NEW JERSEY REGISTER

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(Includes adopted rules filed through March 15, 1993)

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

NEXT UPDATE: SUPPLEMENT FEBRUARY 16, 1993

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **May 5, 1993.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 82(1993)
Highlands Trust Advisory Board

Issued: February 25, 1993.
Effective: February 25, 1993.
Expiration: Indefinite.

WHEREAS, the 1.1 million acre Highlands region, stretching from the Delaware River to the Hudson River and encompassing lands of New York and New Jersey, is an area of significant natural beauty containing numerous cultural and historic sites and possessing substantial recreational opportunities; and

WHEREAS, Federal, State, county and local governments in both New Jersey and New York own approximately 148,800 acres in this region, managing them as parks, preserves, water supply areas, historic sites and open space; and

WHEREAS, the State Development and Redevelopment Plan notes that the Highlands is one of but a few of the natural assets of the Garden State that translates into vast recreational and economic opportunity for today's and tomorrow's New Jerseyans; and

WHEREAS, land preservation efforts in the Highlands Region should link the parks, historic sites, wetlands, wildlife habitats, streams, rivers, reservoirs, watersheds, trails, scenic and natural lands and other protected areas unique to the region between the Delaware and Hudson Rivers for the enjoyment of future generations; and

WHEREAS, greenways provide a means for forging this link by creating unbroken corridors of forests, streams, lakes, reservoirs, rivers and public trust lands which protect valuable wetlands, scenic and recreation areas and wildlife habitats, shape community development and enhance community pride and beauty; and

WHEREAS, in 1987, the President's Commission on American Outdoors called for a network of greenways across the United States to facilitate the preservation of natural resources for recreational and open space purposes; and

WHEREAS, the Governor's Council on New Jersey Outdoors recommended in its 1991 Annual Report that there should be Federal and State assistance in establishing greenway projects; and

WHEREAS, both the Skylands Greenway Task Force and the U.S. Forest Service Highlands Study recognized the continued threats of uncontrolled suburbanization and urbanization on the natural resources of the region and recommended protection and conservation of the region's important water and contiguous forest resources; and

WHEREAS, the Skylands Greenway Task Force recommends the creation of a Skylands Greenway Council and the U.S. Forest Service Highlands Regional Study recommends a continuing entity to implement conservation and preservation strategies; and

WHEREAS, the recent Federal appropriation for the Highlands Region, under the Forest Legacy Program, requires public participation in conservation and preservation recommendations; and

WHEREAS, it is in the interest of New Jersey to create an Advisory Group, including public members, to coordinate land preservation and conservation efforts and provide advice and recommendations to the appropriate State and Federal agencies involved in the Highlands Region;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The creation of a Highlands Trust Advisory Board (hereinafter referred to as the "Board") which shall be advisory to the Commissioner of the Department of Environmental Protection and Energy. The responsibilities of the Board shall include, but not be limited to, providing recommendations on lands most suitable for preservation and conservation in the Highlands region. Preservation and conservation shall include natural and historic resources, as well as greenways, defined as a network of protected linkages of natural, cultural and recreational resources planned in such a way as to enhance the local economy. In making its recommendations, the Board should also examine ongoing efforts to identify and inventory natural habitat areas, greenway corridors, cultural resources, historic resources, scenic roads and landscapes. Additionally, recommendations should reflect comprehensive planning and coordination of land preservation and conservation efforts and most efficient use of resources of public and private agencies in the Highlands Region.

The Board should encourage consideration of the natural and recreational resources at the earliest stages of land use planning and promote cooperation between the community, and State and local reviewing agencies.

The Board should coordinate its activities and recommendations with due regard to the State's Forest Legacy Program.

The Board may examine and refine preservation strategies that were recommended in the Skylands Greenway Task Force Report and Highlands Regional Study and make appropriate recommendations.

2. The Board shall be constituted as follows:

a. The Commissioner of the New Jersey Department of Environmental Protection and Energy, or the Commissioner's designee.

b. A representative from the North Jersey District Water Supply Commission.

c. A representative from the Newark Watershed Conservation and Development Corporation.

d. One representative from each of the following private non-profit land holding conservation groups in the Highlands Region: The Nature Conservancy, Trust for Public Land, New Jersey Conservation Foundation, Morris Parks and Land Conservancy, Hunterdon Heritage Conservancy, and New Jersey Audubon Society.

e. The Board shall invite representatives, one each from counties comprising the Highlands region, specifically, Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren, each to be chosen by the respective Board of Chosen Freeholders of counties which choose to participate in Advisory Board activities.

f. The Board may also invite the participation of the Commissioner of the New York Department of Environmental Conservation and/or of the New York State Office of Parks, Recreation and Historic Preservation, or their designees, as well as representatives from New York's Orange and Rockland Counties, the United States Forest Service, National Park Service, United States Fish and Wildlife Service, United States Soil Conservation Service and other interested groups.

3. The geographical boundaries of the region to be studied by the Board shall coincide with those boundaries identified in the U.S. Forest Service Highlands Regional Study. The New Jersey boundaries include, in part or whole, 83 townships in Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren counties.

4. The New Jersey Department of Environmental Protection and Energy is authorized and directed, to the extent not inconsistent with law, to cooperate with the Board and to furnish it with such information, personnel and assistance as necessary to accomplish the purposes of this Order. The Board may also call upon other State agencies, including the State Planning Commission and Office of State Planning, to provide any information deemed necessary, including statistical and planning data.

5. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 83(1993)
Legalized Gaming Policy Study Commission

Issued: March 5, 1993.
Effective: March 5, 1993.
Expiration: Indefinite.

WHEREAS, revenues from legalized gaming are used by the State and by many private non-profit organizations to fund a broad range of services and programs for the citizens of New Jersey; and

WHEREAS, the demand for services and programs currently funded by legalized gaming revenues is likely to continue to increase; and

WHEREAS, the dependence of certain State-funded programs on revenues from legalized gaming raises practical and policy considerations that should be examined periodically on a comprehensive basis to assure

that the development of legalized gaming results from conscious policy choices rather than perceived financial necessity; and

WHEREAS, legalized gaming has produced and continues to produce significant benefits for New Jersey's citizens; and

WHEREAS, there are also social and other costs associated with legalized gaming; and

WHEREAS, New Jersey currently sanctions a variety of types of legalized gaming; and

WHEREAS, the initiation of or changes to a specific type of legalized gaming may affect other types of legalized gaming; and

WHEREAS, the use of legalized gaming to produce public revenues is becoming more prevalent in other jurisdictions; and

WHEREAS, the existence and possible expansion of legalized gaming in other jurisdictions will have an effect on legalized gaming in New Jersey; and

WHEREAS, there is a need to study the policies of this State with regard to legalized gaming in order to ensure that the various factors cited above are given proper consideration in the development of legalized gaming policies for the future;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created a Legalized Gaming Policy Study Commission, hereinafter referred to as the Commission.

2. The Commission shall consist of thirteen members appointed as follows: four public members appointed by the Governor; one member of the Casino Control Commission appointed by the Governor; two members of the Senate (no more than one of whom shall be of the same political party) and one public member appointed by the President of the Senate; two members of the General Assembly (no more than one of whom shall be of the same political party) and one public member appointed by the Speaker of the General Assembly; the Attorney General or his designee; and the Treasurer or his designee. The Chair and Vice Chair of the Commission shall be appointed by the Governor. All members of the Commission shall serve without compensation.

3. The Commission shall study the policies of this State with regard to legalized gaming and shall make recommendations to help ensure that the various factors cited in the Preamble of this Executive Order, and any other factors deemed relevant by the Commission, are given proper consideration in the development of legalized gaming policies for the future. The Commission shall issue its report and recommendations no later than December 31, 1993.

4. The Commission shall receive staff support from the Department of Treasury and the Department of Law and Public Safety.

5. This Order shall take effect immediately and shall terminate upon the issuance by the Commission of its report and recommendations.

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 84(1993)
Set-Aside Policy for Public Procurement and Construction Contracts

Issued: March 5, 1993.
Effective: March 5, 1993.
Expiration: Indefinite.

WHEREAS, our nation is deeply committed to the universal principle of equality for all, a principle that is forever fixed in our fundamental law through the equal protection clause of the Fourteenth Amendment to the United States Constitution; and

WHEREAS, since the time of the Civil War, our nation's history has been characterized by a long and difficult struggle to provide every citizen with equal rights under the law; and

WHEREAS, we are still engaged in an historic endeavor to cleanse our social, political, and economic life of invidious discrimination against racial and ethnic minorities, and against women; and

WHEREAS, our government cannot tolerate discrimination against African-Americans, who continue to suffer from the legacy of racism in America; against women, who have still not been fully admitted to the table of equality; and against ethnic minorities, such as Latinos and Asian-Americans, who also confront barriers of discrimination throughout this society; and

WHEREAS, our government bears a solemn responsibility to carry out the vision of equality and justice that has long nourished the righteous efforts of the civil rights movement; and

WHEREAS, the civil rights movement in the United States has transformed our legal and political system from one that embraced segregation and other forms of overt discrimination to one that now recognizes the right of every citizen to equal respect and concern; and

WHEREAS, nevertheless, our society continues to be marred by economic inequalities among our citizens—inequalities that represent the direct and intolerable legacy of this nation's discriminatory past; and

WHEREAS, we owe an abiding obligation to the great civil rights leaders in our history, such as Dr. Martin Luther King, Cesar Chavez, Susan B. Anthony, and Supreme Court Justice Thurgood Marshall, to give the fullest measure of our efforts to eradicate the economic consequences of racial, ethnic, and gender discrimination; and

WHEREAS, we can best achieve the ideal of equal economic opportunity for all not by increasing our reliance on social welfare programs of the past, but by advancing new policies that promote economic self-reliance and entrepreneurial self-sufficiency; and

WHEREAS, in 1985, this State adopted with widespread support an innovative set-aside policy that guaranteed businesses owned by racial and ethnic minorities, and businesses owned by women an opportunity to obtain a fair portion of public contracts; and

WHEREAS, New Jersey's set-aside program not only redressed historic discrimination in the marketplace, but also advanced the critical interest of providing historically disadvantaged groups with the means and the experience to compete fairly in the economic setting; and

WHEREAS, in the 1989 case of *City of Richmond v. Croson,* the United States Supreme Court invalidated a City of Richmond set-aside program on the grounds that the city had failed to meet strict standards of constitutional scrutiny, which require that such policies be justified on the basis of evidence of actual discrimination, and that such policies be narrowly tailored to remedy such discrimination; and

WHEREAS, after *Croson,* the set-aside program in New Jersey was suspended; and

WHEREAS, on August 14, 1989, in response to the *Croson* case, Governor Thomas H. Kean issued Executive Order No. 213, which established the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts (hereinafter the "Study Commission"); and

WHEREAS, the Executive Order directed the Study Commission to "investigate the nature and scope of any discriminatory practices" that exist in the awarding of construction and procurement contracts by the State of New Jersey, to "prepare an analysis of this information in order to develop probative evidence of any prior or present discrimination" in the awarding of such contracts, and to "identify and evaluate remedies for these practices consistent with guidelines established by the Supreme Court in *Croson*"; and

WHEREAS, the Study Commission, which has been continued throughout this Administration, has worked diligently since its formation to fulfill its mandate, and has presented me with its final report, complete with extensive findings and comprehensive proposals; and

WHEREAS, the Study Commission's report is based upon a thorough statistical analysis comparing the volume of contract dollars awarded by State agencies to firms owned and operated by minorities and women to the numbers of such firms that are qualified and available to provide goods and services to the State; and

WHEREAS, the Study Commission's report also contains extensive anecdotal and historical evidence revealing widespread discrimination in the marketplace, with which the State passively participates; and

WHEREAS, this compelling statistical and anecdotal evidence establishes a convincing case that firms owned and operated by racial and ethnic minorities, as well as firms owned and operated by women, experience widespread exclusion fom the contracting process; and

WHEREAS, I have been advised by the Attorney General that the evidence set forth in the Study Commission's final report supplies a constitutionally permissible basis for establishing a set-aside policy under the strict scrutiny standards enunciated in the *Croson* case; and

WHEREAS, government must take every necessary and practicable step toward eradicating racial, ethnic, and gender discrimination from our society;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Pursuant to the Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq., the New Jersey Sports and Exhibition Authority Law, N.J.S.A. 5:10-1 et seq., the Casino Control Act. N.J.S.A. 5:12-1 et seq., the New Jersey Wastewater Treatment Trust Act, N.J.S.A. 58:11B-1 et seq., the New Jersey Urban Development Corporation Act, N.J.S.A. 55:19-1 et seq., the New Jersey Local Development Financing Fund Act, N.J.S.A. 34:1B-36, and the New Jersey Transportation Trust Fund Authority Act of 1984, N.J.S.A. 27:1B-1 et seq., every agency, department, and instrumentality of the State of New Jersey that is authorized to award procurement or construction contracts shall forthwith adopt a set-aside policy in accordance with the foregoing statutory provisions and with this Executive Order.

2. In particular, every such State contracting agency shall adopt a set-aside program that requires the agency to make a good faith effort to award 7% of public procurement and construction contracts and subcontracts to qualified businesses owned and operated by African-Americans, Latinos, and Asian-Americans, and 3% of public procurement and construction contracts and subcontracts to qualified businesses owned and operated by women.

3. These numerical goals shall be pursued to the fullest degree consistent with practicality, and only insofar as to advance the State's interest in awarding contracts to firms with the necessary qualifications, regardless of race, ethnicity, or gender. Furthermore, any set-aside program established as directed by this Order shall specifically authorize the department or agency administering the set-aside program to award contracts regardless of race, ethnicity, or gender, notwithstanding the numerical goals set forth above, whenever qualified minority- or women-owned businesses are unavailable to perform the services or supply the goods sought.

4. Any set-aside program established pursuant to this Order is remedial in nature and in purpose, and therefore shall be in effect with respect to each affected group only until such time as the discriminatory conditions that form the basis of the set-aside program are eradicated.

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 85(1993)
Limited State of Emergency

Issued: March 15, 1993.
Effective: March 15, 1993.
Expiration: Indefinite.

WHEREAS, severe weather conditions of March 13, 1993, including snow, heavy rains, winds and high tides have created flooding, hazardous road conditions, and threatened homes and other structures throughout the State; and

WHEREAS, these weather conditions pose a threat and constitute a disaster from a natural cause which threatens and presently does endanger the health, safety or resources of the residents of more than one municipality and county of this State; and which is in some parts of the State and may become in other parts of the State too large in scope to be handled in its entirety by the normal municipal operating services; and

WHEREAS, the Constitution and Statutes of the State of New Jersey, particularly the provisions of the Law of 1942, *c.* 251 (N.J.S.A. App: 9-30 et seq.) and the Laws of 1979, *c.* 240 (N.J.S.A. 38A:3-6.1) and the Laws of 1963, *c.* 109 (N.J.S.A. 38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a limited State of Emergency has and presently exists throughout the State since 10:30 A.M. on Saturday, March 13, 1993.

1. In accordance with the Laws of 1963, *c.* 109 (N.J.S.A. 38A:2-4), I hereby authorize the Adjutant General of the New Jersey National Guard to order to active duty such members of the New Jersey National Guard that, in his judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare. He may authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

2. In accordance with the Laws of 1942, *c.* 251 as supplemented and amended, I hereby empower the Superintendent of the Division of State Police, who is the State's Director of Emergency Management, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area that he, in his direction, deems necessary for the protection of the health, safety and welfare of the public.

3. The Superintendent of the Division of State Police is further authorized and empowered to restrict vehicles from using the State highways and to remove all abandoned or parked vehicles from State highways and take all other actions necessary to secure the health, welfare and safety of the people during this limited State of Emergency.

4. The Superintendent of the Division of State Police is further authorized and empowered to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may be stranded on the highways or evacuated from their residences during the course of this emergency.

5. The Superintendent of the Division of State Police is hereby authorized to order the evacuation of all persons, except for those emergency and governmental personnel whose presence he deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

6. In accordance with the Laws of 1942, *c.* 251, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

7. This Order shall take effect immediately and it shall remain in effect until such time as it is determined by me that an emergency no longer exists.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 86(1993)
Termination of State of Emergency

Issued: March 15, 1993.
Effective: March 15, 1993.

WHEREAS, Executive Order No. 85 declared a State of Emergency effective March 13, 1993 because of severe weather conditions which threatened the health, safety and resources of the residents of this State; and

WHEREAS, the immediate threat posed by the severe weather conditions of March 13, 1993 and since have passed and ceased to endanger the health, safety or resources of residents; and

WHEREAS, I wish to express my personal appreciation to the people of New Jersey for the manner in which they cooperated during this emergency and to the law enforcement, military and emergency response personnel of the State for their untiring efforts;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby declare that the State of Emergency is hereby terminated effective at 5 P.M. on March 15, 1993.

This Order shall take effect immediately.

RULE PROPOSALS

AGRICULTURE

(a)

ADMINISTRATION

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 2:1-4

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-11, 42 U.S.C. §12101 et seq. and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-200.

Submit written comments by May 5, 1993 to:

J. Peter Anderson, Executive Assistant
Office of the Secretary of Agriculture
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Agriculture proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 2:1-4.1, Definitions, which for this agency is proposed as follows:

2:1-4.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Agriculture.

"Designated decision maker" means the Secretary of Agriculture or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08652

BANKING

(b)

ADMINISTRATION

Disability Discrimination Grievance Procedure

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

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

Authority: N.J.S.A. 17:1-8.1, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-168.

Submit written comments by May 5, 1993 to:

Eileen Shea Pazder
ADA Coordinator
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Agriculture proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 3:3-3.1, Definitions, which for this agency is proposed as follows:

SUBCHAPTER 3. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

3:3-3.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Banking.

"Designated decision maker" means the Commissioner of Banking or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
Department of Banking
20 West State Street
CN 040
Trenton, New Jersey 08625

PERSONNEL

(c)

MERIT SYSTEM BOARD

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 4A:1-5

Authorized By: Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6.d., 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-209.

Submit written comments by May 5, 1993 to:

Janet Share Zatz
Director of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Personnel proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 4A:1-5.1, Definitions, which for this agency is proposed as follows:

4A:1-5.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Personnel.

"Designated decision maker" means the Commissioner of Personnel or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Personnel
CN 312
Trenton, New Jersey 08652

COMMUNITY AFFAIRS

(a)

OFFICE OF HUMAN SERVICES

Disability Discrimination Grievance Procedure

Proposed New Ruless: N.J.A.C. 5:5

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-3.1, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-203.

Submit written comments by May 5, 1993 to:

Jeff Ryan
ADA Coordinator
Department of Community Affairs
CN 800
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Community Affairs proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of Subchapter 1, Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1. DEFINITIONS

5:5-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Community Affairs.

"Designated decision maker" means the Commissioner of Community Affairs or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Community Affairs
CN 800
Trenton, New Jersey 08625

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code
Fire Prevention Code
Junk Yards, Recycling Centers and Other Exterior Storage Sites

Proposed Amendments: N.J.A.C. 5:18-3.2, 3.3, 3.13, 3.19 and Appendix 3A

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1993-163.

Submit written comments by May 5, 1993 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
Fax No. (609) 633-6729

The agency proposal follows:

Summary

The proposed amendments establish definitions for junk yards, recycling centers, and other exterior storage sites and proposes the adoption of applicable national safety standards. Definitions are included for "junk yard," "recyclable material," "salvage yard," "vehicle wrecking yard," "waste material" and "waste material handling plant."

The inclusion of three National Fire Protection Association standards relating to indoor and outdoor storage of flammable and combustible materials will provide appropriate guidelines for officials and business owners to use in determining safe storage areas, pile sizes and separations.

Social Impact

The proposed amendments will recognize nationally accepted standards which will assure the safety of employees, firefighters and the public, without placing any unreasonable burdens upon business owners.

Economic Impact

The effect of these rule changes upon particular businesses and properties will vary depending upon the size and nature of the operation in each case. Some storage operations may be able to increase pile sizes and lengths, while others may have to reduce storage. The use of nationally recognized standards will assure that all businesses are treated equitably and on the basis of the hazard that may be presented.

Regulatory Flexibility Analysis

The proposed amendments clarify, through references to national standards, requirements for the storage of waste materials in outdoor settings and for storage of specified types of combustible materials, such as lumber. The amendments will apply to businesses such as junk yards, salvage yards, recycling centers, and to any facility which holds the specified types of materials awaiting further processing. The amendments also will affect lumberyards and woodworking plants. The costs, as discussed in the economic impact, will vary from site to site, depending upon market forces, owner preferences, and the nature of the specific site. Some of the businesses affected may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the Department has determined that no differentiation based upon business size should be provided in the amendments, since fire safety violations directly affect the public safety and must be corrected, regardless of the size of the affected business, as fires and explosions do not discriminate on these grounds.

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

5:18-3.2 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not

defined then the definition of that term found in this code at N.J.A.C. 5:18-1.5 or within the Uniform Construction Code, N.J.A.C. 5:23-1.4, shall govern:

...

"Junk yard" means any location where materials no longer suitable or needed for their original purpose are stored awaiting reuse, recycling or scrap.

...

"Recyclable material" means waste materials which are capable of being reclaimed or reprocessed into raw materials to manufacture new products.

...

"Salvage yard" means a location where materials, equipment, appliances and/or other items are brought to be reconditioned, repaired, resold or scrapped.

...

"Vehicle wrecking yard" means a location where vehicles no longer suitable for use on roads are stored, stripped for parts, crushed or otherwise scrapped. This definition also means and includes portions of vehicle pounds containing wrecked unclaimed vehicles.

...

"Waste material" means materials which are no longer needed or suitable for the purpose originally intended.

"Waste material handling plant" means any operation which collects, receives, stores, sorts, bales or otherwise handles used material of any kind, including, without limitation, paper, cardboard, cloth, plastic, metals, tires, wood and similar materials, whether inside or outside of buildings. This definition also means and includes recycling centers, transfer stations and like facilities.

...

5:18-3.3 General precautions against fire

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

(f) The following apply to materials storage:

1. The storage of combustible or flammable material shall be confined to approved storage areas.

i. Except as otherwise specified in this Code, warehouse storage and protection shall be in conformance with the applicable provisions of NFPA 231, 231C, and 231D listed in Appendix 3A, incorporated herein by reference.

2.-3. (No change.)

4. The outdoor storage of combustible or flammable materials shall [not be more than 20 feet in height and shall] be compact and orderly **and shall not be more than 20 feet in height unless specifically approved by the fire official in accordance with NFPA 46 or Appendix C of NFPA 231D listed in Appendix 3A, incorporated herein by reference.** Such storage shall be located as not to constitute a hazard and **shall be** not less than 15 feet from any other building on the site or from a lot line.

i. When the fire official shall find materials which because of ease of ignition, rapidity of burning, high rate of heat release, configuration of the material or method of storage or such other factors as to present a serious fire potential, he or she shall require reduced pile heights and/or increased separation between piles, building and/or property lines and any other such measures required or recommended by NFPA 46, Appendix C of NFPA 231, and Appendix C of NFPA 231D listed in Appendix 3A, incorporated herein by reference, where provisions of this Code do not specifically cover conditions and operations.

5. (No change.)

5:18-3.13 Lumberyards, **exterior storage or processing of forest products** and woodworking plants

(a) (No change.)

(b) Fire safety requirements are as follows:

1. (No change.)

2. Lumber shall be piled with due regard to stability of piles and in no case higher than 20 feet, **unless specifically approved by the fire official in accordance with NFPA 46 or Appendix C of NFPA 231D listed in Appendix 3A, incorporated herein by reference.**

i.-ii. (No change.)

3.-7. (No change.)

(c) (No change.)

5:18-3.19 Vehicle wrecking yards, junk yards, and waste material handling plants

(a) (No change.)

(b) Fire safety requirements are as follows:

1.-4. (No change.)

5. Storage at junk yards and waste material handling plants shall comply with the requirements of N.J.A.C. 5:18-3.3(f).

Appendix 3-A

...

NFPA National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269

Standard reference number	Title	Referenced in Code Section Number
...		
46-[85] **90**	Forest Products—Recommended Safe Practice for Storage of.....	**3.3(f)4, 3.3(f)4i,** 3.13(b)1, **3.13(b)2**
...		
61A-[85] **89**	Manufacturing and Handling Starch.....	3.10(a)
...		
231-[87] **90**	General Storage, Indoors—Standard for	**3.3(f)1i, 3.3(f)4i,** 3.4(a)1
231C-[86] **91**	Rack Storage—Standard for	**3.3(f)1i, 3.3(f)4i,** 3.4(a)1, **3.13(b)2**
231D-[86] **89**	Storage of Rubber Tires—Standard for	**3.3(f)1i, 3.3(f)4, 3.3(f)4i,** 3.4(a)1

...

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code
Fire Safety Code
Fire Suppression Systems in Use Group I-2 Buildings
Proposed Amendments: N.J.A.C. 5:18-4.3 and 4.7

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1993-184.

Submit written comments by May 5, 1993 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX Number (609) 633-6729

The agency proposal follows:

Summary

The Code currently requires suppression systems in all Use Group I-2 buildings (hospitals and nursing homes), with limited exceptions based on the type of construction of the building. The purpose of these proposed amendments is to eliminate this type of construction exception so that all I-2 uses, except one story day nurseries, will have suppression systems.

Historical fire experience has indicated that an automatic fire suppression system is the most reliable approach to providing the early detection, fire containment and fire suppression necessary for the occupancies where occupants must be "defended in place." Additionally, these amendments mirror the 1991 BOCA National Building Code, which has also removed these types of construction exclusions. The requirement will be phased in over a number of years, on a schedule to be agreed upon by the institution and the local enforcing agency. It

is anticipated that approved schedules will run anywhere from two to 10 years, based upon anticipated renovation and new construction.

The amendments also make clear that the type of suppression system that is to be installed in Use Group I-2 buildings, unless a variance is granted by the fire official pursuant to N.J.A.C. 5:18-2.3, is a sprinkler system, which is the type that would be most likely to be used in any event.

Social Impact

The proposed amendments will eliminate the existing exception, based on type of construction, for hospitals and nursing homes. This will assure that the patients and/or residents of these facilities who cannot protect themselves are protected by fire sprinkler systems.

Economic Impact

The cost of retrofitting sprinkler systems in hospitals or nursing homes is estimated to be between $3.00 and $4.00 per square foot of facility. These costs will be spread out over the course of many years, depending on the mutually agreed upon timetable for compliance. Additionally, fire insurance premiums for fully suppressed buildings can be up to one-tenth that of non-suppressed rates. This reduction will result in these systems paying back their installation costs in six to eight years from final completion.

Regulatory Flexibility Analysis

The proposed amendments will eliminate the exception from fire suppression requirements currently provided in the rules for buildings in Use Group I-2 of Type 1 or Type 2A construction, of any height, or of Type 2-B construction not over one story in height. Such facilities will be able to comply with the new requirements over a period of time, to be approved by the Department, once the facility files a timetable to the local enforcing agency by the June 16, 1994 deadline.

The amendments apply to approximately 20 percent of the 355 nursing homes in New Jersey, about half of which, according to the New Jersey State Department of Health, may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The overall cost of compliance, as noted in the Economic Impact statement, is expected to be between $3.00 and $4.00 per square foot of facility space. Specific items of costs may vary from facility to facility, and may include fees to professionals, such as engineers or architects, although such expenditures are not required by the amendments.

The amendments are being proposed in order to better protect the safety and welfare of patients and residents of Use Group I-2 facilities. Provision has been made for compliance over a period of time for all facilities, regardless of size. Since the amendments involve the health and safety of the residents of the facilities, no differentiation based upon business size is warranted or provided.

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

5:18-4.3 Relation to Uniform Construction Code and other Codes

(a) A building in full compliance with the subcodes adopted pursuant to the Uniform Construction Code Act and regulations in force at the time of its construction and possessing a valid certificate of occupancy shall not be required to conform to more restrictive requirements established by this subchapter.

1. (No change.)

2. Use Group I-2 buildings shall be subject to the requirements of N.J.A.C. 5:18-4.7(c), regardless of their state of compliance with the provisions of the Uniform Construction Code in effect at the time of construction.

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

5:18-4.7 Fire suppression systems

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

(c) All buildings of Use Group I-2 or portions thereof when separated in accordance with (k) below shall be equipped throughout with an automatic fire [suppression] **sprinkler** system installed in accordance with the [New Jersey] Uniform Construction Code.

1. The following are exceptions to (c) above:

[i. Buildings of Type 1 or Type 2A construction of any height or of Type 2B construction not over one story in height as defined in the Uniform Construction Code.]

[ii.]**i.** (No change in text.)

2. For I-2 buildings with a valid certificate of occupancy issued under the Uniform Construction Code, or those previously exempted by this Code, the owner shall submit an approved timetable for compliance with the requirements of (c) above to the local enforcing agency by June 16, 1994.

(d)-(k) (No change.)

MILITARY AND VETERANS' AFFAIRS

(a)

PERSONNEL

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 5A:7-1

Authorized By: Vito Morgano, Adjutant General, Department of Military and Veterans' Affairs.

Authority: N.J.S.A. 38A:3-6, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-206.

Submit written comments by May 5, 1993 to:

Colonel Arthur DeGroat
ADA Coordinator
Assistant Commissioner for Support Services
Department of Military and Veterans' Affairs
CN 340
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Military and Veterans' Affairs proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 5A:7-1.1, Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1. DEFINITIONS

5A:7-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Military and Veterans' Affairs.

"Designated decision maker" means the Adjutant General or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Military and Veterans' Affairs
CN 340
Trenton, New Jersey 08625

EDUCATION

(a)

STATE BOARD OF EDUCATION

Special Education

Proposed Amendments: N.J.A.C. 6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1 through 4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.4 and 11.9

Proposed Repeal and New Rule: N.J.A.C. 6:28-11.2

Authorized By: State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 101-476, 102-119 and 99-457.

Proposal Number: PRN 1993-187.

Submit written comments by May 5, 1993 to:
Elease E. Greene-Smith, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jesey 08625-0500

The agency proposal follows:

Summary

Amendments to N.J.A.C. 6:28 are required due to State statutory and regulatory changes since the readoption, with amendments, of Chapter 28 in June 1992. A series of amendments is also proposed in order to comply with Federal mandates required by the State Plan for Special Education, the New Jersey Corrective Action Plan based on monitoring by the U.S. Department of Education and new policy changes which will enable the department to fully comply with Federal law.

A review of each proposed amendment follows. These amendments are clustered by areas.

Early Intervention Programs

In 1982, the Department of Education (DOE) was authorized as the lead agency by State legislation, P.L. 1981, c.415, to provide programs for children with disabilities below the age of three. Since 1982 the DOE has held the administrative responsibility for the 43 Early Intervention Programs (EIPs) in conjunction with the Departments of Health and Human Services.

In 1986, the Federal government enacted P.L. 99-457, Part H of the Individuals with Disabilities Education Act (I.D.E.A.). This Federal legislation provided for a five year phase-in period to provide early intervention programs as an entitlement in all states. Part H contains a series of requirements which New Jersey is mandated to meet within this phase-in period. Many of these Federal requirements are already in place within the Department of Health. These components include county-based case management units, pediatric rehabilitation centers which provide therapies, high risk follow-up programs, and genetic testing and counseling services. In addition, access to third party medical payments is already integrated into the health system. Therefore, the Departments of Education, Health and Human Services jointly support the transference of the lead agency responsibility from the Department of Education to the Department of Health.

On June 5, 1992 the Statewide Interagency Coordinating Council for infant programs held a public hearing to receive testimony regarding the transfer of the lead agency responsibility. There was widespread support from the public's 33 private agencies and individuals who presented testimony. Following the hearing, draft legislation was prepared to amend P.L. 1981, c.415. New legislation was approved on November 25, 1992.

Amendments are proposed as follows to implement the recently enacted P.L. 1992, c.155:

N.J.A.C. 6:28-2.6(a) and 2.7(a) have been amended because the Department of Education will no longer be the lead agency contracting with EIPs. Due to the enactment of P.L. 1992, c.155, the Department of Health will assume that responsibility and will provide due process rights for children below the age of three.

N.J.A.C. 6:28-3.2(a) and 11.4 have been amended to clarify that the Department of Health will be the lead State agency responsible for identifying children below age three who may require special education programs and services.

N.J.A.C. 6:28-9.2(a)1 has been deleted because complaint investigation procedures will become the responsibility of the Department of Health.

N.J.A.C. 6:28-10.1 has been amended and the title to N.J.A.C. 6:28-10.2 has been changed because the Department of Education no longer has lead agency responsibility for the administration of EIPs.

Preschool Handicapped

An expanded program option for pupils classified preschool handicapped has been created to allow districts more flexibility in serving pupils with disabilities, age three through five. Currently these pupils can only be served in special education self-contained classes, in public or approved private programs or resource centers in public schools or in early intervention programs. The proposed amendments allow districts to provide preschool handicapped alternative programs in a variety of settings, such as Head Start programs, licensed nursery schools or the pupil's homes. This will enable districts to provide special education in a more natural setting in the least restrictive environment.

The following amendments are proposed to establish the alternative preschool handicapped programs and to set forth criteria for their operation effective July 1, 1994;

N.J.A.C. 6:28-4.1(e)2 has been amended to establish a minimum of two hours per week for special education instruction in the preschool handicapped alternative program.

N.J.A.C. 6:28-4.4(a)1 has been amended to clarify that children who are served in preschool handicapped alternative programs will not be enrolled on a special class register.

N.J.A.C. 6:28-4.4(a)6 and 7 have been amended to establish group sizes for preschool handicapped alternative programs.

N.J.A.C. 6:28-4.4(a)8 has been amended to establish criteria for the operation of those programs.

Eligible for Day Training

In 1987, the New Jersey Department of Education was monitored by the U.S. Office of Education, Office of Special Education Programs and cited for noncompliance with Federal special education regulations regarding the provision of programs for pupils classified eligible for day training. New Jersey statutory and regulatory provisions allowed these pupils only to be placed in day training centers once classified eligible for day training. Legislation has been enacted recently in New Jersey to allow these pupils to be placed in a variety of educational programs in order to comply with the least restrictive environment provisions of Federal and State regulations. The following amendments are proposed to implement the recently enacted P.L. 1992, c.129:

N.J.A.C. 6:28-1.3, "Related services," has been amended to include the provision of school nursing services. These services are not new related services, but are now included as part of the definition due to public comment received regarding programs for pupils classified as eligible for day training. This change will make it clear that it is available for all classified pupils, as appropriate, to their needs.

N.J.A.C. 6:28-2.3(h)1vi has been deleted because it will no longer be necessary to have a curriculum consultant from the Department of Human Services attend all individualized education program (IEP) meetings for pupils classified as eligible for day training.

N.J.A.C. 6:28-2.7(d) has been deleted because it will no longer be necessary to name the Department of Human Services as a respondent in due process hearings for pupils classified eligible for day training. Under the proposed amendment, district boards of education will be responsible for developing and implementing IEPs for these pupils and will be named, when appropriate, instead of the Department of Human Services.

N.J.A.C. 6:28-4.4(a)4 has been amended to clarify that the four year age requirement as eligible for day training special class programs is the same as that for all pupils with educational disabilities.

N.J.A.C. 6:28-4.4(a)7 has been amended to clarify that the maximum class size for pupils classified as eligible for day training may not be increased.

N.J.A.C. 6:28-8.4(e) has been amended to clarify the program requirements for day training centers when they are operated by the Department of Human Services.

N.J.A.C. 6:28-8.4(f) through (h) and 11.9(b) have been deleted because it is no longer necessary to separately identify district responsibilities for pupils classified as eligible for day training. These responsibilities are the same for all classified pupils.

N.J.A.C. 6:28-8.4(j) and a portion of (f) have been deleted to specify the responsible agency when home instruction is needed for a pupil in a residential State facility or day training center.

Federal Mandates

Two amendments are proposed to comply with the I.D.E.A. These changes are required as part of the U.S. Office of Education's approval of New Jersey's State Plan.

N.J.A.C. 6:28-1.3, "Related services," has been amended to comply with Section 602(a)(17) of the I.D.E.A. which requires that a state's definition of related services include "rehabilitation counseling services" and "social work services." "Rehabilitation counseling services" according to the definition in I.D.E.A. means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of pupils with an educational disability. The term also includes services currently provided by vocational rehabilitation programs in the State. "Social work services" according to I.D.E.A. include preparing a social or developmental history on a child with a disability, group and individual counseling with the child and family, working with these problems in a child's living situation (home, school, and community) that affects the child's adjustment in school, and mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

N.J.A.C. 6:28-4.2(a)10 has been amended to include "instruction in other appropriate settings" as a program option. This is to comply with Section 602(a)(16) of I.D.E.A. which requires that a state's definition of special education include this in the list of settings for specially designed instruction.

Changes to State Regulations

Amendments are proposed due to changes in state regulatory requirements in N.J.A.C. 6:28 and 6:26. These amendments are proposed to conform with the following changes:

N.J.A.C. 6:28-4.2(a)1iv and 4.3(b), (c) and portion of (d) have been deleted as the provision of resource rooms in N.J.A.C. 6:28 will be discontinued as of June 30, 1993.

N.J.A.C. 6:28-4.4(c) has been amended to clarify the recently adopted amendments to N.J.A.C. 6:28 regarding resource center programs. This amendment clarifies the designation of schools with secondary resource center programs. This is the same standard as for special class programs.

N.J.A.C. 6:28-11.2 has been deleted so that the pilot districts operating under the **Plan to Revise Special Education** will conform to the requirements of Pupil Assistance Committees, N.J.A.C. 6:26, as adopted by the State Board of Education in July 1992.

Implementation of Federal Law

Three different amendments are proposed to fully implement and make New Jersey's special education rules consistent with Federal laws. These amendments are necessary to expand the provision of special education programs and services on a nondiscriminatory basis.

N.J.A.C. 6:28-1.3, "Pupil," has been amended to clarify that the definition of a "pupil" include all persons age three through 21 who are entitled to receive an educational program or services. All pupils are entitled to an education even if they are not enrolled in a public school, such as those receiving home schooling.

N.J.A.C. 6:28-4.1(e)3 and 7.5(c) have been amended to clarify that a 12-month program for a pupil with educational disabilities must conform to the provision of that pupil's IEP, which may include both academic and non-academic activities.

N.J.A.C. 6:28-4.2(b) has been deleted to clarify that preschool pupils with educational disabilities may receive special education and related services in all of the program options listed in N.J.A.C. 6:28-4.2(a).

Technical Corrections

Three amendments are proposed to correct technical errors. These amendments will clarify each rule and are in response to questions raised by the public.

N.J.A.C. 6:28-1.1(d) and (e) have been amended to delete the word "State" from the rule because facilities are approved by the local municipality rather than State agencies.

N.J.A.C. 6:28-3.7(a)3 has been amended to delete a cross-reference to N.J.A.C. 6:28-3.4(g) which requires evaluations by additional specialists when a reevaluation for a pupil is conducted. This requirement was not intended. It is a technical error and was inadvertently caused by a series of cross-references.

N.J.A.C. 6:28-2.3(f) has been amended to clarify the requirements for written notice. The U.S. Office of Education recently replied to New Jersey's Federal Corrective Action Plan by stating that the Department's procedural safeguards statement must be made available to the parent every time written notice is given. The proposed rule is amended to match the Federal interpretation.

Social Impact

These proposed amendments will have a positive social impact on pupils with educational disabilities, parents and district boards of education.

In particular, proposed amendments regarding programs for preschool handicapped alternative programs, eligible for day training pupils and infants with disabilities are designed to expand the range of program options. Thereby, the quality of special education services will be improved. In each case, those pupils will be given the opportunity to be educated more appropriately in a less restrictive environment. Pupils classified as preschool handicapped will not be forced into self-contained special education classes because they need particular services which could be offered in less restrictive placements. Instead, services can be offered in a variety of more natural settings, such as nursery schools and day care centers.

Both parents and district boards of education benefit by having a wider range of options available to meet the needs of pupils with educational disabilities.

Economic Impact

Transferring the administrative responsibility for early intervention programs from the Department of Education to the Department of Health will necessitate the transfer of State and Federal Part H dollars to the Department of Health. This will have no economic impact on district boards of education because the State funds early intervention programs and districts are not responsible to serve children below age three.

There should not be a significant fiscal impact on local districts to fund preschool handicapped alternative programs, even though it is anticipated that there may be an increase of as much as ten percent in the number of preschool children with disabilities who may be served. This is because local districts will receive the same amount of State categorical aid for children placed in these programs as they receive for preschool handicapped special class programs. Also, if the numbers served increase, additional Federal aid will be generated in proportion to that increase. The ability to serve preschool handicapped pupils in alternative programs should relieve the stress of finding separate classroom facilities for those children. This would have a positive economic effect.

Providing a full array of program options to pupils classified as eligible for day training and allowing districts and agencies, other than the Department of Human Services to operate day training centers will have no significant economic impact that would increase State or local expenditures.

Regulatory Flexibility Statement

The rules proposed for readoption, with amendments, will have no reporting, recording or compliance requirements for small businesses except for the 44 early intervention programs presently operated under contract with the DOE. The proposed amendments remove the reporting, recording and compliance requirements to the DOE which these agencies maintained as part of their contract approval process. Since the DOE will no longer be the lead agency responsible for the administration of these programs, it would not be appropriate to require that these programs apply for funding or report to the DOE.

It is anticipated that the Department of Health will establish new contract reporting, recording and compliance requirements once the DOE's responsibility is terminated and the Department of Health becomes the lead agency.

The Departments of Education, Health and Human Services will continue to work collaboratively so that a smooth transition will occur.

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

6:28-1.1 General requirements

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

(d) Each district board of education is responsible for providing a system of free, appropriate special education and/or related services to its elementary and secondary school pupils which shall:

1.-2. (No change.)
3. Be located in [State] approved facilities that are accessible to the disabled; and
4. (No change.)
(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool handicapped pupils which shall:
1.-2. (No change.)
3. Be located in [State] approved facilities that are accessible to the disabled or in early intervention programs approved according to N.J.A.C. 6:28-10.1; and
4. (No change.)
(f)-(n) (No change.)

6:28-1.3 Definitions
Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act.
. . . .
"Pupil" means a person age three through 21 who is [or was enrolled in a public school] **entitled to receive educational programs and services in accordance with Federal or State law or regulation.**
. . . .
"Related services" for pupils with educational disabilities means counseling for pupils, counseling and/or training for parents relative to the education of a pupil, speech-language services, recreation, occupational therapy, physical therapy, **rehabilitation counseling, school nursing services, social work services,** transportation, as well as any other appropriate developmental corrective and supportive services required for a pupil to benefit from education as required by the pupil's individualized education program.
. . . .

6:28-2.3 Parental notice, consent, participation and meetings
(a)-(e) (No change.)
(f) [Each notice] **Notice** shall be written in language understandable to the general public and shall include:
1.-2. (No change.)
3. A copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents and/or adult pupils. **A parent or adult pupil may refuse additional copies of the statement. District boards of education shall maintain documentation that the statement was made available each time written notice was provided to a parent and/or adult pupil.**
(g) (No change.)
(h) Meetings shall be conducted to determine eligibility and to develop, review and revise the basic plan of a pupil's individualized education program.
1. Each meeting shall include the following participants:
i.-iii. (No change.)
iv. At least one member of the child study team; **and**
v. Referring certified school personnel, the school principal or designee and other appropriate individuals if they choose to participate[; and].
[vi. A curriculum consultant from the Department of Human Services, for those pupils classified as eligible for day training.]
2.-6. (No change.)
(i)-(k) (No change.)

6:28-2.6 Mediation
(a) For pupils age three through 21, when disputes arise under this chapter, mediation shall be available through the district board of education, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. [For children below the age of three, mediation shall be available through the Department of Education through the Division of Special Education.] Mediation shall be provided in accordance with the following:
1.-4. (No change.)
(b) (No change.)

6:28-2.7 Due process hearings
(a) A due process hearing may be requested in regard to the referral, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. [A due process hearing may also be requested for all disputes regarding the provision of programs and services for children below the age of three.] For pupils above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.
(b)-(c) (No change.)
[(d) For pupils classified as eligible for day training, if a dispute arises regarding the failure to provide the program or a service mandated by the individualized education program, the Division of Developmental Disabilities or the Office of Education, Department of Human Services shall be named as respondent by the parents. If a dispute arises as to any other issue, the district board of education would be the named party.]
Recodify existing (e) through (j) as **(d)** through **(i)**. (No change in text.)

6:28-3.2 Identification
(a) Each district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district who may be educationally disabled and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be disabled shall be identified, located and evaluated through programs operated by or through contracts [with] **under the responsibility of** the Department of [Education] **Health according to P.L. 1992, c.155.**
(b)-(e) (No change.)

6:28-3.7 Reevaluation
(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.
1.-2. (No change.)
3. Reevaluation shall be conducted according to N.J.A.C. 6:28-3.4(c)[,g,] and (h). Individual child study team assessment shall be conducted according to N.J.A.C. 6:28-3.4(d)1 through 6.
4.-5. (No change.)

6:28-4.1 General requirements
(a)-(d) (No change.)
(e) The length of the school day and the [academic] **school** year of programs for pupils with educational disabilities shall be at least as long as that established for all pupils.
1. [Programs] **Special class programs** for the preschool handicapped shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of pupil instruction.
2. Each pupil in a preschool handicapped alternative program according to N.J.A.C. 6:28-4.4(a)6xv shall receive a minimum of two hours of special education instruction per week.
[2.]**3.** An extended [academic] **school** year program shall be [comparable to the special education program offered during the regular academic year] **provided in accordance with the pupil's individualized education program.**
4. Educational programs for pupils classified as eligible for day training shall operate extended school year programs.
(f)-(k) (No change.)

6:28-4.2 Program options
(a) Educational program options include the following:
1. Instruction in a regular class with all necessary and appropriate supports including, but not limited to, the following:
i.-iii. (No change.)
[iv. Resource room (expires June 30, 1993);]
Recodify existing v through ix as **iv through vii.** (No change in text.)

2.-7. (No change.)

8. Individual instruction at home or in other appropriate facilities, with the prior written approval of the Department of Education through its county office, only when it is not appropriate to provide a special education program for a pupil with an educational disability according to N.J.A.C. 6:28-4.5; [and]

9. An accredited nonpublic school which is not specifically approved for the education of pupils with educational disabilities according to N.J.A.C. 6:28-6.5[.]; **and**

10. Instruction in other appropriate settings according to N.J.A.C. 6:28-1.1(d) and (e).

[(b) A district board of education shall provide a program for a preschool handicapped pupil in one of the following settings:

1. An approved public or private program;

2. An accredited nonpublic school; or

3. An early intervention program (which is under contract with the Department) in which the child has been enrolled for the balance of the school year in which the child turns age three.]

6:28-4.3 Program criteria: supplementary instruction, speech-language services[,] [resource rooms] and resource center programs

(a) (No change.)

[(b) District boards of education may operate on a district wide basis either but not both, resource rooms and resource center programs until June 30, 1993. From that date forward, all district boards of education shall be required to comply with (d) below.

(c) Resource room programs shall be instructional centers offering individual and small group instruction in place of regular classroom instruction, based on curriculum adopted by the board of education. Resource rooms shall meet the following criteria:

1. A pupil with an educational disability in a resource room shall be enrolled on a regular public school class register with his or her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource room teacher and the regular class teacher(s) as described in the individualized education program.

2. Depending on the type of resource room program, the resource room teacher shall hold certification as teacher of the handicapped, or teacher of blind or partially sighted, or teacher of deaf and/or hard of hearing.

3. Types of resource room programs shall be designated as follows:

i. Single handicap program for pupils with the same classification;

ii. Mixed handicap program for pupils with different classifications; and

iii. Open program for nondisabled and educationally disabled pupils.

4. The number of pupils in a resource room at any given time shall not exceed five. The total number of resource room pupils assigned to a resource room teacher shall be no more than 20.

i. When a resource room teacher is assigned other instructional responsibilities, the maximum number of resource room pupils that can be assigned to that teacher shall be less than 20. The maximum number of pupils shall be determined by dividing the number of periods of resource room instruction to which that teacher is assigned by the number of periods of that teacher's total instructional time and multiplying the result by 20. Where the school divides its instructional day by hours rather than periods, the calculation shall be performed by substituting hours for periods.

5. The maximum amount of time per day a pupil may participate in a resource room program at the elementary level is two hours; at the secondary level, two instructional periods.

6. This subsection shall expire on June 30, 1993.

(d) A district board of education may commence the operation of a resource center program at any time during the 1992-93 school year provided the district discontinues resource rooms.]

(b) Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1.-13. (No change.)

6:28-4.4 Program criteria: special class programs, secondary, vocational and vocational rehabilitation

(a) Special class programs shall meet the following criteria:

1. A pupil with an educational disability in a special class program shall be enrolled on a special class register **with the exception of pupils receiving preschool handicapped alternative programs according to N.J.A.C. 6:28-4.4(a)6xv;**

2.-3. (No change.)

4. The age span in special class programs shall not exceed four years [except for eligible for day training pupils according to N.J.A.C. 6:28-8.4(e)3];

5. (No change.)

6. A special class program shall serve pupils who have the same classification. Class size shall not exceed the following:

i.-xiv. (No change.)

xv. Preschool handicapped alternative programs—according to (a)8i through iv below (effective July 1, 1994);

Recodify existing xv and xvi as **xvi and xvii** (No change in text.)

7. With the exception of classes for autistic pupils, **eligible for day training pupils and preschool handicapped alternative programs,** the above maximum class sizes may be increased no more than one-third with the addition of a classroom aide or a second classroom aide where one is already required by obtaining prior written approval from the Department of Education through its county office. **No exceptions according to N.J.A.C. 6:28-4.6 shall be granted regarding class size for pupils classified as eligible for day training.**

8. District boards of education which operate preschool handicapped alternative programs shall meet the following criteria:

i. For instructional purposes, group size shall not exceed five pupils;

ii. Programs shall be operated by a district board of education or through contracts with other district boards of education, educational services commissions or jointure commissions;

iii. Programs shall be provided in a home, licensed day care center, registered family day care home, Head Start Program, nonsectarian nonpublic school, licensed nursery school, early intervention program, under contract with the Department of Health in which a child has been enrolled for the balance of the school year in which the child turns age three, or in other appropriate instructional settings;

iv. The total number of pupils assigned to a teacher of the handicapped in the preschool handicapped alternative program shall not exceed 20; and

v. When the district board of education operates a preschool handicapped alternative program, the maximum number of pupils served shall be proportional to the time the certified teacher is employed to serve as the preschool handicapped alternative program teacher.

(b) (No change.)

(c) Secondary resource center programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education pupils.

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

6:28-7.5 Provision of programs

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

(c) With prior written approval of the Department of Education, a school described in N.J.A.C. 6:28-7.1(a) may operate an extended [academic] **school** year program.

(d) (No change.)

6:28-8.4 Provision of programs

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

(e) Day training programs **operated by the Department of Human Services** shall be provided in the following manner:

1. (No change.)

2. A day training program is responsible for implementing the individualized education program which shall be developed by the district board of education [with input from a curriculum consultant from the day training center];

[3. In classes for pupils classified as eligible for day training, the age range may exceed four years only if the rationale for placement is noted in the pupil's individualized education program;]

[4.]**3.** An educational program for pupils classified as eligible for day training in a State residential facility shall be commensurate with those in a day training center; and

4. For pupils placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6:28-2.3(h).

[5. No exception shall be granted regarding class size in classes for pupils classified as eligible for day training.

(f) For those pupils placed in day training centers, the district board of education shall:

1. Develop the basic plan section of the individualized education program with participation of the curriculum consultant from the proposed day training facility;

2. Conduct the annual review of the individualized education program according to N.J.A.C. 6:28-3.6(j) and include the participation of the teaching staff member from the day training facility who is familiar with the pupil; and

3. Conduct the reevaluation according to N.J.A.C. 6:28-3.7 and provisions of this subchapter.

(g) For those pupils placed in day training centers, the Department of Human Services shall:

1. Provide an opportunity for the teacher having knowledge of the pupil to contribute to the development of the instructional guide section of the individualized education program according to N.J.A.C. 6:28-3.6(g), (h) and (i); and

2. Provide the educational program and all related services as specified in the individualized education program.

(h) An educational plan shall be developed by the approved facility for each school age pupil leaving a Department of Corrections or Department of Human Services education program which shall include:

1. Information necessary to formulate an appropriate educational program when the pupil returns to a local district or attends any other educational program beyond the facility placement.

2. An individualized education program for pupils with educational disabilities; or for nondisabled pupils, a description of the pupil's general education program; and

3. Specifics for the implementation of the plan including:

i. Contact personnel;

ii. Program recommendations;

iii. Timelines for implementation; and

iv. Personnel responsible for implementation.]

[(i)]**(f)** When a pupil in a residential State facility **or day training center** is in need of home instruction according to N.J.A.C. 6:28-4.5[(b)], the State facility **or day training center** shall implement the program. [Pupils may receive home instruction beyond 60 calendar days only with written approval of the Department of Education through its county office.

(j) When a pupil in a day training center is in need of home instruction according to N.J.A.C. 6:28-4.5(b), the center shall implement the program. When home instruction extends beyond 60 calendar days, the Department of Human Services, Office of Education shall notify the responsible district board of education. The district shall review the pupil's current educational classification. Pupils may receive home instruction beyond 60 calendar days only with written approval of the Department of Education through its county office.]

6:28-9.2 Complaint investigation

(a) The Director of the Division of Special Education or his or her designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint of substance regarding the provision of special education and/or related services covered under this chapter.

[1. The Division of Special Education shall complete an investigation within 60 calendar days after a written complaint is received for children below the age of three.]

[2.]**1.** The Division of Special Education in conjunction with the county office of education, shall complete an investigation within 60 calendar days after a written complaint is received for pupils age three and above.

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

6:28-10.1 [General requirements for early] **Early** intervention programs serving children between birth and age three

[(a) This subchapter applies to all agenices that receive public funds through contracts from the Department of Education for the provision of early intervention programs to children with disabilities between birth and age three and their families. Early intervention programs are designed to address or enhance the child's development through an individualized family service plan according to P.L. 99-457.]

[(b)] Early intervention programs shall be administered by the Department of [Education] **Health** as the lead agency in [collaboration] **conjunction** with the Departments of [Health and] Human Services **and Education in accordance with P.L. 1992, c.155.**

[(c) Early intervention programs that receive public funds through contracts shall be funded to the extent provided by appropriations to the Department of Education for these purposes.

(d) The Department of Education, in consultation with the Departments of Health and Human Services shall monitor and review the programs annually.

(e) The Department of Education shall conduct complaint investigations according to N.J.A.C. 6:28-9.2.

(f) An application for funding of an early intervention program shall be submitted annually to the Department of Education.

(g) Eligibility for funding and level of funding shall be determined annually by the Department of Education in consultation with the Departments of Health and Human Services and the Developmental Disabilities Council.

(h) To be eligible for funding, agencies shall comply with the program and fiscal criteria in the application for early intervention funds and with the contract requirements.

(i) An appeal of the approval or funding decision of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6:24.

(j) Personnel employed in early intervention programs shall be appropriately certified or licensed.

(k) Facilities for early intervention programs shall comply with all local health and safety codes. Each facility site shall be inspected and approved according to county and local building, fire and health requirements.

(l) Funded early intervention programs shall comply with all pupil record requirements according to N.J.A.C. 6:3-2.

(m) Mediation and/or a due process hearing may be requested in regard to the provision of programs and services for children below the age of three according to N.J.A.C. 6:28-2.6 and 2.7.]

6:28-10.2 General requirements when district boards of education contract with early intervention programs under contract with the [department] **Department** of [education] **Health** for pupils age three

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

6:28-11.2 [School resource committees] **Pupil assistance committees**

[(a) All pilot district boards of education shall establish at least one school resource committee in each of its regular schools. The school resource committee is a standing committee whose purpose is to assist teachers with strategies for educating nondisabled pupils with learning and/or behavior problems in regular education. Pilot district boards of education shall develop procedures for requesting the services of the school resource committee, implementing committee recommendations and communicating with parents.

1. The core membership of the school resource committee shall be the building principal or designee with the authority of the principal to implement recommendations, one child study team member and at least one of the following:

i. A classroom teacher;

ii. A guidance counselor;

iii. A school nurse;

iv. A reading specialist;

v. A compensatory education teacher; or

vi. Other certified regular education school personnel.

2. The principal or designee shall serve as chairperson of the school resource committee.

3. Core membership of the school resource committee shall be determined by procedures developed by the chief school administrator of the district. The committee shall include the staff member who requested assistance. No special education staff member, other than the designated child study team member, may serve as a core member of the committee. The committee may be increased to include other school staff when considering the needs of a particular pupil. The committee may call upon other school staff to carry out assistance plans for specific pupils.

(b) The school resource committee shall request health information from the school nurse for all pupils being discussed. The school nurse shall review the pupil's health records and apprise the committee of all educationally relevant information about the pupil being discussed.

(c) The school resource committee shall prepare assistance plans for pupils who require modifications to their regular education program. Those plans shall detail the modification(s) developed for the pupil and be reviewed within eight calendar weeks of their implementation. The recommendation(s) of the assistance plan must be carried out and shall:

1. List the specific modifications to be made;

2. Name the person(s) responsible to implement the recommendations; and

3. Indicate who will review the pupil's progress.

(d) If the recommendations of the school resource committee are ineffective, the assistance plan shall be amended or the pupil may be referred to the child study team to determine eligibility for special education and/or related services.

(e) Parents shall be notified that their child is to be discussed by the school resource committee and of any changes made in their child's program.] **All pilot district boards of education shall establish pupil assistance committees in accordance with N.J.A.C. 6:26 by July 1993.**

6:28-11.4 Identification

(a) Each pilot district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district, may be educationally disabled and are not receiving special education and/or related services as required by this chapter. Children below the age of three shall be identified, located and evaluated through programs operated by or through contract with the Department of [Education.] **Health according to P.L. 1992, c.155.**

1.-2. (No change.)

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

6:28-11.9 Individualized education program

(a) (No change.)

[(b) Pupils determined to require placement in a day training facility shall be classified as eligible for day training according to N.J.A.C. 6:28-3.5(d)6iii based upon the child study team evaluation completed under N.J.A.C. 6:28-11.6(g).]

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

HIGHER EDUCATION

(a)

ADMINISTRATIVE POLICIES

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 9:2-11

Authorized By: Edward Goldberg, Chancellor, Department of Higher Education.

Authority: N.J.S.A. 18A:3-15, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-212.

Submit written comments by May 5, 1993 to:

Valerie Van Baaren
Administrative Practice Officer
Department of Higher Education
Central Offices
CN 542
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Higher Education proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 9:2-11.1, Definitions, which for this agency is proposed as follows:

9:2-11.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Higher Education.

"Designated decision maker" means the Chancellor of Higher Education or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Higher Education
Central Offices
CN 542
Trenton, New Jersey 08652

HUMAN SERVICES

(b)

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 10:4

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

Authority: N.J.S.A. 30:1-12, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-205.

Submit written comments by May 5, 1993 to:

Edward Tetelman, Director
Office of Legal and Regulatory Affairs
Department of Human Services
CN 700
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Human Services proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of Subchapter 1. Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1. DEFINITIONS

10:4-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Human Services.

"Designated decision maker" means the Commissioner of Human Services or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Human Services
CN 700
Trenton, New Jersey 08625

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Screening and Screening Outreach Programs

Proposed Amendments: N.J.A.C. 10:31-2.1, 2.2, 2.3 and 8.1

Proposed Repeals and New Rules: N.J.A.C. 10:31-1.4 and 9.1

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-27.1 et seq., especially 30:4-27.5.

Proposal Number: PRN 1992-203.

Submit comments by May 5, 1993, to:
Alan G. Kaufman, Director
Division of Mental Health and Hospitals
CN 727, Capital Center
Trenton, NJ 08625-0727

The agency proposal follows:

Summary

N.J.A.C. 10:31, which governs the operation of the Screening and Screening Outreach Programs designated throughout New Jersey by the Division of Mental Health and Hospitals, became effective on June 5, 1989 (see 20 N.J.R. 2427(d), 21 N.J.R. 1562(a)). These programs provide mental health services including assessment, emergency and referral services to mentally ill persons in a specified geographic area.

On June 27, 1990, however, certain provisions of N.J.A.C. 10:31-1.4, 2.1, 2.3, and 8.1 were invalidated and remanded to the Department of Human Services for repromulgation by the Appellate Division of the Superior Court of New Jersey in *In the Matter of the Appeal from the Adoption of Screening Center Regulations by the Department of Human Services,* ____ N.J. Super. ____ Dkt. No. A-5857-88TI (App. Div. June 27, 1990). These proposed amendments constitute the Department's response to that invalidation and remand.

Specifically, the court concluded that regulatory language related to police transport of mentally ill individuals to hospital-based screening centers might be interpreted differently from the Department's intent by various other persons affected thereby. The court stated that these regulatory provisions were invalidated only because the language in question might be interpreted to authorize the police to take custody of an individual based on the mere oral representation of a screener. Accordingly, the relevant language at N.J.A.C. 10:31-8.1 has been amended to clarify the Department's original intent and the limit of the screener's authority to require police transport.

Likewise, the court concluded that regulatory language related to the administration of medication to individuals being screened might be interpreted differently from the Department's intent that such medication shall not be given to individuals in non-emergency situations without their consent. Accordingly, the relevant language at N.J.A.C. 10:31-2.1(a)8, 2.2(a)2 and 2.3(a) has also been amended to clarify the Department's original intent and prohibit such a medication practice.

Additionally, the court agreed with the Department that N.J.A.C. 10:31-9.1, which establishes client rights, was never intended to be a complete list of all individual rights related to screening program assessment and treatment and that the Department did not act arbitrarily and capriciously in formulating those rights. Nevertheless, the court directed that the Department consider specifically expanding the list of those rights on remand.

Subsequently P.L. 1991 c.233 was enacted in July 1991 which established the appropriate and applicable rights for clients of screening programs. Consequently, N.J.A.C. 10:31-9.1 has been proposed for repeal and replacement with a new rule to clarify that these statutory rights have replaced the Department's previous regulatory provisions on this subject. The relevant statutory provisions related to client rights at screening programs have been distributed to the designated screening services Statewide by the Division and will, likewise, be distributed by the Division to those screening services designated in the future.

Finally, the court determined that the waiver provisions contained in N.J.A.C. 10:31-1.4, and adopted without being proposed in the New Jersey Register, need to be so proposed prior to adoption. In this proposal, the Department has also repealed the original adoption of N.J.A.C. 10:31-1.4 and proposed a new rule to provide more details regarding the principles and procedures which govern the Division's decision-making process regarding waiver requests.

Social Impact

These proposed amendments, repeals and new rules will assist in ensuring that State-funded Screening and Screening Outreach Programs are operated in a manner consistent with the appropriate statutory and regulatory standards as well as the intent of the Department. Additionally, the regulated screening program staff, other governmental agencies, mental health clients, their families, and advocates and the general public will all be better able to understand the policies and procedures which govern the exercise of the Division's decision-making authority regarding waiver requests.

These proposed amendments, repeals and new rules would apply to all 23 currently designated Screening and Screening Outreach Programs as well as any additional programs which may be designated by the Division. Since the proposed amendments provide greater clarity regarding the Department's intent and the applicability of various legal parameters to the operation of the program as well as more information regarding the Division's waiver process, only positive consequences to all parties are anticipated.

Economic Impact

No economic impact upon the regulated Screening and Screening Outreach programs, the clients of these programs, the Department or Division, the general public or other governmental agencies is anticipated as a result of these proposed amendments, repeals and new rules. To the extent that these amendments, repeals and new rules promote a clearer understanding of the Department's intent, the applicable legal parameters and the Division's waiver decision-making process, some general social savings in the form of a lessened likelihood of needing clarification or misunderstanding the previous provisions may accrue as a result of these amendments, repeals and new rules.

Regulatory Flexibility Analysis

The proposed amendments to N.J.A.C. 10:31 impose reporting and other compliance requirements on designated screening centers regarding situations in which waivers may be requested (N.J.A.C. 10:31-1.4), the distribution of medication (N.J.A.C. 10:31-2.2), and the transportation of clients (N.J.A.C. 10:31-8.1). Some designated screening centers may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14-16 et seq. The above-cited reporting and compliance requirements imposed upon such screening centers must be uniformly applied regardless of the size of the center to ensure that mentally ill individuals receiving these services throughout the State do so in accordance with basic minimum standards of quality, objectivity

and timeliness. These standards are important because the individuals being screened are typically in psychiatric crisis at the time and subject to the involuntary commitment. Additionally, the screening centers are individually funded by the Division to be able to meet these requirements.

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

[10:31-1.4 Waiver of Rules

(a) Subject to the authority of the Department of Human Services, the Division of Mental Health and Hospitals may waive any provision of this chapter for a provider agency if:

1. Adequate resources are unavailable to assure compliance with this chapter;

2. Application of any provision would conflict with a policy objective stated in N.J.S.A. 30:4-27.1 et seq.; and

3. Waiver of a specific provision would advance a policy objective stated in N.J.S.A. 30:4-27.1 et seq.]

10:31-1.4 Waiver

(a) Under no circumstances will waiver of this subchapter in its entirety be allowed. If, in the judgment of the Division, sufficient contract funding from the Division is available to the designated screening center or emergency service to comply with all rules of this subchapter, the designated screening center or emergency service shall comply with all rules of this subchapter. If, however, in the judgment of the Division, sufficient contract funding from the Division is not available to the designated screening center or emergency service to comply with any rule of this subchapter, the Division may act to relax or waive, with or without conditions, such rule in the specific circumstances presented if the Division is satisfied that:

1. The rule is not mandated by any provision of N.J.S.A. 30:4-27.1 et seq.;

2. The provision of screening services in accordance with the purpose and procedures contained in N.J.S.A. 30:4-27.5 would not be compromised if the waiver was granted; and

3. No significant risk to the welfare and safety of individuals subject to screening services or the staff of designated screening centers or emergency services would result from the granting of the waiver.

(b) The following procedures will be employed regarding the request for and approval of waivers.

1. Whenever a screening center is requesting that a specific provision of this chapter be waived, it shall submit a written request to the appropriate Divisional Regional Office citing that provision and the basis for the waiver request. Waiver requests may be made at the time of the annual renewal of their contract or at the bi-annual designation of their status as a screening center.

2. All waiver requests must be reviewed and approved by the appropriate Regional Assistant Director, who will review the proposed basis for the waiver and determine whether the request meets the standards set forth at (a) above.

3. Each grant of a waiver may be for a maximum time period of one year, subject to renewal upon request.

4. The Division shall communicate in writing to the screening center indicating which provisions, if any, have been waived, the expiration date of the waiver and any conditions or limitations which have been placed on the waiver.

5. Waiver denials by Regional Assistant Directors may be appealed to the Division Director upon request by the screening center. The screening center which originally requested the waiver and other interested parties may communicate their opinions about the appeal of the waiver denial to the Division Director prior to his decision. The Director shall uphold or reverse the original waiver denial by the Regional Assistant Director and communicate the decision to the screening center.

6. The Division shall maintain on file a copy of the waivers which have been granted and a copy of its response to all waiver requests. Copies of these materials shall be made available to the public upon request.

10:31-2.1 Functions of a screening center

(a) A screening center shall perform the following direct service functions:

1.-7. (No change.)

8. Provision of medication monitoring, which shall include medication on-site for the purpose of crisis stabilization. **Medication shall be administered in accordance with P.L. 1991, c.233 and shall not be given to clients in non-emergency situations without their consent;**

9.-10. (No change.)

(b)-(f) (No change.)

10:31-2.2 Functions of an emergency service (ES)

(a) In addition to the designated screening center, a geographic area may include one or more ES's. All emergency services shall be affiliated by written agreement with the geographic area's designated screening center. Each ES shall provide all of the following services:

1. (No change.)

2. Provision and monitoring of medication on site for the purpose of crisis stabilization and provision for medication until this responsibility is transferred to another agency or service; **medication shall be administered in accordance with P.L. 1991, c.233 and shall not be given to clients in non-emergency situations without their consent.**

3.-6. (No change.)

(b) (No change.)

10:31-2.3 Screening process and procedures

(a) The screening process shall involve a thorough assessment of the client and his or her current situation to determine the meaning and implication of the presenting problem(s) and the nature and extent of efforts which have already been made. The screening center staff shall make every effort to gather information from the client's family and significant others to determine what the clinical needs of the client are and to determine what services are in the best interest of the client. The screening center staff, in conjunction with affiliated mental health care providers, shall advocate for services to meet client needs and encourage the system to respond flexibly. **Throughout the screening process, medication shall not be given to clients in non-emergency situations without their consent.**

(b)-(g) (No change.)

10:31-8.1 Transportation of clients

(a) A certified screener may request that a law enforcement officer transport an individual to a screening center if the screener has, **as part of a screening outreach visit,** evaluated the individual and signed a [screening document] **form prepared by the Division for the purpose,** indicating that the individual may meet the commitment standard and requires further evaluation **at the screening center** [Additionally, when situations are assessed by telephone by the screener as potentially dangerous, a law enforcement official may be requested to transport individuals who are unable or unwilling to come to the screening centers].

(b) When a certified screener has reasonable cause to believe that an individual may be in need of involuntary commitment, the screener may also request that a law enforcement officer investigate the situation, but shall not state or imply to the officer that transport is being authorized by the screener. If, on the basis of personal observation, the law enforcement officer has reasonable cause to believe that the individual is in need of involuntary commitment, the individual shall be transported to the screening center by the law enforcement officer for further evaluation.

10:31-9.1 Client rights

[(a) Clients shall not be involuntarily detained at a screening center for evaluation and emergency treatment for more than 24 hours, unless involuntary commitment procedures are followed.

(b) Clients who are detained at a screening center shall have the following rights:

1. The right to impartial access to all screening center services regardless of race, religion, sex, ethnicity, age, handicap, or ability to pay;

2. The right to receive a prompt and adequate evaluation of his or her psychiatric, social and economic needs and to receive services of a qualified professional of the appropriate disciplines (medicine, nursing, psychiatry, social work, or psychology) as indicated, which evaluation and services shall be delivered in a manner which is respectful of the dignity of the individual;

3. The right to a professional assessment in the least restrictive, clinically appropriate manner and the right to referral to the least restrictive, clinically appropriate, available service;

4. The right to an explanation of their condition, the treatment being provided, and a response to questions they may have about their condition or treatment;

5. The right to participate in treatment planning to the fullest extent that his or her condition permits;

6. The right to prompt access to medical treatment for physical ailments;

7. The right to be free from unnecessary or excessive medication;

8. The right to be free of physical restraints and isolation except in situations where there is reason to believe that the client may cause imminent harm to himself or herself, to others, or property. The reason for physical restraint or isolation shall be documented in the client's chart and a physician's order obtained within one hour;

9. The right to have reasonable access to and use of telephones, both to make and receive calls; and

10. The right to be free of corporal punishment.

(c) Notice of the rights in (b) above shall be prominently posted and written copies shall be available in language easily understandable by clients at each screening center.] **P.L. 1991, c.233 establishes rights for certain clients receiving screening services including psychiatric emergency services provided in a general hospital unit pursuant to a written affiliation agreement with a screening service. These services shall be provided in compliance with those applicable statutory provisions.**

DEVELOPMENTAL DISABILITIES COUNCIL

(a)

EXECUTIVE DIRECTOR

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 10:140

Authorized By: Ethan B. Ellis, Executive Director, Developmental Disabilities Council.

Authority: N.J.S.A. 30:1AA-7, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-204.

Submit written comments by May 5, 1993 to:

Dennis Rizzo
Developmental Disabilities Council
32 West State Street
CN 700
Trenton, New Jersey 08625-0700

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Developmental Disabilities Council proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of Subchapter 1. Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1 DEFINITIONS

10:140-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Developmental Disabilities Council.

"Designated decision maker" means the Executive Director of the Developmental Disabilities Council or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Developmental Disabilities Council
CN 700
Trenton, New Jersey 08625-0700

CORRECTIONS

(b)

OFFICE OF INSTITUTIONAL SUPPORT SERVICES

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 10A:1-3

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

Authority: N.J.S.A. 30:1B-6 and 10, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-210.

Submit written comments by May 5, 1993 to:

John J. Forker
Director, Office of Institutional Support Services
Department of Corrections
CN 863
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Corrections proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 10A:1-3.1, Definitions, which for this agency is proposed as follows:

10A:1-3.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Corrections.

"Designated decision maker" means the Commissioner of Corrections or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Corrections
CN 863
Trenton, New Jersey 08625

INSURANCE

(a)

ADMINISTRATION

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 11:1-3

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

Authority: N.J.S.A. 17:1C-6(e), 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-211.

Submit written comments by May 5, 1993 to:

Verice Mason
Assistant Commissioner of Legislative and Regulatory Affairs
Division of Administration
Department of Insurance
CN 325
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Insurance proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 11:1-3.1, Definitions, which for this agency is proposed as follows:

11:1-3.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Insurance.

"Designated decision maker" means the Commissioner of Insurance or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Insurance
CN 329
Trenton, New Jersey 08625

(b)

DIVISION OF FINANCIAL EXAMINATIONS

Limited Assignment Distribution Servicing Carriers

Proposed Amendments: N.J.A.C. 11:3-3

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

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1C-6(e), 17:32-1 et seq. and 17:29D-1.

Proposal Number: PRN 1993-156.

Submit comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

N.J.A.C. 11:3-3, effective September 21, 1992 (see 24 N.J.R. 3414(a)), sets forth application and procedural requirements for insurers or other qualified entities which seek to become a limited assignment distribution (LAD) servicing carrier and all insurers which seek to appoint a LAD servicing carrier as referenced in N.J.S.A. 17:29D-1c. On September 29, 1992, the Commissioner of Insurance (Commissioner) issued Bulletin No. 92-23 to advise all persons who had filed an application to become a LAD servicing carrier pursuant to N.J.A.C. 11:3-3, and all persons contemplating such action, that the Department intended to revise the requirements set forth in the rules. These proposed amendments to the rules are intended to codify the Department's intent as expressed in the bulletin.

Pursuant to N.J.A.C. 11:3-3.1, a LAD servicing carrier is defined as a person or persons to whom an insurer delegates the authority to perform substantially all of the functions related to policy administration or claims administration for any policy of private passenger automobile insurance of the insurer, but who does not assume any of the risk of the insurer. As noted in Bulletin No. 92-23, the Department is concerned about the ability of LAD servicing carriers to provide adequate service. Through enactment of the Fair Automobile Insurance Reform Act of 1990 (FAIR Act), the Legislature substantially revised the laws governing the provision of private passenger automobile insurance in this State by, among other things, creating a new residual market mechanism in which insurers will share directly in the risk of insuring the "bad driver"; guaranteeing that "good drivers" can obtain motor vehicle insurance coverage in the voluntary market; controlling the apportionment of drivers in the residual market; promoting the efficient handling of claims and the elimination of fraud and other deceptive practices; and promoting the participation of the insurance consumer in reducing losses through the installation of anti-theft devices and completion of defense driving courses.

The transition to the market structure contemplated by the FAIR Act requires a change in the general behavior of insurers, insureds and all other participants in the private passenger automobile insurance market (such as claims personnel, health care providers, etc.). Insurers ultimately bearing the risk of loss associated with private passenger automobile insurance in this State are motivated to provide efficient claims and policyholder service operations, thereby fostering consumer confidence in the insurance mechanism through the development of systems necessary to implement the reforms mandated by the FAIR Act. To the extent an entity such as a LAD servicing carrier bears no risk of loss, it is less motivated to ensure that claims and policyholder service operations function efficiently, which may hamper the transition to the market structure contemplated by the FAIR Act. Moreover, to the extent that additional costs are generated due to poor policyholder service operations of a LAD servicing carrier, such costs will be transferred to the insurer and ultimately to the policyholder through increased rates.

The Department therefore proposes to amend N.J.A.C. 11:3-3 to require that any person which is licensed to transact private passenger automobile insurance in this State and registered as a LAD servicing carrier, must retain not less than 25 percent the risk which the LAD servicing carrier services on behalf of the insurer. Any person which is not presently licensed to transact private passenger automobile insurance in this State and registered as a LAD servicing carrier pursuant to the rules must, within two years from the date of appointment as a LAD servicing carrier, retain, either directly or through an affiliate licensed to transact private passenger automobile insurance in this State, not less than 10 percent of the risk which the LAD servicing carrier services on behalf of the insurer; and within four years from the date of appointment, retain not less than 25 percent of the risk.

The Department believes that it is reasonable to require that a LAD servicing carrier ultimately retain not less than 25 percent of the risk which it services on behalf of the insurer. Policy and claims administration services performed by a LAD servicing carrier normally comprise approximately 20 percent of the premium. Accordingly, the Department believes that a LAD servicing carrier should retain an amount slightly above the amount of premium represented by the actual service performed to provide a sufficient incentive for the LAD servicing carrier to provide adequate service and properly perform its role in the automobile insurance market. The Department, however, recognizes that to the extent a LAD servicing carrier is not presently licensed to transact private passenger automobile insurance in this State, it is not in a position

to immediately retain risk. Accordingly, the Department has provided a transition period of two years from the date of appointment to retain the minimum amount of risk, and four years for the LAD servicing carrier to be in a position to retain the maximum amount of risk. The Department believes that the two-year transition period is reasonable and consistent with the time period for which a temporary certificate of authority to transact private passenger automobile insurance may remain in effect pursuant to N.J.S.A. 17:33B-29.

Moreover, the rules do not require that a LAD servicing carrier directly retain risk. A LAD servicing carrier may retain risk which it services through an affiliate licensed to transact private passenger automobile insurance in this State. The Department believes that this provision is reasonable and appropriate. Since the person acting as a LAD servicing carrier and the insurer which will be responsible for retaining the risk are affiliated, the ultimate parent of both entities will have an incentive to ensure that the LAD servicing carrier provide adequate policy administration and/or claims administration services.

In addition, the rules are amended to require a person seeking to act as a LAD servicing carrier to include as part of its application a certification that: (1) it has filed or intends to file an application for authorization or admission to transact private passenger automobile insurance in this State, or that the applicant otherwise will satisfy the requirement that it retain a portion of the risk of the insurer by retaining risk through an affiliate licensed to transact private passenger automobile insurance in this State; (2) the person is familiar with the requirements to become licensed to transact private passenger automobile insurance in this State; and (3) that the person will possess and maintain the minimum required capital and surplus to become licensed to transact private passenger automobile insurance in this State and maintain adequate capital and surplus to have the capacity to retain the minimum amounts of risk from all insurers on whose behalf the LAD servicing carrier intends to act. The Department believes that such certifications are reasonable, appropriate and necessary to enable the Department to determine whether the applicant will likely satisfy the requirements to become licensed to transact private passenger automobile insurance in this State, or otherwise satisfy the requirement that it retain risk with the time frames prescribed.

However, as noted in Bulletin No. 92-23, and as currently provided in N.J.A.C. 11:3-3.1(b), the proposed requirements will not apply to any entity which is an affiliate of the insurer, if the entity provides policy administration or claims administration functions solely to affiliated insurers. The Department continues to believe that this is reasonable and appropriate since it is customary in holding company arrangements to have employees of one affiliate perform duties for other members of the group. The Department believes that adequate regulatory oversight is maintained since the Department retains oversight authority through the Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1 et seq.

In addition, the Department proposes to amend N.J.A.C. 11:3-3.4(a)6 (currently codified as N.J.A.C. 11:3-3.3(b)6) to require that an applicant indicate on the proposed contract submitted as part of an application those provisions of the contract that satisfy the specific requirements set forth in N.J.A.C. 11:3-3.5(a) and separately specify which provision in the proposed contract satisfies each requirement in N.J.A.C. 11:3-3.5(a)1 to 15. The Department believes that it is reasonable and appropriate to require this of all applicants to facilitate the Department's review of the proposed contract since the contract generally contains numerous provisions beyond those specifically required by the rules. The Department notes that one applicant has already provided this information in its application.

Finally, the Department proposes to make other clarifying changes to the rules as necessary to ensure consistency with the proposed amendments and policies expressed through the proposed amendments.

Social Impact

The Department believes that these proposed amendments will ensure that any entity acting as a LAD servicing carrier on behalf of an insurer is sufficiently motivated to ensure that claims and policyholder service operations function efficiently, thereby facilitating the transition to the market structure contemplated by the FAIR Act. This in turn should benefit all participants in the private passenger automobile insurance market (including insurers, insureds, and the public generally). Moreover, the proposed amendments should reduce any additional costs generated due to the poor policyholder service operations of the LAD servicing carrier which would be transferred to the insurer and ultimately to the policyholder. Finally, the proposed amendments supplement the present regulatory framework by which the Department may regulate LAD servicing carriers and insurers which appoint LAD servicing carriers. The proposed amendments will enable the Department to ensure that entities which seek to become a LAD servicing carrier possess the required expertise and financial resources to fulfill all obligations imposed by the rules, and that insurers which appoint LAD servicing carriers adequately oversee their actions. This in turn should benefit both insurers and the public.

Economic Impact

Insurers and other entities which seek to become a LAD servicing carrier will be required to bear any costs associated with complying with the additional requirements to obtain a Certificate of Registration, including all costs required to become licensed to transact private passenger automobile insurance in this State (including minimum capital and surplus requirements and any costs involved in filing for a certificate of authority pursuant to N.J.A.C. 11:1-10 or 11:1-28, as applicable), and all costs involved in the retaining of the minimum amounts of risk required under the rules. LAD servicing carriers and insurers which appoint LAD servicing carriers will continue to be required to bear any costs associated with complying with the contractual obligations imposed by the rules, as well as fulfilling the oversight responsibilities imposed on insurers with respect to the operations of LAD servicing carriers.

The Department will be required to review all applications for Certificates of Registration, review proposed contracts between insurers and their LAD servicing carriers to ensure that such contracts comply with the minimum requirements set forth in these rules, review the application to determine whether the applicant likely will be in a position to retain risk of the insurer within the time frames specified, and oversee the actions of both insurers and LAD servicing carriers to ensure compliance with these rules.

The Department does not believe that any additional cost to LAD servicing carriers that may be imposed by these proposed amendments is unreasonable or inappropriate in consideration of the benefits to be achieved. The LAD servicing carrier will be required to bear at least a portion of the risk associated with private passenger automobile insurance in this State and thus will be motivated to provide efficient claims and policyholder service operations. This in turn will foster consumer confidence in the insurance mechanism, thereby fostering the transition to the market structure contemplated by the FAIR Act. Moreover, requiring that a LAD servicing carrier bear at least a portion of the risk should reduce any additional costs that may be generated due to poor policyholder service operations of the LAD servicing carrier. This in turn should reduce costs to be transferred to the insurer on whose behalf the LAD servicing carrier is acting which are ultimately passed to the policyholder through increased rates.

The rules however provide a transition period within which a LAD servicing carrier is required to retain a portion of the risk, either directly or through an affiliate licensed to transact private passenger automobile insurance in this State. Moreover, the proposed requirements will not apply to any entity which is an affiliate of the insurer, if the entity provides policy administration or claims administration functions solely to affiliated insurers. The Department believes that these provisions mitigate against any additional burdens that may be imposed.

Regulatory Flexibility Analysis

The proposed amendments may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments will apply to small businesses which are insurers and other entities which seek to become a LAD servicing carrier, insurers and other entities which are LAD servicing carriers, and insurers which appoint LAD servicing carriers. To the extent that the proposed amendments apply to small businesses, they will impose a greater economic burden on small businesses in that they will be required to devote proportionately more staff and financial resources to comply with the regulatory requirements set forth in these proposed amendments.

Both LAD servicing carriers and insurers seeking to utilize them will incur all costs in complying with N.J.A.C. 11:3-3 as currently in effect, in addition to any additional costs imposed by these proposed amendments. Entities seeking to become LAD servicing carriers, and to continue as such, will be required to incur all costs involved in becoming licensed to transact private passenger automobile insurance in this State (including possessing and maintaining adequate capital and surplus, and all other costs involved in compiling the data required under N.J.A.C. 11:1-10 or 11:1-28, as applicable), and will be required to incur all costs

involved in retaining the minimum portions of risk required under the proposed amendments, in addition to any costs involved in complying with all current requirements. In meeting these requirements, the professional services of lawyers, certified public accountants, and actuaries will be necessary.

The proposed new rules provide no different compliance requirements for small businesses. These proposed amendments supplement the regulatory framework presently in effect by which the Department may ensure that persons seeking to become a LAD servicing carrier possess required expertise and financial resources and are sufficiently motivated to provide efficient claims and policyolder service operations. However, the rules provide a transition period for those persons which are registered as a LAD servicing carrier but are not presently licensed to transact private passenger automobile insurance in this State to be in a position to retain the minimum amounts of risk required by the rules. Further, the rules permit the LAD servicing carrier to retain risk either directly or through an affiliate licensed to transact private passenger automobile insurance in this State. Finally, the proposed requirements will not apply to any entity which is an affiliate of the insurer on whose behalf it is acting, if the entity provides policy administration or claims administration functions solely to the affiliated insurer. The Department believes that these provisions mitigate against any undue burden that may be imposed on small businesses. However, duties and obligations of LAD servicing carriers do not vary based on business size. In the interest of consistency and uniformity, and in the interest of protecting both insurers and their policyholders and ensuring that LAD servicing carriers are sufficiently motivated to provide efficient claims and policyholder operations, these rules provide no differentiation in compliance requirements specifically based on business size.

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

SUBCHAPTER 3. LIMITED ASSIGNMENT DISTRIBUTION SERVICING CARRIERS

11:3-3.1 Purpose and scope

(a) The purpose of this subchapter is to set forth application and procedural requirements for insurers or other qualified entities which seek to become a limited assignment distribution servicing carrier and all insurers which seek to appoint a limited assignment distribution servicing carrier as referenced in N.J.S.A. 17:29D-1c. A limited assignment distribution servicing carrier under these rules is a person or persons to whom an insurer delegates the authority to perform substantially all of the functions related to policy administration or claims administration for any policy of private passenger automobile insurance of the insurer[, but who does not assume any of the risk of the insurer]. A person with whom an insurer contracts to perform only certain aspects of policy administration or claims administration (including, but not limited to, data processing, loss appraisal, policy coverage verification and rate pursuit) shall not be deemed to be a limited assignment distribution servicing carrier for purposes of these rules.

(b) This subchapter applies to all insurers and other qualified entities which seek to become a limited assignment distribution servicing carrier and to all insurers which seek to appoint a limited assignment distribution servicing carrier. These rules shall not apply to arrangements entered into between [licensed affiliated insurers] **affiliates, provided that services are provided solely to members of the group.**

[(c) The Commissioner shall, by September 21, 1994, review and reevaluate the feasibility of maintaining the system established herein, and make any revisions that he or she may deem necessary.]

11:3-3.2 Definitions

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

"Affiliate" means an entity within the same holding company system as the LAD servicing carrier.

...

11:3-3.3 General requirements[; registration]

(a) No person shall act as, offer to act as, or hold itself out to be a LAD servicing carrier in this State unless registered as a LAD servicing carrier pursuant to the subchapter.

(b) Any person licensed to transact private passenger automobile insurance in this State registered as a LAD servicing carrier shall retain not less than 25 percent of the risk which the LAD servicing carrier services on behalf of the insurer.

(c) Any person which is not licensed to transact private passenger automobile insurance in this State registered as a LAD servicing carrier pursuant to this subchapter shall:

i. Within two years from the date of appointment as a LAD servicing carrier, retain, either directly or through an affiliate licensed to transact private passenger automobile insurance in this State, not less than 10 percent of the risk which the LAD servicing carrier services on behalf of the insurer; and

ii. Within four years from the date of appointment as a LAD servicing carrier, retain, either directly or through an affiliate licensed to transact private passenger automobile insurance in this State, not less than 25 percent of the risk which the LAD servicing carrier services on behalf of the insurer.

(d) The LAD servicing carrier shall become licensed to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. and N.J.A.C. 11:1-28 or N.J.S.A. 17:32-1 et seq. and N.J.A.C. 11:1-10, as applicable, so that it may retain risk within the time frames set forth in (c) above. However, a LAD servicing carrier may retain risk which it services through an affiliate licensed to transact private passenger automobile insurance in this State.

(e) All LAD servicing carriers or their affiliates, as applicable, licensed to transact insurance in this State shall be subject to all applicable laws in subtitle 3 of Title 17 of the Revised Statutes and all applicable regulations in Title 11 of the New Jersey Administrative Code.

(f) If the LAD servicing carrier is not licensed to transact private passenger automobile insurance or otherwise in a position to retain risk as set forth in (d) above so that it may retain risk within the time frames set forth in (c) above, or if at any time the Commissioner determines that the financial condition of the LAD servicing carrier is such that retention of risk by the LAD servicing carrier may render the insurer's and/or LAD servicing carrier's method of operation hazardous to the public or policyholders, after notice and opportunity for a hearing 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, the Commissioner may nonrenew or revoke the LAD servicing carrier's Certificate of Registration.

11:3-3.4 Registration

[(b)]**(a)** Persons, other than insurers licensed in this State, seeking to act as a LAD servicing carrier in this State shall make an application to the Commissioner for a certificate of Registration. The application shall be on a form approved by the Commissioner and include or be accompanied by the following information and documents:

1.-5. (No change.)

6. A copy of the proposed contracts between the LAD servicing carrier and the insurer;

i. The applicant shall highlight or otherwise indicate on the contract the provisions of the contract that satisfy the specific requirements set forth in N.J.A.C. 11:3-3.5(a), and provide a separate summary that references each requirement in N.J.A.C. 11:3-3.5(a)1 through 15 to the appropriate provision in the contract;

7. The application fee set forth in N.J.A.C. 11:1-32.4(b)12;

8. A statement certified by an officer of the applicant that:

i. The applicant has filed, or intends to file within 180 days of the date of its application for a Certificate of Registration, an application for authorization or admission to transact private

passenger automobile insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. and N.J.A.C. 11:1-28, or N.J.S.A. 17:32-1 et seq. and N.J.A.C. 11:1-10, as applicable; or that the applciant otherwise will satisfy the requirement that it retain a portion of the risk of the insurer as set forth in N.J.A.C. 11:3-3.3(c) by retaining the risk through an affiliate licensed to transact private passenger automobile insurance in this State;

ii. The applicant is familiar with the requirements to become licensed to transact private passenger automobile insurance in this State pursuant to N.J.A.C. 11:1-28 or 11:1-10, as applicable; and

iii. The applicant will possess and maintain the minimum required capital and surplus to become licensed to transact private passenger automobile insurance in this State and that the applicant or affiliate, as applicable, will maintain adequate capital and surplus to have the capacity to retain the minimum amounts of risk from all insurers on whose behalf the LAD servicing carrier intends to act; and

[8.]**9.** Such other information as the Commissioner may request.

[(c)]**(b)** An insurer licensed in this State which seeks to obtain a Certificate of Registration shall submit, in lieu of all of the requirements in [(b)]**(a)** above, a plan of operation which contains the information set forth in [(b)]**(a)**5 above, a copy of the proposed contract as set forth in [(b)]**(a)**6 above, **the certification set forth in (a)8iii above,** and the application fee as set forth in [(b)]**(a)**7 above.

[(d)]**(c)** Upon a finding that the applicant has satisfied all of the requirements set forth in [(b)]**(a)** or [(c)]**(b)** above, **that it is or will be in a position to retain risk as required under N.J.A.C. 11:3-3.3(b) or (c), as applicable,** and that its proposed methods of operation are not such as would render its operation hazardous to the public or policyholders, the Commissioner shall issue a Certificate of Registration to the applicant which shall authorize the applicant to act as a LAD servicing carrier in this State. The Commissioner may refuse to issue a Certificate of Registration if he or she determines that the applicant, or any individual responsible for the conduct of affairs of the applicant, is not competent, trustworthy, financially sound or of good personal and business reputation, or in the case of an insurer, has had an insurance license denied or revoked for cause by any state.

[(e)]**(d)** A Certificate of Registration issued pursuant to [(d)]**(c)** above shall remain in effect from the date of issuance until June 30 immediately following, and shall be renewed each year prior to June 30, unless surrendered, suspended or revoked by the Commissioner, for so long as the LAD servicing carrier continues in business in this State and remains in compliance with this subchapter and any other applicable laws.

Recodify existing (f)-(i) as **(e)-(h)** (No change in text.)

11:3-[3.4]**3.5** LAD servicing carriers; contract provisions

(a) No entity shall act as a LAD servicing carrier on behalf of an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

1.-13. (No change.)

14. If the contract provides for a sharing of interim profits by the LAD servicing carrier, the contract shall specify the manner and the LAD servicing carrier's authority with respect to the determination of interim profits. The Commissioner may disapprove the contract based on such provision if he or she believes that such method of compensation may render the insurer's and/or LAD servicing carrier's methods of operation hazardous to the public or its policyholders. The Commissioner may, in lieu of disapproving the contract, condition approval upon modifications made as he or she deems necessary; **and**

15. The LAD servicing carrier shall not, without the prior approval of the insurer[:],

[i. Pay]**pay** or commit the insurer to pay a claim over a specified amount, net or reinsurance, which amount shall not exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year[; or

ii. Subcontract underwriting and claims processing; and

16. The LAD servicing carrier shall not assume any of the risk of the insurer].

11:3-[3.5]**3.6** Requirements for insurers appointing LAD servicing carriers

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

(d) Within 30 days of executing or terminating a contract with a LAD servicing carrier, the insurer shall provide written notification of such appointment or termination to the Commissioner. In the case of the appointment of a LAD servicing carrier, the insurer shall provide with such notification a copy of the contract, and shall provide a statement describing any differences between the contract entered into and the proposed contract submitted pursuant to N.J.A.C. [11:2-3.3] **11:3-3.4**. The appointment of the LAD servicing carrier shall take effect 60 days after written notification thereof is filed with the Department, unless disapproved by the Commissioner prior to that date. In the case of the termination of **the appointment** of a LAD servicing carrier, **or the nonrenewal or revocation of the LAD servicing carrier's Certificate of Registration by the Commissioner,** the insurer shall provide a statement that sets forth the manner and methods by which it intends to service the business and perform the duties delegated to the LAD servicing carrier. Any agreement to terminate shall take effect 90 days after the date of the execution of the agreement.

(e) (No change.)

11:3-[3.6]**3.7** Application of rules to persons currently acting as LAD servicing carriers and insurers utilizing LAD servicing carriers

(a) Any person acting as a LAD servicing carrier and any insurer utilizing the services of a LAD servicing carrier prior to [September 21, 1992] **the effective date of this subchapter, as amended** shall, [by October 21, 1992] **within 30 days after the effective date of this subchapter, as amended**:

1. Notify the Department in writing of the existence of such relationship; and

2. Certify that it intends to comply with the requirements of this subchapter by [December 20, 1992] **within 120 days.**

(b) Any person acting as a LAD servicing carrier prior to [September 21, 1992] **the effective date of this subchapter, as amended** may continue to act in such capacity provided the person satisfies the requirements set forth in (a) above.

Recodify existing 11:3-3.7 as **11:3-3.8** (No change in text.)

(a)

DIVISION OF WORKERS' COMPENSATION RATING AND INSPECTION

New Jersey Workers' Compensation Managed Care Organizations

Proposed New Rules: N.J.A.C. 11:6-2

Authorized By: Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e); 34:15-15; and 34:15-88.

Proposal Number: PRN 1993-196.

Submit comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

In 1992, the Department of Insurance ("Department"), through the Compensation Rating and Inspection Bureau ("CRIB"), established a Workers' Compensation Task Force consisting of representatives from 11 major New Jersey workers' compensation insurers for the purpose of reporting on workers' compensation issues. Specifically, the Task Force was to describe present programs and recommend changes for

improvements in the areas of cost containment, loss reduction and operating efficiencies. The Task Force's Medical Cost Containment Subcommittee ("Subcommittee") submitted a report to the Task Force containing its findings and recommendations concerning industry practices in various areas related to medical cost containment, including managed care. The Subcommittee recommended the use of managed care programs as a means of controlling workers' compensation medical costs.

On December 1, 1992 the Commissioner of Insurance ("Commissioner") approved an average increase of 14.3 percent in New Jersey's workers' compensation manual rates requested by CRIB effective January 1, 1993. At the same time, the Commissioner announced a number of reform measures to be implemented by the Department in an effort to alleviate increasing workers' compensation insurance costs. In the area of medical cost containment, it was the Commissioner's decision to act upon the Task Force Subcommittee's recommendation to utilize managed care organizations to provide medical care to injured workers in order to achieve significant cost savings without sacrificing quality of care.

Managed care systems in the area of workers' compensation medical care generally work by employing a team approach. When a worker is injured, the communication lines open up among the worker, the worker's employer, the employer's workers' compensation insurer, the managed care organization and the individual medical provider. All members of the team work together toward the same goal—providing prompt, appropriate quality medical care for the injured worker in order to cure and relieve the worker of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible. In order to operate successfully, managed care systems employ various cost containment mechanisms such as provider selection, utilization and claims management and fraud detection programs. The combination of these and other techniques results in the delivery of quality medical care at reduced costs. Since receiving the Task Force Report, the Department has conferred with several managed care organizations and insurance carriers which have been enthusiastic about the potential for utilizing these proven techniques to contain medical costs for workers' compensation insurance.

New Jersey's Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.) permits employers to select providers of medical services for injured workers. Thus, as an alternative to the traditional approach to workers' compensation coverage, employers may opt to utilize a managed care system for the delivery of quality medical care to injured employees at a reduced premium. Pursuant to his ratemaking authority granted under New Jersey's Workers' Compensation Law, the Commissioner plans to implement a form of "schedule rating" whereby employers will be eligible to receive at least a five percent reduction in policyholder standard premium by selecting the managed care option offered by the employer's workers' compensation insurer if the insurer uses a Department-approved MCO. A two-step process will take place before the managed care program can be implemented.

First, in order to qualify to offer the reduced premium to employers, a workers' compensation insurer must utilize a managed care organization ("MCO") that the Department, in consultation with the Department of Health, has approved as capable of providing the kinds of care required to treat workplace-related injuries and diseases in a managed care format. This approval process may be conducted for an MCO established by or affiliated with a particular insurer, for the insurer itself or for an MCO that is completely independent of an insurer. Once the MCO has met the approval criteria set forth in these proposed rules, it may enter into a written agreement with an insurer, if appropriate, to provide medical services under a workers' compensation insurance policy.

Second, an insurer willing to offer a premium reduction, after contracting with an MCO that has obtained Department approval, or after obtaining its own MCO approval, will then be required to file certain information with CRIB. These insurer filing requirements shall be set forth in the CRIB Manual. At the completion of both these steps, the workers' compensation insurer may then implement the managed care program by offering employers a managed care program policy endorsement developed by CRIB that will reduce the employer's premium by at least five percent.

These proposed new rules set forth the Department approval criteria and procedures for an MCO intending to provide medical services under a workers' compensation policy issued by an insurer willing to offer a minimum five percent premium reduction to insureds opting to use an approved MCO.

Social Impact

New Jersey's Workers' Compensation Law provides the Commissioner with the authority over workers' compensation insurance rates. This statutory authority permits the Commissioner to approve a premium reduction for an insurer that has agreed to contract with or is itself a Department-approved MCO that will provide medical services to injured workers under a workers' compensation policy issued by the insurer. Under such a managed care system, injured workers will continue to receive prompt, appropriate, quality medical care for compensable workplace injuries at lower cost to insurers, while employers will receive at least a five percent premium reduction.

Economic Impact

Adoption of these proposed new rules will have a favorable economic impact on both insurers and employers. Implementation of an approved managed care system is expected to reduce costs to workers' compensation insurers. Such a system emphasizes certain cost containment and loss control mechanisms that will result in less expensive claims. Moreover, insurers are expected to experience reduced medical, fraud and litigation costs. Eligible employers will benefit economically because they will receive at least a five percent premium reduction for option to use a Department-approved managed care system, which will provide managed health care under a workers' compensation policy. Injured workers, although not the recipients of any direct economic benefit, will continue to receive prompt, quality medical care under a managed care system. Additionally, the Department expects that broad use of managed care systems will reduce the cost of workers' compensation insurance in the future, after the managed care system's various cost containment and loss control mechanisms have begun to take effect.

Implementing such a system should not result in any additional administrative costs to insurers. In fact, it will likely reduce their administrative burden since an increasing number of providers will be part of a managed care system that deals directly with or is established by insurers, thereby resulting in insurers spending less time communicating directly with scores of medical providers.

To the extent that these rules impose costs regarding the filing and approval of managed care systems for workers' compensation, the Department notes that these rules do not mandate that such costs be incurred. Rather, these rules simply set forth the standards and process for those entities that choose to enter this field. Such costs are limited to those necessary for the Department, in consultation with the Department of Health, to determine that the MCO is capable of providing the kind and quality of care necessary to treat workplace injuries in a managed care format.

The Departments of Insurance and Health may experience a slight increase in their administrative costs due to the MCO approval procedure set forth in these rules. However, both Departments will be compensated by the approval application fee required to be paid by the MCOs.

Regulatory Flexibility Analysis

These proposed new rules affect workers' compensation insurers, managed care organizations, medical providers and employers electing to take part in a managed care system for providing workers' compensation medical coverage. Any of these individuals or entities may be a small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq, but these rules will not impose any reporting, recordkeeping or other compliance requirements on any of them that would result in an adverse economic impact. Participation in a workers' compensation managed care system is not mandatory. Rather, it is a discretionary decision to be made by insurers, employers, managed care organizations and medical providers after weighing all the costs and benefits involved. For insurers electing to participate in such a system, Department of Insurance filing requirements under these rules are relaxed. Thus, the administrative costs that small businesses may experience because of the requirements to implement these rules—for example, preliminary screening of managed care organizations, contracts between insurers and managed care organizations, where appropriate—would be minimal and outweighed by the economic benefits that can be expected.

Full text of the proposed new rules follows:

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. NEW JERSEY WORKERS' COMPENSATION MANAGED CARE ORGANIZATIONS

11:6-2.1 Purpose and scope

(a) The purpose of this subchapter is to encourage the use of managed care to achieve quality care outcomes for the injured worker and to contain medical costs under workers' compensation coverage by providing eligible employers with a method whereby they may select a managed care alternative to traditional workers' compensation medical care at a reduced premium.

(b) This subchapter applies to all persons subject to New Jersey Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.), to all insurers authorized to provide workers' compensation coverage in the State of New Jersey and to all entities seeking approval as a managed care organization under this subchapter.

11:6-2.2 Definitions

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

"Approved managed care organization" means a managed care organization which has been approved by the Department in consultation with the Department of Health.

"Care coordinator physician" means a licensed physician employed by or under contract with, directly or indirectly, the managed care organization, and who is responsible for providing primary medical care to the injured worker, maintaining the continuity of the injured worker's medical care and initiating all referrals to other providers.

"Case manager" means an employee of the managed care organization who is either a licensed registered nurse or a licensed physician, designated to assume responsibility for coordination of services and continuity of care.

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

"Compensation Rating and Inspection Bureau" or "CRIB" means the Bureau created, organized and supervised by the Commissioner of the New Jersey Department of Insurance in accordance with N.J.S.A. 34:15-1 et seq., the New Jersey Workers' Compensation Law.

"Department" means the New Jersey Department of Insurance.

"Employee" or "worker" means an individual covered under a policy of workers' compensation insurance issued pursuant to N.J.S.A. 34:15-1 et seq., the New Jersey Workers' Compensation Law.

"Employer" means an employer obligated under N.J.S.A. 34:15-1 et seq., the New Jersey Workers' Compensation Law, to provide to its employees workers' compensation insurance coverage.

"Health care provider" means an entity or group of entities, organized to provide health care services or organized to provide administrative support services to those entities providing health care services.

"Health care services" means medical or surgical treatment, nursing, hospital and optometrical services.

"Insured" means any employer obligated under the New Jersey Workers' Compensation Law to be insured under a policy of workers' compensation insurance issued by an insurer authorized to write workers' compensation insurance in the State of New Jersey.

"Insurer" means any insurer authorized to write workers' compensation insurance in the State of New Jersey.

"Managed care organization" or "MCO" means any entity that manages the utilization of care and costs associated with claims covered by workers' compensation insurance.

"Medical director" means a licensed physician, board certified in occupational medicine, internal medicine, orthopedics, neurosurgery, neurology or related fields, having a minimum of three years experience in treating either trauma or work-related injuries or illnesses, who is employed by the MCO for the primary purpose of providing full-time, day-to-day direction, management and supervision of medical care.

"Medical service" means any medical, surgical, chiropractic, dental, hospital, nursing, ambulance, or related services such as any medication, crutch, prosthesis, brace, support or physical restorative device.

"Medical service provider" or "provider" means any physician, hospital or other person licensed or otherwise authorized by any state to furnish medical services.

"Participating physician" or "participating provider" means a health care physician or provider who is under contract, directly or indirectly, with a managed care organization.

"Physician" means a person duly licensed by any state to practice one or more of the healing arts in that state within the limits of the license of the licentiate.

"Report" means medical information transmitted in written form containing relevant subjective and objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the Department or the Department of Health.

11:6-2.3 Approval of managed care organizations

(a) The completion by an MCO of the approval process conducted by the Department, in consultation with the Department of Health, under this subchapter shall authorize the MCO to provide medical services under a workers' compensation policy after the insurer has filed an application with CRIB to obtain approval of a minimum five percent overall premium reduction for the insured's election to use a Department-approved managed care system for workers' compensation medical coverage. An approval issued under this subchapter shall not be used for any purpose except as set forth in this subchapter.

(b) The approval issued to an MCO under this subchapter by the Department in consultation with the Department of Health shall remain in force for a period of two years excepting suspension or revocation pursuant to this subchapter.

11:6-2.4 Requirements of approved managed care organizations

(a) For purposes of providing medical services to injured workers under a workers' compensation insurance policy as set forth in this subchapter, an MCO shall meet the following criteria:

1. The MCO shall arrange for the full range of medical and rehabilitative services necessary to treat injured workers, including, but not limited to, primary care, orthopedic care, inpatient care, emergency care, physical therapy and occupational therapy. In the aggregate, services provided outside of the MCO network should not exceed 20 percent of the MCO's cost of medical and rehabilitative services provided to injured workers.

2. The MCO shall provide geographic access by county to emergency, medical and rehabilitative services for employer sites covered under its program. Such services may be delivered directly, under contract, or through written referral protocol;

3. The MCO shall have medical care direction provided and supported by medical directors as defined in this subchapter;

4. The MCO shall provide medical management, catastrophic case management, disability case management and monitoring. These case management services must be supported by documented medical and disability protocol and should be generally accepted by the medical community;

5. The MCO shall track and manage an injured worker's progress from the onset of injury through case resolution;

6. The MCO shall contract with participating health care and rehabilitation providers who are credentialed by the MCO according to their documented criteria, which must specifically include the provider's ability to handle workplace injuries and illnesses;

7. The MCO shall provide written dispute resolution and grievance procedures to assure that disagreements with medical providers are resolved without jeopardizing or disrupting patient management;

8. The MCO shall provide reports as may be required by the Commissioner in areas including, but not limited to, medical utilization, disability data and costs of the MCO;

9. The MCO shall possess the resources, financial and otherwise, necessary to sustain required services; and

10. The MCO shall have a fraud detection plan, which shall include, but not be limited to, measures for detecting and reporting instances of possible fraud on the part of injured workers, employers, medical providers and others. The MCO shall coordinate its fraud detection plan with the workers' compensation insurer's fraud prevention plan, where appropriate.

11:6-2.5 Managed care organizations approval procedures

(a) For purposes of obtaining the Commissioner's approval under this subchapter, an MCO shall submit four copies of a written application to the Department at the following address:

Managed Health Care Bureau
Actuarial Services, Life/Health
N.J. Department of Insurance
CN 325
Trenton, NJ 08625

(b) The MCO application shall include the following:

1. A list of the names, addresses, and specialities of the individuals, rehabilitation centers, hospitals and other centers and clinics that will provide services under the managed care plan. This list shall indicate which medical service providers will act as care coordinator physicians within the MCO. In addition, the MCO shall provide a map of the service area, indicating the location of the providers by type;

2. A narrative description of the places and protocol of providing services under the plan, including: a description of the initial geographical service area. The geographical service area shall be designated as the county in which work sites are located; a description of the number and type of disciplines of medical service providers to treat work-related injuries and illnesses, such as orthopedic, chiropractic, dental and ophthalmologic services; and a description of the number of care coordinator physicians in the MCO. The MCO shall maintain a minimum of one care coordinator physician for every 1,000 workers covered by the managed care plan. The requirements of this paragraph shall be met unless the MCO adequately demonstrates the unavailability of a particular type of provider in a particular geographic service area;

3. A description of the MCO treatment standards and protocols that will govern the medical treatment provided by all medical service providers, including care coordinator physicians. The number of providers should be adequate as necessary to ensure that workers of employers covered by the MCO can:

i. Receive emergency treatment as soon as practicable, preferably by a participating physician;

ii. Receive initial treatment by a participating physician within 24 to 72 hours (depending on the nature of the injury or illness) of the MCO's knowledge of the necessity or request for treatment;

iii. Receive initial treatment by a participating physician in the MCO within five working days or as soon thereafter as practicable, following treatment by a physician outside the MCO;

iv. Receive screening and treatment if necessary by an MCO physician in cases requiring in-patient hospitalization;

v. Be directed to medical providers within a reasonable distance from the worker's place of employment, considering the nature of care required and normal patterns of travel. To receive urgent care, the worker shall be assigned to a physician near the workplace. The assigned care coordinator physician will, in turn, arrange for necessary care through a provider closer to the worker's residence, if appropriate;

vi. Receive treatment by a non-MCO medical service provider at the direction of the care coordinator physician when the worker resides outside the MCO's geographical service area. The care coordinator physician may only select a non-MCO provider who practices closer to the worker's residence than an MCO provider of the same category if that non-MCO provider agrees to the terms and conditions of the MCO; and

vii. Receive specialized medical services the MCO is not otherwise able to provide. The MCO's application shall include a description of the places and protocol of providing such specialized medical services;

4. Specimen copies of contract(s), agreement(s), or other documents between the MCO and each participating medical service provider/health care provider representative, and executed copies of the signature page(s) of such contract, agreement or other document for each provider;

5. The identity of a communication liaison for the Department, employer, worker and the insurer at the MCO's location. The responsibilities of the liaison shall include, but not be limited to, responding to questions and providing direction regarding outgoing correspondence, medical bills, case management and medical services;

6. A description of the reimbursement procedures for all services provided in accordance with the MCO plan;

7. Satisfactory evidence of the MCO's ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan;

8. A description of the MCO's quality assurance program which shall include, but is not limited to:

i. A system for resolution and monitoring of problems and complaints, including, but not limited to, the problems and complaints of workers;

ii. A program which specifies the criteria and process for physician peer review; and

iii. A standardized claimant medical recordkeeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance;

9. A program under the direction of a case manager involving cooperative efforts by the workers, the employer, the insurer, and the managed care organization to promote early return to work for injured workers;

10. A program which provides adequate methods of peer review and utilization review to prevent inappropriate or excessive treatment, including, but not limited to:

i. A pre-admission review program, which requires physicians to obtain prior approval from the MCO for all non-emergency admissions to the hospital and for all non-emergency surgeries prior to surgery being performed;

ii. Individual case management programs, which search for ways to provide appropriate care at lower cost for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care;

iii. Physician profile analysis which shall include such information as each physician's total charges; number and costs of related services provided; time loss of claimant; and total number of visits in relation to care provided by other physicians with the same diagnosis;

iv. Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary;

v. Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate; and

vi. Second surgical opinion programs which describe the worker's ability to obtain the opinion of a second physician when non-emergency surgery is recommended;

11. A procedure for internal dispute resolution, in coordination with the insurer, which shall include a method to resolve complaints by injured workers, medical providers and employers;

12. A description of the method whereby the MCO will provide insurers with information to inform employers of all medical service providers within the plan and the method whereby workers may be directed to those providers;

13. Copies of the MCO certificate of incorporation and/or by-laws indicating managed care responsibilities, if applicable;

14. A general diagram of the MCO's managed care organizational structure;

15. The location of the place of business where the MCO administers the plan and maintains its records;

16. Copies of executed contracts between the MCO and insurer, if applicable;
17. A listing and biography of the MCO's officers and directors, or the individuals within the MCO responsible for managed care;
18. Evidence of or the MCO's certification of malpractice insurance for each provider;
19. The MCO's most recently audited financial report or its capitalization and projections if a newly organized MCO;
20. A detailed description of the MCO's experience with the management of health care costs associated with workers' compensation claims and with other health care claims;
21. A copy of the certificate of the board certified medical director;
22. The estimated savings in overall premium expected from the use of the MCO and the methodology used in arriving at such estimate;
23. The outline of the operation of the MCO to be provided to employers explaining their rights and responsibilities; and
24. Any other materials specifically requested by the Commissioner or the Commissioner of Health in connection with a particular application.

(c) The materials specified in (b) above shall be retained by the Department and referred to the Department of Health for consultation as necessary. Any significant changes to the nature of the MCO's operations as reflected in these materials shall be reported to the Department within 30 days.

(d) The Department, in consultation with the Department of Health, shall review these documents and grant approval, within 45 days of the MCO's filing its application, to those MCOs deemed to meet the criteria set forth in this subchapter. The Commissioner may extend the 45-day time frame an additional 30 days for good cause shown and shall provide notice to the MCO of such extension. A decision to deny approval shall be accompanied by a written explanation by the Department of the reasons for denial.

(e) An MCO shall apply for renewal of its Department approval biannually.

11:6-2.6 Confidentiality of MCO application

(a) All data or information contained in the MCO's application for approval as set forth in N.J.A.C. 11:6-2.5(b) is confidential and will not be disclosed by the Department or the Department of Health to any person other than their employees and representatives, except the following items, but only upon written, specified request and upon notice to the MCO:

1. A description of the MCO's current and prior authority to do business in the State of New Jersey;
2. An organizational chart;
3. A listing and biography of the MCO's officers and directors;
4. The address of the MCO's place of business;
5. The identity of the MCO communication liaison;
6. MCO audited financial reports, capitalization or projections, if otherwise available as filed with any other state or Federal government agency; and
7. The certificate of MCO's board certified medical director.

11:6-2.7 Approval suspension and revocation

(a) The approval of an MCO issued by the Department under this subchapter may be suspended or revoked if:

1. The Department determines that the MCO criteria set forth in this subchapter are no longer being met;
2. Service under the plan is not being provided in accordance with the terms of the approved plan;
3. The plan for providing medical or health care services fails to meet the requirements of these rules;
4. Any false or misleading information is submitted by the MCO or any member of the organization;
5. The MCO continues to utilize the services of a health care provider whose license has been suspended or revoked by the licensing board; or
6. The MCO fails to reduce losses sufficiently to produce a five percent premium credit.

(b) If the Commissioner denies MCO approval under this subchapter or suspends or revokes MCO approval for any of the reasons set forth in this subsection, the MCO may request a hearing on the Commissioner's determination within 10 days from the date of receipt of such determination.

1. A request for a hearing shall be in writing and shall include:
i. The name, address and telephone number of a contact person familiar with the matter;
ii. A copy of the Commissioner's written determination;
iii. A statement requesting a hearing; and
iv. A concise statement describing the basis for which the MCO believes that the Commissioner's findings of fact are erroneous.
2. The Commissioner may, after receipt of a properly completed request for a hearing, provide an informal conference between the MCO and such personnel of the Department or Department of Health as the Commissioner may direct, to determine whether there are material issues of fact in dispute.
3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.
i. If the Commissioner finds that there are no good-faith disputed issues of material fact and the matter may be decided on the documents filed, the Commissioner shall notify the MCO in writing of the final disposition of the matter.
ii. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:6-2.8 Monitoring; auditing

(a) The Department, together with the Department of Health, shall monitor and conduct periodic audits of the MCO as necessary to ensure compliance with the MCO approval criteria set forth in this subchapter.

(b) All records of the MCO and its individual participating physicians or providers shall be disclosed upon request of and in a format acceptable to the Commissioner. If such records are maintained in a coded or semi-coded manner, a legend for the codes shall be provided to the Commissioner.

11:6-2.9 Filing and review fees

(a) Every MCO filing for approval of its managed care program under the procedures set forth in N.J.A.C. 11:6-2.5 shall pay the following fees:

1. An approval application fee of $1,500 payable to "Treasurer, State of New Jersey."
2. A biannual approval renewal fee of $1,000 payable to "Treasurer, State of New Jersey."

LABOR

(a)

OFFICE OF GRANTS AND SPECIAL PROJECTS

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 12:7

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

Authority: N.J.S.A. 34:1A-3f, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-215.

Submit written comments by May 5, 1993 to:

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

Howard Luckett, Director
Office of Grants and Special Projects
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a grievance procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Labor proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of Subchapter 1. Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1. DEFINITIONS

12:7-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Labor.

"Designated decision maker" means the Commissioner of Labor or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625

(a)

DIVISION OF PROGRAMS

Notice of Extension of Comment Period Temporary Disability Benefits

Proposed Amendments: N.J.A.C. 12:18

Take notice that the Commissioner of the New Jersey Department of Labor is extending until May 5, 1993 the period for public comment on the proposed amendments to N.J.A.C. 12:18 which were published in the January 19, 1993 New Jersey Register at 25 N.J.R. 262(a). The readoption of N.J.A.C. 12:18 proposed as part of that proposal has been adopted, and a notice of adoption for that readoption is published elsewhere in this issue of the New Jersey Register.

The Department received comments pertaining to the proposed amendments to the temporary disability benefits rules, including a suggestion that the amendments be distributed more broadly. The Department has determined to act favorably on the suggestion by distributing the proposed amendments to greater numbers of the affected public, thereby providing greater opportunity for public comment. To do so, the comment period is being extended to May 5, 1993 to allow sufficient time to further distribute the proposed amendments and to receive comments regarding same. Accordingly, the Department is hereby notifying the public that the comment period is being extended for an additional 75 days.

Submit written comments by May 5, 1993 to:

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

COMMERCE AND ECONOMIC DEVELOPMENT

(b)

OFFICE OF HUMAN SERVICES

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 12A:1

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

Authority: N.J.S.A. 52:27H-6.f., 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-202.

Submit written comments by May 5, 1993 to:

Stephen P. McPhillips
ADA Coordinator
Office of Human Resources
Department of Commerce and Economic Development
CN 822
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Commerce and Economic Development proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of Subchapter 1. Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1. DEFINITIONS

12A:1-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Commerce and Economic Development.

"Designated decision maker" means the Commissioner of Commerce and Economic Development or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Commerce and
Economic Development
CN 822
Trenton, New Jersey 08625

(c)

THE COMMISSIONER

Waiver of Executive Order No. 66(1978) Development of Small Businesses and Women and Minority Businesses

N.J.A.C. 12A:9

Take notice that the rules concerning the development of small businesses and women and minority businesses, N.J.A.C. 12A:9, were to expire March 7, 1993, pursuant to Executive Order No. 66(1978). The Department of Commerce and Economic Development intends to readopt this chapter, but such could not be accomplished by March 7, 1993.

The provisions set forth in these rules provide the scope of technical assistance and financial assistance to encourage the establishment and growth of small businesses and businesses owned by minorities and women.

Due to the important purpose of the services defined in this chapter, and it being imperative that no lapse of these rules occur, Governor Florio, on March 5, 1993, directed that the five-year sunset provision of Executive Order No. 66(1978) is waived for N.J.A.C. 12A:9 and that the expiration date for this chapter is extended from March 7, 1993, to and including May 30, 1993.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE POLICE TRAINING COMMISSION

Police Training Commission Rules

Proposed Readoption with Amendments: N.J.A.C. 13:1

Authorized By: Police Training Commission, Wayne S. Fisher, Ph.D., Chairman and Deputy Director, Division of Criminal Justice.

Authority: N.J.S.A. 52:17B-71(h).

Proposal Number: PRN 1993-180.

Submit comments by May 5, 1993 to:

Geri Schaeffer, Supervisor
Standards Administration Unit
Division of Criminal Justice
25 Market Street
CN 085
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Police Training Commission was created in 1961. It now has the responsibility for supervising 22 schools throughout the State which provide basic police training, in-service training and specialized training for virtually every kind of law enforcement agency with the exception of the Division of State Police. In 1989 its jurisdiction was substantially increased by including all state and county corrections officers and juvenile detention officers. The Commission promulgates 28 courses, annually utilizes the services of 3,600 instructors and certifies the satisfactory completion of required courses by 3,300 police officers, investigators, special law enforcement officers, corrections officers, juvenile detention officers, campus police officers, sheriff's officers and deputies and arson investigators.

In 1985, the Commission was legislatively allocated to the Division of Criminal Justice in the Department of Law and Public Safety. Full time staff have been assigned by the Division's Director to administer the operations of the Commission.

The present rules of the Police Training Commission will expire pursuant to Executive Order No. 66(1978) on July 5, 1993. The Commission proposes to readopt most of the present rules without change. The proposed amendments reflect necessary changes in language, procedures and policies based upon the past five years' experience of the expansion of training law enforcement officers and the role of the Commission itself in supervising this ever increasing area of education.

Subchapter 1 defines the terms employed in the chapter. Subchapter 2 provides for the relaxation of the rules and the authority of the Chairman to act on behalf of the Commission in certain situations. Subchapter 3 sets forth the procedures for a school to be certified and recertified by the Commission and also includes grounds for the suspension or revocation of a school's certification.

Subchapter 4 contains provisions for the certification of an instructor at a Commission-approved school and special certifications for a firearms instructor, range master, radar instructor and physical conditioning instructor. The requirements for certification of trainees in basic and other courses together with the authority of the Commission to revoke certification are set forth in subchapter 5, Commission approval of curriculum and courses is provided in subchapter 6.

Subchapter 7 governs the administration of Commission-approved schools. It sets forth the responsibilities of the agency which administers the school and the school director and details such responsibilities with respect to compliance with Commission practices and policies. Subchapter 8 sets forth the procedures to be undertaken by an employing law enforcement agency prior to the acceptance of an officer into a basic course. Procedures for appeals to the Commission from actions of its staff or a school director are set forth in subchapter 9.

The proposed amendments are described as follows:

N.J.A.C. 13:1-1.1

The term "police" has been substituted for "law enforcement" officer to coincide with the definition of "police officer" and its subsequent use in these rules.

The definition of "in-service course" has been redefined to limit it only to Commission-approved courses and to exclude those courses which may not have Commission approval.

The definition of "law enforcement agency" has been amended to further clarify that it does not apply to Federal or bi-state police forces.

The "police instructor" definition has been amended so to restrict it to only a person who is employed as a police officer.

The definition of "police officer" has been expanded to also extend it to those juvenile detention officers who are involved with juvenile offenders at residential facilities in addition to custodial facilities.

A definition of "special instructor" has been added to distinguish civilian, as opposed to police, personnel who may be authorized to teach at a Commission-approved school.

N.J.A.C. 13:1-3.4 and 3.5

The term "commission staff" has been substituted for "Administrator of Police Services" as that title has become vacant.

N.J.A.C. 13:1-3.6

The date for recertification of schools has been deleted because that date has passed and all schools have complied with the recertification process.

N.J.A.C. 13:1-4.1

The proposed amendment restates the exception for the requirement of instructor certification in an emergency which is contained in 13:1-7.2(a)14.

N.J.A.C. 13:1-4.5(a)

The staggered instructor renewals previously provided in this subchapter have now been completed and the provision therefor has been deleted. The amendment adds the requirement that an instructor must teach at least once in each certification period. This is an administrative procedure which is intended to purge the records of instructors who are no longer active.

N.J.A.C. 13:1-5.1(a)1

The amendment adds the Basic Course for County Park Rangers and the Basic Course for Residential and Day Program Youth Workers. These courses are now offered at certain approved schools.

N.J.A.C. 13:1-6.1

The word "all" has been deleted because not every school offers all Commission-approved courses. "Components of a basic course" was substituted for "instruction" to make it clear that any additional matter has to be within the limitations of a basic course.

N.J.A.C. 13:1-7.2(a)7

This amendment requires that an illness or injury of an instructor should be reported to the instructor's law enforcement agency so as to make certain that the appropriate insurance coverage is obtained.

N.J.A.C. 13:1-7.2(a)8

Language with respect to the suspension of a trainee has been deleted because experience has shown that this procedure has never been utilized. The universal procedure has been to dismiss a trainee for unacceptable behavior or other good cause. The amendment also fixes a two business day time limit for notification of a dismissal rather than an unspecified period of time.

N.J.A.C. 13:1-7.2(a)13

This paragraph has been deleted because the Commission staff no longer conducts a training course for instructors.

N.J.A.C. 13:1-7.2(a)14

This amendment clarifies that a non-certified instructor may be used in an emergency, but that the Commission staff must be notified prior to any teaching by such individual.

N.J.A.C. 13:1-7.2(a)20

i. A "notice and acknowledgment" form has been substituted for a "waiver" as the former more closely describes the document that is given to each trainee with respect to drug testing.

v. This amendment would permit a school to conduct more than one drug test during a course. Otherwise, a trainee could anticipate that there would be no further testing after the initial test.

xiv. Because of the number of dismissals for this reason, it is proposed that there should be a separate and distinct ground for dismissal from a school based upon a positive drug test result rather than relying upon a dismissal for "good cause" as heretofore provided in these rules.

xv. This amendment would authorize the Commission to notify the central registry maintained by the Division of State Police of a positive drug test of a trainee under certain circumstances, such as when a school or an employing agency neglects to do so after an appeal of a dismissal has been affirmed by the Commission. This proposal is intended to have the Commission Rules conform more accurately to the Attorney General's Drug Screening Guidelines.

N.J.A.C. 13:1-8.4(b)

It is proposed that an appointing authority, rather than the Commission, should obtain the official documentation in connection with a waiver appeal in order to expedite the process and save the time of Commission staff.

Social Impact

The proposed readoption and amendment of these rules are intended to reflect the policy and procedures of the Police Training Commission and laws relating to police, training together with any changes affecting the training of law enforcement officers since the adoption of the Commission's Rules in 1988. The public will benefit from the amendments which, for the most part, are merely intended to clarify the existing rules and improve the operations of the Commission and its staff and the resultant administration of such training by the schools under the jurisdiction of the Commission. Both the readoption and the amendments will have a positive impact upon the law enforcement agencies which employ persons who have received this training and this will, in turn, benefit the public served by them. No adverse social impact is anticipated from any of these amendments.

Economic Impact

The readoption and amendment of these rules should not have any economic impact of consequence. The schools approved by the Police Training Commission are financially supported by various government agencies. Each school may establish reasonable tuition schedules and a trainee's fees are usually borne by the appointing law enforcement agency. The Commission is staffed by employees of the Division of Criminal Justice who are assigned as needed by the Director. No significant increase in the cost of administering or conducting police training to the State, any approved school or any law enforcement agency is anticipated as the result of the adoption of these amendments.

Regulatory Flexibility Statement

These rules only apply to the training of law enforcement officers and not to small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:1.

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

13:1-1.1 Definitions

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

...

"Appointing authority" means a person or group of persons having the power of appointment to or removal from offices, positions or employment as [law enforcement] **police** officers, corrections officers and juvenile detention officers.

...

"In-service course" means any **Commission-approved** course of study which a police officer, corrections officer or juvenile detention officer shall attend after completion of the basic course.

...

"Law enforcement agency" means any police force, corrections authority or organization functioning within this State, except for the Division of State Police **and any Federal or a bi-state police force,** which has by statute or ordinance the responsibility of detecting crime and enforcing the criminal or penal laws of this State.

...

"Police instructor" means an individual **who is employed as a police officer as defined in this subchapter and is** certified by the Commission to teach at a Commission-approved school.

"Police officer" means any employee of a law enforcement agency, other than a civilian employee, any member of a fire department or force who is assigned to an arson investigation unit pursuant to Public Law 1981, Chapter 409 and any corrections officer or juvenile detention officer. **A "juvenile detention officer" includes one who is involved with the custody of juvenile offenders of the law who performs his or her duties in residential facilities.**

...

"Special instructor" means a civilian who is not employed as a police officer as defined in this subchapter and is certified by the Commission to teach in a Commission-approved school.

...

13:1-3.4 Application review

The Commission staff shall review the application to determine if the applicant has demonstrated a need for the school, shall inspect the facility where the training is to be conducted and determine if the applicant has the necessary resources to operate the school. The [Administrator of Police Services] **Commission staff** shall submit a written report to the Commission which shall contain a recommendation with respect to the request. The Commission shall approve or disapprove the certification request with any conditions it believes to be appropriate.

13:1-3.5 Hearing on application

In the event a law enforcement agency interposes an objection with respect to school certification or there is more than one application for certification of a school within the same or adjoining counties the [Administrator of Police Services] **Commission staff** may, for good cause, schedule a hearing by the Commission on the matter after due notice to the affected parties. The Commission shall approve or disapprove the certification request with any conditions it believes to be appropriate.

13:1-3.6 School recertification

Initial certification or recertification of a school by the Commission shall be for a period of three years. An application for recertification shall be the same as that provided in N.J.A.C. 13:1-3.2 through 3.5 together with a Commission staff determination that a school has complied with all Commission requirements. [Schools which are currently certified shall apply for recertification by July 19, 1991.]

13:1-4.1 Certification requirement

All instructors participating in a course authorized by the Commission must be certified before they are permitted to teach except as set forth in this subchapter **and except as provided for in an emergency as set forth in N.J.A.C. 13:1-7.2(a)14.**

13:1-4.5 Certification

(a) Initial instructor certifications and renewals thereof shall expire on December 31 of the third year after the granting or renewal of the certifications[, provided that, renewals of certifications approved prior to December 31, 1988 shall be staggered for periods of one, two or three years as determined by the Administrator of Police Services in order that approximately one-third of all certifications will be subject to approval each year]. **As a condition of recertification, an instructor must teach at least once during the prior certification period.**

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

13:1-5.1 Certification requirements; basic courses

(a) A trainee shall be eligible for certification when the school director affirms that:

1. The trainee has achieved the minimum requirements set forth in the Basic Course for Police Officers, the Basic Course for Investigators, the Basic Course for Special Law Enforcement Officers, the Basic Course for Corrections Officers [or], the Basic Course for Juvenile Detention Officers, **the Basic Course for County Park Rangers or the Basic Course for Juvenile Residential and Day Program Youth Workers** and has demonstrated an acceptable degree of proficiency in the performance objectives contained therein;

2.-3. (No change.)

13:1-6.1 Curriculum and courses

A curriculum promulgated by the Commission shall be the required curriculum at a Commission-approved school. The Commission curricula are incorporated herein by reference and are available from the Commission at the Richard J. Hughes Justice Complex, CN-085, Trenton, New Jersey 08625. An approved school shall conduct [all] basic courses and those other courses as shall be required by the Commission. In addition to the required curriculum, a school may also offer, with Commission staff approval, additional [instruction] **components of a basic course**.

13:1-7.2 Operating entity responsibilities

(a) The law enforcement agency, combination of law enforcement agencies, institution of higher learning, or recognized governmental entity certified to operate a school is vested with the power, responsibility and duty:

1.-6. (No change.)

7. To report immediately the illness or injury of a trainer or an instructor to an appropriate official in the trainee's **or instructor's** law enforcement agency and to the Commission staff;

8. To [suspend or] dismiss a trainee who has demonstrated that he or she will be ineligible for Commission certification, for unacceptable behavior or for other good cause. In such cases:

i. The trainee shall be informed immediately of the reason(s) for the action;

ii. As soon as possible, **but in no event later than the second business day** thereafter, a written statement of the reason(s) for the action shall be provided to the trainee, the appropriate official in the trainee's law enforcement agency and the Commission;

iii. The [suspension or] dismissal of a trainee for misconduct may take effect immediately when, in the opinion of the school director, the continued presence of the trainee would be disruptive of or detrimental to the conduct of the class;

iv. Upon the written request of a trainee, the Commission Chairman may, after consultation with the school director and for good cause, permit a trainee to remain in school pending the appeal of a [suspension or] dismissal pursuant to N.J.A.C. 13:1-9;

v. A trainee who is dismissed from a school for misconduct shall not receive credit for any subjects completed up to the time of dismissal;

9.-12. (No change.)

[13. To forward to the Commission, two months in advance of the beginning of a class, a request for Commission staff to conduct a training course for instructors;]

[14.]**13.** To verify that all instructors have Commission certification. In an emergency or compelling circumstances, a non-certified instructor may be used. In such event the Commission staff shall be notified as soon as possible **and prior to any teaching by such individual** and informed of the reason for this exception;

Recodify existing 15 to 19 as **14 to 18.** (No change in text.)

[20.]**19.** To conduct drug screening of all trainees so as to provide for the safety and welfare of all trainees, instructors and other school personnel in accordance with the following procedures:

i. All trainees will be requested to sign a [waiver] **notice and acknowledgment** in a form prescribed by the Commission consenting to the sampling and testing of urine during the course. This [waiver] **notice and acknowledgment** will include notification that a positive confirmation of the presence of illegal drugs in the trainee's urine will result in dismissal from the school;

ii.-iv. (No change.)

v. Trainees will be required to submit [a] urine samples [at any time] during the course;

vi.-xiii. (No change.)

xiv. The school director shall dismiss any trainee who produces a positive test result for illegal drug usage. Such dismissal shall constitute a dismissal for misconduct; and

xv. The Commission may, as circumstances warrant, notify the central registry maintained by the Division of State Police of a trainee's positive test result for illegal drug usage.

Recodify existing 21 to 23 as **20 to 22.** (No change in text.)

13:1-8.4 Waivers

(a) (No change.)

(b) A request to waive training shall be submitted by the appointing authority to the Commission on a form prescribed by the Commission **together with official documentation from the institution where the training was obtained.**

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

(a)

ADMINISTRATION

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 13:1C

Authorized By: Robert J. Del Tufo, Attorney General.

Authority: N.J.S.A. 52:17B-4d, 42 U.S.C. §12101 et seq. and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-199.

Submit written comments by May 5, 1993 to:

Brian McKeever
Department of Law and Public Safety
Hughes Justice Complex
CN 080
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). All participating agencies propose to adopt the rules as published in this Department of Law and Public Safety proposal, with the exception of Subchapter 1, which will contain definitions specific to each agency and appear as indicated at each agency's Notice of Proposed Rulemaking also published in this issue of the New Jersey Register. In addition, the numbering of the rules will conform to each agency's codification in the Administrative Code. Finally, certain text in this proposed rule will be specific to the particular agency, as indicated in brackets herein.

The agency proposal follows:

Summary

The proposed rules establish a procedure for State agencies to follow when someone wishes to complain that the agency has done something that violates the Americans with Disabilities Act, also known as the ADA (42 U.S.C.A. §12101 et seq.). The ADA prohibits a public entity, including the State agencies proposing to adopt these rules, from discriminating against a qualified individual with a disability, or from excluding that person from participation in, or denying the person the benefits of, the services, programs or activities of the agency. Regulations of the United States Justice Department (found at 28 C.F.R. Part 35) require that such governmental agencies maintain and publish a procedure to be followed when someone wishes to complain of a violation of the law. Under this procedure anyone, including an employee or applicant for employment, who believes he or she has been discriminated against in any program, service or activity of the State agency, may require the agency to review and, if appropriate, to investigate the grievance. These rules set a 45 day objective for the completion of the inquiry by the agency and the issuance of a written determination by the head of the agency or a designee; they also set a 20 day limit following the incident complained of in which the individual may file the grievance. The rules also identify by title, with address and telephone number, the ADA coordinator of the agency who will be the person to receive the grievances in the first

instance. These rules will also contain a form for filing a grievance and a Notice of ADA Procedure, a copy of which will be made available to interested persons.

Social Impact

Because the injustice of discrimination continues to be visited upon the disabled members of our society solely on account of their disabilities, Congress passed the ADA, which attacks that injustice on many fronts and with many methods. One of these fronts is public entities and one of the methods is the requirement that such public entities undertake an examination of complaints that they have violated the substantive provisions of the ADA. The disabled are sometimes excluded from the programs, services or activities of government agencies out of ignorance on the part of the non-disabled and sometimes out of the lack of an available established mechanism whereby those barriers to participation or enjoyment of benefits can be removed. This proposed grievance procedure will provide the disabled one means to correct such lingering discrimination and to eliminate persisting barriers. The procedure will also assist State agencies to eliminate such discrimination by bringing to the agency's attention instances where such discrimination continues to exist and providing the agency the necessary insight and opportunity to correct them. Both the society at large, the government in particular, and the disabled individuals will benefit from the enactment of these rules, as barriers to access are removed and the programs, services and activities of the New Jersey State government are made available in a nondiscriminatory manner, thereby enabling the disabled fuller and more equal participation in all aspects of life. It is in the nature of the proposed procedure that it be informal and expeditious, but still effective; thus, the remediation of discriminatory conditions will be facilitated quickly and without the cumbersome and sometimes counterproductive formalities of other methods of complaint resolution.

Economic Impact

Although the proposed grievance procedure will result in some minor additional expense to the agency, the result of the inquiries and investigations precipated by the use of the procedure may have significant economic impacts, both as additional expenses are incurred by the agency in remediating instances of discrimination or eliminating barriers, and as the resulting nondiscriminatory access to the agency's programs, services and activities results in additional gains for the disabled that have economic value to them.

Regulatory Flexibility Statement

The proposed new rules impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Requirements are imposed on State agencies, and persons complaining that an agency has failed to comply with the ADA must provide certain information in their complaint. A regulatory flexibility analysis is not, therefore, required.

Full text of the proposed new rules follows:

CHAPTER 1C
DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

SUBCHAPTER 1. DEFINITIONS

13:1C-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the Department of Law and Public Safety.

"Designated decision maker" means the Attorney General or a designee of the Attorney General.

SUBCHAPTER 2. GENERAL PROVISIONS

13:1C-2.1 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 13:1C-4.

13:1C-2.2 Required ADA Notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 13:1C-1.1 et seq. As those rules indicate, complaints should be addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

(The following address will be specific to the Agency)

ADA Coordinator
Department of Law and Public Safety
Hughes Justice Complex
CN 080
Trenton, New Jersey 08625

1. A complaint may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related complaints, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A complaint should be filed promptly within 20 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis).

3. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

4. In most cases a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the complainant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the complaints filed.

6. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

SUBCHAPTER 3. DESIGNATED ADA COORDINATOR

13:1C-3.1 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

(The following address will be specific to the Agency)
ADA Coordinator
Department of Law and Public Safety
Hughes Justice Complex
CN 080
Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 13:1C-4.

SUBCHAPTER 4. ADA COMPLAINT PROCEDURE

13:1C-4.1 Complaint procedure

A complaint alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 13:1C-3.1. A complaint alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

13:1C-4.2 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 13:1C-4.3

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or any alternate contact person designated by the complainant to receive communication or provide information for the complainant;
2. The address and telephone number of the complainant or alternate contact person; and
3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

13:1C-4.3 Complaint form

The following form may be utilized for the submission of a complaint pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date: _____

Name of grievant: _____

Address of grievant: _____

Telephone number of grievant: _____

Disability of grievant: _____

Name, address and telephone number of alternate contact person:

_____

_____

Agency alleged to have denied access:

Department: _____

Division: _____

Bureau or office: _____

Location: _____

Incident or barrier:

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

_____

_____

_____

_____

_____

_____

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

_____

_____

_____

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 13:1C-3.1.

13:1C-4.4 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the complaint, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Fees and Terms

Minor's Employment Permit, Rehabilitation Employment Permit, Transportation License Insignia, Limited Transportation Permit, Limited Transportation Permit Insignia

Proposed Amendments: N.J.A.C. 13:2-14.2, 14.7, 20.6 and 21.4

Authorized By: John G. Holl, Acting Director, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 33:1-1(x) and (y), 2, 3, 10, 11, 13, 14, 23, 25, 26, 28, 28.1, 28(a), 31, 35, 39, 50, 55, 66 and 74.

Proposal Number: PRN 1993-197.

Submit written comments by May 5, 1993 to:
John G. Holl
Acting Director
Division of Alcoholic Beverage Control
140 East Front Street
CN-087
Trenton, New Jersey 08625-0087

The agency proposal follows:

Summary

On December 16, 1992, P.L. 1992, c.188 (the "Act"), was enacted which amended various sections of the Alcoholic Beverage Control Act by increasing fees and filing costs of various permits, petitions and appeals. In addition, the Act created a funding mechanism to insure a stable and continuous revenue base to be used for the enforcement and

regulation of the laws and regulations as established by the Alcoholic Beverage Control Act. As part of this overall funding mechanism, the Division is proposing by amendment to increase certain permit and insignia fees established by rule. The increased fees would effect the minor's employment permit, the rehabilitation employment permit, transportation license insignia, the limited transportation permit and the limited transportation permit insignia. These increases are necessary as part of the overall projected revenue base necessary for the enforcement and regulation of the Alcoholic Beverage Control Act. The following amendments are proposed:

The minor's employment permit fee (N.J.A.C. 13:2-14.2(b)) is proposed to be increased from $5.00 to $10.00. This permit is issued to persons at least 15 years old but under the age of 18, permitting them under certain criteria and provisions to be employed on a licensed premises. The permit is issued on an annual basis and must be renewed. The Division issued 824 minor's employment permits in 1992. The fee was last increased in 1971.

The rehabilitation employment permit fee (N.J.A.C. 13:2-14.7(c)) is proposed to be increased from $15.00 to $100.00. This permit may be issued to persons who have been convicted of crimes involving moral turpitude. If certain provisions and criteria are met, the Director will issue the permit allowing the person to work on a licensed premises under certain limitations. The permit is issued on an annual basis and must be renewed. The Division issued 111 of these permits in 1992. The fee was last increased in 1978.

The transportation license insignia fee (N.J.A.C. 13:2-20.6(c)) is proposed to be increased from $10.00 to $20.00 per vehicle. The insignia must be affixed to those vehicles used by the 216 holders of transportation licenses that transport alcoholic beverages into, out of, and through the State of New Jersey. The licensee is permitted to transport alcoholic beverages which are intended for sale and delivery in New Jersey. The licensee is required to have an insignia affixed to each vehicle demonstrating that it is licensed to carry alcoholic beverages. The Division anticipates that it will issue in excess of 10,000 insignia annually. The last fee change regarding transportation license insignia was in 1989 when the fee was decreased from $25.00 to $10.00.

The limited transportation permit fee (N.J.A.C. 13:2-21.4(b)) is proposed to be increased from $200.00 to $400.00. The permit is issued for a period of one year to those entities that transport alcoholic beverages not intended for delivery, sale or use in New Jersey. The Division issued approximately 180 limited transportation permits for the 1992-93 license term. The fee was last increased in 1980.

The limited transportation permit insignia fee (N.J.A.C. 13:2-21.4(e)) is proposed to be increased from $20.00 per vehicle to $40.00. This insignia must be affixed to the limited transportation permittee's specific vehicle as proof that it is properly licensed. The Division anticipates that it will issue in excess of 4,800 insignia annually. The fee was last increased in 1980.

The Division also proposes an amendment to change the term of the limited transportation permit and insignia, N.J.A.C. 13:2-21.4(c)1. The term of the permit and insignia is 12 months but is proposed to be amended to commence on October 1st instead of July 1st as currently set forth in the rules. The reason for this change is to allow the Division to disperse the renewals of the various permits so that they do not become due and processed at the same time. The proposed change to October 1st will allow the Division additional time to process the applications and insure that there is no disruptive effect on the limited transportation permittees. The amendment will also extend the current 180 limited transportation permits and insignia that expire on June 30, 1993 to September 30, 1993 with no additional fee.

Social Impact

The proposed fee increases will have a very positive social impact upon the citizens of New Jersey and the Alcoholic Beverage Industry. The overall statutory and regulatory change will enable the Department and the Division to maintain a continuous and stable source of revenue for the purpose of enforcing and maintaining the regulatory framework of the Alcoholic Beverage Control laws and regulations. The increase will impact on all current and potential minors seeking employment, persons convicted of certain crimes seeking employment in the alcoholic beverage industry and all current and potential persons transporting alcoholic beverages in New Jersey. The social impact upon these persons based on the actual fee to be charged will be minimal but the overall balancing social impact is very positive since it will insure continuous enforcement and protection of the public health, safety and welfare by requiring and maintaining compliance.

The proposed change in the limited transportation permit term should have no impact on any party other than the permittees which will be minimal. The change and amendment will insure no disruptive break in term and allow the Division to disperse the terms of the various permits so they do not all become due at the same time.

Economic Impact

The proposed amendment should have a limited economic impact upon the 834 applicants for minor's employment permits and 111 applicants for rehabilitation employment permits. While the increases are at least double, the actual amount of the fee to be charged to the individual is reasonable. In addition, the increased fees, especially in the case of the rehabilitation employment permit, more realistically represent the actual administrative costs of investigating, reviewing and issuing the permit.

It is anticipated that the fee increases will have a limited economic impact on the 180 limited transportation permittees and the approximate 4,800 vehicles they will use for the transportation of alcohol. The fees were last increased in 1980. The impact will also be limited upon the 216 transportation licensees who require insignia for approximately 10,000 vehicles. The transportation license insignia were decreased in 1989 from $25.00 to $10.00 and even with the proposed increase the fee will not reach 1989 levels. These increases, when viewed as part of the overall funding mechanism mandated by the Act, will have a positive economic impact upon the citizens and the alcoholic beverage industry in New Jersey, since all fees generated are to be specifically used for the enforcement and regulation of the alcoholic beverage industry. Enforcement and continued regulation of the alcoholic beverage industry will promote and maintain the health, safety and welfare of the citizens of New Jersey as it relates to the sale, service and delivery of alcoholic beverages. In addition, it will provide for the continual and effective stability of the alcoholic beverage industry by insuring a competitive marketplace which is monitored to prevent unfair and discriminatory trade practices.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. the affected individual applicants for minor's employment permits and rehabilitation employment permits would not be considered small businesses and are therefore not covered by the Act. In several instances with the issuance of minor's employment permits, the employer/licensee may seek to pay the fee for its employees. This employer is considered a small business and he may indirectly be covered by the Act. In those instances, the amendment requires no additional records or reporting; the only requirement is that the fee be paid in full in a timely manner.

In reviewing the nature and type of holders of transportation licenses and limited transportation permits, it would appear that the majority of these entities would not be considered small businesses as defined by the Act. For those entities that would be considered small businesses, the proposed fee changes impose no additional reporting or recordkeeping requirements by any applicant nor require the necessity to retain any professional service for compliance. The only compliance required is the paying of the increased fees in a timely manner. The increased fees are necessary to insure a stable and healthy alcoholic beverage industry by maintaining a guaranteed and continuous revenue source to be used for the compliance and enforcement of the alcoholic beverage laws and regulations. In balancing the necessity for the increase in fees, the Division of Alcoholic Beverage Control believes that the impact is minimal and the necessary need is great.

The change in the licensing year will have a minimal effect upon the limited transportation permittees. There will be minimal recordkeeping changes necessary in the current license term and the current insignia and permits that are issued shall be extended at no additional cost until the beginning of the proposed new term.

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

13:2-14.2 Minor's employment permit; fees

(a) (No change.)

(b) The fee for an individual permit is [$5.00] **$10.00** per annum, or any part thereof.

13:2-14.7 Rehabilitation employment permit; duration; types; fees

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

(c) The fee for either type of rehabilitation employment permit shall be [$15.00] **$100.00** per annum, payable on the date of application.

13:2-20.6 Applications; fees

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

(c) Application for transportation license insignia shall be filed with the Director upon a prescribed form and shall be issued at a cost of [$10.00] **$20.00** for each insignia, in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control.

1. (No change.)

13:2-21.4 Limited transportation permit

(a) (No change.)

(b) Application for a limited transportation permit shall be made to the Division on a form prescribed by the Director, in duplicate, accompanied by a fee of [$200.00] **$400.00**.

(c) A limited transportation permit has a term of one year terminating on [June 30] **September 30**, unless sooner cancelled by the Director.

1. Those limited transportation permits and the corresponding limited transportation permit insignia which have been issued with an expiration date of June 30, 1993 shall be and are extended until September 30, 1993.

(d) (No change.)

(e) Limited transportation permit insignia are obtainable from the Division in the same manner, with the same eligibility requirements, transfer restrictions and insignia location as a transit insignia as set forth in N.J.A.C. 13:2-20. The cost for this limited transportation permit insignia is [$20.00] **$40.00** per vehicle.

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Services

Dimensional Standards for Automobile Transporters

Proposed Repeals and New Rules: N.J.A.C. 13:20-38.1, 38.2 and 38.3

Proposed New Rules: N.J.A.C. 13:20-38.4, 38.5 and 38.6

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:3-84a(10).

Proposal Number: PRN 1993-181.

Submit written comments by May 5, 1993 to:

Stratton Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
225 East State Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 39:3-84a(10), the Director of Motor Vehicles may adopt rules specifying the maximum length of vehicles which are used to transport other vehicles (automobile transporters). In establishing the maximum length for automobile transporters, the Director utilizes the minimum length standards for such vehicles which have been established by the Federal government for use on the National Network of highways. The Federal standards represent minimum guidelines for the states. The proposed repeals and new rules at N.J.A.C. 13:20-38 reflect the current minimum length standards as set forth in 49 C.F.R. 658.13, revised as of February 1, 1991. N.J.A.C. 13:20-38.1 sets forth the purpose of the rules which is to conform New Jersey's length limitations for automobile transporters to the Federal standards established for such vehicles. Standardization of length limitations for automobile transporters facilitates interstate commerce on highways located in New Jersey which constitute part of the National Network of highways. N.J.A.C. 13:20-38.2 contains definitions of terms used in the subchapter. N.J.A.C. 13:20-38.3 sets forth length limitations for traditional automobile transporters (65 feet) and stinger-steered automobile transporter combinations (75 feet) which conform to minimum Federal standards for such vehicles and combinations as provided in 23 C.F.R. §658.13(d)(1)(i). N.J.A.C. 13:20-38.4 contains load overhang standards for automobile transporters that conform to the maximum Federal standards provided in 23 C.F.R. §658.13(d)(1)(ii). N.J.A.C. 13:20-38.5 sets forth length limitations for drive-away saddlemount vehicle transporter combinations (75 feet) and drive-away saddlemount with fullmount vehicle transporter combinations (75 feet) which conform to minimum Federal standards for such vehicle combinations as provided in 23 C.F.R. §658.13(d)(1)(iii). N.J.A.C. 13:20-38.6 limits the operation of vehicle transporter combinations with an overall length exceeding 62 feet to the through routes and access routes established by the Department of Transportation in N.J.A.C. 16:32-3.

Social Impact

The proposed repeals and new rules foster highway safety in the State and facilitate interstate commerce by setting maximum length standards for automobile transporters which are in compliance with minimum Federal standards and limiting the operation of automobile transporter combinations which exceed 62 feet to through and access highways which can safely accommodate combinations of such length. Operators of automobile transporters are impacted by the proposed new rules since they are required to maintain compliance with the maximum length standards and route limitations established in the rules.

Economic Impact

The proposed repeals and new rules have a beneficial economic impact on the State, the general public and the automobile transporter industry in that the adoption of the minimum Federal standards will promote the unencumbered flow of interstate commerce into and through New Jersey.

Regulatory Flexibility Analysis

The proposed repeals and new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-14 et seq. The new rules impose no reporting or recordkeeping requirements on entities which are small businesses as defined by the Act. The rules do, however, impose compliance requirements on companies engaged in the business of transporting vehicles, some of which are small businesses as defined in the Act. The compliance requirements pertain to maximum length standards for vehicles and combinations utilized as automobile transporters and route limitations for operation of automobile transporter combinations exceeding 62 feet in length.

The new rules do not require small businesses to engage additional professional services. The compliance requirements are in keeping with the minimum length standards imposed by Federal regulation and route restrictions imposed by the Department of Transportation for similar type vehicle combinations and are therefore not viewed as overly burdensome. The new rules do not necessitate any capital or annual expenditures for compliance by small businesses.

The compliance requirements are intended to set standards for maximum length of vehicles and combinations utilized to transport other vehicles and to restrict operation of vehicle combinations which exceed 62 feet to highways which can safely accommodate them. It is for this reason that no differentiation in compliance, based on business size, is provided.

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

13:20-38.1 [Vehicle combination lengths] **Purpose**

[No vehicle or combination of vehicles designed, built and utilized solely to transport other vehicles when operated on the highways of this State shall exceed 65 feet in overall length, excluding the load.]

The purpose of this subchapter is to conform the rules of this State to the national policy governing truck size as set forth in the Federal "Surface Transportation Assistance Act of 1982," Pub. L. 97-424 (49 App. U.S.C. §2311), as amended, and the regulations promulgated pursuant to that Federal law by establishing dimensional standards for automobile transporters that are in compliance with Federal standards contained in 23 C.F.R. §658.13, revised as of February 1, 1991. The purpose of this subchapter is also to facilitate interstate commerce on the National Network of

highways that can safely and efficiently accommodate the automobile transporters authorized by the "Surface Transportation Assistance Act of 1982."

13:20-38.2 [Load overhang automobile transporters] **Definitions**

[(a) A vehicle or combination of vehicles designed, built and utilized solely to transport other vehicles when operated on the highways of this State may have a load overhang of no more than three feet to the front and/or no more than four feet to the rear.

(b) Vehicles designed, built and utilized solely to transport other vehicles shall be exempt from the overhang standards set forth at N.J.A.C. 13:18-8.1.]

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

"Automobile transporter" means any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles.

"Fullmount" means a smaller vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination.

"Saddlemount combination" means a combination of vehicles in which a truck or truck tractor tows one or more trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The saddle is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is called a double saddlemount combination. When three vehicles are towed in this manner, the combination is called a triple saddlemount combination.

"Stinger-steered combination" means an automobile transporter consisting of a truck tractor semitrailer wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit.

"Traditional automobile transporter" means an automobile transporter wherein the fifth wheel is located on the frame of the truck tractor over the rear axle(s) of said truck tractor.

13:20-38.3 [Number of vehicles; overall length] **Vehicle combination lengths; traditional automobile transporters; stinger-steered combination**

[(a) Pursuant to N.J.S.A. 39:4-54 no more than two vehicles may be drawn by a motor vehicle.

(b) No vehicle or combination of vehicles operated in a saddlemount or fullmount operation shall exceed 65 feet in overall length, inclusive of load.]

(a) A traditional automobile transporter when operated on the highways of this State shall not exceed 65 feet in overall length, excluding the load.

(b) An automobile transporter consisting of a stinger-steered combination when operated on the highways of this State shall not exceed 75 feet in overall length, excluding the load.

13:20-38.4 Automobile transporter; load overhang

(a) Automobile transporters when operated on the highways of this State may have a load overhang of no more than three feet to the front and/or no more than four feet to the rear.

(b) Automobile transporters shall be exempt from the overhang standards set forth at N.J.A.C. 13:18-8.1.

13:20-38.5 Drive-away saddlemount vehicle transporter combinations; drive-away saddlemount with fullmount vehicle transporter combinations; overall length

(a) Drive-away saddlemount vehicle transporter combinations when operated on the highways of this State shall not exceed 75 feet in overall length.

(b) Drive-away saddlemount with fullmount vehicle transporter combinations when operated on the highways of this State shall not exceed 75 feet in overall length.

13:20-38.6 Application of Department of Transportation standards for 102-inch standard trucks to automobile transporters

Automobile transporters, drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount transporter combinations having an overall length of the combination of vehicles, including load, or contents or any part or portion thereof, which exceed 62 feet shall be subject to the provisions of N.J.A.C. 16:32-3.2 (General provisions), N.J.A.C. 16:32-3.3 (Through routes for 102-inch standard trucks), and N.J.A.C. 16:32-3.4 (Access from through routes), as amended, which have been adopted by the Commissioner of Transportation.

(a)

DIVISION OF MOTOR VEHICLES

Transportation of Bulk Commodities

Proposed Readoption: N.J.A.C. 13:26

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:5E-5.

Proposal Number: PRN 1993-182.

Submit written comments by May 5, 1993 to:

Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
225 East State Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:26-1.1 through 3.16 concerning the transportation of bulk commodities. These rules were filed and became effective on August 14, 1978, were readopted effective September 26, 1983 and September 26, 1988, and are now to be readopted in accordance with Executive Order No. 66(1978).

The rules implement the provisions of the "Bulk Commodities Transportation Act" (N.J.S.A. 39:5E-1 et seq.) regulating the transportation of bulk commodities in intrastate commerce. The Division's Motor Carriers Unit has reviewed the rules in accordance with Executive Order No. 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated." The rules implement the public policy of this State as set forth in N.J.S.A. 39:5E-2 by fostering sound economic conditions in the bulk commodity transportation industry through a competitive free enterprise economy and promote the public interest by providing for adequate bulk commodity transportation service throughout the State. The substantive provisions of the rules establish vehicle and commodity classifications. Vehicle classifications include tank vehicles transporting liquids and gases, tank vehicles transporting dry bulk cargo and dump vehicles transporting dry bulk cargo. Commodity classifications include non-hazardous cargo and hazardous cargo. The vehicle and commodity classifications are required to be specified on the carriers' certificates of public convenience and/or permits. See N.J.A.C. 13:26-3.1(c).

Common carriers (holders of certificates of public convenience) are required to hold themselves out to the general public as haulers of bulk commodities having the capacity to transport bulk commodities within their authorized territory or points of operation. See N.J.A.C. 13:26-3.1(d). Contract carriers (holders of permits) are required to maintain continuing contracts for the transportation of bulk commodities, maintain adequate equipment for the transportation of bulk commodities to fulfill their contractual responsibilities and maintain the capability to transport bulk commodities within their authorized territory or points of operation. See N.J.A.C. 13:26-3.1(e).

The rules provide for the granting of dual authority as both a common carrier and contract carrier. In addition to the requirements set forth in N.J.A.C. 13:26-3.1(d) and (e) for common and contract carriers, holders of dual authority may not allocate equipment from one service to another unless such allocation will not interfere with their ability to operate either transportation service. See N.J.A.C. 13:26-3.5.

The rules provide for the granting of temporary authority when two or more carriers merge or when a carrier leases or contracts to operate the properties of another carrier. Temporary additional authority may be granted if it is not attainable through the transfer of existing certificates and permits. An applicant for temporary additional authority must satisfy the Director of the Division of Motor Vehicles that failure to grant such authority may result in the destruction or injury to the motor carrier property acquired or may interfere substantially with the property's usefulness in supplying adequate and continuous service to the public. See N.J.A.C. 13:26-3.6(a)(2).

The rules vest in the Director authority to respond to emergencies caused by shortages of carrier service. The Director is authorized to (1) grant temporary authority to carriers capable of furnishing service in an affected territory, (2) direct the joint or common use of terminals, which in his opinion will best meet the shortage of service and serve the public interest, (3) give directions for priority in transportation and movement of traffic, (4) give directions respecting service, without regard to ownership as between carriers, as in his opinion will best promote service in the interest of the public and (5) suspend the operation of any rules or practice for such time as he may determine. See N.J.A.C. 13:26-3.7.

The rules provide for the issuance of permanent and temporary identification plates, cards, and decals for motor vehicle power units driven under any operating authority granted by the Director. See N.J.A.C. 13:26-3.11.

The rule establishes minimum insurance coverages for bodily injury, property damage, and cargo damage. See N.J.A.C. 13:26-3.12.

Social Impact

The rules proposed for readoption have a beneficial social impact. The rules promote the public welfare by providing for adequate bulk commodity transportation services throughout the State. The Director is vested with emergency authority to respond to shortages of carrier service in any part of the State. The Director may grant temporary authority to carriers capable of furnishing service in a territory affected by a shortage of service. Additionally, he may direct common use of terminal space, establish priorities in transportation and movement of traffic, suspend existing rules and practices, and direct carrier service.

Economic Impact

The rules proposed for readoption have a beneficial economic impact on the bulk commodity transportation industry in that they foster sound economic conditions therein through a competitive, free enterprise economy. There is also a beneficial economic impact on the State. The State collects revenue upon issuance of certificates and plates. Common and contract carriers subject to the Act pay a fee of $375.00 for a certificate of public convenience or permit.

Additionally, a carrier pays an annual fee of $10.00 for each identification plate issued for power units operated by it. Private carriers and interstate carriers are not subject to the Act so that there is no economic impact on them.

Regulatory Flexibility Analysis

N.J.S.A. 39:5E-5 provides in pertinent part "[t]he director shall regulate the transportation of bulk commodities in intrastate commerce and to that end . . . shall prescribe a uniform system of accounts, records, reports and the preservation thereof . . ." To this end, the Division of Motor Vehicles adopted N.J.A.C. 13:26-3.15(a) which requires motor carriers engaged in intrastate transportation of bulk commodities to maintain a "financial record and accounting of assets and liabilities, cost and depreciation of all equipment and other physical property owned, receipts from operation, operating and other expenses, contracts entered into, commodities hauled and destination, actual miles traveled within and without the State and such other information the Director may deem necessary." The rule (N.J.A.C. 13:26-3.15(c)) also requires motor carriers to maintain a record of all motor vehicle accidents involving the carriers' motor vehicles. Carriers are directed to preserve their records for at least five years.

To date, the Division has authorized approximately 500 carriers to engage in the intrastate transportation of bulk commodities. Almost all of these motor carriers qualify as small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption will not require small businesses to engage additional professional services. The financial records required to be maintained are similar to those currently necessary for filing Federal income tax returns. Therefore, the rules do not impose additional burdens on small businesses nor do they necessitate initial capital and annual expenditures for compliance by small businesses.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:26.

(a)

STATE BOARD OF DENTISTRY

Continuing Education

Proposed New Rule: N.J.A.C. 13:30-8.18

Authorized By: State Board of Dentistry, Agnes Clarke, Executive Director.

Authority: N.J.S.A. 45:6-10.1 to 10.9 and 45:6-19.4.

Proposal Number: PRN 1993-183.

Submit written comments by May 5, 1993 to:

Agnes Clarke, Executive Director
State Board of Dentistry
124 Halsey Street, 6th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Dentistry proposes a comprehensive new rule relating to continuing dental education pursuant to the mandate of N.J.S.A. 45:6-10.1 to 45:6-10.9, approved January 18, 1992, which establishes continuing education requirements for dentists. The provisions of the new rule include, but are not limited to, credit hour requirements, qualifying and non-qualifying subject matter, continuing education programs and other sources of continuing education credit, procedures for monitoring compliance, and procedures for waiver of the requirement.

The initial credit hour requirements have been pro-rated since the next biennial registration commences on November 1, 1993. Accordingly, each applicant for a biennial license renewal will be required to complete a minimum of 40 credits of continuing dental education, except for the registration period commencing on November 1, 1993, for which 20 credits of continuing dental education will be required for the period July 1, 1992 to October 31, 1993.

The new rule also sets forth the procedures for prior approval of a continuing education sponsor and/or program. In addition, those licensees who already are required to complete continuing education credit in accordance with the requirements for parenteral conscious sedation and/or general anesthesia permits shall be given credit for completion of those requirements towards fulfilling the general professional continuing education requirements. Every licensee also will be required to obtain three hours of the mandatory continuing education credits in the area of basic infection control procedures.

Social Impact

The proposed new rule will apply to all dentist licensees registered by the Board of Dentistry. The public and licensees will benefit from these rules since the professional competency of licensees will be enhanced. These provisions formally recognize the obligation of all dentists to keep current their knowledge, skill, and experience with which they serve their patients and society.

Economic Impact

The cost of compliance with the proposed requirements will be borne solely by the licensee. Pursuant to this rule, the licensee is required to complete credit hour requirements during each biennial period preceding license renewal through attendance at approved courses for which, in all likelihood, there will be an associated fee. Although there is no direct cost to the public, the cost of compliance with these provisions may indirectly affect the public through increased dental fees. However, the Board does not expect any significant increase in dental costs as a result of this proposed rule.

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:

The proposed new rule, which governs and defines mandatory continuing dental education, will apply to all licensees of the Board of Dentistry. The Board currently licenses approximately 10,000 dentists.

The proposed new rule is uniformly applicable to all licensees, without distinction as to the size of the professional practice. The imposition of record maintenance and compliance requirements are minimal, yet

carry out the Board's intended purpose of protecting the public's best interests. The provisions require the retention of records related to continuing education, but they do not require automatic reporting of continuing education credits except upon request by the Board of a sample of licensees and at the discretion of the Board.

Any costs for compliance will be borne by licensees, and the necessity to engage professional services, instructional in nature, will be uniformly applicable to all licensees. Therefore, there is no need to minimize any adverse economic impact on small business, pursuant to the Regulatory Flexibility Act. The Board considers these requirements to be reasonable and to be the minimum necessary in order to handle the responsibility for mandatory continuing dental education delegated to the Board by the Legislature.

Full text of the proposed new rule follows:

13:30-8.18 Continuing dental education

(a) No renewal certificate of registration shall be issued by the Board of Dentistry for the biennial period commencing November 1, 1993 or any following year until the applicant certifies as part of the application for renewal of the certificate of registration that he or she has completed courses of continuing professional dental education of the types and number of credits specified in this section. Such continuing education shall be a mandatory requirement for license renewal, except that the Board shall not require completion of continuing dental education credits for initial registration of dentists.

(b) Each applicant for a biennial license renewal shall be required to complete, during the preceding biennial period, a minimum of 40 credits of continuing dental education, except for the registration period commencing on November 1, 1993, for which 20 credits of continuing dental education shall be required for the period July 1, 1992 to October 31, 1993. Any applicant who is initially licensed subsequent to the commencement of any biennial registration period shall be required to complete dental education credits on a pro rata basis prior to the next renewal period.

(c) One hour of continuing education credit shall be granted for each hour of instruction at lectures, seminars, clinical or laboratory participatory courses, or other educational methods as may be approved by the Board, excluding time spent at meals, breaks or business sessions. Credit shall be granted only for full instructional hours, but not for less than one instructional hour. Successful completion of an entire course or segment of course instruction is required in order to receive any continuing education credit. Unless otherwise provided, only in-class participation, not student time devoted to preparation, will be counted.

(d) It shall be the responsibility of each licensee to maintain an authenticated record of all continuing education activity completed and to be prepared to submit evidence of completion of the credit requirements to the Board upon request. Each licensee must obtain from the continuing education course sponsor and retain for a period of seven years an authenticated record of attendance which shall include, at a minimum, the following:

1. The participant's name;
2. The title or subject area of the course;
3. The instructor;
4. The course sponsor;
5. The date and location of the course;
6. The number of hours; and
7. Verification of successful completion by the course sponsor.

(e) The Board shall monitor compliance with the mandatory continuing dental education requirement by requesting some licensees, at the discretion of the Board, to provide documentary proof of successful completion of continuing education credits.

(f) All continuing education activities to be accepted for credit shall have significant intellectual or practical content which deals primarily with matters directly related to the practice of dentistry or with the professional responsibilities or ethical obligations of licensees. Subjects such as estate planning, financial or investment/tax planning, personal health or others so deemed by the Board from time to time shall not be acceptable for continuing education credit. In addition, correspondence programs and other individual study programs, including taped or video study programs, shall not be acceptable for continuing education credit.

(g) The Board shall maintain a list of approved course sponsors and accredited education programs and shall make this list available to licensees upon request.

(h) A continuing education sponsor may receive prior approval for a course of acceptable subject matter and be assigned a designated number of continuing education credits by the Board if the program sponsor provides, in writing and on a form provided by the Board, information required by the Board to document that the sponsor offers courses which meet the following requirements:

1. The course is offered in a subject matter and in a format permissible pursuant to the provisions of this section;
2. The course is conducted by a qualified instructor or discussion leader; and
3. The course is at least one hour in length.

(i) Prior approval of a continuing education sponsor and/or program and the continuing education credit allowed for the program shall be renewed every two years and at such other times as the program is to be altered substantially. Applications for pre-approval of continuing education programs must be submitted by the program sponsor on the form provided by the Board at least 45 days prior to the date the continuing education program is to be offered. Incomplete applications shall be returned to the sponsor and may result in a failure to grant prior approval of the program. Although failure to obtain prior approval shall not preclude acceptance of the program, there shall be no assurance that the Board will grant approval retroactively.

(j) A licensee may select from any of the areas of study listed below, except that for purposes of obtaining continuing education credits towards the mandatory requirement the licensee may not exceed the maximum number of hours permitted in each category.

1. Educational and scientific courses:

i. A licensee may obtain all of the required continuing education hours in this category. Educational and scientific courses must be offered by approved sponsors or granted prior approval by the Board in accordance with the procedure provided herein.

ii. Completion of an accredited one year dental residency program or completion of an approved advanced education program leading to specialty certification in endodontics, oral surgery, oral pathology, orthodontics, pediatric dentistry, periodontics, prosthodontics, or public health shall satisfy the entire requirement of continuing education hours for one biennial registration period.

iii. A maximum of five hours of continuing education shall be given for basic C.P.R. courses.

2. Papers, publications and scientific presentations:

i. A licensee may obtain a maximum of 20 hours of continuing education credit in this category.

ii. A maximum of 10 hours of continuing education credit shall be given for each original scientific paper authored by the licensee and published in a refereed journal. At the discretion of the Board, these 10 hours may be divided among all co-authors.

iii. For each original presentation of a paper, essay or formal lecture to a recognized group of fellow professionals, the presentor shall receive two hours of continuing education credit for every hour of presentation.

3. Teaching and research appointments:

i. A licensee may obtain a maximum of 10 continuing education credit hours in this category.

ii. A licensee involved in teaching or research activities at least one full day per week per academic year and who holds at least a part time faculty or research appointment shall receive four hours of continuing education credit annually for each full day.

4. Table clinics and scientific exhibits:

i. A licensee may obtain a maximum of eight continuing education hours in this category.

ii. The original presentation of a table clinic or scientific exhibit at a professional meeting will provide a maximum of one hour of continuing education credit per clinic or exhibit for each two hours of presentation.

(k) Those licensees who complete 20 hours of continuing education credit in accordance with the requirements for parenteral conscious sedation and/or general anesthesia permit holders pursuant to N.J.A.C. 13:30-8.2 and 8.3 shall be given credit for all 20 hours towards fulfilling the general requirement for professional continuing education under this section so long as the credits otherwise comply with the provisions of this section.

(l) Every licensee shall be required to obtain three hours of the mandatory continuing education credits during each biennial registration period in the area of basic infection control procedures.

(m) Any continuing education credits which are completed by a licensee in excess of the requirement as provided in this section shall not be credited to any subsequent registration period.

(n) Any continuing education courses directed or ordered by the Board as a remedial or punitive measure shall not be eligible to fulfill the general mandatory continuing education requirement.

(o) The Board may, in its discretion, waive requirements for continuing dental education on an individual basis for reasons of hardship such as illness or disability, retirement of the licensee, or other good cause including, but not limited to, a full time faculty appointment to an accredited dental school or dental hygiene school or inactive licensees who are practicing outside of the State. Any licensee seeking a waiver of the continuing education requirement must apply to the Board in writing and set forth with specificity the reasons for requesting the waiver. The licensee also shall provide the Board with such additional information as it may reasonably request in support of the application. In cases of illness, disability, retirement, practice outside of the State, or other good reason, the licensee shall be placed on inactive or retirement status and shall be prohibited from engaging in the practice of dentistry in the State of New Jersey unless and until such licensee is reinstated with a current active registration. In addition, the Board may, in its discretion, require the completion of continuing education requirements as a condition for reinstatement of active licensure.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Discontinuance of Service to Multi-Family Dwellings

Proposed Amendment: N.J.A.C. 14:3-3.6

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:2-13.

BRC Docket Number: AX93010003U.

Proposal Number: PRN 1993-161.

Submit written comments by May 5, 1993 to:

Kent R. Papsun, Chief
Bureau of Customer Assistance
Board of Regulatory Commissioners
44 South Clinton Avenue
CN 350
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment to N.J.A.C. 14:3-3.6 is intended to address certain problems regarding the discontinuance of service to an entire multi-family dwelling by a utility from its service facilities located on the street. Such a discontinuance has occurred when a utility has been unable to gain access to the building's meter room in order to terminate the service of a few tenants who are delinquent in the payment of a validly rendered bill. See N.J.A.C. 14:3-3.8; see also N.J.A.C. 14:3-6.

In an attempt to balance the rights of the utility and the rights of those tenants who keep current on their bills, the Board proposes the addition of N.J.A.C. 14:3-3.6(e) whereby, after proper notice, a utility could discontinue service to an entire multi-family dwelling with four or more units in which at least 75 percent of the tenants have received a notice of discontinuance for non-payment and the utility has been denied access to its meters. In those cases where a multi-family dwelling has less than four units, all tenants must be delinquent on their bills before discontinuance of service to the entire dwelling may occur.

Prior to such discontinuance, the utility must be denied access to its meters by all customers in the dwelling, including non-deliquent customers, scan its accounts to determine whether it has been provided a key(s) for access to read the meters and, if so, to seek the permission of the customer(s) or landlord to use said key(s) to discontinue service, contact the landlord or superintendent to arrange for access should a key(s) be unavailable, and comply with all applicable Board rules concerning the discontinuance of service.

In the event that access cannot be gained through the foregoing methods, the proposed amendment provides that the Board's Bureau of Customer Assistance be given 10 working days notice of the utility's intent to terminate service to an entire multi-family dwelling. In addition the proposed amendment would provide that the Board could require a utility to defer a pending discontinuance of service for investigative purposes.

Social Impact

The proposed amendment will have a positive social impact in that it will provide non-delinquent tenant customers with a higher degree of protection from service interruption and will set forth a clear procedure for the utilities to follow prior to discontinuing service to an entire multi-family dwelling.

Economic Impact

The information needed by a utility in order to comply with this proposed amendment is already in its possession. The only expense to the affected utilities would be related to the required notices to the non-deliquent customers for access and, if necessary, to the Board. Said expense, which the Board finds to be minimal, would be considered to be business related and the utility could apply for recovery of any such reasonable expenses in an appropriate rate proceeding.

Regulatory Flexibility Analysis

There are no gas utility companies in New Jersey that may be classified as a small business as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are, however, approximately 80 small water and sewer utility companies and one small electric utility company.

Although small businesses will incur some expenses in providing non-delinquent tenant customers and the Board with notice, such expenses, which may be recoverable through rates to customers, are minimal and are commensurate with the number of customers served. Therefore, the burden of the administrative expense falls equally upon both small and large businesses and no differentiation in compliance requirements based on business size is provided.

As noted above, the annual cost of the compliance requirements imposed on the utility companies involves only minor administrative costs to prepare and forward the necessary notices. Because of the minimal cost and the need to protect, to the greatest degree possible, non-delinquent tenant customers from service interruptions, no lesser requirement or exemption is provided.

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

14:3-3.6 Basis of discontinuance of service

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

(e) Discontinuance of service to an entire multi-family dwelling with less than four units is prohibited unless all tenants are delinquent in the payment of a validly rendered bill. A utility may discontinue service to an entire multi-family dwelling containing four or more units in which 75 percent or more of the tenants have received a notice of discontinuance for non-payment of a validly rendered bill and the utility has been denied access to its meter(s). Prior to discontinuing service to an entire multi-family dwelling, the utility shall:

1. Request in writing access from all tenants to the utility's meters for the purpose of terminating service to those tenants with delinquent accounts;

2. Scan all individual accounts in multi-family dwellings to determine whether that utility has possession of a key for meter reading purposes should the utility not have a key which has been authorized for use to gain access for the purpose of terminating

service. If so, the utility shall seek permission from the customer or the landlord to use said key to gain access to the utility's meters for the purpose of terminating service to the delinquent customer(s). If the utility does not have possession of a key, the utility shall contact the landlord or superintendent to arrange for access to the utility's facilities;

3. Give a notice of at least 10 working days to the Board's Bureau of Customer Assistance of its intent to discontinue service to an entire multi-family dwelling. The Board may require the utility to defer a pending discontinuance of service for investigative purposes; and

4. Comply with all applicable provisions of this section pertaining to the discontinuance of service.

STATE

(a)

ADMINISTRATION

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 15:1

Authorized By: Daniel J. Dalton, Secretary of State.
Authority: N.J.S.A. 52:16A-11.a, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.
Proposal Number: PRN 1993-207.

Submit written comments by May 5, 1993 to:
John F. Kettner
ADA Coordinator
Division of Administration
Department of State
CN 459
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of State proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of Subchapter 1. Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1. DEFINITIONS

15:1-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of State.

"Designated decision maker" means the Secretary of State or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

John F. Kettner
ADA Coordinator
New Jersey Department of State
CN 459
Trenton, New Jersey 08625

TREASURY-GENERAL

(b)

DIVISION OF STATE LOTTERY

Rules of the Lottery Commission

Proposed Readoption with Amendments: N.J.A.C. 17:20

Authorized By: New Jersey Lottery Commission, Frank M. Pelly, Executive Director.
Authority: N.J.S.A. 5:9-7.
Proposal Number: PRN 1993-165.

Submit comments by May 5, 1993 to:
Frank M. Pelly, Executive Director
Division of State Lottery
CN 041
Trenton, NJ 08625-0041

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 17:20 expires on September 26, 1993. The Division of State Lottery has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order. The Division proposes to readopt these rules with minor spelling and grammar changes.

Rules of the State Lottery Commission govern lottery ticket sales, the payment of prizes, licensing procedures, and related operations. The rules of the specific Lottery games were removed from the operation of the Administrative Procedures Act by P.L. 1981, c.182 (codified as part of N.J.S.A. 5:9-7a).

The State Lottery Commission has engaged in an ongoing revision of its rules, and accordingly, only two technical changes are proposed in conjunction with the present readoption.

A summary of each section in N.J.A.C. 17:20 follows:

Subchapter 1. General Provisions

N.J.A.C. 17:20-1.1 describes the scope of the rules.

N.J.A.C. 17:20-1.2 specifies the erroneous or mutilated tickets provisions.

N.J.A.C. 17:20-1.3 specifies persons prohibited from purchasing tickets or shares.

Subchapter 2. Definitions

N.J.A.C. 17:20-2.1 provides definitions of the words and terms used throughout this chapter.

Subchapter 3. Director

N.J.A.C. 17:20-3.1 describes the procedure for resolving disputes over ownership or validity of winning lottery tickets.

Subchapter 4. Lottery Agent's Application and License

N.J.A.C. 17:20-4.1 describes the manner in which a person applies for a Lottery license.

N.J.A.C. 17:20-4.2 states the eligibility of an applicant for licensure.

N.J.A.C. 17:20-4.3 describes the procedures involved in processing an application.

N.J.A.C. 17:20-4.4 specifies the conditions for issuing a license.

N.J.A.C. 17:20-4.5 requires that the Lottery license be displayed.

N.J.A.C. 17:20-4.6 specifies that Lottery agents submit a bonding fee.

N.J.A.C. 17:20-4.7 describes the conversion of a manual agent to a machine agent.

N.J.A.C. 17:20-4.8 states that Lottery tickets can only be sold at specific locations.

N.J.A.C. 17:20-4.9 describes the rules for special or seasonal Lottery agents.

N.J.A.C. 17:20-4.10 states the procedures for the transfer of ownership of licensed locations.

Subchapter 5. Denial, Revocation or Suspension of License

N.J.A.C. 17:20-5.1 states the reasons for the denial, revocation and suspension of a license, and the imposition of civil penalties.

N.J.A.C. 17:20-5.2 states the termination procedures for agents.

N.J.A.C. 17:20-5.3 describes the procedures for agents' administrative hearings.

N.J.A.C. 17:20-5.4 through 17:20-5.7 are reserved.

Subchapter 6. Distribution and Sale of Lottery Tickets and Deposit of Lottery Moneys

N.J.A.C. 17:20-6.1 refers to the distribution of tickets.

N.J.A.C. 17:20-6.2 states the requirements for the sale of tickets.

N.J.A.C. 17:20-6.3 describes the procedures for the deposit of Lottery moneys.

N.J.A.C. 17:20-6.4 states how agents are to deal with lost or stolen tickets.

Subchapter 7. Payment of Prizes

N.J.A.C. 17:20-7.1 describes what information is required from a prize claimant.

N.J.A.C. 17:20-7.2 refers to the conditions that may be waived by the Director in the payment of prizes.

N.J.A.C. 17:20-7.3 states the reasons for requesting additional information from the claimant.

N.J.A.C. 17:20-7.4 describes the time for the awarding of prizes.

N.J.A.C. 17:20-7.5 refers to the procedures for the payment of prizes.

N.J.A.C. 17:20-7.6 specifies the discharge of the State's liability upon the payment of an award.

N.J.A.C. 17:20-7.7 states the disposition of unallocated prize money.

N.J.A.C. 17:20-7.8 refers to the information which must be disclosed about Lottery winners.

Subchapter 8. Lottery Vendors' Code of Ethics

N.J.A.C. 17:20-8.1 requires that each Lottery vendor adhere to a code of ethics.

Subchapter 9. Civil Penalties and Sanctions

N.J.A.C. 17:20-9.1 describes imposition of civil penalties not exceeding $2,500.

N.J.A.C. 17:20-9.2 covers civil penalties between $2,500 and $5,000.

N.J.A.C. 17:20-9.3 covers civil penalties in excess of $5,000.

N.J.A.C. 17:20-9.4 describes the Director's restitution power and the enforcement of cease and desist orders.

N.J.A.C. 17:20-9.5 states the procedures for conducting hearings involving civil penalties.

Subchapters 10 through 11 Reserved.

Social Impact

These rules aid and assist the Lottery community of players and agents in performing their various tasks insofar as they clarify the functions of the State Lottery. They have the general beneficial impact of making governmental operations open, regular and comprehensible. Once readopted, the rules will continue to provide thorough guidelines for the administration and operation of the State Lottery.

Subchapter 4 describes application process to follow to be licensed as an agent of the Division of State Lottery, excluding minors, the review procedures of such application, and the terms and conditions for issuance. Subchapter 5 details the reasons for and the procedures to follow should an application be denied or a license be suspended, revoked, or should a civil penalty be imposed on an agent. Subchapter 6 addresses the daily conduct of business as it relates to the distribution, sales and redemption of lottery tickets. The deposit of lottery monies and the procedures for reporting lost or stolen tickets are also addressed. Subchapter 7 outlines the procedure a claimant must follow to claim a prize, including a statement which permits the Lottery to use the names, addresses, prize amounts and photographs of winners. The terms and conditions under which the Director may impose civil penalties and sanctions are discussed in subchapter 9.

Subchapters 1, 2, 3 and 8 have minimal general social impact. Subchapter 1 deals with general provisions and includes a description of those persons who are prohibited from purchasing tickets or shares. Subchapter 2 provides definitions and is general in nature. Subchapter 8 is a vendor code of ethics and does not affect the public at large, beyond assuring adherence to a minimum standard of behavior on the part of the vendors.

Economic Impact

This proposed readoption has no direct economic impact, in that it makes no substantive changes. The Lottery rules themselves describe the operation of the State Lottery. To the extent that these operations are made more efficient, there is an indirect impact that occurs when additional money is made available, by more efficient procedures, to be applied to the designated purposes of the Lottery: aid to education and State institutions. The total amount provided by the Lottery for these purposes from January 1, 1988 to December 31, 1992 is $2,658,958,404. Lottery revenues for the same period total $6,297,394,300.

Since the Lottery charges no fees to the public in general, or to the applicants/vendors for the administration of these rules, the public will experience no direct economic effect. The vendors, however, are required to be bonded, typically at a cost of under $100.00. The required security check involves a fee of $8.00, paid to the New Jersey State Police. The only businesses affected by these rules include the lottery agent network which may incur lost commissions in case of license suspension or may have civil penalties imposed due to lack of compliance.

Regulatory Flexibility Analysis

This proposed readoption has no adverse impact on small businesses, since it effects no change and imposes no additional requirements on small businesses. The existing rules affect many small businesses, since such entities comprise a majority of the approximately 5,200 Lottery agents.

The lottery network, by its very nature, has a direct effect on small and minority businesses in that most of the agents come directly from this category. Strict compliance to the readopted rules as outlined in the summary above will impose neither hardship nor additional financial burden among these businesses.

Businesses applying for licensure with the New Jersey State Lottery are required to follow the application information set forth in subchapter 4. Should an application be denied, appeal procedures are set forth in subchapter 5. Further direction with respect to the conduct of business as an agent for the New Jersey State Lottery is described in subchapters 5, 6, and 7. Should the agent fail to comply with the rules as set forth in this chapter penalties, sanctions and additional hearing procedures are outlined in subchapter 9. Professional services are not required for any of the provisions of this Chapter, except appearance on behalf of a corporation at contested case hearings under subchapter 5 and/or subchapter 9.

The Division considers these rules to be fair and equitable to any and all applicants, agents and the community of players of the New Jersey State Lottery.

The State Lottery Commission has determined that the rules embody the minimum amount of regulatory structure which is consistent with the efficient operation of the Lottery and the maintenance of its integrity. No differentiation can therefore be permitted between Lottery agents based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:20.

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

17:20-2.1 Definitions

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

. . .

17:20-6.4 Lost or stolen tickets

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

(c) Agents shall make prompt reports to the Lottery regarding any theft from or unauthorized entry upon, licensed premises, whether or not any lottery [monies] **moneys** or property appear to be missing at the time.

(d) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

BUREAU OF FORESTRY

Bureau of Forestry Rules

Proposed New Rules: N.J.A.C. 7:3

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

Authority: N.J.S.A. 13:1L-1 et seq. and 54:4-23 et seq., specifically 54:4-23.3.

DEP Docket Number: 13-93-02.

Proposal Number: PRN 1993-159.

Submit comments by May 5, 1993 to:
Janis E. Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 7:3 became effective on March 21, 1988. Pursuant to Executive Order No. 66(1978), the Bureau of Forestry rules expired on March 21, 1993. The lapsing of these rules requires that they be proposed as new rules (see N.J.A.C. 1:30-4.2(g)). The Department of Environmental Protection and Energy, specifically, the Division of Parks and Forestry, is proposing the rules as they appear in N.J.A.C. 7:3 except for amendments to subchapter 1, Reforestation Program. The amendments will make these rules more responsive to the purposes for which N.J.A.C. 7:3 was originally promulgated.

The proposed new rules are comprised of three subchapters which provide the framework for environmentally sound tree planting and forest management practices on private lands and ensures that only those persons certified as tree experts by the Department may use the designation to advertise for services. The benefit to the residents of New Jersey include the perpetuation of open space, aiding local tax assessors, reforestation of open spaces and fairness in advertising.

The following proposed subchapters establish standards implementing the legislative mandate to protect the forestry resources of the State.

Subchapter 1, Reforestation Program, encourages the reforestation of privately owned properties of three acres or more. This is accomplished through the sale of seedlings at a reasonable cost to private landowners. This subchapter sets forth the standards for qualification and the application procedures for requesting seedlings for reforestation purposes. It also limits the sale of seedlings by the State for the purpose of reforestation only and, therefore, generates markets for private nurseries to sell seedlings for private and commercial uses.

The proposed new rules at N.J.A.C. 7:3-1.5 reduce the land ownership requirements for ordering seedlings from five to three acres in order to stabilize the amount of State acreage reforested. The average acreage owned by private individuals is decreasing and it is estimated that by increasing the number of landowners eligible to purchase seedlings under the reforestation program and thereby encouraging the planting of forest plantations of at least one acre in size, the reforested acreage in the State will be stabilized at about 400 acres per year.

N.J.A.C. 7:3 now requires a DEPE forester to visit the site and approve a formal reforestation plan before an eligible landowner could order seedlings. The proposed new rules will eliminate these requirements. These requirements proved to be unnecessary as consulting foresters now provide on-site tree planting instructions where needed. Furthermore, the requirement of a formal plan may have discouraged private landowners from planting trees. However, DEPE will maintain oversight of the reforestation program by retaining the right to inspect properties suspected of violating these rules and to require any person found to be violating the rules to reimburse DEPE for the seedlings plus administrative costs associated with delivery of the seedlings, costs of inspections and other time spent relative to the violation.

N.J.A.C. 7:3-1.5 is amended, to prohibit the sale of reforestation stock to any landowner whose total acreage is less than three acres of land, who has violated the provisions of an agreement signed pursuant to N.J.A.C. 7:3-1.4, or for a purpose other than those in N.J.A.C. 7:3-1.6. At N.J.A.C. 7:3-1.6(b), additional examples of legitimate reforestation projects are provided.

The proposed new provision at N.J.A.C. 7:3-1.6(c) also provides for the distribution of a free seedling, when adequate supplies are available, to each third grade student in the State. This will formalize a program that has evolved over the past few years whereby schools have requested seedlings for children to plant. Third graders were chosen to receive free seedlings because children this age have sufficient appreciation of tree planting to make it a positive environmental educational experience. In addition, children this age will be home or in school for a long enough period of time to observe the growth and maturation of the tree(s) they plant.

Subchapter 2, Approved Foresters List, provides the criteria for the establishment and maintenance of a list of foresters approved by the Department. This subchapter is required primarily to effectuate the woodlands tax assessment for private woodlands owners, authorized by the Farmland Assessment Act, N.J.S.A. 54:4-23 et. seq. To be eligible for woodlands tax assessment, private landowners are mandated by the Farmland Assessment Act to develop a woodlands management plan. Compliance with such a plan must be annually attested to by an approved forester. The standards for applying and qualifying for inclusion on the list, and for deleting a forester from the list, are set forth in this subchapter.

This subchapter permits the Division to organize consultants, ensure uniform delivery of services and provide for a reasonable level of expertise to private landowners. Also, this subchapter, through the use of quarterly activity reports, allows the Division to monitor private-sector forestry activities to guard against excessive tree cutting. Quarterly activity reports are required numerical reports which document the number of woodland management plans, number of timber stand improvement sites, reforestation and Christmans tree plantation plans and acreage covered by such plans.

Subchapter 3, Advertising by Certified Tree Experts, is intended to protect the public from deceptive advertising by uncertified tree experts. A tree expert is defined by the Tree Expert Act, P.L.1940, c.100 (N.J.S.A. 45:15C-1 et. seq.) as a person skilled in the science of tree care whose services are available to the public for compensation as a practicing tree expert. This subchapter sets forth the manner in which a certified tree expert must represent himself or herself to the public when advertising. While the Tree Expert Act established the criteria for certification as a tree expert, it did not limit the use of the designation to those certified. This subchapter is designed to protect the consumer from misrepresentation by uncertified tree experts.

The adoption of all three subchapters sets forth the manner in which the Reforestation Program, Approved Forester List and advertising by certified tree experts support the proper management of the State's tree resources.

Social Impact

This chapter provides essential administrative structure to forestry programs concerning reforestation, listing of foresters approved by the Department and advertising conducted by certified tree experts. These three subchapters provide the framework for environmentally sound tree planting and forest management practices on private lands and ensure that only those persons certified as tree experts by the Department may use the designation to advertise for services. The benefit to the residents of New Jersey include the perpetuation of open space, aiding local tax assessors, reforestation of open spaces and fairness in advertising.

Subchapter 1 will effectively encourage the continual reforestation of privately held lands. The State sells more than 400,000 seedlings annually which are sufficient to reforest approximately 400 acres. Providing a free seedling to each third grade student will provide an opportunity for youths to participate in an environmentally positive experience and thereby encourage good stewardship of the land by future generations. The rules as amended state the requirements for obtaining the seedlings and penalties for any breach which provides the framework of equitable and fair program administration.

Subchapters 2 and 3 will effectively maintain public confidence in the skills and expertise of approved foresters and certified tree experts, whose services are essential to the proper management of forest resources.

Failure to adopt these subchapters would negatively impact on the reforestation goals of the Department and impact on the future of our forestry resources.

Economic Impact

The reforestation program supplies seedlings to private landowners at a reasonable cost encouraging the reforestation and continuance of private, tax-paying open space. Additionally, the program generates requests to private sector nurseries for Christmas tree production. Seedling sales by the State for Christmas tree production are prohibited by this chapter, thus eliminating State competition with private seedling sales. Maintaining DEPE oversight of the reforestation program will ensure that additional costs to the program resulting from violations of the rules will be borne by the violator. In addition to paying for administrative costs and the cost of the seedlings, no landowner found to be in violation of the rules will be permitted to purchase seedlings from the State Nursery in the future.

The seedling program assures private landowners of a consistent, high-quality seedling supply which is a critical element to ensure the long-term potential of woodland resources.

Advertising by certified tree experts is limited to those certified by the Department. This provides a degree of protection to the consumer of tree services and maximizes returns to those certified.

The services of foresters from the Approved Foresters List will be required by landowners seeking woodland tax assessment for annual attestations of compliance with woodland management plans. In addition, landowners would likely use the professional services of the approved foresters in the establishment of the required woodland management plans. Those foresters used for these services will realize a direct economic benefit. Although landowners seeking to qualify for reduced property taxation under the Act will incur additional costs for the services of approved foresters, these landowners will realize enhanced economic benefits from ownership of properly managed woodlands.

These economic benefits to private-landowners and nursery owners would be lost if these subchapters were not adopted.

Environmental Impact

The implementation of the proposed new rules will have a positive environmental impact. The reforestation program provides for the establishment of forest plantations which in turn improve aesthetics and yield clean air and water. Additionally, these forest plantations provide recreational areas and new habitats for plants and animals. The approved forester subchapter helps provide qualified consultants to persons wanting to be good stewards of their lands. These lands then continue to yield the same benefits as enumerated for the reforestation program. The advertising by certified tree experts subchapter augments the Certified Tree Expert Law which promotes care of the State's shade trees which in turn beautify towns and cities, ameliorate temperatures, sequster noxious gases and make our towns and cities more livable. The Department does not anticipate any adverse impacts on the human health and the environment as a result of the implementation of these proposed new rules.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules will impose a minimal compliance requirement on small businesses, namely foresters. This requirement is the preparation of quarterly activity reports by foresters which document the number of woodlands management plans, number of timber stand improvements and reforestation and Christmas tree plantations plans completed and the acreage covered by each such plan and evidence of participation in continuing education. The gathering of this type of information, however, is not considered a burden to the forester's business as the documentation of an Approved Foresters accomplishments are necessary to successfully promote such a business. The information is provided on State-supplied forms. The cost, therefore, is minimal. This reporting requirement should not necessitate the hiring of professional people or result in any additional costs to approved foresters or, in the case of certified tree expert advertising, place any additional costs on the certified tree experts.

N.J.A.C. 7:3-3 affects certified tree experts, the majority of which are small businesses, by limiting advertising of being a certified tree expert to those which actually are certified tree experts. Compliance with this subchapter will cause no capital costs to be incurred, nor are professional services needed.

In developing these rules, the Department has balanced the need to protect the environment against the economic impact of the proposed rules and has determined that to minimize the impact of the rules would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

Full text of the expired rules proposed as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 7:3.

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

SUBCHAPTER 1. [STATE] REFORESTATION **PROGRAM**

7:3-1.4 Agreement

Every person ordering reforestation stock shall enter into an agreement to use the stock solely for reforestation purposes **as described in N.J.A.C. 7:3-1.6(b). The agreement shall provide that reforestation stock must not be resold or removed from the** [and not to resell or remove it from his] property for ornamental use as living trees[.]**, or for use as Christmas trees, except trees severed from the stump in a thinning without reducing the initial acreage reforested. Any person violating this agreement will reimburse the Department for the cost of the seedlings removed and administrative costs incurred due to breach. The Department has the right to inspect the planting site after notifying the landowner as to time and date of the inspection.**

7:3-1.5 Refusal

(a) No reforestation stock shall be sold to any [owner whose total acreage is less than five acres of land.] **landowner:**

1. Whose total acreage is less than three acres of land;

2. Who has violated provisions of an agreement signed pursuant to N.J.A.C. 7:3-1.4; or

3. For a purpose other than those described in N.J.A.C. 7:3-1.6.

7:3-1.6 Distribution

(a) Reforestation stock shall be distributed in the urban, suburban and agricultural areas only after a [preliminary investigation of the specific requests locally on the ground; except in connection with properties or areas with which the Department's agents are already personally familiar] **recipient signs an agreement conforming to N.J.A.C. 7:3-1.4 and attests, as part of the seedling order form, to the ownership of a minimum of three acres of land.**

(b) The use of State grown reforestation stock shall be restricted to legitimate reforestation projects, including planting for school, and youth conservation education projects;[, and] plantings for aesthetic screening and improvement;[, and] air and noise pollution abatement; **wildlife habitat enhancement; erosion control; and lumber and cordwood production.**

(c) Each New Jersey student attending third grade will be eligible to receive a free forest tree seedling from the State Tree Seedling Nursery, if adequate supplies are available, by forwarding a consolidated request to the Department for each school.

SUBCHAPTER 3. ADVERTISING BY CERTIFIED TREE EXPERTS

(a)

DIVISION OF PARKS AND FORESTRY

Natural Areas and the Natural Areas System

Proposed Readoption with Amendments: N.J.A.C. 7:5A

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

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; 13:1B-15.100 et seq.; 13:1D-9; 13:1L-1 et seq.; and 23:7-9.

DEPE Docket Number: 18-93-03.

Proposal Number: PRN 1993-194.

Submit written comments, identified by the Docket Number given above, by May 5, 1993 to:

Janis Hoagland, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Natural Areas Rules, N.J.A.C. 7:5A, are set to expire on June 24, 1993. As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, the Department proposes to readopt this chapter with minor amendments and clarifications.

The Department's administration of State natural areas dates back to 1961, when the Legislature passed the Natural Areas Act, N.J.S.A. 13:1B-15.4 et seq. The Natural Areas Act authorized the Department to acquire, maintain, and preserve natural areas within the State as habitat for rare and vanishing species of plant and animal life, in order to assure the public of the right to enjoy the benefits of such areas as

places of natural interest and scenic beauty, as "living illustrations" of the State's original natural heritage, and as places for scientific study. N.J.S.A. 13:1B-15.5. In addition to creating a natural areas section within the Department's Division of Parks and Forestry, the Natural Areas Act established the Natural Areas Council, a seven-member advisory board, to advise the Commissioner of the Department on the administration of natural areas. N.J.S.A. 13:1B-15.8.

The Department's mandate to acquire and administer State natural areas was reaffirmed in 1975 through the passage of the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq., as a supplement to the Natural Areas Act. The Natural Areas System Act formally established the Natural Areas System (System) and appointed as the initial components of the System those areas designated by the Department as natural areas as of January 1, 1975. N.J.S.A. 13:1B-15.12a3. The Natural Areas System Act also included standards for inclusion of areas in the System (N.J.S.A. 13:1B-15.12a1), procedures for planning for natural areas (N.J.S.A. 13:1B-15.12a2) and evaluating suitable areas for designation (N.J.S.A. 13:1B-15.12a4 and 5), limitations on the use of land in the system (N.J.S.A. 13:1B-15.12a7 and 10), and classification for the designation and regulation of uses of natural areas (N.J.S.A. 13:1B-15.12a9).

The Natural Areas Act authorizes the Department, with the advice of the Council, to prescribe rules and regulations establishing standards for acquisition, maintenance and operation of natural areas. The original version of the Natural Areas Rules was promulgated at N.J.A.C. 7:2-11 as a component of the State Park Service Code prior to the passage of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., in 1968. On December 21, 1987, the Department repealed the original version of the Natural Areas Rules and replaced it with the current version of the rules. See 19 N.J.R. 2409(a). The rules were recodified from N.J.A.C. 7:2-11 to N.J.A.C. 7:5A as part of the 1991 revision and recodification of the State Park Service Code, N.J.A.C. 7:2. See 23 N.J.R. 3005(a). In addition, on February 18, 1992, the Department amended the Natural Areas Rules in order to correct or clarify several sections of the rules and to change the administering agency for five Natural Areas. See 24 N.J.R. 581(b).

The System currently contains 42 areas totalling almost 30,000 acres and is administered by the Office of Natural Lands Management within the Department's Division of Parks and Forestry.

A summary of the sections of N.J.A.C. 7:5A follows:

N.J.A.C. 7:5A-1.1, Scope, and N.J.A.C. 7:5A-1.2, Purpose, describe the scope and purpose of the Natural Areas System Rules, N.J.A.C. 7:5A.

N.J.A.C. 7:5A-1.3, Definitions, contains definitions of major terms used throughout this chapter.

N.J.A.C. 7:5A-1.4, Register of Natural Areas, governs the development and maintenance of the registry, required by N.J.S.A. 13:1B-15.12a6, of all lands, public and private, which are suitable for inclusion within the System.

N.J.A.C. 7:5A-1.5, Natural Areas Council, describes the functions and duties of the Council established by N.J.S.A. 13:1B-15.7.

N.J.A.C. 7:5A-1.6, Natural areas designation, contains the criteria and procedure for designation of areas to the System.

N.J.A.C. 7:5A-1.7, Classification of natural areas, governs the Department's assignment of an interim classification to a natural area upon designation of the area to the System. An interim classification is a category reflecting the type of habitat management permitted within the natural area prior to adoption of a management plan under the procedure at N.J.A.C. 7:5A-1.8.

N.J.A.C. 7:5A-1.8, Natural area management plans, sets forth the procedure by which the Department and the administering agency for a natural area may develop and adopt an individual management plan outlining a long-term management strategy for the natural area.

N.J.A.C. 7:5A-1.9, Interim management practices, lists management practices that apply to all natural areas in the interim between the designation of an area to the System and the adoption of a management plan for the area pursuant to the procedure at N.J.A.C. 7:5A-1.8.

N.J.A.C. 7:5A-1.10, Procedures for conducting research and collecting specimens, sets forth the requirements for conducting scientific research within natural areas and contains a procedure for obtaining permission to conduct scientific research in a natural area.

N.J.A.C. 7:5A-1.11, Enforcement of rules, delegates enforcement under this chapter to Department employees upon whom the Commissioner has conferred powers of police officers, and delineates remedies and penalties for violations of the provision of these rules.

N.J.A.C. 7:5A-1.12, Boundaries of natural areas, contains a procedure for establishing and modifying the boundaries of natural areas in the System.

N.J.A.C. 7:5A-1.13, Natural Areas System, lists the areas designated as components of the System, including the location, management objective, interim classification, and administering agency for each natural area.

N.J.A.C. 7:5A-1.14, Public Information, gives notice of the availability of information on and maps of the Natural Areas System.

A summary of the proposed amendments to N.J.A.C. 7:5A follows:

1. The Department is proposing to repeal the definition of "designation objective" at N.J.A.C. 7:5A-1.3 and replace it with a new term, "management objective." Since the Department has historically used the designation objective of a natural area as its guideline for management of the area after its designation to the System, the Department believes it is more accurate to use the term "management objective" and to specify in this definition that management of the natural areas is to be directed toward this objective. In order to accommodate this change, the Department proposes to change all references of "designation objective" to "management objective" throughout this chapter, including in the listing of natural areas at N.J.A.C. 7:5A-1.13.

2. The Department is proposing to delete the definition of "Natural Heritage Inventory" at N.J.A.C. 7:5A-1.3. This term was defined for use in a previous version of these rules, but is not used in the current version of the rules.

3. The Department is proposing to delete N.J.A.C. 7:5A-1.11(a), which delegates enforcement authority under this chapter to any employee or agent of the Department upon whom the Commissioner has conferred "powers of police officers," based upon its determination that this subsection is redundant with the enforcement authority at current N.J.A.C. 7:5A-1.11(b) and (c).

4. As a result of a review of current information in the Natural Heritage Database, which is a mapped and computerized database of the State's rare plant and animal species and representative natural communities authorized by N.J.S.A. 13:1B-15.146 through 15.150, the Department is proposing to amend the management objective for 11 natural areas in order to include the preservation of rare species habitat and/or to add more specific information on the forest community species to be preserved in the natural area. These 11 natural areas are: Absegami Natural Area, Bearfort Mountain Natural Area, Cape May Wetlands Natural Area, Cedar Swamp Natural Area, Farny Natural Area, Great Bay Natural Area, Island Beach Southern Natural Area, Oswego River Natural Area, Ramapo Lake Natural Area, Washington Crossing Natural Area, and Whittingham Natural Area.

Social Impact

The purpose of the Natural Areas System is to protect and preserve natural and ecological resources for present and future generations of New Jersey residents. The rules at N.J.A.C. 7:5A have provided for the designation of eligible lands to the System and prescribe management of natural areas in a manner which insures preservation of the features the System is designed to protect. The proposed readoption with amendments will continue in full force and effect and improve the Department's management of the System, thereby furthering the Department's goal of preservation of natural diversity for present and future New Jersey residents.

Economic Impact

The proposed amendments are expected to have a positive economic impact by increasing the Department's efficiency in managing the lands within the System. Since this chapter imposes land management responsibilities on the Department but not on members of the general public, the proposed readoption with amendments is not expected to have a direct economic impact on members of the general public.

Environmental Impact

Over the past five years, the Natural Areas System rules, N.J.A.C. 7:5A, have assisted the Department in preserving the State's natural diversity by governing the administration and management of the System. Therefore, the proposed readoption with amendments is expected to have a favorable environmental impact by continuing and improving the Department's administration of the System.

The proposed amendments are technical in nature and are not expected to have a negative environmental impact on the lands within the System or other State resources.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed readoption with amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses since the proposed readoption amendments will impose land management responsibilities on the Department but not on members of the general public.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:5A.

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

7:5A-1.3 Definitions

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

...

["Designation objective" means the stated purpose or goal for placing an area in the Natural Areas System.]

...

"Management objective" means the stated purpose or goal of designating an area to the Natural Areas System, towards which management of the area is to be directed.

...

["Natural Heritage Inventory" means a mapped and computerized data base of the State's rare plants and animal species and representative natural communities, as authorized by N.J.S.A. 13:1B-15.146 through 13:1B-15.150.]

...

"Preservation" means any measures, including no action at all, which are required in order to avoid injury, destruction or decay of a natural resource feature within a Natural Area or otherwise maintain or protect those features indicated in the [designation] **management** objective.

7:5A-1.6 Natural areas designation

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

(c) Upon review of the study and comments from the administering agency, the Council shall submit a final recommendation to the Commissioner for designation of the land in question for inclusion within the System. If the Council favors designation, its recommendation shall include:

1. A [designation] **management** objective for the area;

2.-3. (No change.)

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

7:5A-1.7 Classification of natural areas

(a) Interim classification of natural areas shall be related to the [designation] **management** objective of the area.

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

7:5A-1.8 Natural area management plans

(a) (No change.)

(b) The Division, with the cooperation of the administering agency and other units of the Department, shall prepare a management plan for each natural area in the System. The primary purpose of a management plan is to describe the natural features of the area and prescribe management practices and public uses to ensure preservation in accordance with the [designation] **management** objective of the natural area.

(c) An adopted management plan may supersede the interim management practices listed at N.J.A.C. 7:5A-1.9, if the Commissioner determines through his or her approval of the management plan that the practices in the management plan more specifically address the requirements of the [designation] **management** objective for that area. Any interim management practice listed at N.J.A.C. 7:5A-1.9 and not specifically addressed or superseded by the adopted management plan for the area shall remain in effect in a natural area following adoption of the management plan.

(d) Each management plan shall include, but not be limited to:

1.-3. (No change.)

4. Any management practices that will contribute towards preservation in accordance with the [designation] **management** objective;

5. (No change.)

6. An evaluation of the current boundaries and changes, if necessary, to achieve preservation in accordance with the [designation] **management** objective.

(e)-(i) (No change.)

7:5A-1.9 Interim management practices

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

(c) Upon finding that an interim management practice listed below at (e) or (f) would be detrimental to achieving a specific [designation] **management** objective, the Council shall recommend to the Commissioner the substitution of a more appropriate interim management practice. Should the Commissioner concur with the recommendation of the Council, the Commissioner may approve substitution by a more appropriate interim management practice.

(d) (No change.)

(e) The following interim management practices apply generally to all natural areas upon designation to the System and until and unless superseded by the provisions of an adopted management plan:

1.-4. (No change.)

5. Existing structures may be maintained in a natural area; new structures and enlargement of existing structures may be undertaken upon approval by the Commissioner, provided the structures directly or indirectly contribute to the [designation] **management** objective; new structures, of a temporary nature, may be constructed for research purposes in accordance with N.J.A.C. 7:5A-1.10;

6.-8. (No change.)

9. All wildfires shall be brought under control as quickly as possible; after a fire within a natural area, there shall be no cleanup or replanting except as approved by the Commissioner to achieve the [designation] **management** objective or for reasons of health and safety;

10.-11. (No change.)

12. Habitat manipulation may be undertaken if preservation of a particular habitat type or species of native flora or fauna is included in the [designation] **management** objective of the natural area and upon approval by the Commissioner of a specific habitat manipulation plan prepared by the Department.

13.-16. (No change.)

(f) (No change.)

7:5A-1.10 Procedures for conducting research and collecting specimens

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

(c) The administering agency shall review the submission and approve, conditionally approve, or disapprove the application for research or collection. The decision shall be based on:

1. The relationship of the activity to the [designation] **management** objective of the area and the benefits to be derived;

2.-3. (No change.)

(d) (No change.)

7:5A-1.11 Enforcement of rules

[(a) Any employee or agent of the Department upon whom the Commissioner has conferred powers of police officers shall have the authority to enforce any of the provisions of this subchapter.]

[(b)](**a**) Remedies for the violation of the provisions of this [subchapter] **chapter** applicable to those State-owned or leased lands, waters and facilities administered by the Department, other than wildlife management areas or reservoir lands, shall be as provided at N.J.S.A. 13:1L-23.

[(c)](**b**) Penalties for the violation of the provisions of this [subchapter] **chapter** applicable to State-owned or leased lands under the control of the Division of Fish, Game and Wildlife shall be as provided [for] at N.J.S.A. 23:7-9.

7:5A-1.12 Boundaries of natural areas

(a)-(i) (No change.)

(j) The Commissioner shall review the recommendation of the Council and shall take one of the following actions on the proposal:

1. Approve the boundary change, effective upon publication of notice of the boundary change in the New Jersey Register, upon a finding that the boundary change:
i. (No change.)
ii. Serves to protect the natural area or further its [designation] **management** objective; or
2. (No change.)
3. Deny the proposal, effective upon publication of notice of the denial in the New Jersey Register, upon a finding that the proposed boundary change:
i. (No change.)
ii. Does not serve to protect the natural area or further its [designation] **management** objective.

7:5A-1.13 Natural Areas System
(a) The following are designated as components of the Natural Areas System:
1. Absegami Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of [southern] **Atlantic** white cedar and pine/oak communities, [and a] southern swamp habitat**, and rare species habitat;**
iii.-iv. (No change.)
2. Allamuchy Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a hardwood forest of significant size and successional fields and protection of a rare plant community;
iii.-iv. (No change.)
3. Batsto Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a southern swamp, Pine Barrens bog and floodplain habitats, and rare species habitat;
iii.-iv. (No change.)
4. Bearfort Mountain Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of scrub oak and hardwood swamp [habitats] **forests, and rare species habitat;**
iii.-iv. (No change.)
5. Bear Swamp East Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of ecological communities and relationships, management of bald eagle nesting site and other known and potential endangered species habitat;
iii.-iv. (No change.)
6. Black River Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of mesic, marsh, floodplain habitat, and rare species habitat;
iii.-iv. (No change.)
7. Bull's Island Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a northern floodplain habitat, and rare species habitat;
iii.-iv. (No change.)
8. Bursch Sugar Maple Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a northeastern climax forest, and sugar maple/mixed hardwood community;
iii.-iv. (No change.)
9. Cape May Point Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of [fresh water] **freshwater** marsh behind a coastal dune, habitat diversity for migratory birds, and rare species habitat;
iii.-iv. (No change.)
10. Cape May Wetlands Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of tidal salt marsh ecosystem **and rare species habitat;**
iii.-iv. (No change.)
11. Cedar Swamp Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of southern swamp and floodplain habitat, [southern] **Atlantic** white cedar, red maple and pine/oak forest communities, and rare species habitat;
iii.-iv. (No change.)
12. Cheesequake Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of habitat diversity including hardwood forest, cedar swamp, mature white pine stand, [fresh water] **freshwater** swamp, Pine Barren outlier and salt marsh, and rare species habitat;
iii.-iv. (No change.)
13. Cook Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of freshwater marsh habitat;
iii.-iv. (No change.)
14. Dryden Kuser Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a northern bog habitat, and rare species habitat;
iii.-iv. (No change.)
15. Dunnfield Creek Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a hemlock ravine, and rare species habitat;
iii.-iv. (No change.)
16. Farny Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of **northern mixed oak-hardwood forest, hardwood swamp forest, and** rare species habitat;
iii.-iv. (No change.)
17. Great Bay Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of tidal salt marsh ecosystem **and rare species habitat;**
iii.-iv. (No change.)
18. Hacklebarney Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a river ravine and northern hemlock/mixed hardwood forest, and rare species habitat;
iii.-iv. (No change.)
19. Island Beach Northern Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of barrier island dune system, plant community associations, and rare species habitat;
iii.-iv. (No change.)
20. Island Beach Southern Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of barrier island dune system, [salt water] **saltwater** marsh, [and fresh water] **freshwater** bogs**, and rare species habitat;**
iii.-iv. (No change.)
21. Johnsonburg Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of habitat diversity for rare species;
iii.-iv. (No change.)
22. Ken Lockwood Gorge Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of hemlock/mixed hardwood forest with highly varied understory, and rare species habitat;
iii.-iv. (No change.)

23. Liberty Park Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a salt marsh in upper New York Bay;
iii.-iv. (No change.)
24. Manahawkin Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a mature bottomland hardwood forest, and rare species habitat;
iii.-iv. (No change.)
25. North Brigantine Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of salt marsh habitat, [behind a] coastal dune, and rare species habitat;
iii.-iv. (No change.)
26. Osmun Forest Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a northeastern mixed hardwood forest;
iii.-iv. (No change.)
27. Oswego River Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of [a variety of Pinelands habitats including uplands, white cedar stands, bogs, pine/oak forest, and rare species habitat] **hardwood swamp, pitch pine lowland, pine-oak, Atlantic white cedar, and bog communities, which serve as rare species habitat**;
iii.-iv. (No change.)
28. Parvin Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of mixed oak and pine forest on the Pine Barrens fringe with a diversity of plant and animal species, and rare species habitat;
iii.-iv. (No change.)
29. Ramapo Lake Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of northern upland habitats **and rare species habitat:**;
iii.-iv. (No change.)
30. Rancocas Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of [fresh water] **freshwater** marsh and southern floodplain habitat, including one of the largest stands of wild rice in [state] **the State**;
iii.-iv. (No change.)
31. Readington Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of early stages of secondary field succession;
iii.-iv. (No change.)
32. Strathmere Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a dune habitat, plant community associations, and rare species habitat;
iii.-iv. (No change.)
33. Sunfish Pond Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a lake of glacial origin surrounded by a hardwood forest, and rare species habitat;
iii.-iv. (No change.)
34. Swan Point Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of tidal salt marsh ecosystem;
iii.-iv. (No change.)
35. Swimming River Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of habitat diversity including [fresh water] **freshwater** marsh, [salt water] **saltwater** marsh, woodlands, fields and estuary;
iii.-iv. (No change.)
36. Tillman Ravine Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a hemlock ravine and associated geologic forms, and rare species habitat;
iii.-iv. (No change.)
37. Troy Meadows Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of freshwater marsh habitat northern swamp and floodplain habitat, and rare species habitat;
iii.-iv. (No change.)
38. Washington Crossing Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of natural succession and mixed hardwood forests, **and rare species habitat**;
iii.-iv. (No change.)
39. Wawayanda Hemlock Ravine Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of hemlock/mixed hardwood forest and rare species habitat;
iii.-iv. (No change.)
40. Wawayanda Swamp Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of extensive northern swamp and forest habitats, glacially formed, spring-fed pond, and rare species habitat;
iii.-iv. (No change.)
41. West Pine Plains Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a significant portion of the globally rare Pine Plains community, including rare plant and invertebrate species habitat;
iii.-iv. (No change.)
42. Whittingham Natural Area:
i. (No change.)
ii. [Designation] **Management** Objective: preservation of a northern swamp and floodplain forest [with rare species of plants] on a limestone cliff, **rare and exemplary natural communities, and rare species habitat**;
iii.-iv. (No change.)

(a)

DIVISION OF PARKS AND FORESTRY

Open Lands Management

Proposed Readoption with Amendments: N.J.A.C. 7:5B

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1B-3; 13:1B-15.100 through 13:1B-15.107; 13:1B-15.133 through 13:1B-15.145; and 13:16-1 et seq.
DEPE Docket Number: 19-93-03.
Proposal Number: PRN 1993-195.

Submit written comments, identified by the Docket Number given above, by May 5, 1993 to:

Janis Hoagland, Esq.
Administrative Practice Officer
Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Open Lands Management Rules, N.J.A.C. 7:5B, are set to expire on June 24, 1993. As required by the Executive Order, the Department of Environmental

Protection and Energy (Department) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, the Department proposes to readopt this chapter with a number of amendments intended to clarify and refine the grant procedures contained in these rules.

In 1984, the Legislature passed the Open Lands Management Act (Act), N.J.S.A 13:1B-15.133 through 15.145. In the Act, the Legislature observed that opportunities for public access to recreational open space are rapidly diminshing and that efforts need to be made to explore alternative techniques to provide such access. N.J.S.A. 13:1B-15.135. To address this situation, the Legislature established the Open Lands Management Program in the Department to provide financial assistance and in-kind services to assist private landowners in initiating, maintaining and increasing public recreational use of their land. N.J.S.A. 13:1B-15.136.

On April 7, 1986, the Department adopted the Open Lands Management Rules at N.J.A.C. 7:2-12, as authorized by N.J.S.A. 13:1B-15.137. These rules contained standards and criteria for the type of projects and recreational uses to be funded under the Act, defined the class of applicants eligible for funding under the Act, and specified the amount, terms and conditions of funding, including the execution of an access covenant. The rules were recodified without amendment from N.J.A.C. 7:2-12 to N.J.A.C. 7:5B as part of the 1991 revision and recodification of the State Park Service Code, N.J.A.C. 7:2. See 23 N.J.R. 3005(a).

To date, the Open Lands Management Program has executed grant agreements with 42 landowners for projects encompassing a total of 5,448 acres throughout the State. Over the life of the program, the Department has approved proposals totaling $351,062 in funding and has disbursed final grant awards totaling $272,149. On average, the individual grants to landowners have ranged from $1,500 to $14,000. The average access covenant required in connection with Open Lands Management funding has been seven years. These grants have funded a variety of recreational projects, including horseback riding trails, recreational facilities for disabled members of the public, nature observation blinds, swimming beaches, and picnic areas.

The application period for proposals seeking funding in Fiscal Year 1993 closed on February 26, 1993. The department received approximately 20 applications for funding during Fiscal Year 1993, for which it has approxiamtely $55,000 in funding available from State appropriations. Pursuant to N.J.A.C. 7:5B-1.7(d), which requires the Department to either deny or approve grant applications within 30 days of receipt, the Department expects to have rendered a decision on all Fiscal Year 1993 funding applications by the end of March, 1993. For Fiscal Year 1993, the Department has established a maximum grant amount of $7,000 in order to maximize its distribution of funds among eligible applicants.

The Department anticipates that approximately $55,000 in additional funding will be available from State appropriations for funding Open Lands Management projects in Fiscal Year 1994. As has been the practice in previous years, the Department expects to announce the application deadline, amount of available funding, and maximum grant amount for Fiscal Year 1994 in October 1993 through publication of a notice in the New Jersey Register. Then, the Department will accept applications during a one-week period in mid-February 1994, and will make all Fiscal Year 1994 grant decisions by the end of March 1994.

A summary of the significant sections of N.J.A.C. 7:5B follows:

N.J.A.C. 7:5B-1.1, Purpose and scope, describes the purpose and scope of the Open Lands Management Rules.

N.J.A.C. 7:5B-1.2, Definitions, contains definitions of major terms used throughout this chapter.

N.J.A.C. 7:5B-1.3, General provisions, outlines the general eligibility requirements for applicants wishing to apply for financial assistance under this chapter.

N.J.A.C. 7:5B-1.4, Eligible real property, outlines the general eligibility requirements for property receiving financial assistance under this chapter.

N.J.A.C. 7:5B-1.5, Projects eligible for financial assistance, outlines the general scope of projects eligible for financial assistance under this chapter.

N.J.A.C. 7:5B-1.6, Recreational activities, requires applications for financial assistance under this chapter to include a description of recreational activities and uses to which the real property will be put, lists recreational activities encouraged by the Department to be included in funded projects, and lists recreational activities ineligible for financial assistance.

N.J.A.C. 7:5B-1.7, Application and review procedures, details the Department's procedures and requirements for applications for financial assistance under this chapter.

N.J.A.C. 7:5B-1.8, Factors supporting grant approval, codifies the factors considered by the Department in determining the specific eligibility of a proposed project for financial assistance under this chapter.

N.J.A.C. 7:5B-1.9, Terms of financial assistance, describes the terms and conditions of financial assistance agreements executed under this chapter.

N.J.A.C. 7:5B-1.10, Access covenant, requires a covenant granting public access for public recreational purposes to the landowner's property to be executed in exchange for financial assistance or in-kind services received from the Department under this chapter, and describes the scope and conditions of such access covenants.

A summary of the proposed amendments follows:

1. In order to reflect the 1991 recodification of the Open Lands Management Rules from N.J.A.C. 7:2-12 to N.J.A.C. 7:5B, the Department is proposing to correct cross-references appearing within this chapter at N.J.A.C. 7:5B-1.5(b), 1.7(e)2 and 1.7(e)4, and is proposing to change all references to this "subchapter" to "chapter."

2. The Department is proposing to amend the definitions of "Commissioner" and "Department" at N.J.A.C. 7:5B-1.2 in order to reflect the consolidation of part of the former Board of Public Utilities with the former Department of Environmental Protection to form the Department of Enviromental Protection and Energy.

3. The Department is proposing to revise N.J.A.C. 7:5B-1.5(a)7 to limit the amount of excess liability insurance eligible for funding to not more than 50 percent of the project cost or $3,000, whichever is less. Although the Department does not want to discourage applicants from seeking funding to purchase liability insurance as necessary to facilitate public access, it wishes to ensure that any funded liability insurance purchase is made in connection with a viable recreation project and does not constitute the entire funded project. Therefore, given the limited amount of funds currently available under this program and the increasing cost of liability insurance, the Department believes that it is necessary to cap liability insurance funding at one-half the project cost or $3,000, whichever is less. The $3,000 cap is based on the Department's estimate of one-half the average grant over the past several years.

4. The Department is proposing to amend N.J.A.C. 7:5B-1.5(a)10 and 1.6(c)4 to remove the existing restriction on funding the installation of permanent utilities as part of projects receiving grants under this chapter. This restriction was originally imposed in an effort to avoid financing permanent public utility improvements to private land through the Open Lands Management Program. However, based on the first five years of the Department's experience in funding projects under the Open Lands Management Program, it appears that in many instances there are legitimate reasons to install permanent utilities in order to facilitate passive public recreational use of private property as authorized by the Act. Given the program's limited funding resources and the need to ensure that projects serve a legitimate recreational purpose, the Department is proposing to limit such funding to 50 percent of the project cost or $3,000, whichever is less.

5. The Department is proposing to change N.J.A.C. 7:5B-1.6(c)4 to exclude from funding projects requiring the installation of paving made of impervious surface material. The Department believes that this exclusion is consistent with and warranted by the passive recreation and open space emphasis in the Act, as well as the Department's general environmental protection mandates. However, this restriction is not expected to present a significant obstacle to funding recreational use of private land, since in most instances applicants can substitute porous surfacing materials (such as gravel) for any planned impervious surfaces. In addition, this restriction is expected to conserve funding resources since the cost of paving is usally much greater than the cost of covering a comparable area with a porous surface.

6. In order to correct an error in the original version of these rules, the Department is proposing to change the term "property" to "properly" in N.J.A.C. 7:5B-1.7(a).

7. The Department is proposing a new paragraph, N.J.A.C. 7:5B-1.7(a)2, to address the procedure for processing incomplete applications for funding. The processing of incomplete applications was not addressed in the original version of the rules, leading to confusion about whether the Department should deny or conditionally approve incomplete applications. The Department hopes to resolve this confusion by specifying that it will allow the applicant to supplement its incomplete

application before rendering a decision on the application. The Department is also proposing to add the word "complete" to modify the use of "application" in N.J.A.C. 7:5B-1.7(d) in order to clarify that it will not render its funding decision until it receives a complete application.

8. The Department is proposing to amend N.J.A.C. 7:5B-1.7(b) to shift the burden from the landowner to the Department for notifying State and local officials that an application for financial assistance has been received under these rules, and to specify that State and local officials will have the opportunity for informal comment on funding applications. Under the existing procedure, which required the landowner to notify the appropriate county and municipal clerk, the Department has had difficulty confirming that the required notices were sent. Since this notice is not specifically required by the Act, the Department has decided to assume the responsibility of notifying State and local officials that it has received an application for Open Lands Management funding. Based on its experience with implementing the Open Lands Management grant program, the Department has also determined that State and local officials, and not the county and municipal clerks, are the appropriate entities to receive these notices.

9. The Department is proposing to change the term "preliminary approval" to "conditional approval" at N.J.A.C. 7:5B-1.7(d) in order to more accurately describe the Department's procedure for approving funding applications. To maintain consistency with this subsection, the Department is also proposing to add references to "conditional" approval to N.J.A.C. 7:5B-1.7(e)1 and 1.9(a)2.

10. The Department is proposing a new subsection, N.J.A.C. 7:5B-1.7(f), to limit applicants for funding to one application for funding per year per property. This limitation is intended to allow the Department to maximize its distribution of grant funds among eligible applicants, since it usually receives more funding requests than it can approve each fiscal year.

11. The Department has added a new subsection, N.J.A.C. 7:5B-1.7(g), in order to codify its practice of establishing a maximum grant amount and a deadline for accepting applications for financial assistance under this chapter each fiscal year. Under this provision, the Department will be required to provide notice of the maximum grant amount and application deadline in the New Jersey Register.

12. The Department is proposing to amend N.J.A.C. 7:5B-1.8(a)3 to clarify that this paragraph, which lists the protection and appreciation of natural resources as a factor supporting grant approval, encompasses the use of conservation easements for open space preservation.

13. The Department is proposing a new subsection, N.J.A.C. 7:5B-1.8(b), in order to institute a policy of giving funding preference to new applicants who have not received funding in the previous fiscal year. This policy is intended to allow the Department to maximize its distribution of funds over as many different properties as possible, consistent with the Act's goal of increasing recreational opportunities throughout the State.

14. The Department is proposing to add a new subsection, N.J.A.C. 7:5B-1.8(c), in order to specify the terms and conditions for landowners who have received Open Lands Management funding in the previous fiscal year to reapply for further funding in the next fiscal year. Although the Department does not wish to discourage repeat applicants, this situation was not addressed in the original version of the rules, and questions have arisen about the terms and conditions for approving funding for applicants who have received funding in the previous fiscal year.

15. The Department is proposing to amend N.J.A.C. 7:5B-1.9(a)3 to allow the maximum, and not the actual, grant amount to be listed in the grant agreement to be executed between the landowner and the Department. The Department has determined that it is necessary to list the maximum project cost in the grant agreement because the actual project cost is not available until the project is completed, which is usually at least three months to two years after the execution of the grant agreement. Once construction is completed, the Department determines the actual grant amount on the basis of cost documentation provided by the applicant, and will award this amount as long as it does not exceed the maximum grant amount. See N.J.A.C. 7:5B-1.9(d).

16. The Department is proposing to add a sentence to N.J.A.C. 7:5B-1.9(d) to clarify that the final determination of the actual grant amount is made on the basis of cost documentation provided by the applicant.

17. The Department is proposing to add a new subsection, N.J.A.C. 7:5B-1.9(f), to require the Department's prior approval as a prerequisite for funding additional or alternate work on an approved project.

18. The Department is proposing to amend N.J.A.C. 7:5B-1.10(f) to refer to the "term" rather than the "extent" of the access covenant required to be executed as a condition of funding under this program. Since this subsection refers to the duration, and not the scope, of the access covenant, the Department believes that the use of "term" is more accurate than "extent" in this context.

19. The Department is proposing to revise N.J.A.C. 7:5B-1.10(h) in order to clarify that it is the landowner's, and not the Department's, responsibility to post and maintain signs (supplied by the Department) informing the public of the property's status under the Act.

20. The Department has amended N.J.A.C. 7:5B-1.10(j) to provide more specificity about how it determines the length of the access covenant required as a condition of all Open Lands Management funding. As proposed, this subsection will require a minimum access covenant of two years, and will allow the Department to require an access covenant with a term of more than two years if the approved funding amount exceeds $2,000. For each $1,000 (or fraction thereof) funded by the Department over $2,000, the landowner will be subject to an additional one year's duration of the access covenant. In this manner, the Department will be able to provide public access to funded projects in proportion to the amount of State funding received.

21. The Department is proposing a new subsection, N.J.A.C. 7:5B-1.10(k), in order to require a landowner who obtains additional funding for real property that is already subject to an access covenant under the Act to execute a second access covenant for the property that will run consecutively from the expiration of the original covenant. This situation was not addressed in the original version of these rules, but has arisen in practice under this program.

22. The Department is proposing to add a new subsection, N.J.A.C. 7:5B-1.10(l), to specify that access covenants executed under these rules take effect upon the date they are recorded by the county clerk of the county in which the real property is located, and not on the date upon which they are signed by the landowner. In practice, the recording of the access covenant required by this program may occur three months to two years or more after its signature, since the Department requires the covenant to be signed at the time of grant approval but the covenant does not become effective until construction of the funded project is completed.

23. Under proposed new subsection N.J.A.C. 7:5B-1.10(m), the Department will give landowners at least one month's notice of the impending expiration of access covenants executed under this chapter. The landowner, at his or her option, may then choose to enter into an additional access covenant, conservation easement, or deed restriction in order to allow continued use of the property for public recreation. The Department intends to actively encourage recipients of financial assistance under the Act to voluntarily extend their agreements to allow public use of their property for recreational purposes.

24. The Department is proposing a new subsection, N.J.A.C. 7:5B-1.10(n), to allow landowners to execute a conservation easement or deed restriction providing for permanent open space and passive recreational use of the real property in lieu of an access covenant under N.J.A.C. 7:5B-1.10, since a conservation easement or deed restriction providing for permanent open space and passive recreational use of a property is more stringent than the access covenant normally required under this subsection.

Social Impact

As acknowledged in the Act, opportunities for public access to recreational open space are rapidly decreasing as land development increases throughout the State. Over the past five years, the Open Lands Management program has helped encourage private landowners to provide alternate means of public access to open space by providing financial assistance to upgrade and maintain their land for public access purposes. Through the use of access covenants in exchange for funding received under this program, the Department has secured public access to and public recreational use of over 5,000 acres of private land to which public access would otherwise be restricted. The average access covenant under this program has secured public access to the funded project for a period of seven years.

The financial assistance provided through this program has increased open space and recreational opportunities for all State residents by funding a variety of recreational projects throughout the State. These projects have included horseback riding trails, recreational facilities for disabled members of the public, nature observation blinds, swimming beaches, and picnic areas.

The proposed readoption with amendments will continue the beneficial social impact of this chapter by continuing and improving the procedures by which the Department evaluates projects for funding, disburses funding under the Act, and secures public access to private open space for public recreational purposes.

Economic Impact

Since its implementation, the Open Lands Management Program has had a specific positive economic impact on recipients of funding under the Act. To date, the Department has approved proposals totaling $351,062 in funding and has disbursed final grant awards totaling $272,149 through the Open Lands Management program. On average, the individual grants to landowners have ranged from $1,500 to $14,000, and the costs of preparing an application for funding under this program have been minimal. Assuming State appropriations to this program are not reduced in the upcoming fiscal year, the Department expects to approve approximately $110,000 in additional funding for projects in the next two fiscal years.

Over the past five years, this program has also conferred a generalized economic benefit to State residents by providing recreational opportunities at a fraction of the cost of fee simple purchase of property by the State. In the same manner, this program has also enabled the Department to maximize its limited financial resources for land acquisition by providing an alternate means of financing public recreational access to private open space. Since its administrative costs are also financed through State appropriations, implementing this program has not had a negative economic impact on the Department's operating budget.

By retaining and improving the mechanism for administering Open Lands Management funding, the proposed readoption with amendments is expected to continue the positive economic benefits of this chapter for funding recipients, the general public, and the Department.

Environmental Impact

In general, the Open Lands Management program established by this chapter has had a positive environmental impact throughout the State over the past five years by providing incentives for landowners to retain land in a semi-wilderness state rather than selling it or using it for development purposes. Although public access to funded projects does have an impact on these properties, in general passive public recreational uses of funded properties are much less environmentally degrading than the uses to which the land would be put if funding had not been provided under this program. The proposed readoption with amendments will continue to provide these incentives to owners of private open space, and will enable the Department to continue and improve its efforts to secure public access to and passive use of these properties through access covenants and voluntary conservation restriction and deed restrictions.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed readoption of this chapter with amendments will not impose significant reporting, recordkeeping or other compliance requirements on small businesses. Since any private landowner may apply for funding under the Open Lands Management Program, some recipients of funding under this chapter may qualify as small businesses under the Regulatory Flexibility Act. However, this chapter only requires recordkeeping to be in accordance with good business practice (N.J.A.C. 7:5B-1.9(e)), does not impose compliance requirements on funding recipients beyond those already imposed at the local, county, regional or State level (N.J.A.C. 7:5B-1.9(b)), and requires only minimal grant-related reporting to ensure the success of the funded project and the integrity of the grant award (N.J.A.C. 7:5B-1.9(d) and (f)). Since this chapter already contains minimal reporting, recordkeeping and compliance requirements, the Department has determined that it has already minimized the impact of these rules on small businesses as defined under the Regulatory Flexibility Act and that specific exceptions or procedures for small businesses are not necessary at this time.

Full text of the proposed readoption may be found in the New Jersey Administratiave Code at N.J.A.C. 7:5B.

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

7:5B-1.2 Definitions

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

...

"Commissioner" means the Commissioner of the Department [of Environmental Protection] **or his or her designated representative.**

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

...

7:5B-1.5 Projects eligible for financial assistance

(a) Financial assistance is available for any of the following:

1.-6. (No change.)

7. Purchase of additional liability insurance made necessary because of the use of the property by the public[.]**; however, the amount of funding for liability insurance shall only be allowed as an eligible expense if it does not constitute more than 50 percent of the total project costs or $3,000, whichever is less;**

8. Filing fees for access covenants and associated legal fees; [and]

9. Professional fees for design, survey and construction of **a** project in accordance with the approved application[.]**; and**

10. Installation of permanent utilities which are necessary to enable passive recreational activities to be conducted as part of a project; however, the amount of funding for installation of permanent utilities shall not exceed 50 percent of all project costs, or $3,000, whichever is less.

(b) Financial assistance is available for other activities, provided that they are directly related to recreational activities listed under N.J.A.C. [7:2-12.6] **7:5B-1.6(b).**

7:5B-1.6 Recreational activities

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

(c) The following types of activities shall not be eligible for financial assistance:

1.-3. (No change.)

4. Any activity requiring major construction or clearing of land, [permanent installation of public utilities] **paving with impervious surface material** or enclosed structures.

7:5B-1.7 Application and review procedures

(a) The landowner, or the landowner's agent designated by a [property] **properly** executed Power of Attorney, shall submit an application for financial assistance on a form provided by the Department. In the case of multiple landowners, one agent[,] designated by all such landowners shall submit an application.

1. (No change.)

2. If an applicant does not submit a complete application, the Department shall send notice to the applicant within five working days of receipt of the application. The notice shall describe the information missing from the application and shall contain a deadline for the applicant to submit the missing information to the Department for consideration. If the applicant does not supplement its application by the deadline established by the Department, the Department may deny the application.

(b) [The applicant shall forward, by certified mail, a copy of the application to the clerks of the county and the municipality within which the real property is located.] **The Department shall notify State and local agencies with jurisdiction over the real property that it has received an application for financial assistance under this chapter. The notice shall include a brief description of the proposal, the location of the real property by lot and block number, and a deadline for the State or local agency to submit comments on the proposal to the Department for consideration.**

(c) (No change.)

(d) Within 30 days of receipt of the **complete** application, the Department will either deny the application, citing the reasons for denial, or [grant preliminary approval] **conditionally approve the application.** [The Department will forward copies of its decision to clerks of the county and the municipality within which the real property is located.]

(e) Final approval **of the application** shall be specifically contingent upon compliance by the applicant[,] with the following terms and conditions:

1. Receipt by the landowner of all permits which [may be] **are** necessary in order to implement the proposed project as described in the **conditionally** approved application;

2. Execution by the Department and the landowner[,] of an agreement in accordance with the provisions of N.J.A.C. [7:2-12.9] **7:5B-1.9,** which sets forth the substantive terms and conditions by which all financial assistance will be disbursed;

3. Execution by the landowner and the Department[,] of an access covenant in accordance with the provisions of N.J.A.C. [7:2-12.10] **7:5B-1.10,** which assures public access for a specified time period; and

4. (No change.)

(f) An applicant may submit only one application for funding per year for the same property.

(g) The Department may establish a maximum funding amount and a deadline for accepting applications for financial assistance under this chapter through publication of notice in the New Jersey Register.

7:5B-1.8 Factors supporting grant approval

(a) The factors which the Department will consider in its determination of eligibility of a proposed project include, but are not limited to, the following:

1.-2. (No change.)

3. Project involves the protection and appreciation of natural resources, **including the use of conservation easements for preserving open space;**

4.-9. (No change.)

(b) Preference in granting approval for funding shall be given to new applicants who have not received funding in the previous fiscal year.

(c) Landowners who have received Open Lands Management funding in the previous fiscal year for any single property may reapply for further funding in the next fiscal year. However, funding shall be conditioned upon the following:

1. The Department may grant up to 30 percent of the original funding, but not more than $2,500, for the repair or replacement of facilities previously funded under the Act that have been damaged as a result of direct usage under the program, operational problems, vandalism or natural causes; and

2. The Department will give preference to projects seeking funding for new recreational activities at previously funded properties over projects seeking funding for existing recreational uses.

7:5B-1.9 Terms of financial assistance

(a) All financial assistance granted pursuant to this [subchapter] **chapter** shall be disbursed in accordance with the terms and conditions of an agreement executed by the Department and the landowner for this purpose on a form provided by the Department. The agreement shall contain the following:

1. (No change.)

2. The **conditionally** approved application incorporated by reference, which sets forth the proposed activities for which financial assistance is being provided;

3. A schedule setting forth the time requirements for the completion of each specific proposed activity and setting forth the **maximum** amount of the grant to be paid to the applicant upon such completion; and

4. Any other requirements which the Department deems necessary[;].

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

(d) Financial assistance shall be awarded in a sum to be determined by the Department. **The amount to be awarded shall be determined by the actual cost of supplies and labor, based on cost documentation provided to the Department by the applicant.**

(e) (No change.)

(f) Funding for additional or alternate work on an approved project shall only be provided after prior approval of the work by the Department.

7:5B-1.10 Access covenant

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

(f) Real property covered under the terms of the covenant shall not be diverted to other uses during the [extent of the time period] **term of the access covenant** without **the** prior approval of the [commissioner] **Commissioner.** Such change in status may cause termination of the covenant and reimbursement to the Department of all or part of the grant monies awarded.

(g) (No change.)

(h) [Signs shall be posted and maintained] **The landowner shall post and maintain signs supplied by the Department** stating ownership of the area, allowed use, and appropriate rules of conduct.

(i) (No change.)

(j) The covenant between the landowner and the Department shall run for a period of [one or more years] **not less than two years, determined as follows:**

1. If the Department approves a grant amount of $2,000 or less, the term of the access covenant shall be two years.

2. If the Department approves a grant amount of more than $2,000, the term of the access covenant shall be two years plus one year for every $1,000 of funding or fraction thereof in excess of $2,000.

(k) If a landowner obtains additional funding for real property that is already subject to an access covenant under the Act and this chapter, the applicant shall execute a second access covenant for the property. The term of the access covenant shall be calculated in accordance with (j) above, and shall take effect upon the expiration of the existing covenant.

(l) The access covenant shall take effect upon the date the access covenant is recorded by the county clerk of the county in which the real property is located.

(m) The Department shall give the landowner at least one month's notice of the expiration of an access covenant executed under this section. At the landowner's option, the landowner may enter into an additional access covenant, conservation easement, or deed restriction to allow continued use of the funded property for public recreation purposes.

(n) A landowner may execute a conservation easement or deed restriction providing for permanent open space and passive recreational use of the real property in lieu of the access covenant required by this section.

(a)

DIVISION OF PUBLICLY FUNDED SITE REMEDIATION

New Jersey Pollutant Discharge Elimination System Fees

Proposed Amendment: N.J.A.C. 7:14A-1.8

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

Authority: N.J.S.A. 58:10A-1 et seq.

DEPE Docket Number: 15-93-03.

Proposal Number: PRN 1993-190.

A **public hearing** concerning this proposal will be held on:
Friday, April 30, 1993 at 9:30 A.M.
1st Floor Hearing Room
401 East State Street
Trenton, New Jersey

Submit written comments on or before May 5, 1993 to:
Richard McManus, Esq.
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN-402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy ("Department") is responsible for regulating the discharge of pollutants to the surface and ground waters of the State. The United States Environmental Protection Agency has delegated to the Department the primary enforcement and permitting responsibility under both the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) for surface water discharges and the Underground Injection Control provisions of the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) for ground water discharges to injection wells. These Federal acts and other State programs are implemented under the authority of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., by the New Jersey Pollutant Discharge Elimination System ("NJPDES") permitting program. The NJPDES rules are set forth at N.J.A.C. 7:14A. Pursuant to N.J.S.A. 58:10A-9, the Department is authorized to "establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits." The Department assesses fees to provide funds for the review of NJPDES permit applications, the development of specific permit terms and conditions, evaluating compliance with the terms and conditions of each NJPDES permit, and providing for the general administrative costs of the NJPDES program.

The Department is proposing to amend the way it assesses NJPDES ground water permit fees for persons remediating discharges that may have contaminated ground water. Currently, ground water permit fees for active and past discharges are scaled to the degree of risk to human health and the environment that contaminated ground water poses at a particular site. The present fee system rates degree of risk by several complex factors that determine, for example, if a regulated active discharge from a lagoon, landfill or septic system, or past discharge has impacted ground water (detection monitoring), extent of contamination and need for remediation (compliance monitoring) and requirements for cleanup of contaminated ground water and control of plume migration (corrective action). The Department is proposing to revise the fee methodology for remediating past discharges so that it is based on the Department's actual costs in processing, administering, and monitoring a Discharge to Ground Water Permit. This amendment does not affect the fees for ground water discharge permits issued for active discharges at operating facilities under the purview of the Department's Wastewater Facilities Regulation Program.

The Department has established a new strategy for remediation of contaminated sites. There are five integral parts to this strategy: (1) the organization of the Department's personnel who have the responsibility of performing or overseeing such activities; (2) the identification and prioritization of contaminated sites; (3) the specific cleanup standards applicable to the remediation; (4) the technical and procedural requirements for site remediation; and (5) the establishment of procedures for Department oversight of the remediation of contaminated sites. Each of these components are necessary for the effective remediation of contaminated sites. The Department has already begun the process of implementing these components.

In the Summer of 1991, the Department consolidated its staff involved in the remediation of contaminated sites, forming a single organization under the Assistant Commissioner for Site Remediation. Personnel involved in overseeing site remediation efforts conducted pursuant to a NJPDES Discharge to Ground Water permit were transferred from the former Division of Water Resources to the Site Remediation Program. Personnel responsible for overseeing NJPDES Discharge to Surface Water permits and permits for processing waste water discharges to ground water were transferred to the Environmental Regulation Program. The numerous benefits of the reorganization include the consolidation of management, regulations, guidance, data systems and the establishment of a single program case manager for each contaminated site. This consolidation has resulted in improved policy and technical coordination to allow cases to move to efficient and cost effective closure. This organizational structure allows the Department to meet its mission of ensuring more consistent, efficient and effective clean up of contaminated sites.

The Department is well along in its efforts to compile a comprehensive list of known or suspected contaminated sites in New Jersey. The Department is using existing site lists to develop this comprehensive list. Among the lists being used are the sites identified pursuant to CERCLA, enforcement, permit, and remedial programs, and the hazardous waste manifest system. The Department expects to complete the initial draft of the comprehensive list of known or suspected contaminated sites in early 1993.

Because of the number of contaminated sites in New Jersey, a system to prioritize site cleanups is necessary for the Department to implement a successful comprehensive site remediation strategy. Of particular concern are those sites, or portions of sites, which may pose an immediate or acute risk. The threat of serious and in some cases irreversible environmental pollution caused by unremediated contaminated sites throughout the state has prompted the Legislature to mandate a systematic and consistent approach to the remediation of those sites (N.J.S.A. 58:10-23.20).

Implementation of this new strategy will have several effects as it relates to the NJPDES Discharge to Ground Water permit program and fee system. The Department's Site Remediation Program will estimate the degree of risk to human health and the environment for contaminated sites by a priority ranking system. The regulated community will be encouraged to investigate its sites, detect contamination and develop a plan to remediate any contamination found (including contaminated ground water). Administrative Consent Orders (ACO) and Memoranda of Agreement (MOA) will be the regulatory documents used by the Department to manage studies at contaminated sites and provide for removal of sources of ground water pollution. The remediation requirements in these oversight documents will take the place of many like requirements under the current NJPDES discharge to ground water permit program.

As part of its coordinated and consistent approach to site remediation, the Department intends to ensure that a person pays similar fees for the Department's review and approval of similar documents, regardless of the regulatory program which reviews the document. For example, the same Department oversight effort (cost) is required of all or part of the work done for remediation of a contaminated site regardless of whether the remediation is conducted pursuant to the Water Pollution Control Act, the Underground Storage Tank Act (UST), the Environmental Cleanup Responsibility Act (ECRA) or pursuant to an Administrative Consent Order. Therefore, these NJPDES fee amendments are being proposed in conjunction with similar rule amendments to the fee rules for the ECRA Program, N.J.A.C. 7:26B-1.10, and the Underground Storage Tank (UST) Program, N.J.A.C. 7:14B-3, published elsewhere in this issue of the New Jersey Register. These amendments are also consistent with the oversight cost formula outlined in Appendix I of the proposed Oversight Rules, 24 N.J.R. 1281(b).

In this fee proposal, the Department eliminates minimum fees that ranged from $250.00 for certain permits by rule to $40,000 for hazardous waste facilities and, instead sets categorical fees for applications and emergency permits. Actual costs are based on direct staff hours worked on an individual permit and attendant overhead costs. This is consistent with the way the Department recovers its costs for other activities in the Site Remediation Program. The Department expects to have this rule proposal adopted and operative by July 1, 1993.

The Department intends to enter into MOAs or ACOs with responsible parties rather than issuing NJPDES-DGW permits for the remediation of contaminated sites. The Department intends to integrate permits already issued into the new strategy for remediation of contaminated sites by modifying or terminating many of these permits. Thus, fewer NJPDES-DGW permits need to be issued and it is anticipated that this fee proposal will, beginning July 1, 1993, provide for a single budget for ground water remediation permits instead of a separate budget for landfills and industrial sites. Presently, there are seven minimum fee classes for ground water permits ranging from $250.00 for certain permits-by-rule to $40,000 for certain hazardous waste facilities. Beginning July 1, 1993, this number of fee classes will no longer be necessary as the number of permit categories will have been reduced.

The permit fees will be calculated using data from the Job Cost System maintained by the Department. This system is utilized to account for all expenditures incurred by the Department for the various fee programs, bond projects, capital construction projects, federal grants and each hazardous site cleanup project. The Department calculates the number of hours spent on a specific site or activity through its Job Cost System.

The Department assigns a three-digit Project Activity Code (PAC) to each individual contaminated site, Federal grant, project and activity undertaken by the Department. Most major projects, such as a hazardous cleanup project will have several PACs assigned to account for the various tasks or activities performed during the course of the project.

These Project Activity Codes are coded on all documents processed by the Department including timesheets, vendor invoices, employee expense vouchers, revenue documents as well as internal debits and credits. In addition, PAC codes are also assigned for administrative activities such as supervision, staff meetings and employee training.

The timesheets are prepared on a bi-weekly basis by all employees within the Department. The employee is required to account for the hours during that two week period by the PAC assigned to the site-specific project or activity on which the individual had worked and to certify that the time reported is valid and accurate. The employee's supervisor then reviews the timesheets and certifies that to the best of his or her knowledge, it is correct and accurate. Prior to the information being entered into the Job Cost System, the timesheets are edited and zero-balanced to the payroll records to account for all the individuals within the Department and Division of Law and the hours worked during the two week period.

This information is maintained by the Department within the data base of the Job Cost System by PAC. The system details all expenses incurred for direct labor by State personnel, travel, supply and equipment costs, contractor costs and administrative and indirect costs by summing the costs associated with Project Activity Codes entered as described above.

In preparing a cost summary of expenditures on a specific site, a report is prepared on the individual PACs assigned to the project or activity. The report will detail the direct labor, contractor costs and any other expenses directly associated with that site. In regard to labor costs, the report is able to identify by PAC the individual's name, hours worked by pay period, hourly rate of pay and work location by bureau within the Department. With regard to contractor costs and other expenses, the report is able to identify the payee's name, date paid, amount paid, invoice document number, and the obligation or encumbrance number against which the invoice was paid.

In calculating the permit fee based on the total administrative costs incurred by the Department on a project, the Department will apply fringe benefit, salary additive and indirect cost rates to the direct labor charges. These costs plus any direct contractor and expense costs are totaled to arrive at the total expenditures incurred on the specific project. The formula is as follows:

$$\text{Direct Billing Fee} = A + B$$

where A = (number of hours) × (hourly salary rate) × (salary additive rate) × (fringe benefit rate) × (indirect cost rate); and B = (sampling costs) + (costs of contractor assistance)

The hourly salary rate is the annual salary divided by the number of working hours in a year. The salary additive rate is used to apply a portion of the individual's benefit time, such as vacation, sick leave, administrative leave, and holidays to the direct labor costs. This rate is developed annually by the Department. It is based on the average number of sick, vacation, administrative and other benefit time taken by employees as coded in the Job Cost system. For fiscal year 1993, the salary additive rate is 1.22. This means that, on average, 22 percent of every employee's salary is benefit time.

The fringe benefit rate which is applied to the direct labor costs is developed by the Department of Treasury's Office of Management and Budget (OMB). This rate is developed and negotiated with the U.S. Department of Health and Human Services on an annual basis and directed by OMB Circular Letter for use by all State agencies. The rate reflects the employer's contribution for pension, health benefits, worker's compensation, temporary disability insurance and F.I.C.A. For fiscal year 1993, the fringe benefit rate is 1.2935.

The indirect cost rate is then applied to the total of the direct salary costs, salary additive and fringe benefit charges. The indirect cost rate is developed in accordance with the State's OMB Circular Letter 86-17 and the Federal OMB Circular A-87. Included in the rate calculation are all costs which are allowable under the above-mentioned Circular Letters. These costs include the Department's overhead costs which are incurred for a common purpose such as salaries for management, personnel and financial management staff and non-salary costs such as office supplies and equipment, and the Site Remediation Program's proportionate share of the Department's building rent. The indirect rate includes Site Remediation Program staff that do not code to a specific site (clerical, administrative, data management, planning). The indirect rate also includes the Site Remediation Program's proportionate share of the Department's allocation of costs to run state government as determined by the Department of the Treasury in the Statewide Cost Allocation Plan. The cost components for the indirect rate calculation is based on the actual expenditures as detailed in the Department's Job Cost System. The costs are segregated based on the PACs to develop the indirect cost pool.

The rate is the result of dividing the indirect cost pool by the total direct project costs. The rate is developed on an annual basis for a coming Fiscal Year utilizing the actual expenditures for the State's previous Fiscal Year. The indirect rate for the Site Remediation Program for fiscal year 1993 is 2.3424. This indirect rate is more inclusive than that currently utilized for the NJPDES fees. The indirect rate used by the NJPDES program only includes those indirect costs external to the program (for example, building rent, Department management for Directors, Assistant Commissioners and Commissioner). Costs for activities within the NJPDES program such as clerical and management staff that are not specific to a particular permit ("program indirect costs") are included in the NJPDES budget as direct charges.

In calculating the indirect cost rate, the Site Remediation Program must account for its proportionate share of the direct and indirect salary and non-salary costs for Department management. Department management includes, for example, the costs associated with the Commissioner's Office, and DEPE Offices of Management and Budget, Communications and Legislative and Intergovernmental Affairs. The indirect salary costs for management in the Site Remediation Program includes all salary costs for managers under the authority of the Assistant Commissioner for Site Remediation who do not code to a site specific project. In addition, the Site Remediation Program must pay the Division of Law for the costs it incurs in providing legal representation to the Site Remediation Program. These costs may be divided into direct, site specific activities or indirect costs.

The current indirect rate for the Site Remediation Program was based on numbers generated in FY 91 and calculated as follows: The Department took the total salary costs in the Department for the Site Remediation Program and its support services, $35,351,274.76, and divided it into two categories: salary costs ($34,749,921.80) for full-time employees to which the full fringe benefit rate is applied and salary costs ($601,352.96) for part-time or seasonal employees or overtime work to which the reduced fringe benefit rate is applied. The non-site specific salary costs for Department management ($7,424,837.16) and the Site Remediation Program ($9,312,594.47) were deducted from the total leaving $18,613,843.13 in net site specific salary costs for the Site Remediation Program. The Department then applied the fringe benefit rate for full-time and part-time employees to this sum and arrived at a total cost for direct, site specific salary costs. In FY 91, this sum was $23,871,365.23.

Similarly, the Department took the non-site specific salary costs for Department management and the Site Remediation Program, applied the fringe benefit rate and arrived at a total cost for indirect salary cost of $21,481,765.62. To this sum, the Department added the non-salary indirect costs for the Department management ($875,573.10), the Site Remediation Program ($3,542,937.83), the building rent ($5,460,536.28) and the proportionate share of the State Allocation Plan ($683,298.88) to arrive at the total indirect cost of $32,044,111.72. The Department divided $23,871,365.23, the total costs for direct, site specific salary costs, into $32,044,111.72, the total indirect costs to arrive at an indirect cost rate of 134.24 percent.

Examples of the use of this proposed fee formula are shown in the Economic Impact statement below. In addition to fees calculated by this formula, there are two fixed fees for initial processing of a permit application and for issuing emergency permits.

Prior to the payment of a direct billing fee, the recipient of the bill will have an opportunity to object to it. Within 30 days after receipt of a bill, an objector may file a written request for a fee review with the Department. Upon receipt of a written objection to a bill, the Department will attempt to resolve all factual issues in dispute informally. The Department will review the assessment and provide the objector with additional documentation as necessary. The objector may, after receipt of this additional information, request that the Assistant Commissioner for Site Remediation or his designee conduct a review of the matter. If an informal resolution cannot be reached, the Department may determine the matter to be a contested case and transmit it to the Office of Administrative Law for an adjudicatory hearing.

The Department has limited the scope of the fee review to certain factual issues. For example, the Department will not entertain a challenge to a fee based on DEPE management decisions. Nor will the Department consider objections based on the salary additive, fringe benefit or indirect rate. The Department will, however, allow fee reviews based on factual questions such as whether the bills are for proceedings that never

occurred, whether there was duplicative billing for the same expenditure, incorrect billing to one site of costs incurred at another, or costs that never should have been incurred because they are not in any way associated with overseeing a case.

Social Impact

Contaminated sites affect virtually everyone in the State whether directly (due to proximity to the site causing potential environmental and human health risks) or indirectly (due to the cost to the taxpayer of having these sites remediated). The proposed fee rules will have a positive social impact as the new fee methodology will be simple, fair and easily understood by both the permittees and the general public. The new fee schedule reflects the complexity of a case and, thus, the degree of the Department's review effort. The simplicity and fairness of the fee methodology derives from using direct costs, a few categorical charges (for example, application fee) and no minimum fee categories.

Economic Impact

The proposed amendment is not intended to increase or decrease the revenue generated through the NJPDES fee assessment process. This amendment will likely reduce the administrative costs of assessing and collecting the fees. The proposed fee methodology will be easier for the Department to administer as compared to the present system.

The budget for FY93 for NJPDES Ground Water Discharge permits is estimated at $4,915,844 of which $1,014,000 is operating costs and the remainder salaries. This budget encompasses about 53 work years of effort. The budget for FY 94 for NJPDES Ground Water Discharge permits issued for remediation activities at contaminated sites is expected to be equivalent to FY 93. Estimates of permit fees using the proposed methodology for existing compliance monitoring, corrective action and detection monitoring permits can be made by using current average processing time and salaries. For permits currently classified as corrective action or compliance monitoring, the expected minimum permit processing time for setting permit conditions is 80 hours technical and two hours administrative for permit issuance. Using average technical and administrative hourly rates of $20.00/hour and $10.00/hour respectively, and the additive, fringe and indirect factors of 1.22 × 1.2935 × 2.3424 which equals 3.6965, yields the following fee calculation:

((80×20) + (2×10)) × 3.6965 = about $6,000. This cost can significantly increase if a public hearing is held or if there are complex hydrogeologic conditions at a specific contaminated site. Current permit fees for corrective action and compliance monitoring can range from $1,500 to up to 10 percent of the budget as presented by the Department each year. For the FY 93 example given above, 10 percent of the budget would represent a fee of $491,584.

Permits currently classified as detection monitoring are expected to take about one-third the effort of compliance monitoring and corrective action permits yielding a permit fee of about $2,000. Nearly all permit fees for detection monitoring are now $500.00. The Site Remediation Program intends to issue new NJPDES Ground Water Discharge permits only for direct discharges to ground waters. The fee for these permits (for example, injection well) is anticipated to be equivalent to a corrective action permit as calculated by the proposed fee formula.

Application fees are proposed for review and administrative approval of NJPDES Ground Water Discharge permits for site remediation. It is estimated that four hours technical and one hour administrative is required to review an application. Using average hourly rates stated above, this fee is calculated by ((4×20) + (1×10)) × 3.6965 = $333.00 or $350.00 after rounding for ease of bookkeeping. Similarly, an emergency permit is estimated to take eight hours technical evaluation as to the appropriateness of the emergency permit and any necessary terms and conditions and two hours administrative processing for permit issuance. This fee is calculated as ((8×20) + (2×10)) × 3.6965 = $665.00 or $700.00 after rounding for ease of bookkeeping.

Environmental Impact

As part of the Site Remediation Program, these fees provide the Department with some of the financial resources necessary for the control and remediation of contaminated ground waters through enhanced technical evaluations, inspections and monitoring. An objective of the Site Remediation Program is to encourage private parties to clean up their contaminated sites. A simple and predictable permit fee system will facilitate cleanups by allowing private parties to better plan for cleanup expenditures.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment will affect small businesses to the extent that over half of the holders of NJPDES ground water permits are small businesses. Small businesses will benefit from a simpler fee system to the extent that the fee methodology is simpler and the anticipated reduction in the Department's costs to assess and collect the fees. These rules do not establish any new or additional recordkeeping or reporting requirements, but they may increase compliance costs. For example, a small business permittee that obtained a Detection Monitoring permit formerly paid only a $500.00 fee to the Department. Under the proposed amendment, this same small business may have a new permit fee of $2,000. However, as noted in the Summary above, the Department does not intend to issue many detection monitoring permits in the future. Costs for corrective action permits and compliance monitoring permits are highly variable. Under the proposed fee schedule, some fees will be more and some less than under the current fee schedule.

In developing these rules, the Department has balanced the need to protect human health and the environment against the economic impact of the proposed rules and has determined that to minimize the impact of the proposed regulations on small businesses would endanger the environment, human health and public safety. Therefore, these rules do not establish separate fee requirements for small businesses and no exemption is provided for "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) Except as provided in (i) and (j) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. [The] **Except as provided by (k) below, the** Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or submit a NJPDES application.

2.-5. (No change.)

6. If the permittee objects to the assessment, the Department shall recalculate a permit fee upon receipt of a request from the permittee in writing within 30 days of assessment of the fee. The Department will not recalculate a fee where the permittee has failed to submit information in compliance with its NJPDES permit.

i. A permittee may only contest a fee imposed pursuant to (k) below based on the following:

(1) The Department has no factual basis to sustain the charges assessed in the fee;

(2) The activities for which the fee was imposed did not occur;

(3) The charges are false or duplicative; or

(4) The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

ii. A permittee may not contest a fee imposed pursuant to (k) below if the challenge is based on the following:

(1) An employee's hourly salary rate;

(2) The Department's salary additive rate, indirect rate, or fringe benefit rate; or

(3) Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

iii. A permittee objecting to a fee imposed pursuant to (k) below shall include the following in a request for a fee review:

(1) A copy of the bill;

(2) Payment of all uncontested charges, if not previously paid;

(3) A list of the specific fee charges contested;

(4) The factual questions at issue in each of the contested charges;

(5) The name, mailing address and telephone number of the person making the request;

(6) Information supporting the request or other written documents relied upon to support the request.

(7) (No change.)

8. [The] **Except as provided by (k) below the** Department, upon the termination of a NJPDES permit, or revocation of NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.5(g) shall upon written request of the permittee pro-rate the fee for the number of days that the facility was in operation or was discharging under a valid NJPDES/SIU permit during the billing year and return to the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9. [The] **Except as provided by (k) below, the** annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact × Rate) + Minimum Fee, where:

i.-ii. (No change.)

10. (No change.)

11. If a factual dispute involving a fee imposed pursuant to (k) below cannot be resolved informally, a permittee may request an adjudicatory hearing on the matter pursuant to N.J.A.C. 7:14A-8.9.

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

(d) [The] **Except as provided by (k) below, the** annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct detection monitoring shall use the Environmental Impact in (d)1 below in the annual fee formula. Permittees required by the Department to conduct ground water monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in (d)1 below in the annual fee formula. Permittees who are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1.-2. (No change.)

(e) (No change.)

(f) [The] **Except as provided by (k) below, the** annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. (No change.)

(g) (No change.)

(h) [Minimum] **Except as provided by (k) below, minimum** fees are as follows:

1.-8. (No change.)

(i)-(j) (No change.)

(k) The fee for discharges to ground water required for conducting remediation, as defined by N.J.A.C. 7:26E, of contaminated sites is calculated by using the following formula:

1. Fee = A + B, where:

A = (Number of coded hours × Hourly Salary Rate) × Salary Additive Rate × Fringe Benefit Rate × Indirect Cost Rate.

B = any contractual costs or sampling costs of the Department directly attributable to a specific permittee.

i. Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all staff members including without limitation managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, using the specific PAC, will be included in the formula calculations.

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

iii. The NJDEPE salary additive rate represents the prorated percentage of charges attributable to employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours × hourly salary rate) are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

iv. The fringe benefit represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs.

v. The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(1) The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services and the Division of Personnel.

(2) The indirect rate includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30. The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

vi. Sampling costs and contractor expenses represent non-salary direct, site specific costs. These costs are billed directly as an add on to the formula.

2. The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate for the fiscal year in the New Jersey Register. These rates are developed on an annual basis after the close of the fiscal year.

3. The Department will charge fixed and non-refundable fees for the following categories of activities:

i. The fee for an emergency permit is $700.00 and is due and payable upon issuance.

ii. The fee for a permit application is $350.00 and is due and payable with the application.

4. The Department will bill permittees at regular intervals throughout the life of the permit based on the formula in (k)1 above. The permittee shall submit the fee to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged. The Department shall include the following information in the summary: description of work performed, staff member(s) performing work, number of hours worked by the staff member(s) and staff members' hourly salary rate.

Tables I and II (No change.)

(a)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Underground Storage Tanks Fees

Proposed Amendments: N.J.A.C. 7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1, 3.2, 3.4 and 3.5
Proposed New Rules: N.J.A.C. 7:14B-3.6, 3.7 and 3.8
Proposed Repeal and New Rule: N.J.A.C. 7:14B-3.3

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

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq. and 58:10A-21 et seq.

DEPE Docket Number: 16-93-03.

Proposal Number: PRN 1993-189.

A **public hearing** concerning this proposal will be held on:
Friday, April 30, 1993 at 9:30 A.M.
401 East State Street
1st Floor Hearing Room
Trenton, New Jersey

Submit written comments on or before May 5, 1993 to:
Richard McManus, Esq.
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN-402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

On September 3, 1986, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to 37 (Act), was signed into law. Subsequent to its enactment, the Department promulgated rules, N.J.A.C. 7:14B, to implement the Act and provide a regulatory program for the prevention and control of unauthorized discharges of hazardous substances from underground storage tank (UST) systems. On December 21, 1987, the Department adopted a fee schedule and rules for the registration and annual certification requirements. The Department adopted additional rules on September 4, 1990 to establish tank design and construction standards, tank operating and closure requirements, release reporting and discharge remediation requirements, and requirements for the issuance of loans from the UST Improvement Fund.

The Legislature amended the Act in January 1991 (P.L. 1991, c.1) and April 1991 (P.L. 1991, c.123). The first amendment had two major provisions. First, the deadlines for owners or operators of existing underground storage tank systems to upgrade their systems to meet design and performance standards were extended from September 1991 to either December 1993 (for all tank systems except regulated heating oil tank systems used for on-site consumption) or August 1995 (for all other regulated heating oil tank systems). Second, the Department was authorized to modify the registration cycle from an annual cycle to a periodic cycle, as a means of reducing administrative burdens on the regulated community. The Department promulgated regulatory amendments to N.J.A.C. 7:14B-4.5, 9.1 and 13.20 on March 2, 1992 to incorporate the new requirements pertaining to the upgrade schedule. The Department proposes to modify the registration cycle in this proposal.

The April 1991, statutory amendments established a certification program for individuals and business firms who provide services to owners and operators of underground storage tanks systems for the purposes of complying with the requirements of the Act. The Department intends to propose rule amendments establishing the regulatory program to implement these statutory amendments.

The UST rules constitute one part of the overall site remediation program the Department administers for the investigation and cleanup of contaminated sites throughout New Jersey. Since it is important that all contaminated sites in New Jersey are cleaned up in a timely manner, the Department has focused intensely in the last year on encouraging private parties, on a voluntary basis, to remediate contaminated sites and reducing the need for the Department to always be involved in every step of the remediation process. To promote this approach and to provide more guidance and predictability to the regulated community, the Department has proposed Procedures for Department Oversight of the Remediation of Contaminated Sites (Oversight Rules), N.J.A.C. 7:26C, 24 N.J.R. 1281(b) on April 6, 1992; and Technical Requirements for Site Remediation (Technical Rules), N.J.A.C. 7:26E, 24 N.J.R. 1695(a) on May 4, 1992. Together, these rules will establish the regulatory core of the Department's site remediation program. These rules will ensure that all sites are investigated in accordance with minimum technical standards and that the same remedial processes and cleanup standards will apply regardless of the party conducting the work or the regulatory program overseeing the work.

The Department intends to propose major amendments to N.J.A.C. 7:14B-7, 8 and 9 to incorporate by reference the technical requirements in the Technical Rules, including the requirements to submit site investigation reports, remedial investigation workplans and reports, feasibility studies, and remedial action workplans and reports. Much of the same reporting requirements are contained in the site investigation report and remedial investigation report as within the presently required Site Assessment Summary (SAS), N.J.A.C. 7:14B-9.4(a), and Discharge Investigation and Corrective Action Report (DICAR), N.J.A.C. 7:14B-8.3(a), respectively. The Department may also propose new fees for review of certain of these documents when the Department specifically incorporates the Technical Rules into the UST Program.

As part of the coordinated and consistent approach to site remediation described above, the Department intends to ensure that a person pays similar reasonable fees for the Department's review and approval of similar documents, regardless of the regulatory program which reviews the document. For example, a remedial investigation workplan would require the same Department oversight costs whether the person filing the report is subject to the UST or Environmental Cleanup Responsibility Act (ECRA) Programs or filing it pursuant to an Administrative Consent Order. Therefore, these UST fee amendments are being proposed today in conjunction with similar rule amendments to the fee rules for the ECRA Program, N.J.A.C. 7:26B-1.10, and the New Jersey Pollutant Discharge Elimination System (NJPDES) Program, N.J.A.C. 7:14A-1.8, published elsewhere in this issue of the New Jersey Register. These amendments are also consistent with the oversight cost formula outlined in Appendix I of the proposed Oversight Rules.

The Department is proposing several changes to its fee schedule at N.J.A.C. 7:14B-3. Presently, the Department imposes fees under the UST Program for limited categorical activities. For example, the fee for registering a tank with the Department is $100.00 for the first five tanks and $15.00 for each additional tank at the facility. The Department, however, does not presently impose any fees in the UST Program for the review of SAS's or DICAR's or overseeing other remediation efforts due to contamination from an UST. In the past, when contamination was detected at a site, the case would either be transferred from the UST Program to the New Jersey Pollutant Discharge Elimination System Program (NJPDES), where site remediation efforts would proceed pursuant to a NJPDES Discharge to Ground Water (NJPDES-DGW) Permit or retained by the UST Program. If a NJPDES-DGW Permit was issued, the permittee would pay all appropriate NJPDES fees pursuant to N.J.A.C. 7:14A-1.8. If the Department retained the case in the UST Program, the Department would not impose fees for its remediation oversight activities.

The Department has reevaluated the costs associated with administering the UST Program and has determined that the fees for some activities are not closely related to the Department's effort spent in performing each activity and do not reflect the Department's cost in administering the Program. The Department needs additional revenue to carry out the provisions of the Act. First, the cost of staff salaries and indirect costs have increased by approximately 25 percent over the last four years, and registration fees, the current major source of revenue, have not been increased since their inception in 1988. Second, work required to manage the thousands of contaminated cases is not covered by the existing fee schedule and a revenue base is needed in order to run an efficient and effective program which protects human health and the environment, satisfies statutory mandates, and provides a timely response to the needs of the regulated community. The current funding for remediation oversight activities is through two grants from the U.S. Environmental Protection Agency (USEPA). Neither the Department nor the USEPA consider these grants to be a reliable and predictable source of funding for the future, and the Department does not consider it prudent to rely on them for future salary expenses. Furthermore, the Department has determined that with the UST Program being part of

the Department's Site Remediation Program, it is appropriate for the Department to impose new fees for oversight work conducted pursuant to the UST Program. Thus, for the purposes of fee imposition, as well as technical requirements, it will no longer matter if a person is remediating a contaminated site because of an ECRA triggering event, the execution of an Administrative Consent Order or Memorandum of Agreement, a NJPDES-DGW Permit or UST requirements. All site remediation fees will be based upon the same formula and reflect the Department's level of effort on an activity and the Department's costs associated with that activity. For the above reasons, the Department is proposing to modify certain UST fees and to establish new fees to cover Department's costs in overseeing the remediation of contaminated sites.

The Department is retaining flat fees for certain categorical activities such as registration, facility certification, and review of permit applications, and closure plan approval applications. These fees are calculated based upon the average number of hours expected for staff review of these applications multiplied by the hourly rate for the average staff member who is assigned to conduct the review and the overhead factors described in the discussion of direct billing, below. Examples of the calculations are included in the Economic Impact statement. Based upon the Department's recalculations of costs, the Department is proposing to increase the fees for closure plan and permit application reviews and decrease the fees for registration and facility certification. In addition, the Department is adding new flat fees for the review of Site Assessment Summaries, and Discharge Investigation and Corrective Action Reports. These fees are proposed at N.J.A.C. 7:14B-3.5(c).

Fees for staff time to review workplans and reports for the delineation and remediation of contamination at sites that are submitted after the DICAR is reviewed will be billed directly to the owner or operator responsible for the remediation. This direct billing system provides three benefits: First, the actual fee charged will reflect the amount of Department time necessary for each specific case. As stated above, this will depend on the complexity of the case and the quality of the work product submitted to the Department. Second, the Department is assured of collecting enough revenue to administer the program, providing all owners and operators pay the appropriate fees. Previously, up front fees were estimated based upon projections that were not always realized. Third, this system is being implemented across the various programs in the Department which administer and oversee the remediation of contaminated sites. Thus, the fee schedule for similar oversight activities in the different site remediation programs will be consistent.

The Department acknowledges that a possibility exists that a significant percentage of the revenue expectations from this direct billing system will not be realized due to a large number of non-payors. The Department will evaluate over the next several years the effectiveness of the new system in collecting the necessary revenues. If the direct billing system fails to collect the revenue necessary to administer the different site remediation programs, a revised system utilizing up front fees will be reconsidered.

The direct billing fees will be calculated using data maintained by the Department through the Job Cost System. This system is utilized to account for all expenditures incurred by the Department for the various fee programs, bond projects, capital construction projects, Federal grants and each hazardous site cleanup project. The Department calculates the number of hours spent on a specific site or activity through its Job Cost System.

The Department assigns a three-digit Project Activity Code (PAC) to each contaminated site, Federal grant, project and activity undertaken by the Department. Most major projects, such as a contaminated site cleanup project will have several three-digit Project Activity Codes or a single three-digit Project Activity Code with a variable fourth digit assigned to account for the various tasks or activities performed during the course of the project. These Project Activity Codes are coded on all documents processed by the Department including timesheets, vendor invoices, employee expense vouchers, revenue documents as well as internal debits and credits. In addition to site specific Project Activity Codes, the Department has assigned project activity codes to administrative activities such as employee training, staff meeting attendance, and supervisory activities.

Timesheets are prepared by all employees within the Department. The employee is required to account for his or her hours during a one-week or two-week period by the PAC assigned to the site specific project or activity on which the individual had worked and certify that the time reported is valid and accurate. The employee's supervisor then reviews the timesheets and certifies that to the best of his or her knowledge, it is correct and accurate. Prior to the information being entered into the Job Cost System, the timesheets are edited and zero-balanced to the payroll records to account for all the individuals within Department and the hours worked during that two-week period.

This information is maintained by the Department within the data base of the Job Cost System by Project Activity Code. The system details all expenses incurred for direct labor by State personnel, travel, supply and equipment costs, contractor costs and administrative and indirect costs by Project Activity Code.

In preparing a cost summary of expenditures on a specific site, a report is prepared on the individual PACs assigned to the project or activity. The report will detail the direct labor, contractor costs and any other expenses directly associated with that site. In regard to labor costs, the report is able to identify by PAC the individual's name, hours worked by pay period, hourly rate of pay and work location by bureau within Department. With regard to contractor costs and other expenses, the report is able to identify the payee's name, date paid, amount paid, invoice document number, and the obligation or encumbrance number against which the invoice was paid.

In calculating the direct billing fees based on the total administrative costs incurred by the Department on a project, the Department will apply fringe benefit, salary additive and indirect cost rates to the direct labor charges. These costs plus any direct contractor and expense costs are totaled to arrive at the total expenditures incurred on the specific project. The formula is as follows:

$$\text{Direct Billing Fees} = A + B$$

where A = (number of hours) $\times$ (hourly salary rate) $\times$ (salary additive rate) $\times$ (fringe benefit rate) $\times$ (indirect cost rate); and
B = (sampling costs) + (costs of contractor assistance)

The hourly salary rate is the annual salary divided by the number of working hours in a year. The salary additive rate is used to apply a portion of the individual's benefit time, such as vacation, sick leave, administrative leave, and holidays to the direct labor costs. This rate is developed annually by the Department. It is based on the average number of sick, vacation, administrative, and other days taken by employees as coded in the Job Cost System. For Fiscal Year '93, the salary additive rate is 1.22. This means that, on average, 22 percent of every employees salary is based on benefit time.

The fringe benefit rate which is applied to the direct labor costs is developed by the Department of Treasury's Office of Management and Budget (OMB). This rate is developed and negotiated with the U.S. Department of Health and Human Services on an annual basis and directed by OMB Circular Letter for use by all State agencies. The rate reflects the employer's contribution for pension, health benefits, worker's compensation, temporary disability insurance and F.I.C.A. For Fiscal Year '93, the fringe benefit rate is 1.2935.

The indirect cost rate is then applied to the total of the direct salary costs, salary additive and fringe benefit charges. The indirect cost rate is developed in accordance with the State's OMB Circular Letter 86-17 and the Federal OMB Circular A-87. Included in the rate calculation are all costs which are allowable under the above-mentioned Circular Letters. These costs include the Department's overhead costs which are incurred for a common purpose such as salaries for management, personnel and financial management and other support staff and non-salary costs such as office supplies and equipment, and the Site Remediation Program's proportionate share of the Department's building rent. The indirect rate includes Site Remediation Program staff that do not code to a specific site (clerical, administrative, data management, planning). The indirect rate also includes the Site Remediation Program's proportionate share of Department's allocation of costs to run state government as determined by the Department of the Treasury in the Statewide Cost Allocation Plan. The cost components for the indirect rate calculation is based on the actual expenditures as detailed in the Department's Job Cost System. The costs are segregated based on the PACs to develop the indirect cost pool.

The rate is the result of dividing the indirect cost pool by the total direct project costs. This rate is developed on an annual basis utilizing the actual expenditures for the State's Fiscal Year. The indirect rate for the Site Remediation Program for Fiscal Year '93 is 2.3424.

In calculating the indirect cost rate, the Site Remediation Program must account for its proportionate share of the direct and indirect salary and nonsalary costs for Department management. Department management includes, for example, the costs associated with the Commissioner's Office, and DEPE Offices of Management and Budget, Communications

and Legislative and Intergovernmental Affairs. The indirect salary costs for management in the Site Remediation Program includes all salary costs for managers under the authority of the Assistant Commissioner for Site Remediation who do not code to a site specific project. In addition, the Site Remediation Program must pay the Department of Law and Public Safety for the costs it incurs in providing legal representation to the Site Remediation Program. These costs may be divided into direct, site specific activities or indirect costs.

The current indirect rate for the Site Remediation Program was based on numbers generated during FY '91 and calculated as follows: The Department took the total salary costs in the Department for the Site Remediation Program and its support services, $35,351,274.76 and divided it into two categories; salary costs ($34,749,921.80) for full time employees to which the full fringe benefit rate is applied and salary costs ($601,352.96) for part-time or seasonal employees or overtime work to which the reduced fringe benefit rate is applied. The non-site specific salary costs for Department management ($7,424,837.16) and the Site Remediation Program ($9,312,594.47) were deducted from the total leaving $18,613,843.13 in net site specific salary costs for the Site Remediation Program. The Department then applied the fringe benefit rate for full time and part-time employees to this sum and arrived at a total cost for direct, site specific salary cost. In FY '91, this sum was $23,871,365.23.

Similarly, the Department took the non-site specific salary costs for Department management and the Site Remediation Program; applied the fringe benefit rate and arrived at a total cost for indirect salary cost of $21,481,765.62. To this sum the Department added the non-salary indirect costs for the Department management ($875,573.10), the Site Remediation Program ($3,542.937.83) the building rent ($5,460,536.28) and the proportionate share of the state Allocation Plan ($683,298.88) to arrive at the total indirect cost of $32,044,111.71. The Department divided $23,871,365.23, the total costs for direct, site specific salary costs, into $32,044,111.71, the total indirect costs to arrive at an indirect cost rate of 134.24 percent.

Prior to the payment of a direct billing fee, the recipient of the bill will have an opportunity to object to it. Within 30 days after receipt of a bill, an objector may file a written request for a fee review with the Department. Upon receipt of a written objection to a bill, the Department will attempt to resolve all factual issues in dispute informally. The Department will review the assessment and provide the objector with additional documentation as necessary. The objector may, after receipt of this additional information, request that the Assistant Commissioner for Site Remediation or his or her designee, conduct a review of the matter. If an informal resolution cannot be reached, the Department may determine the matter to be a contested case and transmit it to the Office of Administrative Law for an adjudicatory hearing.

The Department has limited the scope of the fee review to certain factual issues. For example, the Department will not entertain a challenge to a fee based on DEPE management decisions. Nor will the Department consider objections based on the salary additive, fringe benefit or indirect rates. The Department will, however, allow fee reviews based on factual questions such as whether the bills are for proceedings that never occurred, whether there was duplicative billing for the same expenditure, incorrect billing to one site for costs incurred at another, or costs that never should have incurred because they are not in any way associated with overseeing a case.

In the event that an owner or operator does not pay the direct billing charges when billed, the Department may initiate any of several courses of action. The Department may discontinue review or oversight activities, not issue full compliance or no further action letters or initiate enforcement action.

In addition to amending the fee schedule, the Department is proposing to modify the registration cycle for all regulated tank owner and operators consistent with recent amendments to the Act. Instead of an annual cycle, the Department proposes to implement a three-year cycle. Over the next three years, the registration cycle for various facilities will be staggered so that eventually, only one-third of all facilities will need to renew their registration during any particular calendar year.

The Department has also proposed changes throughout the chapter to reflect the renaming of the Department of Environmental Protection to the Department of Environmental Protection and Energy and organizational changes within the Department that have resulted in the transfer of the Underground Storage Tank Program from the former Division of Water Resources to the Division of Responsible Party Site Remediation.

Specific Changes to N.J.A.C. 7:14B

The Department has added, deleted and modified several definitions set forth at N.J.A.C. 7:14B-1.6 as follows:

"Annual certification" was deleted and replaced with the definition of "facility certification" to conform with the January 1991 statutory amendments to the Act (P.L. 1991 c.1) allowing for the periodic renewal of registration instead of the annual renewal. Changes have been made throughout this chapter to be consistent with this new definition.

"Periodic" was added to reflect the revised registration renewal schedule described at N.J.A.C. 7:14B-2.

"Remedial investigation" and "site investigation" were added to be consistent with the definitions of these terms as proposed in the Technical Rules, Oversight Rules and Cleanup Standards.

"Tank capacity" was modified to clarify that the Department will aggregate the capacities of non-residential tanks storing the same substance for the same use on the same site in order to determine if the tanks are subject to the size exemption of N.J.A.C. 7:14B-1.4(b). For example, capacities of tanks storing heating oil for non-residential use at the same facility are added together. In the same manner, the tanks storing motor fuel at farms or residences are also added together to determine if the exemption is valid for that particular classification. Heating oil tank capacities for on-site consumption in residential buildings shall not be aggregated to determine the applicability of residential facilities. Residential heating oil tanks storing 2,000 gallons or less are not considered subject to N.J.A.C. 7:14B.

The Department replaced the phrase "Annual Certification Form" with "Facility Certification Questionnaire" at N.J.A.C. 7:14B-2.2(a), 2.2(c), 2.2(e), 2.6(a), 2.8(b), 3.2(a) and 3.2(b) to reflect the new patient, as opposed to annual, nature of the facility certification procedure.

The Department modified N.J.A.C. 7:14B-2.2(b) to reflect the new address for the Underground Storage Tank Program.

The Department modified N.J.A.C. 7:14B-2.2(c) to vary the period of the facility certification from one year to three years. The Department, over the next two years, intends to stagger the entire registered tank universe evenly over a three-year billing cycle.

N.J.A.C. 7:14B-2.7(b) is being added to allow owners or operators with more than 25 facilities to request that the Department mail all Registration Certificates to a central address. The owner or operator is then responsible for forwarding the Certificates to the particular facilities. The Department will only entertain a request from owners or operators of greater than 25 facilities due to the extra time it takes to separate the particular Certificates from the rest of the faciliites during a printing run.

For clarification, the Department is replacing the term "Initial Registration Fee" with "Registration Fee" at N.J.A.C. 7:14B-2.8(a) and 3.1. The fee is remaining $100.00, but will be assessed for the three year registration and certification cycle. A new sentence at N.J.A.C. 7:14B-3.1 specifies that the Department will only issue a Registration Certificate after the Registration Fee is submitted.

N.J.A.C. 7:14B-3.1(a) and 3.2(a) has been amended to specify that residential facilities with more than one heating oil tank, where all tanks are less than 2,000 gallons in capacity, will not be required to pay a facility certification fee for initial or renewal registration in excess of $100.00.

N.J.A.C. 7:14B-3.2(b)1i has been amended to specify that Facility Certification Fees are $100.00 for the three-year facility certification cycle, regardless of the number of tanks at the facility.

N.J.A.C. 7:14B-3.2(b)2 has been added to describe the timing for payment of the Facility Certification Fee. The Department may only issue a Registration Certificate for renewal after the Facility Certification Fee is submitted.

N.J.A.C. 7:14B-3.2(c) has been added to clarify the Department's ability to collect back fees from owners and operators who failed to properly register a tank system. The Department reserves the right to take enforcement action against the owner or operator for violations of the registration requirements as a separate and distinct action from the collection of the back fees.

The Department's address for the payment of fees has been moved from N.J.A.C. 7:14B-3.3 to N.J.A.C. 7:14B-3.6. N.J.A.C. 7:14B-3.3 has been revised to specify the fees for obtaining duplicate Registration Certificates. The $25.00 fee is expected to cover the Department's administrative expenses in issuing duplicate Registration Certificates.

The Department is deleting N.J.A.C. 7:14B-3.4(a) which exempts public schools and religious or charitable institutions from fee payments. There are 2,500 of these facilities. This amendment will bring an

estimated $0.25 million to the UST Program, thus preventing an increase in the registration fee for the remaining facilities. The Department believes that it is appropriate to assess a fee on all regulated parties in order to cover the Department's costs associated with each regulated activity. This determination is based on several factors. There is no statutory exemption from the payment of fees for any facilities; therefore, exemption is not mandatory. In addition, the exemption simply shifts the financial burden of covering the Department's costs to other members of the regulated community, placing an unfair burden on the non-exempt facilities.

N.J.A.C. 7:14B-3.4(b), which will now be codified N.J.A.C. 7:14B-3.4(a), is also being amended to clarify that no fee shall be assessed for tanks properly abandoned in place prior to September 4, 1990, the effective date of the tank closure requirements located at N.J.A.C. 7:14B-9. Previously, no date was indicated.

N.J.A.C. 7:14B-3.5(a) has been amended to clarify that owners and operators of UST systems which formerly contained hazardous substances but did not close properly must also pay approval fees. Many of these tank systems were emptied in the past, but not closed properly. The current owner or operator of these tank systems which intend to close, upgrade or remediate contamination from these systems must comply with all aspects of the rules, including payment of fees. In addition, N.J.A.C. 7:14B-3.5(a) has been amended to clarify that the owner or operator is required to submit a fee with each of the documents required pursuant to this chapter. Resubmission of documents to the Department due to major technical deficiencies requires a new fee since the Department will need to perform a second review. The requirement that an owner or operator must "obtain a permit or approval prior to beginning any of the activities listed below" was deleted since it is explicitly stated at N.J.A.C. 7:14B-9 and 10.

N.J.A.C. 7:14B-3.5(b) has been modified and recodified at N.J.A.C. 7:14B-3.5(a)3. Previously, all permit applications were submitted on an excavation basis. Thus, one facility, with several excavations, would need to submit a separate application with a separate fee for each excavation. In order to reduce the administrative burden and costs, for both the Department and the applicant, the facility will now submit a single permit application with a single fee, regardless of the number of excavations.

A new N.J.A.C. 7:14B-3.5(b) has been added to clarify that payment of the fee by the owner or operator is a necessary part of the submission for approval or review of any application, workplan or report to the Department.

N.J.A.C. 7:14B-3.5(c) has been amended to reflect the new facility-based fee explained above for N.J.A.C. 7:14B-3.5(a)3, and to simplify the method for calculating the fee for a particular activity. Fees for permits will now be a single charge, rather than a summary of several smaller charges. This is expected to reduce deficient applications and thus decrease applicant and Department processing times. Based on these modifications, the Department anticipates that the permit fee of $475.00 for a new installation will decrease by $175.00 to $300.00. A series of fees to address the Department's review of the Site Assessment Summary (SAS) required by N.J.A.C. 7:14B-9.5 and the Discharge Investigation and Corrective Action Report (DICAR) required by N.J.A.C. 7:14B-8.3 has been added. The SAS fee is $500.00 and the DICAR fee is $1,000. These fees cover the review of the reports by the Department. The rationale for the fee schedule is more fully explained in the Economic Impact statement below.

N.J.A.C. 7:14B-3.5(d) has been added to this subchapter to establish a fee schedule for those facilities at which the Department must oversee site remediation activities. After review and approval of the DICAR, long term monitoring or cleanup may be necessary to remediate the contamination at the site. The Department proposes to recover its costs for overseeing the remedial activities at the site by directly billing the owner or operator for the Department's expenses. These facilities will usually be undergoing a long term cleanup of the site. The Department will continue to perform inspections, sampling and report review as conditions warrant at the facility. Since there is a wide degree of variability in these cases, no specific fee is mentioned. Fees will be imposed on the responsible party based upon the direct billing formula described earlier in the Summary.

N.J.A.C. 7:14B-3.5(e) has been added to allow the Department to bill directly for the costs of developing a parameter-specific cleanup standard for contamination at the facility. The Department's costs shall be calculated based upon the number of hours of staff time needed to develop the standard, multiplied by factors described earlier in the Summary.

N.J.A.C. 7:14B-3.5(f) has been added to describe the administrative procedures available to the Department if a fee is not paid.

N.J.A.C. 7:14B-3.6(a) has been added to specify that all checks and money orders for payment of fees are made out to Treasurer, State of New Jersey, and are submitted to the appropriate address.

N.J.A.C. 7:14B-3.6(b) has been added to clarify that any fee described in this subchapter will not be prorated by the Department. This includes Facility Certification Fees which are paid at the beginning of the year that the tank was removed. The Department considers the effort to process the renewal of the registration to occur at the time the facility files its Facility Certification Questionnaire.

N.J.A.C. 7:14B-3.7 has been added to describe a fee to cover the Department's costs for keeping documents confidential.

N.J.A.C. 7:14B-3.8 has been added to describe the procedures a person must follow in order to object to a direct billing fee.

Various editorial corrections have been made to the rule text.

Social Impact

The proposed amendments to N.J.A.C. 7:14B-2 will allow the Department to stagger the facility certification or registration renewal of the universe of registered facilities over a three-year period instead of the current, annual basis. This will provide a positive social impact since the typical facility will have to complete the Facility Certification Questionnaire and pay the Facility Certification Fee once every three years instead of annually.

A positive social impact will result from the proposed amendments to the UST fee schedule. The change from an excavation based fee system to a facility based system will reduce the administrative burden of filing multiple applications for facilities with multiple excavations. The proposed amendments will also provide a positive social impact by providing funds necessary to appropriately staff the Underground Storage Tank Program and thereby provide the turnaround of applications, workplans, and reports that the Department has committed to as goals which are part of the Environmental Management Accountability Package. In addition, the proposed amendments to the fee requirements will make such fees consistent with other Department site remediation programs such as ECRA, NJPDES-DGW permitting program, and Spill Act activities.

Economic Impact

The amendments to N.J.A.C. 7:14B-2 will have a beneficial financial impact. The modification of the registration cycle from an annual cycle to a three-year cycle will cut the administrative costs of both the registrant and the Department since the Facility Certification will only have to be processed once every three years instead of three times over the three year period.

The amendments to N.J.A.C. 7:14B-3 modify the existing fee schedule. The Department anticipates the proposed UST fees imposed by N.J.A.C. 7:26B-3 will provide approximately $7,310,000 in Fiscal Year 1994 (FY '94). These increased fees are essential to the continued performance of the UST Program's administrative and remedial oversight activities and will increase or decrease based upon the actual level of effort expended by the Department to respond to the workload. The anticipated increase in fee revenues from the FY '92 fee revenue level of $2,000,000 reflects not only the increases needed to directly fund program personnel level of full-time positions, or full-time equivalents (FTEs), but also the increases in the costs to support an FTE. Staff salaries, fringe benefits, overhead and operating expenses have all increased since the last fee adjustments in 1990. In addition to staff salaries, this includes costs for rent, telephone services, insurance, postage, maintenance, employee benefits, equipment, training and printing. Although the FY '92 revenue was only $2,000,000, the total budget for the UST program was $4,800,000. This included $1,200,000 in USEPA grants and $1,600,000 in NJPDES fees. The breakdown of costs for FY '94 is as follows:

Estimated Salaries	$3.40M
Fringe Benefits	$1.00M
Overhead and Operating Costs	$2.21M
Payback of Appropriation	$0.70M
TOTAL	$7.31M

These fees will cover the costs for 80 FTE's associated with administering the UST Program. The costs represent an increase of 23 FTE's from FY '92 staffing levels. This increase is necessary to perform oversight on the 2000 ground water cleanup cases involving UST's. Salaries are based on the current salary costs as of July 1992. The fringe

benefit rate of 1.2935 percent has been established by Department of Treasury. The operating and overhead costs represent the UST Program's proportionate share of Department overhead costs, such as salaries for management personnel not directly funded by the UST Program and building rent as well as operating costs for the program such as office and data processing supplies, telephones, postage equipment. The costs allocated to Payback of Appropriation represents the payback of a 1986 Legislative Appropriation of $700,000 to initiate the UST Program. Pursuant to N.J.S.A. 58:10A-31, the Department is responsible for repaying the appropriation to the Department of Treasury from the fee revenue collected.

The current fee structure requires that the administrative and categorical fees, in addition to the USEPA grants, subsidize the remedial oversight work conducted by the Department. The remedial oversight activities, however, are taking more hours per FTE than in previous years. Rather than increasing the administrative fees to cover these costs, the Department, as described earlier in the Summary, has decided to bill the actual costs of the remedial oversight work to the facility.

The Department anticipates the following annual revenues to be generated by the revised fee system. These projections are based upon the expected submissions and applications for FY '93:

Type of fee	Proposed fee		# of activities		Total fee assessed
Administrative Fees					
Registration and Facility Certification Fees*	$ 100 per facility per 3 year cycle	×	5,667	=	$0.57M
Permit Application Fees	$ 300	×	475	=	$0.14M
Closure Plan Application Fees**	$ 300	×	2,000	=	$0.60M
Site Assessment Summary Report Review Fees***	$ 500	×	1,200	=	$0.60M
Discharge Investigation and Corrective Action Report Review Fees****	$1000	×	1,500	=	$1.50M
Confidentiality Claim Fees	$ 350	×	10	=	$.0033M
Direct Billing					
Remediation Oversight Fees (based on Department costs)	30 hour/case/year	×	2,000	=	$4.00M
TOTAL ASSESSED FEES					$7.31M

*17,000 registered facilities assessed once in a three year cycle; thus 5,667 assessed annually.

**The Department intends to propose the elimination of the closure plan approval applications at a later date. Thus only 2,000 are expected while this requirement is still in effect.

***Also called Site Investigation Reports; required by N.J.A.C. 7:14B-9.4(a).

****Also called Remedial Investigation Reports; required by N.J.A.C. 7:14B-8.3(a).

UST registration fees were established in December 1987. The Department proposes to amend these fee amounts because the Department will now be able to collect fees for other activities which were previously paid for through these fees. These fees cover the costs of the six FTE's associated with the registration activity. Distributing the salaries, fringe and overhead costs for these staff to the 17,000 registered facilities over a three year period yields a fee of $100.00 for the three-year facility certification cycle.

Fees for Department review of permits, closure plans, confidentiality claims, site investigation reports or SAS's, and remedial investigation reports or DICAR's, are calculated based upon the Department's average costs to perform these reviews. Average costs are calculated based upon a formula reflective of the amount of staff time dedicated to the review. The formula takes into account staff salaries, indirect and direct costs. Costs are calculated based upon the number of hours expected for that review multiplied by the hourly rate for that particular staff member and various overhead factors described earlier in the Summary.

Application fees are required for review and approval of an UST permit application. Experience has shown that five hours (four hours technical, one hour administrative) is necessary to review an application. Using average technical and administrative hourly rates of $17.00/hour and $10.00/hour, respectively, and the additive, fringe and indirect factors of 1.22, 1.2935 and 2.3424, yields the following calculation: $((4\times17)+(1\times10)) \times 1.22 \times 1.2935 \times 2.3424 = \$288.00$. Rounding for ease of bookkeeping leads to an application fee of $300.00.

Report review fees are required for review and approval of either SAS's or DICAR's. Experience has shown that Site Assessment Summaries take an average of eight hours to review; while Discharge Investigation and Corrective Action Reports take an average of 16 hours to review. Using a similar calculation as above yields review fees of $500.00 for the site investigation report and $1,000 for the remedial investigation report. It is the Department's intention to approve all submittals upon first review; however, this is not always possible. Notwithstanding the Department's ongoing attempts to educate the regulated community, their consultants and attorneys, via rule and guidance, many technical submittals are of such poor quality that they must be returned as technically deficient. Therefore, a new fee will need to be submitted each time a new report is submitted as a result of the Department's denial of the original document due to major technical deficiencies.

Facilities which are undergoing long term remedial action activities will be billed directly to pay for the Department's oversight of the project. The Department oversight activities include review of remedial investigation and remedial action reports subsequent to the initial DICAR submission detailing additional contaminant delineation, recommendations for treatment works to accomplish the remediation, and progress of the remediation. The facility will be billed based upon the cost formula described in the Summary. The specific costs for a particular site will encompass a large range depending on the degree of complexity of the case. A remediation involving solely soil cleanup at one or two areas of concern may only involve tens of hours, which could mean a cost recovery charge of less than $1,000. A larger project with many areas of concern and significant ground water contamination may require several hundred hours of oversight, which could mean a cost recovery charge in the tens of thousands of dollars.

The proposed amendments will pose additional costs to all facilities undergoing any type of tank closure or remediation. Previously, there was no fee for review of the SAS, DICAR or the Department's oversight, unless the remediation was performed under a NJPDES-DGW Permit. The proposed fee schedule will require that the owner or operator submit a fee for each of these activities. The Department believes that it is necessary for owners and operators to pay these fees in order to have an appropriately staffed UST Program.

The proposed amendments will pose additional costs to those facilities, including public schools, religious or charitable institutions, that will no longer be exempt from the fee requirements of these rules. However, the amount of the fee for each activity is not large compared to the cost of performing the activity. The Department believes that it is no longer appropriate to exempt certain owners and operators from paying fees to the Department; if certain owners and operators are exempt, the costs are inappropriately passed on to other members of the regulated community.

Environmental Impact

The proposed amendments to N.J.A.C. 7:14B-2 and 3 will provide sufficient revenue to the Department so that the Department can be responsive and timely in its oversight and guidance, thus allowing tank closure, new tank installations, tank upgrade or contaminated site remediation to proceed in a timely manner. As a result, the proposed amendments will have a positive environmental impact.

Regulatory Flexibility Analysis

The proposed amendments will apply to all owners and operators of regulated underground storage tanks that store hazardous substances. The Department estimates that 10,000 of the approximately 17,000 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 continue to be affected. Types of small businesses to which the rules apply include independent gasoline service stations, fleet services, and heating oil companies, to name a few. In order to comply with these rules, small businesses will have to pay the fees and comply with the requirements set forth in the Summary above. The Department has determined that the proposed amendments will impose new or increased compliance costs on small businesses. The greatest increases in compliance costs will occur for those owners or operators closing an UST pursuant to N.J.A.C. 7:14B-9 or remediating a discharge from an UST

pursuant to N.J.A.C. 7:14B-8. The increased cost of compliance for small businesses is expected to range from $500.00 for Department review of an SAS to thousands of dollars for ground water remediation cases requiring hundreds of hours of Department oversight time.

In developing these amendments, the Department has balanced the need to protect human health, property and the environment against the economic impact of these rules and has determined that to minimize the impact of the rules based upon the size of the business would unacceptably endanger human health, property and the environment. Therefore, these rules, as amended, do not establish different fee requirements that take into account resources available to small businesses.

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

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.

...

["Annual certification" means the yearly reregistration of a tank with the Department pursuant to this chapter.]

...

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

...

"Facility certification" means the periodic renewal of the registration of a facility with the Department pursuant to this chapter.

...

"Periodic" means the time period for renewal of a facility certification; the period may be one, two, or three years.

...

"Remedial investigation" means remedial investigation as defined in N.J.A.C. 7:26E-1.8.

...

"Site investigation" means site investigation as defined in N.J.A.C. 7:26E-1.8.

...

"Tank capacity" means the manufacturer's nominal tank size, when referring to a single tank. When referring to multiple tanks storing [the same] hazardous [substance] **substances** at the same site, **within one of the following three categories: motor fuel, heating oil for residential use, heating oil for non-residential use,** the aggregate of the nominal tank sizes will be used to determine capacity.

...

SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

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 New Jersey Underground Storage Tank Registration Questionnaire and the New Jersey Underground Storage Tank [Annual] **Facility** Certification [Form] **Questionnaire** respectively.

(b) All registration and certification forms shall be obtained from and accurately completed, signed, dated and returned to **the address below**:

[Bureau of Underground Storage Tanks
Registration Unit
Division of Water Resources
Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]

New Jersey Department of Environmental Protection and Energy
Industrial Site Evaluation Element
CN-028
401 E. State St.
Trenton, NJ 08625-0028

(c) The owner or operator of a facility shall complete the New Jersey Underground Storage Tank [Annual] **Facility** Certification [Form] **Questionnaire** prior to [the annual anniversary date of the facility's registration] **expiration of the facility's Registration Certificate**. The Department may issue [the] **a** [annual] Registration Certificate to the registrant following submission of the complete [Annual] **Facility** Certification [Form] **Questionnaire, The Department will issue the Registration Certificate for a maximum period of three years. The expiration date of the Facility Certification will be specified on the Registration Certificate.**

(d) (No change.)

(e) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank [Annual] **Facility** Certification [Form] **Questionnaire**:

1.-3. (No change.)

(f) (No change.)

7:14B-2.6 Public access to registration information

(a) All completed New Jersey Underground Storage Tank Registration Questionnaires and New Jersey Underground Storage Tank [Annual] **Facility** Certification [Forms] **Questionnaires**, as well as documented information pertaining to the registration, shall be considered public records pursuant to N.J.S.A. 47:1A-1 et seq.

(b) (No change.)

7:14B-2.7 [Display of] Registration Certificate

(a) The owner or operator of an underground storage tank system shall [prominantly] **prominently** display a valid Registration Certificate at the facility or shall make the Registration Certificate available for inspection by any authorized local, State or Federal representative.

(b) The owner or operator of more than 25 separate facilities may request, in writing to the Director at the address set forth at N.J.A.C. 7:14B-2.2(b), that the Department mail the Registration Certificates of the multiple facilities to a single address. The owner or operator shall be responsible for ensuring that the Registration Certificates are then sent to the proper facilities.

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. (No change.)

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. (No change.)

(b) The Department may revoke the registration of a facility upon a determination of the following:

1. (No change.)

2. The owner or operator has failed to submit [an Annual] **a Facility** Certification [Form] **Questionnaire** pursuant to N.J.A.C. 7:14B-2.2;

3. The owner or operator has failed to pay the [Annual] **Facility** Certification fee pursuant to N.J.A.C. 7:14B-[3.1]**3.2**;

4.-5. (No change.)

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

SUBCHAPTER 3. FEES

7:14B-3.1 [Initial] Registration 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. **The Department may only issue a Registration Certificate following the submission of the Registration Fee. The facility certification fee that may be imposed upon the owner or operator of a facility which comprises only two or more tanks used to store heating oil for on-site consumption in a residential building, where no individual tank has a capacity of more than 2,000 gallons, may not exceed $100.00 upon registration.**

7:14B-3.2 [Annual] **Facility** Certification fee

(a) The owner or operator of an underground storage tank system shall submit [an Annual] **a Facility** Certification fee for each facility upon the [yearly re-registration of the facility] **periodic renewal of the Facility Certification** with the Department. **The Facility Certification fee that may be imposed upon the owner or operator of a facility which comprises only two or more tanks used to store**

heating oil for on-site consumption in a residential building, where no individual tank has a capacity of more than 2,000 gallons, may not exceed $100.00 for that facility for periodic renewal.

(b) The [Annual] **owner or operator shall pay the Facility** Certification fee [is as follows:

1.] of $100.00 per facility [up to the first five underground storage tanks located on a contiguous piece of property] **for the three year facility certification cycle**[;] and

[2. $15.00 per tank for each additional underground storage tank located on one taxable lot] **after receiving an invoice from the Department within the time frame set forth in the invoice. The Department may renew the Registration Certificate following the submission of the Facility Certification Fee.**

(c) The owner or operator of an underground storage tank system who failed to register the system and pay the necessary fees when initially required in 1988 or when the tank system was installed, whichever is later, shall be responsible for paying all Facility Certification fees for the years the tank system was being used. Payment of these fees by the owner or operator does not restrict the Department from taking enforcement action against the owner or operator pursuant to N.J.A.C. 7:14B-12.

7:14B-3.3 [Fee payment] **Duplicate Registration Certificate charges**

[(a) Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

Bureau of Underground Storage Tanks
Department of Environmental Protection and Energy
CN-028
Trenton, New Jersey 08625]

The Fee for duplicate Registration Certificates will be $25.00 per document.

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)](**a**) The Department [shall] **will** not assess a **Registration or Facility Certification** fee for underground storage tank systems which have been abandoned in place in accordance with **procedures equivalent to** N.J.A.C. 7:14B-9.1(d) **prior to September 4, 1990.**

7:14B-3.5 Permit and approval fees

(a) The owner or operator of an existing, **former** or proposed underground storage tank system shall [obtain a permit or approval from the Department before beginning any of the activities listed below.]:

1. [The owner or operator shall submit] **Submit** a **separate** fee for each activity at a facility which requires a permit or approval **at the time the application, or report is submitted. The owner or operator shall pay a separate fee for resubmissions of the same application or report when the application or report is disapproved due to technical deficiencies in the initial submittal. The fees required by this section are not one time fees but rather the fees required to perform the review of the specific submittals to the Department;**

2. Submit a separate fee for each application, or report which is contained within a single document; and

[(b) The owner or operator shall submit] **3. Submit** a separate fee for each [excavation area] **facility** where an activity occurs.

(b) The Department will not approve any application or report unless all fee requirements of this subchapter are met.

(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;

7. $80.00 to receive an approval for the closure of an underground storage tank system which does not require a site assessment.]

Activity	Fee
1. Permit for the installation or substantial modification of an underground storage tank system	**$300.00**
2. Review of the closure plan for an underground storage tank system	**$300.00**
3. Review of Site Assessment Summary or site investigation report	**$500.00**
4. Review of Discharge Investigation and Corrective Action Report or remedial investigation report	**$1,000**

(d) The owner or operator shall submit the remedial action oversight fees to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged, subsequent to the review of the DICAR. The Department shall include the following information in the summary: description of work performed, staff member(s) performing work, number of hours performed by the staff member(s), and the staff member(s) hourly rate. The fee schedule shall be as follows:

1. The Department will bill the owner or operator at regular intervals throughout the duration of the remedial action based on the formula in (d)3 below to recover its costs;

2. The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate to be used by the Site Remediation Program for the fiscal year in the New Jersey Register; and

3. Direct Billing Fees are based on time that staff works on activities for that industrial establishment. This fee is based upon the formula:

$$\text{Administrative Costs} = A + B$$

where A = (Number of hours) × (Hourly Salary Rate) × (Salary Additive Rate) × (Fringe Benefit Rate) × (Indirect Cost Rate) and B = (Sampling costs) + (Costs for Contractor Assistance).

i. Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all state employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, Deputy Attorneys General, using the specific Project Activity Code, will be included in the formula calculations.

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

iii. The salary additive rate represents the prorated percentage of charges attributable to NJDEPE employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours × hourly salary rate) are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

iv. The fringe benefit represents the Department's charges for the following benefits: pension, health benefits, including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating

and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs.

v. The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(1) The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services, the Division of Personnel and Department of Law and Public Safety.

(2) The indirect rate also includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

(3) The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

vi. Direct costs represent any non-salary direct, site-specific costs including but not limited to laboratory analysis or contractor expenses. These costs will be billed directly as a formula add on.

(e) The owner or operator conducting a remedial action at a facility with contamination caused by a contaminant which does not have a Cleanup Standard established pursuant to a rule adopted by the Department shall pay the Department's costs to develop a cleanup standard in accordance with (d) above.

(f) The owner or operator shall not receive a "no further action" letter from the Department unless all fees for work previously billed by the Department to the facility are paid. The Department may discontinue review or oversight of a submittal from the owner or operator of the facility unless all fees for work previously billed are paid. In addition, the Department may consider the failure to pay a fee to be a violation of the Act.

7:14B-3.6 Payment for Department services

(a) All fees submitted in compliance with N.J.A.C. 7:14B-3.2 shall be made by check or money order, payable to "Treasurer, State of New Jersey," and submitted to:

Bureau of Revenue
New Jersey Department of Environmental Protection
and Energy
CN-417
Trenton, NJ 08625

All other fee payments shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to the address at N.J.A.C. 7:14B-2.2(b).

(b) No UST fees or charges are pro-rated.

7:14B-3.7 Confidentiality claims

Any confidentiality claim submitted in accordance with N.J.A.C. 7:14B-15 shall be accompanied by a fee of $350.00.

7:14B-3.8 Fee review

(a) To contest a fee imposed pursuant to N.J.A.C. 7:14B-3.5(d), the objector shall, within 30 days after the objector's receipt of the bill for the fee from the Department, submit to the Department a written request for a fee review pursuant to (d) below. An objector may contest the fee based on the following:

1. The Department has no factual basis to sustain the charges assessed in the fee;
2. The activities for which the fee was imposed did not occur;
3. The charges are false or duplicative; or
4. The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

(b) An objector may not contest a fee if the challenge is based on the following:

1. An employee's hourly salary rate;
2. The Department's salary additive rate, indirect rate, or fringe benefit rate; or
3. Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

(c) The objector shall submit a fee review request to the Department at the following address:

Office of Legal Affairs
Attention: Fee Review Requests
DEPE
CN 402
Trenton, NJ 08625-0402

(d) An objector shall include the following in a request for a fee review:

1. A copy of the bill;
2. Payment of all uncontested charges, if not previously paid;
3. A list of the specific fee charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address and telephone number of the person making the request;
6. Information supporting the request or other written documents relied upon to support the request;
7. An estimate of the amount of time required for an informal meeting with Department representatives or an adjudicatory hearing before the Office of Administrative Law; and
8. A request, if necessary, for a barrier free hearing location for physically disabled persons;

(e) If the objector fails to include any information or the payment required by (d) above, the Department may deny a request for a fee review or an adjudicatory hearing on the fee.

(f) Upon the Department's receipt of a request for a fee review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that a fee imposed as incorrect, the Department shall adjust the fee and issue a new bill which shall be due and payable within 30 days after receipt.

(g) The Department may, if it determines that the factual issues involving a fee dispute cannot be resolved informally determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to N.J.S.A. 52:14B-1 et seq.

(h) The Department, if it denies a hearing request, shall briefly state the reasons for such denial. Such denial shall be considered final agency action.

(i) If the objector does not file a request for a fee review within 30 days after the objector's receipt of the bill for the fee from the Department the full amount of the fee shall be due and owing. If the bill is not paid, the Department may take any action in accordance with N.J.A.C. 7:26B-3.5(f) above.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Crab Management

Proposed Repeal: N.J.A.C. 7:25-7.13

Proposed Repeal and New Rule: N.J.A.C. 7:25-14.1

Proposed Amendment: N.J.A.C. 7:25-14.2, 14.4 and 14.6

Proposed New Rules: N.J.A.C. 7:25-14.7, 14.8 and 14.11

Proposed Recodification with Amendments: N.J.A.C. 7:25-14.7 and 14.8 as 14.12 and 14.13

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

Authority: N.J.S.A. 23:2B-6, 23:2B-14 and 50:3-16.13.

DEPE Docket Number: 14-93-03.

Proposal Number: PRN 1993-186.

A **public hearing** on the proposal wil be held on Tuesday, April 22, 1993 at 6:30 P.M. at:

Stockton State College
Residential Life Center
Multi Purpose Room
Pomona, New Jersey 08240

Submit written comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

The purposes of the proposed repeal, new rules and amendments are to stabilize user conflicts and the harvest of crabs by delaying entry into the fishery; allow crab dredging in a section of Delaware Bay; define allowable dredges for crabs; close the Newark Bay complex to crab dredging and potting; change the crab dredge license fee; institute an in-State landing requirement for harvested crabs; eliminate harvesting of organisms by crab pots and dredges other than crabs and conchs; increase the minimum width of creeks for pots and trot lines from 25 feet to 50 feet; eliminate crab pots and trot lines from man-made lagoons; institute a crab pot checking requirement; and allow for the recreation harvest of crabs by bait seine.

Under the proposed new rules and amendments, a delayed entry system for commercial crab potting and dredging will be implemented. Various types of limited and delayed entry systems regarding licensing for blue crabs have been implemented or are being considered in other coastal states. Delaware currently only issues a limited number of crab licenses. Maryland and Virginia currently have a two year delayed entry system similar to New Jersey's proposal. Florida, North Carolina and South Carolina are also considering delayed entry systems. Under these proposed new rules and amendments, anyone intending to harvest crabs for the purpose of sale or barter must apply for a new license. To be eligible for a license, the applicant must have purchased a commercial crab license or oyster dredge boat license during the 1991 or 1992 calendar years or provide proof of completion of active military service within one year of application. If the applicant cannot comply with either of these requirements, he or she must register with the Department in person in each of two successive years prior to the year of license issuance. In the year immediately following the second year of registration, the applicant will be issued a license upon payment of the prescribed license fee. In addition, crab dredging will be allowed in a defined section of Delaware Bay with a maximum of two dredges. Maximum weight of each dredge will be 400 pounds in the Delaware Bay, Atlantic Ocean, and in the bays north of Route 36 (Highlands Bridge). If two or fewer dredges are in possession, then the maximum weight of each dredge will be 500 pounds in the Atlantic Ocean and in the bays north of Route 36 (Highlands Bridge). Maximum length of each dredge tooth bar in Delaware Bay, the Atlantic Ocean, and in the bays north of Route 36 (Highlands Bridge) will be 75 inches. If two dredges or fewer are in possession, then the maximum length of each dredge will be 96 inches in the Atlantic Ocean and in the bays north of Route 36 (Highlands Bridge). Resident crab dredging license fees will be $100.00 which replaces a variable fee scale based on vessel tonnage. The resident fee for crab pot licenses remains at $100.00. Non-resident crab dredge and crab pot license fees will be the same as resident fees if a resident of New Jersey can obtain a license to harvest crabs by dredge or pots in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident fee will be 10 times the $100.00 New Jersey resident fee. All crabs harvested commercially must be landed in New Jersey.

Harvesting of any organisms other than conchs and crabs by crab dredges or crab pots will be illegal and all crab pots must be checked and emptied of all crabs and other organisms at least once every 72 hours. Setting of crab pots or trot lines will be illegal in any creek, ditch or tributary less than 50 feet wide and in all man-made lagoons. In addition, crabs harvested incidentally by bait seines can be retained, but cannot be sold or used for barter. A maximum of one bushel of crabs per day can be harvested by this method.

Social Impact

One of the purposes of the proposed repeals, new rules and amendments is to mitigate user conflicts and stabilize the harvest of crabs by establishing a delayed entry system and pot checking requirement. Conflicts over fishing space, negative interaction between commercial crab potters and recreational boaters and a fishing effort directed toward a limited resource have all increased during the last few years. By immediately stabilizing participants in the commercial crab fishery and possibly reducing participation in the future through attrition, a positive social impact will occur by providing less user conflicts and reducing fishing pressure on the resource. Participation in the fishery and user conflicts can also be reduced by allowing law enforcement officers to remove all pots not checked at least once every 72 hours, increasing minimum creek width for pots and trot lines from 25 feet to 50 feet and prohibiting pots and trot lines in man-made lagoons. No social impact is anticipated for those applicants currently eligible to participate in the fishery as their opportunity to harvest crabs will not change. Some social impacts may be incurred by those individuals not immediately eligible to participate in the fishery; however, provisions have been established to allow individuals to participate after a two year waiting period, thus minimizing this social impact. Any limited short term social impacts, however, are greatly outweighed by the public's long term gains by alleviating conflicts between fishermen and recreational boaters and stabilizing fishing pressure on the resource.

The proposed new rules and amendments will also clarify the State's rules managing crabs in New Jersey's tidal waters. No additional adverse social impacts are anticipated. Establishing a crab dredge fishery in Delaware Bay and defining allowable gears will provide better opportunities for commercial fishermen to participate successfully in the fishery. Closure of the Newark Bay Complex to sale or consumption of crabs was established by Administrative Order No. EO40-19. That portion of the amendment prohibiting harvest of crabs in the Newark Bay Complex closes a loop-hole that would have permitted someone to harvest crabs in this area provided they were not sold or consumed. Virtually no one harvests crabs without the specific intent of sale and/or consumption. Other amendments concerning license fee changes, in-State landing requirements, eliminating harvest of organisms by crab pots and dredges other than crabs and conchs, instituting a crab pot checking requirement, and allowing for the harvest of crabs by bait seine do not further restrict anyone from utilizing the crab resource and will allow for increased participation by bait seiners. In addition, these amendments largely reflect current practices in the fishery; therefore, no adverse social impact is anticipated. The in-State landing requirement will also ensure an effective and practical land based enforcement program.

Economic Impact

Adoption of these amendments and new rules will have minimal adverse economic impact and in part will result in a positive economic impact. Those commercial crabbers immediately eligible for a commercial license will experience no economic impact as their ability to harvest crabs will not be affected. No economic impacts will be incurred by those individuals not immediately eligible to participate in the fishery. These individuals have never experienced an economic gain from the fishery nor have they any investment in the fishery which would be lost due to these amendments.

Adoption of these amendments and new rules will have some positive economic impacts. Currently, the defined section of Delaware Bay is closed to crab dredging. It is believed that a considerble resource is present that can be harvested by crab dredgers. Allowing larger dredges in the Atlantic Ocean and in the bays north of Route 36 (Highlands Bridge) will have a positive economic impact by allowing gear more suited to the requirements of harvesting crabs in deep water. Closing the Newark Bay Complex to crab harvest, instituting an in-State landing requirement for commercially harvested crabs, eliminating harvest of organisms by crab dredges or crab pots other than crabs and conchs, instituting a crab pot checking requirement, enlarging the area of prohibiting pots and trot lines in small creeks and man-made lagoons, and allowing for the harvest of crabs by bait seine largely reflect current practices in the fishery and will result in no adverse economic impacts. Some commercial crab dredgers may experience a slight economic impact because of possible license fee increases. Current minimum resident license fees are $15.00 and maximum resident license fees are $50.00 based on vessel size. The impact of increasing the license fee to $100.00 will be slight as the maximum increase will be $85.00. Impacts to non-residents wishing to purchase a crab dredge license may be more severe. Current license costs range from $75.00 to $250.00 based on vessel size. Proposed license fees could be as high as $1,000. This impact could be eliminated, however, if a New Jersey fisherman can obtain a license to harvest crabs by dredge in the state of residence of the non-resident applicant for the same fee as a resident of that state, then the license fee for the non-resident will be the same as a New Jersey resident. Potentially, this new license fee for non-residents could be less than the current license fee.

Environmental Impact

The proposed repeals, new rules and amendments will result in positive environmental impacts. The total amount of fishermen and fishing gear is increasing and, as a result, an increasing portion of the crab stock can be harvested each year. The number of young produced (recruitment) is influenced by the number of adult spawners and by environmental conditions. High recruitment requires optimum spawning stock size and favorable environmental conditions. To protect the reproductive potential of crab stocks, appropriate fishing levels are needed. Although optimum fishing levels are unknown, stabilizing participants in the commercial fishery will help to stabilize fishing effort and the harvest of adult spawners and protect future recruitment. Crab abundance can increase or decrease significantly from year to year. When cyclic populations are harvested, the potential exists for overexploitation during years of low abundance. The possibility of overexploitation can be reduced by stabilizing participants in the fishery. In addition, opportunistic participants in the fishery who only participate during years of high abundance will be eliminated through the two year registration period, again effectively reducing the harvest of adult spawners. Opportunistic participants in the fishery may also be more likely to abandon fishing gear and eliminating them may reduce the unintentional harvest of marine organisms by ghost pots.

The provisions concerning checking crab pots every 72 hours, increasing minimum creek width for pots and trot lines, and allowing no by-catch in crab pots are designed to prevent overharvesting of various resources by reducing the by-catch of marine species susceptible to capture in crab pots. In addition, the crab pot checking provision will enable law enforcement authorities to remove lost or abandoned crab pots, thereby reducing the unintentional harvest of marine organisms by ghost pots.

No other environmental impacts are anticipated as a result of these amendments and new rules. Allowing crab dredging in a section of Delaware Bay will expose the Delaware Bay crab resources to the same types of fisheries as experienced by the crab resource in the rest of the State. As natural winter mortality of adult crabs is high, harvesting by dredge has little effect on the resource. License fee changes, by-catch allowance in bait seines, closure of man-made lagoons to pots and trot lines, closure of the Newark Bay complex to crab dredging, and in-State landing requirements are either not environmental issues or simply reflect already established standard practices in the State; therefore, no environmental impacts are anticipated from these provisions.

Regulatory Flexibility Analysis

The proposed new rules and amendments would apply to all bait seiners, crab potters, crab dredgers and others anticipating participating in the commercial fishery. Most of the commercial crab potters and dredgers are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and may be impacted to some degree. Although these small businesses will have to comply with the requirements set forth in the Summary above, including a small increase in license fees for crab dredgers, it is unlikely that additional professional services or capital costs will be required for compliance. In developing the amendments, the Department has balanced its environmental responsibilities against the impacts to small businesses and has determined that to minimize the impact of the amendments would adversely affect the environment and, therefore, no exemption from coverage is provided.

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

[7:25-7.13 Crab dredging in the Atlantic Coast section

(a) No crabs may be caught or taken in the Atlantic Coast section by dredges unless a valid crab dredge license is aboard the vessel. The crab dredges shall conform to the following specifications:

1. The maximum length of the tooth bar shall be 75 inches in Raritan and Sandy Hook Bays, but if only one dredge is in possession then the maximum length of the tooth bar shall be 96 inches in Raritan and Sandy Hook Bays, and 38 inches in all other waters.

2. The maximum weight of the dredge shall be 110 pounds in Raritan and Sandy Hook Bays, but if only one dredge is in possession then the maximum weight of the dredge shall be 200 pounds in Raritan and Sandy Hook Bays, and 60 pounds in all other waters.

3. The maximum length of the teeth shall be six inches in Raritan and Sandy Hook Bays and three inches in all other waters.

4. The minimum space between teeth shall be three inches, measured at the base.

5. The collecting bag of a dredge, if material, shall have mesh not less than two inches bar measure or four inches stretched measure; if wire, shall not be less than two inches bar mesh (inside measurement) or two and one-half inches inside diameter if circular; if metal, the O-rings shall not be less than two and one-half inches diameter and be connected with no more than five "S" hooks that measure not less than two and one-half inches in length as measured to the inside of the "S" configuration.

6. Each dredge shall be independently and separately attached to the vessel by a single cable or tow line.

7. South of Route 36 (Highlands Bridge), no boat shall have more than four dredges working at the same time.

(b) No person shall catch, take, or attempt to take crabs by crab dredge from any of the marked leased grounds except the lessee or his employee; no person shall dredge or attempt to dredge crabs on any State oyster beds or grounds as defined in N.J.A.C. 7:25-19.1; and no person shall dredge or attempt to dredge crabs within 50 yards of any marked leased shellfish grounds.

(c) Any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish, which may be caught incidentally to the catching of the crabs by dredge, shall be redeposited immediately in the water from which such clams, oysters, scallops, mussels, other bivalve mollusks, or finfish are caught; nor shall any person, while engaged in the catching and taking of crabs by dredge, have in his boat or possession any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish obtained from any source.

1. The possession of clams, oysters, scallops, mussels, other bivalve mollusks, or finfish and dredges simultaneously in the boat of any person shall constitute prima facie evidence of the violation of this rule.

2. Harvesting of oysters by dredging from leased shellfish grounds by the lessee thereof shall be exempt from this section.

(d) No person shall catch, take, or attempt to catch or take crabs from any of the lands of the Atlantic Coast section except from one-half hour after sunrise to one-half hour before sunset between November 15 and March 31 south of Route 40 (Black Horse Pike), and December 1 and March 31 north of Route 40, nor at any time on Sunday except in Raritan and Sandy Hook Bays.

(e) The license fee for New Jersey residents for the catching and taking of crabs by means of crab dredge shall be $1.00 per gross vessel ton. The minimum license fee for New Jersey residents shall be $15.00 and the maximum shall be $50.00. The license fee for non-residents will be the same as that for a resident if a New Jersey

fisherman can obtain a license to harvest crabs by dredge in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be $5.00 per gross vessel ton, with a minimum license fee of $75.00 and a maximum fee of $250.00.

(f) Any person who violates any of the provisions of this regulation shall be subject to the penalties set forth in N.J.S.A. 23:2B-14.

(g) All persons commercially licensed to take crabs by means of dredges in this State shall keep, on forms furnished by the Division of Fish, Game and Wildlife, accurate records which shall include the number of bushels of crabs and the areas fished. These records will be filed monthly with the Division of Fish, Game and Wildlife. Failure to file on or before the tenth of the month following the month of record may lead to suspension of license by the Division of Fish, Game and Wildlife. Prior to such suspension, a hearing shall be scheduled by the division and the violator notified of the date. Failure to appear at a scheduled hearing may result in suspension of license.]

SUBCHAPTER 14. CRAB [POTS] MANAGEMENT

7:25-14.1 [Crab pots and trot lines defined] **Definitions**

[(a) For the purposes of this subchapter, a crab pot shall mean a cube or rectangular shaped device not larger than 30 inches on a side with openings inward for the entrance of crabs. Any similar device may be approved by the division. The material of which the pot is constructed shall have a mesh not less than one inch across measured on its longest axis. The openings into the interior of the pot shall be oval and not larger than seven inches wide and four inches high.

(b) For the purposes of this subchapter, a trot line, also known as a trawl or layout line, shall mean a single length of anchored line no longer than 3,000 feet to which baits or baited barbless hooks are attached.

(c) Crab pots and trot lines which fail to comply with this section shall be deemed invalidly licensed and in violation of this subchapter.]

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

"Crab dredge area" means all marine waters of the State including the Atlantic Ocean with the exception of the Newark Bay Complex, the State oyster beds defined in N.J.A.C. 7:25-19.1, any marked shellfish grounds leased pursuant to N.J.S.A. 50:1-23 and the Delaware Bay north and west of a line:

1. Beginning at a point (Corner 1) on the shore line of Cape May County (Lat. 39 deg. 04.35'N; Long. 75 deg. 54.83'W) thence running 247 deg. 38.08' (T) 21,127 feet to a point (Corner 2) where the Clam Line intersects the Brandywine-Dennis Creek Line (Lat. 39 deg. 05.66'N; Long. 74 deg. 58.96'W);

2. Thence running 221 deg. 14.32' (T) 4,871 feet to a point (Corner 3) (Lat. 39 deg. 05.06'N; Long. 74 deg. 59.64'W) located on the Dennis Creek Range Line;

3. Thence running 319 deg. 24.57' (T) 13,749 feet to a point (Corner 4) (Lat. 39 deg. 06.77'; Long. 75 deg. 01.54') located in the Delaware Bay;

4. Thence running 270 deg. 50.95' (T) 40,487 feet to a point (Corner 5) (Lat. 39 deg. 06.84'N; Long. 75 deg. 10.10'W) in Delaware Bay;

5. Thence running 329 deg. 27.45' (T) 25,825 feet to a point (Corner 6) (Lat. 39 deg. 10.49'N; Long. 75 deg. 12.90'W) on the Southwest Line; and

6. Thence running 235 deg. 24.00' (T) 7,561.25 feet to the ruins of the former lighthouse known as Cross Ledge Shoal in Delaware Bay.

"Crab pot" means a cube or rectangular shaped device not larger than 30 inches on a side with openings inward for the entrance of crabs. Any similar device may be approved by the Division. The material of which the pot is constructed shall have a mesh not less than one inch across measured on its longest axis. The openings into the interior of the pot shall be oval and not larger than seven inches wide and four inches high.

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

"Division" means the Division of Fish, Game and Wildlife.

"Land" means to transfer the catch of crabs from any vessel to any land, pier, wharf or dock.

"Newark Bay Complex" means the tidal Passaic River, the tidal Hackensack River, the Newark Bay, the Arthur Kill, and the Kill Van Kull.

"Resident" means one legally domiciled with the State for a period of six months immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile within the State is upon the applicant.

"Trot line" means a single length of anchored line no longer than 3,000 feet to which baits or baited barbless hooks are attached.

7:25-14.2 Use of crab pots and trot lines

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

(c) [All turtles and female crabs having eggs or spawn attached] **All other organisms other than crabs and conchs** shall be immediately released **to the waters from which such organisms were taken.**

(d) All licensed crab pots must be checked and emptied of all crabs and other organisms at least once every 72 hours.

(e) No person shall take or attempt to take crabs by pots or trot lines in the Newark Bay Complex.

7:25-14.4 Commercial licenses

(a) No person shall take or attempt to take crabs by any means for the purpose of sale or barter without having in his **or her** possession a valid commercial crabbers license issued by the Division of Fish, Game and Wildlife pursuant to N.J.S.A. 23:5-35.2. **To be eligible for a commercial crabbers license, the applicant must comply with one of the following:**

1. During 1993 and 1994, provide a copy of a previously valid 1991 or 1992 commercial crabbers license or oyster dredge boat license held by the applicant. Beginning with 1995 and in subsequent years, provide a copy of a previously valid commercial crabbers license held by the applicant from the preceding year;

2. Provide proof of completion of active military service within one year of applying for a commercial crabbers license; or

3. Registration with the Department on a form provided by the Department in the two successive years prior to the year of license issuance.

[1.]**(b)** The license fee for New Jersey residents shall be $100.00 **for a crab pot/trot line license and $100.00 for a crab dredge license. The license fee for non-residents will be the same as that for a resident if a New Jersey fisherman can obtain a license to harvest crabs in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be an amount equal to 10 times the $100.00 New Jersey resident license fee.** All licenses shall expire on December 31 of the **calendar** year **for which they were** issued.

[2. The] **(c) For crab pots and trot lines, the** license number shall be displayed on both sides of the crabber's boat amidship, in numerals not less than 12 inches high and of a color contrasting with their background.

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

7:25-14.6 Placement and marking of pots and trot lines

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

(c) No pot or trot line shall be placed in a creek, ditch or tributary less than [25] **50** feet wide at mean low water **or in any man-made lagoon** unless approved by the [division] **Division**, or in any marked or charted channel, except noncommercially licensed pots fastened to a pier or other shore connected structure by a line no longer than twice the depth of the water at that point.

(d)-(e) (No change.)

[7:25-14.7 Filing of reports

All persons commercially licensed to take crabs shall keep, on forms furnished by the Division of Fish, Game and Wildlife, accurate

records of the number of bushels of hard crabs, peelers and soft crabs caught, the type of gear used and the area fished. These records will be filed by the 10th day of each month with the Division of Fish, Game and Wildlife. If no crabs were harvested during the month, a report to that effect shall be provided.

7:25-14.8 Penalties

(a) Any person violating any of the provisions of this subchapter relating to crabs shall be liable to the penalties provided by N.J.S.A. 23:2B-14, except for (b) and (c) below.

(b) Any person not having a valid license in possession or failing to exhibit same for inspection by any authorized law enforcement officer while tending a pot or trot line, or violating any of the provisions of N.J.A.C. 7:25-14.5 or 14.6 shall be liable to a penalty of $20.00 for the first offense and $40.00 for each subsequent offense.

(c) Any person violating the provisions of N.J.A.C. 7:25-14.9 or N.J.A.C. 7:25-14.10 shall be liable to a penalty of $20.00 for each crab taken or had in possession.

(d) Pursuant to N.J.S.A. 23:10-21 and 21.1, any gear used in violation of the provisions of this subchapter may be seized and forfeited.

(e) The assessment of any administrative penalty shall not preclude the Department from prosecuting for a larger amount in the event the administrative penalty is not paid by the time requested.

(f) Nothing in this section shall require the Department to assess an administrative penalty before instituting prosecution.]

7:25-14.7 Use of crab dredges

(a) A person shall not catch or take crabs by dredges without having a valid crab dredge license in his or her possession. Crab dredges shall only be used in crab dredge areas and shall conform to the following specifications:

1. No boat shall have more than four dredges working at the same time, except in Delaware Bay where no boat shall have more than two dredges working at the same time.

2. The maximum length of each tooth bar shall be 75 inches north of Route 36 (Highlands Bridge), in Delaware Bay and the Atlantic Ocean, but if two or fewer dredges are in possession north of Route 36 (Highlands Bridge) or in the Atlantic Ocean then the maximum length of each tooth bar shall be 96 inches. The maximum length of the tooth bar in all other crab dredge areas shall be 38 inches.

3. The maximum weight of each dredge shall be 400 pounds north of Route 36 (Highlands Bridge), in Delaware Bay and the Atlantic Ocean, but if two or fewer dredges are in possession north of Route 36 (Highlands Bridge) or in the Atlantic Ocean then the maximum weight of each dredge shall be 500 pounds. The maximum weight of each dredge in all other crab dredge areas shall be 60 pounds.

4. The maximum length of the teeth shall be six inches north of Route 36 (Highlands Bridge), in Delaware Bay and the Atlantic Ocean and three inches in all other crab dredge areas.

5. The minimum space between teeth shall be two inches in Delaware Bay and three inches in all other crab dredge areas, measured at the base.

6. The collecting bag of a dredge, if material, shall have mesh not less than two inches bar measure or four inches stretched measure; if wire, shall not be less than two inches bar mesh (inside measurement) or two and one-half inches inside diameter if circular; if metal, the O-rings shall not be less than two inches diameter and be connected with no more than six "S" hooks that measure not less than two inches in length as measured to the inside of the "S" configuration.

7. Each dredge shall be independently and separately attached to the vessel by a single cable or tow line; except that two dredges can be towed by a single line in the Atlantic Ocean, north of Route 36 (Highlands Bridge) and Delaware Bay provided that the dredges are not solidly attached to each other in any way and are fastened to the tow line by a bridle that allows the dredges to act independently of each other.

(b) No person shall catch, take, or attempt to take crabs by dredge from any area except the "crab dredge area" as defined in N.J.A.C. 7:25-14.1. No person shall dredge or attempt to dredge crabs on any marked leased shellfish grounds. No person shall dredge or attempt to dredge crabs within 50 yards of any marked leased shellfish grounds.

(c) Any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish, which may be caught incidentally to the catching of crabs by dredge, shall be redeposited immediately in the water from which such clams, oysters, scallops, mussels, other bivalve mollusks, or finfish are caught. No person, while engaged in the catching and taking of crabs by dredge, shall have in his or her boat or possession any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish obtained from any source. Conchs may be retained in the crab dredge fishery as a by-catch only. The possession of bivalve mollusks or finfish, and dredges simultaneously in the boat of any person shall constitute prima facie evidence of the violation of this subsection.

(d) No person shall catch, take or attempt to catch or take crabs by means of a crab dredge except from one-half hour after sunrise to one-half hour before sunset and within the following seasons:

1. From November 15 through March 31 south of Route 30 (White Horse Pike) and in the Atlantic Ocean south of Absecon Inlet; and

2. From December 1 through March 31 north of Route 30 and in the Atlantic Ocean north of Absecon Inlet.

(e) No person shall catch, take or attempt to catch or take crabs by means of a crab dredge at any time on Sunday except north of Route 36 (Highlands Bridge) or in the Atlantic Ocean.

7:25-14.8 Landing crabs

All crabs harvested commercially in State waters shall be landed in this State.

7:25-14.11 Harvesting crabs by bait seine

Crabs may be taken by bait seines authorized pursuant to N.J.S.A. 23:5-24.2 and N.J.A.C. 7:25-18.5. Crabs taken by bait seines shall not be sold or used for barter. The maximum harvest and/or possession of crabs taken by bait seines is one bushel per day per individual.

7:25-14.12 Filing of reports

All persons commercially licensed to take crabs shall keep, on forms furnished by the Division of Fish, Game and Wildlife, accurate records of the number of bushels of hard crabs, peelers and soft crabs caught, the type of gear used and the area fished. These records shall be filed by the 10th day of each month with the Division of Fish, Game and Wildlife. If no crabs were harvested during the month, a report to that effect shall be provided. Failure to file on or before the 10th of the month following the month of record may lead to suspension or revocation of said license by the Department in addition to any penalties assessed under N.J.A.C. 7:25-14.13(b) below. Prior to any suspension or revocation of said license, the licensee shall have the opportunity to request a hearing pursuant to N.J.A.C. 7:25-12.

7:25-14.13 Penalties

(a) Any person violating any of the provisions of this subchapter relating to crabs shall be liable to the penalties provided by N.J.S.A. 23:2B-14, except for (b) and (c) below.

(b) Any person failing to file monthly reports as required in N.J.A.C. 7:25-14.12, or any person not having a valid license in possession or failing to exhibit same for inspection by an authorized law enforcement officer while tending a pot or trot line or dredging crabs, or violating the provisions of N.J.A.C. 7:25-14.5 or 14.6 shall be liable to a penalty of $20.00 for the first offense and $40.00 for each subsequent offense.

(c) Any person failing to check crab pots at least once every 72 hours pursuant to N.J.A.C. 7:25-14.2(d) shall be liable to a penalty of $20.00 for each pot in violation.

(d) Any person violating the provisions of N.J.A.C. 7:25-14.9 or N.J.A.C. 7:25-14.10 shall be liable to a penalty of $20.00 for each crab taken or had in possession.

(e) Pursuant to N.J.S.A. 23:10-21 and 21.1, any gear used in violation of the provisions of this subchapter may be seized and forfeited.

(f) The assessment of any administrative penalty shall not preclude the Department from prosecuting for a larger amount in the event the administrative penalty is not paid by the time requested.

(g) Nothing in this section shall require the Department to assess an administrative penalty before instituting prosecution.

(a)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Environmental Cleanup Responsibility Act Rules Fees

Proposed Amendments: N.J.A.C. 7:26B-1.3, 1.10 and 1.11

Proposed New Rule: N.J.A.C. 7:26B-1.12

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

Authority: N.J.S.A. 13:1D-1 et seq., 13:1K-6 et seq., particularly 13:1K-10, and 58:10-23.11 et seq.

DEPE Docket Number: 17-93-03.

Proposal Number: PRN 1993-191.

A **public hearing** concerning this proposal will be held on:
Friday, April 30, 1993 at 9:30 A.M.
1st Floor Public Hearing Room
401 East State Street
Trenton, New Jersey

Submit written comments by May 5, 1993 to:
Richard McManus, Esq.
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625-0402

The agency proposal follows:

Summary

Overview of Regulatory Changes

The Environmental Cleanup Responsibility Act (ECRA or Act) and the rules promulgated pursuant thereto, N.J.A.C. 7:26B, provide an effective means of mitigating the inherent danger to the citizens, property and natural resources of this State posed by the generation, manufacture, refining, transportation, treatment, storage, handling and disposing of hazardous substances and wastes by industrial establishments. The Act and the rules require an environmental audit and remediation, or the execution of an agreement for such remediation, by owners and operators of industrial establishments as a precondition for the sale, transfer or termination of operations at these facilities. A business is covered by the Act and the rules if it is an industrial establishment pursuant to N.J.A.C. 7:26B-1.3. In order for a facility to be considered an industrial establishment, it must have a standard industrial classification (SIC) number listed in the Act and the owner or operator must have engaged in operations on or after December 31, 1983 that involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances. (SIC numbers are set forth in the Standard Industrial Classification Manual 1987, prepared by the Federal Office of Management and Budget.)

The owner and operator of an industrial establishment becomes subject to ECRA regulation at the time of closing, terminating or transferring of the property or the business operations. If any of the above triggering events are anticipated, the owner or operator of an industrial establishment must submit either a cleanup plan or a negative declaration to the Department for approval, or enter into an ECRA Administrative Consent Order, prior to the closing, terminating or transferring of the industrial establishment. A cleanup plan, sometimes called a remedial action workplan, is defined in these rules as the execution of an approved document which details the measures necessary to detoxify the site of the industrial establishment, including buildings and equipment. A negative declaration is a statement by the owner or operator, subject to the approval of the Department, that there has been no discharge of hazardous substances on the site or that any discharge has been remediated with the approval of the Department. The Legislature granted the Department the authority to adopt "a fee schedule, as necessary, reflecting the actual costs associated with the review of negative declarations and cleanup plans." N.J.S.A. 13:1K-10(a).

The ECRA rules constitute one part of the overall site remediation program the Department administers for the investigation and cleanup of contaminated sites throughout New Jersey. Since it is important that all contaminated areas in New Jersey are remediated in a timely manner, the Department has focused intensely in the last year on encouraging private parties to voluntarily remediate contaminated sites of lower environmental priority. To promote this approach and to provide more guidance and predictability in its site remediation program, the Department proposed Procedures for Department Oversight of the Remediation of Contaminated Sites (Oversight Rules), N.J.A.C. 7:26C, 24 N.J.R. 1281(b) on April 6, 1992; and Technical Requirements for Site Remediation (Technical Rules) N.J.A.C. 7:26E, 24 N.J.R. 1695(a) on May 4, 1992. Together, these rules will ensure that all sites are investigated in accordance with minimum technical standards and that the same remedial processes and cleanup standards will apply regardless of the party conducting the work or the lead regulatory program overseeing the work.

As part of the coordinated and consistent approach to site remediation described above, the Department intends to ensure that a person pays similar reasonable fees for the Department's review and approval of similar documents, regardless of the regulatory program which reviews the document. For example, a remedial action workplan would require the same Department oversight costs whether the person filing the workplan is subject to the ECRA or Underground Storage Tank (UST) Program or filing it pursuant to an Administrative Consent Order. Therefore, these ECRA fee amendments are being proposed in conjunction with similar rule amendments to the fee rules for the Underground Storage Tank (UST) Program, N.J.A.C. 7:14B-3, and the New Jersey Pollutant Discharge Elimination System (NJPDES) Program, N.J.A.C. 7:14A-1.8, published elsewhere in this issue of the New Jersey Register. These amendments are consistent with the oversight cost formula outlined in Appendix I of the proposed Oversight Rules.

The Department proposed modifications to the ECRA fee rules at N.J.A.C. 7:26B-1.10 on March 2, 1992, at 24 N.J.R. 720(a), to provide that a review fee shall accompany each sampling plan or cleanup plan submittal. In addition to the above, the proposal also modified N.J.A.C. 7:26B-1.10(d) and 1.13(a) to provide that a person applying under the small business standard shall submit an affidavit, properly certified, that it meets the criteria in the small business definition. The Department adopted these new requirements on January 4, 1993 (see 25 N.J.R. 100(a)).

In anticipation of the adoption of the Technical Rules, N.J.A.C. 7:26E, and a future proposal to the ECRA rules requiring that all ECRA remediation activities be conducted in accordance with the Technical Rules, the Department is also proposing to modify the terminology it uses to refer to document submittals in the fee schedule to be consistent with the terms used in the Technical Rules. Thus, the Department has replaced references to "sampling plan" with "sampling plan or remedial investigation workplan" since the Technical Rules use the phrase "remedial investigation workplan" for a document that is equivalent to the ECRA sampling plan. Furthermore, references to a "cleanup plan" and "cleanup" have been replaced with "cleanup plan or remedial action workplan" and "remediation." Finally, these proposed amendments introduce into the ECRA rules the term "site investigation," which is part of the process set forth in the Technical Rules. A site investigation is the collection of data to determine the existence of contamination at a site. Owners and operators subject to ECRA currently submit this information as part of the Initial Notice.

The Department is proposing several changes to its fee schedule at N.J.A.C. 7:26B-1.10(c). Presently, all ECRA fees are based on categorical activities. For example, the fee for all Administrative Consent Order applications is $2,000 and the fee for the Department's oversight of a cleanup estimated to cost over one million dollars is $12,000. In reevaluating the costs associated with administering the ECRA Program, the Department has determined that the fees for some activities are not closely related to the Department's level of efforts spent in performing each activity and do not reflect the Department's costs in administering the program. For example, the Department may spend 100 hours per year for five years overseeing a cleanup worth more than one million dollars. The $12,000 fee presently assessed does not cover the Depart-

ment's oversight costs in this instance. As a result, the fees currently assessed are not adequate to fund an appropriately staffed ECRA Program.

The Department is proposing to revise the fee schedule to charge fees related to the Department's level of effort and costs spent performing an activity. As a result, the amount of these ECRA fees will depend on the complexity of the environmental contamination at the industrial establishment and the quality of the workplans and reports submitted to the Department. The Department is proposing to retain flat fees for certain categorical activities, but to directly bill the owner or operator for the Department's costs in reviewing workplans and reports, and overseeing cleanups of contaminated sites.

The Department is retaining flat fees for Initial Notice Review, Negative Declaration Review, Administrative Consent Orders, ACO Amendments, DeMinimus Quantity Exemptions, Limited Conveyance Reviews, Applicability Determinations and Confidentiality Claims. These fees are calculated based upon the average number of hours expected for staff review of these applications multiplied by the hourly rate for the average staff member who would be assigned to conduct the review and the overhead factors described in the discussion of direct billing, below. Examples of the calculations are included in the Economic Impact statement. Based upon the Department's recalculations of costs, the Department is proposing to change the fees for Initial Notice Review, DeMinimus Quantity Exemption and ACO Amendments. In addition, the Department is adding a new negative declaration amendment fee. The fees for negative declaration review and negative declaration amendment review will only be imposed on those cases which can be closed by the Department during the Initial Notice phase. If the case requires further review by a case manager, the costs for reviewing these documents will be included within the direct billing charges.

Fees for staff time to review sampling plans or remedial investigation workplans, cleanup plans or remedial action workplans, performance of cleanup or remediation oversight functions and other case-specific tasks relating to industrial establishments undergoing remediation will be billed directly to the owner or operator responsible for conducting the remediation. This direct billing system provides three benefits. First, the actual fee charged will reflect the amount of Department time necessary for each specific case. As stated above, this will depend on the complexity of the case and the quality of the work product submitted to the Department. Second, the Department is assured of collecting enough revenue to administer the program, providing all owners and operators pay the appropriate fees. Previously, up front fees were estimated based upon projections that were not always realized. Third, this system is being implemented across the various programs in the Department which administer and oversee the remediation of contaminated sites. Thus, the fee schedule for similar oversight activities in the different site remediation programs will be consistent.

The Department believes that this system will be an economic benefit to the regulated community. A possibility exists that a significant percentage of the revenue expectations will not be realized due to a large number of non-payors. The Department will evaluate over the next several years the effectiveness of the new system in collecting the necessary revenues. If the direct billing system fails to collect the revenue necessary to administer the different site remediation programs, a revised system utilizing up front fees will be reconsidered.

The direct billing fees will be calculated using data maintained by the Department through its Job Cost System. This system is utilized to account for all expenditures incurred by the Department for the various fee programs, bond projects, capital construction projects, Federal grants and each hazardous site cleanup project. The Department calculates the number of hours spent on a specific site or activity through its Job Cost System.

The Department assigns a three-digit Project Activity Code (PAC) to each contaminated site, Federal grant, project and activity undertaken by the Department. Most major projects, such as a contaminated site cleanup project, will have several three-digit Project Activity Codes or a single three-digit Project Activity Code with a variable fourth digit assigned to account for the various tasks or activities performed during the course of the project. These Project Activity Codes are coded on all documents processed by the Department including timesheets, vendor invoices, employee expense vouchers, revenue documents, as well as internal debits and credits. In addition to site specific project activity codes, the Department has assigned project activity codes to administrative activities such as employee training, staff meeting attendance and supervisory activities.

Timesheets are prepared by all employees within the Department. The employee is required to account for his or her hours on a weekly or bi-weekly basis by the Project Activity Code assigned to the site specific project or activity on which the individual had worked, and certify that the time reported is valid and accurate. The employee's supervisor reviews the timesheets and certifies that to the best of his or her knowledge, it is correct and accurate. Prior to the information being entered into the Job Cost System, the timesheets are edited and zero-balanced to the payroll records to account for all the individuals within Department and the hours worked during that two week period.

This information is maintained by the Department within the data base of the Job Cost System by Project Activity Code. The system details all expenses incurred for direct labor by State personnel, travel, supply and equipment costs, contractor costs and administrative and indirect costs by Project Activity Code.

In preparing a cost summary of expenditures on a specific site, a report is prepared on the individual Project Activity Codes assigned to the project or activity. The report details the direct labor, contractor costs and any other expenses directly associated with that site. In regard to labor costs, the report is able to identify by Project Activity Code the employee's name, hours worked by pay period, hourly rate of pay and work location by bureau within the Department. With regard to contractor costs and other expenses, the report is able to identify the payee's name, date paid, amount paid, invoice document number and the obligation or encumbrance number against which the invoice was paid.

In calculating the direct billing fees based on the total administrative costs incurred by the Department on a project, the Department will apply fringe benefit, salary additive and indirect cost rates to the direct labor charges. These costs plus any direct contractor and expense costs are totaled to arrive at the total expenditures incurred on the specific project. The formula is as follows:

$$\text{Direct Billing Fee} = A + B$$

where A = (number of hours) × (hourly salary rate) × (salary additive rate) × (fringe benefit rate) × (indirect cost rate); and
B = (sampling costs) + (costs of contractor assistance)

The hourly salary rate is the annual salary divided by the number of working hours in a year. The salary additive rate is used to apply a portion of the individual's benefit time, such as vacation, sick leave, administrative leave and holidays, to the direct labor costs. This rate is developed annually by the Department based on the actual costs incurred as coded in the Job Cost system. For Fiscal Year 1993 (FY1993), the salary additive rate is 1.22.

The fringe benefit rate which is applied to the direct labor costs is developed by the Department of Treasury's Office of Management and Budget (OMB). This rate is developed and negotiated with the U.S. Department of Health and Human Services on an annual basis and directed by OMB Circular Letter for use by all State agencies. The rate reflects the employer's contribution for pension, health benefits, worker's compensation, temporary disability insurance and F.I.C.A. For FY93, the fringe benefit rate is 1.2935.

The indirect cost rate is then applied to the total of the direct salary costs, salary additive and fringe benefit charges. The indirect cost rate is developed in accordance with the State's OMB Circular Letter 86-17 and the Federal OMB Circular A-87. Included in the rate calculation are all costs which are allowable under the above-mentioned Circular Letters. These costs include the Department's overhead costs which are incurred for a common purpose such as salaries for management, personnel and financial management staff and non-salary costs such as office supplies and equipment, and the Site Remediation Program's proportionate share of the Department's building rent. The indirect rate includes Site Remediation Program staff that do not code to a specific site (clerical, administrative, data management, planning). The indirect rate also includes the Site Remediation Program's proportionate share of Department's allocation of costs to run State government as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The cost components for the indirect rate calculation is based on the actual expenditures as detailed in the Department's Job Cost System. The costs are segregated based on the PACs to develop the indirect cost pool.

The rate is the result of dividing the indirect cost pool by the total direct project costs. This rate is developed on an annual basis utilizing the actual expenditures for the State's Fiscal Year. The indirect rate for the Site Remediation Program for fiscal year 1993 is 1.3424.

In calculating the indirect cost rate, the Site Remediation Program must account for its proportionate share of the direct and indirect salary and nonsalary costs for Department management. Department management includes, for example, the costs associated with the Commissioner's Office, the DEPE Offices of Management and Budget, Communications and Legislative and Intergovernmental Affairs. The indirect salary costs for management in the Site Remediation Program includes all salary costs for managers under the authority of the Assistant Commissioner for Site Remediation who do not code to a site specific project. In addition, the Site Remediation Program must pay the Division of Law for the costs it incurs in providing legal representation to the Site Remediation Program. These costs may be divided into direct, site specific activities or indirect costs.

The current indirect rate for the Site Remediation Program was based on numbers generated in FY'91 and calculated as follows: The Department took the total salary costs in the Department for the Site Remediation Program and its support services, $35,351,274.76 and divided it into two categories: salary costs ($34,749,921.80) for full time employees to which the full fringe benefit rate is applied and salary costs ($601,352.96) for part-time or seasonal employess or overtime work to which the reduced fringe benefit rate is applied. The non-site specific salary costs for Department management ($7,424,837.16) and the Site Remediation Program ($9,312,594.47) were deducted from the total leaving $18,613,843.13 in net site specific salary costs for the Site Remediation Program. The Department then applied the fringe benefit rate for full time and part-time employees to this sum and arrived at a total cost for direct, site specific salary costs. In FY'91, this sum was $23,871,365.23.

Similarly, the Department took the non-site specific salary costs for Department management and the Site Remediation Program; applied the fringe benefit rate and arrived at a total cost for indirect salary cost of $21,481,765.62. To this sum the Department added the non-salary indirect costs for the Department management ($875,573.10), the Site Remediation Program ($3,542,937.83), the building rent ($5,460,536.28) and the proportionate share of the State Allocation Plan ($683,298.88) to arrive at the total indirect costs of $32,044,111.72. The Department divided $23,871,365.23, the total costs for direct, site specific salary costs, into $32,044,111.72, the total indirect costs to arrive at an indirect cost rate of 134.24 percent.

The Department is also proposing to limit the separate fee schedule for small businesses, since the Department's level of effort in reviewing documents submitted by a small business is substantially the same as its efforts in reviewing a document submitted by a larger business. However, a small business fee for Initial Notice review and Negative Declaration Review have been retained, in order to limit the economic impact placed on these small businesses for these activities. There is no reduction in the fees for small businesses which need to advance through the ECRA process due to the presence of contamination at the site.

Prior to the payment of a direct billing fee, the recipient of the bill will have an opportunity to object to it. Within 30 days after receipt of a bill, an objector may file a written request for a fee review with the Department. Upon receipt of a written objection to a bill, the Department will attempt to resolve all factual issues in dispute informally. The Department will review the assessment and provide the objector with additional documentation as necessary. The objector may, after receipt of this additional information, request that the Assistant Commissioner for Site Remediation or his or her designee, conduct a review of the matter. If an informal resolution cannot be reached, the Department may determine the matter to be a contested case and transmit it to the Office of Administrative Law for an adjudicatory hearing.

The Department has limited the scope of the fee review to certain factual issues. For example, the Department will not entertain a challenge to a fee based on DEPE management decisions. Nor will the Department consider objections based on the salary additive, fringe benefit or indirect rates. The Department will, however, allow fee reviews based on factual questions such as whether the bills are for proceedings that never occurred, whether there was duplicative billing the same expenditure, incorrect billing to one site for costs incurred at another, or costs that never should have been incurred because they are not in any way associated with overseeing a case.

In the event that an owner or operator does not pay the direct billing charges when billed, the Department may initiate any of several courses of action. The Department may discontinue review or oversight activities, not issue full compliance or no further action letters, not release financial assurance or initiate enforcement action.

Specific Changes to N.J.A.C. 7:26B

The definitions of "remedial action," "remedial investigation" and "site investigation" were added to N.J.A.C. 7:26B-1.3 to be consistent with the definitions of these terms as proposed in the Technical Rules, Oversight Rules and Cleanup Standards.

The Department is proposing to revise the fee for Initial Notice at N.J.A.C. 7:26B-1.10(c)1. An owner or operator with an Initial Notice submission will be charged $1,000; if the owner or operator is a small business, it will be charged $750.00. This is modified from the existing fee schedule at N.J.A.C. 7:26B-1.10(c)1i through iv which included fees ranging from $2,000 through $7,500, depending on the submission of or the complexity of the Sampling Plan. The small business fees ranged from $750.00 through $4,500. The current fee schedule was designed to collect enough fees for both the Initial Notice Review and the Sampling Plan Review. This new initial notice fee schedule proposed today is being implemented to accurately reflect the administrative staff time which is necessary to process the Initial Notice application. Any staff time necessary to process and review a sampling plan and any further remedial action activities after the administrative review is complete will be billed directly to the owner or operator and will be in addition to the Initial Notice Review fee.

The Sampling Plan Data Review fee formerly located at N.J.A.C. 7:26B-1.10(c)2 has been deleted in favor of the direct billing procedure discussed above.

The Department is adding a new negative declaration amendment fee of $100.00 at N.J.A.C. 7:26B-1.10(c)3. The fee includes the Department's average administrative and inspection costs associated with amending a negative declaration. For example, when a triggering event changes from a sale to a cessation of operations, the Department may reinspect the facility to ensure that hazardous substances or wastes have been removed from the industrial establishment and that the negative declaration remains valid.

The Cleanup Plan fee and the Oversight of Cleanup Plan fee formerly located at N.J.A.C. 7:26B-1.10(c)4 and 5, respectively, have been deleted in favor of the direct billing procedure discussed above.

The Department is increasing the fee for review of applications for De Minimus Quantity Exemptions, now located at N.J.A.C. 7:26B-1.10(c)5, from $300.00 to $500.00, and for Administrative Consent Order (ACO) Amendments, now located at N.J.A.C. 7:26B-1.10(c)8, from $500.00 to $1,000. In addition, the Department is lowering the fee for Applicability Determinations, now located at N.J.A.C. 7:26B-1.10(c)4, from $200.00 to $100.00. The new fees more accurately represent the Department's cost for processing these applications.

The Department has not changed the fees for Negative Declaration Review (both standard and small business), Limited Conveyance Reviews, ACO Applications and Confidentiality Claims.

N.J.A.C. 7:26B-1.10(e)1 has been amended to require that the Initial Notice Review fee be submitted with the General Information Submission (GIS), instead of the Site Evaluation Submission (SES). Currently, the fee amount is not known until the SES is completed. Since the proposed amendment has a flat fee for the initial notice of $1,000, there is no need to wait until the SES is complete for the fee to be submitted.

The requirement at N.J.A.C. 7:26B-1.10(e)2, concerning fees for sampling data, has been deleted in favor of the direct billing procedure. A new fee has been added to allow the Department to recover the costs of developing a parameter-specific cleanup standard for contamination at the industrial establishment in the absence of an applicable cleanup standard. The fee will be based upon the direct billing method described above.

N.J.A.C. 7:26B-1.10(e)4 and 5, which detail the fees for cleanup plans, have been deleted. A new N.J.A.C. 7:26B-1.10(e)4 has been added which describes the method and formula for the direct billing procedure. This method and procedure is described in the Summary above and in the Economic Impact statement below.

A new N.J.A.C. 7:26B-1.10(e)5 has been added to clarify that the Department will directly bill the owner or operator that paid an Oversight of Cleanup Plan Implementation fee prior to the effective date of these amendments only after the costs of the Department exceed the amount of the fee paid. As stated previously, the current fees do not adequately cover the Department's costs. The previously paid fees can be translated, using the direct billing formula, into an anticipated number of hours of staff time expended. If the Department incurs more costs than the previously paid fee, the Department will as of the operative date of these amendments initiate direct billing to the owner or operator.

A new N.J.A.C. 7:26B-1.10(e)10 has been added to describe the administrative procedures available to the Department if a fee is not paid by the owner or operator of the industrial establishment. The Department may decide to not issue a full compliance letter, or a negative declaration approval. In addition, the Department may discontinue work on a particular submittal until such time as all fees are paid or pursue enforcement action.

A new N.J.A.C. 7:26-1.12 has been added to describe the procedures a person must follow in order to object to a direct billing fee.

Social Impact

A positive social impact will result from the proposed amendments to the ECRA fee schedule. The proposed amendments will provide the funds necessary to appropriately staff the ECRA Program and thereby provide the turnaround of initial notice submissions, workplans and reports that have been committed to as part of the Environmental Management Accountability Package legislation. These reviews allow industrial establishments to proceed with the sale or transfer of property, or cessation of operations.

Economic Impact

The Department anticipates the proposed ECRA fees imposed by N.J.A.C. 7:26B-1.10 will provide approximately $8,910,000 in Fiscal Year 1994 (FY94). These increased fees are essential to the continued performance of the ECRA program's administrative and remedial oversight activities and will increase or decrease based upon the actual level of effort expended by the Department to respond to the workload. The anticipated increase in fee revenues from the FY92 fee revenue level of $5,800,000 reflect not only the increases needed to directly fund program personnel level of full-time positions, or full-time equivalents (FTEs), but also the increases in the costs to support an FTE. Staff salaries, fringe benefits, overhead or operating expenses have all increased since the last fee adjustments in 1988. In addition to staff salaries, this includes costs for rent, telephone services, insurance, postage, maintenance, employee benefits, equipment, training and printing. Although the Fiscal Year 1992 (FY92) revenue was only $5,800,000, the total budget for the ECRA program was $7,200,000. This included $1,400,000 in carryover costs from fees paid in prior years for reviews being conducted today. The breakdown of costs for FY94 is as follows:

Salary	$4.76M
Fringe Benefits	1.40M
Operating + Overhead	2.75M
Total	$8.91M

These fees will cover the costs for 119 FTE's associated with administering the ECRA Program. The costs represent a proportionate reduction in four FTEs from FY92 staffing levels. Salaries are based on the current salary costs as of July 1992. The fringe benefit rate of 29.35 percent has been established by Department of Treasury. The operating and overhead costs represent the ECRA Program's proportionate share of Department overhead costs, such as salaries for management personnel not directly funded by the ECRA Program and building rent, as well as operating costs for the program such as office and data processing supplies, telephones and postage equipment.

Since 1988, the Department has adjusted its resources to reflect the needs of the ECRA Program. Less new cases are coming into the process whereas more cases are receiving cleanup plan approvals. Thus, the remedial oversight activities are taking more hours per FTE than in previous years. Rather than increasing the administrative fees to cover these costs, the Department, as described earlier in the Summary, has decided to bill the actual costs of the remedial oversight work to the industrial establishment.

The Department anticipates the following annual revenues to be generated by the revised fee system. These projections are based upon the expected submissions and applications for FY94:

	$Fee		# of activities		Total Fee ($M)
Administrative Determinations					
Initial Notice (assume half are small businesses paying $750)	1000.00	×	825	=	.70
Negative Declaration Review (assume half are small business paying $250)	500.00	×	400	=	.20
Negative Declaration Amendment	100.00	×	200	=	.02
Applicability Determination	100.00	×	3000	=	.30
De minimus Quantity Exemption	500.00	×	36	=	.02
Limited Conveyance Review	500.00	×	12	=	.01
Administrative Consent Order	2000.00	×	90	=	.18
ACO Amendment	1000.00	×	10	=	.01
Confidentiality Claim	350.00	×	10	=	.003
Direct Billing					
Remediation oversight based on the Department's costs	100 hr/case/year	×	1150	=	7.52
					$8.91M

The fees for administrative determinations include reviews of Initial Notices, Applicability Determinations, De Minimus Quantity Exemptions, Limited Conveyance Reviews, Administrative Consent Orders, ACO Amendments, and Confidentiality Claims. These fees are fixed based upon average costs calculated based upon a formula reflective of the amount of staff time dedicated to the review. The formula takes into account staff salaries, indirect and direct costs. Costs are calculated based upon the number of hours expected for that review multiplied by the hourly rate for the particular staff member involved and the overhead factors. These overhead factors were described earlier in the Summary.

The following example calculation shows the method for determining the fee amounts. Experience has shown that an average of 16 hours are required to review an Initial Notice submission. Using average salary hourly rates of $17.00/hour and the additive, fringe and indirect factors of 1.22, 1.2935, and 2.3424 respectively, yields the following calculation: $(16 \times 17) \times 1.22 \times 1.2935 \times 2.3424 = \$1{,}000$. Other categorical fees are calculated in a similar manner, using the following review times: Negative Declaration Review, De Minimus Quantity Exemption Review, and Limited Conveyance Review, eight hours; Negative Declaration Amendment, 1.5 hour; Applicability Determination, 1.5 hours; Administrative Consent Order, 32 hours; Administrative Consent Order Amendment, 16 hours; Confidentiality Claim, one hour (includes extra costs for storage).

Fees calculated by direct billing include review of sampling plans or Site Investigation Workplans and Remedial Investigation Workplans, cleanup plan or Remedial Action Workplans and Remediation Oversight activities. These fees have been revised to reflect the Department's costs to conduct these tasks. The proposed fee system will incorporate billings from the Department to the applicant for the recovery of actual costs incurred. Actual costs are determined by the site-specific project activities coding by staff, including case managers, geologists, technical coordinators, supervisors, and section chiefs who have worked on the case. These direct hours are used in the formula calculation for direct billing charges.

The revenue projection for direct billing for remediation oversight is based upon the number of cases which can be handled by the current remediation oversight staff multiplied by the average number of hours anticipated to be spent reviewing the case by that case manager and support staff (technical coordinators, geologists). All other activity projections are based upon the expected submissions and applications for FY94.

The specific direct billing for any particular site may encompass a large range depending on the degree of complexity of the case and the quality of the work submitted. A remediation involving only soil cleanup at one or two areas of concern (AOC) may only involve tens of hours, which could mean a direct billing fee of less than $1,000. A larger project with many areas of concern, including ground water contamination may require hundreds of hours of oversight, which could mean a direct billing fee in the tens of thousands of dollars. The following charts describe the range of review times and direct billing charges for different types of situations. These estimates may also change based upon the work product submitted for Department review.

# of hours/case

Type of Review	<10 AOC's	>10 AOC's
Remedial Investigation and Remedial Action Workplans	50-100	100-250
Remediation Oversight (per year; average case takes 2.5 years)	...	75-200

Direct Billing Charges/case

Type of Review	<10 AOC's	>10 AOC's
Remedial Investigation and Remedial Action Workplans	$3,150-$6,300	$6,300-$15,750
Remediation Oversight (per year; average case takes 2.5 years)	...	$4,725-$12,600

Environmental Impact

The proposed amendments to the fee schedule will provide sufficient revenue to the Department to appropriately staff the ECRA Program. The Department will be more responsive and timely in its oversight and guidance, thus providing a positive environmental impact by allowing the remediation of the contamination at industrial establishments to proceed without delay.

Regulatory Flexibility Analysis

N.J.A.C. 7:26B applies to any owner or operator of an "industrial establishment" who plans to "close, terminate or transfer" the operations of the industrial establishment, unless the operation or transaction is exempted from ECRA under N.J.A.C. 7:26B-1.8. Based upon experience in administering ECRA, the Department estimates that approximately 825 industrial establishments become subject to ECRA each year, and that approximately 500 of these establishments are owned or operated by "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In addition, the Department recognizes that in practice a larger number of persons will elect to obtain an applicability determination from the Department pursuant to N.J.A.C. 7:26B-1.9, even though they are not subject to ECRA. The Department cannot estimate how many of these persons are "small businesses," because it lacks the data to support such an estimate.

The Department has determined that it can reduce fees for certain activities for small businesses without any effect on the environment, public health, or public safety. Accordingly, the fee schedule at N.J.A.C. 7:26B-1.10(c) provides reduced fees for small businesses for Initial Notice Submissions and Negative Declaration Reviews. These are activities which are necessary on a frequent basis by small businesses. The Department has based the fees for all other remedial activities on the time for Department staff to complete reviews of these submissions. Since owners or operators of industrial establishments who submit these remedial documents have a need to assess the degree of contamination at the site, the Department believes that providing a smaller fee would place an undue burden on other fee-payors. In many instances, a small business will have a smaller number of areas of concern and a lesser degree of contamination, resulting in less Department review and a lower cost for the small business' remedial action workplan.

In developing the proposed amendments and new rule, the Department has balanced the need to protect human health, property and the environment against the economic impact of these rules and has determined that to minimize the impact of the rules based upon the size of the business would unacceptably endanger human health, property and the environment. As a result, a reduced fee for certain activities has been included for only certain limited activities within the fee schedule located at N.J.A.C. 7:26B-1.10.

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

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.

...

"Remedial action" means remedial action as defined in N.J.A.C. 7:26E-1.8.

"Remedial investigation" means remedial investigation as defined in N.J.A.C. 7:26E-1.8.

...

"Site investigation" means site investigation as defined in N.J.A.C. 7:26E-1.8.

7:26B-1.10 Fee schedule

(a) The owner or operator shall pay all applicable fees required by this section upon submittal to the Department of each submission for negative declaration, [sampling plan, cleanup plan,] **negative declaration amendment,** applicability determination, de minimus quantity exemption, Certificate of Limited Conveyance, ACO, **ACO Amendment, confidentiality claim** or Initial Notice, except as provided at [(e)4i and (e)5i] **(e)3** below. The applicable fee required by this section shall be submitted with each and every submittal made to the Department. The fees required by this section are not one time fees but rather the fees required to perform the review of the specific submittals to the Department.

(b) [All] **The owner or operator shall pay all** fees required by this section [shall be paid] by certified check, attorney check, [or] money order, or by personal check if received 60 days prior to the issuance of any document specified in (a) above. Checks and money orders shall be made payable to ["New Jersey Department of Environmental Protection".] **"Treasurer, State of New Jersey."** All fees shall be mailed to the address specified at N.J.A.C. 7:26B-1.11.

(c) Fees for those Departmental services listed below shall be as follows:

	Standard	Small Business
1. Initial Notice Review	**$ 1,000**	**$ 750.00**
[i. Without Sampling Plan	2,000	750.00
ii. With Sampling Plan that includes only an underground storage tank analysis without ground water monitoring	3,000	1,500
iii. With Sampling Plan, other than ii above or iv below	5,000	3,000
iv. With Sampling Plan that includes any ground water monitoring	7,500	4,500
2. Sampling Plan Data Review	1,000	1,000]
[3.]**2.** Negative Declaration Review	500.00	250.00
3. Negative Declaration Amendment	**100.00**	**100.00**
[4. Cleanup Plan (based on cost of cleanup)		
i. $1-$9,999	1,000	1,000
ii. $10,000-$99,999	2,500	2,500
iii. $100,000-$499,999	5,000	5,000
iv. $500,000-$999,999	8,000	8,000
v. Over $1,000,000	11,000	11,000
5. Oversight of Cleanup Plan Implementation (based on cost of cleanup)		
i. $1-$9,999	1,000	1,000
ii. $10,000-$99,999	3,000	3,000
iii. $100,000-$499,999	7,000	7,000
iv. $500,000-$999,999	10,000	10,000
v. Over $1,000,000	12,000	12,000]
[6.]**4.** Applicability Determination	[200.00 **100.00**	200.00] **100.00**
[7.]**5.** De Minimus Quantity Exemption	[300.00 **500.00**	300.00] **500.00**
[8.]**6.** Limited Conveyance Review	500.00	[250.00] **500.00**
[9.]**7.** Administrative Consent Order	2,000	2,000
[10.]**8.** ACO Amendment	[500.00 **1,000**	500.00] **1,000**
[11.]**9.** Confidentiality Claim	350.00	350.00

(d) (No change.)

(e) The schedule for submission of fees shall be as follows:

1. The initial notice review fee [based upon the applicable sampling plan category] shall be submitted with the [SES] **GIS.**

2. [Any sampling data submitted to the Department shall be accompanied by the appropriate fee. Data submitted for no more than three underground storage tank integrity tests, if that is the only sampling data submitted to the Department, shall not be assessed a sampling plan review fee.] **The owner or operator conduct-**

ing a remediation at an industrial establishment with contaminaton caused by a contaminant which does not have a Cleanup Standard established pursuant to a rule adopted by the Department shall pay the Department's costs to develop a Cleanup Standard in accordance with (e)7 below.

3. [Any negative declaration submission shall be accompanied by the appropriate fee.] **The Department may require that the owner or operator submit a fee with the negative declaration or negative declaration amendment submission pursuant to (c)3 or 4 above or may charge the owner or operator for the costs to review the negative declaration or negative declaration amendment pursuant to (e)7 below. The Department shall base this decision on the anticipated complexity of the initial notice, remedial investigation workplan, or remedial action workplan submissions by the owner or operator. The fee for simpler submissions will be imposed pursuant to (c)3 or 4 above and the fees for more complex submissions will be imposed pursuant to (e)7 below.**

[4. Any draft cleanup plan or partial cleanup plan submitted shall be accompanied by the cleanup plan review fee based upon the estimated cleanup cost contained in the draft cleanup plan.

i. If the approved cleanup plan costs estimate or actual cleanup cost estimate is in a higher fee category, the owner or operator shall submit a payment for the difference in the fees within 30 days of issuance of cleanup plan approval or with the final report on cleanup plan implementation action report, whichever is appropriate. If the actual cleanup cost is in a lower fee category, a refund will be issued by the Department within 90 days of issuance of a letter of full compliance.

5. The cleanup plan oversight fee shall be paid within 14 days from the receipt of the Department's cleanup plan approval letter and shall be based on the estimated cleanup cost contained in the cleanup plan.

i. If the actual cleanup cost is in a higher fee category, the owner or operator shall submit a payment for the difference in the fees with the final report on cleanup plan implementation. If the actual cleanup cost is in a lower fee category, a refund will be issued by the Department within 90 days of issuance of a letter of full compliance.]

Recodify existing 6. to 8. **4. to 6.** (No change in text.)

7. The owner or operator shall submit the remediation oversight fee to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged for all oversight activities including and subsequent to the review of the sampling plan. The Department shall include the following information in the summary: description of work performed, staff member(s) performing work, number of hours performed by the staff member(s) and staff member's hourly salary rate. The remediation oversight fee schedule shall be as follows:

i. The Department will bill the owner or operator at regular intervals throughout the duration of the remediation based on the formula in (e)7ii below to recover its costs.

ii. Direct billing fees are based on the Department's costs of working on activities for an industrial establishment. This fee is based upon the following formula:

$$\text{Administrative Costs} = A + B$$

where A = (Number of coded hours) × (Hourly Salary Rate) × (Salary Additive Rate) × (Fringe Benefit Rate) × (Indirect Cost Rate) and

B = (Sampling costs) + (Costs for contractor Assistance).

(1) Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all State employees including, without limitation, case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, using the specific PAC, will be included in the formula calculations.

(2) The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

(3) The salary additive rate represents the prorated percentage of charges attributable to NJDEPE employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours × hourly salary rate) are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

(4) The fringe benefit represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and Non-State funded programs.

(5) The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(A) The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services, the Division of Personnel and Department of Law and Public Safety.

(B) The indirect rate also includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of Statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

(C) The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

(6) Direct costs represent any non-salary direct, site-specific costs including, but not limited to, laboratory analysis or contractor expenses. These costs will be billed directly as a formula add on.

8. The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate to be used by the Site Remediation Program for the fiscal year in the New Jersey Register.

9. The Department shall impose fees pursuant to (e)7 above on the owner or operator of an industrial establishment that paid an Oversight of Cleanup Plan Implementation fee if the Department's cost associated with that case exceed the previously paid fee.

[9.]**10.** Any request for an ACO **or ACO amendment** shall be accompanied by the appropriate fee.

11. The owner or operator shall not receive a full compliance or negative declaration letter from the Department unless all fees for work previously billed by the Department to the industrial establishment are paid. The Department may discontinue review or oversight of a submittal from the owner or operator of the industrial establishment unless all fees for work previously billed are paid. In addition, the Department may consider the failure to pay a fee to be a violation of the Act.

7:26B-1.11 Forms

Any forms, fees or other information required to be submitted by this chapter shall be obtained from and returned to the **New Jersey** Department of Environmental Protection **and Energy**, Industrial Site Evaluation Element, CN 028, Trenton, New Jersey, 08625-**0028**. Courier and hand deliveries may be made to 401 East State Street, 5th Floor East, Trenton, New Jersey 08625.

7:26B-1.12 Fee review

(a) To contest a fee imposed pursuant to N.J.A.C. 7:26B-1.10(e)7, the objector shall, within 30 days after the objector's receipt of the bill for the fee from the Department, submit to the Department a written request for a fee review pursuant to (d) below. An objector may contest the fee based on the following:

1. The Department has no factual basis to sustain the charges assessed in the fee;

2. The activities for which the fee was imposed did not occur;

3. The charges are false or duplicative; or

4. The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

(b) An objector may not contest a fee if the challenge is based on the following:

1. An employee's hourly salary rate;

2. The Department's salary additive rate, indirect rate, or fringe benefit rate; or

3. Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

(c) The objector shall submit a fee review request to the Department at the following address:

Office of Legal Affairs
Attention: Fee Review Requests
DEPE
CN 402
Trenton, NJ 08625-0402

(d) An objector shall include the following in a request for a fee review:

1. A copy of the bill;

2. Payment of all uncontested charges, if not previously paid;

3. A list of the specific fee charges contested;

4. The factual questions at issue in each of the contested charges;

5. The name, mailing address and telephone number of the person making the request;

6. Information supporting the request or other written documents relied upon to support the request;

7. An estimate of the amount of time required for an informal meeting with Department representatives or an adjudicatory hearing before the Office of Administrative Law; and

8. A request, if necessary, for a barrier free hearing location for physically disabled persons.

(e) If the objector fails to include any information or the payment required by (d) above, the Department may deny a request for a fee review or an adjudicatory hearing on the fee.

(f) Upon the Department's receipt of a request for a fee review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that a fee imposed was incorrect, the Department shall adjust the fee and issue a new bill which shall be due and payable within 30 days after receipt.

(g) The Department may, if it determines that the factual issues involving a fee dispute cannot be resolved informally, determine the matter to be a contested case, transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to N.J.S.A. 52:14B-1 et seq.

(h) The Department, if it denies a hearing request, shall briefly state the reasons for such denial. Such denial shall be considered final agency action.

(i) If the objector does not file a request for a fee review within 30 days after the objector's receipt of the bill for the fee from the Department, the full amount of the fee shall be due and owing. If the bill is not paid, the Department may take any action in accordance with N.J.A.C. 7:26B-1.10(e)11.

(a)

OFFICE OF ENERGY

Low Emission Vehicles Program

Reproposed New Rules: N.J.A.C. 7:27-26

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

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 26:2C-8 et seq., specifically 26:2C-8 and 8.1 through 8.5.

DEPE Docket Number: 21-93-03.

Proposal Number: PRN 1993-213.

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

Wednesday, May 5, 1993, at 10 A.M.
New Jersey Department of Environmental Protection and Energy
Hearing Room, 1st Floor
401 East State Street
Trenton, New Jersey 08625

Submit written comments by May 19, 1993 to:

Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

A number of documents have been cited within this notice as references or as documents being incorporated by reference. Copies of these documents may be requested from:

David West, Chief
Bureau of Transportation Control
Office of Air Quality Management
Department of Environmental Protection and Energy
CN 411
Trenton, New Jersey 08625

Copies of the documents incorporated by reference may also be obtained from the Office of Administrative Law.

These new rules will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal is set forth below. It contains six major components: a "Summary" section which describes the purpose and scope of proposed rules, a "Social Impact" section which describes the anticipated social effects of the proposed rules, an "Economic Impact" section which sets forth the anticipated costs and benefits of the proposed rules, an "Environmental Impact" section which sets forth the anticipated emission reductions to be obtained, a "Regulatory Flexibility" section which examines the effect of the proposed rules on small businesses, and a full statement of the text of the proposed new rules.

Summary

On April 6, 1992, the New Jersey Department of Environmental Protection and Energy (Department) proposed at 24 N.J.R. 1315(a) new rules, N.J.A.C. 7:27-26 (subchapter 26). The Department was proposing, with these new rules, that all new 1996 and subsequent model year passenger cars and light-duty trucks sold or leased for registration in New Jersey shall meet strict standards for the emission of air contaminants identical to the standards that have been established for such vehicles in the State of California. A summary of public comments and agency responses to the April 6, 1992 proposal appears at the end of this Summary.

P.L.1993, c.69, approved March 10, 1993, requires that the Department review and consider the findings in the written report to be prepared within nine months by the New Jersey Institute of Technology (NJIT), pursuant to section 9 thereof, before adopting administrative rules, such as those proposed on April 6, 1992, establishing a low emission vehicle (LEV) program in New Jersey. The rules of the Office of Administrative Law (OAL) addressing agency rulemaking, N.J.A.C. 1:30, provide that "[i]f a proposal has not been adopted and filed with the OAL within one year from the date the proposed rule was published in the New Jersey Register, the proposal expires." N.J.A.C. 1:30-4.2(c). With respect to the Department's April 6, 1992 LEV proposal, compliance with both P.L.1993, c.69, and OAL's requirement for timely adoption of proposals would be impossible. Accordingly, the Department is now resubmitting the proposal for publication in the Register, again with the notice and opportunity to be heard requirements of the Administrative Procedure

Act (APA), N.J.S.A. 52:14B-1 et seq., in order that it may adopt these rules as soon as possible while safisfying both legislative and administrative rulemaking requirements. After the N.J.I.T. report is prepared and prior to adoption of this proposal, the Department will provide opportunity for additional public comment to address issues raised in the N.J.I.T. report.

P.L.1993, c.69, allows implementation of the LEV program, prior to the 1998 motor vehicle model year only if the states of Delaware, Maryland, New York and Pennsylvania are implementing an LEV program pursuant to legislative enactment or adopted rules and regulations for that particular model year. P.L.1993, c.69, allows implementation of the LEV program during or after the 1998 motor vehicle model year commencing with the model year in which the number of jurisdictions within the Ozone Transport Region (OTR) comprising no less than 40 percent of the total number of registrations of new motor vehicles in all of the OTR, excluding New Jersey, are implementing an LEV program pursuant to legislative enactment or adopted rules and regulations. The OTR is defined at section 2 of P.L.1993, c.69, to encompass the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia and the District of Columbia.

Since the aforementioned triggering events for implementation of the LEV Program cannot be predicted at this time, neither can the actual year of implementation. Accordingly it has been necessary to define and use the term "effective model year" in the rules and presumably the term will be continued in the adoption. As soon as the Department determines the effective model year, it will publish a notice of administrative change in the New Jersey Register.

The April 6, 1992 proposal included several provisions taking effect as early as model year 1996 that become more stringent in succeeding years. This proposal continues this practice even though it is highly unlikely that program implementation would occur as early as that model year. Delayed implementation of the LEV Program will, however, be accompanied by a loss of certain such "phase-in" provisions, for example, N.J.A.C. 7:27-26.4(b)6 and (l)3. This loss is essential to maintain "identicality" with California's program as required by the Federal Clean Air Act, 42 U.S.C.A. §7401 et seq. Thus, a provision may include a particular requirement applicable to model year 1996, a more stringent one for model year 1997, and an even more stringent one for model year 1998 and thereafter. If the effective model year turns out to be model year 1997, the requirement applicable to model year 1996 would not go into effect, the requirement applicable to model year 1997 would be the first to go into effect, and the requirement for model year 1998 and thereafter would be in effect for all subsequent model years.

In its decision in *Motor Vehicle Manufacturers Ass'n v. New York State Department of Environmental Conservation,* No. 92-CV-869 (N.D.N.Y. January 26, 1993) (MVMA), the Federal District Court held that New York State's LEV program violated §177 of the Clean Air Act (CAA), 42 U.S.C.A. §7401 et seq., in four areas. The holdings on three of these counts are of interest to New Jersey. The court held that New York's failure to regulate fuels for sulphur content as part of its LEV program would require the creation of a "third vehicle" to accommodate such fuels. The creation of a "third vehicle" is prohibited at CAA §177. In addition the court held that New York's adoption of a zero emissions vehicle (ZEV) sales mandate violated both the prohibition against indirectly limiting the sale of other California-certified vehicles and the prohibition against requiring the creation of a "third vehicle."

P.L.1993, c.69, §5 prohibits the Department from requiring the sale and use of reformulated gasoline other than that certified pursuant to CAA §211(k) and further provides that should such sale or use be required by court order because of the implementation of the LEV Program, the LEV Program shall expire 180 days from the date of such law or order. Accordingly, if the *MVMA* court's holding, requiring New York to regulate fuels for sulphur content as part of an LEV program, were found applicable to New Jersey, the Department's ability to continue the LEV Program under P.L.1993, c.69, §5 would be at risk.

The holding in *MVMA* is currently under reconsideration before the District Court and appeal to the Second Circuit has been filed. While a similar holding in the District of New Jersey or the Third Circuit would be binding, the holding of the *MVMA* court is not. It is the Department's position, in support of New York, that the court's ruling on these issues is incorrect. For these reasons, the Department is going ahead with this proposal.

The proposed new rules include several defined terms not included in the April 6, 1992 proposal including "effective model year" (the first model year affected by the implementation of New Jersey's LEV Program) and "Ozone Transport Region (OTR)" discussed above. A definition for "low emission vehicle program" is also proposed.

In order to solicit additional comment on addressing rental vehicles in the general prohibition at N.J.A.C. 7:27-26.3 against new motor vehicles that have not been certified in accordance with these rules after the effective model year, the rules now include a partial exemption. This proposed exemption would allow the vehicle to be rented to a final destination within New Jersey only if 30 days have not lapsed since its delivery to a New jersey rental car agency from a non-New Jersey origination point. Otherwise, the vehicle shall remain idle until next rented with a final destination outside of New Jersey. The Department still reserves the right in the adoption of these rules not to include this partial exemption for rental vehicles.

The purpose of this rulemaking is to reduce emissions of air pollutants from new motor vehicles as part of New Jersey's overall effort to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide (CO). This action is one part of a comprehensive program to control motor vehicle emissions. Other components include use of cleaner fuels, enhanced vehicle inspection and maintenance, and actions to reduce motor vehicle use. It is the intent of these proposed rules to achieve these motor vehicle emission reductions primarily through the establishment of vehicle emission standards. It is not the intent of these proposed rules to establish any particular fuel requirements. Automobile manufacturers may, however, in order to meet the proposed standards, elect to manufacture vehicles designed to use alternative fuels such as compressed natural gas (CNG), methanol, ethanol, liquid petroleum gas (LPG), or hydrogen. The Department does intend at a later date to propose rules that set forth market incentives to encourage the use of these alternative fuels in centrally-fueled fleet vehicles.

The Federal Clean Air Act sets forth five different classifications of the severity of the non-attainment with the NAAQS for ozone. These designations relate to how far an area's ambient air quality is from the national standard. The non-attainment classifications for ozone range from "marginal" to "extreme," with an area classified as "extreme" having the worst ambient air quality. Eighteen of New Jersey's 21 counties have been classified by the United States Environmental Protection Agency (EPA) as being in the "severe" non-attainment category for ozone (greater than 50 percent above the NAAQS). This includes six counties which are part of the Greater Philadelphia Consolidated Metropolitan Statistical Area (CMSA) and 12 counties which are part of the New York/New Jersey/Connecticut CMSA. The Clean Air Act mandates that the Greater Philadelphia CMSA must attain the ozone standard by 2005, and the New York/New Jersey/Connecticut CMSA must attain the ozone standard by 2007 and maintain it thereafter.

The non-attainment classifications for carbon monoxide (CO) range from "moderate" to "serious." Five counties in New Jersey have been designated as being in the "moderate" non-attainment category for CO (greater than the NAAQS). In addition, 12 cities within 10 other New Jersey counties are designated non-attainment but are currently not classified. The Clean Air Act mandates that both classified and non-classified non-attainment areas must be brought into attainment by December 31, 1995, and maintained in attainment thereafter.

The Department is currently in the process of finalizing the 1990 base year emission inventory. Public workshops will be held in April, followed by a public hearing later in the spring, to finalize this 1990 base year emission inventory. The emission inventory as prepared by the Department using acceptable EPA procedures and the MOBILE-5.0 emission factor model indicates that motor vehicles contributed 28 percent of the volatile organic compound emissions and 36 percent of the oxides of nitrogen (NO_X) during the ozone season. The inventory during the period when carbon monoxide levels are elevated (primarily the winter months) indicates motor vehicles contribute over 80 percent of the CO in the five county non-attainment areas. The Environmental Protection Agency has also published national data. In the National Air Quality and Emissions Trends Report for 1990, EPA found transportation sources accounted for 35, 38 and 63 percent of the national VOC, NO_X, and CO emissions respectively (1) (**Note:** Numbers in parentheses throughout the proposal statements note references which are summarized at the end of the proposal statements.)

To determine the reductions needed to meet the NAAQS, photochemical air quality modelling is needed. The EPA report entitled "Regional Ozone Modelling for Northeast Transport (ROMNET) Final Report" (2) documents such an effort. This report is generally recognized

as a definitive and current assessment of urban ozone in the OTR. The OTR, which was established by operation of law pursuant to the Clean Air Act (see 42 U.S.C.A. §7511c(a)), as mentioned above, includes the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, as well as the District of Columbia. The ROMNET report concludes that future attainment of the ozone health standard will be extremely difficult to achieve throughout the OTR. The report further concludes that within the OTR, attainment of the ozone standard will be most difficult to achieve within the New York/New Jersey/Connecticut CMSA. The ROMNET report states that VOC reductions of more than 75 percent may be necessary for this area. For the Greater Philadelphia CMSA, the ROMNET study concludes, "the full complement of NO_X controls plus the maximum technology VOC measures may be necessary."

Recently, the Ozone Transport Commission (OTC) completed one phase of a regional air quality sensitivity analysis. This analysis is referred to as the Matrix Sensitivity Analysis. The OTC used the Regional Oxidant Model (ROM). This analysis indicates that 50 to 75 percent reductions in NO_X emissions will result in large reductions in ozone. For VOC emission reductions, the largest ozone reductions are predicted in the vicinity of major urban areas. The incremental benefits of reducing of NO_X emissions appear to be greater than the corresponding benefits of reducing VOC emissions. In the analysis there are several cautions including the uncertainty in the biogenic emissions, the potential underestimation of the mobile source emissions, the grid size, vertical resolution of the model, and the fact that only one episode was modeled. Given the portions of the inventory resulting from motor vehicle emissions, it is evident that attainment of the NAAQS for ozone and maintenance of the CO standards cannot be realized in New Jersey unless substantial motor vehicle emission reductions are achieved.

The emission reductions expected to be achieved by this motor vehicle emission control program are also necessary to offset the expected continued growth in vehicle miles travelled. Project: Clean Air, a private, public and government effort, was founded in 1988 to investigate and recommend motor vehicle and transportation control strategies to reduce air pollution. The Project: Clean Air study report (3), dated September 6, 1991, concluded that travel will grow in New Jersey by 25 percent by the year 2010 (1.7 percent per year through 1999 and 1.5 percent per year thereafter). Moreover, Project: Clean Air's Steering Committee focused on State land use policy and specific transportation control measures (TCMs) to alleviate emission increases due to growth. The Steering Committee concluded that even if all the TCM's it recommended as being reasonable were implemented, travel would still grow by 14 to 15 percent by the year 2000. As such the committee also endorsed adopting the California standards as one of the measures essential to attaining the ozone NAAQS. Project: Clean Air found that unless significant reductions in vehicle emissions are achieved, New Jersey may be compelled to place further, more onerous restrictions upon vehicle use in order to attain the ozone NAAQS. Such restrictions could include prohibitions on driving, imposition of fees for parking, and increased tolls and gas taxes.

The ROMNET estimate of the projected emission reductions needed to comply with the Clean Air Act requirements and the findings of Project: Clean Air help demonstrate that New Jersey must, in the current decade, adopt and implement the most aggressive mobile and stationary source controls available. New Jersey, as well as other states in the OTR, will need to consider all available control measures in developing the compliance strategies which will be implemented over the next 15 years. The Department has determined that one of these available necessary measures is to adopt as part of a comprehensive, regional strategy a program which establishes strict vehicle emission standards identical to those adopted by the State of California.

In addition to the Clean Air Act's general requirements to attain the NAAQS for ozone, the Act requires that New Jersey reduce emissions of volatile organic compounds 15 percent by 1996 and three percent each year thereafter until attainment. Where ozone reduction benefit can be shown, the three percent reductions may include NO_X reductions as well as VOC reductions. Beginning in November 1992, the states were required to submit plans to EPA for review and approval. New Jersey submitted its plan to USEPA on November 13, 1992. The plans, which are called State Implementation Plans or SIPs, specify how these emission reduction requirements will be met. The SIP specifying how the 15 percent reduction will be achieved is due to EPA in 1993. The SIP for three percent reductions is due in 1994. The California vehicle emission standards are a key component of New Jersey's overall plan for meeting the mandated emission reduction requirements—increasingly during the years after 1996, when New Jersey must show continuous reductions each year. The phase-in of the more stringent emission requirements over time in the California low emission vehicle program correlates with this need to show continuous reductions.

Under the Clean Air Act, failure to submit and implement an approvable SIP would result in the imposition of costly Federal sanctions. Potential sanctions include a prohibition of major industrial development, the revocation of certain Federal highway funds, and the preemption of New Jersey's air pollution control authority through the promulgation of a Federal Implementation Plan (FIP). In addition, the Clean Air Act requires that New Jersey reduce emissions of volatile organic compounds 15 percent by 1996 and three percent each year thereafter until attainment. If New Jersey fails to meet these emission reduction milestones, the State will be required to implement contingency measures. It is likely that the contingency measures would be less desirable to implement relative to the LEV Program.

To enable New Jersey to attain and maintain the NAAQS for ozone and CO, the Department plans to institute a comprehensive mobile source emission control program which addresses aspects of the motor vehicle pollution problem in addition to that proposed in these rules. In addition to controlling new vehicle emissions, this comprehensive program will include the following three components: (1) implementing Federal reformulated gasoline requirements; (2) enhancing vehicle inspection and maintenance (I/M); and (3) reducing vehicle miles traveled. These components will work in concert to reduce mobile source emissions. While no single component is predicted upon existence of the others, the reductions achieved by implementing a coordinated approach to mobile source control would outweigh the sum of the independent parts. In the new rules proposed herein, only the first of these components of the Department's comprehensive mobile source control program is addressed, controlling new vehicle emissions. The other components will be implemented through separate State and Federal regulatory actions in accordance with the schedule developed by EPA in accordance with the Clean Air Act.

Since the 1960's, the Clean Air Act and the regulations promulgated thereunder by EPA have established standards for the emissions of contaminants from new motor vehicles. See 42 U.S.C.A. §7521. In general, these standards preempt individual states from adopting their own emission standards. However, the Clean Air Act authorizes the states to set emissions standards for new motor vehicles if certain conditions are met. See 42 U.S.C.A. §§7507 and 7543. The State of California has had a vehicle emissions control program in place since the 1950's, and is the only state authorized under the Clean Air Act to set its own vehicle emission standards which may differ from the Federal standards. California's emissions standards can be different than, and will supplant, the Federal standards provided that the EPA determines the California standards to be at least as protective of public health and welfare in the aggregate as the Federal limits. See 42 U.S.C.A. §7543(b).

States with approved State Implementation Plans, such as New Jersey, are authorized to adopt emission standards, provided that such standards are identical to California's. See 42 U.S.C.A. §7507. However, if these non-attainment states elect not to adopt the California standards, then vehicles sold or leased in those states would still be subject to the Federal vehicle emission standards. These recently adopted Federal emission standards, which are commonly referred to as the "Tier I" standards, are applicable to all 1994 and subsequent model year vehicles.

This proposal sets forth the Department's intent to adopt the California standards for new effective model year and subsequent model year vehicles sold or leased within the State. The new rules proposed herein would establish a New Jersey Low Emission Vehicle Program (hereinafter) referred to as the LEV Program). This program would be based on California's Low Emission Vehicle program and would have vehicle emission standards identical to those established for passenger cars and light-duty trucks sold or leased in California. New Jersey's implementation will occur at the onset of the effective model year which is determined to be the 1998 or subsequent model year in which the number of jurisdictions within the OTR, comprising no less than 40 percent of the total number of registrations of new motor vehicles in all of the OTR, excluding New Jersey, are implementing an LEV Program pursuant to legislative enactment or adopted rules and regulations. However, the effective model year shall be that model year prior to the 1998 model year when the states of Delaware, Maryland, New York and

Pennsylvania are implementing an LEV Program pursuant to their legislative enactment or adopted rules and regulations for that particular prior model year.

The Department has worked with business and industry, environmental groups, and interested citizens in the development of this proposal. On November 7, 1991, the Department held a public workshop to provide interested parties the opportunity to discuss a conceptual version of this rule proposal (4). On December 10, 1991, the Department held a follow-up workgroup meeting to focus on the concerns of the regulated community identified at the public workshop. Persons representing vehicle manufacturers, automotive dealers, the petroleum industry, and public interest groups participated. Written comments were also forwarded to the Department following the workgroup session. The Department also held formal public hearings concerning the April 6, 1992 proposal on May 19, 1992 and June 3, 1992. The Department has considered the comments received during the informal public consultation process and the formal public hearings in developing this rule proposal.

The Department is also working in cooperation with the other states in the OTR to implement the LEV Program, as part of a regional strategy to control motor vehicle emissions. New Jersey's persistent ozone air quality problem is in part generated by emissions transported into the State as well as emissions generated within the State. This reality dictates that New Jersey will need emission reductions regionally as well as emission reductions within its own borders, if the State is to achieve timely attainment of the ozone standard. The eleven member states and the District of Columbia, comprising the OTC, have signed a memorandum of understanding to proceed with the adoption of the LEV program in their respective states (5). Already New York, Massachusetts and Maine have taken action on rules which would adopt the LEV Program in their states (6,7). Massachusetts adopted its LEV rules on January 31, 1992, New York adopted its rule on May 20, 1992, and Maine adopted its rule on February 17, 1993. The Department views this regional interstate cooperation as significant in respect not only to achieving emission reductions, but also to precluding any potential resultant economic inequities among OTR states. P.L.1993, c.69, further addresses this concern in conditioning implementation of the LEV program on similar adoptions by other members.

Additionally, interaction between the California Air Resources Board (CARB) and air pollution control staff in New Jersey and other participating OTR states in support of the development of the LEV program in the northeast is on-going. This interaction, which will continue throughout the course of implementing and maintaining the LEV program, is essential to ensure that issues specific to New Jersey and the OTR are considered and addressed. Further, the Department has encouraged New Jersey business and industry leaders to consult their counterparts in California and draw on the experience that has been gained with the LEV program in California.

The LEV Program proposed herein would apply to all new effective model year and subsequent model year passenger cars and light-duty trucks up to 5750 pounds loaded vehicle weight. Passenger cars are defined as motor vehicles designed primarily for transportation of persons and having a design capacity of up to 12 persons. Light-duty trucks are defined as motor vehicles rated at up to 5750 pounds gross vehicle weight, which are designed primarily for transporting property or which are available with special features for off-highway operation.

The proposed program would not apply to medium-duty vehicles, heavy-duty trucks, motorcycles or off-highway equipment of any type. Heavy-duty vehicles are defined to include motor vehicles other than passenger cars, with a gross vehicle weight rating of more than 8500 pounds. Medium-duty vehicles are defined as heavy-duty vehicles with a gross vehicle rating of between 5750 and 8500 pounds. This part of the California LEV program is scheduled for implementation in California beginning in model year 1998. Prior to such implementation in California, the Department will evaluate the incremental benefit of including these vehicles in the LEV program. This approach is consistent with actions taken by New York, Massachusetts and Maine.

Beginning with model year 1994 vehicles, the Clean Air Act sets national vehicle emission standards which are commonly referred to as "Tier I" standards. The LEV program has standards that are more stringent than the Tier I standards. Although the Tier I vehicle emission standards are more stringent than prior Federal standards, the emission reductions to be achieved under the Federal Tier I program nonetheless fall short of the long range emission reductions required of New Jersey under the Clean Air Act and which the LEV program would provide. The Clean Air Act does include contingent emission standards which are similar to the LEV Program standards. See 42 U.S.C.A. §7521(h). However, the imposition of these standards, which are commonly referred to as the "Tier II" standards, is dependent upon several factors, including the results of studies to be conducted by the EPA and the Federal Office of Technology Assessment, and the results of rulemaking activities to be conducted thereafter. Based upon the results of such studies, the EPA may determine that more stringent *national* standards than the Tier I standards are not necessary and, therefore, EPA may not promulgate the Tier II standards. Even if EPA does promulgate Tier II emission standards, this could occur as late as 2006 which would provide emission reduction benefits later than required for New Jersey. Such a decision will be based upon a national analysis and could fail to respond to specific requirements of New Jersey or the OTR. Alternatively, if the EPA determines that more stringent standards are necessary, EPA may promulgate either the Tier II standards, or alternate standards, which must still be more stringent than the Tier I standards. In the event EPA determines that the more stringent standards are necessary, these new standards will take effect at the earliest for model year 2003 and may not take effect until model year 2006, one year after parts of New Jersey and most of the OTR must reach attainment of the NAAQS for ozone. Therefore, Tier II standards would not contribute to timely attainment of the NAAQS for ozone. As such, if New Jersey were to rely on Tier II standards, it would be compelled to implement more onerous, and less desirable, alternatives such as further reductions in vehicle miles traveled and less cost effective small source controls for industrial and commercial facilities.

Clearly, the imposition of more stringent Federal standards than the Tier I standards is highly speculative. There is considerable uncertainty concerning whether or when Tier II standards will go into effect and what those standards may actually be. Therefore, the Department in its considerations could not rely on emission reductions associated with such standards and realized the need to move forward with the LEV program as an important element of its comprehensive motor vehicle emissions control program. In the event that more stringent Federal standards are imposed at some future date, the Department will, at that time consider their impact on the LEV Program.

As of the year 2005, when most of the OTR must attain the ozone NAAQS, the vehicle emission reductions obtained under the LEV Program would surpass those that would be obtained under the Federal Tier I program for VOC, NO_x, and CO by 27.9 percent, 19.1 percent, and 13.3 percent, respectively. (This information is contained in a report commissioned by the Northeast States for Coordinated Air Use Management (NESCAUM) and prepared by E.H. Pechan and Associates. This report is hereinafter referred to as the Pechan Report (8).) In New Jersey in 2015, the LEV Program will provide, relative to the mandated Federal Tier I Program, further emission reductions of 21 to 58 tons of VOC per summer weekday, 31 to 49 tons of NO_x per summer weekday, and 219 to 730 tons of CO per winter weekday. Obtaining these reductions of base emissions from new motor vehicles which are greater than those which may be achieved under the mandated Federal vehicle emissions program is essential if New Jersey is to attain the ozone NAAQS.

A report recently released by the Mid-Atlantic Regional Air Management Association (MARAMA), entitled "Adopting the California Low Emission Vehicle Program in the Mid-Atlantic States," also prepared by E.H. Pechan (19), utilizes updated emission modeling and inventory information. The study's conclusions however, are consistent with the NESCAUM study although the projected emission reductions vary somewhat.

Further benefits from the LEV program are expected in the emissions of toxic air contaminants. Appendix-1 of the Pechan Report states that "based on modeling conducted for this study, by the year 2015, 1,3-butadiene emissions from light-duty motor vehicles are expected to decrease by 23 percent to 66 percent, benzene emissions by 21 percent to 54 percent and formaldehyde emissions by 19 percent to 62 percent as a result of implementing the LEV Program."

The proposed new rules include the adoption of the California vehicle emission standards, including the adoption of exhaust emission standards for formaldehyde, and a zero emission vehicle (ZEV) sales mandate. The Department's adoption of these LEV standards will supplant the application of Federal vehicle emission standards in New Jersey. However, adoption of the California vehicle standards will not obviate the need for other mobile source control programs mandated by the Clean Air Act, such as requirements for clean fueled fleets, enhanced inspection and maintenance, and reducing motor vehicle use.

The LEV Program allows vehicle manufacturers greater flexibility in how they may achieve conformance with the standards than does the Federal program. Under the Federal Tier I standards, all vehicles of the same general type (for example, all passenger cars and light-duty trucks up to 5750 pounds loaded vehicle weight) must comply with a single set of tailpipe emission standards for non-methane hydrocarbons (NMHC), carbon monoxide (CO), and nitrogen oxides (NO_X). However, in the LEV program the Department is proposing five different categories of emission standards to which vehicle manufacturers may choose to certify particular model year engine classes. These categories include: standard vehicle (SV) which is equivalent to the Federal Tier I standards, transitional low emission vehicle (TLEV), low emision vehicle (LEV), ultra-low emission vehicle (ULEV), and zero emission vehicle (ZEV). The categories are defined based on the allowable exhaust emissions which are set forth in Tables 1, 2, and 3 of N.J.A.C. 7:27-26.4. The exhaust emission components specified are for CO, NO_X, non-methane organic gases (NMOG), and formaldehyde. The standards become increasingly stringent as the vehicle type goes from standard to transitional to low to ultra-low to zero. Manufacturers would be allowed to market new vehicles with engines certified to any of these five categories, provided that average NMOG emissions of the mix of vehicles sold does not exceed specified annual limits that grow more stringent each year. Thus, each manufacturer is allowed to take into consideration its production and distribution costs, consumer demand for its vehicles, and to elect to pursue a marketing strategy which the manufacturer determines to be the most cost effective means of achieving the standard.

In addition, in order to ensure continued progress toward a cleaner fleet, the LEV Program would require, beginning in model year 1998, that at least two percent of the manufacturers' annual sales be vehicles certified as ZEVs, which emit no regulated air contaminants. This minimum percentage would grow to five percent in 2001 and to 10 percent in 2003. Of course, manufacturers are free to elect to sell a higher percentage of ZEVs than the specified amounts if they decide that it would be appropriate to do so.

These proposed new rules, as required by P.L.1993, c.69, Section 5, do not include California's reformulated fuel requirements. This is consistent with the approach of New York, Massachusetts and Maine. The Department seeks comments from the public on the advisability of encouraging the use of alternative fuels in New Jersey and means for doing so. The Department seeks to encourage manufacturers to market at least a small but significant number of dedicated alternatively fueled vehicles. The Department requests comments suggesting approaches to encourage the production of such vehicles for use in vehicle fleets where central fueling locations are accessible.

Specifically, the proposed new rules include the following provisions:

Applicability: At N.J.A.C. 7:27-26.2, these proposed rules set forth the model year and types of motor vehicles that would be subject to the proposed LEV Program. In this rulemaking, LEV standards are not being proposed for all types of motor vehicle classifications. Rather, at the present time the Department is limiting the applicability of the LEV Program to effective model year and subsequent model year passenger automobiles and light-duty trucks of up to 5750 pounds loaded vehicle weight. The LEV Program set forth herein does not apply to medium-duty vehicles, heavy-duty trucks, motorcycles, or off-highway equipment of any type.

Prohibitions: N.J.A.C. 7:27-26.3 generally prohibits the sale, registration, importation, purchase, leasing, gift, acquisition or receipt of any effective model year or subsequent model year automobile which is not in compliance with the proposed new rules. However, the Department has proposed several exceptions to this prohibition in order to recognize the nature of dealer to dealer transfers and other transactions which make application of the prohibition inappropriate:

- Transfers to dealers;
- Transfers for the purpose of wrecking or dismantling;
- Transfers for registration outside New Jersey;
- Transfers for use exclusively off-highway;
- Rental of vehicles in possession of a rental agency in New Jersey; however, if more than 30 days has passed since the vehicle was delivered to a New Jersey rental car agency from a non-New Jersey origination point, the exception shall apply only if the vehicle is next rented with a final destination outside New Jersey;
- Passenger cars or light-duty trucks acquired outside New Jersey by a New Jersey resident for the purpose of replacing a vehicle which, outside New Jersey, was damaged beyond reasonable repair, became inoperative beyond reasonable repair, or was stolen;
- Vehicles transferred by inheritance or court decree;
- Vehicles transferred after the operative date of the proposed new rules, if the vehicles were registered before the effective date; and
- Vehicles certified by EPA and originally registered in another state by a resident of that state, who subsequently establishes residence in New Jersey.

Emission Standards: Manufacturers electing to sell vehicles in New Jersey must submit an application for certification for each vehicle/engine combination. If a vehicle has been certified by the Executive Officer of the CARB, duplicative certification testing and procedures for New Jersey will not be required. Where a manufacturer produces a vehicle for sale in New Jersey which will not be sold in California, the application for certification may be submitted to the Commissioner of the Department. The application must demonstrate the vehicle's compliance with all provisions of "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." The procedure involves submission of data by the applicant which demonstrates that the candidate's vehicle complies with exhaust and evaporative emission standards applicable to the vehicle type and model year at zero miles and over a prescribed number of accumulated miles (also referred to as the durability vehicle basis). The candidate vehicle must also comply with hardware requirements such as emission control labeling and onboard-diagnostics. If the application for certification demonstrates compliance with the applicable standards and requirements, the Executive Officer of CARB or the Commissioner of the Department may grant a certificate of conformity for the vehicle which allows the vehicle to be sold in the respective states.

At N.J.A.C. 7:27-26.4, these rules set forth five different categories of emission standards to which vehicle manufacturers may choose to certify particular model year engine classes. Certification of new vehicles includes the testing of the manufacturer's prototype motor vehicles by engine family according to certain test procedures which have been formulated by the California Air Resources Board. These categories include: standard vehicles (SVs); transitional low emission vehicles (TLEVs); low emission vehicles (LEVs); ultra-low emission vehicles (ULEVs); and zero emission vehicles (ZEVs). The exhaust emission standards for each of these categories apply to carbon monoxide (CO), nitrogen oxides (NO_X) and formaldehyde (HCHO), and non-methane hydrocarbons (NMHC) or non-methane organic gases (NMOG). The specific vehicle category standards have been established by the CARB. The Clean Air Act requires that states which choose to adopt a motor vehicle emissions program other than the Federal Tier I program must adopt emission standards that are identical to the California program.

In-Use Compliance Standards: At N.J.A.C. 7:27-26.4, these proposed new rules set forth emission standards which must be met by vehicles after accumulation of mileage in-use. Generally, the manufacturer, upon submitting an application for certification, must demonstrate that the candidate vehicle will comply with the certification standard over a 50,000 mile or 100,000 mile period depending on the vehicle type and model year. In the case of the Low Emission Vehicle standards set forth in N.J.A.C. 7:27-26.4, in-use compliance standards, in effect until model year 1998, are proposed which are somewhat less stringent than the certification standards. These "intermediate in-use compliance standards" are intended to ease the burden of compliance on manufacturers during the early years of implementation.

Reactivity Adjustment Factors: At N.J.A.C. 7:27-26.4, these proposed new rules set forth the emission standards for TLEVs, LEVs, and ULEVs. Although the proposed new rules do not require the use of alternate fuels, if a manufacturer elects to meet the certification standards by using a fuel other than gasoline, the test procedures for demonstrating compliance with these standards will allow for emissions to be "adjusted" to reflect the different ozone forming potential of emissions from vehicles using the alternate fuel. In this way, manufacturers have an incentive to produce alternatively fueled vehicles which are "inherently low emitting," that is, vehicles whose in-use control of emissions is less vulnerable to the deterioration of emission control hardware. The reactivity adjustment factor is an inherent part of a LEV program.

Fleet Emission Average Requirement: At N.J.A.C. 7:27-26.6, these proposed rules allow each vehicle manufacturer to market any combination of new vehicles with engines certified to any of the five categories of emission standards, provided that the average NMOG emissions of the mix of vehicles sold and leased annually by that manufacturer does not exceed a specified fleet average requirement that grows more stringent each year. Small volume manufacturers (those with sales in

California of less than or equal to 3000 new vehicles per model year) are given flexibility for how they meet the fleet average and the time frame in which they must meet this average.

Enforcement of the Fleet Average: The Department is proposing to allow for consumer choice to determine the combination of vehicles sold or leased in New Jersey, and not to bring an enforcement action if the fleet average is exceeded. This approach is being taken in order to maximize program effectiveness while minimizing administrative burden, and in order to develop regional consistency. This approach is consistent with rules recently adopted by New York, Massachusetts and Maine.

ZEV Sales Mandate: At N.J.A.C. 7:27-26.6, the proposed new rules will require that beginning in model year 1998 a certain percentage of the vehicles marketed and sold by each manufacturer will be zero emission vehicles (ZEVs). Starting with model year 1998, two percent of each manufacturer's fleet would be required to be ZEVs. This requirement would increase to five percent in model year 2001 and to 10 percent in model year 2003 and thereafter. The ZEV sales mandate will, in the long run, provide a greater assurance of achieving the maximum emission reduction benefit, particularly because, unlike gasoline-fueled vehicles, emissions from these vehicles will not increase as the vehicle ages. In addition, the ZEV is ideally suited for urban environments, where the State's worse air quality exists. Urban driving, characterized by slow speeds and stop-and-go traffic, strains the ability of the emissions control systems on conventionally-fueled vehicles to maintain low emission levels.

The ZEV, however, maintains zero emissions under these driving conditions and, in fact, gains a considerable advantage in overall efficiency due to battery recharging during frequent braking conditions.

Intermediate volume manufacturers (those with sales in California of between 3001 and 35,000 new light-duty and medium-duty vehicles) would be exempt from the ZEV sales requirement until the model year 2003. Small volume manufacturers (those with California sales of fewer than 3001 new light-duty and medium-duty vehicles) would be completely exempt from the ZEV sales mandate.

The Department expects that specialized electric vehicle manufacturers may enter the marketplace. At present, only battery-powered electric vehicles appear capable of meeting the ZEV requirements. However, solar and fuel cell-powered vehicles may also be developed to provide zero emission mobility in the future.

The Department recognizes that significant electric vehicle technological developments are underway that may impact the potential for manufacturers to achieve the ZEV sales mandate. The Department, consistent with action planned by New York, Massachusetts and Maine, will undertake a technology review of ZEVs in 1994 to examine ZEV technology developments and issues relating to ZEV performance in New Jersey. This review will include an opportunity for public participation.

Quality Control Testing: No quality control provisions for assembly line testing are included in the proposed rules. The Department will consider proposing such provisions in the future and, in doing so, the Department will consider the need for consistency within the OTR. At the present time, the Massachusetts, Maine and New York rules include assembly line testing procedures identical to California's. However, the California Air Resources Board intends to revise these procedures. The Department, therefore, has decided not to propose a quality control testing provision at this time.

Onboard Diagnostic System: At N.J.A.C. 7:27-26.8, these proposed new rules require all vehicles sold or leased pursuant to the LEV Program to be equipped with advanced onboard diagnostic (OBD) systems. These standards are identical to those adopted by California and are consistent with the Massachusetts, Maine and New York rules. These systems would alert the vehicle operator if the emission system is malfunctioning and monitor additional parameters than those covered by recently proposed Federal OBD standards.

Fill Pipes and Openings of Motor Vehicle Fuel Tanks: At N.J.A.C. 7:27-26.8, these proposed new rules set forth the specifications for fill pipes and the openings of motor vehicle fuel tanks. This section prescribes the specifications for the fuel tank opening and the pipe leading from the fuel tank to the fueling inlet. The specifications are designed to prevent the introduction of a leaded fuel nozzle into the fuel tank opening to prevent misfueling of the vehicle and to assure compatibility of Stage-II refueling vapor control apparatus on gasoline fuel pumps with the fuel opening. Stage-II apparatus is designed to minimize refueling vapor loss during vehicle refueling.

Recall, Warranty and Aftermarket Parts Programs: Although no recall, warranty or aftermarket parts provisions are included in these proposed new rules, the Department does intend to propose such provisions in the future. The recall and warranty programs would have important regional implications. For this reason, the Department will consult and coordinate with other states in the OTR prior to developing and proposing the recall and warranty provisions of its LEV program. The aftermarket parts program has significant implications for the aftermarket parts industry in New Jersey. It is possible that the aftermarket parts provisions may be better integrated with the new enhanced inspection and maintenance (I/M) rules scheduled to be proposed later this year.

Penalties: The proposed rules provide that persons subject to this subchapter who fail to conform with its requirements, including the sales, reporting and registration requirements for low emission vehicles in New Jersey, may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3. These new rules do not propose amendments to N.J.A.C. 7:27A-3 that would establish penalties specific to the requirements of these rules. However, the Department is considering whether to propose amendments establishing penalties, and will solicit public input on this issue in the future.

Incorporation by Reference: The proposed new rules incorporate provisions of the California Code of Regulations together with several specification documents and test procedures. The Department and other State agencies commonly incorporate other laws and regulations, including test procedures, by reference. See, for example, the Department's Safe Drinking Water regulations, specifically, N.J.A.C. 7:10-1.3, and the New Jersey Pollutant Discharge Elimination System regulations, specifically N.J.A.C. 7:14A-1.9. The rules of the Office of Administrative Law specifically allow incorporation by reference, N.J.A.C. 1:30-2.2. This incorporation includes all amendments and supplements to those regulations, specification documents, and test procedures. The Department will publish notices of all such amendments and supplements in the New Jersey Register, which will become operative no earlier than 30 days following publication. The operative date will be stated in the publication. In addition, the Department will provide public notice of California's proposed amendments and supplements, including how copies of such proposals may be obtained and where comments may be submitted. If the Department determines that a particular amendment or supplement may not be appropriate to New Jersey's LEV program, the Department will propose an amendment to these rules.

In any event, under the Clean Air Act New Jersey is required to provide two years notice of its adoption of the LEV standards or revisions to such standards.

Two public hearings on the April 6, 1992 proposal were held. The first was on May 19, 1992, at the Rider College Student Center in Lawrenceville, New Jersey and the second was on June 3, 1992, at the Lewis Herrmann Labor Education Building in New Brunswick, New Jersey. The hearings were held to provide interested parties the opportunity to comment on the new proposed new rules. After the hearings, the hearing officer made no recommendations to the Department regarding the proposal. Thirteen commenters submitted oral comments at the first hearing and 13 commenters submitted oral comments at the second hearing. The Department also received written comments from 22 persons on the proposal. Seven persons submitted both written and oral comments. The commenters were as follows:

1. Andrei K. Kojak, Esq., New Jersey Public Interest Research Group (NJPIRG)
2. Michael J. Bradley, North Eastern States for Coordinated Air Use Management (NESCAUM)
3. Wm. Healey, New Jersey State Chamber of Commerce
4. H.G. Ingram, Texaco
5. James C. Morford and Bernard Dziedzic, New Jersey Society for Environmental, Economic Development (NJSEED)
6. W.D. Dermott, Exxon Company
7. Satoshi Nishibori, Nissan R&D, Inc.
8. John Guzobad, National Motorists Association
9. Michael J. Tydings, Exxon Company and representing the New Jersey Petroleum Council
10. James Benton, New Jersey Petroleum Council
11. R.J. McCool, Eastern States Petroleum Advisory Group
12. Robert Veit, Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA)
13. Gregory Dana, Association of International Automobile Manufacturers
14. William Watson, GM Research Envir. Staff for MVMA
15. Al Weverstad, General Motors

16. Steve Carrellas, National Motorists Association
17. Tony Ippolito, Sun Company
18. Fred Sacco, Fuel Merchants Association of New Jersey
19. Virginia Carlson, Hertz Corporation
20. William Dressler, New Jersey Gasoline Retailer's Association and Allied Trade, Inc.
21. Jim Sinclair, New Jersey Business and Industry Assoc.
22. Charles Morgan, Mobile Environmental Affairs
23. Nancy Homeister, Ford
24. Rachel Jelly, Lotus Cars Ltd.
25. John Antholis, Edwards & Antholis
26. Michael Schwarz, Ford Motor Company
27. Gerald Esper, MVMA
28. Charles Walton, New Jersey Auto Dealer Assoc.
29. Michael Grossman, Lamborghini
30. Hugh Shannon, Exxon R&D
31. Jeffrey Seisler, Natural Gas Vehicle Coalition
32. Roger Schwarz, Public Service Electric and Gas (PSE&G)
33. Greg Dunlap, PSE&G
34. Linda Stansfield, American Lung Assoc.
35. Evan Pokarney, American Lung Assoc.
36. Michael Reilly, Wakefern Food Corp.
37. Eric Zwerling, student
38. John Ferraioli, Passaic County Health Office
39. Marie Curtis, New Jersey Environmental Lobby
40. Daniel Greenbaum, Massachusetts DEP
41. David Logan, citizen
42. Eleanor Gallagher, citizen
43. Steven Faulkner, citizen
44. Robert Dunn, citizen
45. Tim DeBrak, citizen
46. Raymond Kostanty, citizen
47. John Witham, citizen
48. Tom Bielecki, Financial Inset Industries

The following is a summary of the comments received on the proposal and the Department's responses. The commenter is identified after each comment.

General Comments

Legal Authority, Legal Issues

1. COMMENT: The Low Emission Vehicle (LEV) program will offset the impact of transportation control measures that New Jersey will be required to adopt under Clean Air Act (CAA) §182(c)5. This section will require New Jersey to identify and adopt "specific enforceable transportation control strategies and transportation control measures" to offset the growth in mobile source emissions caused by the growth in the number of vehicles on the road and increases in the miles travelled. This is why the LEV Porgram should be adopted by New Jersey. (PSE&G—position paper)

RESPONSE: The Department agrees with the commenter. CAA §182(c)(5), 42 U.S.C.A. §7511a(c)(5), requires that beginning November 15, 1996 and each third year thereafter the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment with the National Ambient Air Quality Standards (NAAQS) for ozone. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State Implementation Plan (SIP) must be revised to include transportation control measures including, but not limited to, those listed at CAA §108(f), 42 U.S.C. §7408(f). These measures include programs for improved public transit, roadlane restrictions to high occupancy vehicles, trip-reduction ordinances, etc. Accordingly, the commenter is correct in asserting that emission benefits achieved through the LEV program may reduce the State's dependency upon transportation control measures (TCMs) to attain the NAAQS for ozone.

2. COMMENT: The "Adoption by Reference" clause in the proposal denies the citizens of New Jersey a voice in this important issue. By adopting an LEV Program identical to California's, the Department is allowing New Jersey's decisions to be made by California. Therefore, the program should be reevaluated, taking into consideration New Jersey's wants and needs. (Michael Tydings, New Jersey Petroleum Council)

RESPONSE: The Department does not believe it is allowing California to make decisions for New Jersey. N.J.A.C. 7:27-26.16 incorporates by reference provisions of the California's Code of Regulations together with several specification documents and test procedures. The Rules for Agency Rulemaking, N.J.A.C. 1:30, specifically provide for incorporation by reference of generally available publications approved by the Director of Administrative Law. See N.J.A.C. 1:30-2.2(a)8. N.J.A.C. 1:30-2.2(c)1ii also provides for the inclusion of future supplements and amendments to those provisions incorporated by reference.

N.J.S.A. 26:2C-8.3 requires that rules establishing standards and requirements for the control of air contaminants from motor vehicles manufactured with air pollution control devices, systems or engine modifications be consistent with the CAA and any amendments and supplements to the CAA. CAA §177, 42 U.S.C.A. §7507, authorizes the State to adopt and enforce only such standards that are identical to the California standards and only as would not create a "third vehicle" (i.e., a motor vehicle or motor vehicle engine different than that certified in California under California standards). Alternatively, the State may determine not to adopt those emission standards, relying instead upon the Federal standards promulgated in the CAA to reduce emissions. Discretion in the Department not to adopt all future supplements and amendments, while provided for at N.J.A.C. 7:27-26.16(d), would be limited to those circumstances where the effect of such a decision would not result in a third vehicle or otherwise place an undue burden upon motor vehicle or motor vehicle engine manufacturers.

Due process is served in the Department's adhering to "notice and comment" rulemaking pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., explicitly proposing to include all future supplements and amendments to the documents and sources listed in the proposal at N.J.A.C. 7:27-26.16(e). Contrary to the assertions of the commenter, the ultimate decision as to whether to adopt the proposal lies in New Jersey and not in California.

3. COMMENT: The decision to adopt Federal reformulated gasoline would have to be non-binding on the State's part. Neither the legislative nor the executive branch of State government can take actions which bind their successors. The State legislative branch can take actions which bind executive branch bodies, but the reverse is not true. Any decision by either the executive or legislative branch is subject to judicial review. The scenario described would almost certainly elicit litigation on the part of the auto industry. Without a binding decision regarding the use of California fuels, New Jersey should not proceed with adoption of the LEV Program. (W.D. Dermott, Exxon)

RESPONSE: Consistent with the approach of Massachusetts, Maine and New York, the Department has determined not to adopt California's reformulated fuel requirements. The Department recognizes that it is not empowered legally to "bind" either its successors or the Legislature. It was determined that New Jersey could obtain the necessary emission reductions without introducing California fuels into the State. P.L.1993, c.69, approved March 10, 1993, binds the Department as far as not allowing it to adopt California reformulated gasoline as part of the LEV Program. The Department does not believe a more "binding" decision is necessary for adoption of the LEV Program.

4. COMMENT: The section on Incorporation by Reference at 24 N.J.R. 1319 leads to numerous questions related to ultimate implementation. This undoubtedly will lead to potential conflicts with other Departmental goals, most specifically that goal related to the sole use of Federal reformulated gasoline as the fuel of choice. For such cases in which there are conflicts, the Department indicates that it "will propose an amendment to these rules." This may violate the CAA which require that a significant burden on the auto industry not be caused by a state that adopts the California program. (W.D. Dermott)

RESPONSE: While the Department may determine that a particular amendment or supplement to the documents or sources incorporated by reference into N.J.A.C. 7:27-26 would be inappropriate to New Jersey's LEV program and, therefore, propose amendment to these rules to preclude incorporation of that particular amendment of supplement, it would take such action only so as not to create a third vehicle or otherwise place an undue burden on motor vehicle or motor vehicle engine manufacturers. Therefore, Department action would be consistent with the CAA. It should also be made clear that of the documents the Department has incorporated by reference, none contain references to the use of California's reformulated gasoline.

5. COMMENT: CAA §177 provides that a state may only "adopt ... California standards for which a waiver has been granted." The Department is therefore precluded from adopting the initial California LEV standards until the United States Environmental Protection Agency (EPA) grants a Federal waiver for such standards. (MVMA)

RESPONSE: EPA has granted the State of California a waiver for their low emission vehicle program as of January 7, 1993. Therefore, this issue is moot for New Jersey.

6. COMMENT: EPA may rule that states participating in the LEV program may get less than maximum credit for the LEV program. Thus, it would be wiser to postpone adoption until after EPA has made its final ruling and, if the ruling is in favor of the LEV program, then adopt and receive maximum credit for the program. (H.G. Ingram)

RESPONSE: The Department believes that its LEV program will receive maximum credit regardless of when it is implemented. Program benefits, however, will be maximized by early State implementation.

7. COMMENT: The proposed LEV regulations may contradict the intent of the CAA. In CAA §209, Congress provided that the Federal emission standards pre-empted state law. The legislative history of this section indicates Congress was concerned that if states were allowed to adopt their own emission control standards this would unduly burden interstate commerce. Congress noted that different standards would pose enormous difficulties on the regulated industry and would increase cost to consumers nationwide while only citizens of one section of the country would benefit. Because of the concern about the potential burden on interstate commerce, Congress provided for only limited waivers to §209 Federal preemption. This concern evinced by Congress would occur in New Jersey if the Department applied the program to the rental industry since the citizens of New Jersey would receive at best minimal improvements in air quality from the increased vehicle emissions standards imposed on rental vehicles while citizens from states up and down the eastern seaboard would incur increased rental cost and be inconvenienced from diminished availability of cars that may be rented for trips to New Jersey. (Virginia Carlson)

RESPONSE: The commenter misconstrues the effect of CAA §209(b), 42 U.S.C.A. §7543(b), in stating that Congress provided for only limited waivers to CAA §209(a), 42 U.S.C.A. §7543(a), Federal preemption. The provision waives application of the entire section addressing Federal preemption with respect to motor vehicle and motor vehicle engine emissions (other than crankcase emission standards). Adoption of the New Jersey LEV Program reflects the Department's position that improvements in air quality will insure the benefit to New Jersey's citizens from every car, rental or otherwise, meeting the prescribed standards.

The Department remains confident that the LEV program will be implemented throughout the Ozone Transport Region (OTR) which includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and portions of Virginia. Maine, Massachusetts, and New York have already adopted the program. The remainder of the OTR, from Virginia to Maine, other than Connecticut, has committed to propose adoption of the LEV standards as soon as possible. Therefore, adoption of the LEV Program should not result in diminished availability of rental cars in the Northeast. Should rental companies still be concerned about the diminished availability of cars that may be rented for trips to New Jersey, they should consider the purchase "50-State" vehicles that comply with both California and Federal standards. In order to reduce any potential burden on the rental industry, the adoption now provides for an exemption from compliance with the LEV standards for a period up to 30 days from the date of delivery.

Cost Effectiveness

8. COMMENT: In the NESCAUM analysis of the California LEV program, the northeast states chose to rely on the original marginal cost estimates developed by the California Air Resources Board (CARB) of $70.00 per vehicle for Transitional Low Emission Vehicle (TLEV), and $170.00 for a LEV or Ultra Low Emission Vehicle (ULEV). CARB and NESCAUM still believe that these estimates reflect a reasonable average cost differential between the future federal and California vehicles. Additional costs for Electrically Heated Catalyst's (EHC's) are not required for all cars and the process to obtain these extra features varies from vehicle to vehicle. Thus, NESCAUM believes that the LEV Program is a cost effective program with optimal benefits and should be adopted by New Jersey. (Mike Bradley)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

9. COMMENT: In trying to control air contaminants, mobile point sources are the most cost effective targets. Motor vehicles are the most abundant sources of air pollution in New Jersey and it would be nearly impossible for New Jersey to comply with the CAA's ozone standards without adopting stricter auto emissions controls. Thus the LEV Program would not only effectively control the largest source of air contaminants today but it would also be doing so in an economic fashion. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

10. COMMENT: In reference to the cost of the Electrically Heated Catalyst (EHC), costs are estimated by W.R. Grace at $200.00 to $300.00 per car. This is still well below what the auto industry claims EHC's will cost and EHC's will not be required on every vehicle produced. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

11. COMMENT: As each additional state joins the LEV program, the cost to consumers of these cars drops. When the automobile companies drop their opposition to the plan and concentrate on designing less polluting vehicles, New Jersey residents will benefit. Therefore, the LEV Program should be adopted in New Jersey. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

12. COMMENT: A failure to comply with the Federal CAA could result in serious economic hardship to the State. The Clean Air Act Amendments of 1990 (CAAA) include several sanctions to be implemented should New Jersey miss any of its deadlines. These sanctions include a prohibition on permitting or constructing major new facilities, the withholding of hundreds of millions of dollars in Federal transportation funds and EPA's taking on the responsibility to implement air quality programs in the State. New Jersey Public Interest Research Group (NJPIRG) feels that compliance cannot be obtained without the LEV Program. In addition, these types of sanctions could be much more detrimental to industry than any of the effects of the LEV Program. Thus, the LEV Program is essential to the New Jersey air quality program. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

13. COMMENT: It is important to note that New Jersey's LEV Program will cost significantly less than the implementation of other emission reduction programs. According to Project: Clean Air, implementation of the LEV program will achieve more than 25 tons of daily hydrocarbon reduction at an annual direct cost of $50 million in 1995 increasing to $60 million by 2010. Thus, the LEV Program should be adopted in lieu of these other programs. (PSE&G position paper)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal. However, the LEV Program is not being implemented instead of, but rather as a compliment to, other emissions reduction programs necessary to achieve and maintain the NAAQS for ozone and carbon monoxide (CO).

14. COMMENT: The Department estimates the LEV program to be up to 70 percent less costly, in terms of dollars required to reduce a ton of pollutant, than stationary source volatile organic compounds (VOC) emission reduction costs. This makes the LEV Program a more cost effective plan that New Jersey should adopt. (PSE&G position paper)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

15. COMMENT: Natural gas is an economical vehicle fuel. An equivalent gallon of natural gas sells for between 42 cents and 90 cents. On the average, compressed natural gas retails for about 70 cents an equivalent gallon. There must be a sufficient price spread between the alternative fuel and the traditional fuel. Thirty cents difference allows high fuel consuming vehicle to achieve economic payback in a reasonable timeframe (two to three years); a 50 cents differential typically provides a payback in under two years. Because the LEV Program will involve alternative fuels such as natural gas, the LEV Program should be implemented in New Jersey. (Jeffrey Seisler)

RESPONSE: The Department, noting that the LEV Program may serve to facilitate the development of alternatively-fueled vehicles, acknowledges receipt of this comment in support of the proposal.

16. COMMENT: It has been established that Americans are willing to pay more for products that are genuinely beneficial to their health or the health of the natural environment. If a vehicle was sincerely advertised as being kinder to the environment, the American public would be more apt to spend the extra amount to purchase this vehicle

over the other choices. The LEV Program would be warmly received if it was adopted in New Jersey. (Eric Zwerling)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

17. COMMENT: The State of New Jersey is completely in non-attainment with the CAA. The present and potentially dangerous impact upon our health, environment and economy certainly outweighs any argument about the incremental costs to the public for LEVs. This is why the LEV program cannot be ignored and must be implemented in New Jersey. (John Ferraioli, Passaic County Health Dept.)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

18. COMMENT: The Department could develop a mobile to stationary source emission trading program, which could be incorporated into permits issued for new and modified stationary sources. The trading program would allow reductions in mobile source emissions to be credited as offsets against emissions from new or modified stationary sources. This would enhance the benefits of the LEV Program to the State of New Jersey, making it irresistible to pass over. (Greg Dunlap)

RESPONSE: The Department is currently working along with the OTC on a variety of trading programs, including the trade between stationary and mobile sources. In fact, the State's existing emission offset rule (N.J.A.C. 7:27-18) allows facilities reaching offsets to acquire them from mobile sources.

19. COMMENT: The cost of compliance has been a highly contested issue. The auto industry's claims that the cost of compliance would be more than $1,000 per car are not true. The additional cost of compliance for the new Ford Escort is about $72.00 per car. It is a cost that Ford has generously decided not to pass onto California consumers. NJPIRG sees no reason why New Jersey shouldn't benefit from the same generosity. If this were the case, the LEV Program would be even more cost effective than previous estimates and should be adopted. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

20. COMMENT: Natural gas is the only clean fuel subject to both public utility taxes and motor fuels tax. Beyond this obvious inequity, we believe there are other tax incentives that can be considered. For example, the incremental cost of any low-emission vehicle and the cost of refueling equipment could be exempted from Sales and Use Tax. This is why we feel that alternative fuels should be considered in addition to the LEV program. (Greg Dunlap)

RESPONSE: The Department supports the use of CNG as an alternative fuel and encourages incentives to further its use.

21. COMMENT: Emphasis should be made on the various incentives that could significantly improve the economic picture. To encourage voluntary use of LEVs and increased public acceptance of the State's proposed program, the State should attempt to remove economic and regulatory barriers associated with LEVs. Current tax policies, incremental costs associated with low-emission vehicles, and refueling infrastructure development are all issues that can be addressed. If these issues were addressed, public acceptance of the LEV Program would increase and the program would be more likely to be adopted. (Greg Dunlap)

RESPONSE: The Department will take these factors into consideration upon actual implementation of the LEV Program within New Jersey. Nonetheless, the Department feels that the LEV Program is cost effective on its own without aid from other incentive programs.

22. COMMENT: The cost of clean cars or clean fuel is irrelevant. Expense is not the issue, the environment and health of New Jersey are the relevant issues. If foreign vehicle corporations can accomplish these increased efficiency standards, so can American corporations. If American corporations accomplished such emissions reductions, maybe more people would buy American. The LEV Program should be adopted in New Jersey because it's good for the health and welfare of the citizens of this State. (Eric Zwerling)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

23. COMMENT: When considering the cost of the LEV Program, it is a realistic assumption that with poor air quality also comes increased medical costs. If low emission vehicles cost a few dollars more, it is at a fraction of the cost of added medical facilities and health care for those increasingly at risk. This is why the LEV program should be adopted. (Marie Curtis, New Jersey Env. Lobby)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

24. COMMENT: The achievements already being realized under the CAA will cost an estimated $30 billion a year in addition to the more than $30 billion industry already spends to meet air quality standards. The additional financial burden of the LEV Program will put undue economic stress on the citizens of this State, since the economic situation is already fragile. Due to the present economic situation of New Jersey, the LEV Program should be postponed indefinitely.

Adoption of a California Car Standard will result in higher priced automobiles. This is the point made by the people who must make and market the automobiles. The New Jersey Chamber of Commerce feels their estimate of $1,000 is accurate. A low-emission vehicle will cost more to purchase, more to maintain and more to fuel. For these reasons, we believe the LEV Program is wrong for New Jersey. (William Healey, N.J. Chamber of Commerce)

RESPONSE: Under the CAAA, states are required to adopt and implement a combination of pollution control strategies that are adequate to attain and maintain the NAAQS. While each state does have discretion as to how these standards may be obtained, they are still bound by a number of Federal mandates. A state's failure to adequately attain and/or maintain NAAQS will result in the non-discretionary imposition of punitive Federal sanctions including a revocation of Federal highway monies and a virtual ban on industrial growth. The Department feels this would put a greater financial burden on industry since it is positive that New Jersey will **not** meet NAAQS without implementing the LEV program.

In addition, the Department would like to stress the relative cost effectiveness of the LEV program. The alternative to controlling mobile sources of air pollution is to target stationary sources at a cost of $1,000 to $5,000 for phase I ahd II oxides of nitrogen (NO_x) emission reduction and an additional $6,000 for each ton of VOC reduced. At this rate, control of stationary sources is expected to exceed $15,000 per ton of emission over the next two decades in order to be adequate for NAAQS. The LEV program is expected to cost $900.00 per ton to meet the same standards within the same time frame. The financial differences are clearly evident.

The Department believes that the technology used to meet the LEV emission standards will not require an appreciable increase in maintenance or loss in fuel economy.

25. COMMENT: Congress has requested that a report on emissions not currently regulated be developed because they recognized that the cost of further control on automobiles is becoming very expensive. The control of presently uncontrolled pollution sources, such as lawn mowers, recreational vehicles, etc., will be cheaper and just as effective as controlling motor vehicle emissions. Therefore, these controls should be looked at first before the State involves itself in an expensive and time consuming plan like the LEV Program. (H.G. Ingram, Texaso)

RESPONSE: Under the CAA, the EPA is mandated to research the contribution of these uncontrolled pollution sources and prepare regulations to control them. EPA is currently considering controls for these sources. However, New Jersey must continue on the time table prescribed in the CAA to reach attainment and, therefore, the Department believes it necessary to adopt the LEV Program.

26. COMMENT: In considering the best means to control air pollution, calculations of the cost effectiveness of each control strategy should be performed to assess the value of each strategy. An emissions control plan would be much more effective if it is implemented with its low-cost control strategies optimized before moving to its higher cost control strategies, such as the LEV Program. (H.G. Ingram)

RESPONSE: Cost effectiveness and New Jersey's industrial and economic future are the key issues the Department considers in designing a strategy that will provide the citizens of New Jersey with clean, healthy air. The Department has examined the cost effectiveness of all possible mobile source control strategies. The LEV Program is widely considered to be among the most cost effective of these strategies.

27. COMMENT: For LEV's and Zero Emission Vehicles (ZEV's), cost estimates vary. For 0.075 g/m LEV car, hardware cost estimates are as follows: CARB = $170.00, VA, CT = $500.00, and Automotive Consulting Group = $1,000. For Zero Emission Vehicles (ZEV), battery costs are important, but the range is from $1,250 to $7,000. Low costs make the electric vehicle (EV) viable even when replacing batteries every four years. However, it is argued that the higher costs of ZEV's will inhibit ZEV acceptance. Until we can determine which figures are correct, the LEV Program is incomplete and cannot be beneficial to New Jersey. (H.G. Ingram)

RESPONSE: Since the LEV Program involves long-range implementation, cost estimates have been projected for the most likely technologies to be used in meeting the standards. It is true that these estimates only reflect the cost of the hardware because it is impossible for the Department to project research and development costs which can vary significantly from manufacturer to manufacturer. This information is also not readily accessible to the Department. However, research and development costs, when diffused over the number of years which a particular technology can be utilized, should not be unreasonable. Properly designed EHC systems should not require greater maintenance than current catalyst systems.

The Department realizes ZEV technology is not fully developed. However, the LEV program allows a substantial lead time to the manufacturers for the development of the technology necessary to meet the program requirements.

The Department is confident in the ability of the manufacturers to accomplish such a goal since they have already achieved significant progress in battery development and associated technology to date. At this pace, the Department feels the ZEV production will be ready to meet the phase-in schedule and the ZEV will meet with consumer acceptance.

28. COMMENT: Departmental cost estimates for implementation ($170.00) conflict with industry estimates ($1,011). Auto industry claims that this increase would equate to a 10 to 15 percent decrease in new car sales because of the sticker increase. For this reason, we believe the LEV Program to be economically infeasible for New Jersey. (Jim Sinclair, NJ Business and Industry Assoc.)

RESPONSE: The Department feels that manufacturers may add the $170.00 to the base price of new LEVs produced; however, the increased cost will not necessarily be passed along to New Jersey consumers in full. The Department does not anticipate that the estimated increased costs associated with the LEV Program will result in an appreciable reduction in the number of new vehicles sold in the State.

29. COMMENT: The implementation date should conform to a uniform date for the region that allows a maximum amount of implementation time and the adoption should provide for non-implementation if actual data from California's program does not present cost-effective justification. (Jim Sinclair)

RESPONSE: The Department would prefer a uniform implementation date across the OTR and is working with the Ozone Transport Commission (OTC) to achieve this; however, this is not administratively possible because states began proposal of the LEV Program at different times and are presently at different stages in the process of proposing the adoption of the LEV Program. Under P.L.1993, c.69, the Department does not anticipate implementation prior to model year 1998. This implementation date will allow industry any extra time that they believe is required for implementation.

30. COMMENT: Cost has become a problem within the adoption of the LEV project due the various estimates of cost from different organizations. In addition, cost estimates within the organizations themselves vary due to the inclusion of California fuels vs. Federal fuels, etc. An accurate, unified price, that has been scrutinized by the public, would help to make a decision on the project. If, after this occurs, a clear and compelling need is shown and the control measures in terms of cost effectiveness, only then will the LEV program be implemented. (William Dressler, NJ Gas Retailers Assoc. and Allied Trade, Inc., Bernard Dziedzic, NJSEED, Greg Dana, Assoc. of International Auto Manufacturers, W.D. Dermott, Exxon and Hugh Shannon, Exxon R and D)

RESPONSE: The Department and other organizations, including NESCAUM and the Mid-Atlantic Regional Air Management Association (MARAMA), have fully evaluated the cost effectiveness of the LEV Program with respect to other mobile source and stationary source control strategies. These evaluations were peer reviewed by the scientific community as well as regulatory agencies including EPA. These evaluations have consistently shown that the LEV Program represents an effective emission control strategy at a reasonable cost.

31. COMMENT: The addition of the LEV program to the already existing air quality standards will increase the costs of operating a business in New Jersey. This will drive more businesses out of the State to less expensive, business-friendly southern states. New Jersey cannot afford to loss anymore loss of business in this hard pressed economy and therefore the commenter believes the LEV Program should not be considered by New Jersey. (Raymond Kostanty, citizen)

RESPONSE: The Department believes the LEV program will not adversely impact industry in New Jersey. Rather, it will reduce the need for additional emission controls on stationary sources. This proposal is expected to have little impact on local New Jersey businesses.

32. COMMENT: The LEV Program is an expensive program that must be used only as a last resort. Alternative fuels, that would burn cleaner and reduce the amount of pollutants in the air exist. However, the prices for these fuels are still too high. If pressure was put on the government to provide for and encourage the use of these alternative fuels, maybe they would become more affordable and could be made available to the public, thereby eliminating the need for the LEV program. (Timothy Debiak, citizen)

RESPONSE: The Department concurs with the need for government intervention to encourage the development and availability of cleaner alternative fuels. At this time, the Department is involved in an alternative fuels demonstration project that will evaluate the effectiveness of these fuels and encourage their use within other fleets of the State. In addition, the CAAA require implementation of a Clean Fuel Fleet (CFF) program that must begin with the 1998 vehicle model year. Moreover, the LEV program will encourage the use of clean alternative fuels through RAFs. The Department feels that these efforts will provide for, and encourage the use of, alternative fuels in the State. However these programs will take years to come online and the State needs to attain and maintain the ambient air quality health standards by the year 2000. Because of this, New Jersey needs to implement more stringent air pollution control measures before the year 2000 such as the LEV Program.

33. COMMENT: The Department has made the mistake of equating market-based cost-effectiveness with that of emission reduction cost-effectiveness, which is not necessarily the case. Within the Economic Impact (24 N.J.R. 1321), there is no correlation between the combinations of certified vehicles to enhance cost effectiveness (market-based) and the subsequent table showing emission reduction cost-effectiveness. In fact the emission reduction cost-effectiveness is totally unfounded. (Hugh Shannon)

RESPONSE: This commenter correctly points out that the Economic Impact statement of the rule proposal considers the cost effectiveness of the proposed LEV program in two dimensions. The first dimension of the program's cost effectiveness is the fact that manufacturers can choose the vehicle "mix" of vehicles they will sell allows each manufacturer to achieve the standards of the rules in a manner that is most cost-effective for that manufacturer's facility. This is referred to by the commenter as "market-based" cost effectiveness.

The second dimension of the program's cost effectiveness is the fact that the State can achieve reductions in VOC emissions more cost-effectively through proposing the adoption of the LEV program than through an alternative program which requires further stationary source reductions. This is referred to by the commenter as "emission reduction" cost effectiveness. The Department based its determination that the LEV program is a more cost-effective means of achieving emission reductions than a stationary source regulatory program on the findings of Tables 2 and 3 of the Pechan Report and on the Department's stationary source permitting experience.

34. COMMENT: In order for industry to comply with the LEV project, it will have to intensify its research and development which in turn will increase costs. In an analysis performed by Nissan, an electrically heated catalyst system alone will be approximately $1,000. Battery replacement will be an additional $500.00 over the life of the vehicle. These estimates greatly surpass CARB's estimates on which New Jersey has relied in evaluating the LEV Program's cost-effectiveness. For these reasons, the LEV Program is not as cost effective as the Department believes and thus in not in the best interest of the State of New Jersey. (Satoshi Nishibori, Nissan R and D)

RESPONSE: Since the LEV Program involves long-range implementation, cost estimates have been projected for the most likely technologies to be used in meeting the standards. It is true that these estimates only reflect the cost of the hardware because it is impossible for the Department to project research and development costs which can vary significantly from manufacturer to manufacturer. This information is also not readily accessible to the Department. However, research and development costs, when diffused over the number of years which a particular technology can be utilized should not be unreasonable. Properly designed EHC systems should not require greater maintenance than current catalyst systems.

35. COMMENT: The LEV regulations will not provide a cost effective solution to the problem of New Jersey's projected non-compliance with the CAAA. The National Motor Assoc.'s conclusion is that the California

Low Emissions Vehicle program (CA/LEV), as proposed for New Jersey, will not provide any significant benefits over the Federal plan, and will cost so much more to make the attempt. Thus it is our belief that New Jersey should concur with the Federal plan instead of the CA/LEV Program. (John Guzobad, National Motorists Assoc. and Steve Carrellas, National Motorists Assoc.)

RESPONSE: The Department disagrees with the commenter's conclusion. The Federal program is less stringent and less effective than the California LEV program. As such, it is logical to expect that it will be less costly to achieve the weaker Federal standards than the LEV standards.

Unfortunately, the Federal standards are inadequate for New Jersey's air quality needs. Assuming EPA promulgates and implements the Tier I emission regulations as required by Congress, the Federal standards should be roughly equivalent in effect and cost to the 1993 California standards. The Department believes the LEV program is a cost-effective program, estimated at $1,900 per ton of volatile organic compounds (VOC) reduced.

36. COMMENT: The LEV Program will cause a giant leap in a new-car sticker price that will be immediately evident, on the order of $1,000 more per car. More obscured, however, is the cost the taxpayer will incur from the hoard of regulations that have to be adopted and enforced. All of these things combined make the LEV Program an ineffective costly program that should not be adopted in New Jersey. (John Guzobad)

RESPONSE: A study of the implementation of the LEV program in the Northeastern States conducted by E.H. Pechan indicates an average increase of $170.00 in the cost of a new vehicle as a result of the LEV regulations. The Department does not anticipate a substantial increase in staff to enforce this LEV Program. Due to the fact that the Department's proposed LEV standards are identical to California's, New Jersey will be utilizing much of the work (including administrative) that has already been performed by California.

37. COMMENT: The Department has made the statement that they have tried to balance the health of the New Jersey citizens and preservation of the environment with the economic standing of the State with this regulation. In the opinion of the National Motorist Association, they have not succeeded in accomplishing this task. (John Guzobad)

RESPONSE: The Department disagrees with the commenter's assessment of how it has attempted to balance the health of New Jersey citizens and the environment with its economic status. According to a counterstudy to the DRI/McGraw Hill study performed by NESCAUM, the potential benefits to the NESCAUM region of implementing the LEV program fall equally into three major categories: health, economics and agriculture. The Department has tried to balance these issues, but quantitatively it is difficult to put a price on health or the preservation of the environment. In addition, the LEV program, as stated previously, is more cost effective than further controls on stationary sources.

38. COMMENT: There will be an extended bureaucracy necessary to monitor, inspect, and certify California's LEV program, entailing an expansion of the State government. For example, CARB has allocated $23 million to mobile source programs in its 1991-1992 budget. These costs, in addition to the hardware costs previously mentioned, make the LEV Program an unrealistic plan for New Jersey. (Mike Tydings, NJ Petroleum Council)

RESPONSE: Implementation and enforcement of the LEV program will not necessitate significant additional resources. The Department's costs of program administration will be greatly diminished by the requirement under the Act that opt-in states adopt standards that are identical to those in California and by California's expressed willingness to share technical information with adopting states. James Boyd, the Executive Officer of the CARB, wrote to Commissioner Jorling of the New York Department of Environmental Conservation:

> "As I have stated previously, California strongly supports working with New York and other opt-in states to regulate vehicle emissions. The Clean Air Act requires that New York adopt standards that are identical to the California standards. In striving to implement identical standards, New York State can expect to rely heavily upon the testing and technical information generated by the State of California. This relationship should futher enhance the cost effectiveness of New York's implementation of the California standards."

In addition, certification testing, assembly-line testing, and quality control testing will be performed by the CARB and shared with opt-in states, thus limiting the amount of staff and resources New Jersey will require to implement its program.

39. COMMENT: By adopting the LEV Program, New Jersey will be committing itself to a plan that has been designed for an area with a much more severe air pollution problem. This will be a costly experiment with an untested, unproven series of results. Further, New Jerey will have no input into the California specific program, but must adopt identical regulations to California regardless of benefit, cost or purpose. It would be wiser if New Jeraey waited until the LEV Program was established in California and could be evaluated for its effectiveness before implementing it in New Jersey. (James Benton, NJ Petroleum Council)

RESPONSE: EPA, based on monitoring data, has determined that New Jersey's air quality desgination is "severe" non-attainment for ozone. Under such a designation the Department must adopt emission control programs adequate to attain the national ozone standard by 2005, and maintain it into the future. The Department has chosen to adopt the LEV standards as one of these programs. It is true that New Jersey's problem is not as severe as southern California which has been designated "extreme" but the problem is similar to other areas in California which are designated "severe."

CAA §177, 42 U.S.C.A. §7507, authorizes the State to adopt and enforce only such stanards that are identical to the California standards and only as would not create a "third vehicle," that is, a motor vehicle or motor vehicle engine different than that certified in California under California standards; otherwise, New Jersey must rely upon the Federal standards promulgated in the CAA to reduce emissions. Discretion in the Department not to adopt all future supplements and amendments, while provided for at N.J.A.C. 2:27-26.16(d), would be limited to those circumstances where the effect of such a decision would not result in the creation of a third vehicle or otherwise place an undue burden upon motor vehicle or motor vehicle engine manufacturers.

The estimated average added cost to manufacture a new gasoline powered vehicle meeting the LEV standards is $170.00 compared to the same model vehicle meeting Federal Tier I standards. Costs associated with the LEV program and the associated emission reductions are therefore considered "cost-effective" by the Department.

The Department cannot wait for an evaluation of the effectiveness of the LEV program in California prior to adopting the program. Because of the lead time required before implementing the LEV program, and because it takes several years to realize the full benefits of the LEV program, the Department cannot delay adoption of this program.

40. COMMENT: The oil industry supports cost effective clean air programs and has demonstrated this through their participation in two major clean air regulatory processes and by its voluntary action to reduce emissions from fuels. Although Exxon supported and helped the LEV project when it was sponsored in California, we feel that it is not apropriate for the problems of New Jersey and thus is not a cost effective way of handling New Jersey's air pollution problems. (R.J. McCool)

RESPONSE: See response to Comment 39 above.

41. COMMENT: To enforce the LEV Program in New Jersey, both the automobile and petroleum industries believe that the Department itself will have to administer a particularly costly in-use testing program. Since the resulting, unique California LEV Program may not be appropriate or cost-effective for other states like New Jersey, we recommend that the Department complete an in-depth study before adopting the California LEV Program. (R.J. McCool and Michael Tydings, MVMA)

RESPONSE: The Department believes that adequate studies have been completed. We conclude that the LEV Program is practical, appropriate and cost effective.

In accordance with section 3 of P.L. 1993, c.69, however, the Department will await preparations of the New Jersey Institute of Technology (NJIT) written report evaluating various air pollution control strategies and address the findings and conditions contained therein, prior to adoption of this proposal.

42. COMMENT: Presently, there is an ongoing $40 million Auto/Oil research program as well as an ongoing Western States Petroleum Advisory Group (WSPA)-GM-CARB Reid vapor pressure (RVP) study and WSPA-CARB EHC study, none of which have been completed yet, but all of which will provide important insights into the most cost-effective fuel and vehicle combinations. Delaying the LEV Program until these results are presented could prove beneficial in assuring the program this State implements is the most cost-effective program feasible. (R. J. McCool)

RESPONSE: The Department is closely following the Auto/Oil study and the joint CARB/industry RVP and EHC studies. The Department

expects that the vehicle manufacturing industry will rely heavily upon these studies in conjunction with their own private research to devise the most cost-effective means of complying with the LEV standards. It must be stressed that the Department is proposing the adoption of emission standards that are identical to the standards previously adopted by California. If any of the aforementioned studies or other research produce compelling new information, CARB is in a position to adjust the LEV program accordingly. Changes CARB makes to the LEV standards are incorporated by reference for New Jersey to remain in compliance with §177 of the CAA.

43. COMMENT: EPA has estimated the amount of pollutants that will be removed if the LEV project is put into effect as the following: 30 percent reduction for inspection and maintenance, 15 percent for reformulated gasoline and only one to two percent for California standards. According to these figures, the costs by far outweigh the benefits. In addition, it is believed that the costs of the program will be much more significant than those being proposed. The citizens of New Jersey cannot afford this and so LEV Program is not a cost effective plan for New Jersey. (Gregory Dana)

RESPONSE: Even though the percent reduction from the LEV Program is relatively small compared to other mobile source control strategies, the program is cost effective. More recent information, such as MARAMA/Pechan Report, indicates a significantly greater benefit from the program than contained in the comment.

44. COMMENT: To support the California LEV Program, refineries' costs of producing reformulated gas (RFG) are expected to rise five to 24 cents per gallon. Similarly, vehicles manufacturers' cost are expected to rise $250 to $1,000 per vehicle. These costs will be incurred by the consumer. Thus we feel that the LEV Program is not the most cost effective plan for New Jersey. (R. J. McCool)

RESPONSE: The production of reformulated gasoline is a Federal mandate stipulated in the CAAA of 1990. New Jersey will have reformulated fuel regardless of whether or not it adopts the LEV Program. The Department feels that the added vehicle costs will be minimal considering the volume of vehicles manufactured and that these costs will not represent an undue burden to consumers.

45. COMMENT: The findings of a private consulting firm, DRI-McGraw Hill, indicate that the California LEV Program would cut employment by 6,400 to 25,200 jobs by the year 2000. The same company also calculated the losses that would be incurred if the program is coupled with a severe reformulated gasoline, and found the employment losses to be 14,700 to 35,400. The loss in annual wage and salary income would drop by as much as $2.1 billion in the year 2000. This, in addition to hardware costs and administration costs, will significantly increase the costs of the LEV Program, making it an ineffective plan for New Jersey. (R. J. McCool)

RESPONSE: The Department received considerable testimony on potential impacts of the LEV standards on the local economy, referencing the DRI-McGraw Hill report titled, *Assessing the Economic Effects of Eastern States Adopting California's Low Emission Vehicle Program.* This report estimated that the higher cost consumers will pay for vehicles and fuels under the LEV program will reduce personal income in New Jersey by $500 million to $4.6 billion by the year 2000, leading to as much as 20 percent of all new jobs (9,500 to 32,000 jobs) created in the late 1990's to be lost by the end of the decade.

The DRI-McGraw Hill report contains no discussion of the Federal mandates pushing the adoption of the LEV standards, compliance alternatives or a baseline of job losses such that a reasonable comparison of the impacts of different ozone reduction strategies might be compared. The limited analysis conducted by DRI-McGraw Hill used incorrect regulatory assumptions, presumes the most extreme reformulated fuel requirements and uses excessive cost estimates, resulting in a gross overestimation of the projected economic impacts. It also ignores the significant public health and economic benefits that will occur with reduced air pollution. Therefore, the Department believes that the report does not truly assess the program's real impacts and presents an overestimate of costs without an associated estimate of benefits.

46. COMMENT: An econometric study performed by the consulting firm of DRI/McGraw-Hill had the following results: (1) LEV would have a negative effect on the disposable income, (2) refiners' costs of producing a California-type of reformulated gasoline would be about 17 to 24 cents per gallon above the current costs and (3) vehicle costs could increase by as much as $250.00 to $1,000 per car, which equates to well over $150,000 for each ton of hydrocarbon emissions reduced. If, however, Federally reformulated fuels are used, the cost is well over $50,000 for each ton of hydrocarbon emissions reduced, which is better, but still very expensive. Either way, the Program is still too expensive and thus is not economically feasible for New Jersey. (Mike Tydings, Bernard Dziedzic, and James Benton)

RESPONSE: The Department believes the DRI/McGraw Hill report to be based upon irrelevant assumptions. See response to Comment 47. According to projections made in the Pechan report, which the Department believes is sound, a cost range of $1,000 to $4,000 per ton of HC reduced is expected depending upon the vehicle mix and technology decisions made by the vehicle manufacturers. Reliance on MOBILE 4.0, 4.1, and 5.0 models suggest that the cost-effectivness of hydrocarbon control under the LEV program is extremely favorable relative to alternative control strategies that are available to reduce emission reductions by the same magnitude during the same time period.

47. COMMENT: In New Jersey, DRI estimates 15,000 to 35,000 jobs would be lost by the year 2000 if California's LEV program was adopted and required an accompanying California-type of severely reformulated gasoline. Likewise, personal income would decrease roughly $0.7 to $2.0 billion annually by 2000 and $1.8 to $6.0 billion annually by 2010. Lower employment and income levels would result, reducing State and local tax revenues by as much as $250 million by 2000 and as much as $700 million in 2010. These make the LEV Program unacceptable for New Jersey. (Mike Tydings, R. J. McCool, Eastern States Petroleum Advisory Group)

RESPONSE: The API/DRI study from which the above figures were obtained is seriously flawed. The API/DRI study greatly overstates the potential negative cost impacts associated with the LEV adoption, fails to account for any of the economic benefits associated with achieving air quality standards and fails to consider the cost of alternative pollution controls. Due to the proprietary nature of the DRI/McGraw-Hill economic model, the Department is unable to evaluate its accuracy. However, given the inaccuracy of API's cost input and regulatory assumptions, the Department is not surprised that the model generates outlandish employment, income and tax losses.

A summary of the major inadequacies contained in the DRI study follows:

The DRI study relies on several incorrect regulatory assumptions:

Incorrect ZEV phase-in

Incorrect assumption of post 2003 fleet average

Incorrect presumption the Northeastern States adopting California fuels specifications as a result of LEV adoption

The DRI study employs excessive cost estimates:

LEV technology costs are grossly overstated

Both Federal and California reformulated gasoline costs are inflated

The DRI study ignores the significant economic benefits and market opportunities that will be gained by Northeast businesses in complying with the LEV standards.

The DRI study fails to even attempt to quantify the significant positive public health, environmental, agricultural, and economic benefits of LEV adoption.

The DRI study fails to assess the economic impacts that would result if New Jersey fails to achieve the NAAQS and is sanctioned under the 1990 CAAA.

The DRI study fails to account for the costs of commensurate controls that will be borne by the industrial scctor of New Jersey if the LEV program is not adopted.

The DRI study misleading incorporates a fuel economy penalty from oxygenated gasoline into the LEV program cost estimates.

Without question, projecting the costs of long term environmental programs is a difficult task. The Department recognizes that when faced with technology forcing vehicles, industrial interests tend to project worst case scenarios in order to protect against all imaginable outcomes.

48. COMMENT: The conversion process for the LEV Program would cost about $1,000 according to the Automotive Consulting Group. This cost is a minimal figure but it does increase when the costs of fuels and battery systems are calculated into the total. Thus the LEV Program is too costly for New Jersey. (William Watson, MVMA)

RESPONSE: Since the LEV Program involves long-range implementation, cost estimates have been projected for the most likely technologies to be used in meeting the standards. It is true that these estimates only reflect the cost of the hardware because it is impossible for the Department to project research and development costs which can vary significantly from manufacturer to manufacturer. This information is also not readily accessible to the Department. However, research and de-

velopment costs, when defused over the number of years which a particular technology can be utilized, should not be unreasonable.

49. COMMENT: Two separate economic studies, one performed by DRI/McGraw-Hill and the other by the group called Urbanomics, confirmed that the results of the LEV Program would be severe unemployment, personal income and State revenue losses. Urbanomics estimates the cost of compliance to be approximately 2.4 billion dollars. These increased operating costs and eventually tax increases will devastate the economy of this State, especially in its already fragile state. At this time New Jersey cannot afford to take the economic repercussions this program stands to produce. (James Benton and Bernard Dziedzic)

RESPONSES: The Department addresses the inadequacies of the DRI study in response to Comment 47. The Department estimates that the increased cost per new vehicle is $170.00. Even if passed onto the consumer, the Department does not view this figure as an undue burden on the citizens of New Jersey, in relation to the emissions reductions and concomitant health benefits that can be achieved. In addition, by achieving the emissions reductions under the LEV Program, New Jersey can avoid Federal sanctions for non-attainment of the health standards and more costly controls on New Jersey's industries.

50. COMMENT: As a private citizen of New Jersey and as a registered car owner, what would be the cost effect for someone who could not, at this time, financially afford a new car. (David Logan, citizen)

RESPONSE: The regulation neither requires that citizens of New Jersey purchase new vehicles nor regulates used vehicles. The regulation only applies to vehicles produced in the effective model year of the Program and subsequent model years. Therefore, there is no financial impact for individuals who are purchasing regulated effective model year vehicles. The Department anticipates that the additional estimated cost of $170.00 per each regulated vehicle will not influence the decision to purchase a new car.

51. COMMENT: New Jersey would be putting itself at a severe economic disadvantage by adopting such an extreme program, that is, the proposal, without a consensus that all upwind states are going to practice the same regulations. Without all the states following the same regulations, we would just be receiving pollutants from their states, such action would, in essence, be throwing money away. Ideally, this issue of air quality must be determined on a regional, if not Federal, level, as a state cannot be expected to handle a project of this magnitude without the cooperation of the states surrounding it. Therefore, New Jersey must wait until the rest of its neighboring states agree to LEV. (Bernard Dziedzic and Virgina Carlson, Hertz)

RESPONSE: The Department agrees with the commenter that the air quality issue should be handled on a regional level. The Department has shown its support for this by signing the Ozone Transport Commission's Memorandum of Understanding on October 29, 1991 with Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, and Virginia. Essentially, this memorandum states the following: "... each of the undersigned member states agrees to propose regulations and/or legislation as necessary to adopt light-duty motor vehicle emission standards identical to those in California's Low Emission Vehicle program, as soon as possible, the Ozone Transport Region and in accordance with §177 of the Clean Air Act Amendments of 1990 (CAAA)." Further, P.L. 1993, c.69, precludes LEV implementation in New Jersey until OTR members representing 40 percent of the new motor vehicle registrations in the OTR have adopted such programs.

52. COMMENT: The EPA has admitted that the most cost effective way of lowering air contaminants from mobile sources is through an enhanced inspection/maintenance (I/M) program. The I/M program should be implemented first. Only if it is determined that the LEV Program is necessary, should it be implemented. (James Benton)

RESPONSE: We agree that enhanced inspection/maintenance programs are very cost effective. Accordingly, the Department is in the process of proposing rules to implement an enhanced I/M program. EPA was directed by the CAAA to publish guidance for enhanced I/M for the states. Such guidance was published during November 1992. It is anticipated that the State's rules will be adopted during 1993 for implementation on January 1, 1995. However, in the longer term, the Department believes New Jersey will need continued emission reductions to attain and maintain the health standards and that the LEV Program will accomplish this end in a cost effective manner. Cleaner vehicles help to offset the projected growth in Vehicle Miles Travelled (VMT).

53. COMMENT: The LEV Program should not proceed unless it can be implemented on a cost-effective basis relative to its environmental benefit. (Anthony Ippolito, Sun Company Incorporated)

RESPONSE: The estimated cost per ton of emissions reduced under the LEV standards is: $900.00 to $2,300 for VOCs and $1,800 to $3,000 for NO_x. These costs are very reasonable when compared to recent regulations controlling VOC from fuels and stationary sources, where compliance costs are estimated in the range of $2,800 to $44,500 per ton of VOC reduced.

The estimated average added cost to manufacture a new gasoline powered vehicle meeting the LEV standards is $170.00 compared to the same model vehicle meeting Federal Tier I standards. Costs associated with the LEV program and the associated emission reductions are, therefore, considered "cost-effective" by the Department.

Timing of LEV Adoption

54. COMMENT: There is still considerable uncertainty about the final form of the LEV/CF program in California, with major changes and revisions expected over the next year or so. Vehicle manufacturers have launched a massive development effort in an attempt to comply with the still evolving LEV standards. Such efforts are hampered by uncertainties about the feasibility of the current California program and the expectation of further revisions to the program, prior to its final implementation. Given such uncertainties and possible changes to the California LEV/CF program, adoption of LEV standards by New Jersey, at this time, would be premature. Therefore, New Jersey should delay adoption of the LEV Program. (MVMA and James Benton)

RESPONSE: The LEV Program in the state of California is constantly evolving. CARB unanimously adopted the LEV standards and regulations in September of 1990. CARB's regulations were subsequently approved by the California Office of Administrative Law and filed with the California Secretary of State formally completing California's LEV adoption. EPA waived Federal preemption of California's LEV Program on January 7, 1993.

The LEV standards go into effect in California prior to their implementation in New Jersey. Since the LEV program is adequately developed to be implemented in California in May 1994, the Department believes its implementation in New Jersey several years later is not premature.

In a concession to the vehicle industry, CARB has agreed to formally re-evaluate the LEV standards on a biennial basis. The purpose of this biennial review is to ensure that vehicle technology is progressing according to CARB expectations.

55. COMMENT: California's LEV emission standards are nearly identical to Federal emission standards through 1997. Therefore, there is more time to study this issue and to give this proposal the analysis it deserves prior to adoption. The CAAA mandate a number of emission control requirements that will help solve New Jersey's ozone nonattainment problems. New Jersey will not fall behind if it carefully studies the cumulative emission reductions stemming from these mandates **before** adopting the LEV Program. (R. J. McCool, Eastern States Petroleum Advisory Group)

RESPONSE: The Department disagrees that a delay in the LEV program will not effect the benefits of the program or the air quality of New Jersey significantly. To delay implementation of the proposed rules is not in New Jersey's best interest. By proposing the adoption of these rules now, the LEV standards will be applicable within a reasonable timeframe. Delay of the start date will reduce the effectiveness of the program. While this delay may not be significant initially, because a motor vehicle emissions control program takes at least 10 years to become fully effective through fleet turnover, over time such a delay in start up would have a significant adverse effect on the LEV Program.

The Department must work towards adoption of the LEV standards expeditiously in order to provide the two years lead time before the implementation of the model year to which this pertains to New Jersey. Failure to adopt with this lead time would force New Jersey to accept the less stringent Federal standards.

Pursuant to the CAAA, New Jersey must not only achieve the NAAQS for ozone by 2005/2007, but must maintain that standard into the future, taking VMT growth into account. Accordingly, the State's adoption of the LEV standards is necessary for maintaining attainment of the standards and allowing for offset of future increases in VMT and industrial and commercial growth.

56. COMMENT: Adoption of this program is premature. New Jersey should consider implementation of control strategies which are proven in benefit and certain in cost. EPA approval of the LEV program remains

undecided. California's authority to initiate this program is preempted by the Federal CAA. Therefore, a state is required to apply for and receive a waiver prior to implementing this program. As of yet, California has not been granted its EPA waiver. In fact, EPA has stated that a decision relating to this matter will not be forthcoming until the fall of 1992. It is, therefore, meaningless for New Jersey business and industry leaders to "consult with their counterparts in California and draw on the experience that has been gained with the LEV Program in California." In addition, determined combinations of vehicles or fuels will be required for the various categories. Obviously, these major areas of uncertainty cast considerable doubt on how California and other states, such as New Jersey, considering adoption of this program can accurately judge the cost effectiveness and air quality benefits of the program. These major areas of uncertainty and the dynamic nature of this California experimental program are disconcerting aspects that New Jersey must carefully consider before rushing to adopt the California program. Therefore New Jersey should delay adoption of the LEV Program until the EPA waiver is granted and the program merits are seen. (James Benton and W. D. Dermott)

RESPONSE: EPA issued a CAA §209(b) preempted waiver to California allowing California and other nonattainment states to implement LEV Programs. Based on CARB's technical analysis of the potential LEV program benefits, as well as the Department's own modeling results, the Department believes that the LEV program will result in significant emission reductions.

57. COMMENT: California labored, over three years, through debates, hearings, workshops, technical studies and consultant studies prior to the adoption of the LEV Program. The citizens of New Jersey are being asked to consider this program in a dramatically reduced time period. The citizens of New Jersey would benefit from the Department's facilitating a broad public debate to consider adoption of the LEV Program. This would include advocacy of this program before the Legislature. The Department should also assure that the program adoption provides adequate opportunity for the citizens of this State to comment. Attempting to close the record at an early date of June 17 is an unnecessarily short and restrictive public comment period. (James Benton and Mike Tydings)

RESPONSE: The Department held one public workshop on November 7, 1991 and one working group meeting with the public and industry on December 10, 1991 concerning the proposed LEV regulations. Although the statutory requirement mandates that one public hearing be held per regulatory proposal, the Department held **two** public hearings on the LEV Program: May 19, 1992 and June 3, 1992. The statutory requirement also mandates that at least 30 days be given for public comment period for a regulatory proposal; the Department extended the LEV public comment period to allow for **71 days** of public comments. Also, on April 9, 1992 a Legislative Hearing was held concerning the LEV Program. In addition to reviewing studies and reports concerning the LEV Program, the Department utilized California's extensive studies prior to considering adoption of the LEV program.

The State Legislature has reviewed the LEV Program and chose to enact P.L. 1993, c.69, specifically authorizing Department adoption of the LEV Program. The new proposal establishes a new comment period and calls for an additional public hearing. In addition, opportunity for further public comment, in response to the legislatively required NJIT study, will be provided upon completion of that study. Accordingly, the Department believes it has provided and will continue to provide ample opportunity for public participation.

58. COMMENT: The Federal tail pipe emission reductions required by the CAAA are nearly identical to the California low emission vehicle standards through 1997 model year and have small differences beyond the year 2000. Thus, very little is gained by adopting the California LEV program at this early date. States needing additional credits toward state plans should adopt the California LEV program at a later date. There is no need to rush to adopt the LEV program for the 1996 model year. Therefore, New Jersey should delay in adopting the LEV Program. (James Benton)

RESPONSE: The Department disagrees. The California LEV Program differs greatly beyond 1997, thus the difference in standards by the year 2000 are as follows: LEV vehicles will meet 0.075 g/mi whereas the Federal vehicles will meet 0.25 g/mi. By the year 2002 the following standards will be achieved: LEV vehicles will meet 0.075 g/mi and ULEV vehicles will meet 0.040 g/mi. After the year 2002, the optional Federal Tier II program **could** come into effect. However, actual Federal promulgation of such standards is still highly uncertain. Therefore, the Department believes there is adequate reason to adopt the LEV program at this time.

59. COMMENT: EPA has acknowledged that the LEVs will emit more pollutants on Federal reformulated gasoline than on California reformulated gasoline. In addition, State emission inventory modeling has not been based on MOBILE 5.0, which EPA has described as the "model of choice" for this purpose. Taking these factors into account, a delay in the implementation of the LEV regulations is not an unreasonable request. A slight delay in implementation until MOBILE 5.0 is released will allow time for a more accurate assessment of the need for the LEV regulations, based on MOBILE 5.0, and will allow manufacturers additional lead time with which to gain additional confidence with required new technologies prior to their commercial introduction. Therefore, New Jersey should research the benefits of the LEV Program using MOBILE 5.0 and should delay adoption until this information is reviewed. (Satoshi Nishibori, Nissan R&D, MVMA, and Al Weverstad, General Motors)

RESPONSE: The Department has modeled the benefits of the LEV program using EPA Mobile 5.0. The results indicate greater than expected benefits from the LEV program using Mobile 4.1. Mobile 5.0 takes into account the use of Federal reformulated gasoline. From this modeling, the benefits of the LEV program, without using California fuels, are predicted to be worthwhile. Therefore, the Department believes New Jersey would benefit from adoption of the LEV Program as soon as practicable.

60. COMMENT: If New Jersey decides to adopt the LEV program at this time, we believe it is desirable to adopt a regulation which would only require manufacturers to sell vehicles which have been certified for sale in California. This would avoid the creation of any "third car" requirements, which are expressly prohibited in the Federal Clean Air Act. (Satoshi Nishibori, Nissan R&D, MVMA, and Al Weverstad, General Motors)

RESPONSE: Adoption of the LEV Program does not constitute any action of any kind to create, or have the effect of creating, a "third vehicle."

61. COMMENT: We urge restraint in adopting regulations that New Jersey has no control over. Should New Jersey blindly follow California or should it make decisions on the LEV Program only after a thorough review of what New Jersey wants to attain and how best to go about reaching that goal has been performed? (William Dressler, New Jersey Gasoline Retailer's Assoc. and Allied Trade, Inc.)

RESPONSE: The Department carefully reviewed California's LEV Program before making the decision that it would be a cost effective means for achieving additional emission reductions in New Jersey. The Department is not blindly following California; although the Department acknowledges the statutory need to maintain standards identical to California's. There are areas where New Jersey can vary from California concerning the LEV Program (for example, enforcement provisions and auditing provisions). To accommodate their concerns, the Department developed N.J.A.C. 7:27-26.16, incorporation by reference. This section allows public comment on any of California's proposed changes to documents the Department has incorporated by reference. It also allows the Department elect not to incorporate future supplements or amendments to the documents incorporated by reference.

62. COMMENT: There would be little or no adverse impact from waiting a few years to adopt the California program. The sales weighted Non-Methane Organic Gas (NMOG) standards are relatively flat for the first few years, then decline rapidly. A state can skip these first few years and opt-in later on the lower part of the NMOG curve if a determination is made that this is necessary. This figure compares a 1995 LEV implementation to a 1997 implementation date. There is virtually no increase in fleet hydrocarbon emission levels by waiting two years. Therefore, we think New Jersey should delay adoption of the LEV Program. (Robert Veit, MVMA)

RESPONSE: The Department disagrees that a delay in the LEV program will not effect the benefits of the program or the air quality of New Jersey significantly. To delay implementation of the proposed rules further than required by P.L. 1993, c.69 is not in New Jersey's best interest. By proposing the adoption of this regulation now, the LEV standards will be applicable within a reasonable timeframe. Further delay of even one or two years will push the program to a later start date, beyond which the effectiveness of the program would be severely reduced. While this delay may not appear to be significant initially, a motor vehicle emissions control program takes at least 10 years to become fully

effective through fleet turnover. The Department must complete adoption of the LEV standards as early as possible in order for the LEV standards to become effective for the effective model year designated by New Jersey. Failure to timely adopt would force New Jersey to accept less stringent Federal standards.

Pursuant to the CAAA, New Jersey must not only achieve the NAAQS for ozone by 2005/2007, but must maintain that standard into the future, taking VMT growth ino account. Accordingly, the State's adoption of the LEV standards is for the purpose of maintaining attainment of the standards and allowing for offset of future VMT, industrial and commercial growth.

63. COMMENT: Premature adoption of California's LEV Program may create undue burdens for our industry and for the citizens of New Jersey at a time when the State's economy can least afford such negative impacts. If California's LEV Program is adopted, the oil industry may have to make significant, unnecessary capital expenditures, in addition to those already required by measures mandated by the CAAA. Also, it could force the citizens of New Jersey to pay additional money every time they fill their tanks for a program whose benefits are still uncertain. Therefore, New Jersey should delay adoption of the LEV Program until its benefits are further researched and founded. (W. D. Dermott)

RESPONSE: Adoption of the LEV Program will not cause the citizens of New Jersey to incur any additional fuel costs. The Department is not proposing the adoption of the California fuel requirements for the State of New Jersey.

64. COMMENT: The Department's statements on "recall" and "additional staff" are premature. Statements regarding potential recall and staff needs are, at this time, completely speculative. California has no experience administering the LEV Program and it is premature to assume that there will be no spillover to other states, including New Jersey, that adopt the Program. (W. D. Dermott)

RESPONSE: Although the Department can only estimate, at this time, the staff and cost requirements to administer the California LEV Program, such estimates are not completely speculative. CARB has administered a motor vehicle emissions control program for nearly 30 years. New Jersey's estimates are based heavily upon CARB's experience. As stated in the Economic Impact statement at 24 N.J.R. 1321:

The LEV Program by its nature will rely heavily on the staff and facilities of the California Air Resources Board (CARB), as CARB already regularly performs the background work necessary to implement its LEV Program. Since New Jersey's program would be based on California's, and since the emission standards are required by the Clean Air Act to be identical to California's, a minimum of additional resources will be required by the Department. The Department estimates that some additional staff members will be needed by the Department and the Division of Motor Vehicles Services (MVS) to audit registration, dealer compliance, certification and reporting, and to perform field enforcement.

65. COMMENT: Hertz believes that delaying the program's implementation to model year 1998, as proposed by the motor vehicle industry, is reasonable and believes New Jersey should delay adoption of the LEV Program. (Virginia Carlson, Hertz Corp.)

RESPONSE: The requirements of P.L. 1993, c.69, make it very unlikely that the Department will implement the LEV Program prior to model year 1998.

66. COMMENT: Our members in the oil and motor vehicle industries are actively requesting that New Jersey action on implementing the LEV standard be deferred several years until we see whether or not the California programs actually achieve a cost-effective reduction. In light of the optimistic dates for implementation in the region, this appears to be a reasonable solution. Therefore, New Jersey should delay adoption of the LEV Program. (Jim Sinclair, New Jersey Business & Industry Assoc.)

RESPONSE: See response to Comment 55.

67. COMMENT: GM showed that there would be little or no adverse impact from waiting a few years to adopt the California Program. The sales weighted NMOG standards are relatively flat for the first few years. NMOG standards for '94 through '97 and on up to 2003 begin to decline rapidly. A state can skip the first few years and opt in later on the lower part of the NMOG curve if a determination is made that this is necessary. There's virtually no increase in fleet hydrocarbon levels by waiting for these two years because of the slow ramp up of the vehicles. These slides should show positively that there are no adverse effects in waiting to adopt the LEV Program. (Al Weverstad, GM)

RESPONSE: See response to Comment 55.

68. COMMENT: There were significant reductions in the number of ozone exceedances in 1988 to 1991. The high number of exceedances in 1988 has been attributed to the extraordinarily hot weather that occurred throughout the Northeast during that summer. The summer of 1991 nearly matched the extreme heat of 1988, but the number of ozone exceedances in New Jersey dropped from 45 to 26. Further, the running three year medians of the daily peak ozone concentration have shown significant declines over the same period throughout the tri-state area, with the largest decline occurring since 1989. What the Department has already done controlling RVP, Stage II controls on fuels, is having a positive impact. This is a case where the 1990 CAA is reducing hydrocarbons by including an enhanced and improved evaporative emissions program. The 1990 CAA vehicles start coming in 1994, and they are going to start providing you with additional benefit. With the ozone already coming down, we think you ought to wait before adopting the LEV Program. (Al Weverstad)

RESPONSE: The Department agrees that the ozone levels are on a decline because of an aggressive State (and Federal) emissions control program to reduce emissions of hydrocarbons and NO_x. However, because of the projected increase in vehicle miles traveled (VMT) and the increased number of vehicles on the road (even taking into account the additional control programs to be implemented), VOC and NO_x inventories will begin to increase after the year 2000. The reductions from implementation of the LEV Program will help to offset the increased VMT and vehicle population.

69. COMMENT: By the year 1997 a determination of the necessity of Federal Tier II will become apparent. Keeping this fact in mind, MVMA feels the best course New Jersey can take is to wait until 1997 to adopt the LEV Program. If EPA does not come through with Tier II, then at that point, if New Jersey went forward with a Low Emission Vehicle Program, it would have the LEV Program in place before the 2004 model year when Tier II, Federally, would take place. (Weverstad)

RESPONSE: EPA must complete its evaluation of the need for the Tier II standards by June 1, 1997.

The Department disagrees that a delay in the LEV program will not effect the benefits of the program or the air quality of New Jersey significantly. To delay implementation of the proposed regulation is not in New Jersey's best interest. By proposing the adoption of these rules now, the LEV standards will be applicable within a reasonable timeframe. Delay of the start date will reduce the effectiveness of the program. While this delay may not be significant initially, because a motor vehicle emissions control program takes at least 10 years to become fully effective through fleet turnover, over time such a delay in start up would have a significant adverse effect on the LEV Program.

Pursuant to the CAAA, New Jersey must not only achieve the NAAQS for ozone by 2005/2007, but must maintain that standard into the future, taking VMT growth into account. Adoption of the LEV standards is for the purpose of maintaing attainment of the standards and allowing for offset of future industrial and commercial growth.

70. COMMENT: The New Jersey Society for Environmental, Economic Development (NJSEED) urges that until the cost of implementing the California LEV Program in New Jersey (in addition to adopting CAA requirements) is determined that all regulatory actions regarding the adoption of the LEV Program be suspended. (Bernard Dziedzic, NJSEED)

RESPONSE: The Department has determined that the LEV standards will result in an additional cost of $170.00 per new vehicle purchases. The Department views this as a cost effective control strategy and not an undue burden on the citizens of New Jersey. The Department estimates the administrative costs of implementing the LEV program in New Jersey will be minimal. In order to keep administrative costs down, New Jersey will rely heavily upon the staff and facilities of the CARB as well as other states in the region that adopt the LEV program.

71. COMMENT: We believe that there is sufficient time to assess New Jersey's air quality situation and develop a detailed emissions control strategy tailored to meet the State's needs without prematurely adopting California's Low Emission Vehicle Program. For example, delaying adoption of California's LEV program for three years would cause only a one percent difference in vehicle emissions in the year 2000 or the year 2005, and the difference is even smaller in subsequent years. Thus, New Jersey has ample time to evaluate the need, cost and benefit of this optional control measure such as California's LEV program. While New Jersey evaluates options, such as the LEV program, it would not be losing ground on its air quality improvement efforts because of the provisions of the CAAA which are far reaching mandatory requirements and are

to be implemented during this time period. These controls include tighter vehicle standards, oxygenated fuels, reformulated gasoline, enhanced vehicle inspection and maintenance, as well as many other measures. These requirements mandated by the CAA, coupled with steps already taken by New Jersey, such as Stage II marine vapor recovery and lower volatility requirements, plus the continuing turnover of motor vehicle fleet, will make major improvements in New Jersey's air quality and, in fact, may solve the State's air quality problem. (James Benton and Charles Morgan, Mobile Environmental Affairs)

RESPONSE: See response to Comment 55.

72. COMMENT: In addition to cost-effective air pollution control strategies, we believe that the implementation of the California LEV Program should proceed at a very deliberate pace. We believe that there are some uncertainties regarding the LEV Program. (Anthony Ippolito)

RESPONSE: The Department agrees that there are certain aspects of the LEV program that are not fully developed. However, the basis for the LEV program is sound and the Department does not believe that those program components not fully developed yet should prevent New Jersey from proceeding with adoption in order to reap its benefits as soon as possible.

73. COMMENT: The Fuels Merchant Association of New Jersey feels that the Department should give more consideration to the LEV Program before it adopts. The LEV program is potentially harmful to the business of the smaller fuel merchants in the State. (Fred Sacco)

RESPONSE: The Department believes that the LEV program will **not** have an adverse impact on the fuel market in New Jersey. The Department is **not** proposing adoption of California's alternative fuels program or their reformulated gasoline specifications.

74. COMMENT: Exxon questions the statement relative to "Tier II Adoption" at 24 N.J.R. 1317. It is premature to speculate on what EPA might do regarding Tier II Standards. Certainly, EPA will conduct a thorough study of the need for adopting the standards as required by the CAAA. In the same manner, the Department should conduct a thorough study before adopting the California LEV Program. (W. D. Dermott, Exxon Co. USA)

RESPONSE: Before the Federal Tier II emission standards are adopted nationwide, EPA must submit to Congress, after public review and comment, a study showing that additional reductions from light duty vehicles are needed, cost-effective, and technically achievable. Tier II standards (equivalent to the category of vehicles meeting LEV standard) or alternatives are ultimately dependent upon an effective and successful Federal rulemaking, the effective date of which can be no earlier than model year 2003, but no later than model year 2006. Given the uncertainty and time frames associated with this process, the Department believes that the probability of adoption of Federal Tier II standards is unlikely.

In accordance with section 3 of P.L. 1993, c.69, however, the Department will await preparations of the NJIT written report evaluating various air pollution control strategies and address the findings and conditions contained therein, prior to adoption of this proposal.

Vehicle Technology

75. COMMENT: The Massachusetts Department of Environmental Protection presented a document issued April 14, 1992 from Ford Motor Company announcing the CARB's certification of a Ford Escort and Mercury Tracer to TLEV standards, one of the emission categories under the LEV program. If Ford was able to achieve these standards four years ahead of schedule, the technology is available for other vehicle manufacturers as well. (Daniel Greenbaum, Mass. DEP)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

76. COMMENT: PSE&G thinks it makes sense for the State to encourage the further development of electric vehicle technology by having sales of a prescribed percentage of ZEVs in New Jersey mandatory. Therefore, we support the ZEV sales mandate contained in the proposal and recommend its adoption. (Greg Dunlap, PSEG)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

77. COMMENT: Over and over again, the automobile industry has been dragged screaming and kicking like a petulant, spoiled child toward some societally beneficial position, and then they trumpet the achievement as if they have been the chief advocates and sponsors all along. The commenter believes that the automobile industry is capable of meeting the LEV standards but resists the program because it will require additional work. The commenter thinks New Jersey should proceed with the adoption of the LEV program. (Eric Zwerling, citizen)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

78. COMMENT: At the "real earth summit" the rest of the world is about to sign on to energy efficiency emission reduction treaties, which will create a huge demand for new technology cars as well as other efficiency devices. If other auto industries can comply with their country's energy efficiency emission reduction plans, so can the United States (U.S.) auto industries. Therefore, New Jersey should proceed with the adoption of the LEV program. (Eric Zwerling)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

79. COMMENT: The California LEV Program which New Jersey proposes to adopt will require Nissan to develop unproven technologies and involves considerable resources and costs. The retail cost of a vehicle is therefore expected to increase significantly, which will have a direct impact on our customers and, therefore, the LEV program should not be adopted in New Jersey since it is not cost effective. (Satoshi Nishibori)

RESPONSE: According to the study of LEV implementation conducted for the Department (Pechan Report), the increase in new car prices should average $170.00 per vehicle. The State believes that the Pechan Report is a reliable source of information. The study was conducted for NESCAUM, which is an organization that represents the interests of New Jersey as well as the rest of the Northeastern states. All of the NESCAUM states were allowed to review the Pechan Report prior to its publication and concluded that the report was reasonable. Therefore, the Department believes that the report is accurate and shows a viable representation of the air pollution situation in the Northeastern part of the country.

Since the low-emission vehicle regulations involve long-range implementation, cost estimates have been projected for the most likely technologies to be used in meeting the standards. It is true that these estimates only reflect the cost of the hardware because it is impossible for the Department to project research and development costs which can vary significantly from manufacturer to manufacturer. This information is also not readily accessible to the Department. However, research and development costs, when defused over the number of years which a particular technology can be utilized, should not be unreasonable. The Department therefore does not feel that the LEV standards will result in a significant increase in the cost of the new car and, as such, will not have a direct impact on new car sales.

80. COMMENT: The California Emission Program has not yet been implemented by CARB and not yet approved by EPA. The vehicle technologies necessary to achieve the emission levels have not been demonstrated in commercially viable systems. Therefore, New Jersey should delay adoption of the LEV Program until these issues are resolved. (James Morford and Bernard Dziedzic of NJSEED)

RESPONSE: CARB has expended considerable effort to demonstrate that it is feasible and cost effective to meet the Low-Emission Vehicle requirements. CARB's background and basis for the proposed LEV regulations indicates the standards appropriately reflect both the need to achieve maximum emission reductions at the earliest practicable date. The Department, therefore, feels that manufacturers can meet the required technology in a timely and cost effective manner.

81. COMMENT: The LEV program has not been implemented nor have the vehicle technologies necessary to achieve the low emission levels been demonstrated in commercially viable systems. Ford recently announced that two of its vehicles, the 1993 Ford Escort and Mercury Tracer, will meet the first of California's LEV program standards—the transitional low emissions vehicle (TLEV) standard. However, Ford, despite its best efforts, has not identified the technology to meet the next two levels of standards in California's LEV program—the low emissions vehicle (LEV) standard and the even more stringent Ultra Low Emissions Vehicle (ULEV) standards. Thus, New Jersey should delay adoption of the LEV Program unti the requisite LEV and ULEV technology has been identified. (Michael Tydings)

RESPONSE: The Department is relying on the findings of CARB for the certification of vehicles under the LEV standards. Historically, CARB has set the pace of manufacturers to meet progressively more stringent vehicle emission standards. The manufacturing community has been able to meet those standards. For example, catalytic converters and feedback fuel controls were developed to meet stringent vehicles emission standards in the late 1970s and early 1980s. The success of CARB's strategy indicates that they have been reasonable in gauging the stringency of proposed standards and manufacturers' ability to respond effectively.

82. COMMENT: Texaco has uncertainties associated with the LEV Program. New Jersey should not adopt the LEV Program because of a lack of in-use experience with future low NO_x cars (0.075 g/m and 0.04 g/m). (H. G. Ingram)

RESPONSE: Prototype vehicles tested by CARB clearly demonstrate that the ULEV standards are achievable in the timeframe required under the LEV phase-in schedule. CARB has demonstrated that the ULEV standards can be met using present day vehicles, running on commercially available gasoline, that are retrofitted with EHC systems. The significant progress manufacturers have made developing EHC technology, hydrocarbon traps and other emission control methods provides the Department with the confidence that the ULEV standards are practical. In additon, ULEV emission standards are clearly achievable by hybrid electric vehicle technologies which employ both an electric motor and a small combustion engine. Finally, the biennial technology review committed to by CARB as part of the LEV program provides a mechanism to continually monitor the progress of the motor vehicle industry and the practicality of the LEV requirements.

83. COMMENT: CARB's original estimates of the cost of an electrically heated catalyst were $170.00. More recent estimates by CARB put it between $200.00 and $290.00. The Automotive Consulting Group, an independent firm, estimated the cost at about $1,000 per vehicle. There is also a negative fuel economy impact to this technology. The extra battery, catalyst, and other system components will add about 40 pounds to the weight of the vehicle. The additional weight, coupled with the additional load on the engine to recharge the extra battery between engine starts, could decrease fuel economy by three percent. Therefore, we believe the LEV Program is not a cost-effective one and New Jersey should not adopt it. (Robert Veit and Al Weverstad, General Motors)

RESPONSE: The estimates made by the Automotive Consulting Group are based on pre-production levels and research and development costs amortized over a very short period of time. The Department believes that at mass prouction levels, the price of the Electrically Heated Catalyst (EHC) will drop substantially. The Department also believes that any fuel economy penalty resulting from the EHC can and will be offset through other engine or vehicle design modifications.

84. COMMENT: There are comprehensive program reviews in California every two years. CARB required these when it approved the LEV Program in September of 1990, in recognition of the complex nature of this program and the unproven technology that would be required. If New Jersey were to adopt a California LEV Program now, it would be adopting a program that is incomplete and undefined. In fact, the first comprehensive LEV program review was scheduled for last April and has now been delayed until November. Thus, New Jersey should delay adoption of the LEV Program until these issues are resolved. (Al Weverstad)

RESPONSE: The basic framework for California's LEV program has been adopted through regulation and is sufficiently defined for EPA to have waived Federal preemption of the program. The Department believes that the program is adequately well defined to merit adoption for New Jersey.

85. COMMENT: A major uncertainty exists about the benefits of emission reduction in the program making adoption at this time very premature. An example of this is the technological feasibility. There have been some comments made in regard to the TLEV which some manufacturers are capable of meeting, but once you go beyond the TLEV feasibility drops dramatically. The current in-use emission factors are not known for the TLEV. Therefore, New Jersey should not adopt the LEV Program. (William Watson)

RESPONSE: The technology to meet the emissions standards prescribed in the LEV Program is advancing rapidly. Therefore, the Department believes that the LEV standards can be met within the necessary timeframes. However, as part of California's biennial review process, California will review the state of the technology and make adjustments to the schedule if appropriate. As a result of California's adjustments, New Jersey will modify its regulation in accordance with California.

86. COMMENT: Ford made reference to the Tracer and Escort, as well as the TLEV standards which are first going to be enforced in California in 1994. They stated that the vehicle is about two years ahead of schedule. This car has not met the in-use LEV standards, because Ford has not been able to project this car's emissions over a long period of time. Additionally, the vehicles produced did not meet the historical standards required by California and have not been certified as meeting the LEV standards. There must be more technology developed before a vehicle can be certified to meet the low emission standards, and probably at a substantial cost. In addition, Ford cannot say that any of our other vehicles are even close to this level. Many years of research and engineering have already gone into the Tracer vehicles, and many more years of research will have to go into other vehicles before they are even at this level of technology. We have no knowledge at this point whether the equipment needed to meet the LEV standards will properly function throughout the warranty period of 100,000 miles. This does not even go into any discusion of how much more equipment might be needed on other cars. This equipment has only been tested on the Escort and the Tracer. We do not know how costly that equipment will be either. Keeping all of this information in mind, Ford feels that New Jersey should delay adoption of the LEV Program until the technology is more advanced. (Nancy Homeister, Ford)

RESPONSE: The emission levels that were reported for the Escort and Tracer were achieved using current emissions control technology. The Department realizes that additional technological advancements will be required for other vehicles to achieve these standards. However, the Escort and Tracer demonstrate that significant advancements are possible in a relatively short timeframe. The Department is relying on the findings of the CARB for the certification of vehicles under the LEV standards. Historically the CARB has set the pace of manufacturers to meet progressively more stringent vehicle emission standards. The manufacturing community has been able to meet those standards. For example, catalytic converters and feedback fuel controls were developed to meet stringent vehicles emission standards in the late 1970s and early 1980s. The success of CARB's strategy indicates that they have been reasonable in gauging the stringency of proposed standards and manufacturers' ability to respond effectively.

87. COMMENT: Regulations for the LEV Program are still being developed. This program includes a mechanism for adjusting the standards for vehicles powered by fuels other than gasoline, based on whether emissions from such vehicles are more or less ozone reactive. The mechanism requires that reactivity adjustment factors (RAF's) be developed and used to calculate gasoline equivalent emissions for a vehicle's alternate fuel system. This crucial aspect of the program currently under development by California, is still being critically reviewed, evaluated and challenged on technical merit by those in the scientific community. It is unclear at this time when California will adopt the reactivity factors for reformulated gasoline and alternate fuels and if EPA will grant approval of this controversial concept. Therefore, New Jersey should not adopt the LEV Program until these issues have been resolved in California. (James Benton)

RESPONSE: As has previously been stated, the EPA has issued California a CAA §209 waiver alloowing their implementation of the LEV Program. EPA has found that the method CARB used in determining the methanol RAFs is reasonable and does not adversely affect CARB's protectiveness determination. In addition, the Department feels that in issuing CAA §209 waiver to California, EPA was fully aware of the fact that later in the program other RAFs would have to be developed and that their development would be conducted in the same diligent manner as the RAFs already adopted. In fact, California has requested a "within the scope" review of recently developed RAFs. The Department defers to the judgment of the Federal government on this issue and believes that the LEV Program should be adopted on the schedule allowed by P.L. 1993, c.69.

88. COMMENT: Much of the CARB technology feasibility analysis for the low emission vehicle standards is built on the electrically heated catalyst technology, which is still undergoing considerable investigation by both CARB and the industry. General Motors has demonstrated prototype systems but with very low mileage. No one has demonstrated a system capable of complying with LEV or ULEV standards beyond 15,000 miles. To be acceptable for production cars and trucks, the system must be designed for 100,000 miles and it must work on every vehicle that we build, not just one at a time. Considerable work still has yet to be done to develop these systems. Until this can be accomplished, the LEV Program is not practical and should not be adopted in New Jersey. (Al Weverstad)

RESPONSE: The Department is aware that the Electrically Heated Catalyst (EHC) technology is advancing very rapidly, especially in the aftermarket sector. Therefore, we expect these systems to be in production at a reasonable cost prior to the introduction of LEV's and Ultra Low Emission Vehicles (ULEV's). Recent developments indicate that EHCs will allow vehicles to meet the ULEV standards.

89. COMMENT: New Jersey's technical review should address some of the circumstantial differences (that is, climatological, etc.) between California and New Jersey. For example, the heater is expected to be used frequently in New Jersey because of the colder climate. The prevailing cooler temperatures result in degraded battery performance as well as more severe heater and defrost/defog design requirements that will decrease the driving range of a ZEV. Additionally the status of the infrastructure needed to support electric vehicles should be evaluated. All of these issues should be reviewed before New Jersey adopts the LEV Program. (Satoshi Nishibori)

RESPONSE: The Department agrees that the technological review of Zero Emission Vehicles (ZEVs) should address circumstantial differences between California and New Jersey and status of the infrastructure. As stated at 24 N.J.R. 1319 of the proposed notice, "The Department recognizes that significant electric vehicle technological developments are underway that may impact the potential for manufacturers to achieve the ZEV sales mandate. the Department, consistent with action planned by Massachusetts and New York, will undertake a technological review of ZEVs in 1994 to examine ZEV technological developments and issues relating to ZEV performance in New Jersey. This review will include an opportunity for public participation."

Impact on Selected Industries

90. COMMENT: The growth of the NGV Coalition is an indication of increased utility activity relative to NGVs. More impressive is the developing fueling infrastructure being pursued by some of the more aggressive gas utility companies around the country. This indicates support from the fuel suppliers, not arguments against the adoption of the LEV Program in New Jersey. (Jeffrey Seisler)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

91. COMMENT: The manufacturing and the petroleum industries are exempted from many of the most important environmental laws because they claim that they cannot compete with foreign corporations. Their arguments are invalid. New Jersey should proceed with the adoption of the LEV Program. (Eric Zwerling)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

92. COMMENT: If we require clean fuel, efficient cars here in New Jersey, we will be doing car manufacturers a favor. But true to form, Detroit's response will be to hire 10 new lobbyists, while Japan will simply hire 10 new engineers. Auto manufacturers in the U.S. are capable of meeting the LEV standards. New Jersey should proceed with the adoption of the Program. (Eric Zwerling)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

93. COMMENT: Exxon does not agree that the Department has "worked" with industry. The Department has sponsored a number of workshops. Yet, any collaborative approach to working toward a common understanding of the issue and the basis for proceeding with the adoption of the California LEV Program has been lacking on the Department's part. Until a common understanding can be reached on this issue, the LEV Program should not be adopted in New Jersey. (W. D. Dermott)

RESPONSE: The Department held one public workshop on November 7, 1991 and one working group meeting with the public and industry on December 10, 1991 concerning the proposed LEV regulations. Although the statutory requirement mandates that one public hearing to be held per regulatory proposal, the Department held two public hearings on the LEV Program: May 19, 1992 and June 3, 1992. The statutory requirement also mandates that at least 30 days be given for public comment period for a regulatory proposal; the Department extended the LEV public comment period to allow for 71 days of public comments. Also, on April 9, 1992 a Legislative Hearing was held concerning the LEV Program. In addition to reviewing studies and reports concerning the LEV Program, the Department utilized California's extensive studies prior to considering adoption of the LEV Program. The Department believes that little compromise may have been reached with industry. However, the Department believes that it has made its best effort to satisfy industries' concerns.

94. COMMENT: The LEV project could be considerably detrimental to the rental car industry. If passed, LEV would require that out-of-State vehicles that are not certified to the low emission standards be forced to remain idle until such a time as they can be rented to individuals whose final destination is outside of New Jersey. This proposed aspect to the LEV regulation would be detrimental to the industry in many ways.

(1) It would severely limit the rental car companies' operations and reduce the availability of cars to the public.

(2) It would contradict the intent of the Clean Air Act and interfere with interstate commerce and the public's right to travel.

(3) It would force the agencies to forfeit potential income from a non-conforming vehicle which could otherwise be rented.

(4) It may place the Department's regulations in direct conflict with the International Registration Plan (IRP) requirements with which New Jersey must comply by 1996.

Due to the fact that the rental car industry constitutes a minimal percentage of vehicles and their fleets consists mostly of new cars, this aspect of the rules will have no effect on reducing emission levels in New Jersey. The significant burden on interstate commerce, as well as the public's right to travel, would be more detrimental than the effects on public health. Thus the rental car industry should be provided with a flexibility to properly administer the program without losing significant income from an idle vehicle. (Virginia Carlson, Hertz Corp.)

RESPONSE: The Department has amended the LEV proposal to exempt the rental car agencies from the prohibitions of the regulations for a period of 30 days commencing on the day a vehicle is delivered to a New Jersey rental car agency. If, after the 30 day delay period, the vehicle is still in the State, then it must remain idle until it is next rented to a destination outside of New Jersey. The timeframe was not arbitrarily chosen. The New Jersey Motor Vehicle code requires that a vehicle kept in the State for more than 30 days must be re-registered as a New Jersey vehicle. The Department believes that this is a reasonable compromise that will relieve any undue burden on the rental car industry in New Jersey without causing significant loss of emission reduction benefit.

95. COMMENT: The rental car industry in California lends itself to the LEV Program due to the fact that the business is mainly intrastate travel. In California's case, any out-of-state cars that come in can be allowed to remain idle without causing a severe loss in profit margin. In New Jersey, as well as the rest of the east coast, the rental car business thrives on interstate business and so the out-of-state idle clause would cause a substantial loss in profit. Therefore, the rental car agencies in New Jersey should be exempted from the LEV regulation. (Virginia Carlson)

RESPONSE: See response to Comment 94 above.

96. COMMENT: Under existing provisions of the State registration laws, car rental companies are required to return an out-of-State car to its home state within 30 days or the vehicles must be re-registered as a New Jersey vehicle. As a result, Hertz uses its best effort to re-rent out-of-State vehicles back towards their original renting locations. This further insures that the rental agencies will conform to the LEV regulations in a given, limited time period. (Virginia Carlson)

RESPONSE: See response to Comment 94.

97. COMMENT: The proposed section of the LEV law which would prohibit the rental of out-of-State non-conforming cars unless their final destination is out of New Jersey would also prohibit any car rental company from accepting a vehicle being returned by the customer for any reason, including a safety defect, unless that vehicle conforms to the vehicle emission standards of New Jersey. Disabled vehicles or vehicles in need of repair would have to be towed or driven out-of-State for repairs. Thus, this section of the regulation would not only cause an undue burden to the rental agencies of New Jersey but also to the citizens that live in the State. Therefore, this prohibition should be modified or stricken from the regulation. (Virginia Carlson)

RESPONSE: The Department believes that the changes made to the provision as stipulated in the response to Comment 94 and above will allow sufficient time to mitigate the burden identified by the commenter.

98. COMMENT: Due to the added strain that will be placed on the automobile industry to develop cars that meet the stringent LEV standards, the industry asks that the EPA allow a period of time for which the Federal on-board diagnostic (OBD) requirements will be identical to those of California. After the manufacturers have successfully completed the car emission requirements of the LEV program, then they will then develop on-board diagnostics to satisfy New Jersey's requirements. (Mike Schwarz, Ford)

RESPONSE: The Department understands that CARB and EPA are discussing development and implementation of Federal and California OBD requirements to streamline implementation. New Jersey's OBD requirements will be identical to California's.

99. COMMENT: The adoption of California's fleet average emissions with New Jersey could cause an undue bruden for specific manufacturers

while not having this result on the industry as a whole. The fleet averages would have a limiting effect on the sale of California certified vehicles or require production modifications not needed for California, which would constitute the creation of a third vehicle prohibited by the CAAA. Thus, the LEV Program should not be adopted in New Jersey with fleet average emission requirements identical to California's. (Al Weverstad, MVMA)

RESPONSE: The Department assumes the commenter is referring to prohibitions at CAA §177 against a state's attempt to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards. The Department does not interpret this language as prohibiting the establishment of fleet average exhaust emission limitations. Such an interpretation would run counter to the spirit of the statute.

100. COMMENT: If the Department promulgated California's LEV regulations, mandating the use of Federal reformulated gasoline only, auto makers might be forced to litigate the issue to protect themselves against warranty claims in the event that their vehicles failed to meet emission standards when operated on Federal reformulated gasoline. This being the case, the Department should not adopt the LEV Program unless the California reformulated fuels are adopted as well. (James Benton, NJ Petroleum Council)

RESPONSE: Regarding the California fuels issue, EPA has stated that although eligible states may adopt California new motor vehicle emission standards, there is no explicit requirement that such states also adopt California fuel requirements. The Department shares this belief and has no plans to adopt the California fuels provisions.

Emission warranties for motor vehicles are required by Federal law. CAA §207; 42 U.S.C. §7541. The CAA directly addresses the issue of gasoline quality as it relates to warranty coverage by requiring that all gasoline sold in the country be "substantially similar" to the fuel that is used for emission testing—known as certification fuel. CAA §211(f); 42 U.S.C. §7545. The purpose of this requirement is to ensure that no gasoline will have the effect of undermining a vehicle's emission control system. Thus, as a matter of law, the commenter's claim is not valid. Furthermore, there is no valid technical basis to support the commenter's claim that Federal fuel will undermine the durability of a vehicle's emission control system.

The fact that an LEV vehicle might have higher emissions when operated on Federal fuel would not mean that it would fail to meet the LEV standards. In the certification process, cars are tested on fuels such as Indolene that are cleaner than in-use fuels. Because compliance with the LEV standard is only determined when the vehicle is subject to a test procedure that includes the use of the fuel used to certify the vehicle, there is no danger of failing the test based on the daily use of fuels other than Indolene.

Because the availability of reformulated fuels in California may be limited during the commencement of the LEV standards and because California cars will obviously be leaving the state for areas where California reformulated gasoline will not be available, the commenter's concerns would be a concern for the manufacturers of all cars sold in California as well as those sold in New Jersey. However, the manufacturers did not voice these concerns in EPA's rulemaking to revise the protocols by which manufacturers demonstrate emissions durability of new motor vehicles.

Significantly, despite their claims regarding the potential adverse effects of Federal fuels on LEVs, the automobile manufacturers have not proposed to EPA that purchasers of California vehicles in the state of California be notified of these limitations.

101. COMMENT: The smaller fuel industries are having problems with the LEV regulations due to the fact that they are being sandwiched between the big fuel companies and the new series of companies that are coming in with the alternate fuels. This leaves the small volume manufacturers with nothing. They are the industry in New Jersey that presently has been redlined by the financial institutions in their efforts to meet EPA tank requirements. They cannot possibly get the funding to back the changes that the LEV Program would require, and thus, would have to get out of the business or leave the State of New Jersey. Therefore, some type of accommodations should be made for the smaller fuel industries or the program should not be adopted in New Jersey at all. (Fred Sacco, Fuel Merchants Association of New Jersey)

RESPONSE: The Department is not proposing adoption of any fuel requirements in conjunction with the LEV Program. Hence, this action will have no effect upon any fuel marketers, especially small, independent marketers of petroleum products.

102. COMMENT: Severe problems will also occur at the dealership level due to the complications of selling California models in New Jersey where Federal models used to be sold. In addition, automotive technicians will have to be trained, at considerable cost, to repair the exhaust emission control systems of California models in order to maintain customer satisfaction. Since technician training can only be accomplished at the dealership level, due to the fact that Nissan does not offer training to independent repair facilities, the quality of training will be impossible for Nissan to control. This will decrease the amount of trained technicians in the field. Therefore, New Jersey should not adopt the LEV Program. (Satoshi Nishibori, Nissan)

RESPONSE: The Department realizes that Nissan cannot control the quality of training at the independent level. The Department believes that the private automotive repair industry will advance in expertise in repairing California certified vehicles at a sufficient pace to assure quality repairs. As with any new technology, there will be a period of technician education that will be needed. The dynamics of the marketplace will drive the repair industry to assure adequate training of the repair technicians.

103. COMMENT: The emissions control program currently managed by CARB is technically sophisticated and wide-ranging. Therefore, it is not necessary for New Jersey to duplicate the technical evaluations of CARB. Nissan agrees that New Jersey does not need to conduct individual evaluation tests. Rather, we believe New Jersey can and should rely upon and apply the determinations and findings of CARB. In particular, the use of only CARB's test results for the assembly line two percent Quality Audit Test is desirable. If the two percent Quality Audit Test is required for the California models sold in both New Jersey and California, present Nissan manpower and test facilities would be inadequate to perform individual audits for each state. In addition, the increase in the number of vehicles tested would not be statistically meaningful. Nissan believes that it would be prudent to avoid any regulation which has no discernible air quality benefit and imposes significant burdens on manufacturers, such as the LEV Program. (Satoshi Nishibori)

RESPONSE: The Department agrees with the commenter that unnecessary duplications of effort between CARB and New Jersey would not be productive. It is in this light that the Department developed the proposed rules. The commenter's suggestions regarding Quality/Assurance Audits will be considered by the Department in subsequent amendments to this Subchapter to incorporate Quality/Assurance Audit provisions.

Fuels: Alternative and Reformulated

104. COMMENT: The Federal reformulated gasoline program, which Northeast states will opt into on a regional basis, along with enhanced I/M programs are expected to produce much of the 15 percent reduction in VOC inventories required by 1996 and will play a crucial role in helping states make progress toward attaiment of the ozone standard. Since the LEV Program in New Jersey will bring the State closer to attainment, we support the adoption of the LEV Program. (Mike Bradley)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

105. COMMENT: The California reformulated fuel is not mandated as part of this LEV Program. Federally formulated fuels are available. Nothing will affect EPA's authority to conduct in-use warranty and recall testing, which is already stipulated in the layout of both the California and the Federal Plans. These limitations on fuel and staffing reduce excessive program costs to New Jersey. Thus, the LEV Program is a cost effective air pollution control strategy. (Mike Bradley)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

106. COMMENT: Natural gas is an abundant domestic fuel. 93 percent of the gas consumed in the U.S. is produced domestically. As for supply, according to the U.S. Department of Energy there is about 65 years of natural gas available at today's prices; and a 200 year supply in the U.S. (97 percent of the reserves in 48 states). Natural gas is being used in many fleet situations already and as with the conventionally-fueled vehicles, the manufacturer is responsible for warranty and service. Thus, we advocate the adoption of the LEV Program within the State of New Jersey, especially because of our belief that the program provides

incentives to promote the use of alternative fuels, such as natural gas. (Jeffrey Seisler, NGV, Mike Reilly, Wakefern Corp. and PSE&G position paper)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

107. COMMENT: One of the key uncertainties associated with the LEV Program is that regarding the Program's fuels requirements. The Department has stated that, if New Jersey adopts California's LEV Program, the only fuel required will be Federal reformulated gasoline. However, California's LEV Program is accompanied by a mandate requiring fuel providers make available those fuels used to certify vehicles under the LEV Program. In California, car manufacturers will be able to meet the LEV standards through a combination of vehicle technology and fuel type. Auto manufacturers will be required to certify that the vehicle/type combination meets the LEV standards. At this point, we simply do not see how it can be assumed that cars will meet their emission standard if they are operated on a fuel different from the fuel on which they were certified. Therefore, the possibility of a California fuel requirement is very real, irrespective of statements to the contrary by the Department. (Michael Tydings, Exxon and William Dressler, NJ Gasoline Retailers Assoc.)

RESPONSE: California has historically regulated the composition and properties of motor fuels. Although California has regulated commercial fuel differently than other states, these differences do not affect vehicle hardware. Moreover, California's adoption of the reformulated gasoline program is primarily to achieve emission reduction from gasoline-powered vehicles already on the road.

California's LEV standards and fuel program are demonstrably separate in a number of ways. First, in California, Phase II reformulated gasoline will not be required until March 1, 1996, although vehicles certified to LEV standards will already be on the road. Second, CARB will exempt small refiners from the reformulated gasoline regulations for two years. Third, CARB's clean fuels program is also regional, that is, it is limited to certain (heavily polluted) areas of that State. Since the automobile manufacturers are not restricting the use of their LEV cars to any region in California or even to the entire State, these vehicles must be able to refuel in areas that do not have reformulated gasoline. Therefore, it is apparent that the LEV standards and the California fuels program constitute separate pollution control strategies, promulgated together as distinct, but complementary programs.

EPA has stated that although eligible states may adopt California new motor vehicle emission standards, there is no explicit requirement that such states also adopt California fuel requirements. The Department shares this position and has no plans to adopt the California fuels provisions.

Further, P.L. 1993, c.69, prohibits the Department from requiring the sale of California reformulated fuel. Should said sale be required by court order because of implementation of the LEV Program, the LEV Program shall expire 180 days later.

108. COMMENT: The California fuel program is a concern for our oil company members. Those companies with regional markets and local refining facilities are very concerned about the capital cost of developing refining capacity for a California fuel at their facilities. Commissioner Weiner announced at several public meetings that it is not the intent of the Department, the State or the OTC to mandate the use of California fuels in this program. Most people who have looked at this issue acknowledge that there appears statutory power to separate the car standards from the fuel program. These assurances, however, have not mollified the industries at risk. There are concerns about citizen suits which might be successful. A court could mandate the adoption of the California fuel for states that have adopted the California car standards. There are also concerns about technology car-fuel linkage in California. Until these concerns can be eliminated, the New Jersey Business and Industry Assoc. strongly urges New Jersey to reconsider their LEV Program proposal. (Jim Sinclair, New Jersey Business and Industry Assoc.)

RESPONSE: The Department believes that the California LEV standards are separate from the California fuel requirements. §177 of the Clean Air Act requires states to adopt standards, not fuels. §177 of the Clean Air Act provides for the adoption and enforcement of California's standards "relating to control of emissions from new motor vehicles ... if (1) such standards are identical to the California standards for which a waiver has been granted ...". Since the waiver requirements of §209 of the Act pertain only to motor vehicle emission standards, New Jersey need only adopt the standards that are contained in California's waiver application. This is clearly the intention of §177.

EPA has stated that although eligible states may adopt California new motor vehicle emission standards, there is no explicit requirement that such states also adopt California fuel requirements. The Department shares this position and has no plans to adopt the California fuels provisions.

Further, P.L. 1993, c.69, prohibits the Department from requiring the sale of California reformulated fuel. Should said sale be required by court order because of implementation of the LEV Program, the LEV Program shall expire 180 days later.

109. COMMENT: It is a fact that California motor vehicles are designed and calibrated to comply with emission standards and to maintain driveability based on certain fuel specifications for fuels sold in California. This means that emission and driveability performances may be adversely affected if fuels other than those found in California are used. Therefore, if a fuel different from California is sold in New Jersey, the in-use emission performance may be adversely affected. It is quite possible that the vehicle would not comply with the New Jersey standards, even though it complies with the same set of standards in California. If a manufacturer is forced to develop a vehicle compatible with commercial fuels sold in New Jersey, it would have the effect of creating the prohibited "third vehicle," which is against §177 of the CAA. Thus New Jersey must adopt the California fuels program in conjunction with the LEV Program or abandon the Program altogether. (Satoshi Nishibori, Nissan Research and Development)

RESPONSE: California's LEV standards and fuel program are demonstrably separate in a number of ways. First, in California, Phase II reformulated gasoline will not be required until March 1, 1996, although vehicles certified to LEV standards will already be on the road. Second, CARB will exempt small refiners from the reformulated gasoline regulations for two years. Third, CARB's clean fuels program is also regional, that is, it is limited to certain (heavily polluted) areas of that State. Since the automobile manufacturers are not restricting the use of their LEV cars to any region in California or even to the entire State, these vehicles will refuel in areas that do not have reformulated gasoline. Therefore, it is apparent that the LEV standards and the California fuels program constitute separate pollution control strategies, promulgated together as distinct by complementary programs.

EPA has stated that although eligible states may adopt California new motor vehicle emission standards, there is no explicit requirement that such states also adopt California fuel requirements. The Department shares this position and has no plans to adopt the California fuels provisions.

Further, P.L. 1993, c.69, prohibits the Department from requiring the sale of California reformulated fuel. Should said sale be required by court order because of implementation of the LEV Program, the LEV Program shall expire 180 days later.

110. COMMENT: The assurance of alternative fuel availability will become a very important issue when alternatively fueled vehicles are introduced. CARB has recognized the importance of this issue and, therefore, has required vehicle manufacturers to inform CARB in advance regarding the manufacturer's plans to introduce alternatively fueled vehicles. Based on such notification, CARB will then mandate the necessary alternative fuel availability from the petroleum companies. If New Jersey is to adopt identical California emission standards, Nissan believes New Jersey should continue to follow CARB's lead and necessitate mandatory fuel availability requirements or just not adopt the standards at all. (Satoshi Nishibori)

RESPONSE: The Department believes that if automobile manufacturers elect to certify vehicles on alternative fuels, the availability of the alternative fuels will be determined by the marketplace and this will be adequate without the Department adopting mandatory fuel availability requirements.

111. COMMENT: California plans to implement LEVs with California fuels. This situation will change in the direction of lesser fuel availability in future years. Furthermore, since the Department is not planning on using California fuels, the problem of model availability has a high probability of being further jeopardized. For these reasons, the National Motorists Association feels that the LEV Program cannot be adopted without the California fuel requirements and any attempt of this sort would be detrimental to New Jersey. (Steve Carrellas, National Motorists Association).

RESPONSE: The Department believes that the vast majority of vehicles introduced by the manufacturers for the LEV Program will be

designed to operate on conventional gasolines. These vehicles will perform satisfactorily on the Federal reformulated gasoline; therefore, model availability should not be an issue in New Jersey. The LEV Program will have significant benefits even without the California fuel requirements.

112. COMMENT: At this time, it is not known what types of fuels the automobile manufacturers will use to certify vehicles to meet the California LEV and ULEV standards. Recent studies indicate that these fuels could be considerably more expensive, between 17 and 24 cents per gallon, than the Federal reformulated gasoline mandated for introduction by the Clean Air Act Amendments and scheduled for introduction in New Jersey in 1995. Further, these uncertain California fuels may not be compatible with existing supply and distribution systems in New Jersey. The Department's position is that the California fuels are not to be considered in this regulatory program. California cars will almost certainly be certified with the EPA using the California Phase II reformulated gasoline, a much more stringent and costly reformulation, than any Federal reformulated fuel. Even if the EPA were to allow the use of California vehicles on gasoline other than which they were certified, the question of whether warranties would be binding remains unanswered. Car manufacturers and public interest groups have previously used litigation as a method of resolving unanswered questions concerning enforcement of control strategies. Given the uncertainties of this program, the Department should realistically consider the very real threat that unintended consequences of premature adoption of a control strategy may occur. New Jersey should carefully consider the LEV Program. After thinking it over, the Department will realize that the LEV Program is not beneficial to New Jersey. (James Benton, New Jersey Petroleum Council and R. J. McCool, Eastern States Petroleum Advisory Group)

RESPONSE: The commenter is correct in stating the Department's position is that California's fuels are not part of this regulatory program. In fact, P.L. 1993, c.69 would prohibit such a fuel sales requirement. In response to the question of warranties, emission warranties are required under the Fedeal Clean Air Act. Under these provisions, manufacturers must inform new car purchasers of any fuel a vehicle cannot operate on. Vehicles meeting the LEV standards on gasoline must be able to operate on a range of gasoline qualities including those found in states where even Federal reformulated gasoline is not available for sale. Any vehicle meeting the LEV standards on California Phase II gasoline in California will therefore, be required to operate properly on Federal reformulated gasoline sold in New Jersey and gasolines available in every other state in the country. Thus any vehicle meeting the LEV standards on California Phase II gasoline in California but operated on Federal reformulated gasoline in New Jersey would be covered by the warranty provisions of the Clean Air Act.

113. COMMENT: If New Jersey is to adopt the California LEV Program, the State should also adopt the companion Clean Fuels requirement. The LEV/CF program was created as a systems approach to emissions control, and the strategy of adopting only the LEV Program would break apart that system and likely result in higher emissions for LEVs. Figures show that Federal Tier I vehicles have emissions lower than their standard when operated on Federal reformulated gasoline, while LEVs have emissions higher than their standard. This means that consumers would potentially pay up to $1,000 more for their car to be a low emitting vehicle but, because the State has not adopted the Clean Fuels requirement, they would not get all the benefits they have paid for. New Jersey should adopt LEV with the companion fuels program or not adopt at all. (Bob Veit, MVMA)

RESPONSE: The Department agrees that LEV's operating on Federal Phase I gasoline would likely have higher emissions than LEV's operating on California reformulated gasoline. However, according to a report entitled "Screening Study of Mobile-Source Strategies for the Northeast" prepared by Acurex Environmental Corporation, the LEV, even when operated on Federal reformulated gasoline, would provide larger benefits than the Federal Tier I or Tier II car operating on Federal reformulated gasoline. The benefits of the LEV Program can be achieved entirely independently of the fuels.

114. COMMENT: The volatile organic compound (VOC) emission reductions of the different reformulated gasolines have been documented. California reformulated gasoline achieves a much higher VOC emission reduction on all vehicles than does the Federal Phase II reformulated gasoline. Additionally, it becomes effective in California in 1996. This is just another reason to adopt the California fuels requirement with the LEV Program. If New Jersey, in fact, "needs" the California motor vehicle control program in lieu of the Federal program, then it is clear that New Jersey must also "need" the benefits of the California Clean Fuels program in lieu of Federal reformulated gasoline. This appears to be an inconsistency in the Department's philosophy. (Bob Veit)

RESPONSE: The Department's proposal to adopt its LEV Program without a clean fuels component is not inconsistent, but rather reflects a choice the Department has made to implement a cost-effective emission control program. Modeling has shown that the LEV Program can achieve significant emission reductions even without the adoption of California's gasoline requirements.

EPA has stated that although eligible states may adopt California new motor vehicle emission standards, there is no explicit requirement that such states also adopt California fuel requirements. The Department shares this position and has no plans to adopt the California fuels provisions.

Further, P.L. 1993, c.69 prohibits the Department from requiring the sale of California reformulated fuel. Should said sale be required by court order because of implementation of the LEV Program, the LEV Program shall expire 180 days later.

115. COMMENT: The benefits of the California Phase II reformulated gasoline are nearly three times the benefit of the complete LEV Clean Fuels Program. This is because the emissions of every car on the road, new and old, are affected by reformulated gasoline, whereas the LEV Program only affects the emissions of new cars, and it takes many years of fleet turnover, at high penetration rates for these new cars to have a meaningful affect. The Department should concentrate on the older vehicles and then, only if this does not significantly reduce the State's air pollution, implement the LEV Program for control of newer vehicles. (Bob Veit)

RESPONSE: The Department is not ignoring the significance of older motor vehicles on air pollution. Currently, the Department is looking into a scrappage program for older vehicles but it is the Department's feeling that additional control measures will be necessary in order for New Jersey to come into compliance with the CAA. According to a report entitled "Screening Study of Mobile-Source Strategies for the Northeast" (Acurex Environmental Corp.), in the year 2010 the LEV Program will provide four times the benefit that California reformulated gasoline would provide. These benefits justify the need for the LEV Program in New Jersey. The issue of fleet turnover justifies the need to implement the LEV Program as soon as possible.

116. COMMENT: Compliance with the LEV emissions standards is expressly premised on the availability of the particular fuel selected by the manufacturer, and the manufacturer designs the vehicle to meet the standard with that fuel in mind. CARB concluded that low emission levels will be achieved in customer use only if clean fuels are available to the consumers for the operation of their vehicles. In other words, vehicles certified to the California LEV standards on Clean Fuels are unlikely to achieve in-use compliance with such standards if not operated on the appropriate Clean Fuel, and the potential environmental benefits of the LEV/CF program will be substantially reduced, if not entirely eliminated, if Clean Fuels are not available. Therefore, New Jersey should not adopt the LEV Program without the California fuels requirement. (MVMA-written)

RESPONSE: The Department agrees that by electing not to mandate the sale of California reformulated gasoline, the Department may be foregoing a certain amount of emission reduction that otherwise might be achieved. However, the Department believes that the LEV Program, in conjunction with the Federal reformulated gasoline program, will provide cost-effective emission reductions. In addition, the Department will, in coordination with other member states and jurisdictions of the OTC, work with EPA to define the Federal Phase II reformulated gasoline standards. The Department expects to thereby maximize the benefits of Federal Phase II reformulated gasoline with LEV emission standards.

117. COMMENT: The LEV proposal does not mention any requirement on fuel suppliers in the State. The Department has made it clear that it has no intention to adopt California's fuel. California has stated many times that they view the car and the fuel as a system working concurrently to control tailpipe emissions. In California, auto manufacturers tell CARB what fuels the vehicles are designed to use two years before the car arrives on the market to assure adequate fuel supply. New Jersey must be prepared to regulate fuel consumption and have its citizens accept the burden of increased costs if it intends to develop

California's cars. Otherwise, it should not plan on adopting the LEV Program at all. (Gregory Dana, Assoc. of International Auto. Manufacturers)

RESPONSE: The commenter is correct in stating that the Department has no intention of adopting California's fuel requirements. The Department believes that California certified vehicles will operate properly and achieve significant emission reductions when operating on Federal reformulated gasoline. Furthermore, if and when vehicle manufacturers certify vehicles to alternative fuels, the Department feels the alternative fuels will become available without further regulations from the Department, through the dynamics of the marketplace.

118. COMMENT: The possibility of a New Jersey LEV Program containing a California fuel requirement at some future date, such as California severely reformulated gasoline, methanol or compressed natural gas, cannot be dismissed. (Jim Benton, hearing 2)

RESPONSE: The Department has not and does not intend to implement the California fuel requirements as part of this regulatory proposal. P.L. 1993, c.69 prohibits the LEV Program from containing a California fuel requirement.

119. COMMENT: Exxon supports the development of all alternative fuels but does oppose alternative fuels mandates and/or preferential subsidies or incentives that might provide one or more fuels with an advantage over other fuels. We believe mandates of any alternative fuels are premature and all competitors and all alternative fuel/vehicle systems should be allowed to compete on an equal baiss. The NAS/NRC report ("Rethinking the Ozone Problem in Urban and Regional Air Pollution") recommends that alternative fuels for motor vehicles be described as follows: "Because there is uncertainty about the degree to which alternative fuels would reduce ozone, requiring the widespread use of any specific fuel would be premature. An exception may be electric vehicles, which can lead to substantial reduction in all ozone precursor emissions. Coordinated emissions measurement and modeling studies should be used to determine which fuels will work best to control formation of ozone." The LEV Program should not allow itself to be used as a marketing strategy of competing corporations. (W.D. Dermott, Exxon)

RESPONSE: The Department agrees with the commenter in opposing alternative fuel mandates. As such, the LEV regulatory proposal was crafted to be strictly fuel neutral except for ZEV's. This gives the program flexibility so that a particular fuel or hardware system will have advantages for emission control over conventional gasoline. In the past, vehicle testing requirements, etc., were all cast around gasoline, and as a result, emissions rules in and of themselves presented a regulatory barrier to alternative fuel systems. By contrast, the proposed LEV rule neither mandates alternative fuels nor impedes their development. In fact, the rule makes specific provision in the testing methodology to account for varying reactivity of the emissions from alternatively fueled vehicles. In sum, while the LEV standards allow for alternative fuel use, adoption of the LEV standards does not necessitate a de facto implementation of alternative fuels in New Jersey.

Reactivity Adjustment Factors (RAF)

120. COMMENT: The Reactivity Adjustment Factors (RAF) portion of the California LEV Program are still being developed. This program includes a mechanism for adjusting the standards for vehicles powered by fuels other than gasoline, based on whether emissions from such vehicles are more or less ozone reactive. The mechanism requires that reactivity adjustment factors be developed and used to calculate gasoline equivalent emissions for a vehicle's alternate fuels system. This crucial aspect of the program currently under development by California is still being critically reviewed and evaluated and challenged on technical merit by those in the scientific community. It is unclear at this time when California will adopt the reactivity factors for reformulated gasoline and alternate fuels and if EPA will grant approval of this controversial concept. Beginning in 1994 model year automakers must certify new low emitting vehicles and specify a clean fuel to be used in those vehicles in order to comply with the mandated annual vehicle emission standards required by the program. Due to the unknown effects that reactivity adjustment factors may have on emissions of unproven alternate fuel technology, the air quality situation in non-attainment areas such as New Jersey could worsen. Thus until the controversy surrounding California's RAF's can be resolved, New Jersey should not consider adopting the Program. (NJ Pet Council, May 19)

RESPONSE: California has adopted RAFs for reformulated gasoline and alternative fuels that will allow manufacturers enough time to certify their vehicles on those fuels. The RAF Program being developed by CARB is based on air quality models which have applicability to diverse air quality problems.

EPA has considered carefully the petroleum industry comments relating to the RAFs and the RAF procedures in the CARB regulations as well as CARB's responses to the specific concerns raised at the hearing and in the subsequent written comments. EPA, in issuing the CAA §209(b) waiver, has determined that California's determination that its standards are at least as protective of public health as applicable Federal standards is not rendered arbitrary and capricious as a result of inclusion of its RAF program.

To date, EPA has found that the method CARB used in determining the methanol RAFs is reasonable. CARB has requested a review of future RAFs from EPA. Therefore, the Department believes that the basis for the RAF approach will be valid for New Jersey's air quality as well as California's.

121. COMMENT: The LEV/CF program is complex and major portions have yet to be finalized by CARB. Since vehicles and fuels are treated as a system, CARB will adopt reactivity adjustment factors for different fuels that manufacturers can use to certify different alternative fuel technologies to the LEV standards. To date, only one reactivity adjustment factor has been adopted—the one for TLEVs operated on M85 (85 percent methanol—15 percent gasoline). Reactivity adjustment factors need to be developed and reviewed for many other fuel types and technologies. In addition, there are comprehensive program reviews every two years. CARB required these reviews when it approved the LEV/CF program in September 1990, in recognition of the complex nature of the program and the unproven technology that would be required. If New Jersey were to adopt the California program now, it would be adopting a program that is, in mnay respects, incomplete and uncertain in nautre. (MVMA and Al Weverstad, General Motors)

RESPONSE: The Department realizes that certain portions of the LEV program are still under development, including the RAF program. However, the Department believes the technical basis for the RAF approach is valid and that the future refinements to the RAF program will be applicable and effective in New Jersey.

122. COMMENT: The Department will be adopting from California, as indicated in the April 6 proposal, a set of reactivity adjustment factors, or RAF's. Such factors are designed for California conditions, including temperature, meteorology, and emissions levels, but these same factors would have to be applied in New Jersey. Such factors will be different for fuels within the same class of fuel (for example, conventional gasoline's RAF will be different than Federal reformulated gasoline's RAF which will be different than California Phase II reformulated gasoline's RAF) as well as from fue-to-fuel (for example, Federal reformulated gasoline's RAF will be different than methanol's RAF). Such factors could allow, for example, methanol-fueled vehicles to have almost twice the mass emissions of comparably certified gasoline vehicles. The use of reactivity adjustment factors may work toward reducing ozone in California, but RAFs tailored for use in California will not be appropriate for use in New Jersey. Therefore, New Jersey must develop its own specific RAF's or eliminate the LEV Program from consideration. (Michael Tydings, NJ Petroleum Council and W. D. Dermott, Exxon)

RESPONSE: The RAFs that CARB has developed are not based on conditions in any specific urban or rural area, but are representations of "worst-case" scenarios, in terms of ozone production, for each organic species. Such an approach may overestimate the actual ozone formation potential for an emissions mixture, but it is not subject to bias due to different atmospheric conditions, and is therefore, no less appropriate in New Jersey as in California. Indeed, the procedure must be applicable over a wide range of conditions, because it must be applied throughout the state of California and not simply in the Los Angeles Basin.

123. COMMENT: EPA's approval of California's waiver request could have major implications on the way California and New Jersey, if it adopts California's LEV Program, implement the requirements of the CAAA. Considerable uncertainty and confusion are likely to result if California's waiver application is approved. There are three major issues in this regard. First, there will be uncertainty as to what actions either California or New Jersey, if it adopts California's LEV Program, should pursue if it is shown that the use of the RAFs result in a worsening of air quality. Whatever the action, it will be expensive and time-consuming. Second, there will be uncertainty in how California or New Jersey implements stationary source controls of both hydrocarbons and oxides of nitrogen. This could be in terms of mass emissions as now

anticipated and contemplated in Title I and Title III of the CAAA, or with the use of yet to be determined RAFs. Finally, if New Jersey adopts California's LEV Program, it will have to determine how the waiver, if granted, is to be applied. Will the waiver be applied in terms of vehicle technologies, as has been the prior basis, or in terms of the fleet average emission standards as requested by waiver application? (Michael Tydings and W. D. Dermott, Exxon)

RESPONSE: EPA has found that the method CARB used in determining the methanol RAFs is reasonable. Recently, however, CARB has requested a review of future RAFs from EPA.

The fact that California's motor vehicle program uses reactivity adjustments does not necessarily impinge upon stationary source emission calculations. The Department does not plan to make any modifications to their stationary source calculation methodologies as a result of adopting the LEV Program.

The California waiver was granted by EPA on January 7, 1993. California will begin phasing in and enforcing the LEV standards, on a fleet average emissions basis, for cars and light-duty trucks beginning with model year 1994.

124. COMMENT: CARB has established an RAF for TLEVs operating on M85. They have not adopted the RAFs for the LEVs or ULEVs operating on alternative fuels. Critical ones are for LPG, compressed natural gas, and Phase II reformulated gasoline. Therefore, RAF regulations are not finalized. Even though the concept has been approved by CARB, the final language has not been submitted to the California's Office of Administrative Law, the RAF approach has certainly not been approved by EPA and there is a lot of questions and concerns about it.

The RAF Program was based upon very limited data from just a few vehicles. More data should be collected and the RAF's should be recalculated before New Jersey uses them as a basis for the LEV Program. We feel that it could result in an increased ozone formation by alternate fuel vehicles. And this approach has not really been scientifically determined. Theoretically, different RAFs should be developed for each California air quality district, taking into account the meteorology and air chemistry in that particular air basin. As a result, even if CARB finally promulgates this rule through California's Office of Administrative Law, we expect court challenges on this particular aspect of the rule and New Jersey should consider this before adopting the LEV Program. (Charles Morgan, Mobil)

RESPONSE: See response to Comment 120.

125. COMMENT: The RAF Program is basically an approximation of what really happens in terms of the impact of the exhaust on air quality and ozone formation. The best way of doing that is to speciate the exhaust, then put that information or input into an air model which takes into account all the local meteorology, temperature, conditions, etc., so that you can provide a better estimate of what the impact of that exhaust is on the atmosphere. This is not the methodology used by CARB in formulating its RAF's. Until this method is examined, New Jersey should consider the LEV Program incomplete and unacceptable as an air pollution control method. (Morgan, Mobil)

RESPONSE: EPA has examined and approved of the methodology utilized by CARB in formulating the RAFs. New Jersey considers this methodology to be sound and, after concurring with EPA's conclusions, has chosen to accept CARB's RAFs as part of the LEV Program.

126. COMMENT: Professor Harvey Jeffries, on behalf of the Western States Petroleum Association, testified to EPA on RAFs that "the concept of a single RAF is fundamentally flawed. The flaw is not in the choice of a particular reactivity scale, but in the notion that here can be one reactivity scale that would be applicable to all urban atmospheric situation. It is scientifically possible to compute a reactivity scale for a given set of environmental conditions, but each ozone nonattainment area could have significantly different environmental situations and thus a different 'true' reactivity scale from that developed based on California's waiver request. Air quality improvement, the goal of the CAAA, could be stymied by application of California's LEV waiver if RAF's are incorrectly applied." As implied by Professor Jeffries, RAF's will need to be determined for each applicable nonattainment area for the California waiver request to be scientifically sound. RAF's vary considerably from one VOC/NO_x ratio to another. If the reactivity adjustment factors are not "customized," each nonattainment area will have to develop an area specific strategy to address the possibility that the air quality may in fact deteriorate. By allowance of the use of RAFs, additional emissions reductions may be required from stationary sources to offset the possibility of otherwise higher emissions from mobile sources using the factors. (W.D. Dermott, Exxon)

RESPONSE: The Department agrees that the RAF's will vary from one VOC/NO_x ratio to another. However, the Department recognizes that air pollutant concentrations vary within the State of New Jersey as they do in California. California has designed the RAF program to address the air pollution problems in areas of the state where it is most severe and most heavily populated. Therefore, whereas the RAF approach may not be ideally suited for all areas of New Jersey from an air quality perspective, it will be most effective in the most heavily polluted and populated areas of the State.

Air Quality Benefits, Inventory and Models

127. COMMENT: Transportation control measures (TCMs) designed to reduce the number of trips, especially in single occupant vehicles, are needed to minimize increased vehicle miles travelled which have historically offset much of the potential benefits provided by enhanced emission control systems. The California LEV Program is projected as a key maintenance strategy which will permit states to accommodate growth without exacerbating air quality problems and as such should be adopted by New Jersey. (Mike Bradley, NESCAUM)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal, as well as the need for TCMs. The Department is looking closely with the New Jersey Department of Transportation on rules addressing TCMs. It is anticipated that rules governing TCMs will be adopted and made a part of the State Implementation Plan (SIP) by November 15, 1993.

128. COMMENT: "Percent reductions in exhaust fleet emission by the year 2015 for the California program relative to the Federal program were estimated at:

VOC—23% to 63%

NO_x—26% to 41%

CO—10% to 33%"

The lower limit represents what the EPA predicts we can reach by a Federal standard and the upper limit is the consensus of state and Federal regulators on what should be achievable. With the LEV Program properly implemented, New Jersey could achieve the upper limits and provide the best achievable air quality for New Jersey. (Mike Bradley)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

129. COMMENT: The environmental benefits of a LEV Program will greatly assist New Jersey in finally meeting the Federal air quality standards. By adopting a LEV Program, New Jersey can avoid more onerous and costly programs in the future and at the same time meet Clean Air Act standards. (PSE&G-position paper, Roger Schwarz)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

130. COMMENT: In light duty engines, Natural Gas Vehicles (NGVs) produce about 85 percent less reactive hydrocarbons, in excess of 90 percent less carbon monoxide and approximately 18 to 30 percent less greenhouse gases—carbon dioxide and methane. NGVs also achieve nitrogen oxide reductions. In heavy duty engines, NGVs produce less emissions as compared to gasoline and diesel engines. Since alternatively fueled vehicles are a necessary part of later LEV Program emission standards, these reductions will assist New Jersey in attaining their air quality standards. Therefore we feel that New Jersey will greaty benefit from the LEV Program. (Jeffrey Seisler, NGV)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

131. COMMENT: Strong emissions regulations will lead the way in the fight to reduce air pollution, particularly in congested areas with heavy vehicle traffic. The LEV Program will provide these stronger emission regulations and will consequently help New Jersey in its quest to control air pollution from mobile sources. (Jeffrey Seisler)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

132. COMMENT: A study conducted by the NESCAUM states entitled *Adopting the California Low Emission Vehicle Program in the Northeast States,* concludes that implementing the LEV Program in the northeast will provide substantial motor vehicle-related emission reductions beyond those projected for the future Federal Motor Vehicle Control Program. Thus NESCAUM believes that New Jersey should adopt the LEV Program. (Mike Bradley)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

133. COMMENT: The entire northeastern region will have difficulty attaining compliance with the Clean Air Act's mandate. An EPA report entitled "Regional Ozone modelling for the Northeast Transport (ROMNET)" concluded that volatile organic compounds reductions of more than 75 percent may be necessary in the northeast region if the Clean Air Act's ozone health standard is to be achieved. This means additional programs, like the LEV project, are needed in New Jersey. (Drew Kojak, NJPIRG)

RESPONSE: The Department is committed to working in cooperation with other states through NESCAUM and the Ozone Transport Commission (OTC) to adopt the LEV standards, thereby maixmizing their potential benefits and cost effectiveness as a regional ozone control strategy.

134. COMMENT: New Jersey Public Interest Research Group (NJPIRG) feels that the Federal program is not aggressive enough or strict enough to bring New Jersey's air quality in compliance with the Federal Clean Air Act Amendments of 1990 (CAAA). As mentioned by the Department, September 1991 reports by Project: Clean Air found that New Jersey's adoption of California standards is essential if the State is to attain the National Ambient Air Quality Standards (NAAQS) for ozone. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

135. COMMENT: Motor vehicles generate nearly half the VOC's and NO_x which fuel the formation of ozone. Additionally, motor vehicles contribute almost three-quarters of the CO to the State's urban areas. Based on those percentages and the conclusions of the ROMNET and Project: Clean Air studies, it will be nearly impossible for New Jersey to comply with the Clean Air Act (CAA) ozone standards without adopting the LEV Program. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

136. COMMENT: The findings of the NESCAUM study confirm that the LEV program represents one of the most significant and cost effective long-term strategies for reducing emissions of VOCs, NO_x, CO, and a host of toxic air pollutants in New Jersey. (Michael J. Bradley)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

137. COMMENT: New Jersey should continue efforts to improve the environmental air quality by including provisions and strategies mandated under the CAAA. Continued implementation and adherence to the mandated measures of the CAAA will result in significant benefits to the quality of air in New Jersey and will improve New Jersey's leadership position in clean air control technolgoy. Thus, we believe that New Jersey does not need additional control strategies such as the LEV Program. (James C. Morford and Bernard Dziedzic, NJ Society for Environmental Economic Development)

RESPONSE: The Department believes that even with the implementation of all of the mandated CAAA control strategies, New Jersey will still not meet their required reductions by the milestone dates dictated by the CAAA. However, the Department does believe that using additional control strategies, such as the LEV Program, in conjunction with the mandated requirements will allow New Jersey to achieve attainment of the air quality standards.

138. COMMENT: In complying with the standard for the CAAA, compromise numbers were used as a result of political pressures and scientific and technical processes were essentially ignored. This is not the way to produce effective air quality laws. Since New Jersey is second only to California in its poor quality of air, it should model itself after California and adopt the LEV Program to try and rectify the inconsistencies in the CAAA mandates. (Marie Curtis, NJ Env. Lobby)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

139. COMMENT: The Low Emission Vehicle Program would strengthen control of mobile source pollution, the leading cause of smog in New Jersey. Nationwide, transportation sources are resposnible for 67 percent of the CO, 41 percent of the NO_x, 33 percent of hydrocarbons and 20 percent of the particulate matter. Implementing the LEV Program in New Jersey would address the transportation related pollution sources. (Linda Stansfield, American Lung Association)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

140. COMMENT: The ozone in smog is generated photochemically from hydrocarbons and NO_x present in automotive gasoline engine emissions and refueling procedures. It is now clear that long distance transport of this type of pollution occurs, and that large downwind, semi-rural or rural areas can be covered by ozone-containing air originally generated from urban pollutant emissions. It is also clear that elevated levels of ambient ozone for prolonged periods of time occur frequently throughout the northeast region of the country in addition to the short-term morning and evening peaks associated with rush-hour traffic. Adopting the LEV Program would significantly reduce the emission of ozone forming pollutants in New Jersey. (Linda Stansfield, American Lung Association)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

141. COMMENT: Sun has advocated the rapid implementation of Stage II in moderate and severe non-attainment areas. New Jersey already has Stage II. We are advocating that upwind states address the ozone transport problem that concerns the downwind states before downwind states implement more stringent control strategies, such as the LEV Program. (Anthony Ippolito, Sun Company Inc.)

RESPONSE: The Department realizes that the ozone problem is a regional issue. For this reason, the Department is working in conjunction with the other OTC states to coordinate efforts to reduce the emission of ozone precursors in upwind states. The OTC states have agreed that the LEV Program is one such measure that will achieve this goal. With this in mind, New Jersey has decided to proceed with implementation of the LEV Program.

142. COMMENT: The preliminary results of the Regional Oxidant Modeling for Northeastern Transport (ROMNET) study show that future attainment of the ozone health standard throughout the NESCAUM region will be difficult to achieve even with implementation of extremely aggressive control strategies to reduce hydrocarbon and NO_x. This is especially true for those portions of New Jersey which are part of the Philadelphia and New York City metropolitan area. In order to attain and maintain the NAAQS for ozone, the northeast states will have to impose control measures beyond those mandated in the CAAA. Effective emission control programs, for example, the California emissions control program, in New Jersey are crucial to the attainment goals of the entire NESCAUM region. (Michael J. Bradley, NESCAUM)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

143. COMMENT: The National Academy of Science (NAS) report states that the current emission levels are significantly understated and may have led to the wrong control strategy over the last 20 years. New Jersey should work to update inventories and this should be included in New Jersey's plan. This plan should reflect the concerns shown in the NAS study. Small changes in yearly Vehicle Miles Traveled (VMT) projections significantly impacts emission inventories in later years. If the VMT projections are too high, it will lead to over control at a great expense; under estimations will result in under control. VMT projections need to be more accurate. Texaco believes that New Jersey should resolve these uncertainties before proceeding with the adoption of the LEV Program. (H.G. Ingram, Texaco)

RESPONSE: The New Jersey 1990 base year inventory was released in November 1992. The Department feels that the newest inventory for New Jersey reflects the general concerns of the industries in New Jersey. VMT projections used for the inventory were obtained from the New Jersey Department of Transportation. These are the most accurate projections available to the Department at this time and are based upon results from the Federal Highway Performance Monitoring System (HPMS). Thus the Department believes it has sufficiently resolved the uncertainties alluded to by the Texaco Corp. and to make the determination that New Jersey would benefit from the LEV Program.

144. COMMENT: The Department estimated the benefit of adopting California's LEV Program at 25 to 40 tons per day of volatile organic compounds reduced. We estimate the benefit at four to six tons per day. The Department should further assess this issue prior to adoption of the California LEV Program. Exxon, along with the New Jersey Petroleum Council, has advocated the need for collaborative interaction with the Department on the best approach to achieve the requirements of the CAAA. We believe this should begin with joint discussion of the emission inventory and the necessary reductions of hydrocarbon and NO_x emissions to "show continued progress" as required by the CAAA. In addition, we are willing to work with the Department on the preferred action plan to implement the required emission reduction steps outlined in the CAAA. Until these measures are considered, New Jersey should forego the adoption of the LEV Program. (W.D. Dermott, Exxon Company and James Benton, New Jersey Petroleum Council)

RESPONSE: MOBILE 5.0 shows a significant difference between LEV and non-LEV programs, with the LEV program showing greater benefits. The Department has been working and will continue to work in a collaborative fashion with the regulated community through a series of public workshops, workgroups and public hearings.

145. COMMENT: Recent analysis of data from EPA on the air quality of nonattainment areas in the northeast underscore the need for caution in proceeding with the selection of optional emission reductions steps. Based on Exxon's preliminary analysis of 1991 data, of the 33 nonattainment areas in the northeast, 31 observed significant reductions in their design values and 16 would be classified as attainment based on these design values. This analysis points out the need for a measured and reasonable approach to adopting any optional emission control steps, and whether or not any optional emissions control steps should be considered at all. (W.D. Dermott)

RESPONSE: The Department agrees that there has been improvement in the overall air quality of the State and the need for a measured and reasonable approach to adopting optional emission controls. However, New Jersey is still listed as a severe non-attainment area. Furthermore, with continued growth in vehicle miles travelled, emission inventories will begin to increase if we do not pursue long-term control strategies such as the LEV program. Therefore, the Department believes adoption of the LEV Program constitutes an element of a long term air pollution control strategy.

146. COMMENT: The effect of the CAAA requirements on air quality should be modeled with EPA approved air quality models and evaluated before a state and/or its nonattainment areas implement more stringent and less cost-effective optional emission control measures like the LEV program. (W.D. Dermott)

RESPONSE: The Department has modeled the effects of the CAA requirements using EPA approved MOBILE 5.0 and has concluded that additional control measures are required to attain and maintain the NAAQS. The Department has further determined that the LEV Program is a very effective additional control measure.

147. COMMENT: In Tables 4A and 4B (on page 1322), references to "CARB" and "EPA" are misleading. In the Pechan Study, and in Table 4A, "EPA" means assumptions similar to those used by EPA in current vehicle modeling. There is no data to provide a basis for either the California Air Resource Board (CARB) or the U.S. Environmental Protection Agency (EPA) to project how the new LEV vehicles will perform in-use. The percentage reductions referred to in the text following Tables 4A and 4B are also misleading in that they refer to the exhaust emissions only. We believe it is more appropriate to view this issue in terms of **total** vehicle emissions and not just exhaust emissions in which case the difference would be much smaller. These estimated reductions are only if the California fuel accompanies the LEV Program. Significantly smaller reductions will be observed without California fuel, but any estimates at this time are only speculation. (W.D. Dermott and Al Weverstad, General Motors)

RESPONSE: The Pechan Report's analysis using both EPA's and the CARB's deterioration rate assumptions is appropriate for evaluating potential scenarios of emission benefits for New Jersey. One scenario reflects the CARB's motor vehicle emissions control program, which CARB believes will limit vehicle emission control system deterioration over time to the lowest degree possible. The second scenario is based on the EPA, who must make the determination for SIP credit purposes, and EPA's belief that motor vehicle manufacturers will not be able to limit emission control system deterioration as effectively.

Regarding the California fuels issue, EPA has stated that although eligible states may adopt California new motor vehicle emission standards, there is no explicit requirement that such states also adopt California fuel requirements. The Department agrees with this assessment and, therefore, has no plans to adopt the California fuel provisions.

148. COMMENT: With the exception of Los Angeles, the average number of days per year during which the NAAQS for ozone was exceeded has been negligible for 1989 through 1991 for the entire United States. During those years, the Northeastern states experienced few days with the above-standard ozone levels. This being the case, no additional air quality control strategies are necessary. (John Guzobad, National Motorists Association)

RESPONSE: New Jersey has had continued exceedances of the NAAQS for ozone. All Department modeling indicates that even if New Jersey were to implement all of the mandatory CAAA control measures, the State would still be in non-attainment. Thus, the Department has determined that adoption of the LEV Program would be in the best interest of the State of New Jersey.

149. COMMENT: Vehicle emission control measures already mandated by the Clean Air Act Amendments will reduce today's total vehicle emissions by 85 percent by the year 2010. California's LEV option would provide only one to two percent additional reductions. In view of the very high cost for this negligible reduction, there appears to be little incentive to adopt the LEV Program. There is sufficient time to ensure the right programs are developed and selected to meet New Jersey's needs. (Michael J. Tydings, Exxon Company, James Benton, New Jersey Petroleum Council and James Morford and Bernard Dziedzic, NJSEED)

RESPONSE: The Department disagrees with the commenter's conclusions quantifying reductions from adoption of the LEV Program. The Motor Vehicle Manufacturers Association (MVMA) analysis relies on three basic assumptions which are fundamentally different than the Pechan Report, and which the Department takes exception to: (1) different Tier I deterioration rates which incorporate on-board diagnostics and I/M; (2) the change of Federal certification fuel from Indolene to the 1990 industry average fuel which would force Federal vehicles to be cleaner; and (3) the implementation of Tier II emission standards in 2003.

In preparing its analysis of the LEV standards, Pechan Associates evaluated the hardware benefits of the LEV standards in comparison to the Federal Tier I standards. The Pechan analysis did not account for the emission benefits of OBD, I/M, or reformulated gasoline under either the Federal or LEV standard scenarios.

While the Department has supported the use of industry average fuel for certification, it has been the Department's intention that the average be for the most current year, not 1990. The MVMA's assumption of Federal certification fuel being changed from Indolene to the 1990 industry average gasoline has no known regulatory basis, and if proposed would be strongly opposed by the Department.

Prior to adoption of the Federal Tier II standards EPA must make a finding that they are needed, cost effective, and technically feasible. To date the automobile manufacturing community has argued that additional controls on motor vehicles are not needed, are not cost effective, and are not technically feasible for New Jersey. The Department believes that this argument will be brought to a national level which will make it unlikely that Tier II emission standards will be adopted nationally by the year 2003.

150. COMMENT: The Department relies on the Pechan study for the basis of its regulatory proposal. The Pechan study failed to adequately examine the alternative control measures, such as Federal Tier II vehicle standards, to the adoption of the California LEV Program. The Pechan study underestimated the cost of the fuel and the vehicle to New Jersey consumers. LEV program is a very costly measure that produces only minimal air quality benefits. The Pechan analysis did not look at the effectiveness of the Federal program as it omitted on-board diagnostics, enhanced evaporative controls and reformulated gasoline requirements. The decision to adopt the LEV Program should await EPA's MOBILE 5.0 emission model and the release and adoption of the State emission inventory. (James Benton, New Jersey Petroleum Council, and R.J. McCool, Eastern States Petroleum Advisory Group)

RESPONSE: The Department realizes that the Pechan Report is not a complete estimation of what will occur if the LEV Program is implemented. The Pechan Associates were asked to model the tailpipe exhaust emissions from the full on-road fleet for the NESCAUM states under two scenarios: (1) a "base case" of implementation of all the CAAA mobile source requirements; and (2) the implementation of the California LEV program in addition to the base case. It should be underscored that Pechan Associates were asked, in the interest of focusing the study, only to address the tailpipe (exhaust) emissions and thus the study did accomplish its assigned task. The Department does realize, however, that other impacts of adopting the California LEV program might bring additional emission benefits to New Jersey including the difference in Federal and California regulations governing evaporative emission and the differences in OBD systems between California and Federal vehicles in which the results will only prove more favorable for the LEV program.

Before the Federal Tier II emission standards are adopted nationwide, EPA must submit to Congress, after public review and comment, a study showing that additional reductions from light duty vehicles are needed, cost-effective, and technically achievable. Tier II standards (equivalent to the category of vehicles meeting LEV standard) or alternatives are

ultimately dependent upon an effective and successful Federal rulemaking, the effective date of which can be no earlier than model year 2003, but no later than model year 2006. Given the uncertainty and timeframes associated with this process, the Department supported the baseline assumption used by Pechan, that the Federal Tier II standards would likely not be adopted during the Pechan Report's time frame for analysis.

The New Jersey 1990 base year inventory was released during November 1992 and supports the Department's position that the LEV Program is needed to achieve attainment.

151. COMMENT: The Federal Tier I tailpipe standards are nearly identical to the LEV standards through model year 1997 and have only very small differences beyond 2000. Federal Tier II tailpipe standards are similar to California's TLEV standards for hydrocarbons and LEV standards for NO_X. There appears to be very little incentive for adopting the LEV standards. There is time to ensure the right programs are developed and selected for New Jersey's needs. (R.J. McCool, Eastern States Petroleum Advisory Group and Steve Carrellas, National Motorist Assoc.)

RESPONSE: Before the Federal Tier II emission standards are adopted nationwide, EPA must submit to Congress, after public review and comment, a study showing that additional reductions from light duty vehicles are needed, cost-effective, and technically achievable. Tier II standards (eqivalent to the category of vehicles meeting LEV standard) or alternatives are ultimately dependent upon an effective and successful Federal rulemaking, the effective date of which can be no earlier than model year 2003, but no later than model year 2006. Given the uncertainty and time frames associated with this process, the Department decided to support implementation of the LEV Program rather than rely upon the uncertain implementation of Tier II standards.

In accordance with section 3 of P.L.1993, c.69, however, the Department will await preparations of the NJIT written report evaluating various air pollution control strategies and address the findings and conditions contained therein, prior to adoption of this proposal.

152. COMMENT: Modeling analyses to date concerning the ROMNET program have serious deficiencies when used as a basis for determining emission reductions necessary for attainment. ROMNET modeling showed NO_X emission reductions could actually increase ozone downwind of New York and such NO_X reductions related to California LEV program may actually be counterproductive. This underscores the need to rigorously evaluate the model performance and to actually perform accurate predictive modeling in advance of adopting such a program as the California LEV program. The CAAA mandate a number of air pollution control requirements, depending upon the severity of an area's nonattainment problem, that must be contained in each SIP. The effect of these requirements on air quality should be modeled with EPA approved air quality models and evaluated before a state and/or its nonattainment areas implement more stringent and less cost-effective controls. New Jersey will not fall behind while it carefully studies the cumulative emission reduction effects of these mandates before rushing to adopt additional measures, such as the California LEV Program, which may prove to be totally unnecessary, and unnecessarily costly to society. Thus, the need for a California LEV program is under question. (R.J. McCool and W.D. Dermott)

RESPONSE: The Department has modeled the effects of the CAAA requirements using EPA-approved MOBILE 5.0 and has concluded that additional control measures are required to attain and maintain NAAQS. Therefore, the Department has decided that the LEV Program is a very effective additional control measure.

In accordance with section 3 of P.L.1993, c.69, however, the Department will await preparations of the NJIT written report evaluating various air pollution control strategies and address the findings and conditions contained therein, prior to adoption of this proposal.

153. COMMENT: The commenter provided the following as a consensus opinion of the Pechan study shortcomings: improperly attributing the major portion of the emission reduction benefits between 1987 and 2015 to other parts of the LEV Program (for example, approximately 50 percent of the benefits are due to simple fleet turnover); ignoring other vehicle emission control requirements of the CAAA, which include reformulated gasoline, enhanced I/M, on-board vehicle diagnostics, enhanced evaporative emission controls, cold CO test certification and refueling emissions control through the on-board canister and/or Stage II; the impact of the optional Federal Tier II vehicle standards were ignored. For these reasons, Exxon does not support New Jersey's adoption plan for the LEV Program. (R.J. McCool)

RESPONSE: The Department realizes that the Pechan Report does not provide a complete picture of what will occur if the LEV Program is implemented. The Pechan Associates were asked to model the tailpipe exhaust emissions from the full on-road fleet for the NESCAUM states under two scenarios: (1) a "base case" of implementation of all the CAAA mobile source requirements; and (2) the implementation of the California LEV program in addition to the base case. It should be underscored that Pechan Associates were asked, in the interest of focusing the study, only to address the tailpipe (exhaust) emissions and thus the study did accomplish its assigned task. The Department does realize, however, that other impacts of adopting the California LEV program might bring additional emission benefits to New Jersey including the difference in Federal and California regulations governing evaporative emission and the differences in OBD systems between California and Federal vehicles in which the results will only prove more favorable for the LEV program.

154. COMMENT: The Department has prepared analyses representing the emissions impact of the LEV program. However, many factors have been omitted such as the difference in California and Federal reformulated gasolines and the likelihood of Federal Tier II emission standards. This makes the benefit appear much greater. A comparison of the emission standards themselves is not adequate because the standards must be adjusted for vehicle emissions deterioration, speed, temperature, etc. The most accurate comparison must be made from emission modeling using "local" conditions. Until this is accomplished, the LEV Program should not be adopted in New Jersey. (MVMA and Al Weverstad, General Motors)

RESPONSE: Regarding the California fuels issue, EPA has stated that although eligible states may adopt California new motor vehicle emission standards, there is no explicit requirement that such states also adopt California fuel requirements. The Department agrees with this assessment and, therefore, has no plans to adopt the California fuels provisions.

Before the Federal Tier II emission standards are adopted nationwide, EPA must submit to Congress, after public review and comment, a study showing that additional reductions from light duty vehicles are needed, cost-effective, and technically achievable. Tier II standards (equivalent to the category of vehicles meeting LEV standard) or alternatives are ultimately dependent upon an effective and successful Federal rulemaking, the effective date of which can be no earlier than model year 2003, but no later than model year 2006. Given the uncertainty and time frames associated with this process, the Department decided to support implementation of the LEV Program rather than rely upon the uncertain implementation of Tier II standards.

155. COMMENT: The Department's inventory analysis does not include enhanced evaporative controls and on-board diagnostic requirements, which are required of the CAA. MVMA's preliminary analysis of the effectiveness of these two requirements are that they would reduce an additional 84 tons/day of VOCs in 2005. When added to the Department's estimated 563 tons/day of VOCs, the result far exceeds the required 565 tons/day of reductions. Therefore, the contribution that may be available from the LEV program is not necessary to show reasonable further progress in 2005 and adoption of the LEV standards should not be pursued. (MVMA and Al Weverstad, General Motors)

RESPONSE: The Department's analysis does not include controls for evaporative controls and on-board diagnostics because EPA has not formally established emission reduction credits for these requirements. The Department cannot rely on unsubstantiated claims for emission reductions when the LEV Program yields more clearly significant benefits.

156. COMMENT: The Department must either assume in its analyses of the benefits of the LEV standards that the Federal Tier 2 standards will be adopted, or it must explain why it is proposing to adopt similar standards that are also necessarily infeasible, unnecessary or unsafe. The air quality benefits of adopting the California clean fuel (CF) requirements would be substantially greater than the benefits of adopting only the vehicle components of the LEV/CF program. The Department should require the CF program in lieu of Federal reformulated gasoline or abandon the proposal of the LEV Program. (MVMA)

RESPONSE: While the Department does not deny the need for Federal Tier II standards, the Department believes that the other prerequisites for their timely adoption are unlikely. Therefore, the Department proposed the LEV program instead.

Regarding the California fuels issue, EPA has stated that although eligible states may adopt California new motor vehicle emission stan-

dards, there is no explicit requirement that such states also adopt California fuel requirements. The Department agrees with this assessment and, therefore, has no plans to adopt the California fuels provisions.

157. COMMENT: The impact of any California Motor Vehicle Emissions program will be minimal in meeting the NAAQS attainment need. This is due to a long timespan required to turn over the vehicle fleet and the fact that the LEV program only addresses light duty motor vehicles, which are a very small part of the problem. For these reasons, we believe that New Jersey should not adopt the LEV Program. (Gregory Dana, Assoc. of International Automobile Manufacturers)

RESPONSE: The commenter is correct in recognizing the long lead time needed to turn over the vehicle fleet. In recognition of this factor, the Department is proposing implementation of the LEV program as part of its long term strategy to maintain the air quality standards.

The Department, however, disagrees with the commenter's assessment that the light-duty motor vehicle population contributes only a small part of the air pollution problem. The latest EPA mobile source model, MOBILE 5.0, indicates that the light-duty vehicle population contributes 80 percent of the overall mobile source inventory.

158. COMMENT: EPA expects only one to two percent reduction for California standards. This clearly demonstrates that the costs outweigh the benefits of the LEV Program and so New Jersey should not adopt the Program. (Gregory Dana, and Al Weverstad of General Motors)

RESPONSE: The Department disagrees with the commenter's conclusions on the cost effectiveness of the LEV Program. In a report proposed for NESCAUM by Pechan, for New Jersey, the cost effectiveness for VOC reduction is $900.00/ton. This cost effectiveness is comparable to or better than other stationary and mobile source control strategies.

159. COMMENT: A major uncertainty exists about the benefits of emission reduction in the LEV program and it makes adoption at this time very premature. The current in-use emission factors are not known. The Department is not looking at adopting the fuel part of the California program, and currently the air quality modelling has not been completed to know what your non-attainment status really is in terms of your inventory and where New Jersey needs to go. (William Watson, GM Research Envir. Staff; MVMA)

RESPONSE: The inventory that the commenter is referring to has been completed. EPA MOBILE 5.0 has been released and clears up most of the uncertainties that surrounded the reduction scenarios.

The Department again emphasizes the fact that it is not adopting the California fuel requirements. The Department does realize that by choosing not to adopt these requirements along with the LEV Program, the State will be forfeiting a minimal amount of benefit. However, given the greater benefits of the low emission vehicles versus Tier I vehicles, the Department defends its decision to adopt the LEV standards.

160. COMMENT: New Jersey should continue to implement proven strategies mandated by the CAA and advocated by EPA which include improvements to our State's automobile inspection system, the introduction of federal reformulated gasoline, employer trip reduction programs and strategies for VOC, NO_x and CO controls. The enhanced inspection and maintenance program, coupled with incentives to remove the older vehicles and incentives for sale of new vehicles, provide the best measure of immediate improvement of our air quality. New Jersey should return to its traditional method of determining air compliance strategies, by moving on mandated strategies then ranking additional discretionary control measures in terms of their contributions to improving air quality and relative costs and benefits before adopting the LEV program. That comparison will highlight the most effective alternatives in developing appropriate control mechanisms which improve our State's air quality. (James Benton, Michael Tydings)

RESPONSE: The Department is proceeding with implementing mandatory CAAA programs. The Department has evaluated additional discretionary control measures and has determined the LEV program is a cost-effective discretionary measure.

In accordance with section 3 of P.L.1993, c.69, however, the Department will await preparations of the NJIT written report evaluating various air pollution control strategies and address the findings and conditions contained therein, prior to adoption of this proposal.

161. COMMENT: New Jersey Society for Environmental and Economic Development urges that the Legislature require the submission of a comprehensive report analyzing the differences between the California Emissions Standards and Compliance Program and the CAA. This report should be undertaken by a broadly represented panel for a limited term evaluation of specific air quality improvement needs and cost effective strategies. Until this is accomplished, the Department should not adopt the proposed LEV regulations. (Bernard Dziedzic)

RESPONSE: In developing the LEV regulatory proposal, the Department sought the input of various public and private parties. The Department has also reviewed the conclusions of various studies, and upon consideration of this information, has decided to proceed with this regulatory proposal.

In accordance with section 3 of P.L.1993, c.69, however, the Department will await preparations of the NJIT written report evaluating various air pollution control strategies and address the findings and conditions contained therein, prior to adoption of this proposal.

162. COMMENT: Air quality control strategies should be implemented on a cost-effective basis relative to their environmental benefit. Sun Company's position is that alternative fuels should be expanded and implemented as quickly as possible even before the 1998 deadline. We think that the early implementation of alternative fuels will have a more measurable and significant impact on air quality than the LEV Program. (Tony Ippolito, Sun Company)

RESPONSE: The Department agrees with the commenter. New Jersey has taken the initiative in the promotion and distribution of alternative fuels by developing and implementing an Alternative Fuel Demonstration Project. However, the Department feels that while alternative fuels will play a major role in reaching attainment in New Jersey, they cannot be the sole program to accomplish this task and that is why the LEV program is also needed.

163. COMMENT: Methods other than the implementation of the LEV Program offer equivalent or superior solutions. More specifically, the control of pollution from older vehicles offers the most benefit with the least cost to the residents of New Jersey. If California had the same mix of cars as the Federal fleet, the automotive contribution to air pollution would instantly be cut by 20 percent. With the help of a climate that does not promote rust, California's vehicle fleet is relatively old with plenty of older, more polluting cars. In a recent study by the EPA on an 84 car fleet, one car emitted 6.8 grams per mile while the rest of the fleet measured in at close to 0.2 grams per mile, or 34 times less pollution. Just by identifying and repairing one bad vehicle, the fleet's overall pollution could have been improved by 20 percent. The National Motorist Assoc. believes that New Jersey should attempt this control method before adopting the more costly LEV Program. (John Guzobad)

RESPONSE: The Department agrees that the control of air pollution from older vehicles offers opportunity for substantial reductions in emissions. However, these strategies alone do not offer sufficient benefit to achieve our air quality improvement goals. The Department will be implementing an Enhanced Inspection/Maintenance Program as well as a Vehicle Scrappage Program to reduce the emission contribution from older vehicles and in-use vehicles but still believes the adoption and implementation of the LEV Program is necessary.

164. COMMENT: Despite the uncertainties, MVMA feels it is apparent the benefits of the LEV Program over the Federal program are extremely small and generally would be expected to occur well after the ozone attainment deadlines that are set forth in the CAAA. This being the case, we cannot see the point in New Jersey adopting the LEV Program in order to reach CAAA attainment goals. (William Watson)

RESPONSE: The commenter is correct in stating that the majority of the benefits of the LEV Program occur after the ozone attainment deadline. However, after the year 2005, the benefits of the LEV Program are more substantial, for example, in 2005 the LEV Program will achieve 27.9 percent reduction in VOC emissions over the federal program. These benefits are expected to be necessary to offset increased growth in Vehicle Miles Traveled (VMT) and vehicle population growth in monitoring the NAAQS for ozone and CO.

165. COMMENT: The proposed low-emission vehicle regulations would require manufacturers to begin producing these vehicles for the 1996 model year. The Department claims that without this program, New Jersey will not meet the Federal standards for ozone and carbon monoxide levels required by the CAA. However, the auto and petroleum industries have submitted documentation that presents alternative measures and different implementation time schedules. The auto industry has examined the Department's figures and announced at a recent legislative public hearing that new equipment will produce evaporative emission reductions of 74 tons per day. This is almost four times the reduction realized from the California car program. In addition, on-board diagnostic computers will provide even more savings. Commissioner Scott Weiner told a legislative committee that there is indicated regional support from the Governors in 10 states saying that they will join a

Northeast/Mid-Atlantic compact to promulgate the California standards on a regional level. Anything less than a full regional solution would be a logistical nightmare for manufacturers, retailers and regulatory agencies. (Jim Sinclair, NJ Business & Industry Assoc.)

RESPONSE: The Department acknowledges that even a delay in implementation to model year 1998 would result in only a small loss of benefit in the initial years of program operation. The most significant benefits are realized in the years beyond 2005.

The Department agrees with the commenter that the air quality issue should be handled on a regional level. The Department has shown its support for this by signing the Ozone Transport Commission's Memorandum of Understanding on October 29, 1991 with the folowing states: Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, and Virginia. Essentially, this memorandum states that "each of the undersigned member states agrees to propose regulations and/or legislation as necessary to adopt light-duty motor vehicle emission standards identical to those in California's Low Emission Vehicle program, as soon as possible, in the Ozone Transport Region and in accordance with §177 of the Clean Air Act Amendments of 1990 (CAAA)."

P.L.1993, c.69, establishes conditions precedent to adoption of the proposal based on adoption of the LEV Program by a OTC member representing 40 percent of new motor vehicle registrations.

166. COMMENT: The Department states that we should not delay implementation because the California standard itself has a built-in delay option. In addition, we would lose emission benefits from the delay. However, according to the Department's figures, we would see that gap only in the extreme out years of 2007 to 2010. This would be a loss of five tons per day. This shows that any delay will not effect the results of the LEV Program. (Jim Sinclair)

RESPONSE: The Department acknowledges that a delay in implementation of the LEV Program may prove to be in the best interests of the business community of New Jersey. Even a delay in implementation to model year 1998 will result in only a small loss of benefit in the initial years of program operation. The most significant benefits are realized in the years beyond 2005.

167. COMMENT: The commenter states that New Jersey's air quality problems are significantly different and less severe than those of California. For these reasons, the New Jersey Chamber of Commerce believes that the LEV Program should not be adopted in New Jersey. (William Healey, NJ State Chamber of Commerce)

RESPONSE: New Jersey has the second worst ozone pollution problem in the nation. In addition, it is surrounded by states that are also ranked within the top 10 for ozone problems, especially New York, which is third highest nationwide. Like California, New Jersey has a severe pollution problem in its metropolitan area, a number of less polluted urban areas and a variety of rural attainment areas. While aspects of the ozone problems in New Jersey differ from those in California, New Jersey's problems are far more similar to those in California than they are to the problems, or lack thereof, in many states for which the new federal vehicle standards were designed. Moreover, the LEV standards are not designed solely for Southern California but rather are designed for application throughout the entire State of California. As such, the LEV program is designed to reflect a wide array of air quality needs, climate, topography and vehicle use patterns. In addition, the LEV program offers significant reduction in CO emissions and toxic emissions. New Jersey's CO and toxic air pollution problems are very similar to and in some cases more severe than those experienced in California. For these reasons, the Department disagrees with the commenter's conclusion.

168. COMMENT: The improvement in air quality that might result from implementation of the LEV Program is a topic which has received much attention for its ambiguity. The argument over whether data is expressed in terms of percent or tons per day has clouded efforts to present the facts. As much as 75 percent of the emissions reduction predicted from the LEV Program is due to differences in assumed inspection/maintenance scenarios. Since the choice of an inspection/maintenance program is independent of the adoption of the LEV Program, the benefit of the better inspection/maintenance is not a benefit of the LEV Program. Given these factors, we believe that the LEV Program is not the best program for New Jersey. (John Guzobad, National Motorists Association)

RESPONSE: The Department has chosen to express the LEV Program benefits in terms of tons/day. The Department believes that this representation most clearly shows the relationship of the benefits to the State's overall mobile source emissions inventory.

The Department does not plan to link the LEV Program to the CAAA mandated Enhanced Inspection and Maintenance Program. The Department believes that the benefits of the LEV Program are independent of inspection and maintenance. Both programs are needed to achieve and maintain the NAAQS.

169. COMMENT: Exhaust emissions comprise only one source of vehicle emissions. The Federal plan would control other types of emissions as stringently in New Jersey as it would in California. Control of these emissions results in an improvement in air quality, by the year 2010, which makes the LEV Program only 0.05 grams per mile more effective than the federal plan. This value comes from the Pechan study, which neglects a number of important factors, making that an optimistic estimate at best. The National Motorists Assoc. believes that since the Federal program is only slightly less effective than the California program, New Jersey should not adopt at this time. (John Guzobad)

RESPONSE: The Department has modeled the benefits of the LEV Program using MOBILE 5.0. The results, which take into account Federal evaporative emission controls, show a much more substantial benefit for LEV than appears in the Pechan report. Even though the difference in emission factors is relatively small, this difference is more significant in the later years of program implementation because of the impact of increasing VMT and vehicle population growth.

170. COMMENT: The CAAA contain numerous clean air strategies for mobile sources already, such as reformulated gasolines, enhanced I/M, more stringent exhaust standards, etc. It would be to our benefit to wait and see if these programs reduce air pollution before taking on the considerable task of implementing California's LEV program. Incidentally, to look at the LEV program, one must also take into consideration the pollution factors of this plan. For example, electricity has to be produced in order to run the ZEV. This comes from coal fired plants, increasing solid waste because more SO_2 has to be scrubbed out and increasing the NO_X in the atmosphere. So in this case, LEV may reduce some pollutants but also has a hand in increasing others. Texaco believes that the tradeoff of one pollutant for another is not effective in terms of the benefits and costs gained from the LEV Program. (H.G. Ingram, Texaco)

RESPONSE: The Department believes that we cannot "wait and see" if we need the benefits of the LEV Program until assessment after implementation of all of the measures. If we waited to assess our needs for additional reductions, after implementing all other measures, it would be too late to accrue the maximum benefits of the LEV Program.

In accordance with section 3 of P.L.1993, c.69, however, the Department will await preparations of the NJIT written report evaluating various air pollution control strategies and address the findings and conditions contained therein, prior to adoption of this proposal.

The commenter is correct in stating that electricity has to be produced to recharge electric vehicles, resulting in pollution from the generation of electric power. However, even considering the air pollution resulting from increasing electric power generation requirements, ZEVs overall result in a highly significant emission benefit compared to gasoline fueled vehicles.

171. COMMENT: The new requirements of the CAAA coupled with steps already taken by New Jersey and the continuing "turnover" of the motor vehicle fleet will make major improvements in the air quality for New Jersey. In fact, the fleet turnover and the enhanced I/M program will provide two of the largest reductions in emissions. Thus, no further discretionary air pollution control strategies, such as the LEV Program, are needed in order for New Jersey to meet its attainment goals. (Mike Tydings, MVMA)

RESPONSE: The Department agrees that enhanced inspection/maintenance and fleet turnover provide two of the largest reductions in mobile source emissions. However, its modelling has shown that further emission reductions will be required to attain and maintain the air quality standards into the next century. The Department has considered various discretionary air pollution control strategies and has decided that the LEV Program is the most effective and least costly.

172. COMMENT: California's Low Emission Vehicle Program was specifically designed with the problems and attributes of California in mind. The main reason why the LEV Program should not be implemented in New Jersey is the fact that the State of California is unique. This is due to its air basin geography, warm climate, distinctive population growth, and crippling dependence on automobiles. Since the LEV program has been created with these particulars inherent to the program,

it is unlikely that it will work in a state that does not possess these characteristics. (James Benton, NJ Petroleum Council, William Watson, MVMA, Satoshi Nishibori, Nissan, R.J. McCool, Eastern States Petroleum Advisory Group, Mike Tyding)

RESPONSE: Although the magnitude of southern California's ozone problem is partially attributable to meteorological patterns and topographical features that differ from those found in New Jersey, the root cause of California's ozone problem is anthropogenic emissions of hydrocarbons and NO_x. The dominant source of these emissions in California is the automobile. These features are not unique to California. In fact, they are replicated throughout the Northeastern United States where the root cause of ozone nonattainment is also anthropogenic hydrocarbons and NO_x emissions and the dominant source of these emissions is automobiles. The fact that there are some differences between California and New Jersey does not alter the fact that reducing pollutant emissions from automobiles will improve air quality in New Jersey.

173. COMMENT: The reason why the LEV Program cannot be implemented in the State of New Jersey is that California's air pollution problems are much more severe than that of any other state. It is the only state which is almost completely a nonattainment area. In addition, as New Jersey's pollution problems have seen significant improvements in the last five years, California continues to worsen at a drastic rate. California, and this is for the most part Los Angeles, exceeds ozone standards at a daily rate over five times greater, on an annual rate, than New Jersey. Even at this elevated rate of increase, California still debated and researched the LEV issue for over three years. For this reason, New Jersey is not California and should not be treated as if it was California. (R.J. McCool, Eastern States Petroleum Advisory Group, Greg Dana, Assoc. of International Auto Manufacturers, James Benton, NJ Petroleum Council, William Healey, NJ State Chamber of Commerce)

RESPONSE: New Jersey has the second worst ozone pollution problem in the nation. In addition, it is surrounded by states that are also ranked within the top 10 for ozone problems, especially New York, which is third highest nationwide. Like California, New Jersey has a severe pollution problem in its metropolitan area, a number of less polluted urban areas and a variety of rural attainment areas. While aspects of the ozone problems in New Jersey differ from those in California, New Jersey's problems are far more similar to those in California than they are to the problems, or lack thereof, in many states for which the new federal vehicle standards were designed. Moreover, the LEV standards are not designed solely for Southern California but rather are designed for application throughout the entire State of California. As such, the LEV program is designed to reflect a wide array of air quality needs, climate, topography and vehicle use patterns. In addition, the LEV program offers significant reduction in CO emissions and toxic emissions. New Jersey's CO and toxic air pollution problems are very similar to and in some cases more severe than those experienced in California. For these reasons, the Department disagrees with the commenters' implied conclusion that New Jersey should not adopt the LEV Program.

174. COMMENT: The reference to "Project: Clean Air" and its conclusions on adopting the LEV Program (on page 1321) are correct as published. However, the Project's analysis is faulty. The assumed reductions in emissions is high by a factor of about five. The costs are low by at least a factor of about five. With test correction, the Project should have placed the LEV Program in the second tier of priority strategies, to be considered with other optional control measures on a cost-effective basis. Exxon believes that given the inaccuracies of the Project: Clean Air report that the Department should reconsider adoption of the LEV Program. (W.D. Dermott, Exxon)

RESPONSE: The Department finds the results of the Project: Clean Air report and their efforts to quantify the benefit and costs associated with the LEV Program consistent with other studies that have rated the LEV Program as a highly cost effective discretionary air pollution control measure. The Department has considered all of these studies and has determined that the LEV Program is needed for New Jersey to meet its attainment goals.

175. COMMENT: Page 1316 of the Project: Clean Air report references an estimated growth in travel in New Jersey of 25 percent by 2010. This estimate has not taken into account the increased emphasis by the State on reducing vehicle use and a revised commitment to mass transportation. Based on New Jersey's population growth over the last 10 years of about five percent compared to California's 28 percent and looking at the projected 2010 growth in miles traveled in California, which is much more dependent on motor vehicle transportation, the estimated growth in travel in New Jersey should only be about 12 percent by 2010. Due to this limiting growth factor, New Jersey does not require any additional air pollution control strategies other than those mandated by the CAAA. (W.D. Dermott, Exxon)

RESPONSE: New Jersey's emission inventory projections have taken into account the estimated growth in VMT. Even accounting for the decrease in VMT growth, the inventory still shows a net increase in emissions over time without the added reductions from the LEV programs.

Miscellaneous Comments

176. COMMENT: Sun Company Inc. advocates an aggressive enhanced I/M program. We also support IM 240 testing as developed by EPA for use in an enhanced I/M program. In addition, we advocate an accelerated scrappage program for older, high emitting cars. We think through a combination of enhanced I/M and scrappage of the older high emitting vehicles New Jersey will decrease its overall air pollution significantly. Keeping this in mind, we feel that New Jersey would benefit from exploring these control measures before involving itself in a more costly, less effective long term project like the LEV Program. (Anthony Ippolito, Sun Company Inc.)

RESPONSE: Although the Department recognizes the need for CAAA mandated control strategies, such as Enhanced I/M, and optional strategies, such as the scrappage program, it feels that even the combined efforts of these programs will not bring New Jersey into attainment. The Department has reviewed various discretionary measures and has decided that the LEV Program will provide the most benefit at the least cost to the State and will allow New Jersey to reach and maintain attainment.

177. COMMENT: Before New Jersey requires mandatory ZEV introduction, Nissan believes a review should be conducted of not only the technical issues but consumer acceptance issues as well. Currently, there is no solid market research to suggest that consumers will purchase ZEVs, or that sufficient infrastructure will be in place in time for the introduction of ZEVs in the LEV Program. Additionally, the sales target may not go beyond a niche market of a specific, unique user in New Jersey. Therefore, it may be inappropriate to adopt the same mandatory percentages as required in California. (Satoshi Nishibori, Nissan)

RESPONSE: The Department understands that the marketing of ZEVs will likely be sold in niche markets until after the turn of the century. Vehicle manufacturers, dealers and government will all need to play a role in familiarizing consumers with the benefits of ZEVs and dispelling unfounded negative perceptions concerning these vehicles. Manufacturers have begun to aggressively promote electric vehicles. The Department has committed itself to an alternative fuels demonstration study to promote the technology behind ZEVs and low emission vehicles and to identify appropriate markets for ZEV use. Therefore, the Department disagrees that the ZEV sales percentages required in California will be inappropriate for New Jersey.

178. COMMENT: Before the LEV rule goes into effect, it would be beneficial if there was some type of control set up for the diesel buses and trucks. Perhaps this would be a more cost efficient way to reduce air pollutants and at the same time provide a more visible and effective benefit to the State of New Jersey. (Robert Dunn, citizen)

RESPONSE: The Department is presently limiting adoption of the LEV standards to vehicles with a gross vehicle weight of less than 6,000 pounds. The medium and heavy-duty aspects of the LEV program do not take effect until the 1998 vehicle model year in California. The Department will evaluate the benefits of its proposal to adopt the medium and heavy-duty vehicle standards prior to the 1998 model year. In the meantime, the Department is pursuing means of reducing the in-use emissions from heavy-duty vehicles. The major pollutant emissions from diesel vehicles are PM_{10} and NO_x. The Department must pursue diesel control in order to achieve attainment of the PM_{10} standards in the consolidated metropolitan statistical areas located in New Jersey and in order to reduce toxic emissions in urban areas. Controlling diesel vehicles is not an alternative ozone or CO control strategy to its LEV Program contained in this proposal, because HC and CO emission from heavy-duty vehicles are not significant relative to light duty vehicles.

179. COMMENT: The major health complaint for ambient air quality is its increasing effects on reductions of lung capacity. In truth, reductions in lung function should not be considered a health "problem." The effects diminish even during continuing exposure, decreasing each day after the second, and disappearing after the fifth. They are observable only during heavy exercise. One can minimize the effects by remaining

indoors, where ozone concentration is substantially lower. Therefore, the National Motorist Assoc. believes that the LEV Program is not needed in New Jersey. (John Guzobad, National Motorists Association)

RESPONSE: Ozone does have severe effects on the capacity of the lungs and can have damaging effects on respiration. A series of EPA studies indicate that ozone exposures as low as 0.08 ppm, well below the NAAQS of 0.125 ppm, can impair lung function. Even at low levels, ozone can cause average humans to experience breathing difficulty, chest pains, coughing or irritation of the nose, throat and eyes. In addition, chronic ozone exposure studies performed on animals indicate that long-term exposure to ozone effects changes in lung physiology and morphology. These studies suggest that humans exposed to ozone over long periods of time can experience chronic respiratory injuries resulting in premature or accelerated aging of human lung tissue. In 1991, New Jersey's air was categorized as "unhealthy" 36 days out of the year. Of those 36 days, 26 were due to ozone, where the State was out of compliance with the NAAQS standard of 0.12 ppm. In addition, since EPA studies indicate that lung function may deteriorate at ozone levels as low as 0.08 ppm, it is also useful to note that the State of New Jersey exceeded the level of 0.08 ppm an average of 228.47 hours through the "ozone season" or summer months of 1991. These hours peaked during times when outdoor activity is at its height in summer months (between 10 a.m. and 5 p.m.). The commenter's suggestion that the citizens of New Jersey remain indoors during excessive ozone levels would unduly burden the lives of New Jersey residents.

180. COMMENT: Before the Department takes such drastic and expensive measures, such as the LEV Program to secure a healthy air environment in New Jersey, we should consider simpler alternatives, for example, voluntary reduction of car numbers, alternative fuels, mass transits, etc. (John Witham, citizen)

RESPONSE: The Department does not consider the LEV program to be a drastic and expensive measure, but considers it to be a cost effective measure to reduce pollutant levels in New Jersey. As part of its State Implementation Plan (SIP) process, the Department is considering additional measures such as transportation control measures, incentives for increased use of mass transit and alternative fuels. But these additional measures will not provide the air quality benefits that we can derive from the LEV Program.

181. COMMENT: Considering the recent delays of the surrounding states in adopting, or even initiating, the LEV program, it would be useless for New Jersey to adopt at this time. If New Jersey does, it will only be receiving pollutants from outside sources and will be unable to control them. Since this will be the case, LEV will have cost the State a tremendous amount of money while not receiving any benefits from the program. (W.D. Dermott and William R. Healey, New Jersey State Chamber of Commerce)

RESPONSE: The Department has worked in coordination with Ozone Transport Commission (OTC) states and the motor vehicle manufacturing community to adopt the most beneficial and cost effective motor vehicle emission control regulation possible. The Department is committed to continuing to work in this manner with the intent of implementing a coordinated and streamlined program that reflects the input of the motor vehicle industry. Currently, Massachusetts and New York have completed adoption of the LEV standards for the 1995 model year. Maine has completed adoption of the LEV standards for the 1996 model year. In addition, all the OTC members with the exception of Connecticut have committed to implement the LEV standards as soon as possible. Connecticut is studying the LEV program further before making a decision on LEV adoption. The Department remains confident that the LEV program will be implemented throughout all states in the Ozone Transport Region. In addition, Illinois has proposed regulation to adopt the LEV standards and Wisconsin held hearings in February to consider adoption. Finally, P.L.1993, c.69, establishes conditions precedent to adoption of the proposal based on adoption of the LEV Program by OTR members representing 40 percent of new motor vehicle registrations.

182. COMMENT: In reference to the proposal of the LEV program, a statement was made that said "State residents (of New Jersey) would not be able to register vehicles purchased out of state." It is requested that this be clarified as to whether this is in reference to new cars only or if it applies to used cars as well. (Steven Faulkner, citizen)

RESPONSE: The proposal applies only to new motor vehicles sold after the implementation date of the LEV Program in New Jersey. The proposal does not affect the trade of used cars.

183. COMMENT: There are elements of Tier II that are very certain, and that is why they were chosen to be part of the CAAA. Congress stated that these are the standards. EPA must examine them based on the need for further reductions, available technology, and the need for more stringent motor vehicle standards and the cost effectiveness. Then EPA must present a report to Congress in 1997 with the recommendation of whether or not to implement Federal Tier II standards. The point that MVMA has tried to make to New Jersey, and to the various other states, is that our analysis shows little difference if you assume that Federal Tier II is implemented, particularly if you assume that your State does not adopt California fuels. This being the case, what New Jersey is really looking at is something for the maintenance of the air quality standards, be it Tier II or be it the California Emissions Program. (Alan Weverstad)

RESPONSE: It is clear to the Department that the Federal Tier II standards are not mandatory. It is clearly stated in the Clean Air Act Amendments (CAAA) that adoption of these standards by EPA is discretionary as follows: "The Administrator, with the participation of the Office of Technology Assessment, shall **study** whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this title. The **study** shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight of 3750 lbs. or less." Therefore, it is clear that the Department cannot "assume that Federal Tier II is implemented" as the commenter suggests.

184. COMMENT: The Department should consider the following set of questions: What are the standards that New Jersey would use to test the vehicles in use? How would these standards be determined? What would be the scientific basis used in the development of these standards? Would these new standards violate federal law by creating a "third car"? For example, New Jersey's mass emission standards for cars certified on conventional gasoline is .125 NMOG, non-methane organic gas, for LEVs at 50,000 miles. Can you explain how these numbers were derived? (James Benton, Mike Tydings and W.D. Dermott)

RESPONSE: The CAAA permits states to adopt the California emission standards. The technical justification for these standards is provided by California and approved by EPA through the California waiver process. EPA waived preemption of California's LEV Program during January 1993. EPA allows other states to adopt standards identical to those of California without repeating the waiver and justification process that California has already undergone. This allows New Jersey to adopt the LEV standards without creating a third car.

Enhanced Inspection and Maintenance (I/M)

185. COMMENT: Enhanced Inspection and Maintenance (I/M) Programs are a key component of the future motor vehicle control program. The benefits of better testing programs will ensure that more high emitting vehicles are identified and will aid in the proper repair of these high emitters. These benefits will accrue to both existing and future technology vehicles. (Mike Bradley, NESCAUM)

RESPONSE: The Department acknowledges receipt of this comment in support of the Enhanced I/M program. However, New Jersey does not plan to link the Enhanced I/M program to the LEV program. The Department believes that the benefits of the LEV program are independent of Enhanced I/M. The Enhanced I/M program is a Federally mandated control strategy and New Jersey will implement this program.

Health Aspects

186. COMMENT: Health costs for air pollution in the United States are on the order of $50 billion per year. The American Lung Association estimates that 182 million people face health threats from ground-level ozone—the main ingredient of smog. In New Jersey, motor vehicle emissions account for more than half of the air pollutants. For these reasons, the cost of not implementing the LEV program far outweighs the cost of implementation. Therefore, NJPIRG supports the LEV program in New Jersey. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

187. COMMENT: Natural gas as a vehicle fuel is safer than any existing alternative fuel on the market. Natural gas has a narrow flammability range and is lighter than air, so it evacuates to the atmosphere in case of leakage. The storage tanks have also been subjected to a series of tests and have proven safe. NJPIRG feels that implementing the LEV

program, with its potential to foster the use of alternative fuels, is a safe and practical approach to reducing emissions from motor vehicles. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

188. COMMENT: A study recently published in Lancet suggests that ozone can double a person's sensitivity to allergens that cause asthma. Asthma affects ten million Americans and the incidence is increasing. Ozone can cause health problems even at .12 ppm, a concentration EPA deems is safe, and a level which New Jersey routinely exceeds. On the basis of health effects alone, New Jersey should implement the LEV Program as soon as possible. (Eric Zwerling)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

189. COMMENT: Based on the knowledge of the adverse health effects of air pollution, it is essential that stricter ambient air pollution controls be implemented. With the continued degradation of our air resources, the danger is more serious than we know, especially for those subgroups that are potentially at higher risk from exposure. For this reason alone, New Jersey should adopt the LEV Program. (Linda Stansfield, American Lung Assocition)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

California vs. Federal

190. COMMENT: Compared to the California LEV program, the Federal automobile emissions control program is slow moving and not stringent enough to protect the health of New Jersey's residents. New Jersey cannot afford to take the risk of implementing the Federal program and not having it perform as needed. New Jersey must use the LEV Program to supplement its emission control strategies. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

Other States Responsibility and Opinions

191. COMMENT: Adopting the California LEV program sends a strong message to all of our neighboring states that New Jersey is serious about clean air. Ozone is a regional problem and must be solved through cooperation. New Jersey risks losing the support of neighboring states on other issues if we don't accept the LEV program. (Drew Kojak)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

Conservation of Energy

192. COMMENT: The expanded use of NGV's promotes energy efficiency and conservation. NGV's present an abundant non-seasonal demand that contributes to base-load capacity. Much of the refueling of the NGV's can be done on off-peak hours. Since the LEV Program potentially fosters the use of alternative fuels, NGV supports its implementation in New Jersey. (Jeffrey Seisler)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

Government Support

193. COMMENT: A commitment by federal, state and local government has been required in any country where alternative fuels has achieved successful market introduction and penetration. Leadership by example—converting public fleets and purchasing clean fuel vehicles—demonstrates the commitment to clean air that will help lead the way among the general public and businesses. New Jersey should lead the way in the use of alternative fuels by adopting the LEV Program. (Jeffrey Seisler, NGV)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

Public Availability

194. COMMENT: Under California's LEV program, gasoline suppliers will be required to distribute a minimum assigned volume of the various clean-fuels, once a specific number of LEVs using the clean fuels are on the road. While PSE&G is not suggesting a similar provision for New Jersey, we do believe that the State must act to ensure that clean-fuels are readily available. In implementing the LEV Program, the State should allow for a regulatory structure that will encourage refueling infrastructure development in New Jersey. (Greg Dunlap)

RESPONSE: Although not directly related to this proposal, the Department does support incentive programs that will encourage the development of an alternative fuel refueling infrastructure in New Jersey.

195. COMMENT: About 93 percent of the natural gas consumed in the United States is produced domestically. The balance comes mostly from Canada, hence the expanded use of natural gas will decrease U.S. reliance on oil from unreliable foreign sources. Therefore the LEV Program, with its alternative fuels incentives, will not only help the country environmentally but also economically. (Jeffery Seisler)

RESPONSE: The Department acknowledges receipt of this comment in support of the proposal.

Compatibility with Other Regulations

196. COMMENT: Implementation of the LEV Program will be simplified by the State ensuring its compatibility with other regulatory initiatives. For example, the LEV program should be expanded, not necessarily now but soon, to include a more complete program which does not limit applicability to light-duty trucks as it does now. These make up only 20 percent of New Jersey's fleets and automakers should be made to concentrate on the heavier low-emission vehicles as well. (Greg Dunlap)

RESPONSE: The Department acknowledges the commenters concerns regarding heavy duty vehicles. However, at this time, the proposal concentrates on the reduction of pollutants from light duty vehicles. After reviewing the effects of control strategies for light duty vehicles, the Department will consider proposal of the LEV standards for the heavier vehicle classes.

Fleet Average Enforcement

197. COMMENT: The proposal specifies a fleet average emissions requirement which manufacturers shall not exceed. MVMA believes that the Clean Air Act, §177, specifically and clearly prohibits New Jersey's adoption of the California fleet average emissions requirement. Manufacturers will be tailoring product plans to meet the fleet average emissions requirements in California sales patterns. The New Jersey sales patterns of individual manufacturers are, of course, different than those of California. Adoption of California's fleet average emissions requirements in New Jersey would, therefore, inevitably have the effect of limiting sales of California certified vehicles or requiring production modifications not needed for California, which is a third vehicle, both of which are prohibited under §177. (Al Weverstad, Robert Veit, MVMA)

RESPONSE: The CAA prohibits New Jersey from requiring a third vehicle. The Department believes it is clear that the proposed regulation does not require the manufacture of a vehicle to a third standard. A vehicle manufacturer may meet the fleet average by selling more of a vehicle already certified to a lower standard. This would not require the manufacture of a third vehicle. The clear intent of §177 of the Clean Air Act is to provide states with access to the emission benefits provided by adoption of vehicle emission standards that are set in California and deemed to be at least as protective of health and welfare as the Federal program. The Department does not believe that imposing a fleet average requirement like that which exists in California is a violation of §177 of the CAA.

198. COMMENT: If LEV sales credits earned in New Jersey are different from those in California then it's possible that manufacturers will be unable to sell vehicles in New Jersey which are offered in California. In addition, an MVMA analysis comparing the historical vehicle sales in California and New Jersey has indicated that, on an industry-wide basis, the differences between California and New Jersey, vehicle sales patterns and, therefore, fleet average emissions are negligible. The NMOG average requirements should be deleted from the rules and the offset vehicle provisions should be modified to clarify that all vehicles offered for sale in California may be offered for sale in New Jersey. (Al Weverstad)

RESPONSE: The Department agrees that historical sales patterns in California and New Jersey are very similar. Therefore, manufacturers should not have difficulty in meeting the fleet average requirement specified in the proposed regulation. Offset vehicles may be offered for sale in New Jersey pursuant to the requirements proposed at N.J.A.C. 7:27-26.7(a).

199. COMMENT: The commenter suggests that the enforcement of the fleet average requirement on an individual manufacturer would inevitably cause undue burden. This would require them to take special actions for New Jersey in order to offset normal year to year fluctuations. For this reason, the MVMA feels that the LEV Program is not suitable for New Jersey. (Al Weverstad)

RESPONSE: The Department has addressed the issue of enforcement in responding to the fleet enforcement argument and has decided that there is to be no enforcement action if the fleet average is exceeded in New Jersey. This "market-based" approach to the fleet average will provide benefits nearly identical to those of an enforcement program while greatly minimizing administrative burdens. The Department feels that this approach demonstrates its interest in minimizing administrative burdens without compromising program effectiveness. However, the Department does feel justified requiring that, if a manufacturer fails to meet the fleet average in a given model, it provides a reasonable explanation of its failure. This requirement is not intended to be punitive in nature but, rather, remedial. The Department will collect this information in order to take a proactive role in ensuring that a manufacturer's inability to meet the fleet average does not continue.

200. COMMENT: It may not be possible to achieve the fleet average emission standards that are described in Table 2 of the proposed new rules if the new car purchasing patterns of the citizens of New Jersey are different than those of the citizens of California. If this turns out to be the case, we do not understand what will occur as the Department has stated there will be no enforcement mechanism. Given the lack of enforcement in the LEV Program, Exxon does not believe that New Jersey should adopt the program as an effective control strategy. (W.D. Dermott, Exxon Company)

RESPONSE: It is agreed that the automobile industry is essentially identical throughout the Northeastern States. Since this is the case, the Department believes that it can rely on the information that the auto manufacturers provided for New York. This information indicates that, as long as the industry acts in good faith and markets vehicles in New York in a manner similar to that in California, historical differences in purchasing patterns will not result in a violation of the fleet average in the aggregate. The New York Department of Environmental Conservation (DEC) constructed a worse case scenario that suggested that the maximum difference in the fleet average during any three year period was less than five percent, so long as vehicle manufacturers did not attempt to use the flexibility provided as a means of not selling LEVs in New York.

201. COMMENT: For the reasons outlined below, Nissan cannot agree with New Jersey's proposed calculation method for fleet average NMOG values, and the mandated ZEV introduction requirements. New Jersey has proposed the calculation of the fleet average NMOG values to be based on New Jersey sales, with no enforcement provisions. Nissan, however, believes compliance with NMOG standards should be based on sales in California. Nissan is now considering a strategy for compliance with the LEV Program in California. Even if the exact same models are introduced in both New Jersey and California, the corporate average NMOG value may differ significantly between the two states. Therefore, if New Jersey requires compliance based on the corporate average NMOG, we may have to compensate for the difference in sales mix by making some models comply with even more stringent standards in New Jersey. We believe this would create a "third vehicle." In addition, there would be insufficient lead time to develop another (separate from California's LEV) low emission vehicle. For these reasons, we strongly request NMOG compliance **not** be based on sales in New Jersey. (Satoshi Nishibori, Nissan Research & Development, Inc.)

RESPONSE: The Department believes the fleet average NMOG values should be based on New Jersey sales because that is where the air quality benefit must be realized. However, as the commenter notes, the Department is not enforcing the fleet average requirement. Nonetheless, the Department believes, as other manufacturers have stated, that the sales patterns in California and New Jersey are not that dissimilar and therefore the fleet average values will be relatively close. This being the case, a "third vehicle" will not be necessary to comply with the fleet average NMOG values in New Jersey and the LEV Program will not cause any undue burden to the manufacturers.

Technical Corrections to Regulation

202. COMMENT: To accord with the California regulations, the definition of "small volume manufacturer," N.J.A.C. 7:27-26.1 should read: "Small volume manufacturer shall mean any vehicle manufacturer with sales less than or equal to 3000 new light-duty **vehicles** and medium-duty vehicles per model year . . ." (Rachel Jelly, Lotus Cars Ltd. and Michael Grossman, Automobili Lamborghini, SpA)

RESPONSE: The Department agrees and has amended the definition of the term "small volume manufacturer" as suggested by this comment. The following definition has been inserted at N.J.A.C. 7:27-26.1.

"Small volume manufacturer" means any vehicle manufacturer with sales less than or equal to 3000 new light-duty vehicles and medium-duty vehicles per model year . . ."

203. COMMENT: The Hertz Co. requests that, prior to rental for an ultimate destination outside New Jersey, a rental agency be allowed to rent a vehicle for use inside New Jersey for a limited period of time. In particular, we would request that a New Jersey rental agency be given a 30 day period from the date a vehicle is delivered to it from an out-of-state origination point to rent the vehicle for use within New Jersey, provided that at the end of the 30 day period it can be rented only with a non-New Jersey final destination. In order to implement that proposal, it is suggested that all the language after the "which" on the third line of proposed N.J.A.C. 7:27-26.3(b)11 be deleted and the following language be inserted: . . . is delivered to a New Jersey rental agency from a non-New Jersey origination point and rented for temporary use within New Jersey for a period of 30 days or less commencing on the date of said delivery, and a vehicle so certified which is delivered to a New Jersey rental agency from a non-New Jersey origination point and is either next rented, or next rented after the period of 30 days or less described above, with a final destination outside of New Jersey. (John Antholis, Edwards & Antholis)

RESPONSE: The Department recognizes the concerns expressed by the commenter and, accordingly, the Department has amended the proposal at N.J.A.C. 7:27-26.3(b) to allow a 30 day grace period from the date the vehicle was delivered for rental within New Jersey.

204. COMMENT: Assuming the implementation of the LEV Program is different from Federal Tier I standards, the following comments address the Prohibitions issues in N.J.A.C. 7:27-26.3:

Subsection (a): First, 1996 or later vehicles that will be used privately and are not registered for use on public roads (for example, a vehicle exclusively used for racing or other track events) should not be subject to prohibition. It is not clear that the language paragraph (b)9 includes the intent above since it makes reference to "a vehicle transferred." The use of the phrase "for use" and "or resale within this State" in Subsection (a) contributes to this ambiguity. Examples of more appropriate language are "for use on public roads" and "resale for use on public roads". Another issue of concern to our car club members is the flexibility to make modifications to their vehicles. In particular, we interpret that an engine manufactured prior to 1996 (and brand new) can be placed in a vehicle manufactured in or after 1996 and that vehicle can be registered for use on public roads. For the more typical case, the proposal should also consider that replacement engines for pre-1996 cars will be manufactured in or after 1996 and that these engines need not be LEV certified. For all these cases described, this section should be clarified to better determine applicability. Likewise it may be necessary to modify N.J.A.C. 7:27-26.4(a).

Subsection (b): Our greatest concern is the situation where an out-of-state motorist moves to New Jersey and cannot bring his or her vehicle with them. The financial loss and protection of property issues are significant if a motorist is forced to sell a vehicle to become a New Jersey resident. It seems that paragraph (b)5 may address this issue. But, does (b)5 indicate that a 1996 or later vehicle from out-of-state that meets Federal **or** California standards will be allowed in New Jersey? We hope so. If that is the intent, this item could be stated (or supplemented) with clearer language. (John Guzobad, National Motorists Assoc.)

RESPONSE: The commenter's interpretation regarding engine switching is incorrect. The intent of the regulation is to prohibit the use of any pre-1996 non-LEV engine in a 1996 or later vehicle. In the case of pre-1996 vehicles, the replacement engine must be of the same model year or later as the vehicle itself and the resultant engine-drivetrain configuration must conform to the configuration certified by USEPA. If the vehicle is certified to LEV standards, the replacement engine must also be LEV certified in addition to applying to the above stated model year rules. To clarify N.J.A.C. 7:27-26.3(b)5, a vehicle that has been certified to Federal Clean Air Act standards or California standards and originally registered in another state by a resident of that state who subsequently establishes residence in New Jersey, may be registered in New Jersey.

205. COMMENT: While it may be implied from N.J.A.C. 7:27-26.16 that New Jersey will incorporate CARB MOs (Mail Outs) and MACs (Manufacturer Advisory Correspondence) for both clarification and implementation of this regulation, New Jersey should specifically adopt and/or incorporate by reference the policies contained in CARB MAC #91-04 dated July 10, 1991 (See Attachment II) dealing with Assigned Deterioration Factors and most particularly with the sales aggregation

of two manufacturers, one of which partly or wholly owns the other, in determining the sales limit for small volume manufacturer eligibility. (Michael Grossman, Automobili LAMBORGHINI, SpA)

RESPONSE: The Rules for Agency Rulemaking, N.J.A.C. 1:1-30, are specific as to what may be incorporated into a rule by reference. Since the documents listed by the commenter, CARB Mail Outs and Manufacturer Advisory Correspondence, do not constitute generally available publications approved by the Director of the Office of Administrative Law nor were proposed for such treatment at N.J.A.C. 7:27-26.16, they are not incorporated by reference into the adoption. However, to the extent these documents constitute guidance for implementing California's LEV emission standards, in order to avoid creating an undue burden upon motor vehicle and motor vehicle engine manufacturers, the Department will implement the New Jersey LEV Program in a manner generally consistent with such guidance.

206. COMMENT: The commenter states that in order to clarify that the Department is not proposing to independently review California certification determinations, the proposed rules should be modified to provide that all vehicles which are certified by California are deemed certified for New Jersey's purposes." (Alan Weverstad)

RESPONSE: In the "Summary" to the proposal at 24 N.J.R. 1318 (under "Emission Standards"), the Department stated that "when a vehicle will be also sold in California, the certification process accepts the certification by the Executive Officer of the California Air Resources Board (CARB) thereby avoiding unnecessary duplicative certification testing and procedures."

207. COMMENT: In its summary of the proposed new rules, the Department states that it is proposing "that all new 1996 and subsequent model year passenger cars and light-duty trucks sold or leased for registration in New Jersey shall meet strict standards for the emissions of air contaminants identical to the standards that have been established for such vehicles in the state of California." The express terms of the Department's proposed new rules include reiterations of selected portions of California regulations (for example, Tables 1-5, N.J.A.C. 7:27-26.4; 7:27-26.6), adoption by reference of other California regulations as in effect at various specified dates (for example, "Offset vehicle" definition, N.J.A.C. 7:27-26.1), and some potentially unique New Jersey requirements (for example, N.J.A.C. 7:27-26.5). MVMA believes that this approach to adopting of California new motor vehicle emission standards is unnecessarily complex and potentially inconsistent with CAA §177. In order to achieve the stated purpose of the Department's proposed new rules, in a manner that is workable and in accord with CAA §177, the final rules should include only proposed N.J.A.C. 7:27-26.2 and 7:27-26.3, and definitions necessary for those provisions. (Alan Weverstad, MVMA)

RESPONSE: The Department believes that all of the information contained in N.J.A.C. 7:27-26 is needed to clearly and explicitly define all aspects of the LEV Program. Removing any sections after N.J.A.C. 7:27-26.3 would simplify the regulation to the point where it would not be clear to all parties involved. Therefore, the Department will not delete all sections of N.J.A.C. 7:27-26 after 26.3.

208. COMMENT: "Proposed regulation N.J.A.C. 7:27-26.3(a) provides, in pertinent part, that

> no person who is a resident of [New Jersey] or who operates an established place of business within [New Jersey] shall *** import, deliver, rent, lease *** or otherwise transfer [covered motor vehicle] for use *** within [New Jersey] unless it has been certified in accordance with the [LEV program].

This ruling has a serious effect on rental companies since it is simply impossible to immediately re-rent a vehicle outside the State. As a compromise to this section of the LEV proposal, it is suggested that the regulation be extended to include a de minimis rule allowing very temporary use in New Jersey of a vehicle delivered from out-of-state that will be ultimately sent out-of-State. It has been requested that this period of time be at least 30 days from the date the vehicle is delivered to New Jersey. (John Antholis, Edwards & Antholis)

RESPONSE: See response to Comment 203.

Social Impact

These proposed new rules will have a positive social impact. They are designed to help New Jersey achieve and maintain the NAAQS for ozone and carbon monoxide by reducing the emission of air contaminants from new motor vehicles. These air contaminants include volatile organic compounds, carbon monoxide, oxides of nitrogen and various toxic air pollutants. Volatile organic compounds and oxides of nitrogen contribute to the formation of photochemical smog, of which ground level ozone is a primary constituent. By reducing these emissions, these new rules would have the effect of helping to deter or prevent the exposure of persons who reside or work in New Jersey to elevated unhealthy concentrations of these substances. Reducing these emissions will also help to deter or prevent the degradation of plant life and various human-made materials which is caused by increased ozone concentrations. The effects would be protective of public health and the environment, and would be of significant societal benefit.

The frequent and widespread violations of the health-based NAAQS for ozone in New Jersey constitutes a serious public health problem in the State. In 1978 based on ozone's then known health effects, the national ambient air quality standard was established at 0.12 parts per million by EPA. However, adverse health effects have been observed at lower levels of ozone, and the American Lung Association and several states have filed a lawsuit against EPA seeking that EPA reevaluate the ozone standard in light of recent scientific findings in order to ensure that the national ozone standard is protective of public health. (9)

The Department maintains a comprehensive air pollution monitoring system throughout the State and provides a daily forecast and an annual report for each calendar year (10). In addition, EPA has published a report which summarizes ozone air quality data for the New York, New Jersey, and Connecticut region (11). This report provides 1990 air quality data including the occurrence of ozone air quality exceedances:

Air Quality Data
Exceedances of the Ozone Standard in 1990

Area	Number of Sites	Number of Exceedances	Average Number of Exceedances per site
New Jersey (southern)	6	21	3.5
New Jersey (northern/central)	9	37	4.1
New York (NYC Metro)	7	12	1.7
Connecticut	10	44	4.4
TOTAL	32	114	3.6

In New Jersey this translates into 58 site exceedances and 23 days in 1990 during which the ozone NAAQS was violated. Preliminary data for 1991 show that 75 site exceedances occurred and that the ozone NAAQS were violated during 26 days in 1991.

Short-term effects on healthy exercising adults and children from exposure to elevated ozone concentrations include coughing, painful breathing and loss of certain lung functions. The connection between respiratory disease and high levels of ozone has been reported by the University of Medicine and Dentistry of New Jersey (UMDNJ). After studying data from nine central New Jersey hospitals, UMDNJ researchers found that the incidence of asthma attacks rose from seven to 10 percent when elevated levels of ozone were reported by the Department (12). These effects are exacerbated in sensitive populations, particularly the elderly, those with preexisting respiratory diseases and children who play outdoors. Long-term effects are also of concern, because much of New Jersey's population has been exposed to unhealthful levels of ozone throughout their lifetime. Although chronic effects have not been conclusively determined, repeated exposure to ozone over a lifetime causes biochemical and structural changes in the lung and may be a causal factor in development of chronic respiratory diseases.

Increased ozone levels also cause damage to foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this impact on sensitive plants. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in ambient ozone concentrations will mitigate damage to foliage, fruits, vegetables, and grains.

The oxidizing properties of ozone lead to accelerated degradation of various man-made materials such as rubber, plastics, dyes, and paints. Attainment of the NAAQS for ozone will reduce the rate of degradation of both natural and synthetic materials.

Carbon monoxide reduces the oxygen carried in the blood and also may be fatal at high concentrations. In 1990 New Jersey had the fewest recorded exceedances of the CO NAAQS in recent years, with only one exceedance recorded in Elizabeth. However, preliminary data from 1991 indicates that two exceedances occurred in Elizabeth, once exceedance

in East Orange, and one in North Bergen. Reducing the emissions of CO from motor vehicles is expected to help avoid any such exceedances.

In addition to the contribution to ozone and CO levels, the EPA estimates that motor vehicle emissions account for 60 percent of the total cancer incidence from outdoor exposure to air toxics nationwide (13). Therefore, reducing the motor vehicle emissions is also expected to significantly reduce the total cancer incidence attributable to motor vehicle emissions.

Most New Jersey residents who wish to purchase new vehicles would be impacted by the LEV program. Only vehicles that are certified to LEV Program standards would be allowed for sale in New Jersey after the effective model year. Therefore, new car buyers would be restricted to purchasing only vehicles that conform with these proposed standards. New Jersey residents would not be able to register in New Jersey new vehicles purchased from an out-of-State automotive dealership, except for vehicles certified to the LEV Program standards. However, the Department believes that the adoption of these new rules would not materially limit either the availability of motor vehicles for New Jersey car buyers, or the availability of various makes or models of such motor vehicles. First, the LEV standards and any sales prohibitions would not apply to used vehicles. Second, past experience in California has shown that manufacturers certify the great majority of their product line to the more stringent California emission standards, resulting in little effect on the availability of particular makes or models. Third, the Department is proposing to adopt an "offset vehicle provision" similar to California's whereby manufacturers can choose to sell in New Jersey a limited number of vehicles certified to Federal standards to increase model availability. The emissions from these higher emitting vehicles would be required to be "offset" through the sale of lower emitting vehicles. Lastly, the proposed LEV Program allows the manufacturers to certify cars to any one of five different categories of emission standards, and allows them to sell any mix of such vehicles the manufacturer decides, provided that the average emissions of NMOG do not exceed a certain level.

Another significant factor is that 11 member states of the OTR (including New Jersey's neighboring states of Pennsylvania, New York and Delaware), together with the District of Columbia, agreed to a Memorandum of Understanding (5) containing a commitment to adopt the LEV program within their jurisdictions. According to national vehicle registration statistics, these northeast states, together with California, constitute approximately 35 percent of the market for new cars in the United States. The size of the demand for cars that meet the LEV Program standards, once the program has been adopted throughout the northeast, will provide a substantial incentive for vehicle manufacturers to make such vehicles available. Therefore, the Department anticipates that under the LEV Program, a full range of vehicle models would be available to New Jersey residents.

Some New Jersey businesses are expected to be affected, namely new and used automotive dealerships and wholesalers, automotive parts dealers and distributors, and possibly gasoline retailers. Overall, as discussed in the Economic Impact and Regulatory Flexibility Analysis below, these new rules are expected to minimally affect the operations of New Jersey businesses and are not expected to affect the absolute sales or profits of such businesses.

Economic Impact

The Department expects that the proposed new rules will result in both positive and negative economic impacts. While compliance with the proposed new rules will bring associated costs, such compliance will also result in improved air quality, avoiding some of the substantial costs associated with air pollution.

The actual costs and other economic impacts associated with reducing air pollutants by implementing the LEV program are speculative and difficult to accurately quantify, as they are a function of several different parameters. These parameters include vehicle cost and consumer demand, relative cost effectiveness of the emission reductions, impacts on vehicle dealerships, impacts on Department resources, costs inflicted by air pollution, and impacts on affected industries. Each of these are discussed below.

Added Vehicle Cost: The proposed new rules will increase the cost of producing complying vehicles. Manufacturers may add to the base price of each new vehicle produced in order to reflect any increase in costs necessary to certify vehicles to the more stringent LEV Program standards; however, for the reasons discussed below (see "Impacts Upon Affected Industries), the increased cost will not necessarily be passed along to New Jersey purchasers in full.

The California Air Resources Board has predicted the following incremental cost increases for the LEV Program over current-technology gasoline-fueled vehicles (14):

Added Cost of Light-Duty
Low Emission Vehicles (est. 1990 $)

	Gasoline	Methanol Ethanol	Liquid Propane Gas (LPG)	Compressed Natural Gas (CNG)	Electri-city
TLEV	$70	$200	$600	$1000	N/A
LEV	$170	$270	$700	$1200	N/A
ULEV	$170	$370	$870	$1200	N/A
ZEV	N/A	N/A	N/A	N/A	$1300

These increased costs reflect the anticipated technology-related expenses in hardware required to certify vehicles to TLEV, LEV, ULEV and ZEV emission standards. In the Pechan report (8), an average capital cost of $170.00 per vehicle (the estimate for LEVs and ULEVs) was used. The Pechan report predicts that the added cost of LEV Program vehicles will decline over time as the manufacturing volume of these vehicles increases. Whether the manufacturers actually increase the price to consumers to reflect these possible increased costs is dependent in large part upon consumer demand for the vehicles.

A report prepared by DRI/McGraw-Hill for the American Petroleum Institute (API) (15) contests these cost estimates. The report (herein after referred to as the DRI/McGraw-Hill report) estimates that the incremental cost differences will exceed those estimated by CARB and Pechan for the LEV, ULEV, and ZEV categories. The DRI/McGraw-Hill report assumes some uncertainty in cost increases and provides a range for the estimated incremental costs which at the high end exceed the CARB estimates by $930.00 per LEV or ULEV. The CARB estimate assumes the LEV and ULEV standards will be met by the addition of an electrically heated catalytic converter. Documentation supporting the DRI/McGraw-Hill report estimate has not been made available. It is the opinion of NESCAUM in responding to the DRI/McGraw-Hill report in a January 3, 1992 letter to API that manufacturers will pursue the most cost effective measures to comply (16). According to NESCAUM, recent information from EPA, CARB and motor vehicle representatives "indicate that only a limited number of LEV engine families may use electrically heated catalysts while the majority of LEV engine families will rely on less costly emission control program modifications."

While CNG and electric vehicles are predicted to be more expensive to purchase, CARB predicts that once marketed, the higher purchase costs of alternative fuel vehicles will be largely offset by their lower fuel prices and maintenance costs.

Cost Effectiveness: By allowing manufacturers to market a mix of vehicles, the LEV Program combines the economic efficiency of market-based averaging schemes with the enforceability of traditional vehicle emission standards. Instead of having to certify all vehicles to one strict standard, as would be required by the Federal standards, each manufacturer can choose to certify vehicle types to the different standards and to produce the various vehicle types in whatever combination is most cost-effective, given that manufacturer's production capabilities, as long as the required average fleet emissions average is met.

Historically, pollution control measures have focused on stationary sources. Therefore, the cost of such controls have become the basis of comparison for other proposed control measures. The proposed LEV Program would be more cost effective, in terms of dollars required to reduce a ton of pollutant, when compared to stationary source VOC emission reduction costs. The Pechan report estimates the following effectiveness values (first for LEVs only and then for the combined package including LEVs and ZEVs):

Table 2

Effectiveness of LEV Standard	(cost per ton)
VOC	$1900
NO_x	$1500
CO	$ 200

Table 3

Effectiveness of LEV and ZEV Combined	(cost per ton)
VOC	$1900
NO_x	$1400
CO	$ 190

The Department's experience is that average stationary source reductions for VOC's are currently in the range of $3,000 to $6,000 per ton, making the proposed LEV program significantly more cost effective. Stationary source controls for NO_x and CO are comparable to those listed in Table 3.

The DRI/McGraw-Hill report disputes the Pechan report cost effectiveness estimates. The DRI/McGraw-Hill report assumes a potentially higher increased cost per vehicle, uses a different means to calculate the effectiveness values for the LEV program than used by Pechan and questions the benefits to be gained. The DRI/McGraw-Hill report also emphasizes the technological uncertainties of the LEV program and concludes that until the technology to meet the LEV program is demonstrated, the cost per vehicle and effectiveness values can not be accurately estimated. The Department and NESCAUM agree with CARB that, for gasoline powered vehicles, the technology to meet the LEV Program standards is known and the costs can be estimated.

In the economic study conducted by Urbanomics for Project: Clean Air, the VOC emission reductions, congestion reductions, and costs were compared for 21 transportation and mobile source strategies. Using this data, the Project Clean Air steering committee ranked the LEV Program among the first-priority strategies, along with growth management, enhanced I/M, traffic flow improvement, mandatory employee trip reduction, and capital improvement for public transportation (3).

Impact on Vehicle Dealerships: The proposed new rules are expected to have little impact on vehicle dealerships. Provisions have been made to permit dealers to handle non-LEV Program vehicles for sale to another dealer, for the purpose of wrecking or dismantling, for off-highway use and for out-of-state registration. In addition, as more states enter the program, as anticipated, any dislocations in interstate trading of dealership stock will be mitigated. Finally, the proposed rules do not restrict the sale of used vehicles.

Impact on State Government Resources: The LEV Program by its nature will rely heavily on the staff and facilities of the California Air Resources Board (CARB), as CARB already regularly performs the background work necessary to implement its LEV Program. Since New Jersey's program would be based on California's, and since the emission standards are required by the Clean Air Act to be identical to California's, a minimum of additional resources will be required by the Department. The Department estimates that some additional staff members will be needed by the Department and the Division of Motor Vehicle Services (MVS) to audit registration, dealer compliance certification and reporting, and to perform field enforcement.

Although the State intends to rely heavily on California's resources initially, it may become necessary for a regional recall investigation facility to exist in the Northeast. Such a facility could be of minimal additional cost to the State if jointly operated by all OTR member states participating in the LEV program or if funding is available from another source, such as the EPA.

Cost of Air Pollution: The impact on the general public of not improving the air quality is very significant. The American Lung Association (ALA) has recently estimated the cost of health problems attributed to air pollution including the loss of worker productivity, to be in the range of $4.43 to $93.49 billion dollars per year, nationally (9). New Jersey has an extremely high density of motor vehicles as compared to other states. Motor vehicles contribute almost half of the pollutants that result in air quality problems in New Jersey. For this reason, taking all prudent measures to limit the emission of air pollutants from motor vehicles is an essential step in reducing these pollutants.

Impacts Upon Affected Industries: The Department has made every effort to minimize the burdens borne by the motor vehicle manufacturing industry and vehicle dealers. By proposing to adopt emission standards identical to those in California, the Department ensures that the vehicle industry will have to comply with only two sets of pollution control standards (the Federal standards and the LEV Program standards). The Department does not anticipate that the estimated increased costs associated with the LEV Program will result in an appreciable reduction in the number of new vehicles sold in the State. While the additional costs of the cleaner cars mandated by the LEV Program would eventually be passed along to consumers, the full additional cost may not be added to purchase prices, because factors other than production costs influence prices. Therefore, it is unclear whether the cleaner cars would be priced to reflect the higher cost of their emission controls. The Department does not anticipate that the relatively small additional cost of LEV vehicles (about a one percent increase in the total cost) would materially reduce the number of new vehicles sold in New Jersey.

In addition, the Department is working closely with the OTR to ensure that there are no state specific programs which may negatively impact the distribution or sale of vehicles in the region.

Further, the Department has proposed exempting small and intermediate volume manufacturers from compliance with the LEV emission standards and requirements until model year 2000, and has proposed exempting small volume manufacturers from the ZEV sales mandate entirely. These provisions are intended to minimize the economic impact of the proposed new rules on those manufacturers which are generally least able to absorb increased costs.

Environmental Impact

The implementation of the proposed new rules will have a positive impact on the environment. The additional exhaust emission benefits from New Jersey's adoption of the proposed LEV Program as opposed to the Tier I standards were estimated in the Pechan report. This report should be consulted for details regarding the methodology for calculating emission benefits, emission factor generation, and other assumptions used (8).

The Pechan report was developed using the Department's 1988 emission inventory which was the most current inventory at the time of the proposal. Since then the Department has developed an updated draft emission inventory for 1990 which indicates the contribution of motor vehicles has dropped. The Department believes, however, that motor vehicles continue to be significant contributors to emission inventories. Therefore, although emission reductions listed in the Pechan report and summarized in the following section would change if based upon the newer emission inventory, the Department believes the results would continue to be supportive of this proposal.

In the Pechan report, estimated emission benefits were calculated for each state in the NESCAUM region. The estimates for New Jersey, presented herein, are listed by pollutant. The benefits of adopting the proposed LEV Program are most pronounced in the later years of the Program, when significant numbers of low emitting vehicles become part of the vehicle fleet and older, high emitting vehicles are taken out of service.

The Pechan report also estimated the percent emission reductions for New Jersey that would be attributable to the LEV Program. These data are shown in Tables 4B, 5B, and 6B. They were calculated by taking the estimated exhaust emission inventory for New Jersey under the LEV Program using CARB's assumptions and EPA's assumptions, subtracting that number from the estimated emissions inventory expected under the Federal Tier I Program, and dividing that by the mobile source inventory which would exist under Federal Tier I standards.

Volatile organic compounds emissions are precursors to ozone formation. For this reason, efforts to attain and maintain the NAAQS for ozone have focused on reducing VOC emissions. In 1988, VOC emissions in New Jersey totalled 1263 tons per summer weekday with 630 tons attributed to emissions from all mobile sources, not just exhaust emissions.

The benefits projected in all tables assume an implementation year of 1996. If the Program is not implemented until 1998, or later, the benefits will be delayed accordingly. For example, for a 1988 implementation, the 2001 benefits will not occur until 2003. The projections contained in the tables are the latest information available to the Department.

The emission reduction calculations in Tables 4A and 4B show that by the year 2005, motor vehicle emissions in New Jersey under the proposed LEV Program will have been reduced by an additional 13 to 28 percent over the emission reductions that would have occurred had motor vehicles in New Jersey only been subject to the Federal Tier I Program.

Table 4A

New Jersey VOC Emissions Inventory
From Vehicle Exhaust (8)
(tons per summer weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM

(Year)	2001	2005	2010	2015
LEV: CARB estimates	97	62	44	35
LEV: EPA estimates	99	75	70	72
TIER I	101	86	88	93

Table 4B

New Jersey VOC Emissions Inventory
From Vehicle Exhaust (8)
(percent reduction beyond Federal Tier I Emission Standards)

(Year)	2001	2005	2010	2015
LEV: CARB estimates	4.0	27.9	50.0	62.4
LEV: EPA estimates	2.0	12.8	20.5	22.6

By the year 2015 motor vehicle emissions would be reduced by an additional 23 to 62 percent over the reductions expected from under the Federal Tier I Program.

Oxides of nitrogen (NO_x) are also precursors to ozone formation. In 1988, NO_x emissions in New Jersey totaled 921 tons per summer weekday with 390 tons per summer weekday attributed to emissions from all mobile sources. Tables 5A and 5B show the estimated emissions reductions benefits to New Jersey that would accrue under the proposed LEV Program.

The emission reductions calculations in Tables 5A and 5B show that by the year 2005, motor vehicle emissions of NO_x in New Jersey under the proposed LEV Program will have been reduced by an additional 14 to 19 percent over the emission reductions that would have occurred had motor vehicles in New Jersey only been subject to the Federal Tier I Program.

By the year 2015, NO_x emissions from motor vehicle exhaust would be reduced by an additional 27 to 42 percent over the reductions expected from the Federal Program.

Table 5A

New Jersey NO_x Emissions Inventory
From Vehicle Exhaust (8)
(tons per summer weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM

(Year)	2001	2005	2010	2015
LEV: CARB estimates	121	89	73	68
LEV: EPA estimates	121	95	86	86
TIER I	124	110	110	117

Table 5B

New Jersey NO_x Emissions Inventory
From Vehicle Exhaust (8)
(percent reduction beyond Federal Tier I Emission Standards)

(Year)	2001	2005	2010	2015
LEV: CARB estimates	2.4	19.1	33.6	41.9
LEV: EPA estimates	2.4	13.6	21.8	26.5

A recently released report by the National Academy of Sciences (NAS) entitled "Rethinking the Ozone Problem in Urban and Regional Air Pollution" criticized the SIP process and EPA for not verifying emission reductions (18). In particular the NAS found that the SIPs underestimated mobile source VOC emissions by a factor of two to four. This underestimation along with underestimation of naturally occurring (biogenic) VOCs in many cases has led to erroneous estimates of the relation of VOC to NO_x emissions or VOC/NO_x ratio. At higher VOC/NO_x ratios, NO_x emission control is more effective in reducing ozone concentrations. Thus, NAS believes that in many areas fuller control of NO_x or controls on both VOC and NO_x will optimize the reduction of ozone formation. The LEV Program clearly leads to greater reductions of both VOC and NO_x. (*Note:* OTC ROM results support this conclusion.)

Carbon monoxide (CO) is generally a localized wintertime pollutant, elevated levels of which are related to colder temperatures and congested traffic. The LEV Program will play an important role in reducing CO emissions from motor vehicles and maintaining the NAAQS. In 1988, CO emissions in New Jersey totalled 2943 tons per winter weekday, with 2200 tons per winter weekday attributed to all mobile sources.

The emission reduction calculations in Tables 6A and 6B show that by the year 2005, motor vehicle emissions of carbon monoxide in New Jersey under the proposed LEV Program will have been reduced by an additional six to 13 percent over the emission reductions that would have occurred had motor vehicles in New Jersey only been subject to the Federal Tier I Program.

By the year 2015, motor vehicle emissions of carbon monoxide will be reduced by an additional 10 to 34 percent over the reductions expected from the Federal Tier I standards.

Table 6A

New Jersey CO Emissions Inventory
From Vehicle Exhaust
(tons per winter weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM

(Year)	2001	2005	2010	2015
LEV: CARB estimates	2019	1698	1506	1426
LEV: EPA estimates	2026	1846	1853	1937
TIER I	2043	1958	2032	2156

Table 6B

New Jersey CO Emissions Inventory
From Vehicle Exhaust
(percent reduction beyond Federal Tier I Emission Standards)

(Year)	2001	2005	2010	2015
LEV: CARB estimates	1.2	13.3	25.9	33.9
LEV: EPA estimates	0.5	5.7	8.8	10.2

The proposed new rules would require that beginning in 1998, certain percentages of new passenger cars and light-duty trucks sold be ZEVs. Currently only battery-powered electric vehicles are capable of meeting the ZEV requirements. Solar and fuel cell-powered vehicles may also be developed to provide zero emission mobility in the future. Electrically powered vehicles are not truly zero emission vehicles because the off-site generation of electricity required for the electric vehicles can result in additional stationary source emissions. However, modern electrical generation facilities emit far less pollution per unit of energy generated than gasoline-powered vehicles. Moreover, unlike the vehicles themselves, electrical generating facilities are often located outside of the areas most in need of emission reductions. And, in contrast to conventional vehicles, ZEVs are expected to maintain their emissions standards as they age and operate in congested traffic situations. In addition, gasoline-powered vehicles are likewise responsible for additional stationary and mobile source emissions, which result from fuel refining and fuel distribution.

Analyses by CARB and the Electric Power Research Institute (EPRI) demonstrate that, even taking into account the emissions from the generation of electricity, present technology ZEVs will have extremely low emissions of VOCs and CO and substantially lower emissions of NO_x and carbon dioxide (CO_2) relative to gasoline-powered vehicles (17). According to EPRI's analysis, which was based upon the power demand for the Chrysler electric "T" Van, VOC emissions will be 100 times lower, CO emissions will be 200 times lower, and NO_x emissions will be six times lower than conventionally fueled minivans (14). It is expected that the benefits of electric vehicles will rise even further as more efficient battery and drive-train technologies become available.

The LEV Program standards set forth in the proposed rules set explicit emission limits for formaldehyde, whereas the Federal standards do not address formaldehyde emissions. The LEV standards also achieve substantial reductions in emissions of other toxic species that are included in generic hydrocarbon and non-methane organic gas (NMOG) classifications. When a vehicle is operated, toxic pollutants such as benzene, acetaldehyde, formaldehyde, and 1,3-butadiene are present in the exhaust. Vehicle technology designed to meet LEV standards and reduce the NMOG emissions will thus reduce toxic emissions as well. For instance, emissions of benzene from gasoline-fueled vehicles that meet the LEV standards are expected to decline in roughly the same propor-

tion as hydrocarbon emissions. Benzene is the toxic pollutant with the highest potential carcinogenic risk among the exhaust pollutants. If other fuels are used, the reductions in benzene will be even greater. The correlation between emissions of 1,3-butadiene and hydrocarbons is not as well understood. However, the vast majority of 1,3-butadiene emissions occur during start-up emissions, which the LEV standards are expected to reduce substantially.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed rules will not impose additional reporting or recordkeeping requirements on small business (as defined in the Regulatory Flexibility Act). The proposed rules would apply to vehicle manufacturers, dealers, and rental car agencies. Since no known vehicle manufacturers meet the definition of a small business, as they are not New Jersey based and employ more than 100 people, the proposed rules' impact upon small businesses will be upon vehicle dealerships and the smaller rental car agencies.

The additional reporting and recordkeeping requirements imposed by the new rules apply to vehicle manufacturers, which are not small businesses and rental car agencies, some of which are small businesses. The compliance requirements imposed upon small businesses are the prohibition against the sale or leasing of new vehicles which have not been certified by the manufacturer as meeting the stringent LEV Program standards, and a pre-delivery check for performance requirements related to emissions control systems. Since it is expected that the estimated additional costs associated with the LEV Program ($170.00 per vehicle for LEVs and ULEVs) may be passed on to the ultimate consumer, and that such increased cost will not result in an appreciable reduction in new vehicle sales, the costs to small business in this regard should be minimal. Further, the proposed rules impose the fleet average and ZEV sales requirement only on vehicle manufacturers, which are not small businesses.

In developing these rules, the Department has balanced the need to protect human health and the environment against the economic impact of the rules as proposed. As a result, allowances have been made for small and intermediate volume manufacturers. These rules allow these manufacturers extended time for compliance and in some cases (ZEV sales for small volume manufacturers) exempt them entirely. Additionally, allowances have been made for car rental agencies, some of which are small businesses. The rules would allow the rental of non-certified vehicles within the State, but if more than 30 days have passed since delivery of the vehicle to a New Jersey rental car agency from a non-New Jersey origination point, the non-certified vehicle shall next be rented with a final destination outside of New Jersey.

References

(1) United States Environmental Protection Agency, "National Air Quality Trends Report, 1990," November 1991.

(2) "Regional Ozone Modelling for Northeast Transport (ROMNET) Final Report," USEPA, 1991.

(3) Regional Plan Association/New Jersey, "Final Report of Project: Clean Air," Newark, New Jersey, September 6, 1991.

(4) "Summary of Comments Made at the November 7, 1991 Public Workshop on Mobile Source Rules Under Development Pursuant to the 1990 Clean Air Act Amendments (CAAA)," NJDEPE, 1992.

(5) Memorandum of Understanding, Ozone Transport Commission, signed by 10 states, as of October 29, 1991.

(6) Proposal to amend 6 NYCRR, Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," July 30, 1991.

(7) Proposal to amend 310 CMR 7.00, et seq., September, 1991.

(8) E.H. Pechan & Associates, Inc., "Adopting the California Low Emission Vehicle Program in the Northeast States—An Evaluation," Northeast States for Coordinated Air Use Management, Boston, September 1991.

(9) *American Lung Association et al. v. EPA,* Case No. 91 Civ. No. 4114, Second Circuit Federal U.S. District Court, October 22, 1991.

(10) "1990 Air Quality Report," New Jersey Department of Environmental Protection, July 1991.

(11) Environmental Protection Agency, Region II, "Ozone Air Quality 1990 New Jersey and New York," New York, Regional Air Quality Report.

(12) Cody R.P., Weisel, C.P., Birnbaum G., and Lioy, P.J., "The Effect of Ozone Associated with Summertime Photochemical Smog on the Frequency of Asthma Visits to Hospital Emergency Departments," Environmental Research, 1992.

(13) "Cancer Risk from Outdoor Exposure to Air Toxics: Final Report," USEPA, Office of Air Quality Planning and Standards, September, 1990.

(14) "Proposed Regulations for Low Emission Vehicles and Clean Fuels, Technical Support Document," State of California Air Resources Board, August 13, 1990.

(15) DRI/McGraw-Hill, "Assessing the Economic Effects of Eastern States Adopting California's Low Emission Vehicle Program," American Petroleum Institute, Washington, D.C., October 1991.

(16) Letter dated January 3, 1992, from Michael J. Bradley, Executive Director, Northeast States for Coordinated Air Use Management, to Terry F. Yosie, Vice President, American Petroleum Institute.

(17) Electric Power Research Institute Journal, April/May 1991, pp. 5-19.

(18) "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Academy of Sciences (NAS), 1991.

(19) E.H. Pechan & Associates, Inc., "Adopting the California Low Emission Vehicle Program in Mid-Atlantic States," Pechan Report No. 92.10.006/271 prepared for Mid-Atlantic Regional Air Management Association, Harrisburg, PA, 1992.

Full text of the proposed new rules follows:

SUBCHAPTER 26. LOW EMISSION VEHICLES PROGRAM

7:27-26.1 Definitions

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

"Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including, but not limited to, exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

"California Air Resources Board" or "CARB" means the agency established and empowered to regulate sources of air pollution in the state of California, including motor vehicles, pursuant to California Health & Safety Code sections 39500 et seq.

"California standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States Environmental Protection Agency pursuant to the authority of 42 U.S.C.A. section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C.A. Section 7507.

"CCR" shall mean the California Code of Regulations (Barclays, 1991).

"Certificate of conformity" means that document issued by the Executive Officer of CARB, USEPA, or the Commissioner of the Department certifying that a vehicle conforms to all applicable emission certification standards.

"Certification application" means the application and associated information that a motor vehicle manufacturer, a motor vehicle engine manufacturer or an air contaminant emission control system manufacturer submits to CARB, or the Department, in the process of applying for certification of a motor vehicle, motor vehicle engine, engine family or air contaminant emission control system.

"Certified" means the finding by the California Air Resources Board, or the Department, that a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system has satisfied the criteria adopted by CARB or the Department for the control of specified air contaminants from motor vehicles.

"Dealer" includes every person actively engaged in the business of buying, transferring, leasing, selling or exchanging motor vehicles and who has an established place of business.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Diesel" means powered by an engine where the primary means of controlling power output is by limiting the amount of fuel that is injected into the combustion chambers of the engine.

"Dual fueled" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel which is stored separately on-board the vehicle.

"Durability vehicle basis" means the number of miles during which the test vehicle used by a motor vehicle manufacturer to certify to the prescribed exhaust emission standards must maintain those specified standards.

"Effective model year" means the 1998 or subsequent model year in which the jurisdictions within the Ozone Transport Region (OTR), excluding New Jersey, comprising no less than 40 percent of the total number of registrations of new motor vehicles in all jurisdictions within the OTR, are implementing an LEV program pursuant to legislative enactment or adopted rules and regulations; provided, however, the effective model year shall be that model year prior to the 1998 model year that the states of Delaware, Maryland, New York and Pennsylvania are implementing an LEV program pursuant to legislative enactment or adopted rules and regulations for that particular model year.

"Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

"Engine family" means the basic classification unit comprised of the engine and drive-train configuration selected by a manufacturer and used for the purpose of certification testing.

"Established place of business" means a place actually occupied either continuously or at regular periods for business use.

"Evaporative emissions" mean vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

"Field fixes" mean modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer's authorized service representative, and that are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Fleet average" means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this subchapter which are sold in the State of New Jersey in any model year beginning with model year 1996, based on the calculation of N.J.A.C. 7:27-26.6(a).

"Fuel flexible" means a methanol-fueled motor vehicle that is engineered and designed to be operated using any gasoline-methanol fuel mixture or blend.

"Fuel system" means the combination of fuel tank(s), fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

"G/mi" means grams per mile.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy-duty vehicle" means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 pounds, except passenger cars.

"HEV contribution factor" means the NMOG emission contribution of HEVs to the fleet average NMOG value.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, and also includes any limited-access highway designated as a "freeway" or "parkway" by authority of law, and any semi-public or private way to which the provisions of Subtitle 1 of Title 39 of the Revised Statutes, N.J.S.A 39:1-1 et seq., have been made applicable pursuant to the provisions of N.J.S.A. 39:5A-1.

"Hybrid electric vehicle" or "HEV" means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the driver wheels by either a combustion engine and/or by a powered electric motor.

"Intermediate compliance standards" means in-use compliance standards that are effective prior to the effective date of the final in-use compliance standards.

"Intermediate volume manufacturer" means any vehicle manufacturer with sales between 3,001 and 35,000 new light-duty and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1993; provided that, for manufacturers certifying for the first time in California, model year sales shall be based on projected California sales.

"In-use compliance" means the adherence of a motor vehicle to specified exhaust emission standards while the motor vehicle is used and properly maintained within the guidelines of the motor vehicle manufacturer.

"Light-duty truck" means any motor vehicle, rated at 6,000 pounds gross vehicle weight or less and a loaded vehicle weight of 5,750 pounds or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.

"Light-duty vehicle" means light-duty trucks and passenger cars.

"Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

"Low emission vehicle" or "LEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C 7:27-26.4.

"Low Emission Vehicles Program" means a low emission vehicle program based upon emission control standards for new motor vehicles or new motor vehicle engines that are identical to those adopted by the State of California in accordance with authority granted therefor pursuant to the Federal Clean Air Act.

"Manufacturer's sales fleet" means all passenger cars and light-duty trucks a manufacturer sells or offers for sale in New Jersey.

"Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 and subsequent model year heavy-duty low emission vehicle or ultra-low emission vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less or any 1995 and subsequent model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less.

"Mg/mi" means milligrams per mile.

"Model-year" or "MY" means the manufacturer's annual production period for each motor vehicle which includes January 1 of such calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New motor vehicle" or "new vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

"New motor vehicle dealer" means the agent, distributor or authorized dealer of the manufacturer of a new motor vehicle who has an established place of business.

"New motor vehicle engine" means a new engine in a motor vehicle.

"Non-methane organic gas" or "NMOG" shall mean the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

"Off-highway" means any place other than a highway.

"Offset vehicle" means a Federally-certified light-duty vehicle that has been certified by CARB or the Department as meeting the standards and procedures set forth in the "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991.

"Organic material hydrocarbon equivalent" or "OMHCE" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in an exhaust gas sample, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrocarbon-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot-soak emissions, the hydrocarbon-to-carbon ratios of the equivalent hydrocarbons are 2.33:1, respectively.

"Ozone Transport Region (OTR)" means the ozone transport region established pursuant to 42 U.S.C.A. 7511c (a), comprises the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hamphsire, New Jersey, New York, Rhode Island, Pennsylvania, Vermont, Virginia and the District of Columbia, which together form the membership of the Ozone Transport Commission for the northeastern and mid-Atlantic states pursuant to 42 U.S.C.A. 7505a.

"Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Reactivity adjustment factor" means a fraction applied to the NMOG emissions from a vehicle powered by a fuel other than conventional gasoline for the purpose of determining a gasoline-equivalent NMOG level. The reactivity adjustment factor means the ozone-forming potential of clean fuel vehicle exhaust divided by the ozone-forming potential of gasoline vehicle exhaust.

"Rental agency" means a business engaged in renting motor vehicles for temporary use.

"Running changes" means modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer during vehicle production, and which are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser.

"Small volume manufacturer" means any vehicle manufacturer with sales less than or equal to 3,000 new light-duty vehicles and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1991; provided that, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

"Standard vehicle" or "SV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"State" means the State of New Jersey, unless otherwise specified.

"Transitional low emission vehicle" or "TLEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Type A HEV" means an HEV which achieves a minimum range of 60 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 C.F.R. Part 600 Subpart B) without the use of the engine, and in which the use of vehicle accessories does not lower the battery-only range below 60 miles. This definition shall also apply to vehicles which have no tailpipe emissions, but use fuel fired heaters, regardless of the operating range of the vehicle.

"Type B HEV" means an HEV which achieves a range of 40 to 59 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 C.F.R. Part 600 Subpart B) without the use of the engine, and in which the use of vehicle accessories does not lower the battery-only range below 40 miles.

"Type C HEV" means an HEV which achieves a range of 0 to 39 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 C.F.R. Part 600 Subpart B) without the use of the engine, an HEV which enables the vehicle operator to control the engine time and modes of operation solely through the use of the engine, and all other HEVs excluding Type A and Type B HEVs.

"Ultra low emission vehicle" or "ULEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

"Useful life" means a period of use denoted by the emission standards to which a given vehicle is certifying. For those light-duty vehicles certified to optional 100,000 mile standards and those 1996 and subsequent model year vehicles certified to 100,000 emission standards, and for those transitional low-emission, low-emission, and ultra-low emission vehicles certified to 100,000 emission standards, the useful life shall mean 10 years or 100,000 miles, whichever first occurs. For light-duty vehicles certified only to 50,000 mile standards useful life shall mean five years or 50,000 miles, whichever first occurs.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with 40 C.F.R. § 86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Zero emission vehicle" or "ZEV" means any vehicle which produces zero emissions of air contaminants under any and all possible operational modes and conditions.

7:27-26.2 Applicability

This subchapter applies to all effective model year and subsequent model year motor vehicles which are passenger cars and light-duty trucks, motor vehicle engines in such motor vehicles, and air contaminant emission control systems for such motor vehicles and motor vehicle engines.

7:27-26.3 Prohibitions

(a) No person who is a resident of or who operates an established place of business within this State shall sell, register, import, deliver, purchase, lease, give, acquire, receive or otherwise transfer an effective model year or subsequent model year new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine, for use, registration or resale within this State, unless such new motor vehicle or new motor vehicle engine has been certified in accordance with this subchapter. No person shall attempt or assist in any such action.

(b) No person who is a resident of or who operates an established place of business within this State shall rent an effective model year or subsequent model year motor vehicle for use within this State unless such motor vehicle has been certified in accordance with this subchapter.

1. If a vehicle which is delivered to a New Jersey rental car agency from a non-New Jersey origination point is not rented to a final destination outside of New Jersey within 30 days from such delivery to the New Jersey rental car agency, it shall remain idle until it is next rented with a final destination outside of New Jersey.

(c) The prohibitions contained in (a) above shall not apply to the following passenger cars or light-duty trucks:

1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged, or became inoperative, beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of State at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

2. A vehicle transferred by inheritance;

3. A vehicle transferred by court decree;

4. A vehicle transferred after the effective date of this subchapter if the vehicle was registered in this State before such effective date;

5. A vehicle having a certificate of conformity issued pursuant to the Federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and originally

registered in another state by a resident of that state who subsequently establishes residence in this State;

6. A vehicle which is an offset vehicle;

7. A vehicle transferred by a dealer to another dealer;

8. A vehicle transferred for the purpose of being wrecked or dismantled;

9. A vehicle transferred for use exclusively off-highway; or

10. A vehicle transferred for registration out of State.

(d) To register any vehicle exempted under (b) above, the person seeking registration must provide satisfactory evidence, as determined by the New Jersey Divison of Motor Vehicles, demonstrating that the exemption is applicable.

(e) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

7:27-26.4 Emission certification standards

(a) Except as otherwise provided in N.J.A.C. 7:27-26.3(c), all effective model year and subsequent model year motor vehicles subject to this subchapter must be certified as not exceeding the following emission standards for standard vehicles, low emission vehicles, transitional low emission vehicles, ultra-low emission vehicles, zero emission vehicles or hybrid electric vehicles. Vehicles must be certified as meeting the applicable emission certification standards for one of such categories of vehicles.

(b) The exhaust emission certification standards for effective model year and subsequent model year passenger cars and light-duty trucks which are certified as standard vehicles are as follows:

1. The exhaust emission certification standards for non-methane hydrocarbons, carbon monoxide and oxides of nitrogen are set forth in Table 1.

Table 1
EFFECTIVE MODEL YEAR AND SUBSEQUENT MODEL YEAR PASSENGER CAR AND LIGHT-DUTY TRUCK STANDARD VEHICLE EXHAUST EMISSION CERTIFICATION STANDARDS

Vehicle Type[1]	Loaded Vehicle Weight (lbs)	Durability Vehicle Basis (mi)	Non-Methane Hydrocarbons (g/mi)[2]	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC	All	50,000	0.25	3.4	0.4
PC	All	100,000	0.31	4.2	n/a
Diesel PC (Option 2)	All	100,000	0.31	4.2	1.0
LDT	0-3750	50,000	0.25	3.4	0.4
LDT	0-3750	100,000	0.31	4.2	n/a
Diesel LDT (Option 2)	0-3750	100,000	0.31	4.2	1.0
LDT	3751-5750	50,000	0.32	4.4	0.7
LDT	3751-5750	100,000	0.40	5.5	n/a
Diesel LDT (Option 1)	3751-5750	100,000	0.40	5.5	1.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks, "n/a" means not applicable.

(2) For methanol-fueled vehicles certifying to these standards, including flexible-fueled vehicles, "Non-Methane Hydrocarbons" shall mean "Organic Material Hydrocarbon Equivalent" (or "OMHCE").

2. Methanol fueled passenger cars, and methanol-fueled light-duty trucks up to 3750 pounds loaded vehicle weight, certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 15 mg/mi., determined on a 50,000 mile durability vehicle basis. Methanol fueled light-duty trucks from 3751 to 5750 pounds loaded vehicle weight certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 18 mg/mi., determined on a 50,000 mile durability vehicle basis.

3. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR Part 600 Subpart B) shall be not greater than 1.33 times the applicable passenger car standards and 2.00 times the applicable light-duty truck standards shown in Table I. Both the projected emissions and the HWFET standard shall be rounded in accordance with American Society for Testing Materials (ASTM) Standard Practice E29-88 to the nearest 0.1 g/mi before being compared.

4. Diesel passenger cars and light-duty trucks certifying to these standards are subject to a particulate exhaust emission standard of 0.08 g/mi, determined on a 50,000 mile durability vehicle basis.

5. For all vehicles, except those certifying to optional diesel standards, in-use compliance with the exhaust emission standards shall be limited to vehicles with less than 75,000 miles.

6. For the 1996 model year (if the LEV Program is effective for this model year), all manufacturers, except those certifying to optional diesel standards, are permitted alternative in-use compliance as set forth below. Alternative in-use compliance is permitted for 20 percent of a manufacturer's vehicles in the 1996 model year. For the 1996 model year small volume manufacturers only are permitted alternative in-use compliance for 100 percent of the fleet. The percentages shall be applied to the manufacturers, total projected sales for California-certified passenger cars and light-duty trucks for the model year. Alternative in-use compliance standards for the 1996 model year shall consist of the following:

i. For all passenger cars and those light-duty trucks from 0 to 3750 pounds, loaded vehicle weight, except those diesel vehicles certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.32 g/mi non-methane hydrocarbon and 5.2 g/mi carbon monoxide for 50,000 miles.

ii. For light-duty trucks from 3751 to 5750 pounds, loaded vehicle weight, except those diesel light-duty trucks certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.41 g/mi non-methane hydrocarbon and 6.7 g/mi carbon monoxide for 50,000 miles.

iii. In-use compliance standards shall be waived beyond 50,000 miles.

7. All passenger cars and light-duty trucks, except those diesel vehicles certifying to optional standards, are subject to non-methane hydrocarbon, carbon monoxide and oxides of nitrogen standards determined on a 50,000 mile durability basis and non-methane hydrocarbon and carbon monoxide standards determined on an 100,000 mile durability basis.

(c) The exhaust emission certification standards and test procedures for non-methane organic gases (NMOG), oxides of nitrogen (NO_x), carbon monoxide (CO) and particulates for effective model year and subsequent model-year passenger cars and light-duty

trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles are as follows:

1. The exhaust emission certification standards for NMOG, CO and NO_x are set forth in Table 2.

Table 2

EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES AND ULTRA-LOW EMISSION VEHICLES IN PASSENGER CAR AND LIGHT-DUTY TRUCK VEHICLE CLASSES[3]

Vehicle Type[1]	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category[2]	Non-Methane Organic Gases (g/mi)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC and LDT	All 0-3750	50,000	TLEV	0.125 (0.188)	3.4 (3.4)	0.4 (0.4)
			LEV	0.075 (0.100)	3.4 (3.4)	0.2 (0.3)
			ULEV	0.040 (0.058)	1.7 (2.6)	0.2 (0.3)
		100,000	TLEV	0.156	4.2	0.6
			LEV	0.090	4.2	0.3
			ULEV	0.055	2.1	0.3
LDT	3751-5750	50,000	TLEV	0.160 (0.238)	4.4 (4.4)	0.7 (0.7)
			LEV	0.100 (0.128)	4.4 (4.4)	0.4 (0.5)
			ULEV	0.050 (0.075)	2.2 (3.3)	0.4 (0.5)
		100,000	TLEV	0.200	5.5	0.9
			LEV	0.130	5.5	0.5
			ULEV	0.070	2.8	0.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks.
(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.
(3) The standards in parentheses are intermediate compliance standards for 50,000 miles, applicable under (c)5 below.

2. To demonstrate compliance with an NMOG standard, NMOG emissions shall be measured in accordance with the "California Non-Methane Organic Gas Test Procedures" as adopted July 12, 1991. For TLEVs, LEVs and ULEVs designed to operate exclusively on any fuel other than conventional gasoline, manufacturers shall multiply the measured NMOG mass emissions at 50,000 and 100,000 miles by the reactivity adjustment factor established for the particular vehicle emission category and fuel combination in the application for certification. The reactivity adjustment factor shall be that which has been determined by CARB according to the procedure described in Appendix VIII of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991.

3. Fuel-flexible and dual-fuel PCs and LDTs from 0 to 5750 pounds loaded vehicle weight shall be certified to exhaust mass emission standards for NMOG established for the operation of the vehicle on any available fuel other than conventional gasoline, and conventional gasoline.

i. For TLEVs, LEVs, and ULEVs, when certifying for operation on a fuel other than conventional gasoline, manufacturers shall multiply the measured NMOG emissions by the applicable reactivity adjustment factor in the application for certification at 50,000 and 100,000 miles.

ii. For PCs and LDTs from 0 to 3750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.25 g/mi and 0.31 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.125 g/mi and 0.156 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEV, 0.075 g/mi and 0.090 g/mi for 50,000 and 100,000 miles, respectively.

iii. For LDTs from 3751 to 5750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.32 g/mi and 0.40 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs 0.160 g/mi and 0.200 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEVs, 0.100 g/mi and 0.130 g/mi for 50,000 and 100,000 miles, respectively.

4. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B) shall be not greater than 1.33 times the applicable light-duty vehicle standards shown in Table 2. Both the projected emissions and the HWFET standard shall be rounded in accordance with ASTM E29-88 to the nearest 0.1 g/mi before being compared.

5. For PCs and LDTs from 0 to 5750 pounds loaded vehicle weight, including fuel-flexible and dual-fuel vehicles when operating on any available fuel other than conventional gasoline, intermediate compliance standards shall apply to LEVs and ULEVs through the 1998 model year. Compliance with standards beyond 50,000 miles shall be waived through the 1998 model year for LEVs and ULEVs.

i. For TLEVs, LEVs, and ULEVs designed to operate on any fuel other than conventional gasoline, including fuel-flexible and dual-fuel vehicles when operating on any fuel other than conventional gasoline, measured NMOG emissions shall be multiplied by the reactivity adjustment factor to determine compliance with intermediate compliance standards for NMOG.

ii. For fuel-flexible and dual-fuel PCs and LDTs from 0 to 3750 pounds LVW, intermediate compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on conventional gasoline, shall be 0.32 g/mi, 0.188 g/mi, and 0.100 g/mi for TLEVs, LEVs, and ULEVs, respectively.

iii. For fuel-flexible and dual-fuel PCs and LDTs from 3751 to 5750 pounds LVW, intermediate compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on conventional gasoline, shall be 0.41 g/mi, 0.238 g/mi, and 0.128 g/mi for TLEVs, LEVs and ULEVs, respectively.

6. Manufacturers of diesel vehicles must also certify to particulate standards for 100,000 miles. For all PCs and LDTs from 0-5750 lbs loaded vehicle weight, the particulate standard is 0.08 g/mi, 0.08 g/mi and 0.04 g/mi for TLEVs, LEVs and ULEVs, respectively.

7. Manufacturers shall demonstrate compliance with the above standards for NMOG, CO, and NO_x at 50 degrees Fahrenheit according to the procedure specified in Section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and

Medium-Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991. For diesel vehicles, manufacturers shall demonstrate compliance with the particulate standard as specified in section 11k of the foregoing test procedures.

8. In-use compliance testing shall be limited to vehicles with fewer than 75,000 miles.

(d) Formaldehyde exhaust emission standards apply to vehicles designed to operate on any available fuel, including fuel-flexible and dual-fuel vehicles. The exhaust emission certification standards for formaldehyde, for effective model-year and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles, are as follows:

1. The exhaust emission certification standards for formaldehyde are set forth in Table 3.

Table 3

FORMALDEHYDE EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES, AND ULTRA-LOW EMISSION VEHICLES IN THE LIGHT-DUTY VEHICLES WEIGHT CLASS

Vehicle Type[1]	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category[2]	Formaldehyde (mg/mi)[3]
PC and LDT	All 0-3750	50,000	TLEV	15 (23)
			LEV	15 (15)
			ULEV	8 (12)
		100,000	TLEV	18
			LEV	18
			ULEV	11
LDT	3751-5750	50,000	TLEV	18 (27)
			LEV	18 (18)
			ULEV	9 (14)
		100,000	TLEV	23
			LEV	23
			ULEV	13

(1) "PC" means passenger cars, "LDT" means light-duty trucks.
(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.
(3) The standards in parentheses are intermediate compliance standards for 50,000 miles applicable under (d)2 below.

2. For PCs and LDTs from 0 to 5750 pounds LVW, including fuel-flexible and dual-fuel vehicles, intermediate compliance standards shall apply to LEVs and ULEVs through the 1998 model year. Compliance with standards beyond 50,000 miles shall be waived through 1998 for LEVs and ULEVs.

3. Manufacturers shall demonstrate compliance with the above standards for formaldehyde at 50 degrees Fahrenheit according to the procedures specified in section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991.

4. In-use compliance testing shall be limited to passenger cars and light-duty trucks with fewer than 75,000 miles.

(e) The evaporative emissions certification standards for all effective model-year and subsequent model-year gasoline-fueled, liquefied petroleum gas-fueled and methanol fueled motor vehicles, except petroleum-fueled diesel vehicles, are as follows:

1. The evaporative emission certification standards for hydrocarbons and OMHCE are set forth in Table 4.

Table 4

Vehicle Type	Model Year	Hydrocarbons or OMHCE[1] Hot Soak + Diurnal (grams per test) Useful Life	Hydrocarbons or OMHCE[1] Running Loss (grams/mile) Useful Life
Passenger Car Light-Duty Trucks	implementation model year and subsequent	2.0	0.05

(1) The applicable evaporative emission standards for methanol vehicles are expressed as organic material hydrocarbon equivalent (OMHCE).

2. Evaporative emission standards shall be tested in accordance with the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," adopted April 16, 1975, as last amended November 20, 1991.

3. The running loss and hot soak plus diurnal useful life standards shall be phased-in beginning with the 1996 model year (if the LEV Program is effective for the 1996 model year) and continuing with model year 1997 (if the LEV Program is effective for the 1997 model year). Each manufacturer, except small volume manufacturers, must certify the following percent of passenger cars and light-duty trucks to the running loss and hot soak plus diurnal evaporative emission standards according to the following schedule.

Model Year Standards	Number of Vehicles Certified to Running Loss and Hot Soak + Diurnal Useful Life
1996	30 percent
1997	50 percent
1998 and subsequent model year	100 percent

i. The number of motor vehicles in each vehicle type required to be certified to the running loss and hot soak plus diurnal useful life standards shall be determined by applying the specified percentage to the manufacturer's projected New Jersey model year sales of passenger cars and light-duty trucks.

ii. Beginning with the 1998 model year, all motor vehicles subject to the running loss and hot soak plus diurnal useful life standards, including those produced by small volume manufacturers, must be certified to the specified standards.

iii. All 1996 and 1997 model year motor vehicles which are not subject to the running loss and hot soak plus diurnal useful life standards pursuant to the phase-in schedule must be certified to a 2.0 grams per test hot soak plus diurnal standard for 50,000 miles.

7:27-26.5 Certification

(a) Any person seeking certification from the Department for a new motor vehicle or new motor vehicle engine subject to this subchapter shall submit a certification application to the Department. The applicant shall provide the information regarding certification required by Title 40, Code of Federal Regulations, as amended by the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," section (4)(a).

(b) Certification applications shall be submitted to the New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Transportation Control, CN411, 380 Scotch Road, Trenton, N.J. 08625.

(c) The requirements set forth in (a) and (b) above shall not apply to a new motor vehicle or new motor vehicle engine subject to this subchapter which has been certified by CARB as meeting the California standards. Vehicle manufacturers shall submit one copy of all certification materials submitted to California to the Department at the address in (b) above, or, at the Department's discretion, to the Department's designee.

7:27-26.6 Fleet average

(a) The fleet average non-methane organic gas exhaust emissions from a manufacturer's sales of passenger cars and light-duty trucks shall not exceed the values set forth in Table 5.

Table 5

FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS FOR LIGHT-DUTY VEHICLE WEIGHT CLASSES[5]

Vehicle Type	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Model Year	Fleet Average Non-Methane Organic Gases (g/mi)[1,2,3,4]
PC and LDT	All 0-3750	50,000	1996	0.225
			1997	0.202
			1998	0.157
			1999	0.113
			2000	0.073
			2001	0.070
			2002	0.068
			2003 and subsequent	0.062
LDT	3751-5750	50,000	1996	0.287
			1997	0.260
			1998	0.205
			1999	0.150
			2000	0.099
			2001	0.098
			2002	0.095
			2003 and subsequent	0.093

(1) For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or "HEVs") based on the range of the HEV without the use of the engine.

(2) Each manufacturer's fleet average NMOG value for the total number of PCs and LDTs from 0 to 3750 pounds loaded vehicle weight sold in New Jersey shall be calculated in units of g/mi NMOG as: {[(No. of standard vehicles sold × (0.25)] + [(No. of transitional low emission vehicles, excluding HEVs, sold) × (0.125)] + [(No. of low emission vehicles, excluding HEVs, sold) × (0.075)] + [(No. of ultra-low emission vehicles, excluding HEVs, sold) × (0.040)] + (HEV contribution factor)}/(Total No. of vehicles sold, including Zero-emission vehicles and HEVs):

(i) The HEV contribution factor shall be calculated in units of g/mi as follows:

(ii) HEV contribution factor = {[No. of "Type A HEV" TLEVs sold] × (0.100) + [No. of "Type B HEV" TLEVs sold] × (0.113) + [No. of "Type C HEV" TLEVs sold] × (0.125)} + {[No. of "Type A HEV" LEVs sold] × (0.057) + [No. of "Type B HEV" LEVs sold] × (0.066) + [No. of "Type C HEV" LEVs sold] × (0.075)} + ([No. of "Type A HEV" ULEVs sold] × (0.020) + [No. of "Type B HEV" ULEVs sold] × (0.030) + [No. of "Type C HEV" ULEVs sold] × (0.040)}

(iii) Zero-emission vehicles classified as medium-duty vehicles by weight may be designated by the manufacturer as light-duty vehicles for the purposes of calculating fleet average NMOG values.

(3) Manufacturers that certify LDTs from 3751-5750 lbs. LVW, shall calculate a fleet average NMOG value in units of g/mi NMOG as: {[No. of standard vehicles sold × (0.32)] + [(No. of TLEVs sold excluding HEVs) × (0.160)] + [(No. of LEVs sold excluding HEVs) × (0.100)] + [(No. of ULEVs sold excluding HEVs) × (0.050)] + (HEV contribution factor)}/(Total No. of vehicles sold, including ZEVs and HEVs).

(i) The HEV contribution factor shall be calculated in units of g/mi as follows:

(ii) HEV contribution factor = {[No. of "Type A HEV" TLEVs sold] × (0.130) + [No. of "Type B HEV" TLEVs sold] × (0.145) + [No. of "Type C HEV" TLEVs sold] × (0.160)} + {[No. of "Type A HEV" LEVs sold] × (0.075) + [No. of "Type B HEV" LEVs sold] × (0.087) + [No. of "Type C HEV" LEVs sold] × (0.100)} + {[No. of "Type A HEV" ULEVs sold] × (0.025) + [No. of "Type B HEV" ULEVs sold] × (0.037) + [No. of "Type C HEV" ULEVs sold] × (0.050)}

(4) In 2000 and subsequent model years, small volume manufacturers shall comply with fleet average NMOG requirements.

(i) Prior to the year 2000, compliance with the specified fleet average NMOG requirements shall be waived for small volume manufacturers.

(ii) In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.075 g/mi for PCs and LDTs from 0 to 3750 pounds LVW for 50,000 miles.

(iii) In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.100 g/mi for LDTs from 3751 to 5750 pounds LVW for 50,000 miles.

(b) While meeting the fleet average requirements, each manufacturer's New Jersey sales fleet of passenger cars and light-duty trucks from 0 to 3750 pounds LVW shall be composed of at least two percent ZEVs in the 1998 through 2000 model years, five percent ZEVs in 2001 and 2002, and 10 percent ZEVs in 2003 and subsequent model years.

1. Small volume manufacturers shall not be required to meet the percentage ZEV requirements.

2. Intermediate volume manufacturers shall not be required to meet the percentage ZEV requirements before the 2003 model year.

7:27-26.7 Enforcement

(a) Commencing with the effective model year, each manufacturer shall report to the Department the average NMOG emissions of its fleet sold in New Jersey for that particular model year. Such reports shall be submitted within 60 days after the end of each model year, and shall be submitted in a form and manner to be determined by the Department. Fleet average reports shall, at a minimum, identify the total number of vehicles including offset vehicles sold in New Jersey and California, respectively, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in New Jersey and California in relation to total fleet sales in the respective states.

(b) Commencing with the 1998 model year, each manufacturer shall submit annually to the Department, within 60 days after the end of each model year, a report on a form provided by the Department, calculating compliance with the zero emission vehicle requirements set forth in N.J.A.C. 7:27-26.6(b).

(c) In addition to all other requirements contained in this subchapter, new motor vehicle dealers shall comply with the following requirements.

1. No dealer shall sell or offer or deliver for sale a new passenger car or light-duty truck subject to this subchapter unless such vehicle conforms to the following standards and requirements:

i. Ignition timing is set to manufacturer's specification with an allowable tolerance of ± three degrees;

ii. Idle speed is set to manufacturer's specification with an allowable tolerance of ± 100 revolutions per minute;

iii. Required exhaust and evaporative emission controls, such as exhaust gas recirculation (EGR) valves, are operating properly;

iv. Vacuum hoses and electrical wiring for emission controls are correctly routed and connected, and operating properly; and

v. Idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

2. The requirements set forth in this subsection shall also apply to a dealer when servicing emission related components. However, only that requirement(s) appropriate to the service performed shall apply.

(d) The Department and its representatives shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials, motor vehicles or motor vehicle engines or any emissions therefrom, at the facility, to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(e) Except with respect to the fleet average requirements set forth in N.J.A.C. 7:27-26.6(a), failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C-19.

7:27-26.8 Additional requirements

(a) In addition to all other requirements set forth in this subchapter, new motor vehicles and new motor vehicle engines which are certified to the emission certification standards contained in N.J.A.C. 7:27-26.4 shall comply with the following requirements:

1. Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, shall be equipped with emission control labels which conform to the requirements contained in the "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978 as last amended July 12, 1991.

2. Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, shall be equipped with emission control malfunction and diagnostic systems which conform to the requirements contained in the California Code of Regulations, Title 13, Section 1968.1.

3. Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, which are gasoline-fueled or methanol-fueled shall comply with the requirements set forth in California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," dated March 26, 1976 and last amended February 21, 1990.

7:27-26.9 through 26.15 (Reserved)

7:27-26.16 Incorporation by reference

(a) Any reference in this subchapter to any of the documents or sources listed below shall be deemed to incorporate such document or source by reference, together with any future supplements or amendments thereto.

(b) If the entity which promulgated a document or source incorporated by reference into this subchapter proposes to amend or supplement the document or source, the Department will publish a notice of the proposed amendment or supplement in the New Jersey Register. The notice shall state how to obtain a copy of the proposal, and to whom comments on the proposal can be submitted. The Department will publish the notice within 60 days after publication of the proposed amendment or supplement.

(c) The adoption of any proposed amendment or supplement described in (b) above shall become operative in New Jersey no earlier than 30 days after publication by the Department of a notice of such adoption in the New Jersey Register.

(d) If the Department proposes to not incorporate any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter, the Department will propose an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(e) The following documents and sources are incorporated by reference within this subchapter:

1. California Code of Regulations, Title 13, Section 1968.1;

2. "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991, CARB;

3. "California Non-Methane Organic Gas Test Procedures" adopted July 12, 1991, CARB;

4. "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted May 20, 1987, as last amended July 12, 1991, CARB;

5. "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," adopted April 16, 1975, as last amended November 20, 1991, CARB;

6. "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978, as last amended July 12, 1991, CARB;

7. California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," adopted March 26, 1976, as last amended February 21, 1990, CARB;

8. American Society for Testing Materials Standard Practice E29-88;

9. "Federal Highway Fuel Economy Test Procedure" 40 C.F.R. Part 600 Subpart B;

10. 40 C.F.R. §86.082-24; and

11. "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86, Subparts A and B.

(f) Any of the documents in (e) above may be obtained by contacting the Office of Administrative Law or by contacting:

Department of Environmental Protection and Energy
Office of Air Quality Management
Bureau of Transportation Control
CN 411 (380 Scotch Road)
Trenton, New Jersey 08625

7:27-26.17 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

(a)

OFFICE OF NOISE CONTROL

Notice of Extension of Comment Period Determination of Noise from Stationary Sources Proposed New Rules: N.J.A.C. 7:29-2 Proposed Amendments: N.J.A.C. 7:29-1.1 and 1.2

Take notice that the Department of Environmental Protection and Energy is extending the comment period for the above-referenced proposed new rules and amendments, notice of which was published in the March 15, 1993 New Jersey Register at 25 N.J.R. 1040(a). The extended deadline for the receipt of comment is April 30, 1993.

Submit written comments by April 30, 1993 to:

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

(b)

ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Toxic Catastrophe Prevention Act Program Proposed Readoption With Amendments: N.J.A.C. 7:31

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

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq., particularly 26:2C-8.

DEPE Docket Number: 20-93-03.

Proposal Number: PRN 1993-214.

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

Monday, April 26, 1993 at 10:00 A.M.
New Jersey Department of Environmental Protection and Energy
Hearing Room, First Floor
401 East State Street
Trenton, New Jersey 08625

Submit written comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), the Toxic Catastrophe Prevention Act Program Rules, N.J.A.C. 7:31, (rules) expire on June 20, 1993. As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were promulgated. The Department proposes to readopt these rules with amendments which will improve their clarity and fairness, while discouraging non-compliance on the part of the regulated community.

The Toxic Catastrophe Prevention Act (TCPA), N.J.S.A. 13:1K-19 et seq., was adopted by the Legislature and signed into law by Governor Kean as P.L. 1985, c.403, effective January 8, 1986. TCPA was adopted after a period of special concern for public safety created by several releases of hazardous substances, some in New Jersey during the fall of 1984 and early 1985, but more importantly in Bhopal, India during December 1984. The release of methyl isocyanate in Bhopal had catastrophic results. More than 2,500 people were killed and at least 10,000 injured.

During its investigation of facilities responsible for the toxic releases in New Jersey from 1980 to 1986, the Department gathered important information on the risk management programs (RMPs) at industrial facilities which released toxic substances. As a result of the investigations, the Department identified the need to ensure that RMPs include key elements that are fully defined and properly implemented. Based on these considerations, the rules were adopted at N.J.A.C. 7:31, became effective on June 20, 1988 and operative on July 21, 1988.

The rules have been successful in reducing the risk of catastrophic accidents through the expanding adoption and implementation of risk management programs. Owners and operators have cooperated with the Department in establishing RMPs at their sites. Further, they have identified risks and implemented means to reduce those risks. Some owners and operators of the private sector as TCPA registrants have participated with the Department in providing technical and management assistance on risk management program issues to some registrants of the public sector. Major national firms with operations in New Jersey have used their RMPs based on the TCPA Rules to improve their overall operation. Representatives of those firms have praised the practicality of the program.

Risk of catastrophic accidents has also been reduced because the TCPA rules contribute incentives to reduce inventories of hazardous chemicals and switching to less toxic substances. In the case of chlorine, one of the most common hazardous chemicals, approximately 483 water treatment facilities out of an original 575 had lowered the quantity of chlorine on hand to less than the TCPA registration quantity (RQ) of 500 pounds or had ceased the use of chlorine altogether by March 1991. An additional 70 of 95 industrial facilities using chlorine have reduced quantities to below the RQ or eliminated its use altogether. Statewide chlorine inventories in registered facilities had decreased in the period from June 1988 to December 1992 from about 10,250 tons to 6,008 tons.

Similar inventory reductions to reduce risk have occurred for 48 of the 60 other substances originally registered under TCPA. The largest reduction in EHS risk was produced by inventory reductions during the 1988 to 1992 period for allyl chloride, bromine, hydrogen chloride, hydrochloric acid, hydrofluoric acid, hydrogen sulfide, hydrogen cyanide, phosgene, phosphorous trichloride, ammonia, aqueous ammonia, formaldehyde, nitrogen dioxide, sulfur dioxide and sulfur trioxide. Statewide inventories of these other substances have been reduced from about 54,000 tons registered originally to about 33,100 tons registered in December 1992. Registered facilities with these substances have decreased from 287 to 95.

The chapter contains subchapters governing the general provisions, requirements, prohibitions and procedures of the TCPA program, the minimum requirements for an RMP, requirements for the work plan, confidentiality and trade secrets, and civil administrative penalties and requests for adjudicatory hearings. A brief summary of the content and purpose of each of these subchapters follows:

Subchapter 1, General Provisions, sets forth the general provisions of the rules, their scope and applicability, their purpose, and definitions of terms which are used throughout the chapter.

Subchapter 2, General Requirements, Prohibitions and Procedures, concerns programmatic requirements, prohibitions and procedures applicable to all facilities subject to the TCPA. It sets forth the list of extraordinarily hazardous substances (EHSs) and their registration quantities, registration procedures and fees. It covers requirements for certifications and signatures, RMPs, work plans, new and modified facilities, inspections, annual reports, release of information by insurance carriers, consultant selection criteria and exemptions of certain equipment and procedures.

Subchapter 3, Minimum Requirements for a Risk Management Program, details the elements of an acceptable RMP, to achieve the essential goal of the entire TCPA program. Sections of this subchapter are devoted to each of the elements. The safety review (N.J.A.C. 7:31-3.4) ensures that EHS facilities are designed, installed and operated according to state of the art and current codes and standards. Standard operating procedures (N.J.A.C. 7:31-3.5) are required to be written to prevent deviations from proper procedures. Preventive maintenance (N.J.A.C. 7:31-3.6) is an essential element for avoiding equipment failure. EHS operator training (N.J.A.C. 7:31-3.7) insures assignment of qualified staff. EHS accident investigation procedures (N.J.A.C. 7:31-3.8) ensure that staff learn from the accident experience to avoid repeat accidents. Risk assessment (N.J.A.C. 7:31-3.9) determines the level of EHS accident risk to the surrounding community and the need to implement risk reduction measures. An emergency response program (N.J.A.C. 7:31-3.10) addresses the assumptions that preventive measures fail and that preplanning will help minimize the impact of the failure on the public. By means of an annual self audit (N.J.A.C. 7:31-3.11) the TCPA registrant determines whether details of its risk management program are being followed. To assist in compliance of these element provisions, the TCPA Risk Management Program Checklist (STP-011) as required in (N.J.A.C. 7:31-3.14) has been established. Management of modification (change) is now incorporated into the rules (N.J.A.C. 7:31-3.15) to reduce registrant effort. Finally rules for outside contractors (N.J.A.C. 7:31-3.17) have been established in preventive maintenance, operator training and emergency response.

Subchapter 4, Work Plan Requirements, details the requirements of Work Plan, the procedure established for facilities that claim not to have an established RMP, or are deemed so by the Department, based on their submitted summary risk management program statement. Work Plan requirements are prepared by the Department in conjunction with the registrant. A consultant, selected by the Department, who executes the Work Plan is hired by the registrant following a specific procedure. The Work Plan is used to develop a risk reduction plan for the site. When the Work Plan is implemented completely, the site should have an RMP acceptable to the Department.

Subchapter 5, Confidentiality and Trade Secrets, covers requirements and conditions for a registrant to apply for and receive confidentiality and trade secret status on information he submits to the Department. The purpose is to preclude public disclosure of information that would put the registrant at a competitive disadvantage.

Suchapter 6, Civil Administrative Penalties and Requests for Adjudicatory Hearings, sets forth civil administrative penalties and describes procedures for assessing these penalties, as well as procedures by which a violator may request an adjudicatory hearing.

The proposed amendments to the chapter will update and further refine and clarify the rules, provide greater equity and discourage noncompliance. Key changes introduced include: adoption of annual update of fees based on the Department's records of TCPA program cost and effort as incorporated into a new fee structure; adoption of site specific criteria for requiring risk reduction measures rather than the release size criteria for simply performing risk assessment; adoption of practices from the new OSHA rules on Process Safety Management, 29 CFR Part 1910 on contract workers and management of modification (change); and adoption of criteria to exempt EHS equipment with less than an RQ based on dispersion/consequence analysis rather than on fixed distance criteria. Explanations of the proposed changes are presented later in the order of appearance in the rules.

Many of the amendments reflect the input of interested parties. Under cover letter dated October 7, 1992, the Department sent copies of its proposed readoption with amendments preliminary rule draft to interested parties. On October 23, 1992, the rule draft was discussed by the Department with approximately 40 representatives of the 147 active TCPA registrants and 31 environmental, industrial and other interested organizations. Written comments were submitted by 22 registrants and organizations. Important amendments that relate to these comments are discussed here.

In that preliminary rule draft, the Department included language to make explicit that transportation service sites where shipping containers of EHSs are stored or handled are subject to the TCPA program. The Department is exploring aspects of the TCPA program that will apply to such sites which may be subject to the federal Hazardous Material Transportation Uniform Safety Act, 49 U.S.C.A. §1801 et seq., (HMTUSA). However, none of the language related to such sites appears in the proposed rules.

The Department has amended the rules to lessen the paperwork burden. The rules were originally written to reflect existing documentation and paperwork among manufacturing establishments so that the compliance with the rules would not require the preparation of additional documents. Unfortunately, many establishments prepared special documents for their RMP to accommodate the annual cycles specified by the rules or to address modifications. Therefore, to simplify paperwork requirements, amendments specifying "calendar year" are added in the rules at various locations where the starting date of the annual period was not previously specified. For example, records for EHS equipment inspection at N.J.A.C. 7:31-3.6(a)4 under preventive maintenance and N.J.A.C. 7:31-3.7(b)4 under EHS operator training are set to follow a "calendar year." Thus, the need for special TCPA paperwork in these instances is eliminated. However, the date required for annual report submittal will remain as the anniversary of the signing of the consent agreement. Paperwork reduction will also occur in the cases of modification notifications and emergency response plans and updates, which are no longer required to be submitted.

Specific amendments are as follows:

N.J.A.C. 7:31-1.5 Definitions

The definition of "Act" has been expanded to include the acronym "TCPA" used throughout these rules.

Three new definitions are added and one definition is modified as part of the changes to assign fees based upon review of Department records of TCPA program cost and TCPA effort assignable to registrants rather than a uniform base fee applied to the census of registrants. The annual fee, to be discussed in detail in a subsequent section, will consist of a base fee, a facility-derived fee and an inventory-derived fee. The new definitions needed are "budget-expenditure variance," "TCPA program operating expense" and "total spending plan of the TCPA program." The definition of "facility" is modified to include the criteria which distinguish each facility at a site. With this definition the number of facilities at a particular site may be determined. The facility-derived fee for the site may then be computed.

"Budget-expenditure variance" is calculated by the Department to address surplus or deficit of TCPA fee revenue based on budget versus TCPA actual program expense.

"Total spending plan of the TCPA program" is a Department fiscal management document which is prepared for each of its programs. Covering the fiscal year ending June 30 of the next calendar year, it includes "expenditure estimates," and "planned (fee) receipts" plus "budget-expenditure variance," the difference between actual expenses and fees collected from the prior year. Expenditure estimates consist of two main categories: salary related expenses and program costs. Salary related expenses are direct salaries of staff persons in positions of the TCPA program filled at the beginning of the fiscal year plus an overlay of fringe benefits and indirect costs which typically amount to 67 percent of direct salary. "TCPA program operating expense" includes charges for professional services, data processing equipment, staff training, data processing services, and without limitation expenses for postage, telephone, travel, supplies and data system management attributable to TCPA staff. Salary expenses are projected by fiscal management based on personnel salary records. Program costs are projected by Bureau of Release Prevention staff based on review of actual expenditures of prior years, replace or repair decision analysis on equipment and vehicles, and estimates of costs of special expenditures, for example, expected contracted services.

The definition of "consequence analysis" has been revised to reflect changes in risk assessment requirements at N.J.A.C. 7:31-3.9. The identified acute toxicity concentration (ATC) for each substance is now specified as the toxicological base criterion in performing a consequence analysis. Thus, in dispersion modeling, the boundary of a toxic cloud or plume on a map will be drawn at the ATC isopleth. The ATC for each EHS of Part II in N.J.A.C. 7:31-2.3(a) was published by the Department as part of the Basis and Background document for the initial rule proposal. A complete list of the ATCs is available from the Department in a source document.

In the definition of EHS equipment, examples of EHS equipment which are not directly involved in storage, handling or use have been added. However, breakdown or unexpected interruption of such equipment will likely have a direct impact on the containment of the EHS.

A definition of "EHS facility emergency response team" has been added in conjunction with the addition of this item at the new N.J.A.C. 7:31-3.10(a)4. This definition has been added because sites with multiple

facilities often have different levels of response depending on the severity of the emergency. The EHS facility emergency response team responds to the emergencies limited to or contained in the particular EHS facilities. Emergencies in an EHS facility for which it is likely that other areas of the site or off-site areas will be impacted require the deployment of the "site emergency response team," also defined in the proposal. Personnel considered part of the EHS facility emergency response team may vary from facility to facility. At a minimum, EHS operators are considered members of the EHS facility emergency response team since they would most likely be the first to notice a release, identify emergency alarms, and begin notifying supervisors or the site emergency response team. Those personnel responsible for the emergency shutdown of the EHS equipment are also part of the EHS facility emergency response team. For those sites with only one EHS facility, the site emergency response team and the EHS facility emergency response team may be the same.

In the definition of "EHS operator," the phrase "or employees at an EHS facility" has been deleted to clarify the definition to include any EHS operations at the registrant's site. The phrase "or being trained in" has been deleted, since a trainee is not yet considered an "EHS operator".

A definition of "EHS procedure" has been added to clarify its meaning as used throughout this rule.

Definitions of "equivalent EHS equipment," "replacement in kind" and "routine maintenance" have been added to clarify the use of these terms in the existing definition of "modification" at N.J.A.C. 7:31-1.5. A definition of "routine maintenance" is proposed—"the repair or replacement in kind of existing EHS equipment to insure continuity of operation." A definition of "replacement in kind" is proposed—"the replacement of existing EHS equipment, with identical or equivalent EHS equipment and installation according to criteria for design and operation." Therefore, replacements need not be exactly the same. Further, it must be understood that "equipment" refers to an "equipment item" not a series of contiguous equipment items. Finally, a detailed definition of "equivalent EHS equipment" has been added which applies only to "replacement in kind."

The definition of "facility" has been expanded to include that a facility must be covered by a process flow diagram and standard operating procedures, and that all its areas must have a common manager, the criteria which will be used to distinguish one facility at a site from another.

"Hazard analysis" has been redefined. It now has a generic definition. Specific methods of hazard analysis and criteria for other acceptable methods are now included at N.J.A.C. 7:31-3.9(c)1.

A definition of "hazard unit" has been added to provide its meaning at N.J.A.C. 7:31-6.4(d) in addition to N.J.A.C. 7:31-2.16.

A definition of "inventory" has been added to satisfy the need of the Department to corroborate the value of the maximum inventory of an EHS expected during the year that a registrant enters on the registration form, and to meet the need of registrants to monitor the inventories of their EHSs on a frequent schedule as part of managing the inherent risk. A definition of inventory had not been included in the original rules because adequate inventory records were believed to be existent among manufacturing establishments for routine financial audit and control of production and working capital costs. Contrary to this expectation, many registrants maintain sparse records of inventory which has made corroboration of the maximum expected inventory very time consuming. The physical inventory in a full shipping container is taken as the quantity recorded on its label and corroborated by the corresponding shipping papers.

A definition of "non-contiguous EHS equipment" has been added to clarify its meaning in N.J.A.C. 7:31-2.19. In addition to the standard dictionary definition "not in contact" and "not adjacent to" given in the Basis and Background document for the original rules, "non-contiguous" is explicitly stated to mean "not connected . . . by piping through which an EHS flows," and sufficiently separated from other exempt EHS equipment to preclude combined off-site consequences in the event of an accident.

The definition of "process flow diagram" now includes a requirement for a block flow diagram that depicts handling of full, partially filled and empty shipping containers of the EHS. Thus, the process flow diagram will now be the document of record to define a facility and its major equipment and activities involved with EHSs at the site. This supports the definition of facility now in the rules so that each facility at the site will be distinguishable. In addition, the process flow diagram will show any EHS equipment that has been determined to be exempt under the rules.

In the definition of "registrant," the word "EHS" was deleted and "in EHS service" added because the Department has determined that it is important for the owner or operator of the site to register each EHS at the site whether or not it is in a facility handling less than the registration quantity of that EHS. This is consistent with N.J.A.C. 7:31-2.5 and the TCPA Registration Form (STP-010) which in Section D directs the registrant to complete the following table for every EHS used, manufactured, stored, handled, or generated at this site or water treatment system.

In the definition of "risk assessment," "rate and duration" has been added after the word "quantity" to indicate that the estimate of the release quantity should agree with the EHS release scenario.

A definition of "risk assessment section" has been added to provide its meaning as used in N.J.A.C. 7:31-2.16(c)5ii, related to fee determination.

The definition of "SIC code" is now included in the definition section to clarify its existing use in the TCPA registration form, as required in new N.J.A.C. 7:31-2.5(g)1viii. The existing reference to "SIC code" in N.J.A.C. 7:31-2.5(g)5 has been deleted, since it was inappropriate for that paragraph, and the stated publisher was incorrect.

A definition of "site emergency response team" has been added to differentiate the functions of the site emergency response team from those of the EHS facility emergency response team. Site emergency response teams respond to those emergencies involving an EHS which may have a substantial impact at the site or an off-site impact.

In the definition of "state of the art," the phrase "at reasonable cost" has been added after "in the public domain" to emphasize that cost is a consideration in the adoption of risk reduction measures.

A definition of "tabletop exercise" has been added to support its introduction at N.J.A.C. 7:31-3.10(a)4ii.

The definitions of "wastewater treatment system" and "water treatment system" have been modified to include pumping stations used in connection with such systems.

The words "EHS facility" were changed to "EHS equipment and procedures" throughout the rules, and notably for example in the definition of "EHS operator" and "state of the art" and at N.J.A.C. 7:31-2.4(f), 2.7(a), 2.9(c)3, 3.4(c) and (d), and 4.5(a). The changes have been made because the Department has determined that some equipment and procedures in EHS service may be used on a site-wide basis and not in one particular EHS facility and that this equipment and procedures should also be included in the RMP, unless granted an exemption pursuant to N.J.A.C. 7:31-2.19 or 2.20.

N.J.A.C. 7:31-2.3 Extraordinarily hazardous substance list

In Table I at N.J.A.C. 7:31-2.3(a), an additional CAS# has been added for toluene-2,4-diisocyanate which includes all mixtures with toluene-2,6-diisocyanate, since the two substances are of equal toxicity and almost always exist as mixtures.

"Ammonium hydroxide" has been changed to "ammonia (aqueous)" to clarify that the acutely toxic component in the container refers to ammonia. Registration quantities (RQ) for nitric oxide and for nitrogen trioxide have been changed to reflect stoichiometric conversion to nitrogen dioxide and rounded to agree with the table given in Appendix F of the original Basis and Background document, dated September 1987, and available for inspection during the hours of 9 A.M. to 5 P.M. at the Bureau of Release Prevention, 401 E. State Street, Trenton, New Jersey 08625, and from 8:30 A.M. to 4:30 P.M. at the Office of Administrative Law, Quakerbridge Road at Quakerbridge Plaza, Bldg. 9, Trenton, New Jersey 08625.

New subsection N.J.A.C. 7:31-2.3(b) has been added to clarify what constitutes a registration quantity for EHS in mixtures not already designated in Table I at subsection (a). This clarifies that all EHS in mixtures must be registered if the quantity of the pure EHS contained is greater than or equal to one RQ.

N.J.A.C. 7:31-2.4 Prohibitions

In N.J.A.C. 7:31-2.4(a), "at least" was deleted for grammatical purposes, and "and this chapter" was added for thoroughness.

At N.J.A.C. 7:31-2.4(b) and 2.5(a), references to "Part II" and to the original date have been deleted since they are no longer applicable. Part I and Part II EHSs are now treated equally, and a 90-day period for registration is no longer available. In the future, appropriate notice will be given for any new EHS added to Table I.

At N.J.A.C. 7:31-2.4(c), the words "or registrant with an established risk management program shall utilize an existing facility for a new EHS service" were added to clarify the Department's intent that this section shall also apply to those registrants who previously had received notice from the Department that the risk management program at their site has been determined to be "established" according to N.J.A.C. 7:31-2.7(b) or 2.9(k) as revised in this proposal. The risk management program determined "established" is reviewed further according to N.J.A.C. 7:31-2.6(e) through (i) for the Department to determine it to be "approved." The Department strongly feels that the registrant with an established RMP needs more critical review than the one with an approved RMP. This wording ensures consistency with the change at N.J.A.C. 7:31-2.10(a) on new EHS facilities.

At N.J.A.C. 7:31-2.4(f) in the first sentence, the phrase "with an approved site risk management program" is deleted because the purpose of this subsection is to regulate registrants which have an "established" risk management program (but not yet an "approved" one). The deletion removes the inconsistency. Also in this subsection, the words "performing a safety review and a hazard analysis" have been deleted and "managing a modification" have been added to reflect the fact that the registrant can now develop a management of modification (change) procedure which will categorize the proposed change and will define the procedural steps to be followed for implementation. A safety review and hazard analysis may or may not be required. The management of modification (change) procedure will be reviewed and approved by the Department as part of the Risk Management Program.

N.J.A.C. 7:31-2.4(i) has been deleted since the date included is no longer applicable. A new subsection N.J.A.C. 7:31-2.4(i) has been added to cover the failure to provide required information.

N.J.A.C. 7:31-2.5 Registration

The TCPA registration form (now designated STP-010 for preciseness) has been revised as given in N.J.A.C. 7:31-2.5. This form is no longer part of the rule or set forth in Appendix II, as previously specified in N.J.A.C. 7:31-5.3(a)4. Only the information to be included in STP-010 is part of the rule.

At N.J.A.C. 7:31-2.5(a) and (b), in regard to the TCPA registration form, STP-010, the phrase "provided by" has been replaced with "available from" (the Department), since the Department cannot have foreknowledge of all potential registrants.

At N.J.A.C. 7:31-2.5(c), it is now required that an owner planning to construct a new EHS facility must record the maximum inventory of the EHS expected during the year on the registration form. This change, together with the definition of "inventory," clarifies the usage of that term in this rule and ensures that the greatest potential hazards at the proposed new facility are considered.

At N.J.A.C. 7:31-2.5(e) the requirement for submittal of a revised registration form has been relaxed and clarified. Also, the words "including, but not limited to, any increase in the registrant's EHS inventory" have been added to emphasize the Department's concern about the increase in maximum inventory which has been regularly overlooked by many registrants in the past and resulted in the issuance of Administrative Orders and assessment of penalties.

N.J.A.C. 7:31-2.5(g)1vii, viii and ix have been added to reflect current registration form requirements, which facilitate program implementation.

At N.J.A.C. 7:31-2.5(g)5, specifically subparagraph (g)5ix, it is now required that the number of facilities be indicated, to facilitate the determination and billing of fees. The reference to SIC codes is moved to the appropriate location, N.J.A.C. 7:31-2.5(g)1viii.

At N.J.A.C. 7:31-2.5(g)8, the requirement that the initial registration form submittal be accompanied by a USGS topographic map with a standard scale has been added, which was inadvertently omitted before.

N.J.A.C. 7:31-2.5(h) has been added setting forth the required information upon receipt of which the Department will discontinue a registrant from registration under the TCPA program.

N.J.A.C. 7:31-2.5(i) has been added to address the need for a registrant status for cases in which the registrant temporarily discontinues use, handling or generation of an EHS at particular EHS equipment, or stores it at less than the registration quantity, but still wants to remain a registrant because of the business need to resume EHS operations in the shortest time possible. The registrant may remain registered provided he meets the conditions of proposed new N.J.A.C. 7:31-3.16, and pays the fee set forth in N.J.A.C. 7:31-2.16(o). These additions allow the registrant to bypass the procedures for new facilities N.J.A.C. 7:31-2.10, when the registrant later increases the inventory of the EHS at the site to the registration quantity or greater.

N.J.A.C. 7:31-2.5(j) specifies a particular situation in which a registration quantity (RQ) or greater of an EHS exists at a site, but the inventory of EHS is divided among more than one facility operator, at least one of whom leases from the site owner. Thus, one or more facility operator may have less than the RQ of the EHS. In this case, to satisfy the intent of the Act, the inventory of the EHS at the site must be registered by the site owner or the facility operators or both.

N.J.A.C. 7:31-2.6 Risk management program procedures

N.J.A.C. 7:31-2.6(e)2 has been deleted because the Department has determined that the emergency response plan can be more efficiently reviewed at the reigstrant's site rather than at the Department's offices. Accordingly, paragraphs N.J.A.C. 7:31-2.6(e)3 and (e)4 have been renumbered N.J.A.C. 7:31-2.6(e)2 and (e)3, respectively.

N.J.A.C. 7:31-2.6(g) now explicitly presents the options to the registrant of either returning a signed draft consent agreement indicating acceptance of the requirements or submitting a counter proposal to correct the deficiencies. The registrant's counter proposal is most conveniently transmitted by direct marking of the draft consent agreement where the registrant initials and dates each mark.

N.J.A.C. 7:31-2.6(h) is revised to indicate that a registrant "shall comply with requirements of the approved risk management program set forth in the consent agreement," which is more precise than "shall comply with the consent agreement," previously stated in the rule. Also, a sentence specifying who signs consent agreements has been added to set a standard for all registrants.

At N.J.A.C. 7:31-2.6(i), the words "cannot reach agreement" have been changed to "have not signed a consent agreement within 120 days of the registrant's receipt of the draft consent agreement identified at (f) above." This revision sets forth the event that signifies lack of agreement and the time frame within which the registrant and the Department shall agree to any proposals to change the original consent agreement.

N.J.A.C. 7:31-2.8 Transfer of risk management program

N.J.A.C. 7:31-2.8, previously reserved, has now become a rule for transfer of risk management programs from one entity to another. The need for this requirement has become evident since the rules were adopted.

N.J.A.C. 7:31-2.9 Extraordinary hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan

The words "list of documents of" were added to N.J.A.C. 7:31-2.9(b) for clarification, since the Department intended that only a summary list of this documentation, rather than the actual documents, be submitted.

In N.J.A.C. 7:31-2.9(c)3 the word "facility" has been replaced with "equipment and procedures" because, in some instances, these tasks may need to be performed on a site-wide basis rather than at one particular facility at the site.

The words referring to an "EHS facility" were deleted from N.J.A.C. 7:31-2.9(d), (f), (h), (i) and (k) because, in some instances, these tasks may need to be performed on a site-wide basis rather than at one particular facility at the site.

At N.J.A.C. 7:31-2.9(i), the phrase "in accordance with the schedule in the work plan" has been added to specify the time frame for compliance.

At N.J.A.C. 7:31-2.9(k)2, the word "complete" replaces "take" because the Department in its review of the EHSARA report is concerned that actions of risk reduction taken be completed.

The new paragraph N.J.A.C. 7:31-2.9(k)3 has been added to require the Department to state in the risk reduction plan incorporated in the administrative order that a registrant has an established risk management program (RMP). This statement has been added to make clear that the registrant has an established risk management program entitling the registrant to avail itself of the procedure for modification to an existing EHS facility at its site in accordance with N.J.A.C. 7:31-2.11.

As a clarification, N.J.A.C. 7:31-2.9(m) has been added to require the normal process of detailed review of the established RMP in accordance with N.J.A.C. 7:31-2.6(e) through (i), after the risk reduction plan is implemented.

N.J.A.C. 7:31-2.10 New EHS facilities

At N.J.A.C. 7:31-2.10(a), the text was revised to require the registrants with an established risk management program who are planning to utilize an existing facility for new EHS service to comply with the same

procedures as the owner or operator of a site planning to construct a new EHS facility. Expansion of EHS use by registrants with an "established" RMP should be subject to more critical review than that by ones with an "approved" RMP.

N.J.A.C. 7:31-2.10(a)2 and 3 are revised to improve the Department's review process for granting the owner or operator permission to construct and place in EHS service new EHS facilities. The original review process was based on a two stage submittal. The first stage submitted consisted only of the reports of safety review and hazard analysis/risk assessment which provided the basis to grant permission to construct. The second stage for submittal consisted of a full summary risk management program statement which provided the basis to grant permission to use the EHS. Now the submittal includes both these items at the same time. The information of the summary risk management program statement had not been originally included because designs of new equipment existent were known to be based on conceptual engineering packages which included criteria for design and operation and conceptual operating procedures covering normal, abnormal and emergency conditions and safety procedures. Contrary to this expectation firms applying to the Department for permission to construct new EHS facilities frequently presented reports of safety review and hazard analysis/risk assessment which were incomplete because no conceptual operating procedure had been prepared. This required the Department to request that the applicant resubmit the reports to reflect a fully developed conceptual operating procedure document. The basis to grant permission to use the EHS at the new facility is now set forth in N.J.A.C. 7:31-2.10(b), discussed below.

N.J.A.C. 7:31-2.10(a)2 has been revised to eliminate the requirement for submittal of initial submittal of reports of a safety review and hazard analysis. The Summary Risk Management Program Statements (SRMPS) (formerly required at N.J.A.C. 7:31-2.10(a)3) shall be submitted to the Department. This change will allow the registrant to conduct the safety review and hazard analysis reflecting the operating procedures of the new facility while the risk management program elements are developed at least on a preliminary basis.

At N.J.A.C. 7:31-2.10(a)3, the requirement for SRMPS submittal as discussed above has been deleted and the requirement for document submittal, as applicable in accordance with N.J.A.C. 7:31-2.6(e), has been added in order to have a site inspection of the new EHS facility conducted by the Department. These changes will facilitate RMP approval by signing of a consent agreement by both parties, which is necessary prior to placing the equipment in EHS service.

N.J.A.C. 7:31-2.10(a)4 now specifically states that the amount of the fees will be set forth in a bill sent by the Department to the registrant, determined in accordance with N.J.A.C. 7:31-2.16.

New subsection N.J.A.C. 7:31-2.10(b) has been added to ensure that new equipment placed into EHS service is as represented by the latest revision of the pertinent document items changed during design, construction and pre-startup, and that the safety review and risk assessment are updated based upon those documents prior to EHS service.

The new subsection N.J.A.C. 7:31-2.10(d) has been added to establish the procedures to have an approved risk management program of a new EHS facility, which had been omitted.

N.J.A.C. 7:31-2.11 Modification to an EHS facility

N.J.A.C. 7:31-2.11 has been substantially revised to refer to a new section N.J.A.C. 7:31-3.15, Management of modifications (change) to EHS equipment and procedures, which must be followed by the registrant to manage any changes, including a change in risk management program administration.

N.J.A.C. 7:31-2.12 Inspections

N.J.A.C. 7:31-2.12(c) has been revised to eliminate mandatory annual inspection. Instead, the frequency of inspection will be developed by the Department as appropriate to the administration of the program.

A subsection has been added, N.J.A.C. 7:31-2.12(e), concerning actions by the Department after an audit inspection to correct deficiencies to provide for consensual agreement of an RMP as an addendum to the original consent agreement to be entered into in accordance with the procedures at N.J.A.C. 7:31-2.6.

N.J.A.C. 7:31-2.15 Release of information by insurance carriers

"An EHS facility" was changed to "a site" in N.J.A.C. 7:31-2.15(a) because EHS equipment and facilities may be located throughout the site, all of which would have to be inspected.

"The facility's" was changed to "its" at N.J.A.C. 7:31-2.15(a) because the responsible party in this reference is the registrant.

"Facility's" was changed to "registrant's" at N.J.A.C. 7:31-2.15(b) to be consistent with the amendment made in N.J.A.C. 7:31-2.15(a).

N.J.A.C. 7:31-2.16 Fees

N.J.A.C. 7:31-2.16 has been revised to allow the Department to adjust fees annually, in order to provide a more reliable and sound financial base for the TCPA program, through equitable accounting procedures reflecting costs to the Department of reviewing individual facilities while enabling the Department to continue to administer the program on a self-supporting basis. The changes reflect the recommendation in the Summary of the Hearing Officer's Report and Agency Response for the TCPA fee amendment effective September 3, 1991. The hearing officer, Dr. Gerald Nicholls of the Department, recommended that the Department establish cost and effort accounting procedures and records to annually determine its costs for reviewing individual facilities and administering the TCPA program. Accordingly, he recommended that fees based on an annual review of actual Departmental costs be incorporated into a future rules revision.

The rules now incorporate a formula for determining the unit fees each year. In application of this formula the Department will publish a report each year in the New Jersey Register, establishing the values upon which fees are based for the current year, which began July 1 and will be billed during January of that fiscal year.

The fee structure has been changed from the fixed base fee plus inventory derived fee because the previous structure did not adequately reflect the effort required to administer the registrant's individual risk management program. The proposed annual fee computation incorporates a base fee, a facility-derived fee, and an inventory-derived fee.

The facility-derived fee reflects the incremental effort of the Risk Assessment Section staff to review a facility. It is determined by distributing the annual costs assignable to the Risk Assessment Section staff uniformly over the facilities subject to review at registrant sites.

The inventory-derived fee is based on a fixed rate of $10.00 per hazard unit. This fee also reflects Department review costs as well as providing an incentive for inventory reduction.

The base fee is computed from the remainder after subtraction of the total contributions of the inventory-derived fees and the facility-derived fees from the projected TCPA costs. This remainder is divided by the number of registrants to obtain a base fee unit rate. This fee, while also reflecting Department review costs, serves to ensure that the Department will continue to administer the TCPA program on a self-supporting basis.

Exhibit 1 of this Summary illustrates calculation of fees of individual registrants in representative categories based on fiscal year (FY) 1993 program costs.

Changes to N.J.A.C. 7:31-2.16(j) concerning water treatment and/or wastewater treatment systems reflect their requirement to pay a single base fee and a facility-derived fee for one facility only, regardless of the actual number of facilities or systems, better reflecting the Department's actual costs for review effort.

Former N.J.A.C. 7:31-2.16(k) has been deleted, since the fee requirements are now stated at revised N.J.A.C. 7:31-2.16(m).

N.J.A.C. 7:31-2.16(o) has been added to include the fee requirement for a registrant who temporarily discontinues EHS use and storage pursuant to N.J.A.C. 7:31-2.5(i).

Former subsections (o) and (p) have been recodified as (q) and (r).

N.J.A.C. 7:31-2.16(p) has been added to include the fee requirement for an owner who has leased portions of his or her site to more than one facility operator.

N.J.A.C. 7:31-2.17 Required signatures and certifications

At N.J.A.C. 7:31-2.17, required signatures and certifications have been amended to clarify which individuals provide certifications, and which documents, not previously specified, shall contain the required signatures. It is also amended to clarify that documents will not be considered complete by the Department unless certified as required. The changes provide consistency with the language in other Departmental rules. At N.J.A.C. 7:31-2.17(a), "risk management program descriptions" has been deleted, since such descriptions are already implicit in the consent agreements referred to N.J.A.C. 7:31-2.17(d). "Exemption requests" and "annual exemption reaffirmations" have been added to

N.J.A.C. 7:31-2.17(a), since these require certification to assure accountability. The words "required by" have been replaced with the appropriate word "at."

In N.J.A.C. 7:31-2.17(a)1 it is now specified that the highest ranking individual with direct knowledge and overall responsibility for the information in the pertinent documents shall sign the certification, instead of the highest ranking official at the site to which the information pertains. This change is intended to insure that the person who signs the certification has both direct knowledge of the document content and overall responsibility for the document preparation and review even if that individual is not located at the site. The individual need not have overall responsibility for implementation of the TCPA program.

In N.J.A.C. 7:31-2.17(a)2i clearer definition is provided of persons who will attest to the truth, accuracy and completeness of submittals.

N.J.A.C. 7:31-2.17(d) has been added to specify the responsibility of the person who shall sign consent agreements and their addenda is that he or she shall be able to implement the items agreed.

N.J.A.C. 7:31-2.17(e), a new subsection, requires that each item of correspondence be signed by the responsible manager or person whose name is on the registration form.

N.J.A.C. 7:31-2.18 Criteria for selecting independent consultants

At N.J.A.C. 7:31-2.18(b), to facilitate enforcement, it is now stated that the registrant shall not submit the name and proposal of any consultant who fails to state in its written proposal that it will not subcontract EHSARA work, or fails to state that it will not change the staff named to do EHSARA work, unless approved in writing by the Department in each case. Subsection N.J.A.C. 7:31-2.18(c) is deleted due to this consolidation.

N.J.A.C. 7:31-2.19 Exemptions for non-contiguous EHS equipment

N.J.A.C. 7:31-2.19 is revised to reflect site specific criteria to be used by the Department to grant exemptions from the requirements of N.J.A.C. 7:31-3. A hazard analysis, dispersion analysis and consequence analysis now are required to determine potential off-site impact in all cases.

Obtaining an exemption will no longer require that the subject equipment be located at least 100 meters from the property line, which is the Gaussian model validity limit, and 100 meters from other EHS equipment, since this criterion does not prove appropriate in many specific scenarios. Instead, the registrant must perform a hazard analysis on the subject equipment, and identify all release points, quantities, rates and durations of release. The hazard analysis is then followed by a dispersion and consequence analysis for each scenario, using specified modeling conditions. The exemption will be granted if this analysis shows that the concentration criterion does not extend beyond the site boundary. Otherwise the risk management program of the site must include the subject equipment. Combination of releases from different pieces of equipment meeting the exemption criteria must also meet the exemption criteria. Combination of a release from equipment meeting the exemption criteria with a release from equipment that does not would be addressed under risk assessment (N.J.A.C. 7:31-3.9) only. However, an exemption would be granted, if the uncombined release meets the criteria.

The procedures required will yield accurate findings upon which to base the granting of an exemption, greater confidence in the appropriateness of the exemption, and applicability at more sites.

At N.J.A.C. 7:31-2.19(a)3, the words "which is the boundary closest to the point of release" were deleted because the closest boundary is not necessarily the only direction to be addressed in modeling.

At new N.J.A.C. 7:31-2.19(b)3, to facilitate the review exemption request, the rules now require a process flow diagram and procedures which small remain managed by the RMP if the exemptions are granted.

To assure continued safety, N.J.A.C. 7:31-2.19(e) has been added to require a registrant with an exemption for non-contiguous EHS equipment to reaffirm annually that the information submitted to obtain the exemption has not changed, including changes outside site boundaries which may impact earlier findings of the consequence of the potential release.

At new N.J.A.C. 7:31-2.19(f), pursuant to these rule changes on non-contiguous equipment exemptions, the Department reserves the right to rescind any prior exemptions if deemed inappropriate.

N.J.A.C. 7:31-2.20 Exemption for contiguous EHS equipment

N.J.A.C. 7:31-2.20 has been added to allow registrants the option of exempting contiguous EHS equipment from most of the provisions of N.J.A.C. 7:31-3 if the equipment meets essentially the same requirements for exemption as non-contiguous equipment. But unlike non-contiguous EHS equipment which relates to an entire process or unit, contiguous EHS equipment evaluated for exemption can related to only a section of the process. In order to verify the exemption effectively, it will be necessary to identify on the process flow diagram the interface between EHS equipment requested for exemption and the remainder. In addition, the procedures that will be affected such as filling, scrubbing, etc., shall also be identified. A hazard analysis, dispersion analysis and consequence analysis are required to determine potential off-site impact in all cases.

All scenarios must be considered for potential off-site population exposure, including scenarios involving the failure of flow-restricting devices between contiguous pieces of EHS equipment.

The exempted, contiguous EHS equipment must be maintained properly so that equipment failures do not occur which could impact adjacent equipment. To assure good maintenance practices are followed, the designated equipment must be maintained in accordance with the provisions of N.J.A.C. 7:31-3.6 because unlike non-contiguous EHS equipment which may be exempted under N.J.A.C. 7:31-2.19, the equipment that is contiguous should be subject to a formal program to maintain its mechanical integrity. The equipment is exempted from all other provisions of N.J.A.C. 7:31-3.

N.J.A.C. 7:31-3.3 Risk management program

The words "and process design criteria" were deleted from N.J.A.C. 7:31-3.3(c)1 because, through experience gained in the implementation of the TCPA, the Department has determined that the requirements of process design criteria would be satisfied by meeting the requirements at proposed N.J.A.C. 7:31-3.3(c)19, criteria for design and operation used at the site.

At N.J.A.C. 7:31-3.3(c)2, "report of book value balance of inventory" replaces "Facility inventory" to be more precise, and the phrase "for the past 12 months" is added to be consistent with changes at N.J.A.C. 7:31-2.5(c). Also, a requirement of the frequency of inventory reconciliation is added; it reflects standard procedures of auditing and accounting that have been found to be normally practiced by many registrants.

The words "and audits" were deleted from N.J.A.C. 7:31-3.3(c)3 for organization and clarity. These requirements are now addressed at new paragraph N.J.A.C. 7:31-3.3(c)22. The words "of new and existing equipment" were added to N.J.A.C. 7:31-3.3(c)3 to be more specific concerning the documentation.

The words "procedures, records and" and "EHS" were added to, and "at EHS facilities" were deleted from, N.J.A.C. 7:31-3.3(c)4 to achieve consistency with the requirements of N.J.A.C. 7:31-3.8, EHS accident investigation procedures.

Reference to piping and instrumentation diagrams was deleted from N.J.A.C. 7:31-3.3(c)5, and added in a new paragraph N.J.A.C. 7:31-3.3(c)6, to emphasize the distinction between these and process flow diagrams.

At N.J.A.C. 7:31-3.3(c)9, "Site-wide" was deleted and "program" added to be consisent with the requirements of N.J.A.C. 7:31-3.10, Emergency response program.

At N.J.A.C. 7:31-3.3(c)15 (formerly N.J.A.C. 7:31-3.3(e)4), the words "fire hazard" have been replaced with "electrical sparking which may cause an explosion or fire," which more precisely convey the intent of this paragraph.

N.J.A.C. 7:31-3.3(d), (d)1, and (e) were deleted to be consistent with the documentation requirements of the eight elements of the risk management program detailed in N.J.A.C. 7:31-3.4 through 3.11.

The words "including job classifications and job descriptions for EHS operators" were added at N.J.A.C. 7:31-3.3(c)10 (formerly N.J.A.C. 7:31-3.3(d)2) to be consistent with the documentation requirements of N.J.A.C. 7:31-3.7, EHS operator training.

At N.J.A.C. 7:31-3.3(c)11 (formerly N.J.A.C. 7:31-3.3(d)3), (c)21 (formerly (e)10), and new c(22), the phrase "for the last three calendar years" was added to establish a reasonable time period for record retention.

At N.J.A.C. 7:31-3.3(c)19 (formerly N.J.A.C. 7:31-3.3(e)8), the words "list of" were deleted, since the term "criteria for design and operation" already constitutes a listing.

At new N.J.A.C. 7:31-3.3(c)22, audit procedures and reports are now required in order to be consistent with N.J.A.C. 7:31-3.11.

N.J.A.C. 7:31-3.4 Safety review of new and existing facilities

In N.J.A.C. 7:31-3.4(a) and (b)1, "state of the art" is deleted since it more accurately applies to use with hazard analysis instead of safety

review. Safety review is more appropriately related to "criteria for design and operation."

At N.J.A.C. 7:31-3.4(a), (b), (b)3 and (b)3ii, the phrase "or modifications" is deleted because the need for a safety review of the design of a modification is now covered by the new section N.J.A.C. 7:31-3.15 rather than by N.J.A.C. 7:31-3.4.

In N.J.A.C. 7:31-3.4(b) "fire water system piping diagrams" and "sewer system piping diagrams" are included as part of the review of drawings. Although these diagrams are mentioned under N.J.A.C. 7:31-3.3(c), it had never been explained at what point they were to be reviewed. They are therefore added at N.J.A.C. 7:31-3.4(b)1 and (d)1 to clarify that these diagrams are to be reviewed during the safety review.

New N.J.A.C. 7:31-3.4(b)1xiv is added so that the safety review of design of a new EHS facilities includes comparison of the proposed operating procedures, normal and abnormal, implicit in the design as documented, with criteria for design and operation. This requirement has existed in practice since the inception of rule implementation to make the safety review of facilities valid, since a facility is the sum of its equipment and procedures.

At N.J.A.C. 7:31-3.4(b)3ii, the requirements for dates of review and date of issue of the report have been added, since they are needed to determine compliance.

At N.J.A.C. 7:31-3.4(c), a window of 12 months is allowed for the performance of the calendar year annual safety review of existing EHS equipment or procedures.

The word "EHS" was deleted and "in EHS service" added to N.J.A.C. 7:31-3.4(d)6i to clarify the Department's intent that any facility handling an EHS at a registered site shall be subject to the safety review rather than the previous interpretation that only those facilities handling more than the registration quantity were subject to the safety review.

The requirements for date of review and date of issue of the safety review report have been added at N.J.A.C. 7:31-3.4(d)6iv, since the reports need to be dated to determine compliance.

N.J.A.C. 7:31-3.5 Standard operating procedures

In N.J.A.C. 7:31-3.5, reference to Material Safety Data Sheets or fact sheets has been moved from (c)12 to (b) since these are not standard operating procedures.

At N.J.A.C. 7:31-3.5(b), a "hardcopy" rather than just a "copy" of the standard operating procedures (SOP) is required to be available to EHS operators to preclude the existence of the SOP in a computer only as an acceptable copy. The existence of a "hardcopy" maximizes the opportunity to EHS operators to be trained in the requirements of the SOP. However, the revision does not require a "hardcopy" of the Material Safety Data Sheets (MSDS) or fact sheets. These may continue to be stored in a computer only.

N.J.A.C. 7:31-3.5(f) was deleted because the Department has determined that an index of EHS operating procedures is not necessary for the implementation or review of the site's risk management program.

N.J.A.C. 7:31-3.6 Preventive maintenance program

The words "on or near EHS equipment" were added to N.J.A.C. 7:31-3.6(a)9 to clarify the Department's intent that only work being performed on or near EHS equipment should be done in accordance with the requirements of the preventive maintenance program.

N.J.A.C. 7:31-3.6(a)9 has been amended to refer to new section N.J.A.C. 7:31-3.17 which includes requirements for contractors performing maintenance work on or near EHS facilities and equipment vendors doing installation work which were previously omitted from this chapter, and also to conform to OSHA regulations, at 29 C.F.R. § 1910.119(h).

At N.J.A.C. 7:31-3.6(a)9, the word "outside" has been deleted, since it is an unnecessary adjective in describing contractors. It is also clarified in this paragraph that the work performed by contractors must be "on or near EHS equipment."

N.J.A.C. 7:31-3.7 EHS operator training

The Department acknowledges that contractors are needed to assist as EHS operators at some sites. Therefore, it has added new N.J.A.C. 7:31-3.7(a)4 which refers to the new section N.J.A.C. 7:31-3.17 for the training of such contracted EHS operators who would operate EHS equipment such as forklifts, trucks, cranes, etc., at a site. The section is adopted from OSHA regulations at 29 C.F.R. § 1910.119(h).

At N.J.A.C. 7:31-3.7(b)3, the words "at the specific EHS facility" were deleted to provide clarification so as to include all personnel on the registrant's staff who are required under TCPA to receive the training detailed in this subsection.

N.J.A.C. 7:31-3.7(e) has been amended to include the words "employee receiving EHS operator training" to identify those employees for which this information must be maintained on the site.

N.J.A.C. 7:31-3.8 EHS accident investigation procedures

In N.J.A.C. 7:31-3.8(a)5i, it is now specified that management review of EHS accident reports "shall result in evaluation of the recommendations of actions or alternatives to be taken to prevent accident recurrence." Also at N.J.A.C. 7:31-3.8(a)5ii, it is specified that procedures for implementing these recommendations shall include assignment of personnel responsible for implementation. The word "decision" was deleted as a modifier of "procedures" to make the requirement more general.

At N.J.A.C. 7:31-3.8(a)5iv, the words "on implementation of risk reduction measures" is added to clarify the requirement that the implementation status of risk reduction measures must be available for review.

At N.J.A.C. 7:31-3.8(b)7i, employee retraining or reassignment is now to be considered as a recommended action when human error is found to be the accident cause and "human error analysis" as a separate activity is deleted as possible recommended action. This change clarifies the goal of the requirement.

At N.J.A.C. 7:31-3.8(c)3, "employee" has been replaced by "human" to include errors by contractors or any other person.

At N.J.A.C. 7:31-3.8(c)3, "by EHS facility" was removed to address the situation in which an EHS accident does occur at a location within a site other than an EHS facility. In addition, the names of any persons who might be at the site and involved in an EHS accident are required to be listed regardless of whether they are an employee or not.

N.J.A.C. 7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives

N.J.A.C. 7:31-3.9, is repealed and a new rule proposed to address more precisely the quantification and standardization of risk assessment and to simplify the hazard analysis/risk assessment process. The revision presents new criteria for triggering a study of possible risk reductions by the registrant. Unlike the criterion in the original rule which was a fixed value of release size within a one hour period regardless of site conditions, each owner or operator subject to the TCPA rule will now determine, subject to Department approval, which potential releases from his or her site will require risk reduction study.

The new approach requires the owner or operator to use a standard method of study of potential releases of EHSs at the site and to identify those EHS releases which are significant, that is, would have off-site health consequences.

The method is illustrated in the flow chart of Exhibit 2—Risk Assessment Procedure at the end of this Summary and requires the owner or operator to determine criteria by which significant potential releases will be identified. First, the registrant determines the cloud-defining concentration (first page) depending on the duration of the release (the acute toxicity concentration (ATC) or a multiple "z" of the ATC). Second, the registrant obtains not only the downwind distance of this concentration within the cloud from the point of release on site using standard dispersion model inputs (second page), but also the downwind distance of the contained cloud defined by a five times higher concentration (either 5ATC or 5zATC). If the five ATC or five zATC cloud extends beyond the site boundary, the registrant will perform a study of risk reduction on the potential release (fourth and fifth pages). If only the ATC or zATC extends beyond the site boundary (third page), the registrant will decide either to perform a study of risk reduction on the potential release or to determine the frequency of release occurrence. If the frequency is equal to or greater than 10^{-4} per year, the registrant will perform a study of risk reduction on the potential release.

The standard method for performing risk assessment that the Department has introduced in this new rule requires a registrant to perform a dispersion/consequence analysis on all maximum release rate or quantity scenarios identified by hazard analysis, in a sequence of decreasing release rate or quantity, until a scenario is found that does not yield an ATC (or equivalent dose) beyond the site boundary. The criterion for performing risk assessment is no longer based on the release being five times the registration quantity (5RQ) or more, as formerly required.

The criterion of 5RQ triggering risk assessment, when applied in actual dispersion analysis, indicated, in many site-specific cases, downwind distances of cloud concentrations that had the potential for significant off-site consequences. In other cases, the 5RQ release indicated no off-site consequences. Therefore, it was evident that a different criterion would

need to be used that avoided these shortcomings while including all significant releases. The procedure of modeling only maximum release scenarios that indicate clouds which extend off-site resolves this question, and avoids over-burdening registrants with excessive modeling runs (see N.J.A.C. 7:31-3.9(d) through (f)).

The risk reduction criteria are intended as a first step to ensure that all large release scenarios are reviewed, that is, those whose clouds have downwind concentrations beyond the site boundary of five ATC or greater. As a second step, the new risk reduction criteria method recognizes that smaller releases, where only one to five times the ATC extends beyond the site boundary, do not necessarily need to be reviewed if they are infrequent. However, the option of proceeding directly to state of the art review is retained for such smaller releases, independently of frequency, to allow the registrant to avoid the burden of frequency determination, which often entails lengthy fault-tree analysis.

If frequency determination is chosen, the scenario is compared with the criterion of 10^{-4} per year. This value would translate into an individual risk of fatality of approximately 10^{-7} per year, when wind speed, stability, direction and other factors such as indoor concentration attenuation are taken into account. Risks at this level are considered acceptable, since they are more infrequent than acts of God or nature. (See the publications of T. Kletz, *Reliability Engineering, 3* (1982) and of R. Prugh, *Proceedings of the International Congress on Hazardous Materials Management,* Chattanooga, Tenn. (6/87)).

To assist registrants in selecting appropriate failure rate and release frequency data, the Department has prepared a guidance document offering examples of commonly used data bases. Registrants may use these data bases, or upon Department approval, any other appropriate data, generic and site-specific. In this document, frequency of release, in events per year, is listed for many common release occurrences, such as, "pump failure to stop" and "pressure vessel catastrophic rupture."

Specific methods of hazard analysis and criteria for other acceptable methods are included at N.J.A.C. 7:31-3.9(c).

Dispersion and consequence analysis procedures are set forth in detail in the revised rule (see subsection (d)). Using an atmospheric dispersion model appropriate to the scenario with capability to accept specified inputs, the registrant must follow the step-by-step procedures provided so that a decision may be made on whether or not state-of-the-art risk reduction measures shall be reviewed and a plan to reduce consequences or release frequency or both shall be developed (see N.J.A.C. 7:31-3.9(d), (e) and (f)). Details are then given on what specifically should appear in the risk assessment report. This report incorporates information and summarizes data previously included in what was known as the hazard analysis report. This new report format will facilitate review by the responsible manager and the Department of significant potential releases (see N.J.A.C. 7:31-3.9(g)).

It is anticipated that for certain registrants the number of necessary dispersion analysis runs will increase substantially, although for others the number will decrease. For example, if scenarios with the highest potential release rates or quantities do not result in off-site impact, the registrant does not need to run any additional scenarios.

The Department will publish a source document for risk assessment which includes acute toxicity concentration data and likelihood/frequency data and will provide on-going dispersion modeling guidance in cooperation with registrants in meeting requirements.

Use of Haber's rule is introduced as a requirement in the revised rule to obtain an equivalent dose of the ATC one-hour downwind distance concentration criterion in cases where the release duration (or appropriate exposure time) is less than one hour. Haber's rule states that for a given toxicological effect the product of concentration and exposure time is essentially constant, except at short exposure times (less than one quarter hour) where the rule is shown empirically to be invalid. As an example for use of Haber's rule, consider a continuous chlorine release for 10 minutes resulting in an exposure to a receptor for approximately 10 minutes. Chlorine has an ATC of 13.7 ppm for 1 hour exposure. The adjusted concentration criterion becomes 13.7 ppm divided by the minimum time allowed, 0.25 hr, or 54.8 ppm. The same computation would be performed in the case of an instantaneous release of chlorine, if exposure to the cloud as it travels downwind is less than one-quarter hour (refer to N.J.A.C. 7:31-3.9(e)2).

Use of Haber's rule will not be allowed for specific EHSs whose ATCs are based on animal tests of less than one hour, since computed concentrations would then be too high and therefore would underpredict downwind distances. These specific EHSs are as follows: hydrogen cyanide, ketene, arsine, methyl chloroformate, methyl dichlorosilane, methyl fluoroacetate, nickel carbonyl, phosphorous trifluoride, sulfur monochloride, thionyl chloride and trimethylchlorosilane. In these cases, registrants must use the ATC.

In the process of simplifying the entire N.J.A.C. 7:31-3.9, subsections relating to "hazard analysis" as a separate entity have been consolidated with those relating to "risk assessment" (see N.J.A.C. 7:31-3.9(c), (g) and (h)). In addition, subsections relating to existing facilities have been combined with those relating to new facilities (see N.J.A.C. 7:31-3.9(c), (g) and (h)).

Additional requirements have been added to assist in expediting review. Date(s) when hazard analysis and dispersion/consequence analysis were conducted must be identified (see N.J.A.C. 7:31-3.9(g)1). Procedures such as status reports to ensure that the risk reduction measures are implemented must now be employed by the responsible manager (see N.J.A.C. 7:31-3.9(i)).

N.J.A.C. 7:31-3.10 Emergency response program

N.J.A.C. 7:31-3.10(a)2 through 8 were deleted and restated at new paragraphs (a)6 and (a)7. These paragraphs were deleted because there was much confusion among registrants on the correct format of addressing these items in the written emergency response program document. A description of the items in these paragraphs is provided in the emergency response plan. The determination on the adequacy or need of each of these items has been required in the written assessments performed with each emergency response exercise.

The word "required" was added and "protective" deleted from recodified N.J.A.C. 7:31-3.10(a)2iii (formerly N.J.A.C. 7:31-3.10(a)9iii) so as not to limit equipment to "protective" equipment, but to afford site personnel any equipment that would limit their exposure to the EHS and assist in their evacuation.

N.J.A.C. 7:31-3.10(a)3 has been expanded to include training whenever the emergency response team member's responsibilities change or the plan changes. This has been done to ensure that all emergency response team members are able to implement effectively the site's current emergency response plan.

"EHS release" was added to N.J.A.C. 7:31-3.10(a)3vii (formerly N.J.A.C. 7:31-3.10(a)10vii) to ensure that emergency response training focuses on scenarios involving EHS releases.

At N.J.A.C. 7:31-3.10(a)4 (formerly N.J.A.C. 7:31-3.10(a)11), "exercises for EHS facility emergency response teams and the site wide emergency response team" is added to clarify the Department's position that two levels of emergency response staffing are needed, one for the site and one for each EHS facility. "Exercise" has replaced "drill" as a more appropriate term, since "exercise" relates to activities that are not as repetitive and standard as the word "drill" connotes. N.J.A.C. 7:31-3.10(a)4i, 4ii and 5iii that follow provide greater detail on exercise schedules and requirements. The number of exercises required to be performed now applies to the team rather than individual team members, since the purpose of the exercise is to demonstrate the effectiveness of the emergency response plan. The EHS facility team is now required to participate in at least one real life (other than tabletop) exercise per calendar year to make certain that the EHS facility emergency response plan is fully demonstrated at least once annually; previously the type of exercise was open to interpretation. In addition the rule now specifies that both annual exercises of the site wide emergency response team assume that the ATC of the EHS extends beyond the site boundary, since it is those scenarios that engage the site wide team in an emergency response event.

"Site" is deleted from "site emergency response team" and names of those participating is added at N.J.A.C. 7:31-3.10(a)5iii (formerly N.J.A.C. 7:31-3.10(a)12iii). Thus, the requirements of the assessment apply to exercises either of the site or of the EHS facility. The names of personnel participating is included so the registrant will demonstrate that the minimum number required has participated.

The phrase "adequacy of onsite and offsite emergency response communication systems" is moved from N.J.A.C. 7:31-3.10(a)12v to be a part of new N.J.A.C. 7:31-3.10(a)6. The phrase "a record of events" is moved to N.J.A.C. 7:31-3.10(a)5iv from former N.J.A.C. 7:31-3.10(a)7 because a chronological description of the implementation of the exercise is needed to perform the assessment and also to review and evaluate the accuracy of the findings in the assessment.

Former N.J.A.C. 7:31-3.10(a)12vi was deleted because for organizational purposes emergency power and lighting systems are addressed at the new N.J.A.C. 7:31-3.10(a)6ii.

N.J.A.C. 7:31-3.10(a)6 has been added to include a written assessment after each emergency response exercise of the adequacy or need for various categories of emergency response equipment. Previously N.J.A.C. 7:31-3.10(a)4 through 8 required registrants to determine the need for various emergency response equipment. The Department has decided that this can be done most effectively as part of the study of the emergency response exercise assessment.

N.J.A.C. 7:31-3.10(a)7 has been added to provide a requirement for a remedial action plan and schedule for completion of inadequacies identified in the emergency response exercise. This requirement has been added because in the review of past emergency response exercise assessments, there have been many instances where there was a lack of followup on recommendations that had been made. The requirement will ensure that recommendations identified in the assessment are resolved.

N.J.A.C. 7:31-3.10(a)8 and 9 (formerly N.J.A.C. 7:31-3.10(a)13 and (a)14) have been amended to delete the time frame for compliance with the rules on meteorological stations and EHS detection equipment, because various time frames for meeting these requirements may be better established by the Department on a case by case basis. Current registrants have installed meteorological stations. This requirement applies to all future new registrants.

"EHS release" was changed to "EHS accident" throughout N.J.A.C. 7:31-3.10(b) because only unintended or unplanned releases need to be reported under TCPA.

At N.J.A.C. 7:31-3.10(b)7iii(1) through (3), "which means" was deleted and "or that" was inserted to clarify that the notification requirement may be the descriptive term or the full description.

N.J.A.C. 7:31-3.10(b)7iv, the phrase "place a second call to the Department within 15 minutes of the first notification and" was replaced with "be prepared to" to reflect actual operating procedures of the Department.

N.J.A.C. 7:31-3.10(b)7v has been added so that minor accidental releases with no chance of an off-site impact or other consequences are not reported to the Department's emergency communications center. In the past many such minor releases have been reported which resulted in the needless deployment of various state, county and local response organizations.

N.J.A.C. 7:31-3.10(b)10 has been revised and expanded to define the "coordination" with the Local Emergency Response Committee (LEPC) more precisely and explicitly. The expanded version provides a greater probability for planned participation of the LEPC in emergency response exercises and ensures that the emergency response plan is compatible with the objectives of the N.J. State Police.

N.J.A.C. 7:31-3.10(b)14 has been added to refer to N.J.A.C. 7:31-3.17 which specifies necessary procedures for registrants who hire contractors to perform emergency response work. These procedures will help ensure that the contractor hired by the registrant will be informed of the registrant's emergency response program. These procedures will help maintain safety for all parties concerned and ensure that the registrant's emergency response plan is more effectively implemented when contractors are used.

N.J.A.C. 7:31-3.11 Audit requirements for risk management programs

At N.J.A.C. 7:31-3.11(b)1i, it is now specified that the RMP checklist must be completed during the final three months preceding the anniversary date of the RMP to correspond to the requirements of N.J.A.C. 7:31-3.13(a)3. Completion during the final three month period is specified because answers to the checklist questions should reflect the current status of the RMP, including items completed during the year prior to the anniversary date.

At N.J.A.C. 7:31-3.11(b)2, the term "independent consultant" has been deleted and replaced with the term "its consultant or both" so as to make clear that the consultant in this case may be selected by the registrant which differs from the consultant selected for the EHSARA as in N.J.A.C. 7:31-2.18.

N.J.A.C. 7:31-3.12 Summary risk management program statement

At N.J.A.C. 7:31-3.12(a)1, the first sentence on the kind of description of the RMP is replaced with language similar to that at N.J.A.C. 7:31-2.6(e)1, since this provision is more descriptive of what is required.

At N.J.A.C. 7:31-3.12(a)2 and (a)3, changes were made to clarify the Department's intent that any EHS equipment operated by a registrant is subject to the provisions of the TCPA unless granted an exemption pursuant to N.J.A.C. 7:31-2.19 or 2.20 or both.

N.J.A.C. 7:31-3.13 Annual reports

At N.J.A.C. 7:31-3.13(a)1, reference to N.J.A.C. 7:31-3.12(a)1 has been deleted and replaced with N.J.A.C. 7:31-2.6(e)1, since N.J.A.C. 7:31-2.6(e)1 provides a more thorough description of the kind of submittal required and who will be involved, and therefore promotes greater program efficiency.

The words "Section D of" were deleted from N.J.A.C. 7:31-3.13(a)2 to make this section compatible with N.J.A.C. 7:31-2.5(e).

N.J.A.C. 7:31-3.13(a)7 was deleted because the Department has determined that submissions of a copy of the changes to the site's emergency response plan during the previous 12 months is not required. The changes will be reviewed during the annual inspection by the Department.

At N.J.A.C. 7:31-3.13(a)8, a change is made to require submittal of the entire updated catalog of documents rather than just the updated pages. The catalog must be reviewed by the Department in its entirety to evaluate consistency and completeness.

N.J.A.C. 7:31-3.14 Risk management program checklist

As amended in N.J.A.C. 7:31-3.14(a), the RMP Checklist is now designated STP-011. The availability of the Checklist from the Department is now made explicit.

N.J.A.C. 7:31-3.15 Management of modifications (change) to EHS equipment and procedures

New section N.J.A.C. 7:31-3.15 has been added as described in N.J.A.C. 7:31-2.11, Modification to EHS equipment and procedures, above. The language of this new section reflects that of the Occupational Safety and Health Administration (OSHA) Process Safety Standard, 29 C.F.R. § 1910.119(l), "Management of Change." Each registrant with an "approved" risk management program will, in advance of implementing any change to EHS equipment or procedures, establish criteria to categorize the proposed change as one which is minor or significant. Changes which the registrant, by applying the criteria, determines to be minor will require a lower level of effort, documentation and paperwork by the registrant. The criteria to categorize the proposed change will reflect the possible consequences of releases of EHS. The Department expects that registrants will be able to formulate the criteria from the results of previous risk assessments available in their files.

N.J.A.C. 7:31-3.15(b) exempts two categories of modifications from the requirements of subparagraph (a)5ii, namely, those based on findings of risk assessments and those based on EHS accident investigations. These modifications are actually implementations of risk reduction measures, and assessment of their effects would already have been part of the initial findings.

N.J.A.C. 7:31-3.15(c) also requires that changes in risk management program administration be subject to preplanning to avoid lapses which might result from personnel actions.

N.J.A.C. 7:31-3.16 Obligations upon temporary discontinuance of EHS use, storage and handling

New section N.J.A.C. 7:31-3.16 has been added to address requirements for safety review, preventive maintenance and operator training that a registrant who temporarily discontinues EHS use or storage must observe pursuant to the new section N.J.A.C. 7:31-2.5(i). These revisions codify existing Department practice for those registrants who "campaign" the use of EHS's or who temporarily discontinue EHS use or storage for other reasons.

N.J.A.C. 7:31-3.17 Contractors and contractor employees

New section N.J.A.C. 7:31-3.17 has been added to deal with special procedures for registrants who hire contractors to perform activities involving the handling of EHSs. This new section specifies the requirements concerning activities of EHS operators and of EHS emergency responders, supplied by contractors, and also amplifies the existing requirement in N.J.A.C. 7:31-3.6(a)9 that work performed by outside contractors will be done in accordance with the requirements of the preventive maintenance program.

In addition, this section makes explicit that temporary employees hired directly, or hired from non-employer agencies, are already covered by the rules in the same way as permanent employees. Such temporary employees report directly to the registrant as do permanent employees, unlike contractor employees who report directly to the contractor management.

As used in this rule, contractors would include equipment vendors installing EHS equipment. Non-employer agencies would include union halls, temporary employment agencies, and other suppliers of labor such as shippers.

N.J.A.C. 7:31-4.4 Site data

The words "EHS facility documents" were deleted from N.J.A.C. 7:31-4.4(a) to clarify the intention of having only one list of documents submitted to the Department.

N.J.A.C. 7:31-4.5 Generic scope of work

In N.J.A.C. 7:31-4.5(a)3i, changes have been made to narrow the scope of the requirement for process chemistry review to concerns related to the prevention of toxic catastrophes rather than to all possible concerns related to EHS reactions.

N.J.A.C. 7:31-4.5(a)3ii has been added to include requirements for review or creation of criteria for design and operation, because the criteria for design and operation are important components of an RMP.

At N.J.A.C. 7:31-4.5(a)4, the requirement for safety review is changed from one based on N.J.A.C. 7:31-3.4(b) and (d) to one based on N.J.A.C. 7:31-3.4(d) that applies to safety review of existing facilities, but augmented with requirements in this section selected and adapted from N.J.A.C. 7:31-3.4(b). This was necessary since work plan is intended for existing facilities of registrants who do not have an RMP. The full requirements of a safety review for new facilities (N.J.A.C. 7:31-3.4(b)) are not needed for existing facilities. Consequently, a rational sequence of the work plan scope is developed.

Additional requirements for safety review documentation are added at N.J.A.C. 7:31-4.5(a)4i.

At N.J.A.C. 7:31-4.5(a)4iii(3), the term "EHS" is deleted from "EHS facility" to clarify the Department's intent that any facility handling an EHS is part of the site plan review.

The year "1987" is deleted from N.J.A.C. 7:31-4.5(a)4iv because this reference to the year of the edition was not necessary since it was stated that the most current edition of this publication should be reviewed.

At N.J.A.C. 7:31-4.5(a)4vi(4), the inclusion of "interlocks" is intended to obtain thoroughness in the review.

Changes have been made in N.J.A.C. 7:31-4.5(a)5 and 6 to reflect revisions of N.J.A.C. 7:31-3.9.

N.J.A.C. 7:31-4.6 EHSARA report

The words "alternatives" and "proposed" are added to N.J.A.C. 7:31-4.6(b)6 in order to clarify that an EHSARA report represents a consultant's recommendations rather than the Department's approved risk reduction plan. This will give the Department optional methods of resolution, since N.J.A.C. 7:31-2.9(k) states that the Department shall review the EHSARA report and prepare a risk reduction work plan, which will be incorporated into an administrative order.

N.J.A.C. 7:31-4.7 Site documentation

At N.J.A.C. 7:31-4.7(a), the words "at the EHS facility" were removed and "in EHS service" added to clarify the Department's intent.

At N.J.A.C. 7:31-4.7(a), the list was removed and instead the reference is made to N.J.A.C. 7:31-3.3(c) in order to unify the requirements of N.J.A.C. 7:31-3 and N.J.A.C. 7:31-4. Therefore, one list was arranged and presented in N.J.A.C. 7:31-3.3(c).

N.J.A.C. 7:31-5 Confidentiality and Trade Secrets

At N.J.A.C. 7:31-5.2(d), the Departmental address from which forms can be obtained has been updated.

At N.J.A.C. 7:31-5.3(a)4, the new designation for the TCPA registration form is added, and the fact that it is no longer set forth in an Appendix to the Rules is indicated by a deletion. Also the final section in this paragraph has been deleted since it no longer pertains.

The references in N.J.A.C. 7:31-5.4(h), 5.5(d), 5.6(a), and 5.6(b) are changed to be consistent with previously noted changes in these rules, and to correct other erroneous citations.

Corrections are made at N.J.A.C. 7:31-5.5(f) in the Departmental address needed to obtain various TCPA forms.

At N.J.A.C. 7:31-5.6(b), "asserting a petition" has been changed to the appropriate phrase "petitioning the Department for the right."

N.J.A.C. 7:31-6 Civil Administrative Penalties and Requests for Adjudicatory Hearings

Revisions are made throughout N.J.A.C. 7:31-6.2 to reflect current principles of enforcement and to clarify previous provisions. The language in N.J.A.C. 7:31-6.2 is made consistent with the Air Permit Program Rules (N.J.A.C. 7:27A) and the Discharge Prevention, Containment and Countermeasures Program (DPCC) (N.J.A.C. 7:1E). N.J.A.C. 7:31-6.2(a) now clarifies which documents are covered by the enforcement procedures and that multiple offenses may be addressed in one or more notices.

N.J.A.C. 7:31-6.2(b) makes clear that compliance of the terms of an administrative order is required in addition to payment of the civil administrative penalty. It also defines when an administrative order, as well as notice of a civil administrative penalty assessment, becomes a final order.

N.J.A.C. 7:31-6.2(c) makes clear that persons who fail to comply with the requirements of the TCPA statute, rule or order issued thereto or who fails to pay a civil administrative penalty thereunder is subject to a civil penalty recoverable with cost in a summary proceeding before the Superior Court and each day's continuance of the violation constitutes a separate and distinct violation.

At N.J.A.C. 7:31-6.3(d), the reference to N.J.A.C. 7:31-2.9 is amended to N.J.A.C. 7:31-2.9(k) for greater continuity with the Act at N.J.S.A. 13:1K-26(b).

N.J.A.C. 7:31-6.4(d) is amended at Table II to close gaps by listing actual violations of this rule that could occur and by adding the citation of the rule provision which the penalty concerns. Prior penalty amounts are adjusted for consistency. In determining the penalty amounts listed in Table II, the Department established higher penalty amounts for those violations which increase the level of extraordinarily hazardous accident risks and for violations of requirements which are most central to the TCPA program. In addition, the level of risk management program development at the site when the owner or operator perpetrates the offense is a factor which the Department will use to set penalty levels. Another such factor is the severity of the impact of the offense on the pace of the Department's efforts to enforce the rule. For registrants with approved risk management programs, penalties for offenses of incomplete records or reports are assessed less than penalties for offenses of lack of timeliness or nonperformance of key risk management program requirements. Finally, the penalty schedule proposal is generally consistent with such schedules of other Department programs.

Further, in N.J.A.C. 7:31-6.4(d) the Department recognizes the possible redundancy of Penalty Item 2 and Penalty Item 4 of Table II. Since a site with an approved RMP which violates N.J.A.C. 7:31-2.4(e) (Penalty Item 4) will also necessarily violate N.J.A.C. 7:31-2.4(c) (Penalty Item 2), when an existing facility is utilized in a new EHS service, the Department would not assess penalties under both provisions in this case.

A new subsection N.J.A.C. 7:31-6.4(e) has been added to specify the factors upon which the Department shall base penalty assessments for violations of provisions of N.J.A.C. 7:31 for which no penalty amount is specified under N.J.A.C. 7:31-6.4(d). (Subsections (e) and (f) have been recodified as (f) and (g).)

At N.J.A.C. 7:31-6.4(g), to facilitate enforcement of these rules, a sentence has been added to allow the Department the discretion to treat an offense as a first offense solely for penalty determination purposes if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

A new subsection N.J.A.C. 7:31-6.4(h) has been added to allow the Department to modify the amount of a penalty on a case-by-case basis, depending upon circumstances and conditions.

Exhibit 1
SAMPLE FEE CALCULATIONS
Site/System, Facility and Inventory Derived

FOOD AND KINDRED PRODUCTS

Registrant data			
Identification	361	362	057
SIC	2,026	2,026	2,099
Number of Hazard Units	1.34	1.44	10.58
Number of facilities	2	2	2
Base Fee	$ 6,800	$ 6,800	$ 6,800
Facility Fee			
At $2,200 each	4,400	4,400	4,400
Inventory derived fee	13.4	14.4	105.8
TOTAL FEE	$11,213	$11,214	$11,305

CHEMICALS AND ALLIED PRODUCTS

Registrant data		
Identification	093	116
SIC	2,869	2,869
Number of Hazard Units	795.6	400
Number of facilities	8	2
Base Fee	$ 6,800	$ 6,800
Facility fee		
At $2,200 each	17,600	4,400
Inventory derived fee	7,956	4,000
TOTAL FEE	$32,256	$15,100

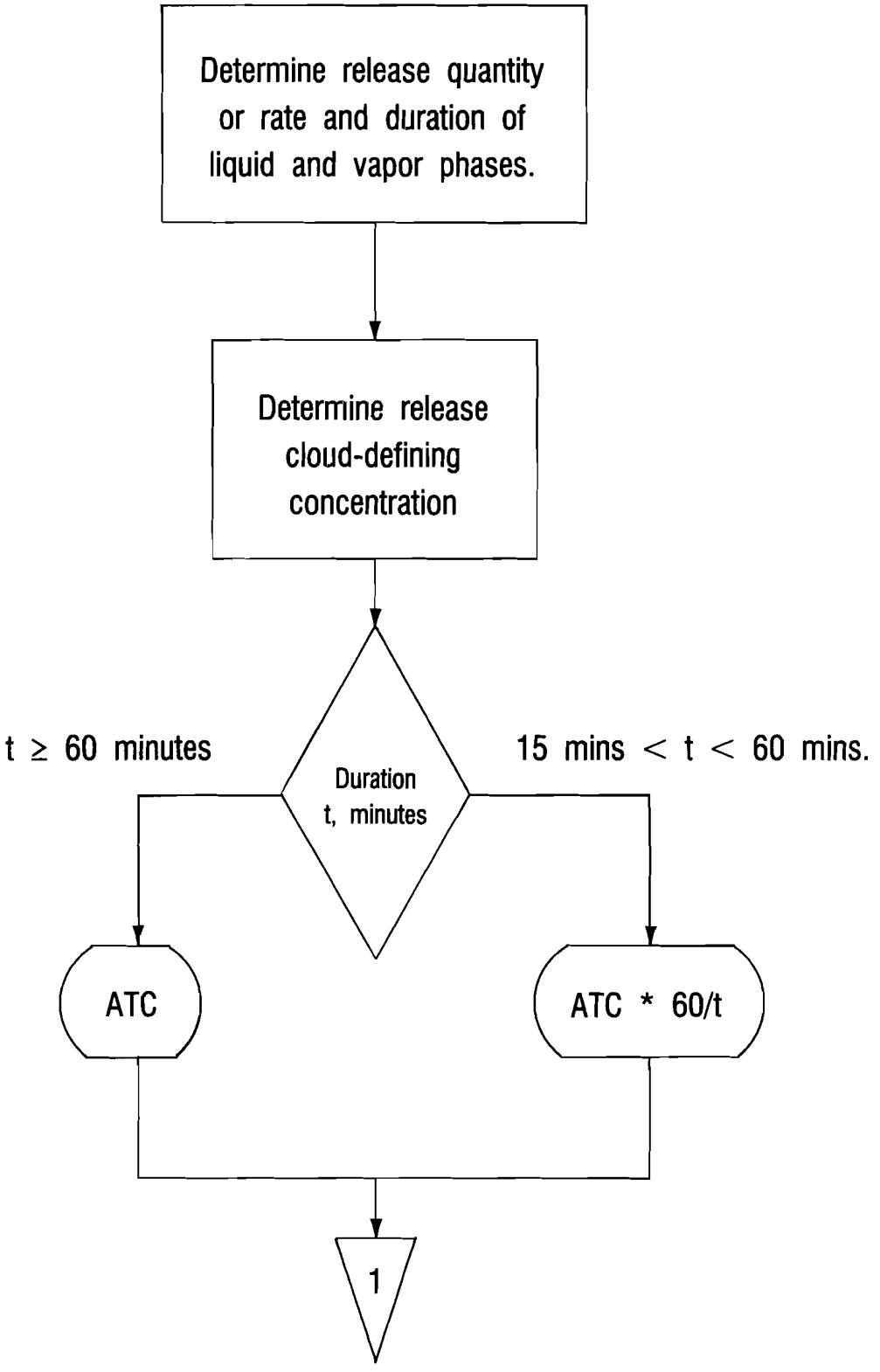
PETROLEUM REFINING

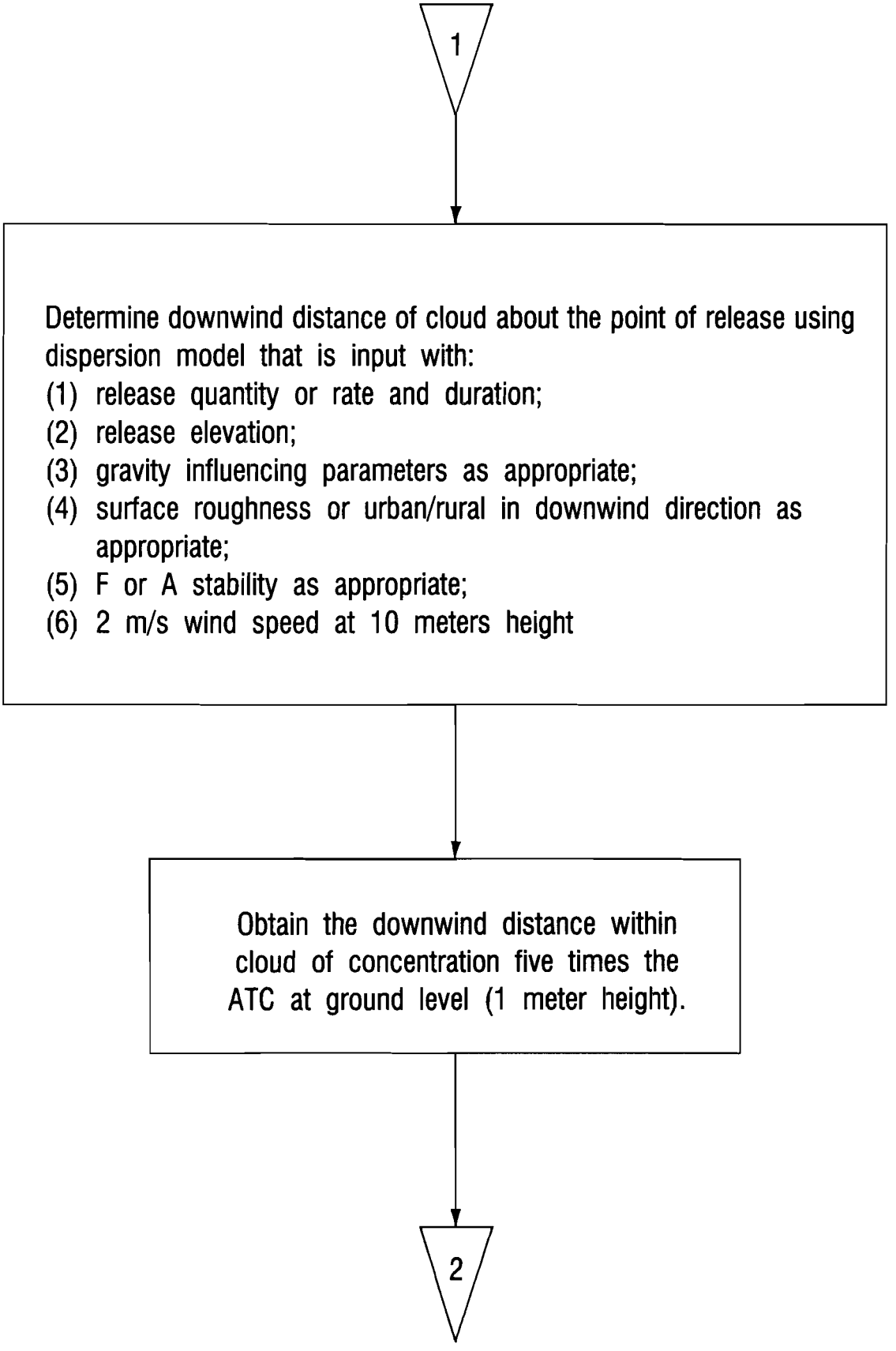
Registrant data		
Identification	094	150
SIC	2,911	2,911
Number of Hazard Units	454.7	486
Number of facilities	9	18
Base Fee	$ 6,800	$ 6,800
Facility Fee		
At $2,200 each	19,800	39,600
Inventory derived fee	4,547	4,860
TOTAL FEE	$31,097	$51,160

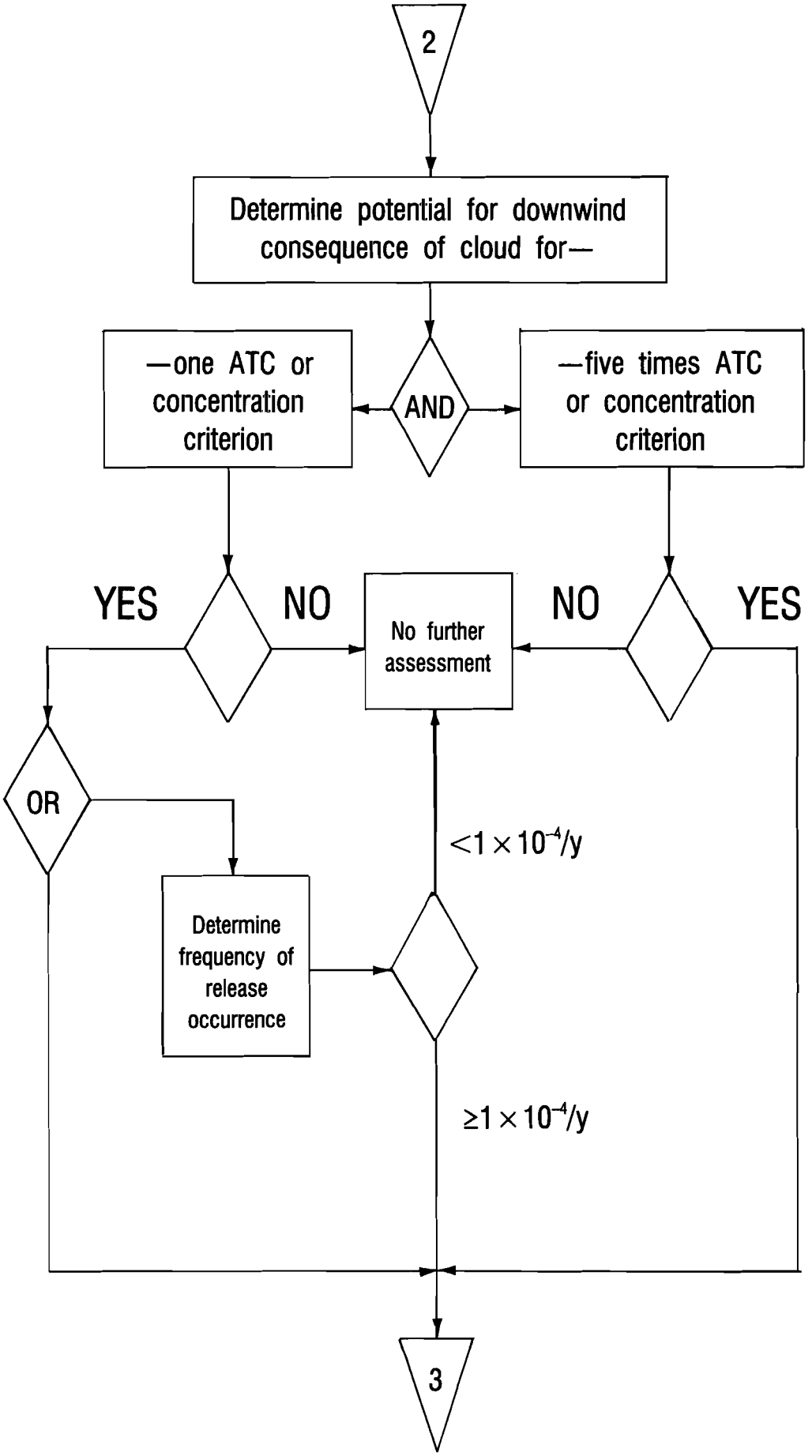
WATER SUPPLY SYSTEMS/SEWERAGE SYSTEMS

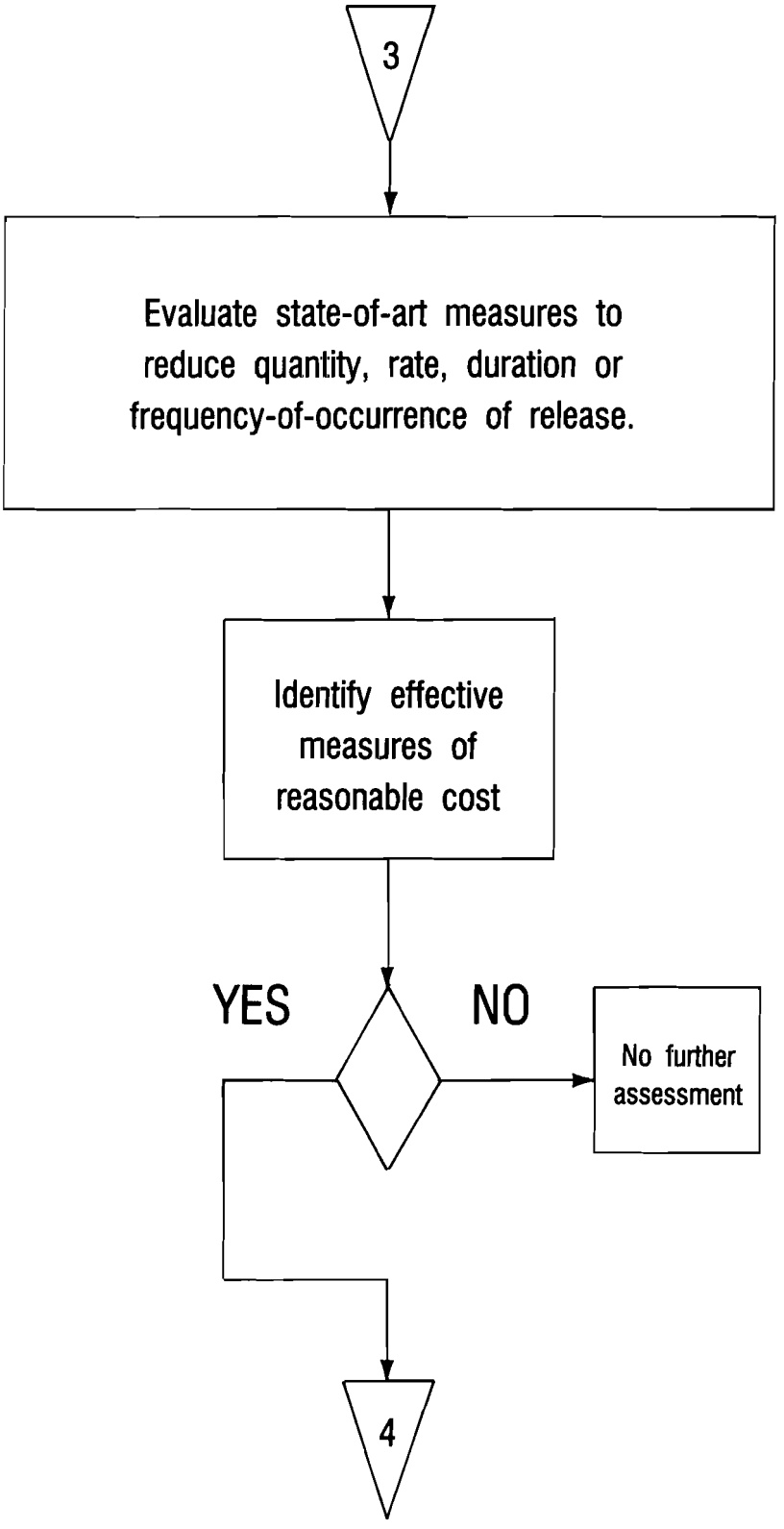
Registrant data				
Identification	301	898	725	612
SIC	4,941	4,914	4,952	4,952
Number of Hazard Units	152.2	44.8	258	46.4
Number of facilities	1	1	1	1
Base Fee	$ 6,800	$ 6,800	$ 6,800	$6,800
Facility fee				
At $2,200 each	2,200	2,200	2,200	2,200
Inventory derived fee	1,520	450	2,580	464
TOTAL FEE	$10,420	$ 9,350	$11,480	$9,364

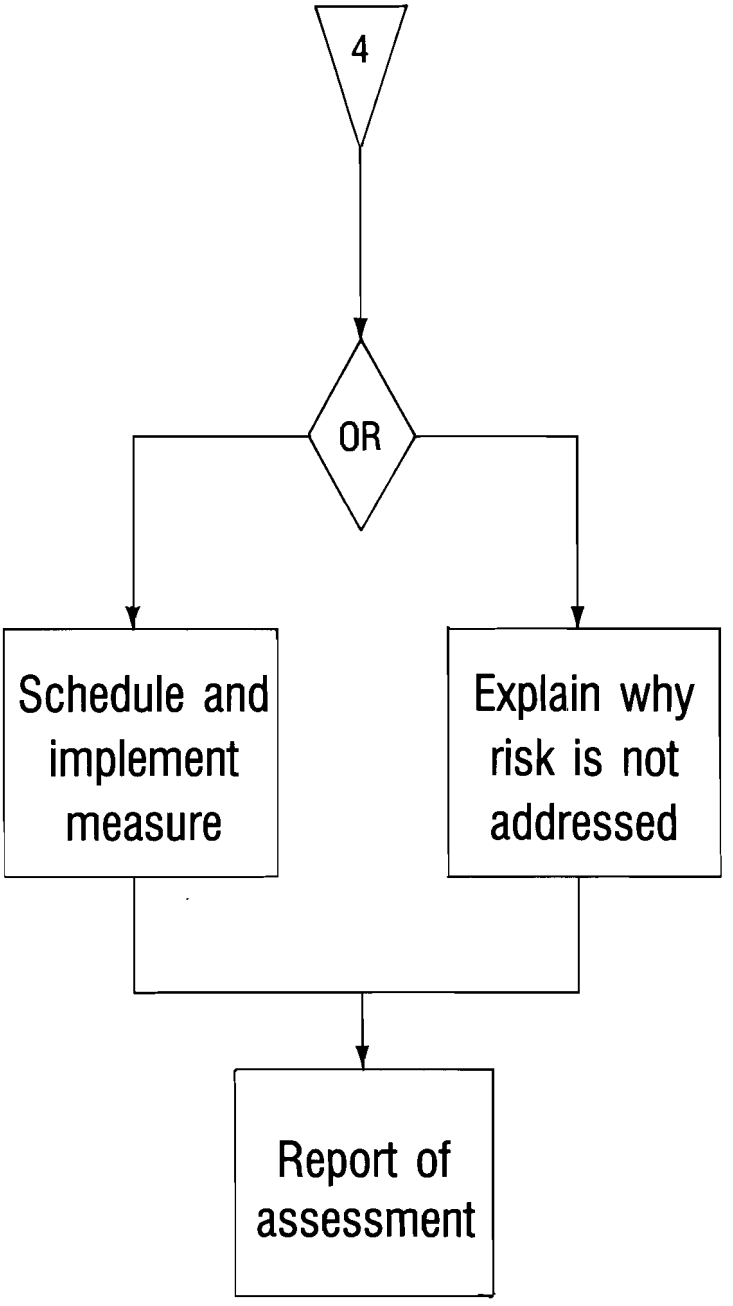
Exhibit 2
RISK ASSESSMENT PROCEDURE




1
Determine downwind distance of cloud about the point of release using dispersion model that is input with:
(1) release quantity or rate and duration;
(2) release elevation;
(3) gravity influencing parameters as appropriate;
(4) surface roughness or urban/rural in downwind direction as appropriate;
(5) F or A stability as appropriate;
(6) 2 m/s wind speed at 10 meters height
Obtain the downwind distance within cloud of concentration five times the ATC at ground level (1 meter height).
2


2
Determine potential for downwind consequence of cloud for—
—one ATC or concentration criterion
AND
—five times ATC or concentration criterion
YES
NO
No further assessment
NO
YES
OR
<1 × 10⁻⁴/y
Determine frequency of release occurrence
≥1 × 10⁻⁴/y
3


3
Evaluate state-of-art measures to reduce quantity, rate, duration or frequency-of-occurrence of release.
Identify effective measures of reasonable cost
YES
NO
No further assessment
4


4
OR
Schedule and implement measure
Explain why risk is not addressed
Report of assessment

Social Impact

The social impact of the rules has been very positive. The rules currently affect 203 facilities widespread over the State at urban, suburban and rural sites. In addition to refining rule implementation detail and resolving areas of confusion in the original rules, the proposed amendments will reinforce features that have contributed to its beneficial social impact. Annual update of the TCPA fees will provide the necessary financial resources to maintain program continuity.

More importantly, the amendments adopt a site specific criteria for requiring risk reduction measures, rather than the original fixed release size criteria that was applied to all sites. Consequently, additional residences adjacent to EHS facilities will receive the benefits of needed risk reduction measures.

More clearly established penalty procedures will result in improved enforcement and improved compliance. The list of penalties has been reorganized to follow the format of these rules with specific cite information added to each item. In some cases the severity of penalty has been increased to assure compliance.

The program has been praised by regulated owners as a complex program to protect the public that works well because of the practical approach embodied in the rules. The proposed amendments will make them more practical.

Economic Impact

The TCPA program increases the costs of doing business for the registrants involved with EHSs. The increased costs include the cost of remedial measures to reduce risks, and the continued implementation of the risk management program including as examples, more frequent safety reviews, hazard analyses, increased maintenance and greater training requirements.

Registrants with ongoing risk management programs encountered some of these costs as part of implementing their risk management programs developed prior to the TCPA program. The increase in cost to these registrants is for continued compliance. For the others, the cost of TCPA has been substantially higher as implementing risk reduction plans required new equipment and operational changes.

Some registrants allocated a greater portion of their operating budgets to safety related expenses. Without TCPA requirements, some registrants may try to limit expenses on safety items to reduce their total operating costs. Compliance with the requirements of this rule requires registrants to make available funds for all necessary safety related expenditures.

The proposed amendments are expected to have some economic impact as a result of changes in the areas of fee restructuring, risk assessments and exemption requests. The impact of fee restructuring should be minimal for most registrants, but significant for others. The impact of revisions in risk assessment and exemption is expected to be significant for most registrants; however, Department guidance on these issues will help minimize their impact. In other areas, economic effects will be non-existent or positive, due to improvements in program efficiency.

The fee structure is revised to obtain two objectives: (1) to administer the program on a self-supporting basis each year; and (2) to assess fees to individual registrants based on costs of reviewing individual registrant facilities.

The current fee structure was adopted September 1991 using the projected FY1991 costs as detailed in Exhibit 3 and September 1991 registrant census and EHS inventory (in terms of hazard units) as the basis. The September 1991 registrant census and EHS inventory values used to base the current fee structure, $6,500 per registrant and $9.20 per hazard unit, amounted to 179 fee paying registrants and 85,000 hazard units of EHS inventory. The 179 registrants translated to 175.25 full base fee equivalents because five of the 179 paid a 25 percent fee since their EHS inventory is less than a registration quantity, and 174 paid a full base fee. The actual operating cost of the TCPA in FY1991 at $2,038,000 (see Exhibit 4) versus the projected at $2,370,000 of FY1991 (see Exhibit 3) reflects the cost savings associated with vacancies of two environmental engineer and environmental specialist positions, an administrative position and a clerical position. Also various non-staff expenditures were taken at lower levels than shown by Exhibit 3.

However, as shown by Exhibit 5, the current fee structure does not produce sufficient revenue for a self-supporting TCPA program: $1,820,950 revenues (versus $2,007,000 operating costs) for FY1992, and $1,483,075 (versus $2,255,000) for FY1993. The shortfalls in revenues reflect the decline of both fee-paying registrants and EHS inventories in December 1991 for FY1992 and in December 1992 for FY1993, compared to their fee base values of September 1991. Full base fee equivalents declined from 175.5 in September 1991 to 165.5 in December 1991 and to 134.75 in December 1992 reflecting the following census:

	September 1991	December 1991	December 1992
Full Base Fee	174	164	133
25% Full Base Fee	5	6	7
Full Base Fee Equivalent	175.25	165.5	134.75

Inventories of fee paying registrants, in terms of hazard units, declined from 85,000 in September 1991, to 81,000 in December 1991, and to 65,000 in December 1992.

With this proposal, instead of fees being fixed at the same values year after year, the unit fees will be adjusted annually so that each year revenues will match TCPA operating cost. In its proposal to adjust annually the unit fees the Department includes a parameter that reflects the Department's annual effort on behalf of each registrant more fully than the parameters of registrant census and EHS inventory alone. The Department's review of the program found that its direct effort on behalf of each registrant was determined to a great degree by the number of EHS facilities owned or operated by the registrant. The estimated number of EHS facilities of fee paying registrants amounted to 404 in September 1991, 394 in December 1991 and 317 in December 1992.

The revised fee structure consists of a base fee, a facility-derived fee and inventory-derived fee. The rule includes provision for annual adjustment of the base fee and the facility-derived fee to meet estimated program expenses each year in accordance with the Act's directive to assess fees based on the costs for reviewing individual facilities. The components of the fee that reflect the Department effort are an inventory-derived fee and a facility-derived fee. The facility-derived fee reflects the efforts of the Department's Risk Assessment Section staff of eight members (six chemical safety engineers and two acting chemical safety engineers). The base fee reflects services of the other staff and the remainder of necessary program expenses.

Unit fees of the proposed fee structure are presented by Exhibit 7 based on parameters of registrant census, EHS inventory and EHS facility census of Exhibit 6. The FY1993 unit fees of the proposed fee structure compare with current unit fees as follows:

	Current unit fees, FY1993	Proposed unit fees, FY1992 scenario
Base fee, each registrant	$6,500	$6,800
Inventory-derived, each hazard unit	$9.20	$10.00
Facility derived, each EHS facility	None	$2,200

The proposed fee structure includes a new fee category of registrant, namely, a water system registrant which pays a full base fee plus only one facility fee, regardless of the number of its facilities.

Accordingly, there will be redistribution of the TCPA program cost burden among the registrants. Furthermore, registrants with more than one facility will pay higher fees than those with one facility, except in the cases of waste or potable water treatment systems which pay for one facility regardless of the number of facilities at their sites. The new fee category better reflects the Department's actual cost for review.

The unit fees of the proposed fee structure will depend on projected Department costs and fee parameters. As shown by Exhibit 4, the Department expects that it shall be able to handle the TCPA program in FY1994 at a salary level that reflects the same staff level as FY1993. The estimate reflects the uncertainty in projecting the census of registrants, EHS facilities and EHS inventories in September 1993. The two cases of projections in Exhibit 6 reflect: (1) an assumption that September 1993 registrants census total will be the same as at December 1992 (Case 1); and (2) a projection from a review of recent evidence that three registrants which otherwise pay full base fee will deregister prior to September 1993 and an assumption that EHS inventories will continue their steady decline reflecting the impact of the continuance of the inventory-dervied fee (Case 2).

The Department anticipates an increase in the number of TCPA registrants by the time FY1995 fee levels are determined. By that time the Department expects to add to its list of EHSs those substances adopted by the USEPA in its list of extremely hazardous substances as required by Section 112 of the Clean Air Act Amendments of 1990, which are not presently included in the TCPA list. The increase in TCPA

registrants could be substantial. The program budget of FY1994 (Exhibit 4) includes a salary level which reflects a mandated five percent raise, corresponding increases in fringe benefits and indirect expenses, and no change in operating costs.

The contributions of the elements of the proposed fee schedule to the total fee billing of a particular FY result from multiplying the respective unit fees listed in Exhibit 7 by the corresponding census equivalent values. For example, for Case 1 scenario using FY1993 values as a basis, the contributions of the fee elements are calculated as follows:

Fee Element	Census Equivalent	Unit Fee	Contribution
Base Fee	134.75	$6,783	$ 914,000
Facility-derived Fee	317	$2,180	691,000
EHS Inventory Fee	65,000	$ 10	650,000
		Total Fee Billing	$2,255,000

As previously, a registrant will still have the opportunity of reducing its annual fee by reducing EHS inventory. In addition, a registrant may reduce its annual fee by reducing the number of facilities at its site.

In these ways, the registrants also have some control over reducing program costs to the Department that would reduce their next annual fee. Concurrently, the Department will strive to reduce program costs, by reviewing staffing assignments not less than annually, as part of the budget process, to eliminate waste and over-staffing if such exists.

Increased detail in the performance of risk assessment, including the requirement for dispersion modeling and release frequency estimation for each release scenario, may increase some registrant's workload substantially. However, the Department is taking steps to reduce the possibility of excessive costs to the registrants, especially to reduce the extent of consultant's services by preparation of risk assessment guidance documents which will provide frequency of release occurrence data, details on selection of release scenarios and modeling techniques.

Increased detail in obtaining exemptions for non-contiguous equipment on a site-specific basis may also require additional effort and cost, but, as with risk assessment, the Department will provide guidance and assistance to reduce these costs. New benefits to the registrant will be exemptions for contiguous as well as non-contiguous equipment for which a release cannot result in an acute toxicity concentration (ATC) extending beyond the site boundary. Location of equipment at a minimum of 100 meters from the property line and from other equipment will no longer be a determinant and, in contiguous equipment, concentration of an EHS at below the ATC will be a valid basis for consideration for exemption.

Except as discussed above, these amendments will have slight or no negative economic effects for persons complying with the rules. Among those amendments that should show no difference in economic impact from present levels, or perhaps less impact due to increased efficiency, are the changes in modifications (N.J.A.C. 7:31-2.11(a) and 3.15), management of modification requirements (N.J.A.C. 7:31-3.15) based on the OSHA rule on Process Safety Management 29 C.F.R. §1910.119(l), and the rule on contract workers (N.J.A.C. 7:31-3.17) also adopted from OSHA regulation at 29 C.F.R. §1910.119(h). Other areas of change that should have no effect on present costs are those related to certifications (N.J.A.C. 7:31-2.17), state of the art (N.J.A.C. 7:31-1.5), release notification (N.J.A.C. 7:31-3.10(b)7ii), generic hazard analysis (N.J.A.C . 7:31-1.5), emergency response training (N.J.A.C. 7:31-3.10(a)4), and emergency response coordination with Local Emergency Planning Committee (LEPC) (N.J.A.C. 7:31-3.10(b)10i-iii). Emergency response exercise (drill) requirements (N.J.A.C. 7:31-3.10(a)4) for emergency response team members have been made less stringent by allowing the registrant to define the minimum number of team members needed to participate in each exercise. Previous requirements for 100 percent member participation were considered an unnecessary and excessive cost burden due to difficulties in scheduling.

The registrants complying with this chapter have risk management programs that prevent many accidental releases of extraordinarily hazardous substances and provide for mitigation of the consequences of a release that does occur. Additional savings at these sites and to society also occur from the reduced number of accidents and the reduced extent of damage to the facility, the public and the environment. For example, fewer and shorter periods of unexpected equipment breakdowns result from improved preventive maintenance and operator training programs and provide savings in excess of the costs of these programs. Hazard analyses point out ways to avoid material losses in general, which result in cost saving. Fewer accidents result in the reduction of repair and replacement cost of equipment involved in accidents. Registrants may have lower insurance premiums as a result of increasing safety and reducing the risk of an accident. Medical costs from treatment of employees or the public may also be reduced as would the cost of damage or restoration of the environment after a release. The overall effect of compliance is to create a facility that is more efficient and cost effective to operate, while reducing the potential for catastrophic economic losses.

Exhibit 3
FY 1991 TCPA
Cost of Operating for Fee Proposal
Adopted September 1991

Salaries (1)	$1,257,000
Fringe benefits (2)	360,000
Indirect expense (3)	525,000
Operating costs (4)	228,000
TOTAL	$2,370,000

(1) Salaries: 4 Administrative Positions, 2 Supervising Environmental Specialists, 2 Principal Environmental Specialists, 1 Senior Environmental Specialist, 5 Principal Environmental Engineers, 2 Senior Environmental Engineers, 5 Chemical Safety Engineers, 1 Research Scientist, 1 Environmental Scientist, 2 Clerical Positions.
(2) Fringes: 28.6% of Salaries
(3) Indirect expense: 32.5% of Salaries and Fringes
(4) Operating costs:

Printing and Office Supplies	14,000
Vehicular (Gasoline, Oil, Tires)	5,000
Safety and Protective Clothing	2,000
Materials/Supplies	1,000
Travel	10,000
Telephone	20,000
Postage	10,000
Data Processing Supplies	10,000
Professional Services	70,000
Training, Other Services	15,000
Data Processing Charges—OTIS	10,000
Maintenance of Equipment	2,000
Maintenance of Vehicles (Repairs)	6,000
Vehicular Rental Charges: Central Motor Pool (CMP)	8,000
Other Equipment (Office, Scientific, etc.)	5,000
Data Processing Equipment	40,000
Subtotal	$228,000

Source: New Jersey Register, Sept. 3, 1991, pg. 2781.

Exhibit 4
TCPA Program Budgets
($1000)

	Actual FY 1991	Actual FY 1992	Estimated FY 1993	Estimated FY 1994
Salaries	1,200	1,125	1,267	1,330
Fringe benefits	334	316	371	388
Indirect expense	440	470	481	503
Operating costs	64	96	136	136
	$2,038	$2,007	$2,255	$2,357

Exhibit 5

Annual Revenues (Billed) based on Current Fee Schedule

	FY1992	FY1992
Base fee at $6,500 per registrant	$1,075,750 (1)	$ 875,875 (3)
Hazard unit fee at $9.20 per hazard unit	745,200 (2)	598,919 (4)
	$1,820,950	$1,474,794

Notes:

(1) FY1992 base fee revenue represents 165.5 equivalent registrants, since 164 paid full base fee and seven paid 25% base fee.
(2) FY1992 inventory derived fee revenue represents 81,000 hazard units.
(3) FY1993 base fee revenue represents 136.5 equivalent registrants, since 133 will pay full fee and seven 25% base fee.
(4) FY1993 inventory derived fee revenue represents 65,000 hazard units.

Exhibit 6

Census of Registrants (Based on Proposed Fee Structure)

		Projected FY1994	
	December 1992	September 1993 Case 1	Case 2
Fee Paying Registrants:	140	140	137
Full Base Fee	133	133	130
25% Full Base Fee (1)	7	7	7
Full Base Fee Equivalent (2)	134.75	134.75	131.75
Hazard Units (Fee Paying), Thousands	65	64	58
Number of Facilities paying facility-derived fee (exclusive of water treatment systems) plus number of water treatment systems	317	317	314
No fee	7	7	7

Notes:

(1) 25 percent Full Base Fee + no Inventory Fee + no Facility Fee (N.J.A.C. 7:31-2.16(n))
(2) "Full Base Fee Equivalent" value equals number of Full Base Fee registrants + 0.25 times number of 25 percent—Full Base Fee registrants

Exhibit 7

Projected TCPA Fees Based On Proposed Fee Structure

	FY1993	FY1994	
REVENUE CONTRIBUTIONS VERSUS NEEDED		Case 1	Case 2
Facility fee contribution, (1000)	$ 691 (1)	$ 723 (2)	$ 723 (2)
Hazard unit fee contribution, (1000)	$ 650 (3)	$ 640 (4)	$ 580 (4)
Base fee contribution, (1000) (5)	$ 914	$ 994	$1,054
Total needed (1000)	$2,255	$2,357	$2,357
UNIT FEE VALUES			
Facility fee, each facility (6)	$2,180	$2,280	$2,302
Hazard unit	$ 10	$ 10	$ 10
Base fee, each registrant (7)	$6,783	$7,377	$8,000

Notes:

(1) FY1993 facility fee contribution covers cost of Risk Assessment Section staff: salaries-$494,000; fringes—$144,000; and allocated program costs—$53,000.
(2) FY1994 facility fee contribution covers cost of Risk Assessment Section staff: salaries—$519,000; fringes—$151,000; and allocated program costs—$53,000.
(3) FY1993 hazard unit fee contribution—65,000 hazard units at $10 each.
(4) FY1994, Case 1 hazard unit fee contribution—64,000 hazard units at $10.00 each; Case 2 hazard unit fee contribution—58,000 hazard units at $10.00 each.
(5) Base fee contribution equals total revenue needed minus facility fee and hazard unit fee contributions.
(6) Facility fee, each facility, equals facility fee contribution divided by number of facilities plus water treatment systems: FY1993—317; FY1994, Case 1—317; and FY1994, Case 2—314.
(7) Base fee, each registrant, equals base fee contribution divided by full base fee equivalents as follows: FY1993—134.75; FY1994, case 1—134.75, and FY1994, case 2—131.75.

Environmental Impact

These amendments will have a positive environmental impact by reducing non-compliance with the rules. These rule amendments are intended to serve as a strong deterrent to those who would violate them. The amendments provide for improved and expanded clarity in the penalty section by listing rule provision citations which will provide a greater awareness of where the registrants are subject to penalties and result in improved enforcement and therefore compliance. The Department anticipates that the changes in the penalty schedule in the proposed amendments will provide the regulated community with a strong incentive to conduct their activities in conformance with the rules, thereby protecting public health and welfare. These amendments are anticipated to further decrease the possibility of accidental Extraordinarily Hazardous Substance release through the more thorough risk assessment requirements, thereby reducing the potential for permanent disability and death.

Regulatory Flexibility Analysis

The readoption with amendments will apply to all facilities which handle, use, manufacture, store, or generate extraordinarily hazardous substances at or above the registration quantities established for the EHS in N.J.A.C. 7:31-2.3. It is estimated that of the approximately 150 registrants presently impacted by the Act, 15 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses are affected by the existing rules, and will be impacted by the readoption with amendments.

In developing the readoption with amendments, the Department has balanced the need to protect the environment against the economic impact of the rules and has determined that to minimize the impact of the rules on small businesses would endanger the environment, public health, and public safety and, therefore, no exemption from coverage is provided.

In order to comply with these rules as amended, small businesses will have to prepare or present to the Department for review a copy of their facilities risk management program which meets the requirements for the safe handling, use manufacturing, storage, or generation of EHSs

in order to prevent the accidental release of the EHS into the environment. In doing so, it is likely that small businesses will need to hire professional safety and environmental consultants, to appoint a contact person for environmental affairs, to implement changes to their facilities' operations or to design to prevent or mitigate the consequences of an accidental release, and to pay fees for registration and yearly review of their risk management program.

It is expected that the annual costs of compliance for each small business will range from approximately $8,000 to $50,000 depending on the type of business and on the types and quantities of EHSs involved. Small businesses are encouraged by the Department, however, to review actual inventory needs and to eliminate, if possible, these additional costs by reducing site inventories to below the registration quantities. In many cases these lower inventories will have little effect on facility operations. Registrants who are able to temporarily discontinue use, handling, storage or generation of an EHS at the site shall be subject to only 25 percent of the annual fee. In addition, special reduced fees are established for water and wastewater system registrants, because of the Department's recognition of the reduced effort required in reviewing such facilities.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:31.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.5 Definitions

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

...

"Act" **or "TCPA"** means the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

...

"Budget-expenditure variance" means the difference, either positive or negative, between the gross expenditures and the spending plan (budget) of the same fiscal year of the TCPA program. Where budget exceeds expenditures, this difference is positive.

...

"Consequence analysis" means the determination of the potential consequence of an EHS release on the surrounding population [by comparison of the concentration of extraordinarily hazardous substances, determined by dispersion analysis, to a toxicological base criteria]**, using dispersion analysis to compute concentrations of EHSs and, at a minimum, identifying potential populations exposed to at least the acute toxicity concentration (ATC) for each EHS.**

...

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

...

"EHS equipment" means that equipment systematically integrated within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment. **EHS equipment includes fire suppression, risk mitigation and EHS release detection equipment.**

...

"EHS facility emergency response team" means those personnel responsible for responding to an emergency at a particular EHS facility. The specific duties for which an EHS operator is responsible as part of the EHS facility emergency team may be limited to emergency shutdown, notification of an emergency to supervisors or the site emergency response team, and use of emergency protective equipment.

"EHS operator" means an employee [or employees at an EHS facility] who is directly involved with an EHS and qualified and trained in [or being trained in] the operations of [an EHS facility] **EHS equipment or procedures**.

"EHS procedure" means a step of an operation involving an EHS, which if conducted improperly, could directly or indirectly result in or contribute to an EHS accident.

...

"Equivalent EHS equipment" means EHS equipment that, while not identical to existing EHS equipment, performs the same function in the same configuration as reliably as the existing EHS equipment it replaces.

...

"Facility" means a building, equipment, and contiguous area **covered by a process flow diagram and standard operating procedures, and under common area management. EHSs in a contiguous process flow under common area management shall be viewed as in a single facility. EHSs in a non-contiguous process flow shall be viewed as in separate facilities.** Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

...

"Hazard analysis" means a systematic identification of the potential conditions that may result in an EHS accident [using singly or in combination a Hazard and Operability Study, Failure Mode and Effect Analysis, qualitative Fault Tree Analysis or What If/Check List].

...

"Hazard unit" means the measure of inventory of an EHS expressed as multiples of its registration quantity, determined in accordance with N.J.A.C. 7:31-2.16(l).

"Inventory" means the substance balance at the site confirmed by the book value balance, computed after each transaction or at the end of the registrant's accounting day. The book value balance is computed by the standard accounting method: beginning balance, plus receipts, minus shipments or usage, equals ending balance. All balances whether book values or physical values are summations or physical counts of all material contained in shipping containers, storage vessels and in process equipment and piping.

...

"Non-contiguous EHS equipment" means EHS equipment that is not connected to other EHS equipment by piping through which an EHS flows, and that the Department has determined is sufficiently separated from other exempt EHS equipment to preclude combined off-site consequences.

...

"Process flow diagram" means a diagram including a legend of **a** [any EHS] facility which depicts the use, generation, storage or handling of an EHS showing items of equipment (groups of duplicate equipment may be represented by one symbol, if desired), flow of material from item to item, simplified basic control loops or major control schemes, points of discharge to the environment, and showing or cross-referencing documents which give details of material balance, flows, raw materials, products, intermediates, treatment chemicals, operating conditions of temperature, pressure, and stream characteristics, operating cycles and batch sizes where applicable. **A process flow diagram includes, or references, a block flow diagram that depicts the receipt, handling and storage steps at the site of full, partially filled and empty shipping containers of the EHS.**

...

"Registrant" means an owner or operator of a site who has registered one or more [EHS] facilities **in EHS service** at that site with the Department pursuant to the Act or this chapter.

...

"Replacement in kind" means the replacement of existing EHS equipment with identical or equivalent EHS equipment, and installation according to criteria for design and operation.

...

"Risk assessment" means the evaluation of the results of quantitative analyses to facilitate development of an effective risk reduction plan. The quantitative analyses shall consist of an estimate of the quantity, **rate and duration** of EHS released, a dispersion

analysis, a consequence analysis, and an estimate of the probability or frequency of the undesired event.

"Risk assessment section" means all personnel responsible for the implementation and compliance of registrants' risk management programs, including the review of summary risk management program statements, the detailed review of the risk management programs, the creation and implementation of work plans, review of submittals to construct and operate new EHS facilities of owners or operators, review of submittals to exempt EHS facilities, and periodic audit inspections of risk management programs.

...

"Routine maintenance" means the repair or replacement in kind of existing EHS equipment to provide continuity of operation.

...

"SIC code" means the most recent revision of the standard industrial classification code published by the Office of Management and Budget, Executive Office of the President of the United States, that designates industry groups.

...

"Site emergency response team" means those personnel identified in the emergency response plan that respond to an emergency on the site which involves an EHS. Functions for which the site emergency response team shall be responsible include alarm identification and response, response to an EHS release, use of emergency protective equipment, rescue procedures, evacuation procedures, medical assistance, action plans for dealing with specific scenarios, and specifically assigned emergency response duties. Registrants may arrange with outside providers for any portion of these functions as needed.

...

"State of the art" means up-to-date technology [reflected in equipment or procedures] that, when applied [at] **to** a registrant's EHS [facility] **equipment or procedures**, will result in a significant reduction of risk. The technology represents an advancement in reduction of risk and shall have been demonstrated at a similar referenced facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain **at reasonable cost** or otherwise available at reasonable cost commensurate with the reduction of risk achieved.

...

"Tabletop exercise" means an activity in which the participants are gathered informally to describe actions to be taken to respond to a pre-planned simulated EHS release scenario based upon the site emergency response plan as if it were an actual release, with site plans, equipment arrangement plans and local street maps referenced by the participants during the exercise.

"TCPA program operating expense" means the normal TCPA program operating items such as postage, telephone, travel supplies and data management systems.

"Total spending plan of the TCPA program" means the total annual estimated cost of TCPA operations approved by the Department for the fiscal year beginning July 1.

...

"Wastewater treatment system" means any structure or structures by means of which domestic, or combined domestic and industrial liquid wastes or sewage are subjected to any process in order to remove or so alter constituents as to render the wastes less offensive or dangerous to public health, safety, welfare, comfort, property or environment of the State or any inhabitants of the State before discharge of the resulting effluent either directly or indirectly into any waters of the State. Such term includes: any collection, treatment, storage, **pumping** and distribution facilities under control of the operator of such system and used primarily in connection with such system.

"Water treatment 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 at least 60 days out of the year. Such term includes: any collection, treatment, storage, **pumping** [and] **or** distribution facilities under control of the operator of such system and used primarily in connection with such system.

SUBCHAPTER 2. GENERAL REQUIREMENTS, PROHIBITIONS AND PROCEDURES

7:31-2.1 and 2.2 (No change.)

7:31-2.3 Extraordinarily hazardous substance list

(a) The substances and chemical compounds listed in Table I below shall constitute the Department's extraordinarily hazardous substance list:

TABLE I

Name of Extraordinarily Hazardous Substance	CAS #	Registration Quantity in Pounds
PART I		
...		
Toluene-2,4-diisocyanate	584-84-9 **or 26471-62-5 (mixture with Toluene-2,6-diisocyantate)**	100
PART II		
Name of Extraordinarily Hazardous Substance	CAS #	Registration Quantity in Pounds
...		
[PART II]		
[Ammonium hydroxide] **Ammonia (aqueous)** 28 percent by weight or more NH_3	1336-21-6	19,000
...		
Nitrogen Oxides		
Nitrogen dioxide (NO_2) 10 percent by volume or more [as NO_2]	10102-44-0	200 [as NO_2]
Nitric oxide 10 percent by volume or more [as NO_2]	10102-43-9	[200 as NO_2] **125**
Nitrogen tetroxide 10 percent by volume or more [as NO_2]	10544-72-6	200 [as NO_2]
Nitrogen trioxide 10 percent by volume or more [as NO_2]	10544-72-7	[200 as NO_2] **175**

...

(b) For those mixtures not specified in (a) above which contain EHS, the registration quantity shall be calculated using the weight percent of EHS contained in the mixture. When the weight of the total mixture times the weight percent is equal to or greater than the registration quantity for that EHS, the owner or operator must register.

7:31-2.4 Prohibitions

(a) No owner or operator of a facility shall handle, use, manufacture or store or have the capability to generate within one hour, [at least] the registration quantity or greater of an EHS listed in [Part I of Table I] N.J.A.C. 7:31-2.3 unless registered pursuant to the Act **and this chapter** with the Department.

(b) [No owner or operator of a facility shall handle, use, manufacture or store or have the capability to generate within one hour, at least the registration quantity of an EHS listed in Part II of Table I in N.J.A.C. 7:31-2.3, unless registered pursuant to this chapter with the Department by October 19, 1988 or within 90 days after an EHS has been added to Table I of N.J.A.C. 7:31-2.3.] **(Reserved)**

(c) No owner or operator **of a site** shall construct a new EHS facility **or no registrant with an established risk management pro-**

gram shall utilize an existing facility for a new EHS service unless the owner or operator **or registrant** has:

1.-2. (No change.)

3. Received written Departmental approval to construct the new EHS facility **or to utilize an existing facility for a new EHS service.**

(d)-(e) (No change.)

(f) No registrant [with an approved site risk management program] shall implement a modification to [an] existing EHS [facility] **equipment or procedures** at its site without completing the requirements of its established risk management program as determined by the Department or its approved EHSARA workplan and [performing a safety review and a hazard analysis] **managing the modification** in accordance with N.J.A.C. 7:31-[3.4 and 3.9]**3.15**;

(g)-(h) (No change.)

(i) [Subsections (c), (d), (e), and (f) above will not apply to EHS's listed on Part II of Table I of N.J.A.C. 7:31-2.3 until June 30, 1989.] **No owner or operator of a facility shall fail to provide the Department with any information required to be submitted to the Department pursuant to the Act or this chapter or both.**

7:31-2.5 Registration

(a) Each owner or operator of a site handling, using, manufacturing or storing at least the registration quantity of an EHS, or who has the capability to generate, within one hour, at least the registration quantity of an EHS on the EHS list in [Part II of] Table I in N.J.A.C. 7:31-2.3, shall register with the Department on [forms] **TCPA Registration Form (STP-010) (registration form)** [provided by] **available from** the Department [by no later than October 19, 1988]. **All forms can be obtained from:**

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection and Energy
Division of Environmental Safety, Health and Analytical Progams
CN 424
Trenton, New Jersey 08625

(b) Each owner or operator of a site which has handled, used, manufactured, stored or generated at least the registration quantity of one or more of the EHSs included in Table I of N.J.A.C. 7:31-2.3 at the same site and plans to handle, use, manufacture, store or generate such substances in the future, may register all the substances with the Department on the forms [provided by] **available from** the Department.

(c) Each owner or operator of a site planning to construct a new EHS facility which will handle, use, manufacture or store an EHS in at least the registration quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, or which will have the capability of generating an EHS within one hour in at least the registration quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, shall register with the Department at least 90 days prior to construction and comply with the requirements of N.J.A.C. 7:31-2.10(a). **In Section D of the registration form, the registrant shall record the maximum inventory of the EHS expected during the year.**

(d) (No change.)

(e) Each registrant shall submit an updated **Section A and C of the** registration form **and any other affected section**, exclusive of items 1, 2 and 3 of section F, to the Department within 30 days after a change occurs which makes [a] **those** sections of the registration form incorrect [or incomplete], **including, but not limited to, any changes in the registrant's maximum EHS inventory.**

(f) (No change.)

(g) Each registrant shall provide the following information in the appropriate section of the registration form:

1. Section A of the registration form shall contain:

i.-iv. (No change.)

v. The site's mailing address; [and]

vi. The name, title and telephone number of the responsible manager[.];

vii. The site's tax lot and block number;

viii. The SIC code for the site; and

ix. The number of facilities at the site as identified in Section D.

2.-4. (No change.)

5. Section E of the registration form shall contain the process description of and principal equipment used with each EHS at the site, by facility **according to the definition of facility in N.J.A.C. 7:31-1.5** [and the Standard Industrial Classification Code for that type facility published by the United States Department of Commerce].

6.-7. (No change.)

8. The initial registration form submittal shall be accompanied by a USGS Topographic map with a scale of 1:24,000 indicating the location of each facility registered in Section D of the registration form.

(h) The Department will suspend from registration a registrant who submits a registration form showing a negative answer to question 3 of Section B (above at (g)2ii) of the registration form.

(i) A registrant with an established or approved risk management program who temporarily discontinues use, handling or generation of an EHS at particular EHS equipment, or stores it at less than the registration quantity, may remain a registrant with respect to that EHS provided the Department and the registrant execute a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-3.16 and the registrant pays an annual fee as required by N.J.A.C. 7:31-2.16(o).

(j) An owner who has leased portions of a site to one or more than one facility operator, each handling, using, manufacturing, storing or having the capability of generating within one hour less than the registration quantity of an EHS in its (their) respective facility(ies), shall register, separately or jointly with the facility operator(s), the EHS on the site, if the sum of EHS quantity in all facilities is greater than or equal to the registration quantity. Alternatively, all facility operators at that site shall register jointly.

7:31-2.6 Risk management program procedures

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

(e) The review of each established risk management program accepted for further review shall consist of a review of documents and a site inspection. Any documents to be reviewed may be reviewed at the site or at the Department at the discretion of the Department. Each registrant shall submit upon the request of the Department the following documentation:

1. (No change.)

[2. A copy of the site's emergency response plan prepared in accordance with N.J.A.C. 7:31-3.10(b);]

[3.]**2.** A catalog listing the documents required by N.J.A.C. 7:31-3.3(c)[, (d) and (e)] and their location at the site; and

[4.]**3.** (No change in text.)

(f) (No change.)

(g) Within 60 days after the registrant receives the draft consent agreement pursuant to (f) above, the registrant shall **either sign and return the consent agreement to the Department, thereby indicating its acceptance of the requirements, or** submit its proposals to correct any deficiencies;

(h) If the Department and registrant reach agreement on the risk management program, the registrant shall enter into a consent agreement with the Department and shall comply with the **requirements of the approved risk management program as set forth in the** consent agreement. **For the registrant, the consent agreement shall be signed by its representative who meets the requirements of N.J.A.C. 7:31-2.17(a)1i and for the Department by the Chief of the Bureau of Release Prevention or his or her supervisor.**

(i) If the [Department and] registrant [cannot reach agreement] **has not signed a consent agreement within 120 days of the registrant's receipt of the draft consent agreement identified at (f) above** on the measures necessary to correct the deficiencies or omissions in the risk management program, the Department shall:

1.-2. (No change.)

7:31-2.7 Initial evaluation of the risk management program

(a) In order to determine if a registrant has an established risk management program, the Department shall review the RMP description, and the reports of safety reviews, hazard analyses and risk assessments of existing EHS [facilities] **equipment and**

procedures included in the summary risk management program statement (see N.J.A.C. 7:31-3.12) submitted by the registrant for compliance with the requirements of N.J.A.C. 7:31-3.4 and 3.9.

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

7:31-2.8 [(Reserved)] **Transfer of risk management program**

(a) In the event of the transfer of the site, or facility(ies) at a site, to a new owner or operator, or the change in name of the existing owner or operator, the new owner or operator shall, before operating EHS equipment, adopt the existing, or obtain a new, approved RMP for the site.

(b) A new owner or operator shall adopt an existing approved RMP by registering in accordance with N.J.A.C. 7:31-2.5(e) and (g) and, subsequent to registering, executing an addendum, prepared in accordance with N.J.A.C. 7:31-2.6(f) through (i), to the consent agreement that was previously signed by the Department and the former owner or operator.

7:31-2.9 Extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan

(a) (No change.)

(b) A registrant assisting the Department in the development of the required work plan shall compile the **list of documents of** site data required by N.J.A.C. 7:31-4.4 and submit them to the Department:

1.-2. (No change.)

(c) Upon review of the documents submitted by the registrant, the Department will schedule a meeting with the registrant for the purpose of:

1.-2. (No change.)

3. Discussing and adapting the work plan to be developed in accordance with the requirements of N.J.A.C. 7:31-4 to the registrant's EHS [facility] **equipment and procedures**;

4.-8. (No change.)

(d) The Department will authorize one of the following types of personnel to perform the extraordinarily hazardous substance accident risk assessment [on a registrant's EHS facility]:

1.-3. (No change.)

(e) (No change.)

(f) The Department, within 15 days after receipt of the names and proposals from the registrant, shall:

1. Select one of the consultants to perform the extraordinarily hazardous substance accident risk assessment [on the Registrant's EHS facility]; or

2. After determining that none of the consultants' proposals submitted by the registrant meet the requirements in N.J.A.C. 7:31-2.18, direct the registrant to submit, within 60 days, the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the extraordinarily hazardous substance accident risk assessment [on the registrant's EHS facility].

(g) (No change.)

(h) The consultant or Department shall perform the extraordinarily hazardous substance accident risk assessment [of the registrant's EHS facility] and develop a recommended risk reduction plan which will include the identification of those activities necessary to create a risk management program. These shall be performed in conformity with the work plan developed and explained at the meeting held pursuant to (c) above. Members of the registrant's staff may participate in the work preparatory to the EHSARA.

(i) Upon completion of the extraordinarily hazardous substance accident risk assessment, the consultant or the Department shall prepare **in accordance with the schedule in the work plan** an EHSARA report in accordance with N.J.A.C. 7:31-4.6, including its recommendations to reduce risks [at the EHS facility].

(j) (No change.)

(k) The Department shall review the EHSARA report and prepare a risk reduction plan which will be incorporated into an administrative order which will be issued to the registrant. The administrative order shall direct the registrant to implement the risk reduction plan which shall include:

1. A list of risks [at the EHS facility] that must be reduced; [and]

2. The actions the registrant is to take to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 and the schedule within which the registrant shall [take] **complete** the actions[.]; **and**

3. A statement that the registrant has an established risk management program.

(l) (No change.)

(m) Upon implementation of the risk reduction plan as required by the administrative order, the established RMP will be reviewed in accordance with N.J.A.C. 7:31-2.6(e) through (i).

7:31-2.10 New EHS facilities

(a) Each owner or operator of a site planning to construct a new EHS facility, **or a registrant with an established risk management program planning to utilize an existing facility for a new EHS service,** shall:

1. (No change.)

2. Submit a [report of a safety review of the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.4 and a report of a hazard analysis and a report of a risk assessment on] **Summary Risk Management Program Statement for** the new EHS facility prepared in accordance with N.J.A.C. [7:31-3.9] **7:31-3.12** to the Department at least 90 days prior to construction of the EHS facility;

3. Submit [a summary risk management program statement for the new EHS facility] **to the Department the documentation** [prepared in accordance with] **as required by** N.J.A.C. 7:31-2.6(e) as applicable at least 90 days prior to the date the equipment is scheduled to be placed into EHS service; and

4. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(d), **in accordance with the bill issued by the Department.**

(b) The equipment placed into EHS service shall be placed into service as represented by the latest revision of process flow diagrams, standard operating procedures, criteria for design and operation and other pertinent drawings and documents. The safety review and risk assessment shall be updated prior to placing the equipment in EHS service, if those drawings and documents differ from those reviewed and reported on in the original reports to the Department.

[(b)](c) (No change in text.)

(d) Prior to placing equipment into EHS service, the registrant shall enter into a consent agreement with the Department and complete any items of the consent agreement needed prior to EHS service.

7:31-2.11 Modification to an EHS facility

[(a)] A registrant with an established or approved risk management program as determined by the Department planning to implement a modification to an existing EHS facility at its site shall [comply with the requirements of its risk management program and perform a safety review and a hazard analysis in accordance with the requirements of N.J.A.C. 7:31-3.4 and 3.9] **manage the modification (change) in accordance with N.J.A.C. 7:31-3.15.**

[(b) The registrant shall submit the reports of the safety review, the hazard analysis and the risk assessment on the modification to the Department at least 60 days prior to the date of placing the equipment or procedure in EHS service, if the hazard analysis on the modification identifies an increase in the potential for a release in an amount which within one hour either will be equal to or greater than five times the registration quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3. The equipment placed into EHS service shall be placed into service as represented in the reports of safety review, hazard analysis and risk assessment submitted to the Department.]

7:31-2.12 Inspections

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

(c) The Department plans to [inspect a] **perform an RMP audit inspection at a registrant's** site [at least annually] to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan **at a frequency appropriate to the administration of the program.**

(d) (No change.)

(e) After an audit inspection, the Department will identify material deficiencies found and include actions to correct the deficiencies in a draft addendum to the consent agreement to be signed by the Department and the registrant. The Department will send the draft addendum to the registrant and the registrant shall enter into agreement with the Department in accordance with the procedures for entering into consent agreements as detailed in N.J.A.C. 7:31-2.6(g) through (i).

7:31-2.15 Release of information by insurance carriers

(a) After a review of documents and [an EHS facility] **a site** inspection, the Department may determine that a registrant shall authorize [the facility's] **its** environmental liability or worker's compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the [facility's] **registrant's** EHS management practices[;].

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

7:31-2.16 Fees

(a) Each registrant or owner or operator of a site required to register pursuant to N.J.A.C. 7:31-2.5, shall pay an annual fee to the Department. The annual fee shall be computed in accordance with **(b), (c) and** (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(b) [(Reserved)] **The Department shall assess annual fees that include a base fee, a facility derived fee, and an inventory derived fee. The base fee unit rate and the facility derived fee unit rate shall be calculated using the data from the TCPA data base as of October 1 of the current year.**

(c) [(Reserved)] **The Department shall annually determine during the month of December the base fee and the facility derived fee unit rates, taking the steps in (c)1 through 8 below. The Department shall:**

1. Establish the spending plan by projecting the amount of money required to fund the TCPA program during the fiscal year in which registrants shall be charged fees based on the following data:

i. The cost of Department staff in all positions of the TCPA program for which fees are charged for the current fiscal year;

ii. The cost of fringe benefits for those staff members identified at (c)1i above, calculated as a percentage of their salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. Indirect costs attributable to those staff members identified at (c)1i above. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs shall be calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;

iv. The estimated TCPA program operating expenses; and

v. The budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the TCPA program;

2. Subtract a positive difference or add a negative difference of the "budget-expenditure variance" of the spending plan for the TCPA program of prior fiscal year, determined by the Department as of October 1 of the current fiscal year, from the amount of money required to fund the TCPA program determined in (c)1 above to determine the net money required;

3. Project the total amount to be contributed by the inventory derived fee to the aggregate fee of each registrant. This projection shall be based on the following data and steps:

i. Determine the sum of hazard units at all sites or systems registered as of October 1 of the current fiscal year; and

ii. Multiply the sum of hazard units by the inventory derived fee unit rate specified at (l)3 below;

4. Subtract the contribution of the inventory derived fee determined in (c)3 above from the net money required as determined in (c)2 above to determine the sum of base fee plus facility derived fee contribution needed;

5. Determine the facility derived fee contribution based on the following data and steps:

i. Determine the number of TCPA facilities registered as of October 1 of the current fiscal year; and

ii. Calculate the facility derived fee rate which equals the sum of salaries plus fringe of the Risk Assessment Section staff plus the percent of the TCPA program operating expenses assigned to that staff divided by the number of facilities;

6. Subtract the contribution of the facility derived fee determined in (c)5ii above from the remainder from (c)4 above to determine the base fee contribution needed;

7. Determine the base fee unit rate by dividing the base fee contribution needed from (c)6 above by the total number of registrants; and

8. Each year, the Department shall prepare an Annual TCPA Fee Schedule Report. During the month of December, the Department shall publish a summary including the fee schedule in the New Jersey Register setting forth the adjusted facility-derived and base fee unit rates and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.

(d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department shall submit the annual fee for that calendar year computed in accordance with **(b), (c) and** (i) through (m) below in accordance with the bill received from the Department.

(e)-(f) (No change.)

(g) Except for the fees submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each registrant a bill stating the fee for that calendar year.

1. [Fees shall be calculated based on the inventory reported in Section D of the registrant's registration form on file with the Department as of the previous December 1.] **This bill shall include the base fee and additional fees calculated based on data from the registrant's registration form on file with the Department as of the previous October 1—the number of facilities reported in Section E, or determined by the Department, and the inventory reported in Section D.**

(h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee. The check or money order shall be submitted to:

New Jersey Department of Environmental Protection
and Energy
Bureau of Revenue
Division of Financial Management, Planning and
General Services
CN [402] **417**
Trenton, New Jersey 08625

(i) (No change.)

(j) Each [registrant] **owner or operator** of a **registered** water treatment system or **a registered** wastewater treatment system or both shall **pay annually for those systems** a base fee [of $6,500 per system annually] **plus a facility derived fee for one facility** plus an EHS inventory derived fee[; except:

1. Registrants with a water treatment system or wastewater treatment system or both located on a site which is also covered by (k) below shall only pay the fee required by that subsection].

(k) [All other registrants not included in (j) above shall pay one base fee of $6,500 per site annually plus an EHS inventory derived fee.] **(Reserved)**

(l) The inventory derived fee at each site, water treatment system and wastewater treatment system is determined in the following manner:

1.-2. (No change.)

3. The number of hazard units for each EHS is multiplied by [$9.20] **$10.00** per hazard unit to determine the fee for each EHS.

(m) The annual fee for each registrant shall be the sum of the base fee **and the sum of the facility derived fee for each facility** and the sum of each EHS inventory derived fee except [for (n) below] **as provided at (j) above, and (n) and (o) below.**

(n) (No change.)

(o) The annual fee for each registrant who has temporarily discontinued use, handling, storage or generation of the particular EHS at the site and has signed a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-3.16 shall be 25 percent of the base fee.

(p) An owner who has leased portions of a site to one or more than one facility operator shall pay an annual fee separately or jointly with the facility operator(s) or, alternatively, the operator(s) shall pay an annual fee. The fee shall be the sum of the base fee for the site and the facility derived fee for each facility and the sum of each EHS inventory derived fee for each facility except for (n) above.

Recodify existing (o)-(p) as **(g)**-(r). (No change in text.)

7:31-2.17 Required signatures and certifications

(a) All registration forms, [risk management program descriptions,] risk management program checklists, **exemption requests, annual exemption reaffirmations,** petitions to withhold privileged trade secret or security information and substantiation forms and supplemental information in support of petitions to withhold privileged trade secret or security information **shall not be complete until they** contain the following signatures and [two-part certification which provides the following] **certifications**:

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, information, including fines and/or imprisonment."], **including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."**

i. The certification [required by] **at** (a)1 above shall be signed by the highest ranking [corporate, partnership, or governmental officer or official at the site to which the information pertains.] **individual with direct knowledge and overall responsibility for the information contained in the certified documents; and**

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document 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 information, including the possibility of fine and/or imprisonment."], **including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."**

i. The certification [required by] **at** (a)2 above shall be signed **by the ranking official,** as follows:

(1) For a corporation, by a [principal executive officer of at least the level of vice president] **person authorized to execute the documents listed in (a) above on behalf of the corporation by resolution of the corporation's board of directors or by a provision in the corporation's by-laws;**

(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 a principal executive officer or ranking elected official.] **the mayor or equivalent official;**

(4) For a county, the county executive or equivalent official;

(5) For the State, an official of at least the rank of agency director; or

(6) For any other public agency, a principal executive officer or ranking elected official.

(b) Notwithstanding the provisions of (a) above, the certification contained in (a)1 above shall be the only certification required if the individual required in (a)1i above to sign the certification is the same individual required in (a)2i above to sign the certification at (a)2 above.

[(b)](c) All other reports required by this chapter, **the summary risk management program statements,** the risk management programs, **annual reports, reports of safety review, hazard analysis and risk assessment,** confidentiality claim forms and substantiation forms in support of confidentiality claims, and other information requested by the Department shall [be] **not be deemed submitted to the Department unless** signed by a person described in (a)1i above [or the responsible manager], and the person who signs the reports shall make the certification set forth in (a)1 above.

(d) All consent agreements and consent agreement addenda shall not be deemed executed unless signed by the highest ranking corporate, partnership or government official or official at the site with sufficient responsibility to effect the items agreed.

(e) Each item of correspondence with the Department from a registrant shall not be deemed submitted unless signed by the registrant's responsible manager or any person of the registrant staff whose name is included in the current registration form of the registrant.

7:31-2.18 Criteria for selecting independent consultants

(a) (No change.)

(b) The registrant shall not submit the name **and proposal** of any consultant who:

1. Is owned or controlled by the registrant or by a firm which owns or controls both the registrant and the consultant or owns or controls the registrant;

2. Was the designer of any EHS facility at the site; [or]

3. Is 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[.];

4. Fails to state in its written proposal that it will not subcontract any of the work involved in the EHSARA unless provided in writing by the Department; or

5. Fails to state in its written proposal that it will not change the staff named to do any of the work involved in the EHSARA unless approved in writing by the Department.

(c) [The registrant in its contract with the consultant chosen by the Department shall prohibit the subcontracting of any of the work involved in the EHSARA unless approved in writing by the Department.] **(Reserved)**

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

7:31-2.19 Exemptions for non-contiguous EHS equipment

(a) A registrant may request that non-contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 provided that the following conditions are met:

1. The **non-contiguous** equipment has only the capability to contain or generate in one hour less than the registration quantity of the EHS as listed in [Table I,] N.J.A.C. 7:31-2.3; and

[2. The equipment is located a minimum of 100 meters from the property line and other EHS equipment; or]

[3.]**2.** The registrant demonstrates to the satisfaction of the Department by dispersion and consequence analyses **in accordance with the methods set forth in N.J.A.C. 7:31-3.9(d)** that a release of the contained or generated quantity of the EHS, **alone or in combination with any concurrent releases from other exempt non-contiguous EHS equipment,** will not result in [acute health effects to persons exposed] **the concentration criterion determined at N.J.A.C. 7:31-3.9(d)2 extending** beyond the site boundary[, which is the boundary closest to the point of release].

(b) The request for exemption shall include [either]:

1. A plot plan to scale of the site, showing location of the EHS equipment and quantity of the EHS contained in the equipment for which an exemption is being requested and the distance from this EHS equipment to other EHS equipment and the site boundaries[, or:];

2. The results of the **hazard analysis and the** dispersion and consequence analysis **utilizing the estimates and assumptions set forth in N.J.A.C. 7:31-3.9(c) and (d); and**

3. A process flow diagram which depicts the EHS equipment and procedures which are requested for exemption and the EHS equipment and procedures which shall remain managed by the RMP if the exemptions are granted.

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

(e) On an annual basis or in the current year's annual report, the registrant shall reaffirm to the Department that the information submitted in accordance with (b) above has not changed.

(f) The Department shall reserve the right to rescind any exemption granted prior to the adoption of these rule amendments if the exemption is deemed inappropriate.

7:31-2.20 Exemptions for contiguous EHS equipment

(a) A registrant may request that contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 (except N.J.A.C. 7:31-3.6) provided that the following conditions are met:

1. The contiguous equipment has only the capability to contain or generate in one hour or have a maximum flow in one hour of less than the registration quantity of the EHS listed in N.J.A.C. 7:31-2.3;

2. The registrant demonstrates to the satisfaction of the Department:

i. By dispersion and consequence analyses in accordance with the methods set forth in N.J.A.C. 7:31-3.9(d), that a release of the EHS, alone or in combination with any concurrent releases from other exempt EHS equipment, will not result in the concentration criterion determined at N.J.A.C. 7:31-3.9(d)2 extending beyond the site boundary; or

ii. The concentration of the EHS in the EHS equipment is below the ATC for that EHS as established by the Department; and

3. The contiguous equipment is maintained in accordance with the provisions of N.J.A.C. 7:31-3.6, Preventive maintenance.

(b) The request for exemption shall include:

1. A plot plan to scale of the site, showing location of the EHS equipment and quantity of the EHS contained in the equipment for which an exemption is being requested and the distance from this EHS equipment to other EHS equipment and the site boundaries;

2. The results of the hazard analysis and the dispersion and consequence analyses utilizing the estimates and assumptions set forth in N.J.A.C. 7:31-3.9(c) and (d); and

3. A process flow diagram which depicts the EHS equipment and procedures which are requested for exemption and the EHS equipment and procedures which shall remain managed by the RMP if the exemptions are granted.

(c) The Department shall grant the exemption only if the registrant demonstrates to the satisfaction of the Department that the requirements of (a) above are met.

(d) On an annual basis or in the current year's annual report, the registrant shall reaffirm to the Department that the information submitted in accordance with (b) above has not changed.

(e) The Department shall reserve the right to rescind any exemption granted prior to the adoption of these rule amendments, if the exemption is deemed inappropriate under this chapter as operative

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SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A RISK MANAGEMENT PROGRAM

7:31-3.3 Risk mangement program

(a-(b) (No change.)

(c) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated documentation including revision dates covering process information involving EHSs in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Process chemistry [and process design criteria];

2. [Facility] **Report of book value balance of** inventory of each extraordinarily hazardous substance **for the past 12 months as reconciled each month with the physical inventory;**

3. Reports of hazard analyses, risk assessments[,] and safety reviews **of new and existing equipment** [and audits] performed during the previous six **calendar** years;

4. Accident investigation **procedures, records and** reports covering **EHS** accidents [at EHS facilities] for the past six **calendar** years;

5. Updated process flow **diagram of each EHS facility** [and piping and instrumentation diagrams];

6. Updated piping and instrumentation diagrams;

[6.]**7.** Standard operating procedures;

[7.]**8.** Site-wide safety procedures; [and]

[8.]**9.** [Site-wide] Emergency response **program and** plan[.];

[(d) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated EHS operating training documentation in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Job classifications and job descriptions for EHS operators;]

[2.]**10.** Description of the EHS operator training program **including job clasifications and job descriptions for EHS operators** and its records for the service period of the employees; [and]

[3.]**11.** Annual **calendar year** tabulation of EHS operator training conducted **for the last three calendar years**[.];

[(e) Each registrant shall maintain and make available for Departmental review, either at the site or at the Department's offices in the discretion of the Department, the following updated engineering and maintenance documentation in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:]

Recodify existing numbers 1-3 as **12-14** (No change in text.)

[4.]**15.** National Electrical Code area classification diagrams for the EHS facility and the adjoining areas on the site which can pose a threat of EHS release due to [a fire hazard] **electrical sparking which may cause an explosion or fire;**

Recodify existing 5-7 as **16-18** (No change in text).

[8.]**19.** [List of criteria] **Criteria** for design and operation used at the site;

[9.]**20.** Preventive maintenance program [procedures] and records covering EHS equipment throughout service life; [and]

[10.]**21.** Annual **calendar year** tabulations of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested[.] **for the last three calendar years; and**

22. Audit procedures and reports as required at N.J.A.C. 7:31-3.11 for the last three calendar years.

7:31-3.4 Safety review of new and existing facilities

(a) All new EHS facilities [or modifications] shall be designed, installed and operated in accordance with the [state of the art and] criteria for design and operation.

(b) The requirements for safety review of design of new EHS facilities [or modifications] shall include:

1. Comparison of the following information describing the EHS equipment and operations with [state of the art and] criteria for design and operation:

i.-ix. (No change.)

x. EHS equipment specifications; [and]

xi. External forces and events data;

xii. Firewater system piping diagrams;

xiii. Sewer system piping diagrams; and

xiv. Procedures and conditions for normal, abnormal and emergency conditions prepared pursuant to N.J.A.C. 7:31-3.5(c)2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14 and 15;

2. Documentation of the safety review and its findings; and

3. A report of the safety review of design of new EHS facilities [or modifications]. The report may be prepared by the designers and shall:

i. Contain a list of the criteria for design and operation upon which the design is based;

ii. Identify the new EHS facility [or modification], the EHS equipment items reviewed, the drawings and documents reviewed, **the**

date(s) of the review, the date of issue of the report and the name position and affiliation of the persons who performed the review; and

iii. Explain where the design of the new EHS facility [or modification] deviates from the listed consensus standards of the criteria for design and operation and the reasoning for such a deviation.

(c) There shall be an annual safety review performed on [each] **all** existing EHS [facility] **equipment and procedures each calendar year no sooner than six months or longer than 18 months from the previous safety review.**

(d) The requirements for the annual safety review [of existing EHS facility] shall include:

1. A visual inspection of the EHS [facility] **equipment** or review of up-to-date inspection records against process flow diagrams, piping and instrument diagrams, [and] electrical one line diagrams, electrical area classification, **and sewer and fire system piping diagrams** to determine whether the diagrams reflect actual conditions with respect to EHS equipment, runs and sizes of pipe, location and function of instruments, and location, function and size of valves. Deviations found shall constitute an unauthorized modification and shall be immediately discontinued from service until the requirements of this chapter for a modification are satisfied;

2. A visual inspection of the [facility] **EHS equipment** or review of up-to-date inspection records against design documents to determine whether safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning or capable of functioning as designed. EHS safety systems or devices found to be inoperable shall be returned to operational status immediately;

3. (No change.)

4. An inspection of the EHS [facility] **equipment** and procedures and interviews of site personnel to determine whether actual conditions reflect standard operating procedures. Deviations found to be unauthorized shall be immediately discontinued;

5. Documentation of the deviations of procedure or equipment found by (d)1 through [5] **4** above;

6. A report of the results of the safety review by the registrant shall be written and shall:

i. Identify the [EHS] facility **in EHS service**;

ii.-iii. (No change.)

iv. Identify the name, position and affiliation of the persons who performed the review, **the date(s) of the review, and the date of issue of the report**; and

7. (No change.)

7:31-3.5 Standard operating procedures

(a) (No change.)

(b) A [copy] **hardcopy** of the standard operating procedures **and a copy of the Material Data Safety Sheets or fact sheets** shall be readily available to EHS operators.

(c) The standard operating procedures shall include, but not be limited to:

1.-11. (No change.)

[12. Material safety data sheets or fact sheets for each EHS used in the operation;]

Recodify existing 13-15 as **12-14** (No change in text.)

(d)-(e) (No change.)

[(f) A current index of the EHS standard operating procedures with corresponding latest dates of issue shall be maintained, filed and distributed to the responsible manager.]

7:31-3.6 Preventive maintenance program

(a) The preventive maintenance program shall be written, be kept at the site and include all preventive maintenance program documents. Requirements of the preventive maintenance program shall include, but not be limited to, the following:

1.-3. (No change.)

4. Inspection or testing of all pressure safety devices in EHS service at least as frequently as the frequency set forth in the criteria for design and operation applicable to the particular EHS involved. In the absence of frequencies in the criteria for design and operation, inspections or tests shall be performed, at a minimum, [annually] **once each calendar year**;

5.-8. (No change.)

9. Procedures to insure that work **on or near EHS equipment** performed by [outside] contractors will be done in accordance with the requirements of the preventive maintenance program **and N.J.A.C. 7:31-3.17**;

10.-12. (No change.)

(b) (No change.)

7:31-3.7 EHS operator training

(a) The training program for EHS operators shall be written and, at a minimum, include the following:

1. (No change.)

2. Procedures to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position; [and]

3. Specified time periods of in-house training for each position covering orientation, specific EHS training and on-the-job training, trainee evaluation, final qualification and periodic refresher training. A procedure shall be established for tracking the progess of each EHS operator at regular intervals. In addition, the maximum period of time for each training program shall be established within which the EHS operator must achieve qualified status[.]; **and**

4. Procedures to insure that work done by contractors to assist as EHS operators shall be in accordance with the requirements of the standard operating procedures and N.J.A.C. 7:31-3.17.

(b) The training which EHS operators will receive shall, at a minimum, include:

1.-2. (No change.)

3. On-the-job training for newly assigned EHS operators [at the specific EHS facility] shall include, but not be limited to, the following:

i.-v. (No change.)

4. Refresher training at least once [a] **each calendar** year which shall present an overview and updated information on the standard operating procedures, EHS material safety data sheets, safe handling of the EHS, EHS emergency Procedures and review of EHS accident reports.

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

(e) Documentation of all training, evaluations and qualifying activities for each employee **receiving EHS operator training** shall be kept at the site.

(f) A tabulation of EHS operator training performed during the previous **calendar** year shall be prepared by the registrant, filed and submitted to the responsible manager. The tabulation shall include identification of EHS operators trained, their job titles and facility designation, subjects covered and training dates.

7:31-3.8 EHS accident investigation procedures

(a) There shall be written procedures for investigating all EHS accidents which shall include the following:

1.-4. (No change.)

5. The methods of implementing recommendations for risk reduction resulting from analysis of EHS accident investigations including:

i. Procedures for management review of EHS accident reports. **The review shall result in the evaluation of the recommendations of actions or alternatives to be taken to prevent accident recurrence;**

ii. [Decision procedures] **Procedures** for implementing EHS accident investigation recommendations, **including assignment of personnel responsible**;

iii. Procedures for establishing a timetable for implementing recommendations for risk reduction;

iv. Procedures to ensure that recommendations are implemented such as the use of status reports **on implementation of risk reduction measures**; and

v. Procedures for evaluating the need for employee retraining or reassignment based on the record of employee errors; and

6. (No change.)

(b) All EHS accidents reports shall be written and shall include, at a minimum, the following:

1.-6. (No change.)

7. Recommended actions to be implemented to prevent a recurrence which shall include the following, as appropriate:

i. [Employee retraining and human error analysis where the accident cause was determined to be due to human error] **Where human error was determined to be the cause, retraining or reassignment of employees involved in the accident**;

ii.-iii. (No change.)

8.-9. (No change.)

(c) EHS accident investigation records shall include:

1.-2. (No change.)

3. An updated record of [employee] **human** errors including a list of each employee [by EHS facility] **of the registrant or contractors or any other person** involved in an EHS accident caused by human error; and

4. An end of **calendar** year summary report which shall be prepared, filed on site, distributed to the responsible manager, and shall consist of:

i.-iv. (No change.)

7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives

[(a) A hazard analysis shall be conducted on each new EHS facility, new operating alternative and modification.

(b) A hazard analysis shall be conducted on existing EHS facilities at least once every four years.

(c) Each hazard analysis shall be performed in accordance with the following:

1. The hazard analysis shall be conducted either by a team trained to perform the hazard analysis and comprised of members of the registrant's staff, an outside qualified consulting firm chosen by the registrant or by a combination thereof;

2. The hazard analysis team shall:

i. Identify all EHS equipment, potential EHS releases, the points of possible EHS releases, the corresponding approximate quantity or rate of EHS release and corresponding cause of the EHS release;

ii. Consider EHS equipment failure data and EHS accident reports of the EHS facility that have been prepared since the last hazard analysis in its identification of possible EHS releases;

iii. Determine the instances of potential EHS release on which further study by risk assessment will be performed based on the criteria set forth in (d) below;

iv. For the instances where the criteria in (d) below does not require a risk assessment, conduct a state of the art technology search; and

v. Develop a risk reduction plan, utilizing state of the art risk reduction measures for those scenarios which pose an extraordinarily hazardous accident risk.

3. The hazard analysis team shall document its findings of possible EHS releases, estimates of quantity or rate of EHS releases, findings of the state of the art technology search and risk reduction recommendations. Documentation of the recommended risk reduction measures shall include an explanation of the onsite control, secondary containment or other state of the art equipment or procedures to be implemented with a schedule and the date of implementation. When state of the art technology is not used, an explanation of its exclusion shall be documented;

4. The team shall prepare a report of each hazard analysis performed on each existing EHS facility. The report shall:

i. Identify the EHS facility and all EHS equipment that is subject to hazard analysis, the procedure followed and the names, positions and affiliations of the persons who performed the hazard analysis;

ii. Identify the points of potential EHS release, and the potential cause, rate and quantity of EHS release;

iii. Include the findings of the state of the art technology searches;

iv. Identify the EHS accident risks, present the risk reduction plan and the dates of implementation; and

v. Explain why an EHS accident risk is not addressed in the risk reduction plan;

5. The team shall prepare a report of the hazard analysis performed on each new EHS facility, new operating alternative or modification. The report shall:

i. Identify the EHS facility and all EHS equipment that is subject to hazard analysis, the procedure followed and the names, positions and affiliations of the persons who performed the hazard analysis;

ii. Identify the points of potential EHS release, and the potential cause, rate and quantity of EHS release;

iii. Include the findings of the state of the art technology searches;

iv. Identify the EHS accident risks, present the risk reduction measures incorporated in the design; and

v. Explain why an EHS accident risk is not addressed by the risk reduction measures.

(d) The registrant shall perform a risk assessment on:

1. EHS equipment or operating alternatives identified by a hazard analysis as having a potential for EHS release in an amount within one hour which is equal to or greater than five times the registration quantity for the particular EHS listed in Table I of N.J.A.C. 7:31-2.3; and

2. A modification identified by a hazard analysis as having an increase in the potential for an EHS release in an amount which within one hour will be equal to or greater than five times the registration quantity established for that EHS listed in Table I of N.J.A.C. 7:31-2.3.

(e) The registrant shall maintain at the site a written statement designating the site's procedures for risk assessment which will include the records and documentation used in risk assessment.

(f) The risk assessment shall include, but not be limited to:

1. An estimate of potential EHS release quantity;

2. A dispersion analysis;

3. A consequence analysis involving surrounding populations;

4. An estimate of the probability of EHS release occurrence or the assumption that the probability of the EHS release occurrence is 100 percent; and

5. An evaluation of state of the art, including alternate processes, procedures or equipment which would reduce probability or consequences of an EHS release or control the discharge of an EHS within the facility. The evaluation of the alternates shall be based on estimates of their respective EHS release quantity and probability of occurrence along with corresponding dispersion and consequence analyses that should be precise enough to arrive at a selection decision.

(g) Based on the findings in (f) above, the registrant shall develop a risk reduction plan utilizing state of the art risk reduction measures which will reduce the probability or consequence of the release and a schedule for its implementation in each instance. The registrant shall document all estimates and analysis performed as part of the risk assessment.

(h) The registrant shall prepare a report of the risk assessment for each new EHS facility or modification. The report shall:

1. Identify the facility that is the subject of the risk assessment and the name, position and affiliation of persons who performed it;

2. Present the EHS accident risks identified, the features incorporated in the constructed facility that reflect current state of the art and the lowered possible risk commensurate with the neighboring environment;

3. Evaluate each incorporated feature of the risk reduction plan; and

4. Explain why an EHS accident risk is not addressed in the risk reduction plan.

(i) The registrant shall prepare a report of the risk assessment of each existing EHS facility which shall be kept at the site.

1. The report shall:

i. Identify the EHS facility whose equipment or procedure is the subject of the risk assessment and the name, position and affiliation of the persons who performed it;

ii. Present the EHS accident risks identified, the recommended risk reduction plan that reflects consideration of state of the art and the lowered possible risk commensurate with the environment of the

site, a proposed schedule of implementation, a summary of the evaluation of each recommended item of the risk reduction plan; and

iii. Explain why an EHS accident risk is not addressed in the risk reduction plan.

(j) Each report of hazard analysis and report of risk assessment shall be submitted to the responsible manager.

(k) The responsible manager shall implement the risk reduction plan.]

(a) A risk assessment shall be conducted on each new EHS facility, each new EHS operating alternative or each modification identified at N.J.A.C. 7:31-3.15.

(b) A risk assessment shall be conducted on existing EHS equipment or operating alternative at least once every four calendar years from the previous hazard analysis satisfying the requirements of (c) below.

(c) Each risk assessment shall include a hazard analysis performed in accordance with the following:

1. The method of the hazard analysis shall be singly or in combination a Hazard and Operability Study, Failure Mode and Effect Analysis, qualitative Fault Tree Analysis, What If/Check List or any alternative method demonstrated to the Department as being equivalent to or better than any of the above four methods. The alternative method shall be a systematic examination of both human and equipment failure that may result in an EHS accident performed by a team from a review of updated issues of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, standard operating procedures, maintenance procedures, accident investigations and results of equipment reliability studies.

2. The hazard analysis shall be conducted by a team. The team shall consist of personnel trained to perform the hazard analysis method and knowledgeable in the technology and operations, such as the process chemistry, the design of the equipment, the procedures of operation and maintenance and the related criteria for design and operation. In addition, they shall have the technical expertise to answer most of the questions of the review without recourse to further expertise. The team shall be comprised of members of the registrant's staff, employees of an outside consulting firm chosen by the registrant or both. The team shall include a person assigned to lead the study and a person to record the results, both of whom are technically trained and will be available for the duration of the study.

3. Results of the study for a unit or system shall be reported in tabular form. The results entered on the table shall include the release point and the corresponding scenario of potential basic (initiating) and intermediate event sequences, the corresponding quantity or rate and duration, and the recommended action, if any in terms of equipment or procedure to mitigate the consequences.

4. The hazard analysis team shall:

i. Identify for all EHS equipment, the points of possible EHS releases, the corresponding approximate quantity of an instantaneous EHS release or the rate(s) and duration of a continuous EHS release, either of steady or non-steady state, and corresponding cause of the EHS release. Estimates of the quantity or rate and duration of a release shall be based on actual release mechanisms, and shall reflect the operating procedures and mitigation equipment and procedures, planned for new or modified EHS facilities or in place at existing facilities; and

ii. Identify release scenarios from a review of EHS equipment failure data, equipment reliability data and EHS accident reports of the EHS facility that have been prepared since the last hazard analysis.

(d) A registrant shall perform a dispersion/consequence analysis, for the maximum release rate or quantity scenario identified in (c)2i and (c)2ii above, and for each successively lower release rate or quantity scenario, until all scenarios are determined for which the concentration criteria as determined in (d)2 and (d)4 below are exceeded off-site. As to procedure, the registrant shall:

1. Select an atmospheric dispersion model with the capability to accept inputs at required in (d)3 and 4 below;

2. Determine the concentration criterion for modeling downwind distance of the plume or cloud from the following:

i. For release duration of one hour or greater, use the ATC of the substance being modeled; and

ii. For release duration of less than one hour, except for hydrogen cyanide, ketene, arsine, methyl chloroformate, methyl dichlorosilane, methyl fluoroacetate, nickel carbonyl, phosphorous trifluoride, sulfur monochloride, thionyl chloride and trimethylchlorosilane, use a concentration giving an equivalent dose which is equal to the ATC of the substance that may be released, divided by the release duration in hours, using a minimum allowable limit of one-quarter hour. For those EHSs listed above, use the ATC;

3. Input the following parameters into the dispersion model:

i. Estimates of release parameters obtained in accordance with (c)2i and (c)2 above;

ii. Meteorological parameters of F-stability and wind speed of two meters per second at 10 meters elevation for ground-level releases and elevated releases affected by gravity or of A-stability and wind speed of two meters per second for elevated, high flowrate, buoyant releases, whichever stability yields the greatest downwind distance;

iii. Elevation of the source of release;

iv. Other scenario specific parameters such as release temperature; and

v. The surface roughness or rural/urban dispersion coefficients, as appropriate to the model selected, in the downwind direction;

4. Determine the downwind distance of the plume or cloud at one meter height (ground level) using:

i. The concentration criterion as obtained in (d)2 above, in any direction which has differing surface roughness; and

ii. Five times the concentration criterion as obtained in (d)2 above, in any direction which has differing surface roughness;

5. Determine whether or not each concentration criterion as obtained in (d)2 above extends beyond the site boundary; and

6. Repeat steps (d)1 through 5 above until a release scenario is modeled for which the concentration criteria obtained in (d)2 and 4 above do not extend beyond the site boundary.

(e) For each release scenario identified at (d)5 and 6 above as indicating that five times the concentration criterion extends beyond the site boundary, the registrant shall:

1. Perform an evaluation of state of the art, including alternate processes, procedures or equipment which would reduce frequency or consequences of an EHS release;

2. Develop a risk reduction plan utilizing state of the art risk reduction measures which will reduce the frequency or consequence of the release;

3. Develop a schedule for its implementation in each instance; and

4. Document all estimates and analyses performed as part of the risk assessment.

(f) For each release scenario identified at (d)5 and 6 above as indicating that one times the concentration criterion extends beyond the site boundary, the registrant shall either:

1. Perform a state-of-the-art evaluation in accordance with (e)1 and 2 above; or

2. Determine the frequency of release occurrence:

i. If less than 10^{-4} per year, no further assessment is required; but

ii. If greater than or equal to 10^{-4} per year, perform a state-of-the-art evaluation in accordance with (e)1 and 2.

(g) The registrant shall prepare a report of the risk assessment for each new EHS facility or modification or existing EHS facility which shall be kept at the site. The report shall:

1. Identify the facility that is the subject of the risk assessment and the name, position and affiliation of persons who performed the hazard analysis and the dispersion/consequence analysis, and the dates each was performed;

2. Summarize on one spreadsheet each potential EHS release identified in (c)1 and 2 above, the rate, duration or quantity. For those scenarios modeled in accordance with (d) above, summarize the downwind distances of the plume or cloud, the concentration defining the downwind distances and the respective distances to the

property line. For those release scenarios identified in (f) above, summarize the frequency of release occurrence in releases per year;

3. For each potential EHS release identified in (e) and (f) above, evaluate and summarize each feature incorporated in the constructed facility or the recommended risk reduction plan that reflects current state-of-the-art and the lowered possible risk commensurate with the neighboring environment;

4. Explain why any potential EHS release identified in (e) and (f) above is not addressed in the risk reduction plan; and

5. Provide at a minimum the following information obtained from dispersion/consequence analysis as required at (d) above:

i. Ground level coordinates of the downwind distance contour around the release point connecting points determined at (d)4 above, for the one and five times concentration criteria, for the maximum release scenario and the minimum release scenario that indicates a concentration criterion that extends off-site; and

ii. Identification by compass direction within the downwind distance contour determined at (g)5i above of off-site centers of residential areas, commercial areas, major highways, and areas of sensitive populations, such as hospitals, schools and nursing homes.

(h) Each report of risk assessment shall be submitted to the responsible manager.

(i) The responsible manager shall implement the risk reduction plan, and employ procedures such as status reports to ensure that the risk reduction measures are implemented.

7:31-3.10 Emergency response program

(a) Each registrant shall develop and implement a written emergency response program which shall include, at a minimum [requirements and procedures for]:

1. **Preparation and** distribution of copies of the emergency response plan;

[2. Procurement and distribution of plot plans and maps of the surrounding community;

3. Preparation and distribution of EHS material safety data sheets or fact sheets;

4. Determining the need for and arrangement of equipment capable of sensing the imminence or existence of an EHS release and of a continuously attended station where such equipment would be monitored;

5. Determining the need for and distribution of two way radio equipment;

6. Determining the need for and location of emergency lighting equipment;

7. Recording sequence of events for each incident for which the emergency response plan is implemented and emergency response drill involving emergency response team by using log books or tape recorders;

8. Determining the quantity needed and distribution of:

i. Self contained breathing apparatus;

ii. Fire fighting equipment;

iii. Portable EHS gas monitors and detectors, including calibration and maintenance schedules;

iv. Emergency medical supplies; and

v. Protective clothing;]

[9.]**2.** Emergency response training for all site employees including schedules for initial and annual refresher training **during each calendar year** in:

i.-ii. (No change.)

iii. Use of **required** emergency response [protective] equipment; and

iv. (No change.)

[10.]**3.** Emergency response training for the [site's] **site wide and the EHS facility** emergency response [team] **teams as it applies to their function** including a schedule for initial **training** and annual refresher training [in] **during each calendar year or training whenever the team member's responsibilities or designated actions under the emergency response plan change or whenever the emergency response plan is changed, in the areas of:**

i.-vi. (No change.)

vii. Action plans for dealing with specific **EHS release** scenarios; and

viii. (No change.)

[11.]**4.** Emergency response [drills] **exercises for EHS facility emergency response teams and the site wide emergency response team,** including, but not limited to:

i. A schedule [with a minimum of two drills per year] **which will require the site wide emergency response team to participate in at least two exercises each calendar year in which it is assumed that the ATC of the EHS extends beyond the site boundary and each EHS facility emergency response team in at least two exercises each calendar year. The registrant shall define the minimum number of team members needed to participate in the exercise to demonstrate the functions required**; and

ii. A minimum of one exercise other than a tabletop exercise each calendar year, for the site wide team and the EHS facility emergency response teams;

[iii. The establishment of preplanned EHS release criteria for the drill;]

[12.]**5.** A written assessment of the emergency response plan after each implementation or emergency response [drill] **exercise**, including, but not limited to:

i.-ii. (No change.)

iii. The performance of the [site] personnel **participating in the exercise and a list of their names** [and the site emergency response team];

iv. The adequacy of treatment of exposed personnel at the site and at offsite facilities; **and**

v. The [adequacy of onsite and offsite emergency response communication systems; and] **recording of events;**

[vi. The adequacy of emergency power and lighting systems;]

6. A written assessment, after each implementation or emergency response exercise, of the adequacy or need for emergency response equipment including, but not limited to:

i. Emergency response communications systems;

ii. Emergency power and lighting systems;

iii. The distribution of the emergency response plans, plot plans, and maps of the surrounding community;

iv. EHS detection systems;

v. Self contained breathing apparatus;

vi. Fire fighting equipment;

vii. Medical supplies;

viii. Personnel protective equipment; and

ix. Equipment necessary to reduce the quantity or duration of EHS releases, such as capping devices, leak repair kits and spill containment;

7. Preparation of a remedial action plan and a schedule for completion to correct any inadequacies identified in the assessment at (a)5 and 6 above of the emergency response plan or equipment;

[13.]**8.** The installation[, by January 17, 1989,] of a meteorological station owned by the registrant capable of providing, at a minimum, a continuous record of wind speed and direction for the site;

[14.]**9.** The procurement, [within 180 days of the operative date of this chapter,] of onsite hand held or mobile EHS detection equipment where commercially available; and

[15.]**10.** (No change in text.)

(b) Each registrant shall have a written emergency response plan that includes, but is not limited to, the following:

1.-6. (No change.)

7. A description of the site's emergency notification system which shall include the following requirements for reporting [an emergency] **EHS accidents**:

i. Designation of emergency operators, on a 24 hour basis, at the site or central control station, by job title to be notified in case of an EHS [release] **accident** or imminent EHS [release] **accident** at the site, and the internal procedures to be followed in making that notification;

ii. Immediate notification of the Department's emergency communications center at 609-292-7172 by the emergency operator of an EHS [release] **accident** or imminent EHS [release] **accident** at the site. The notification shall include the following information:

(1) Name and address of site [where] **of** the EHS [release will or has occurred] **accident**;

(2) (No change.)
(3) The time of, or anticipated time, of **the** EHS [release] **accident** and the projected duration;
(4)-(6) (No change.)
iii. In addition to the information required by (c)7ii above, the emergency operator shall state that the notification is:
(1) An ALERT [which means] **or that** an EHS [release] **accident** is imminent and will probably occur;
(2) A SITE EMERGENCY [which means] **or that** an EHS [release] **accident** has occurred which will probably not have an off-site impact; or
(3) A GENERAL EMERGENCY [which means] **or that** an EHS [release] **accident** has occurred which will probably have an off-site impact; and
iv. The site emergency coordinator shall [place a second call to the Department within 15 minutes of the first notification and] **be prepared to** provide the Department's emergency communications center with an update which shall include the following information:
(1) Name and address of site [where] **of** the EHS [release] **accident** [will or has occurred];
(2) (No change.)
(3) Location of the point of EHS release, a description of the source, cause and type of EHS [release] **accident**, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature;
(4)-(5) (No change.)
v. An accidental release of an EHS that does not present a potential for off-site impact; does not present a potential for, or actual, on-site injuries or fatalities; does not activate the site's or EHS facility's emergency response team; and is not reportable under any other State or Federal rule shall be exempt from these notification requirements. Such incidents shall be recorded following the procedures established at N.J.A.C. 7:31-3.8, EHS accident investigation procedures.
8.-9. (No change.)
10. Procedures for timely and appropriate notification of, and coordination with, the emergency coordinator for local emergency planning committee[;] **(LEPC), which procedures shall include:**
i. The name of the LEPC coordinator, his or her alternate and their respective telephone numbers;
ii. The submittal of a copy of the registrant's "Emergency Response Guide," conforming to the Standard Format of the New Jersey State Police, if requested by the LEPC in whose jurisdiction the registrant is located; and
iii. The notification of the LEPC coordinator of the registrant's schedule of two emergency response exercises per year;
11. (No change.)
12. A detailed plan of evacuation of on site personnel, including, but not limited to, the following:
i.-iii. (No change.)
iv. Provisions for moving personnel to designated assembly areas; [and]
13. A detailed plan for reentry and site recovery including, but not limited to, procedures and equipment for the safe cleanup and decontamination of the site and removal of waste materials[:]**; and**
14. Procedures to insure that work performed by contractors hired by the registrant to assist during an emergency response incident will meet the requirements of the emergency response program and of N.J.A.C. 7:31-3.17.

7:31-3.11 Audit requirements for risk management programs
(a) (No change.)
(b) The registrant shall prepare written requirements for auditing which shall include, at a minimum:
1. Audit scope and procedures including:
i. Completion of risk management program checklist **during the final three months immediately preceeding the anniversary date of the registrant's risk management program** [established in] **as required by** N.J.A.C. 7:31-3.14;
ii.-v. (No change.)
2. The audit team shall be employees of the registrant or [an independent consultant] **its consultant or both.** Only a minority of the members of the audit team may be involved in the day-to-day operation or management of the EHS facility being audited.

7:31-3.12 Summary risk management program statement
(a) The summary risk management program statement shall contain:
1. [An RMP description which describes in brief each of the eight program elements of the risk management program defined in N.J.A.C. 7:31-3.3(a).] **A description in brief of each program element which covers the registrant's policies, standards and procedures for that program element and identifies the persons or positions responsible for ensuring their implementation.** The description of any program element may reference other submittals included in the summary risk management program statement which are applicable to the particular element.
2. The reports of the most recent safety review of design of new and existing EHS equipment [for each EHS facility] meeting the requirements of N.J.A.C. 7:31-3.4 conducted [on each EHS facility] during the previous two years;
3. The report of the most recent hazard analysis and risk assessment meeting the requirements of N.J.A.C. 7:31-3.9 performed on [each] **new and** existing EHS [facility] **equipment and operating alternatives** within the past four years; and
4. (No change.)

7:31-3.13 Annual reports
(a) The annual report shall contain:
1. An update of the RMP description [prepared in conformance with] **required to be submitted at** N.J.A.C. 7:31-[3.12(a)1] **2.6(e)1** showing by additions or deletions any revisions to the risk management program;
2. [A complete] **An** update of [Section D of] **any portion of** the **TCPA** registration form **(STP-010)**;
3.-4. (No change.)
5. Reports of hazard analyses [and] **or** risk assessments required by N.J.A.C. 7:31-3.9(b), conducted during the previous 12 months which have not been previously submitted to the Department;
6. List of all hazard analyses **or risk assessments** required by N.J.A.C. 7:31-3.9(a) conducted during the previous 12 months, the report of which has not been previously submitted to the Department;
[7. A copy of the changes to the site's emergency response plan implemented during the previous 12 months;]
[8.]**7.** (No change in text.)
[9.]**8.** Updated [catalogs or updated pages for the catalogs] **catalog of documents** prepared pursuant to N.J.A.C. 7:31-3.3(c) [, (d) and (e)].

7:31-3.14 Risk management program checklist
(a) Each registrant shall answer the questions on the Risk Management Program Checklist, [DEQ-092,] **STP-011**, as set forth in Appendix I and made a part of these rules. **It is available from the Department at the following address:**

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection and Energy
Division of Environmental Safety, Health and Analytical Programs
CN 424
Trenton, New Jersey 08625

The Risk Management Program Checklist shall be submitted:
1.-2. (No change.)
(b) (No change.)

7:31-3.15 Management of modifications (change) to EHS equipment and procedures
(a) Prior to any modification in EHS equipment or procedures which had been the subject of TCPA safety review of new and existing facilities, hazard analysis or risk assessment prior to June 20, 1993, each registrant shall establish a written program to manage such modifications. The program shall require the registrant to:

1. Establish criteria which the registrant will use to categorize the proposed change as one whose impact is minor and well understood or one which is complex or represents a significant change in EHS equipment design or procedure. The criteria shall be founded on consequences of the potential release to persons outside the site boundary and shall, along with the documentation, be subject to review by the Department;

2. Identify the scope and the purpose of the change;

3. Compare and update any of the following documents, as may be affected by the change, with the registrant's criteria for design and operation:

i. Process description and process chemistry;

ii. Process flow diagrams;

iii. Piping and instrumentation diagrams;

iv. Facility location maps, site plans and equipment layout;

v. Electrical one-line diagrams;

vi. Electrical area classification drawings;

vii. Specifications of safety relief devices, and interlocks and controls;

viii. EHS inventories;

ix. EHS equipment specifications;

x. External forces and events data;

xi. Firewater systems piping diagrams;

xii. Sewer system piping diagrams; and

xiii. Standard operating procedures;

4. Determine the impact of the change on the following elements of the registrant's risk management program and update accordingly:

i. Preventive Maintenance Program;

ii. EHS operator training; and

iii. Emergency response;

5. Authorize the change prior to implementation:

i. Where the impact of the change is minor and well understood, registrant staff charged with implementing the change shall complete a checklist report that the responsible manager shall sign affirming performance of requirements at (a)1, 2, 3 and 4 above; and

ii. For a more complex or significant change in EHS equipment design or procedure, the registrant staff charged with implementing the change shall conduct a risk assessment on the items to be changed according to requirements at N.J.A.C. 7:31-3.9(c) through (i) which shall be approved and its report signed by the responsible manager. Documents and data from a previous risk assessment for a similar scenario and release quantity may be recertified and revalidated to meet the requirement. The report of risk assessment shall address the items of potential release introduced by the change; and

6. Establish a schedule detailing the necessary time periods for key tasks to implement the change.

(b) The following modifications would be exempt from the requirements at (a)5ii above:

1. Modifications based on findings of a risk assessment on the facility; and

2. Modifications resulting from the findings of an EHS accident investigation.

(c) Each registrant shall establish in writing a program to manage changes in risk management program administration. The program shall provide for the succession of line organization staff who implement individual elements of the site risk management program. It shall set forth for each position the qualifications of the successor, training of the successor by the incumbent prior to starting, and the duration of the training period.

7:31-3.16 Obligations upon temporary discontinuance of EHS use, storage and handling

(a) The registrant which temporarily discontinues use, storage, handling and generation of a particular EHS at particular EHS equipment, or temporarily stores it at less than the registration quantity, shall continue activities required of the registrant by this chapter until the date a consent agreement, or consent agreement addendum, that is signed by the registrant, is signed by the Department which requires, at a minimum:

1. Performance of a safety review of the particular EHS equipment and procedures in accordance with the requirements of N.J.A.C. 7:31-3.4(d), 60 calendar days prior to bringing the EHS on-site;

2. Performance of inspections, tests and checks for proper operation of the particular EHS equipment required by the site RMP, conforming to requirements of N.J.A.C. 7:31-3.6(a)3, 4, 5, 7 and 3.6(b), 30 calendar days prior to bringing the EHS on-site; and

3. Performance of EHS operator training activities of the site RMP, conforming to N.J.A.C. 7:31-3.7(a)1, (b), (c), (d), (e) and (f), 10 calendar days prior to bringing the EHS on-site.

7:31-3.17 Contractors and contractor employees

(a) The registrant shall include in its risk management program written procedures to insure that work done by persons not directly employed by registrant meets the applicable requirements of the risk management program. The procedures shall apply to specific activities involving the handling of EHSs by a contractor and/or its employees. Temporary employees, either directly hired by the registrant or furnished by a non-employer agency, are subject to the same requirements of this chapter that are applicable to permanent registrant employees.

(b) The procedures shall not apply to contractors providing incidental services which do not influence safety, such as janitorial work, food and drink services or other supply services.

(c) The procedures shall apply to the following activities performed by the contractor and/or its employees:

1. Maintenance or repair, turnaround, major renovation or specialty work on, or adjacent to, a facility handling an EHS;

2. Assistance as EHS operators in facilities handling EHSs; and

3. Assistance during an emergency response incident involving an EHS, including mitigating the release or cleanup of the released EHS.

(d) The procedures shall require the contractor to inform, train and evaluate its employees, as applicable to individual assignments, concerning:

1. The requirements of the site's preventive maintenance program;

2. The applicable provisions of the facility standard operating procedure on EHSs; and

3. The applicable provisions of the site's emergency response plan required at N.J.A.C. 7:31-3.10(b).

(e) The procedures shall require that:

1. The registrant, when selecting a contractor, shall obtain information regarding contractor's safety performance and programs;

2. The registrant shall inform the contractors of the known potential fire, explosion or toxic release hazards related to the contractor's work and the facility handling an EHS;

3. The registrant shall explain to the contractors the applicable provisions of the site's emergency response plan;

4. The registrant shall develop and implement safe work practices consistent with N.J.A.C. 7:31-3.6(a)10 to control the entrance, presence and exit of the contractor and/or its employees in facilities handling EHSs; and

5. The registrant shall periodically evaluate the performance of the contractors in fulfilling their obligations as required below:

i. The registrant shall request that the contractor assure that it and/or each of its employees is trained in work practices necessary to safely perform his or her job;

ii. The registrant shall request that the contractor assure that it and/or each of its employees is instructed in the known potential fire, explosion or toxic release hazards related to his or her job and the facility handling an EHS and the applicable provisions of the emergency response plan;

iii. The registrant shall request that the contractor document that it and/or each of its employees has received and understood the training requested by the registrant. The registrant shall request that the contractor prepare a record which contains the identity of its employee, the date of training and the means used to verify that the employee understood the training;

iv. The registrant shall request that the contractor assure that it and/or each of its employees follows the safety rules of the

registrant including safe work practices set forth at N.J.A.C. 7:31-3.6(a)10; and

v. The registrant shall request that the contractor advise the registrant of any unique hazards presented by the contractor's work or of any hazards found by the contractor during its work.

SUBCHAPTER 4. WORK PLAN REQUIREMENTS

7:31-4.4 Site data

The Registrant shall submit to the Department the [EHS facility documents and] lists of site documents set forth in N.J.A.C. 7:31-4.7.

7:31-4.5 Generic scope of work

(a) The scope of work in the work plan for each registrant required to have an EHSARA performed by a consultant or the Department shall include the following:

1.-2. (No change.)

3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:

i. [A process chemistry review] **A review of process description and process chemistry** to define all the possible chemical reactions [involving EHS] at the site **that may cause or contribute to an EHS accident**; [and]

ii. A review or creation of the criteria for design and operation for the EHS equipment and procedures; and

[ii.]**iii.** A review of EHS process flow diagrams, piping and instrument diagrams including those of process, utility or service units at the site that are interactive with the EHS piping and instrument diagrams, electrical one-line diagrams and site and plot plans for:

(1) Completeness as defined in N.J.A.C. 7:31-1.5 for each referred in [(a)3ii] **(a)3iii** above;

(2)-(5) (No change.)

4. A requirement for a safety review which shall meet the requirements of N.J.A.C 7:31-3.4[(b) and] (d). In addition, the safety review shall include at a minimum the following:

i. Annotation or preparation of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, [and] electrical area classification drawings**, site plan, plot plan, sewer system piping diagrams, and fire water system piping diagrams incorporating drawing title, revision number, date, signature, etc.,** as necessary to reflect actual conditions. The annotation of the piping and instrument diagrams shall be limited to EHS equipment, run and size of piping, location and function of instruments and location, function and size of valves;

ii. (No change.)

iii. A site plan review to determine at a minimum the following:

(1)-(2) (No change.)

(3) The measures and precautions designed for the purpose of protecting the [EHS] facility from external forces and events and for the purpose of controlling EHS releases within the site;

iv. An electrical area classification review to determine conformance with the most current edition of the National Electrical Code, ANSI/NFPA 70[-1987];

v. (No change.)

vi. A mechanical design review comparing the specifications of installed EHS equipment and instrumentation [against current state of the art and] **with** criteria for design and operation including**,** but not limited to:

(1)-(3) (No change.)

(4) Safety relief devices **and interlocks**;

(5)-(6) (No change.)

vii.-viii. (No change.)

ix. An examination of the EHS [facility] **equipment** for evidence of inadequate equipment and piping supports;

5. A requirement for a hazard analysis, meeting the requirements of N.J.A.C. 7:31-3.9 on [each] EHS [facility] **equipment or operating alternatives** using the method of analysis specified in the work plan by the Department[. The hazard analysis will determine, at a minimum, the circumstances that would have to occur in order for there to be an EHS release];

6. A requirement for risk assessments meeting the requirements of N.J.A.C. 7:31-3.9 on specific pieces of EHS equipment or operating procedures [identified by the hazard analysis as having the potential to have an EHS release at least five times the registration quantity for that particular EHS established in Table I of N.J.A.C. 7:31-2.3];

7.-12. (No change.)

7:31-4.6 EHSARA report

(a) (No change.)

(b) The EHSARA report shall contain, but not be limited to, the following:

1.-5. (No change.)

6. The recommended risk reduction plan including the listing of all of the deficiencies identified in (b)1 through 5 above, the remedial actions **and alternatives** [recommended] to correct the deficiencies and [the] **a proposed** schedule for implementation.

(c) (No change.)

7:31-4.7 Site documentation

(a) The [following] list[s] of site documents **required at N.J.A.C. 7:31-3.3(c)**, if existing, shall be submitted by the registrant prior to the registrant's meeting with the Department to establish the work plan. Lists of documents shall be grouped by operating or utility unit or area [at the EHS facility] **in EHS service at the site** giving their document number, name, the EHS involved, most recent revision number and date, file location at the site, and code of sheet size according to ANSI Y14.1-1980 (A, B, C, D, or E) or Deutsche Institut Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0)[:].

[1. Equipment list;
2. Instrument list;
3. Pipe line list;
4. List of process flow diagrams;
5. List of process chemistry documents;
6. List of piping and instrument diagrams;
7. List of site plans and topographic maps;
8. List of equipment specifications or fabrication drawings;
9. List of piping material specifications;
10. List of instrument specifications;
11. List of trip and interlock logic sheets;
12. List of electrical one-line diagrams;
13. List of electrical area classification drawings;
14. List of fire water system diagrams;
15. List of sewer system diagrams;
16. List of criteria for design and operation used at the facility;
17. List of hazard analysis reports;
18. List of emergency response program documents;
19. List of equipment testing schedules;
20. List of preventive maintenance procedure documents;
21. List of standard operating procedures;
22. List of descriptions of relief and control systems and secondary containments;
23. List of audit procedures documents;
24. List of equipment and instrumentation maintenance records including the data necessary for reliability studies;
25. List of operator training procedures;
26. List of EHS accident investigation procedures; and
27. List of safety procedures.]

SUBCHAPTER 5. CONFIDENTIALITY AND TRADE SECRETS

7:31-5.2 General provisions

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

(d) A registrant may file a claim with the Department to withhold from public disclosure confidential information required to be submitted to the Department at any time such information is required to be submitted or disclosed to the Department. A registrant may file a petition to withhold from the Department privileged trade secret or security information only at the time of filing the summary risk management statement with the Department pursuant to N.J.A.C. 7:31-2.6(b) and (c) and 2.10, or within 30 days after receipt

of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. All such claims or petitions and any required substantiation shall be submitted in writing on forms provided by the Department in accordance with N.J.A.C. 7:31-5.4 and 5.6, respectively. If the space provided for responses on Department forms is not sufficient, additional pages, properly referenced, may be attached to the required forms to provide complete responses. All the forms can be obtained from:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection **and Energy**
[Division of Environmental Quality]
Division of Environmental Safety, Health and Analytical Programs
CN [027] **424**
Trenton, New Jersey 08625

(e)-(h) (No change.)

7:31-5.3 Exclusions from confidential information and privileged trade secret or security information

(a) Information required to be submitted or disclosed to the Department pursuant to the Act or this chapter which meets the following criteria shall not be considered as confidential information, regardless of any claim or petition either pending or approved:

1.-3. (No change.)

4. Information supplied to the Department by a registrant contained within the Toxic Catastrophe Prevention Act registration form, **STP-010,** with the exception of information contained in section E of the registration form [as set forth in Appendix II and made part of this chapter. Any registrant which submitted a registration form prior to the effective date of this rule wishing to assert a confidentiality claim covering any confidential information disclosed in section E of its registration form shall submit such claim prior to September 19, 1988 to ensure confidentiality treatment for such information];

5.-12. (No change.)

(b) (No change.)

7:31-5.4 Confidentiality claims

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

(f) The confidential copy, containing the information which the claimant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp both sides. This envelope, together with the confidentiality claim form (which may or may not be enclosed in a separate envelope, at the option of the claimant), shall be enclosed in another envelope for transmittal to the Department, at the following address:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection **and Energy**
[Division of Environmental Quality]
Division of Environmental Safety, Health and Analytical Programs
CN 027
Trenton, New Jersey 08625

(g) (No change.)

(h) The certification on the bottom of the confidentiality claim form shall contain the signature and certification **as** specified in N.J.A.C. 7:31-2.17[(b)](**c**). Any substantiation form which the claimant submits to support a confidentiality claim shall also contain the signature and certification **as** specified in N.J.A.C. 7:31-2.17 [(b)](**c**).

(i)-(j) (No change.)

7:31-5.5 Determination of confidentiality claims

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

(d) If the Department determines that the information is not the subject of a prior confidentiality determination, the Department shall notify the claimant by certified mail, return receipt requested, of the claimant's right to submit substantiation in support of its claim that the information is entitled to be treated as confidential. The substantiation shall be submitted in writing on a form provided by the Department, shall be accompanied by the public copy of the information and the fee set forth in N.J.A.C. 7:31-2.16[(n)](**g**) for review of the substantiation, and shall be received by the Department within 30 days of receipt of the Department's notice. The substantiation shall include, but need not be limited to, the following:

1.-10. (No change.)

(e)-(j) (No change.)

7:31-5.6 Petitions to withhold privileged trade secret or security information

(a) Any registrant required to submit or disclose trade secret or security information pursuant to the Act or this chapter which the registrant believes must be kept privileged so as not to competitively disadvantage the facility, or compromise the security of the facility or its operations, may petition the Department for the right to withhold the privileged trade secret or security information by following the procedures set forth in this section and by paying the fee set forth in N.J.A.C. 7:31-2.16[(o)](**r**). Any registrant of a facility submitting such a petition shall provide complete responses on all required submissions to the Department except for those items which would require the disclosure of privileged trade secret or security information which the petitioner seeks to withhold. For those items, the petitioner shall note that a petition to withhold privileged trade secret or security information has been submitted, along with the date thereof.

(b) Any registrant [asserting a petition] **petitioning the Department for the right** to withhold privileged trade secret or security information shall do so in writing on a form provided by the Department at the time of filing the summary risk management program statement, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. A petitioner shall also submit in writing substantiation on a form provided by the Department to support its assertion that the information sought to be withheld is privileged trade secret or security information and pay the fee set forth in N.J.A.C. 7:31-2.16[(o)](**r**) for review of its petition and substantiation in accordance with the following:

1.-4. (No change.)

(c)-(j) (No change.)

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:31-6.2 Procedures for **issuance of administrative orders** and assessment of civil administrative penalties **and payment of such penalties**

(a) [To assess a civil administrative penalty under the Toxic Catastrophe Prevention Act] **For violation of the Act or any rule, consent agreement, information request, access request, or order promulgated or issued pursuant to the Act,** the Department shall, **by issuance of an administrative order and/or notice of civil administrative penalty assessment,** notify the violator [by] **using** certified mail (return receipt requested) or [by] personal service. **The Department may, in its discretion, require cessation of violation and/or assess a civil administrative penalty for more than one offense in a single administrative order and/or notice of civil administrative penalty assessment or in multiple administrative orders and/or notices of civil administrative penalty assessment.** This **administrative order and/or** notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, consent agreement, **information request, or access request,** or [administrative] order violated;

2. (No change.)

3. For any violation still continuing, order such violation to cease;

4. Specify the amount of the civil administrative penalty to be imposed, **if any**; and

[4.]5. (No change in text.)

(b) Payment of the civil administrative penalty is due **and compliance with the terms of an administrative order is required** upon receipt by the violator of the Department's final order in a contested case or when **an administrative order and/or** a notice of civil administrative penalty assessment otherwise becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:31-6.3, the **administrative order and/or** notice of civil administrative penalty assessment becomes a **notice of** final order on the 21st **calendar** day following receipt of the notice of civil administrative penalty assessment by the violator; [or]

2. If the Department denies the hearing request, [a] **an administrative order and/or** notice of civil administrative penalty assessment becomes a final order upon the violator's receipt, by certified mail or personal service, of notice of such denial; **or**

3. If an adjudicatory hearing is conducted, an administrative order and/or notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) Any person who violates any provision of N.J.S.A. 13:1K-22 through 13:1K-26 or any rule, regulation, or order promulgated or a court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full is subject, upon order of the court, to a civil penalty not to exceed $10,000 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation. Any penalty imposed under this subsection may be recovered with cost in a summary proceeding before the Superior Court and pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

7:31-6.3 Procedures to request an adjudicatory hearing

(a) Within 20 calendar days from receipt of an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Toxic Catastrophe Prevention Act, the violator may request an adjudicatory hearing to contest such administrative order and/or penalty assessment by submitting a written request to the Department which shall include the following information except as provided in (b) below:

1.-2. (No change.)

3. The violator's defenses to each of the **Department's** findings of fact stated in short and plain terms;

4. An admission or denial of each of the **Department's** findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

5. Information supporting the request and **specific reference to or** copies of other written documents relied upon to support the request;

6.-7. (No change.)

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

(d) During the pendancy of the review and hearing on an administrative order issued pursuant to N.J.A.C. 7:31-2.9(**k**), the timetable for compliance with those conditions being appealed in the order shall be suspended.

(e)-(f) (No change.)

(g) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request

7:31-6.4 Civil administrative penalty determination

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

(d) The Department shall determine the amount of the civil administrative penalty for violations of the Toxic Catastrophe Prevention Act and rule, consent agreement and administrative order issued pursuant thereto on the basis of the category of offense and the frequency of the violation as follows:

[TABLE II

Categories of Offense	Penalty in U.S. Dollars By Offense Category: First Offense	Second Offense	Third Offense
A. Failure to register a new or existing EHS facility as set by the total hazard units at the facility:			
1. Less than 10 hazard units	$ 2,000	$ 4,000	$25,000
2. 10 through 49 hazard units	5,000	10,000	25,000
3. 50 and more hazard units	10,000	20,000	50,000
B. Failure to pay annual fee:	25 percent of fee up to 10,000	50 percent of fee up to 20,000	75 percent to fee up to 50,000
C. Failure to submit summary risk management program statement on time:	2,000	5,000	10,000
D. Failure to execute contract with consultant within 45 days of receipt of notification:	5,000	10,000	25,000
E. Failure to initiate an EHSARA according to the schedule in the work plan:	5,000	10,000	25,000
F. EHSARA not performed according to the schedule in the work plan:	2,000	5,000	10,000
G. Failure to implement a risk reduction plan:	10,000	20,000	50,000

H. Failure to comply with the requirements of an approved RMP, each requirement:	up to 5,000	up to 10,000	up to 20,000
I. Failure to comply with conditions of a consent agreement or administrative order, each condition:	up to 5,000	up to 10,000	up to 20,000
J. Failure to provide information requested by the Department:	2,000	5,000	10,000
K. Failure to grant access to Department employees or agents for inspections:	5,000	10,000	25,000
L. Failure to provide information or grant access to Department employees or agents during an emergency condition:	10,000	20,000	50,000
M. Falsification of information submitted to the Department:	10,000	20,000	50,000
N. Failure to submit an annual report:	5,000	10,000	25,000
O. Construction of a new EHS facility without Departmental approval, when required:	10,000	20,000	50,000
P. Startup of a new EHS facility without an approved risk management program:	10,000	20,000	50,000
Q. For a site with an approved RMP, placing a new EHS facility into service or placing an existing facility in different EHS service without Departmental approval:	5,000	10,000	25,000]

TABLE II

Penalty in U.S. Dollars By Offense Category

Categories of Offense	Cite N.J.A.C. 7:31-	First Offense	Second Offense	Third and Each Subsequent Offense
1. Failure to register a new or existing EHS facility as set by the total hazard units at the facility	**2.4(a)**			
a. Less than 25 hazard units		**5,000**	**10,000**	**25,000**
b. 25 and more hazard units		**10,000**	**20,000**	**50,000**
2. Construction of a new EHS facility or utilization of an existing facility for a new EHS service without Departmental approval, when required	**2.4(c)**	**10,000**	**20,000**	**50,000**
3. Startup of a new EHS facility without an approved risk management program	**2.4(d)**	**10,000**	**20,000**	**50,000**

4.	For a site with an approved RMP, placing a new EHS facility into service or to utilize an existing facility for a new EHS service without Departmental approval	2.4(e)	5,000	10,000	25,000
5.	Failure to complete the requirements of an established RMP or its approved EHSARA work plan and performing a safety review and hazard analysis prior to modifying an existing EHS facility, each requirement	2.4(f)	2,500	5,000	12,500
6.	Failure to handle, use, manufacture, generate or store an EHS in compliance with the Act and rules, each requirement	2.4(g)	2,500	5,000	12,500
7.	Failure to comply with the requirements of an approved RMP, each requirement	2.4(h)	2,500	5,000	12,500
8.	Failure to provide information requested by the Department	2.4(i)	2,000	4,000	10,000
9.	Failure to submit an updated registration form, STP-010, within 30 days after a change occurs which makes any section of the form incorrect or incomplete	2.5(e)			
	a. Failure to report a change in responsible manager		5,000	10,000	25,000
	b. Failure to report increased hazard units on form STP-010, Section D		5,000	10,000	25,000
	1. Less than 25 hazard units		5,000	10,000	25,000
	2. 25 and more hazard units		10,000	20,000	50,000
	c. Failure to report any other change		1,000	2,000	5,000

10.	Failure to comply with conditions of a consent agreement addendum setting forth requirements of N.J.A.C. 7:31-3.16, each condition	2.5(i)	2,500	5,000	12,500
11.	Failure to submit summary risk management program statement on time	2.6(b)			
	a. Less than 30 days		1,000	2,000	5,000
	b. 30 through 59 days		2,500	5,000	12,500
	c. More than 59 days		5,000	10,000	25,000
12.	Failure to provide a description of each program element	2.6(e)1	2,000	5,000	10,000
13.	Failure to return signed consent agreement/ addendum or to submit proposals to correct any deficiencies in the draft consent agreement/ addendum within 60 days of receipt of the draft consent agreement/addendum	2.6(g) or 2.12(e)	5,000	10,000	25,000
14.	Failure to comply with conditions of a consent agreement or administrative order, each condition	2.6(h), 2.9(k) or 2.12(e)	2,500	5,000	12,500
15.	Failure of a new owner or operator of an existing EHS facility to adopt or obtain an approved risk management program before operating EHS equipment	2.8(a) 2.8(b)	5,000	10,000	25,000
16.	Failure to submit site data as required by N.J.A.C. 7:31-4.4	2.9(b)			
	a. By registrants who indicated they did not have an RMP	2.9(b)1	2,500	5,000	12,500

	b. Registrants who did not have an established RMP, as determined by the Department	2.9(b)2	2,500	5,000	12,500
17.	Failure to nominate 3 consultants to perform the EHSARA on time	2.9(e)	5,000	10,000	25,000
18.	Failure to nominate on time an additional 3 consultants, upon determination of the inadequacy of the first 3	2.9(f)2	5,000	10,000	25,000
19.	Failure to execute contract with chosen consultant within 45 days of receipt of notification of the name of the consultant	2.9(g)	5,000	10,000	25,000
20.	Failure to initiate an EHSARA according to the schedule in the work plan	2.9(h)	5,000	10,000	25,000
21.	EHSARA not performed by consultant according to the schedule in the work plan	2.9(h)	5,000	10,000	25,000
22.	Failure of owner or operator to make available for Department review a report of EHSARA in accordance with the schedule of the work plan when a consultant hired by the owner or operator prepares the report of EHSARA.	2.9(i)	5,000	10,000	25,000
23.	Failure to implement a risk reduction plan as directed by the issuance of an administrative order	2.9(k)	5,000	10,000	25,000
24.	Failure of owner or operator to submit a summary risk management program statement at least 90 days prior to construction of a new EHS facility	2.10(a)2	5,000	10,000	25,000

25. Failure to update the safety review and risk assessment to reflect latest revision of pertinent documents prior to placing equipment in EHS service.	2.10(b)	5,000	10,000	25,000
26. Failure to manage the change of existing EHS equipment and procedures in accordance with N.J.A.C. 7:31-3.15	2.11(a)	2,500	5,000	12,500
27. Failure to grant access to Department employees or agents for inspections	2.12(a)	5,000	10,000	25,000
28. Failure to assist Department employees in performances of all aspects of any inspection	2.12(a)	5,000	10,000	25,000
29. Failure to provide information or grant access to Department employees or agents during an emergency condition	2.12(a)	10,000	20,000	50,000
30. Failure to submit an annual report on time	2.14			
a. Less than 30 days		1,000	2,000	5,000
b. 30 through 59 days		2,000	4,000	10,000
c. More than 59 days		5,000	10,000	25,000
31. Failure to authorize an insurance carrier to release information requested by the Department within 30 days of the request	2.15(d)	5,000	10,000	25,000
32. Failure to pay any annual fee	2.16	5,000	10,000	25,000
33. Failure to properly certify documents	2.17	5,000	10,000	25,000

34. Failure of consultant to obtain approval in writing from the Department to subcontract any of the work of the EHSARA or to change the staff named to do any of the work of the EHSARA	2.18(b)	2,000	4,000	10,000
35. Failure to operate an EHS facility, to which the Department has granted an exemption from N.J.A.C. 7:31-3, according to information provided to the Department to obtain an exemption	2.19	5,000	10,000	25,000

(e) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:31 for which no penalty amount is specified under N.J.A.C. 7:31-6.4(d). The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:31-6.4(d) for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping completeness, reporting completeness or performance of risk management program requirements) and the nature and extent of the extraordinarily hazardous accident risk likely to result from the type of violation; and

2. The factors listed in (h) below;

[(e)] **(f)** (No change.)

[(f)] **(g)** If [no subsequent] **the registrant has not committed the same** offense [occurs] within a three year period of an offense, the next penalty will be assessed at the **frequency of violation** level of the [last] **prior** offense. **The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.**

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above under N.J.A.C. 7:31-2.4(f), 2.4(g), 2.4(h), 2.5(i), 2.6(h), 2.9(k), 2.12(e) and 2.11(a) to assess a civil administrative penalty amount no greater than the maximum penalty based upon any or all of the following factors:

1. The nature of the violation;

2. The nature and extent of the extraordinarily hazardous accident risk;

3. The nature, timing and effectiveness of prevention measures to minimize extraordinarily hazardous accident risks in addition to those minimally required by applicable statute or rule;

4. The compliance history of the violator;

5. The number of times and the frequency with which the violation occurred;

6. The severity of the violation; and/or

7. Any other mitigating, extenuating or aggravating circumstances.

OFFICE OF ADMINISTRATIVE LAW NOTE: Appendices I and II of N.J.A.C. 7:31 are proposed for deletion by the Department of Environmental Protection and Energy, but are not reproduced below. The text of these Appendices may be found in the New Jersey Administrative Code.

STP-011
2/93

APPENDIX I

NEW JERSEY DEPT. OF ENVIRONMENTAL PROTECTION AND ENERGY
Division of Environmental Safety, Health and Analytical Programs
CN 424, Trenton, N.J. 08625-0424

"TOXIC CATASTROPHE PREVENTION ACT"

RISK MANAGEMENT PROGRAM CHECKLIST

Legal Name of Registrant _____

Facility Name _____

Nature of Business _____

N.J. Employer ID # _____ **APEDS #** _____

NJPDES # _____ **PWS #** _____

Facility Location _____
No. *Street*

_____
Municipality *County*

Registrant's Mailing Address _____
No. *Street*

_____
City *State* *Zip*

Name of Responsible Manager _____

Title _____ **Telephone No. ( )** _____

CERTIFICATIONS

Highest Ranking Individual with Direct Knowledge and Overall Responsibility for this Information

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties including fines or imprisonment or both, for submitting false, inaccurate or incomplete information.

Signature _____ **Date** _____

Name (Print) _____ **Title** _____

Principal Executive Officer, General Partner or Proprietor, Agency Director or Ranking Official:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document 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 including the possibility of fines or imprisonment or both, for submitting false, inaccurate or incomplete information.

Signature _____ **Date** _____

Name (Print) _____ **Title** _____

Check One: ____ Initial Submittal
____ Annual Submittal—Covering Period from _____ to _____

STP-011
2/93

RISK MANAGEMENT CHECKLIST

Questions shall be answered in the affirmative or the negative, and when the answer is negative the registrant shall provide an explanation. Use separate pages.

DOCUMENTATION

The following are the questions on supporting documentation (See N.J.A.C. 7:31-3.3):

		Yes	No	Comments
1.	**Is the following updated documentation including appropriate revision dates covering process information maintained at the site and available for inspection by the Department:**			
	i. **Process chemistry?**	____	____	____
	ii. **Report of inventory of each extraordinarily hazardous substance for the past 12 months?**	____	____	____
	iii. **Reports of hazard analyses, risk assessments, safety reviews of new and existing equipment performed during the previous six calendar years.**	____	____	____
	iv. **Accident investigation procedures, records and reports covering EHS accidents for the past six calendar years?**	____	____	____

v. Updated process flow diagram of each EHS facility with appropriate dates indicated? _____ _____ _____
vi. Updated piping and instrumentation diagrams? _____ _____ _____
vii. Standard operating procedures? _____ _____ _____
viii. Site wide safety procedures? _____ _____ _____
ix. Emergency response program and plan? _____ _____ _____
x. Description of the EHS operator training program including job classifications and job descriptions for EHS operators and its records? _____ _____ _____
xi. Annual calendar year tabulation of EHS operator training conducted for the last three calendar years? _____ _____ _____
xii. Topographic maps? _____ _____ _____
xiii. Site plan? _____ _____ _____
xiv. EHS equipment specifications including instrument and piping specifications? _____ _____ _____
xv. National Electrical Code area classification diagrams for the EHS facility and adjoining areas? _____ _____ _____
xvi. Electrical one line diagrams? _____ _____ _____
xvii. Fire water system piping diagrams for the site? _____ _____ _____
xviii. Sewer system piping diagrams for the site? _____ _____ _____
xix. Criteria for design and operation used at the site? _____ _____ _____
xx. Preventive maintenance program and records covering EHS equipment? _____ _____ _____
xxi. Annual calendar year tabulations of EHS equipment inspected and tested versus scheduled for the last three calendar years? _____ _____ _____
xxii. Audit procedures and reports as required at N.J.A.C. 7:31-3.11 for the last three calendar years? _____ _____ _____

SAFETY REVIEW

The following are the questions on safety review of new and existing facilities (See N.J.A.C. 7:31-3.4):

1. Are all new EHS facilities designed, installed and operated in accordance with the criteria for design and operation? _____ _____ _____

2. Have the criteria for design and operation been identified for each new EHS facility, and have they been compared with the following information describing the EHS equipment and operations:
   i. Process description and process chemistry? _____ _____ _____
   ii. Process flow sheet? _____ _____ _____
   iii. Piping and instrumentation diagrams? _____ _____ _____
   iv. EHS facility location maps, site plans and equipment layout? _____ _____ _____
   v. Electrical one-line diagrams? _____ _____ _____
   vi. Electrical area classification drawing? _____ _____ _____
   vii. Specifications of safety relief devices and interlocks and controls? _____ _____ _____
   viii. Specifications for materials of construction? _____ _____ _____
   ix. EHS inventories? _____ _____ _____
   x. EHS equipment specifications? _____ _____ _____
   xi. External forces and events data? _____ _____ _____
   xii. Firewater system piping diagrams? _____ _____ _____
   xiii. Sewer system piping diagrams? _____ _____ _____
   xiv. Procedures and conditions for normal, abnormal and emergency conditions prepared pursuant to N.J.A.C. 7:31-3.5(c)2,3,4,6,7,8,9,10,11,12,14 and 15? _____ _____ _____

3. Has the identification and comparison required in 2 above been documented? _____ _____ _____

4. Has a report of the result of each safety review of design of each new EHS facility been prepared? _____ _____ _____
   i. Does each report contain a list of the criteria for design and operation upon which the design is based? _____ _____ _____
   ii. Does each report identify the new EHS facility, the EHS equipment items reviewed, the drawings and documents reviewed, the date(s) of the review, the date of issue of the report, and the name, position and affiliation of the persons who performed the review? _____ _____ _____
   iii. Does each report explain where the design of the new EHS facility deviates from the listed consensus standards of the criteria for design and operation? _____ _____ _____
   iv. Does each report explain the reasoning upon which an intended deviation from the listed consensus standard is based? _____ _____ _____

The following are the questions on safety review of existing EHS equipment (See N.J.A.C. 7:31-3.4):

1. Has a safety review of all existing EHS equipment and procedures been performed each calendar year no sooner than six months or no longer than 18 months from the previous safety review? _____ _____ _____

2. Has each safety review included:
   - i. A visual inspection of the EHS equipment or review of up-to-date inspection records to determine if process flow diagrams, piping and instrument diagrams, electrical one line diagrams, electrical area classification, and sewer and fire system piping diagrams reflect actual conditions with respect to EHS equipment runs and sizes of pipe, location and function of instruments, and location, function and size of valves? _____ _____ _____
   - ii. A visual inspection of the EHS equipment or review of up-to-date inspection records against design document to determine if safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning as designed? _____ _____ _____
   - iii. A review to determine if actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications are within the limits of the current design criteria of individual equipment items? _____ _____ _____
   - iv. Inspection of the EHS equipment and procedures and interviews of site personnel to determine if standard operating procedures reflect actual conditions? _____ _____ _____
3. Have the deviations of procedure or EHS equipment found by each safety review been documented? _____ _____ _____
4. Have deviations found as a result of the visual inspections or reviews specified in 2i, iii and iv above been immediately discontinued? _____ _____ _____
5. Have the safety systems found to be inoperable during the inspection specified in 2ii above been immediately returned to operational status? _____ _____ _____
6. Has a report of the results of each safety review been prepared and does it:
   - i. Identify the facility in EHS service? _____ _____ _____
   - ii. Identify the EHS equipment, procedures, drawings and documents reviewed? _____ _____ _____
   - iii. Describe the deviations found and the corresponding actions taken pursuant to (2) above? _____ _____ _____
   - iv. Identify the name, position and affiliation of the persons who performed the review, the date(s) of the review and the date of issue of the report? _____ _____ _____
7. Has the report been distributed to the responsible manager? _____ _____ _____

STANDARD OPERATING PROCEDURES

The following are the questions on Standard Operating Procedures (See N.J.A.C. 7:31-3.5):

1. Are the standard operating procedures written in English and in language of fluency understandable by EHS operators? _____ _____ _____
2. Are there versions of each of the standard operating procedures written in the language of fluency of EHS operators not fluent in English? _____ _____ _____
3. Is a hard copy of each standard operating procedure and a copy of the material safety data sheets or fact sheets readily available to EHS operators? _____ _____ _____
4. Does each standard operating procedure include:
   - i. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures? _____ _____ _____
   - ii. Procedures and conditions for normal operations? _____ _____ _____
   - iii. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions? _____ _____ _____
   - iv. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions? _____ _____ _____
   - v. Pre-start procedures covering testing for leak tightness prior to charging the EHS? _____ _____ _____
   - vi. Startup procedures including conditions to be maintained during startup? _____ _____ _____
   - vii. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of EHS equipment to be maintained after shutdown? _____ _____ _____
   - viii. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activations points indicated? _____ _____ _____
   - ix. Sampling procedures addressing apparatus and specific steps involved in the taking of samples? _____ _____ _____
   - x. Safety procedures related to each specific operation in the standard operating procedures? _____ _____ _____
   - xi. Procedures to prepare EHS equipment for maintenance and inspection of maintenance work upon completion prior to placing equipment in EHS service? _____ _____ _____
   - xii. Log sheets and checklists where appropriate to the operation? _____ _____ _____
   - xiii. A statement as to the number of EHS operators required to meet safety need for each operation with requirements for shift coverage? _____ _____ _____
   - xiv. A requirement that an EHS operator be in attendance at the EHS site and be able to acknowledge alarms and take corrective action at all time during specified activities of EHS handling, use, manufacture, storage or generation? _____ _____ _____
5. Have modifications to the standard operating procedures been made in accordance with N.J.A.C. 7:31-2.11 and 3.15? _____ _____ _____

6. Have modifications been incorporated in the standard operating procedure before being implemented? _____ _____ _____

PREVENTIVE MAINTENANCE

The following are the questions for the preventive maintenance program (See N.J.A.C. 7:31-3.6):

1. Have the preventive maintenance program documents been written, filed at the site, and are they available for inspection by the Department? _____ _____ _____
2. Has all EHS equipment needed to be included in the preventive maintenance program been identified? _____ _____ _____
3. Have all modifications been approved and authorized by the responsible manager? _____ _____ _____
4. Have the internal and external inspection of EHS equipment prescribed by the preventive maintenance program been performed as scheduled? _____ _____ _____
   i. Are the frequencies of inspection sufficient to prevent the failure of the equipment? _____ _____ _____
5. Have the inspections or tests prescribed by the preventive maintenance program for pressure safety devices in EHS service been performed as scheduled? _____ _____ _____
6. Has the safety instrumentation in EHS service been checked for proper operation, as prescribed by the preventive maintenance program? _____ _____ _____
7. Have the procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment prescribed by the preventive maintenance program been followed? _____ _____ _____
8. Have emergency power supply systems been tested in accordance with the schedule prescribed by the criteria for design and operation? _____ _____ _____
9. Has the training of the employees assigned to perform maintenance work on EHS equipment been performed in accordance with the requirements of the preventive maintenance program? _____ _____ _____
10. Have the procedures to insure that work on or near EHS equipment performed by contractors is done in accordance with the requirements of the preventive maintenance program and N.J.A.C. 7:31-3.17 been followed? _____ _____ _____
11. Have the permits and check lists for all EHS equipment entries, lockouts, and welding and burning operations required by the preventive maintenance program been used? _____ _____ _____
12. Have all inspection reports and preventive maintenance testing and training information been filed in a centralized location as required by the preventive maintenance program? _____ _____ _____
13. Has the record keeping system prescribed by the preventive maintenance program been followed? _____ _____ _____

OPERATOR TRAINING

The following are the questions for the EHS operator training program (See N.J.A.C. 7:31-3.7):

1. Has the training program for EHS operators been written? _____ _____ _____
2. Has a job description been written for each EHS operator position which includes the duties and responsibilities, the education, experience and training necessary to qualify for that position? _____ _____ _____
3. Have the evaluation procedures prescribed by the EHS operator training program to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position been used? _____ _____ _____
4. Have the time periods prescribed by the EHS operator training program for in house training for each position been followed? _____ _____ _____
   i. Has the plan established for tracking the training progress of each EHS operator at regular intervals prescribed by the EHS operator training program been followed? _____ _____ _____
   ii. Has the maximum period of time been established within which the EHS operator must achieve qualified status and is it being followed? _____ _____ _____
5. Have established procedures been followed to insure that work done by contractors to assist as EHS operators is in accordance with the requirements of the standard operating procedure and with N.J.A.C. 7:31-3.17? _____ _____ _____
6. Has the training EHS operators received during the previous 12 months included:
   i. For new employees, general orientation and initial training as prescribed by the EHS operator training program? _____ _____ _____
   ii. For newly assigned EHS operators, the training on specific extraordinarily hazardous substance activities prescribed by the EHS operator training program? _____ _____ _____
   iii. For newly assigned EHS operators, the on-the-job training as prescribed by the EHS operator training program? _____ _____ _____
   iv. The refresher training prescribed by the EHS operator training program? _____ _____ _____

7. Have the evaluations of EHS operators included oral and written tests? ____ ____ ____
8. Have EHS operators qualified within the maximum periods established for training in each EHS position? ____ ____ ____
9. Do all personnel responsible for training and evaluating EHS operators meet the qualifications prescribed for instructors and evaluators by the EHS operator training program? ____ ____ ____
10. Have all training, evaluations and qualifying activities been documented as prescribed by the EHS operator training program? ____ ____ ____
11. Has a tabulation of EHS operator training performed during the previous calendar year been prepared, filed and submitted to the responsible manager? ____ ____ ____

ACCIDENT INVESTIGATION

The following are the questions for EHS accident investigation program (See N.J.A.C. 7:31-3.8):

1. Have the written procedures for investigating all EHS accidents prescribed by the accident investigation program been followed for each accident? ____ ____ ____
2. Were the EHS accident investigations completed within the time frame prescribed by the EHS accident investigation program? ____ ____ ____
3. Is there a written accident investigation report of each EHS accident that occurred during the past calendar year? ____ ____ ____
4. Did management review each EHS accident report completed during the past calendar year? ____ ____ ____
5. Did management implement the recommendations in each EHS accident investigation report? ____ ____ ____
6. Is there a requirement to include the review of EHS accident reports in operator refresher training and maintenance training? ____ ____ ____
7. Does each EHS accident report include:
   - i. The date, time and location of the EHS accident? ____ ____ ____
   - ii. The identity, amount and duration of the release or potential EHS release? ____ ____ ____
   - iii. The EHS equipment, materials, procedures and personnel involved? ____ ____ ____
   - iv. A detailed chronological description of the accident including all the facts related to the EHS accident? ____ ____ ____
   - v. The consequences of the EHS accident including the number of people injured or killed and the impact on the community? ____ ____ ____
   - vi. The identity of the basic and contributory causes of the EHS accident? ____ ____ ____
   - vii. The determination of whether the EHS accident was caused by human error, equipment failure, or procedural inadequacy? ____ ____ ____
   - viii. Recommend actions addressing human error, equipment failure or procedural inadequacy to be implemented to prevent a recurrence? ____ ____ ____
   - ix. Schedule for implementation of recommended actions? ____ ____ ____
   - x. Signatures and position titles of the investigators? ____ ____ ____
8. Do the EHS accident investigation records include:
   - i. A separate file of EHS accident reports for the Toxic Catastrophe Prevention Act program? ____ ____ ____
   - ii. A monthly list on which the implementation status of all active recommendations for corrective action is updated? ____ ____ ____
   - iii. An updated list of employees of the registrant or contractors or any other person involved in EHS accidents? ____ ____ ____
   - iv. End of calendar year summary reports consisting, at a minimum, of the following:
     - (1) A list and brief description of each EHS accident? ____ ____ ____
     - (2) An identification of the cause of each EHS accident as human error, equipment failure, or procedural inadequacy? ____ ____ ____
     - (3) A consolidated schedule of implementation and completion status covering all EHS accidents? ____ ____ ____

RISK ASSESSMENT

The following are the questions for the risk assessment program for specific pieces of EHS equipment or operating alternative (See N.J.A.C. 7:31-3.9):

1. Was a risk assessment conducted on each EHS facility, each new EHS operating alternative or each modification identified at N.J.A.C. 7:31-3.15? ____ ____ ____
2. Was a risk assessment conducted on existing EHS equipment or operating alternative at least once every four calendar years from the previous hazard analysis satisfying the requirements of N.J.A.C. 7:31-3.9(c)? ____ ____ ____
3. Did each risk assessment include a hazard analysis performed in accordance with N.J.A.C. 7:31-3.9(c)? ____ ____ ____

4. Was a dispersion/consequence analysis performed for the maximum release rate or quantity scenario identified in (3) above and for each successively lower release rate or quantity scenario in accordance with N.J.A.C. 7:31-3.9(d)?

5. For each release scenario at (4) above as indicating that five times the concentration criterion extends beyond the site boundary:
   i. Was an evaluation of state of the art performed?
   ii. Was a risk reduction plan developed utilizing state of the art risk reduction measures?
   iii. Was a schedule developed for its implementation?
   iv. Were all estimates and analyses performed as part of the risk assessment properly documented?

6. For each release scenario identified in (4) above as indicating that one times the concentration criterion extends beyond the site boundary:
   i. Was either a state of the art evaluation performed in accordance with (5) above? or
   ii. Was the frequency of release occurrence determined?
   iii. If the frequency was greater than or equal to 10^{-4} per year, was a state of the art evaluation performed?

7. Was a report of the risk assessment prepared for each new EHS facility or modification or existing EHS facility in accordance with N.J.A.C. 7:31-3.9(g)?

8. Was each report of risk assessment submitted to the responsible manager?

9. Did the responsible manager implement the risk reduction plan, and employ procedures such as status reports to ensure that the risk reduction measures were implemented?

EMERGENCY RESPONSE

The following are the questions for emergency response planning (See N.J.A.C. 7:31-3.10):

1. Has the approved written emergency response program been updated to reflect changes approved by the responsible manager during the calendar year?

2. Have the copies of the distributed emergency response plan been maintained in an up-to-date condition?

3. Has the scheduled initial and refresher emergency response training for all site employees been performed during the calendar year?
   i. Did the emergency response training include:
      (1) Alarm identification and response?
      (2) Response to EHS release?
      (3) Use of required emergency response equipment?
      (4) Evacuation procedures?

4. Has the scheduled initial and refresher emergency response training for the site-wide and EHS facility emergency response teams been performed during the calendar year?

5. Has emergency response training been performed whenever a team member's responsibilities or designated actions have changed or when the emergency response plan changed?
   i. Did emergency response training in (4) and (5) above include:
      (1) Alarm identification and response?
      (2) Response to EHS release?
      (3) Use of emergency protective equipment?
      (4) Rescue procedures?
      (5) Evacuation procedures?
      (6) Medical assistance?
      (7) Action plans for dealing with specific EHS release scenarios?
      (8) Training in specific assigned emergency response duties?

6. Have the scheduled emergency response exercises for site-wide and EHS facility teams been performed during the calendar year in accordance with N.J.A.C. 7:31-3.10(a)4?

7. Has there been a written assessment of the emergency response plan after each implementation or emergency response exercise including but not limited to:
   i. The adequacy of the emergency response plan?
   ii. The implementation of the emergency response plan during the two exercises and any emergencies that occurred during the calendar year?
   iii. The performance of the personnel participating in the two exercises and any emergencies that occurred during the calendar year?
   iv. The adequacy of first aid and medical treatment procedures during the two exercises and any emergency that occurred during the calendar year?
   v. The adequacy of the recording of events?

8. Has there been a written assessment of the adequacy or need for emergency response equipment after each implementation or emergency response exercise including but not limited to:
   - i. Emergency response communications system? ____ ____ ____
   - ii. Emergency power and lighting systems? ____ ____ ____
   - iii. The distribution of the emergency response plans, plot plans and maps of the surrounding community? ____ ____ ____
   - iv. EHS detection system? ____ ____ ____
   - v. Self-contained breathing apparatus? ____ ____ ____
   - vi. Fire fighting equipment? ____ ____ ____
   - vii. Medical supplies? ____ ____ ____
   - viii. Personal protective equipment? ____ ____ ____
   - ix. Equipment necessary to reduce the quantity or duration of EHS release, such as capping devices, leak repair kits and spill containment? ____ ____ ____
9. Was a remedial action plan prepared with a schedule for completion to correct any inadequacies identified in (7) and (8) above? ____ ____ ____
10. Has the meteorological station been properly maintained in working condition? ____ ____ ____
11. Has the site's emergency response plan been coordinated with the emergency response plan of the local emergency planning committee during the calendar year? ____ ____ ____
12. Has a written emergency response plan been prepared in accordance with N.J.A.C. 7:31-3.10(b) and is it maintained at the site? ____ ____ ____
13. Has the list of the emergency response equipment and supplies and their location at the site been updated in the last six months? ____ ____ ____
14. Are the titles of the site emergency coordinator and alternates current? ____ ____ ____
15. Is the designation of emergency operators required by N.J.A.C. 7:31-3.10(b)7i current? ____ ____ ____
16. Has the Department's emergency communications center been notified immediately for each EHS accident or imminent EHS accident at the site as prescribed by the plan? ____ ____ ____
17. Has each accidental release been properly evaluated to determine if it should be reported in accordance with N.J.A.C. 7:31-3.10(b)7v, and all releases properly recorded? ____ ____ ____
18. Have the written procedures been implemented for timely and appropriate notification of, and coordination with, the emergency response coordinator for the local emergency response planning committee (LEPC)? ____ ____ ____
   - i. Names and telephone numbers of coordinators? ____ ____ ____
   - ii. Submittal of "Emergency Response Guide" if requested by the LEPC? ____ ____ ____
   - iii. Notification of coordinators of schedule of emergency response exercise? ____ ____ ____

AUDIT REQUIREMENTS

The following are the questions on Audit Requirements (See N.J.A.C. 7:31-3.11)

1. Was an annual audit of the risk management program conducted in accordance with N.J.A.C. 7:31-3.11(a)? ____ ____ ____
2. Was a written report prepared which includes as a minimum:
   - i. Completion of the risk management checklist established under N.J.A.C. 7:31-3.14? ____ ____ ____
   - ii. A list of deficiencies found in completing the checklist? ____ ____ ____
   - iii. Recommendations for remedial action? ____ ____ ____
   - iv. Submission of audit report to the responsible manager? ____ ____ ____
   - v. Requirements for review and implementation of remedial actions, including schedule, by the facility? ____ ____ ____
3. Was the audit team an independent consultant? ____ ____ ____
4. Was the audit team employees of the registrant, a majority of whom are not involved in day-to-day operations? ____ ____ ____

ANNUAL REPORTS

The following are the questions on Annual Reports (N.J.A.C. 7:31-3.13)

1. Was an annual report prepared and did it contain: ____ ____ ____
   - i. An update of the RMP description prepared in conformance with N.J.A.C. 7:31-3.12(a)1? ____ ____ ____
   - ii. A complete update of Section D of the registration form? ____ ____ ____
   - iii. A risk management program checklist for the site completed during the previous 3 months? ____ ____ ____
   - iv. A list of all safety reviews conducted during the previous 12 months? ____ ____ ____
   - v. Reports of risk assessments and hazard analyses conducted during the previous 12 months which had not been previously submitted to the Department? ____ ____ ____

vi. A list of all risk assessments and hazard analyses conducted during the previous 12 months which had not been previously submitted to the Department? ____ ____ ____
vii. A copy of the end of year summary report of EHS accidents? ____ ____ ____
viii. Updated catalog of documents prepared pursuant to N.J.A.C. 7:31-3.3(c)? ____ ____ ____

MANAGEMENT OF CHANGE

The following are the questions on Management of Modifications (Change) to EHS equipment and procedures (See N.J.A.C. 7:31-3.15)

1. Has the written program been established to manage modification that conforms to the requirements of N.J.A.C. 7:31-3.15? ____ ____ ____
2. For each modification (change) did you:
   i. Categorize the proposed change as minor or complex? ____ ____ ____
   ii. Identify the scope and purpose of the change? ____ ____ ____
   iii. Compare the change with the criteria for design and operation and update the documents as outlined in N.J.A.C. 7:31-3.15(a)3? ____ ____ ____
   iv. Determine the impact of the changes on the following elements of the risk management program and update them accordingly? ____ ____ ____
      a. Preventive Maintenance Program ____ ____ ____
      b. EHS Operator Training ____ ____ ____
      c. Emergency Response ____ ____ ____
   v. Properly authorize the change prior to implementation? ____ ____ ____
   vi. Established a schedule detailing the necessary time periods for key tasks to implement the change? ____ ____ ____
3. Has a written program been established to manage changes in the risk management program administration that conforms to N.J.A.C. 7:31-3.15(c)? ____ ____ ____

CONTRACTORS

The following are questions on contractors and contractor employees (See N.J.A.C. 7:31-3.17)

1. Have written procedures been included in the risk management program to insure that work done by persons not directly employed by you meet the applicable requirements of the risk management program in conformance with N.J.A.C. 7:31-3.17? ____ ____ ____
2. For each occurrence when a contractor was used did you:
   i. Obtain information regarding the contractor's safety performance and programs? ____ ____ ____
   ii. Inform the contractor of the known potential fire, explosion or toxic release hazards related to the contractor's work and the facility handling an EHS? ____ ____ ____
   iii. Explain to the contractor the applicable provisions of the site's emergency response plan? ____ ____ ____
   iv. Properly control the entrance, presence and exit of the contractor and/or its employees in facilities handling EHS's? ____ ____ ____
   v. Evaluate the performance of the contractor in compliance with N.J.A.C. 7:31-3.17(e)5? ____ ____ ____

(a)

ENVIRONMENTAL REGULATION

Green Acres Program

Notice of Opportunity for Interested Party Review of Green Acres Rules Located at N.J.A.C. 7:36, Proposed for Revision and Repromulgation

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

Authority: N.J.S.A. 13:1D-1 et seq.; 13:8A-1 et seq.; 13:8A-20 et seq.; 13:8A-35 et seq; P.L. 1961, c.45; P.L. 1971, c.165; P.L. 1974, c.102; P.L. 1978, c.118; P.L. 1983, c.353; P.L. 1987, c.265; P.L. 1989, c.183; P.L. 1992, c.88.

Take notice that the Department of Enviromental Protection and Energy (Department) is preparing to repeal, revise, and repromulgate the regulations under which government units apply for and receive Green Acres funds for the development and/or acquisition of lands for recreation and conservation purposes.

The Green Acres rules were originally adopted and became effective October 25, 1977. The rules currently in effect were adopted on November 21, 1988, and have remained largely unchanged since that time. It is now necessary to repromulgate N.J.A.C. 7:36 in order to avoid its automatic expiration on November 21, 1993. The Department is taking advantage of this opportunity to restructure and expand the rules to make them easier to understand and their consequences clearer.

The general purpose of these rules is to effectuate the administration of loans and grants to local government units and eligible nonprofit programs for the acquisition and/or development of recreational facilities, including application procedures and evaluation and award criteria. Rules regarding restrictions on funded areas, as well as on non-funded areas held by the local unit for recreation and conservation purposes at the time of funding, criteria and procedures dealing with diversion from these uses, sale of parkland, and the process of applying for Commissioner and State House Commission approval of diversions have been clarified and expanded.

A draft of the proposed rules will be available for review and comment on April 7, 1993.

To obtain a copy of the draft rules interested parties should write to:

Jeanne M. Donlon
Green Acres Program
CN 412
Trenton, NJ 08625

Comments on the draft rules are due by May 5, 1993.

The Green Acres Program intends to publish the proposed rules in the New Jersey Register on August 2, 1993.

Comments on the proposed rules will be received until September 1, 1993.

The rules as adopted will be published in the November 15, 1993 issue of the New Jersey Register.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Licensing Standards for Long-Term Care Facilities

Proposed Readoption with Amendments: N.J.A.C. 8:39

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner Designate, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1993-174.

Submit comments by May 5, 1993 to:

Robert J. Fogg, Esq.
Director, Licensing, Certification and Standards
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The chapter "Long Term Care Licensing Standards," N.J.A.C. 8:39, became effective on June 20, 1988. The standards were developed through a series of regulatory innovations by the Department's Licensure Reform Project. The licensure reform process involved the regulated community and health care professionals fully in the development of licensing standards in order to assure the validity of these standards of care. One mechanism used to obtain input from the nursing home community was a written opinion survey used to evaluate each proposed standard for its importance to patient care. After the survey results were tabulated and analyzed, a Nursing Home Advisory Group, consisting of selected industry and professional participants as well as Department personnel, reviewed the results and made further refinements of the standards.

A major innovation of licensure reform is the use of advisory standards in each area. While mandatory standards fulfill the usual licensure role of prescribing minimally acceptable levels of performance, advisory standards constitute standards of superior achievement or excellence.

Since the adoption of N.J.A.C. 8:39 in 1988, the nursing Home Advisory Group (NHAG) has continued to meet periodically. New members have been selected to replace some of those who have served for several years, and membership has been broadened to include, for example, representatives from consumer groups and the Office of the Ombudsman. NHAG members evaluate both mandatory and advisory standards in terms of their contribution to patient care. On the basis of recommendations from the Nursing Home Advisory Group as well as review of the effectiveness of the standards by the Department, a number of amendments were believed to be necessary and have been adopted. Changes were made, for example, to the standards regarding restraints, pharmacy, and patient care. New rules regarding advance directives were added in accordance with State and Federal laws. Rules regarding mandatory air conditioning were added, and rules specifiying handling and disposal of regulated medical waste were changed to reflect current statutes. Some advisory standards were deleted, while others were made mandatory.

N.J.A.C. 8:39 is scheduled to expire on June 20, 1993, pursuant to the requirements of Executive Order 66(1978). A subcommittee of the NHAG has been convened and has met several times to recommend further changes to the standards, based on changes in statutes, new laws, new approaches to resident care, and further reconsideration of some advisory standards. However, due to the Department's commitment to consider all of the recommendations of staff and the advisory committee, it will not be possible to propose and adopt the revision of the rules prior to the expiration date of June 20, 1993. It is therefore imperative that the text of N.J.A.C. 8:39 be maintained until the rules have been fully evaluated and revised. The Department needs the existing rules to accomplish its legal mandate of assuring that all long-term care providers offer a safe and effective level of care to their residents.

The proposed readoption for a five-year period will avert the scheduled June 20, 1993 expiration of the licensure rules and allow the completion of the review process, which will ensure that the revised rules continue to be responsive to the needs of residents, consumers, families and providers of long-term care. Internal review and evaluation by the Department and by the Nursing Home Advisory Committee indicates that N.J.A.C. 8:39 has been effective in assisting the Department to carry out the functions mandated by the Health Care Facilities Planning Act. These rules are necessary for the Department to effect its legal mandate to protect the health, safety and well-being of the residents in the long-term care facilities in New Jersey. The rules in N.J.A.C. 8:39 are essential for the regulation of long-term care facilities to assure the minimum quality of care and the provision of required services.

Subchapter 1 delineates the purpose, scope and definitions used in the chapter.

Subchapter 2 specifies the procedure for licensure, from the point of application, through surveys and temporary licensure, to full licensure. Subchapter 2 also includes provisions for actions against a licensee, surrender of license, and waivers from the requirements of the chapter.

Subchapter 3 explains the use of advisory standards.

Subchapter 4 contains a listing of the rights of patients of long-term care facilities.

Subchapter 5 explains mandatory access to care.

Subchapter 6 contains advisory admission policies.

Subchapter 7 contains requirements for patient activities, including organization, policies and procedures, staffing, types of service, and space and environment requirements.

Subchapter 8 contains the advisory standards for patient activities.

Subchapter 9 contains administration standards, including organization, policies and procedures, staffing and advance directive requirements. Advance directive refers to a document in which a patient specifies, or directs, his or her treatment in the event of incapacity, and may include references to a proxy directive, a specific directive, or both.

Subchapter 10 includes advisory administration procedures.

Subchapter 11 contains the requirements for patient assessments and care plans, including organization, policies and procedures, and discharge and transfer.

Subchapter 12 contains advisory standards for patient assessment and care plans.

Subchapter 13 contains communication requirements, including policies and procedures, services provided, and staffing.

Subchapter 14 contains advisory communication standards.

Subchapter 15 contains requirements for dental services to patients.

Subchapter 16 contains advisory standards for dental services.

Subchapter 17 contains requirements for dietary services, including organization, policies and procedures, staffing, and minimum patient services.

Subchapter 18 contains the advisory standards for dietary services.

Subchapter 19 contains infection control and sanitation standards, and includes organization, policies and procedures, staff, space and equipment for water, sanitation and space management, staff education and supply requirements.

Subchapter 20 contains the advisory standards for infection control and sanitation.

Subchapter 21 contains the requirements for laundry and housekeeping services, including policies and procedures, staff, space and equipment, supply and quality assurance standards.

Subchapter 22 contains the advisory standards for laundry and housekeeping services.

Subchapter 23 contains medical service requirements, including organization and policies and procedures.

Subchapter 24 contains advisory medical service standards.

Subchapter 25 contains policy and procedure, amount and availability, qualification and education and training standards for nurse staffing of a long-term care facility.

Subchapter 26 contains the advisory standards for nurse staffing.

Subchapter 27 contains patient care requirements, including the use of restraints, post-mortem policies, general patient care, staffing amounts and availability, personal care, space and environment for access to privacy, and standards regarding supplies and equipment.

Subchapter 28 contains the advisory standards for patient care.

Subchapter 29 contains pharmacy requirements, including organization, policies and procedures for drug administration, reporting and control, staff, service, supply and equipment, and quality assurance standards.

Subchapter 30 contains the advisory pharmacy standards.

Subchapter 31 contains physical environment requirements, including specifications for facilities with more than 60 beds, and requirements for supplies and equipment.

Subchapter 32 contains advisory physical environment standards.

Subchapter 33 contains the quality assurance standards, including organization, staff education, and patient services.

Subchapter 34 contains the advisory standards for quality assurance.

Subchapter 35 contains the standards for medical records, including policies and procedures and staff education and training.

Subchapter 36 contains the advisory standards for medical records.

Subchapter 37 contains requirements for rehabilitation services to patients, including policies and procedures, staff and equipment standards.

Subchapter 38 contains the advisory standards for patient rehabilitation.

Subchapter 39 contains standards for social work services in the facility, including policies and procedures, staff, services to patients, and space and equipment requirements.

Subchapter 40 contains the advisory standards for social work services in long-term care facilities.

Subchapter 41 contains physical plant requirements, and includes references to building and fire codes, as well as maintenance, fire, emergency and safety requirements.

Subchapter 42 contains advisory physical plant standards.

Subchapter 43 contains standards on the implementation of staffing requirements, including provisions for the delay of such requirements, and research of staffing requirements.

Subchapter 44 contains requirements regarding respite care services, which are short-term stays in a facility. Such short-term stays can be helpful in maintaining a person in the community, in that relief can be provided to the major caregivers.

A new rule and an amendment are being added to N.J.A.C. 8:39. N.J.A.C. 8:39-2.9 is being developed by the NHAG and will be proposed during this year. The citation has been reserved for that rule. The new rule at N.J.A.C. 8:39-2.10 addresses procedures to be followed by a long-term care facility requesting approval to increase its total licensed beds by no more than 10 beds, or 10 percent of its licensed bed capacity. Since these "add-a-bed" procedures are exempted from Certificate of Need approval, the Department believes that is necessary to specify methods by which the facility may request approval of additional beds, the process of filing the application forms, the fee for application, and the criteria upon which the Department may deny an application for add-a-beds. Although no certificate of need is required, the Department's policies for review of these additional beds is consistent with the review policy for any other long-term care beds, and is based on similar track record criteria, on availability of space to implement the increased bed capacity in accordance with current construction standards, and on the facility's ability to demonstrate that it has provided minimum nurse staffing hours for current patient census.

N.J.A.C. 8:39-9.2, Mandatory policies and procedures for administration, is being amended to reflect current statutes which require that residents who have advanced a security deposit to a facility prior to or upon admission receive interest earnings on such funds. (See P.L. 1991 c.262, N.J.S.A. 30:13-4.1 et seq.) In order to address the many concerns expressed by residents and families regarding interest on security deposits deposited before or after February 1, 1992, the date specified by statute, the Department is spelling out requirements in this amendment.

Social Impact

No change in social impact is foreseen. The currrent rules provide a beneficial social impact, particularly in the areas of quality assurance and communication with patients and their families. The proposed readoption has been discussed with and carries the recommendation of the Nursing Home Advisory Group, consisting of long-term care providers as well as Departmental personnel and other interested persons. The proposed readoption will not have any adverse impact upon patient care or patient health and safety. Failure to readopt N.J.A.C. 8:39 could jeopardize the residents who are currently receiving quality care in licensed and regulated long-term care facilities. The rules currently provide patients and their families with clear indicators of quality, which they can use to select a nursing home to suit their needs. The staffing levels have provided more opportunities for patients to maintain social skills and to pursue activities of interest to them.

Addition of the new rule and amendment will have a beneficial impact upon facilities, residents, and families, by clarifying current add-a-bed procedures as well as statutes regarding interest earned on security deposits. The new "add-a-bed" rule allows small numbers of beds to be added to a facility more quickly, thereby making beds available more quickly, to accommodate the needs of the public for long-term care facilities. The security deposit provisions preserve the patient's right to direct the use of his or her funds.

Economic Impact

Long-term care facilities are already providing services in accordance with Long Term Care Licensing Standards, N.J.A.C. 8:39. Additional expenditures will not be required as a result of the proposed readoption of the rules, except to the extent providers are not affording current residents of long term care facilities admitted prior to February 1, 1992, interest on any funds held as security deposits. Security deposits are prohibited under Federal law for any resident who is either a Medicaid or Medicare recipient. Currently, approximately 65 percent of patient days are Medicaid reimbursed in New Jersey. The average Medicaid cost is $88.00 per day. The remaining 35 percent of the 44,000 beds Statewide are private pay patients, or approximately 16,400 residents. As length of stay in a nursing home is approximately two and one-half years, it can be assumed that by the effective date of the proposed rule (July 1, 1993), at least one half of residents would have been admitted since February 1, 1992, thus reducing the fiscal impact proportionately. As a segment of these residents are already afforded the benefit of interest payments on security deposits, and as the Department does not maintain information on the amount of security deposits maintained by facilities nor the proportion not currently meeting the statutory mandate, an accurate estimate of fiscal impact cannot be prepared. The Department invites comments on this by providers and consumers.

The proposed new rule, which allows a small number of beds (no more than 10) to be added to a facility via a simplified procedure, allows a facility to increase its level of service with little additional cost. The application fee for the add-a-bed process is $250.00.

The readoption of N.J.A.C. 8:39 will not have any additional economic impact on providers of care since the rules are now in existence and compliance is required of long-term care facilities. There will be no additional economic impact on the Department, again as these rules are in existence now and facilities are presently being surveyed using these rules. There are more than 44,000 beds in the 355 long-term care facilities now licensed in New Jersey. No economic impact is expected as a result of the new rule and amendment, since these reflect current practices and statutes.

Failure to adopt N.J.A.C. 8:39, however, could have serious consequences with a concomitant economic impact. For example without rules regarding the required services in a long-term care facility and the qualifications of the administrator and staff, there would be no assurance that the required services will be provided in an organized and efficient manner by competent staff and would be cost-effective. Without licensed long-term care facilities, potential residents might receive fragmented care or no care, which would ultimately increase costs. Inadequate care to residents in long-term care facilities would increase the cases of illness and disease requiring more costly care in hospitals. Therefore, it is imperative that these rules be readopted. The rules are based on performance standards, and, for the most part, do not require particular expenditures. In this, facilities may choose to spend more or less, depending on their particular needs. A more specific evaluation of the economic impact of the chapter is not yet complete, but will be presented in the New Jersey Register with the revisions being prepared by the Nursing Home Advisory Group.

Regulatory Flexibility Analysis

Approximately half of New Jersey's 355 long-term care facilities may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption will not significantly change the recordkeeping and reporting requirements already placed upon small businesses by the current rules, N.J.A.C. 8:39. Required services must be documented when provided to the patient. Financial reports and statistical data are already being collected by facilities. Laws requiring the facilities to maintain records of the handling of regulated medical waste are already in place. The rules have been designed to minimize the adverse economic impact on small businesses, while ensuring the provision of quality care to patients. The Department of Health has determined that compliance with the requirements delineated in the Summary, and with the proposed amendments is necessary for all facilities which provide long-term care services, in the interest of public health and safety, and that there should be no

differentiation based on business size. Facilities with 60 or fewer beds are granted specified exemptions, which would decrease costs on those facilities, which usually employ fewer than 100 people.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:39.

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

8:39-2.9 (Reserved)

8:39-2.10 Add-a-bed procedure

(a) Pursuant to N.J.S.A. 26:2H-7.2, a facility may request approval from the Department to increase total licensed beds by no more than 10 beds or 10 percent of its licensed bed capacity, whichever is less, without certificate of need approval.

(b) The application shall be filed, with an application fee of $250.00, using application forms provided by the Licensing, Certification and Standards program, and shall include: name, address, ownership, any other facilities owned, licensed capacity, any existing waivers, number of beds requested, proposed location of beds, any construction/renovation needed, a description of the project, number of single-bed rooms and square footage of dining/recreation area after increase, and additional staffing required.

(c) The Department may deny an application for add-a-beds based on the facility track record, using the following criteria:

1. Within the last 12 months preceding the date of application the applicant was cited for a violation of the licensing rules in this chapter or of Federal certification requirements for Medicaid or Medicare participation which presented a serious risk to the life, safety, or quality of care of the facility's patients or residents. A serious risk to life, safety, or quality of care of patients or residents includes, but is not limited to, deficiencies in State licensure or Federal certification requirements in the areas of nursing, patient rights, patient assessment of care plan, dietary services, infection control and sanitation, or pharmacy, resulting in:

i. An action by a State or Federal agency to curtail or temporarily suspend admissions to a facility; or

ii. Issuance of two or more Federal Level A deficiencies in the areas identified above; or

iii. Issuance of one or more Federal Level A deficiencies in the same area on two or more consecutive visits.

2. The applicant fails to demonstrate that the facility has sufficent space to implement the new licensed bed capacity in a manner meeting Federal construction standards contained in the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 or current edition), as published by the American Institute of Architects and approved by the U.S. Department of Health and Human Services. (Available from the American Institute of Architects Press, 1735 New York Ave., NW, Washington, D.C. 20006); or

3. The applicant fails to demonstrate that the facility has provided minimum nurse staffing hours, in accordance with this chapter, sufficient to meet the needs of the current patient census.

8:39-9.2 Mandatory policies and procedures for administration

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

(d) Effective July 1, 1993, all residents who have advanced a security deposit to a facility prior to or upon their admission shall be entitled to receive interest earnings which accumulate on such funds or property after the effective date.

1. The facility shall hold such funds or property in trust for the resident and they shall remain the property of the resident. All such funds shall be held in an interest-bearing account as established under requirements of N.J.S.A. 30:13-1 et seq.

2. The facility may deduct an amount not to exceed one percent per annum of the amount so invested or deposited for costs of servicing and processing the accounts.

3. The facility within 60 days of establishing an account shall notify the resident, in writing, of the name of the bank or investment company holding the funds and the account number. The facility shall thereafter provide a quarterly statement to each resident it holds security funds in trust for identifying the balance, interest earned, and any deductions for charges or expenses incurred in accordance with the terms of the contract or agreement of admission.

Recodify existing (d) through (i) as **(e) through (j)** (No change in text.)

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Drug Treatment Facilities Standards for Licensure

Proposed Readoption: N.J.A.C. 8:42B

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner Designate, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1993-175.

Submit comments by May 5, 1993 to:

Robert J. Fogg, Esq.
Director
Licensing, Certification and Standard
Division of Health Facilities Evaluation and Licensing
New Jersey Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is proposing readoption of the Manual of Standards for Licensure of Drug Treatment Facilities, N.J.A.C. 8:42B. This chapter applies to all facilities which provide inpatient drug treatment services, including hospitals which provide these services as a separate service. The current rules, which constitute the basis for the licensure of 15 drug treatment facilities by the Department, are scheduled to expire on July 18, 1993, pursuant to the "sunset" provisions of Executive Order No. 66(1978).

The current rules were adopted in 1988 following a comprehensive revision of N.J.A.C. 8:42B intended to "simplify and clarify regulations and to allow the facilities maximum flexibility to develop workable means of delivering drug treatment services to their patients" (see 20 N.J.R. 598(a); 20 N.J.R. 1692(a)). At the present time, the Department is examining the issue of substance abuse treatment facility licensure in general and may determine in the future that these facilities will be classified along different lines than are presently employed for the purpose of licensure. Given this reexamination of the present situation, and based upon the Department's belief that these current rules have functioned effectively since their promulgation in 1988, the Department maintains that readoption of the rules represents the most reasonable option at this time for averting expiration of the licensure standards.

Drug treatment facilities provide specialized, integrated care to chemically dependent or drug-addicted individuals in order to assist these individuals in reaching the maximum functional levels of which they are capable as well as to protect their health and safety. N.J.A.C. 8:42B complements this goal by establishing minimum rules with which a drug treatment facility must comply in order to obtain a license to operate in New Jersey.

A summary of the rules follows:

The scope and purpose of the rules in this chapter are set forth at N.J.A.C. 8:42B-1. The rules contain definitions of technical terms, many of which are the same as those for the terms in licensure rules developed by the Department for other types of health care facilities. There are, however, terms specific to drug treatment facilities which are defined for the purposes of this text and general terms which are defined from a drug treatment perspective. The rules delineate the qualifications for health care practitioners to which the rules refer. The rules include, for example, specification of the qualifications of the administrator (see N.J.A.C. 8:42B-1.4), the director of drug counseling services (see N.J.A.C. 8:42B-1.6), and the drug counselors (see N.J.A.C. 8:42B-1.8).

N.J.A.C. 8:42B-2, Licensure Procedures, outlines procedures for obtaining licensure, which are similar to those for other types of health care facilities. Sections of N.J.A.C. 8:42B-2 address requirements regard-

ing the following: certificate of need; application for licensure; newly constructed or expanded facilities; surveys and temporary license; full license; surrender of license; the fee schedule for filing an application for licensure; and the facility's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

General areas common to the licensure rules for many types of health care facilities are addressed at N.J.A.C. 8:42B-3. The rules require job descriptions for all personnel (see N.J.A.C. 8:42B-3.4(a)) and that at least one staff member trained in cardiopulmonary resuscitation be present in all patient areas when patients are present (see N.J.A.C. 8:42B-3.4(e)). The facility is also required by N.J.A.C. 8:42B-3.4(c) to maintain written staffing schedules and to substitute staff with equivalent qualifications for absent staff members.

N.J.A.C. 8:42B-4 outlines the responsibilities of the governing authority, which retains legal responsibility for the management, operation, and financial viability of the facility. Responsibilities enumerated in the rules include provision of a safe, adequately staffed and equipped physical plant.

N.J.A.C. 8:42B-5 applies to the administration of the facility. The rules require the appointment of a full-time administrator who shall be available on the premises of the facility at all times and of a designee to act in the absence of the administrator. Administrative responsibilities are also enumerated.

Requirements for patient care policies for the facility are set forth at N.J.A.C. 8:42B-6. The rationale for this subchapter is to protect patient health and safety, to facilitate the delivery of appropriate patient care, and to enhance the patient's access to information. While the subchapter delineates aspects of patient care which require the formulation of written policies and procedures, the facility retains control over their actual content in many instances. Many of the subject areas are the same as for other health care facilities, but the policies and procedures are to be appropriate to the drug treatment environment, in accordance with the determination of the individual facility. N.J.A.C. 8:42B-6.2 contains a series of provisions intended to ensure that the patient is fully informed of all financial arrangements.

Subchapter N.J.A.C. 8:42B-7, Medical Services, is the first of the series of subchapters which discuss requirements for the specialized professional services to be offered by drug treatment facilities. The rules require that a medical director and medical services be available to all patients at all times.

The structure and rationale of subchapter N.J.A.C. 8:42B-7 are shared by the subchapter on nursing services, N.J.A.C. 8:42B-8. N.J.A.C. 8:42B-8.2 requires that a registered professional nurse direct the nursing service. The rules also stipulate that additional licensed nursing personnel shall be provided in accordance with a systematic determination of nurse staffing levels on the basis of the acuity of patient need. Requirements for nursing care services related to pharmaceutical services are specified at N.J.A.C. 8:42B-8.5.

Subchapter 9 concerns patient assessments and treatment plans and is formulated so as to reflect the multidisciplinary approach necessary for successful drug treatment, with emphasis on continuity of care. The rules include a requirement for individual assessment of the patient at the time of admission. Assessments are to be used to develop a multidisciplinary patient treatment plan, which is to be reviewed and revised, based upon the patient's response to the care provided. The rules require that the patient's assigned drug counselor be responsible for the coordination and maintenance of the patient treatment plan. Health care practitioners providing services to the patient are to participate as members of the multidisciplinary team.

The rules at N.J.A.C. 8:42B-10 require that drug counseling services be provided on the premises to patients, in accordance with the patient treatment plan. The minimum counselor to patient ratio of 1:12 is specified at N.J.A.C. 8:42B-10.2. Supportive services, such as vocational and educational counseling, are to be available to patients (see N.J.A.C. 8:42B-10.5).

The requirements for a planned, diversified program of patient activities are delineated in N.J.A.C. 8:42B-11, Recreational Services. Responsibility for the recreational service lies with the administrator (see N.J.A.C. 8:42B-11.2).

Licensing of laboratory services and radiological services by the appropriate State agencies (Departments of Health and Environmental Protection, respectively) is addressed at N.J.A.C. 8:42B-12.

According to N.J.A.C. 8:42B-13.1(a), pharmaceutical services must be available to patients at all times. Those facilities providing acute medical detoxification services must also comply with N.J.A.C. 8:42B-13.3(a)1 through 8, which contain requirements similar to those for hospital pharmaceutical services.

N.J.A.C. 8:42B-14 includes requirements for dietary services. Dietary services must be provided to meet the nutritional needs of patients. N.J.A.C. 8:42B-14.2(a) requires that a dietitian be appointed to be responsible for the dietary service. A full-time food service supervisor is required by N.J.A.C. 8:42B-14.3.

Requirements concerning patient rights are stated at N.J.A.C. 8:42B-15. Drug treatment facilities are required to develop and implement policies and procedures regarding, for example, the following patient rights: right to appropriate treatment; freedom from discrimination or abuse; right to register complaints; and right to privacy and to security of personal possessions.

The content of N.J.A.C. 8:42B-16, Emergency Services and Procedures, incorporates principles of fire safety and emergency planning. The facility is required by N.J.A.C. 8:42B-16.1(a) to develop a written emergency plan for various emergency situations, including medical emergencies, equipment breakdown, fire, and other disaster. All emergency plans are to be posted, and drills and tests are to be conducted and documented. The provisions contained in this subchapter are intended to promote patient safety.

N.J.A.C. 8:42B-17 concerns discharge planning—an important part of the continuum of care in a drug treatment setting. The intent of the requirements regarding discharge planning is to promote the preparation of the patient for independent functioning in the community.

Requirements for medical records, including provisions addressing medical record maintenance, storage, contents, and confidentiality, are presented at N.J.A.C. 8:42B-18. The rules stipulate that a medical record shall be maintained for each patient. N.J.A.C. 8:42B-18.2 requires that the facility employ the services of a medical record practitioner, whose qualifications are specified at N.J.A.C. 8:42B-1.11.

N.J.A.C. 8:42B-19 includes requirement concerning infection prevention and control. While the facility is given flexibility in the management of infection control, this subchapter identifies the content areas to be addressed by the facility's infection control policies and procedures.

Housekeeping, sanitation, and safety are the subject of N.J.A.C. 8:42B-20. The drug treatment facility is required to maintain a safe, sanitary environment. Twenty-one specific housekeeping conditions which must be satified are enumerated at N.J.A.C. 8:42B-20.2(d).

N.J.A.C. 8:42B-21, Volunteer Services, requires facilities to specify qualifications and permitted duties of volunteers, if volunteers participate in patient care.

The requirement for a quality assurance program is established by N.J.A.C. 8:42B-22. A written plan specifying a timetable and assignment of responsibility must provide for monitoring of staff and services rendered to patients.

Social Impact

N.J.S.A. 26:2H-1 et seq. gives the Department of Health the responsibility of protecting and promoting the health of the citizens of New Jersey and also gives the Department the authority to establish rules for the licensure of health care facilities. N.J.A.C. 8:42B establishes minimum rules for the licensure of drug treatment facilities. The intent of the rules is to ensure the quality of care provided to patients who receive drug treatment services. In the absence of any action by the Department, such as this proposed readoption, prior to July 18, 1993, the rules will expire as of that date.

As was the case when the current rules were adopted in 1988, drug abuse currently represents a major public health problem in New Jersey, as it does throughout the United States. The social consequences of drug abuse have been widely reported. The causes of, and problems associated with, drug abuse are difficult to overcome. It is believed, however, that drug treatment facilities in New Jersey have helped some patients to become rehabilitated and to become productive members of society. Readoption of the rules at N.J.A.C. 8:42B will result in the continuing operation of drug treatment facilities which are licensed and regulated in a manner which promotes the delivery of quality care to patients who may benefit from drug treatment services.

The rules at N.J.A.C. 8:42B require the use of a multidisciplinary team of drug treatment professionals who offer individualized services to each patient. The various services must be integrated through joint treatment planning into a continuum of care. Requirements for a broad range of drug treatment services, including medical, nursing, dietary, drug counseling, pharmaceutical, and recreational services, reflect this multidisciplinary approach. Multidisciplinary patient assessment, coordi-

nated and goal-oriented treatment planning, ongoing reassessment, and discharge planning characterize drug treatment services provided in accordance with N.J.A.C. 8:42B.

Involvement of the patient and family in patient treatment planning and discharge planning is emphasized. N.J.A.C. 8:42B includes provisions for patient and family instruction, education, and, when possible, participation in the development of the patient treatment plan.

The rules at N.J.A.C. 8:42B were designed to provide drug treatment facilities with the flexibility to establish policies, procedures, and means of service delivery which are best, given the facilities' individual structures and patient populations.

N.J.A.C. 8:42B-22 recognizes the importance of patient care evaluation by means of implementation of an organized quality assurance program. Quality assurance activities are required for each patient care service as well as for facility-wide functions. The provisions regarding quality assurance are intended to focus the facility's efforts upon delivery of safe and effective patient care.

Both the Department and the drug treatment facilities have benefitted from these rules, which have been supporting the survey, licensure, and enforcement processes since their adoption in 1988. The Department maintains that readoption of the rules at N.J.A.C. 8:42B would have a beneficial impact upon individual patients and their families, providers of drug treatment services, the health care system, and the general public. The rules, if readopted, would continue to support effort to conserve the human potential of drug treatment patients through restoration of functional abilities which would allow the patients to become less dependent upon sources of pubic support.

Economic Impact

Drug treatment facilities in New Jersey are currently providing the services addressed by N.J.A.C. 8:42B, and the rules reflect current practices of the facilities.

The rules at N.J.A.C. 8:42B allow the facilities flexbility in management practices, such as in developing policies and procedures best suited to their individual circumstances, and in determining staffing levels to meet patient care needs. This flexibility allows the facilities to conserve resources by determining the most efficient manner in which to utilize services and personnel. The emphasis upon coordination of care is intended to reduce duplication and fragmentation of services. Use of a multidisciplinary team approach in patient assessment, treatment planning, and implementation of treatment plans help to ensure that each patient benefits from a range of professional skills and that the facility's resources are used with efficiency in meeting the patient's total drug treatment needs.

Discharge planning as required by these rules contributes to the goal of reducing costs. Careful discharge planning, with the participation of various professional disciplines, facilitates the patient's transition, while ensuring that arrangements are made for aftercare so as to avoid potentially costly fragmentation, gaps, or interruption in services.

The rules at N.J.A.C. 8:42B-19 and 20 encourage avoidance of unnecessary expenses which result from accidents and injuries by including requirements regarding the areas of infection prevention and control, housekeeping, sanitation, and safety. While the primary concern of these rules is the health and safety of patients, they also aim to reduce costs by focusing upon environmental safety in all areas of the drug treatment facility.

N.J.A.C. 8:42B-22 contains requirements for a quality assurance program which could function in such a way as to increase the cost-effectiveness of facility operations. Review and evaluation of patient care services, staffing, maintenance of physical plant and equipment, discharging planning services, and volunteer services are required.

Since these rules are currently in effect, no increase in the costs to the State related to the licensure and survey process is expected to result from readoption of N.J.A.C. 8:42B. Costs Readoption of the current rules may ultimately result in a savings, not only of health care dollars, but of human potential, as more drug-addicted individuals who receive care through drug treatment facilities attain a level of functional ability whereby they can make an occupational and economic contribution to society.

The readoption of N.J.A.C. 8:42B imposes no new costs related to the licensure and survey process, which includes unannounced site visits by Department staff for the purpose of observation of the drug treatment facility program. Licensure fees range from $500.00 plus $3.00 per bed for a drug treatment facility to $150.00 for application by a hospital for a drug treatment service within the hospital. The administration of the licensure and survey process includes costs to the State for staff, transportation to and from the facility site, and preparation of the necessary reports and correspondence. Should a licensee be required to surrender a license, any appeal pursued may create costs for legal services; however, such expenditures are not required by these rules.

Readoption of the current rules may ultimately result in a savings, not only of health care dollars, but of human potential, as more drug-addicted individuals who receive care through licensed drug treatment facilities attain a level of functional ability whereby they can make an occupational and economic contribution to society.

Regulatory Flexibility Analysis

Chapter 42B, Manual of Standards for licensure of Long-Term Care Facilities imposes standards for licensure and operation of drug treatment facilities within the State of New Jersey. Program requirements, as delineated in the Summary, are imposed to assure that staffing, services, physical safety and sanitation meet a minimum which has been determined by the Department to be necessary. No specific professional services are required, beyond those which would normally be provided to patients as part of the program. The Department of Health contributes approximately $16,800 per year for each slot in a facility. Services required must be provided to patients, regardless of the size of the facility, therefore no differentiation based upon business size has been provided in the rules.

The Department of Health has determined that compliance with the current N.J.A.C. 8:42B is necessary for all facilities which provide drug treatment services in a residential setting. These rules have been applied to all licensed drug treatment facilities since 1988. Fifteen drug treatment facilities are licensed at the present time. The Department acknowledges that all of the 15 drug treatment facilities presently licensed have fewer than 100 full-time employees and are, therefore, categorized as small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. When the rules delineated in the Summary and Impact statements were introduced in 1988, the Department asserted that the rules has been designed so as to minimize adverse economic impact on small businesses, while ensuring the provision of quality care to patients. The Department now reaffirms the reasonableness of these rules, on this same basis of minimal adverse impact and promotion of quality care, and maintains that readoption of N.J.A.C. 8:42B would be in the best interest of the residents of New Jersey.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:42B.

TRANSPORTATION

(a)

FINANCE AND ADMINISTRATION

Disability Discrimination Grievance Procedure

Proposed New Rules: N.J.A.C. 16:1B

Authorized By: Thomas M. Downs, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-208.

Submit written comments by May 5, 1993 to:

Ms. Christine Cox
Assistant Commissioner for Finance and Administration
Department of Transportation
CN 600
Trenton, New Jersey 08625

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Department of Transportation proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of Subchapter 1. Definitions, which for this agency is proposed as follows:

SUBCHAPTER 1. DEFINITIONS

16:1B-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Transportation.

"Designated decision maker" means the Commissioner of Transportation or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Department of Transportation
CN 600
Trenton, New Jersey 08625

(a)

DIVISION OF ROADWAY DESIGN
BUREAU OF LANDSCAPE ARCHITECTURE

Soil Erosion and Sediment Control Standards Vegetative and Engineering Standards

Proposed Readoption with Amendments: N.J.A.C. 16:25A

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 4:24-39 et seq., the Soil Erosion and Sediment Control Act, P.L. 1975, c.251.

Proposal Number: PRN 1993-185.

Submit comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

In accordance with the provisions of Executive Order 66(1978), N.J.A.C. 16:25A, Soil Erosion and Sediment Control Standards, will expire on July 18, 1993. The Department has evaluated the rules and has found them reasonable, understandable and necessary for the purpose for which they were originally promulgated. While the Department is considering certain revisions to the standards, the revisions remain under discussion. Therefore, no amendments are included in this proposed readoption.

N.J.A.C. 16:25A contains the rules governing the Department's certification of its plans for any construction project to the appropriate Soil Conservation District, in accordance with the requirements of the Soil Erosion and Sediment Control Act, N.J.S.A. 24:39 et seq. The Act requires the Department to conform to standards developed jointly by the Departments of Agriculture, Environmental Protection and Energy, and Transportation which are contained in a document entitled "Soil Erosion and Sediment Control Standards." Construction projects in general are required by the Act to conform to standards established by and contained in, the rules of the Department of Environmental Protection and Energy. Construction projects of the Department, however, require specific standards more particularly adapted to roadway construction. In addition, the language of the Act requires the Department to promulgate rules governing its activities in the control of soil erosion. For these reasons, the Department has adopted N.J.A.C. 16:25A, incorporating by reference the soil erosion and sediment control standards developed to control highway construction projects.

Social Impact

The rules proposed for readoption will continue to have a favorable impact on the citizens of New Jersey through increased protection from off-site erosion and sedimentation damages resulting from land disturbances for transportation construction. Soil losses from construction sites which result in the impairment of storm drain systems, streams and lakes which may increase the potential for flooding and related damages will be more adequately controlled. A positive environmental impact is anticipated with reduced sedimentation damage. Water quality will be enhanced and storm water damage will be reduced.

Economic Impact

The rules proposed for readoption will have a favorable economic impact, in that the Department's construction projects will be accomplished in such a way as to minimize soil erosion in the State of New Jersey, in accordance with the Soil Erosion and Sediment Control Act, N.J.S.A. 24:39 et seq. The Department, in considering soil erosion and sediment control as it carries out its responsibilities for the construction and maintenance of New Jersey's State and interstate roadways, is not, overall, increasing or decreasing construction costs. Although specific amounts saved or spent cannot be specified, maintenance of the State's natural resources is important to New Jersey's economy.

Regulatory Flexibility Statement

The rules proposed for readoption impose no requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The chapter governs the construction of roadway projects by the New Jersey Department of Transportation, as required by the Soil Erosion and Sediment Control Act.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:25A.

(b)

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

Speed Limits for State Highways; Restricted Parking and Stopping; No Parking Zones; Miscellaneous Traffic Rules; Turns; Prohibited Right Turns on Red

Proposed Readoptions: N.J.A.C. 16:28, 16:28A, 16:29, 16:31 and 16:31A

Proposed Readoption with Amendments: N.J.A.C. 16:30

Authorized By: Gerard Kerwin, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-21, 39:4-98, 39:4-138, 39:4-139, 39:4-198, 39:4-199, 39:4-201.1, 39:4-85.1, 39:4-140, 39:4-183.6, 39:4-88, 39:4-208, 39:4-94.1 and 39:4-183.27.

Proposal Number: PRN 1993-160.

Submit comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978) the Department of Transportation proposes to readopt N.J.A.C. 16:28, 16:28A, 16:29, 16:30, 16:31 and 16:31A. These rules are due to expire on June 1, 1993.

The Department's Bureau of Traffic Engineering and Safety Programs, in response to requests from local officials, has conducted and will continue to conduct engineering studies establishing the requirements for traffic control along the State's highway system. These traffic control rules have helped to reduce accidents, and have enhanced the overall safety. It is critical to preserve the integrity and continuity of efficient traffic operations. Any interruption in this continuity of operation could imperil police enforcement and interfere with the public's safety.

These rules were reviewed by Departmental staff along with traffic engineers from the Department's Bureau of Traffic Engineering and Safety Program in compliance with Executive Order No. 66(1978) and were found to be adequate, reasonable, understandable and necessary for the purpose for which they were originally promulgated. Amendments have been made where deemed necessary and rules no longer required or necessary have been repealed.

The chapters proposed for readoption are summarized as follows:

N.J.A.C. 16:28-1 regulates speed limits on all State highways under the authority of N.J.S.A. 39:4-98.

N.J.A.C. 16:28-2 through 13, 15 and 16 are reserved.

N.J.A.C. 16:28-14 regulates speed limits for State highways under construction or repair.

N.J.A.C. 16:28A-1 establishes "no stopping or standing" zones along various highways and at bus stops within the highway system.

N.J.A.C. 16:28A-1A establishes "no stopping or standing" zones on roads under reconstruction or repair.

N.J.A.C. 16:28A-2 regulates emergency stopping only along Route 55 between West Oak Road and West Garden Road.

N.J.A.C. 16:29 prescribes zones along the highway system where passing is unauthorized under N.J.S.A. 39:4-201.1.

N.J.A.C. 16:30 contains miscellaneous traffic rules as follows:

Subchapter 1 prescribes routes designated for one-way traffic under N.J.S.A. 39:4-85.1.

Subchapter 2 depicts routes established as "through streets" where "Stop" and "Yield" signs are erected on the near right side of each intersecting roadway under N.J.S.A. 39:4-140.

Subchapter 3 outlines the restrictions of lanes for usage by certain categories of vehicles under N.J.S.A. 39:4-88 and 39:4-183.6.

Subchapter 4 prohibits bicycles from certain parts of State highways under N.J.S.A. 27:1-7.

Subchapter 5 outlines traffic restrictions and parking on New Jersey Department of Transportation property under N.J.S.A. 39:4-108.

Subchapter 6 provides weight limitations for vehicles along various routes under N.J.S.A. 27:7-21.

Subchapter 7 prescribes limited access, which prohibits certain classes of vehicles along State highways under N.J.S.A. 39:4-91.

Subchapter 8 prescribes "no trespassing" zones along various State highways under N.J.S.A. 27:1A-5.

Amendments have been made to N.J.A.C. 16:30, Miscellaneous Traffic Rules, for the following reasons:

N.J.A.C. 16:30-5.2, which controls parking at Department headquarters, has been amended to assist the Department in assuring that designated parking spaces are used as specified by the Department, for example, that only car pool vehicles park in spots so designated. Subsection (a) has been amended to change the name of the Bureau of Security to the Division of Support Services, to accommodate a change in the Department's organizational structure. The provision regarding intent to evade requirements has been omitted from subsection (d), since the Department does not believe intent to be a primary factor, but the act of counterfeit or substitution. Temporary parking provisions have been removed from subsection (g), since such permits are no longer issued. Towing provisions have been added at subsection (g), in an effort to enforce the proper use of designated parking spaces. A provision for handicapped spaces has been added at subsection (h). At subsection (k), the method of delineation of spaces has been deleted, since methods other than white lines may be used for this purpose. At subsection (n), the conditions for the revocation of a parking permit have been deleted, since these are covered more fully in the Department's Employee Policies and Procedures. A reference to that document has been added at subsection (o), to clarify the process. The existing subsection (o) has been recodified as subsection (p) and amended to conform to N.J.S.A. 39:4-209, providing for a fine of $1.00 to $15.00.

In subchapter 6, Weight Limits, N.J.A.C. 16:30-6.1 has been deleted, since a new bridge has been built and the weight limit is no longer necessary. N.J.A.C. 16:30-6.4 has also been deleted, since the construction necessitating the restriction has been completed. In subchapter 7, Limited Access Prohibition, N.J.A.C. 16:30-7.3 has been deleted, since the roadway has been improved so that such restrictions are no longer necessary.

N.J.A.C. 16:31 regulates "turning movements" along various State highways under N.J.S.A. 39:4-183.6.

N.J.A.C. 16:31A regulates "right turn on red," along various highways under N.J.S.A. 39:4-123 and 4-183.27.

Social Impact

The proposed readoptions will have no new or additional social impact on the motoring public since the public is required to observe and obey speed limits and traffic control devices along the highway systems as prescribed by law. The rules as proposed for readoption are essential to the maintenance of the safe and efficient flow of traffic on State and interstate highways.

Economic Impact

The proposed readoptions are expected to have no increased economic impact on the motoring public other than the payment of fines as stipulated by law when the rules are violated. The amendments to N.J.A.C. 16:30-5.2 include a requirement that any vehicles improperly parked will be towed at the owner's expense. The towing will be performed as specified by the local police force, and costs will depend upon the towing service selected. The Department and local governments will continue to incur direct and indirect costs for mileage, personnel, and equipment required in traffic survey and placement of control devices.

Regulatory Flexibility Statement

Since the proposed readoptions do not place any reporting, recordkeeping, or compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, a regulatory flexibility analysis is not required. The rules primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed readoptions may be found in the New Jersey Administrative Code at N.J.A.C. 16:28 through 16:31.

16:30-5.2 DOT headquarters

(a) Except as hereinafter provided, the operator of a vehicle shall not park the vehicle in any parking area constructed, owned and maintained at the Headquarters of the N.J.D.O.T. unless such vehicle is registered with a parking permit issued by the [Bureau of Security] **Division of Support Services.**

(b) (No change.)

(c) Parking permits shall be serially numbered and shall indicate [General] Parking **Area**. The permit will be designed for pasting and shall be pasted upon the inside of the rear window.

(d) No [Person] **person** shall counterfeit a parking permit or make a substitute or temporary permit, or use such a permit [with intent to evade or violate the requirements of these regulations].

(e) To be valid, the parking permit must be on the car at all times while parked in designated [N.J.D.O.T.] parking areas.

(f) Records of all permits issued will be kept on file at the issuing agent's office.

(g) [Temporary parking permits may be issued by the issuing agent for emergency purposes or for any other purposes that may be necessary for official State business. These permits will be void except for the date mentioned thereon.] **Vehicles parked in restricted areas may be towed away at owner's expense.**

(h) Reserved parking spaces **and handicapped spaces** may be established within the various parking areas including areas for **customer**/visitor parking and will be properly marked by signs or markings and the operator of any vehicle using such areas will obey all reserved signs or markings.

(i) On special or emergency occasions any [N.J.D.O.T.] parking area may be designated as a closed area to permit holders. On such occasions proper notice will be given to permit holders as soon as possible and such notice will designate, providing there is space, another area available to them during such time.

(j) The operator of a vehicle shall not stop or stand the vehicle in the driveways or roadways marked with signs o[f]**r** any of the parking areas so as to interfere with the free and orderly movement of vehicles entering or leaving the areas.

(k) The operator of a vehicle will park said vehicle in a proper manner in the spaces marked [by white lines] and they shall not park the vehicle in any other space not so marked.

(l) The operator of a vehicle upon entering, remaining in or leaving the various parking areas will obey all traffic [lights, signs] **control devices** and all Department designated officers that may be on duty at the time.

(m) The Department designated officer on duty in any of the [N.J.D.O.T.] parking areas may [regulate and] control the traffic and parking. [and all] **All** drivers of vehicles shall obey his orders and directions, notwithstanding anything contained in these Rules [and Regulations].

(n) Parking permits may be revoked by the issuing agent at any time [the holder of such permit is found to be violating any of the Rules and Regulations].

(o) Department employees in violation of these rules may be subject to Departmental disciplinary action as provided for in Departmental Policies and Procedures.

[(o)](**p**) As prescribed by Title 39:4-209 of the Revised Statutes, "Any person who shall violate any of the said regulations [shall] **may** be subject to a fine of not less than [one dollar ()$1.00[)] nor more than [ten dollars ($10.00)] **$15.00**."

16:30-6.1 [Route 152] **(Reserved)**

[For the protection and use of the bridge along State highway Route 152 over Broad Thorofare in Egg Harbor Township, there is hereby established a weight limit of 6,000 pounds gross weight.]

16:30-6.4 [Route 45] **(Reserved)**

[For the improvement in maintenance, repair and extensive reconstruction of the South portion of Route 45 (beginning at Route U.S. 77 and Route 45 Intersection north to Route 45 and U.S. Route 322 Connector) in Harrison Township, Gloucester County, there is hereby established a weight limit of four tons gross weight for trucks, except for the pick up and delivery of materials.]

16:30-7.3 [Route I-78] **(Reserved)**

[(a) Whereas, it has been found that the health, safety and welfare of the public require that the use of the westbound part of Route Interstate 78 between the Route Interstate 78-Route US 1 and 9 interchange situated in the City of Newark, County of Essex, and the Garden State Parkway in the Township of Hillside, County of Union, be limited to certain classes of vehicles. Therefore, the use of the aforesaid section of highway by trucks having a registered total combined gross weight of vehicle and load in excess of 10,000 pounds is prohibited.

(b) The following vehicles are exempt from the provisions of this regulation:

1. New Jersey Department of Transportation maintenance trucks;
2. Trucks carrying materials to be used on adjacent Route I-78 construction projects;
3. Snow removal equipment;
4. Trucks having an origin or destination which is in close proximity to Route I-78, east of the Garden State Parkway, or through truck traffic destined for Route 24, providing that in both instances a permit is obtained from the Department of Transportation. Such a permit must be in the possession of the operator at the times when the truck is on Route I-78.]

(a)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF FREIGHT SERVICES

Rail Freight Program

Proposed Readoption with Amendments: N.J.A.C. 16:53C

Proposed Repeal: N.J.A.C. 16:53C-6.2

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-3, 27:1A-5, 27:1A-5.1 and 27:1A-6.
Proposal Number: PRN 1993-169.

Submit comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to readopt N.J.A.C. 16:53C concerning the Rail Freight Program. This chapter is scheduled to expire on June 16, 1993.

This chapter has been reviewed by the Department's Bureau of Freight Services in compliance with Executive Order No. 66(1978) and was found adequate, reasonable, understandable and necessary for the purpose for which it was promulgated.

The chapter continues a program within the Department to oversee and assist financially in the acquisition and improvement of New Jersey rail freight facilities. The program provides assistance to parties interested in preserving rail service on lines threatened with abandonment or discontinued service due to physical condition. Funding under this program is authorized in the State Budget. Eligible activities include the cost of constructing rail related facilities to improve the quality and efficiency of rail freight service.

The chapter was further amended to reflect current operational procedures, as follows:

The definition of acquisition assistance has been amended to clarify the purpose and source of such assistance.

N.J.A.C. 16:53C-1.1 has also been amended to add language to the definition of rail facility construction assistance which would allow such assistance to serve facilities not directly on the railroad line through the use of team track, intermodal transfer and other, similar, systems. The industry could be at a remote location, which may, in the past, have required a railroad siding constructed to the industry site. The purpose of the Rail Freight Assistance program is to use the most efficient means to provide the benefits of rail service to industries which require such service.

N.J.A.C. 16:53C-2.2 has been amended to clarify who is eligible for assistance. A county, or a public entity such as the Port Authority of New York and New Jersey, may be considered eligible for a grant. N.J.A.C. 16:53C-2.3 has been amended to allow an extension beyond three years from the date of project approval, and includes circumstances eligible for an extension.

N.J.A.C. 16:53C-3.2, acquisition assistance, has been amended to clarify that intermodal facilities, such as those which transfer containerized shipments from rail to truck, while not exclusively rail, are eligible projects.

N.J.A.C. 16:53C-3.3 has been amended to change the requirement that the Department aid those properties which insure the continuation of freight service, to the more realistic standard of aiding those properties which will seek to insure continuation of service. Misspellings and typographical errors have also been corrected in this rule. Lease payments have been added as a source of assessments, as this form of payment differs from trackage rights fees. Trackage rights fees are based upon actual use of the tracks, and lease payments are flat rates paid for a specific period of use.

The Department has changed the requirement for a public hearing at N.J.A.C. 16:53C-5.1 to a requirement for a public meeting, which will be conducted as an information session. The Department is not required by law to hold a hearing. The Department is taking this action to eliminate the recording costs incurred by a hearing. The Department will continue to announce the meeting in such a way as to encourage the participation of all interested parties.

The provisions of N.J.A.C. 16:53C-6.1(a)5 and 6 have been transferred to N.J.A.C. 16:53C-8.1(b)2 and 3.

N.J.A.C. 16:53C-6.2 has been deleted, since the requirements contained in the rule are part of every standard agreement, and are not applications requirements.

N.J.A.C. 16:53C is summarized as follows:

N.J.A.C. 16:53C-1, Introduction, provides the definitions for words and terms used throughout the chapter.

N.J.A.C. 16:53C-2, State Rail Assistance Program, outlines the general provisions of the program, the form of financial assistance and duration of assistance.

N.J.A.C. 16:53C-3, Project Eligibility, establishes the general requirements for a project to be eligible for funding under the program.

N.J.A.C. 16:53C-4, State Local Share, specifies the manner in which the allowable costs under the program shall be provided by the State and local government.

N.J.A.C. 16:53C-5, Requirements for the State Rail Plan, establishes the general provisions and requirements of the State Rail Plan.

N.J.A.C. 16:53C-6, Applications, provides guidelines and requirements in submitting applications.

N.J.A.C. 16:53C-7, Environmental Impact, states that an environmental impact statement meeting State and Federal guidelines shall be part of an application for assistance.

N.J.A.C. 16:53C-8, Grant Agreement and Disbursement, outlines the grant procedure to include grant agreement, disbursement of State share of project and final settlement.

N.J.A.C. 16:53C-9, Record, Audit and Examination, stipulates that the applicant for assistance under this program shall retain and make available any and all records for audit and examination.

Social Impact

The proposed readoption will continue to provide assistance to persons and organizations interested in preserving rail service on lines threatened with abandonment or discontinued service due to physical condition. The program preserves the economic and environmental interests of the areas served by these rail lines.

Economic Impact

The proposed readoption will continue to foster economic growth and limit the loss of jobs and revenue. Based on customer surveys, projects to be accomplished through the State Rail Program will directly create 46 new jobs upon their completion. The Department estimates that this will result in direct salary impacts of $5,864,361 over the five-year period after project completion.

Regulatory Flexibility Analysis

The proposed readoption does not place any new reporting, recordkeeping, or other requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, reporting and recordkeeping requirements are necessary to meet the objectives of the State Rail Plan, and to ensure that the public funds are spent in conformance with agency approvals. While no specific type of professional assistance is required by the rules, applicants may utilize such services in the preparation of their applications. Since costs of compliance which are administrative in nature, are outweighed by the financial benefits provided to the small businesses, and by the improved rail freight service, the Department has determined that no differentiation based on business size should be provided in the rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:53C.

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

16:53C-1.1 Definitions

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

"Acquisition assistance" means funds [granted to the Department of Transportation under] the Rail Freight Assistance Program **uses** to cover the cost of acquiring, by purchase, or in such other manner the Department considers appropriate, [a line] a railroad **line** or other rail property for existing or future rail freight service.

. . .

"Rail facility construction assistance" means funds provided to cover the cost of constructing rail related facilities for the purpose of improving the quality and efficiency of [the] **existing** rail freight service**, or providing the benefits of rail service to industries not located on existing rail lines**. This includes new connections between two or more existing lines, relocation of lines or sidings, modernization of existing facilities, **construction of rail related freight facilities (for example, team track, intermodal transfer, etc.)**, and construction of minor sections of new track (for example, passing tracks, crossovers, etc.).

. . .

"Substitute service assistance" means funds to cover the cost of reducing the transportation impacts of abandoned rail service in a manner less expensive than the continuation of the rail service and includes, but is not limited to, the acquisition, construction or improvement of substitute freight transportation facilities, for example, team track[, intermodal facilities, etc. as described in the State Rail Plan].

16:53C-2.1 General provisions

(a) Scope of the program includes:

1.-3. (No change.)

4. Substitute service assistance[;].

16:53C-2.2 Form of financial assistance

Financial assistance may be in the form of a grant to the owner of the rail properties, [or] the operator of Rail Freight Service on the properties**, or responsible public agency/authority**. The Commissioner shall determine all financial terms and conditions of the grant.

16:53C-2.3 Duration of assistance

Financial assistance is limited in duration to a period not to exceed three years from the date of project approval. **Should circumstances dictate that a project extend beyond three years, the sponsor shall request such an extension of the Department in writing, including a detailed justification for the request. Circumstances to be considered eligible for an extension shall include, but not be limited to: unanticipated additional work directly associated with the project; inability to accomplish the project within the specified timeframe due to circumstances beyond the sponsor's control; forced staging of financing over a period greater than three years; or a project scope which is physically impossible to accomplish within three years.**

16:53C-3.2 Acquisition [Assistance] **assistance**

(a) The rail freight properties which are eligible for acquisition assistance are those properties in the State identified as part of a core rail freight system which will be defined by the Department. In no case will the State acquire rail properties where continued rail operations can be maintained through ownership within the private sector. These properties may include inactive rail lines which have value for future use as rail freight facilities **or as components of an intermodal system.**

(b) (No change.)

16:53C-3.3 Rehabilitation or improvement assistance

(a) The rail freight properties eligible for rehabilitation assistance are those properties (as defined by the Department), for which a one-time investment of capital assistance will **seek to** insure the continuation or creation of safe, adequate and efficient rail freight services for a period of not less than five years.

1. For a State-owned line, the [operation] **operator** of the freight service or other appropriate party is eligible to receive a grant of up to 100 percent of the total project cost to rehabilitate a rail line to Federal Railroad Administration (FRA)[,] safety standards allowing rail operations at speeds appropriate for this line. On these properties trackage rights fees**, or lease payments** may be assessed in an amount sufficient to recoup acquisition and/or rehabilitation investments.

2. An operator or other responsible party, providing rail freight services[,] on a rail line not owned by the State which is part of the core rail freight system, is eligible to receive a grant not to exceed 70 percent of the total cost of rehabilitating the rail line to FRA safety standards allowing rail operations at speeds appropriate for this line[;].

3. The operator or other responsible party, providing rail freight service[,] on a rail line which is not an element of the core system, is eligible to receive a grant not to exceed 50 percent of the cost of rehabilitating the line to FRA safety standards allowing rail operations at speeds appropriate for this line[;].

4. Funding assistance available under this program shall not be available for maintenance **as defined** in N.J.A.C. 16:53C-1.

16:53C-3.5 Substitute rail service assistance

For industries located on rail segments where the continuation of rail service through acquisition, rehabilitation or rail facility construction assistance is not warranted, a grant not to exceed 50 percent of the total cost of project construction may be made available in order to provide **alternative** nonrail [alternative] transportation facilities necessitated by the loss of rail service.

16:53C-5.1 General provisions

(a) The State Rail Plan shall be based on a comprehensive, coordinated and continuing planning process. It shall be developed with an opportunity for participation by all interested parties. The Department shall schedule a public [hearing] **meeting** upon revising the State Rail Plan. Public notice shall be given in accordance with applicable State law and practice.

(b) (No change.)

16:53C-6.1 General contents **of applications**

(a) Each application shall include:

1.-2. (No change.)

3. Budget estimates for the total amount of assistance required; **and**

4. Applicant's intention to furnish the local share of total project costs, including copies of any executed third party agreements to provide the required local share, or a portion thereof[;].

[5. Assurances that the applicant will comply with applicable State laws, policies, directives, and regulations dealing with discrimination in employment and prevailing wage rate requirements on public contracts;

6. Assurance by the applicant that a contingent interest shall be retained by the State for a period equal to the service life of the project. Further, that during any time within this period, the State's share shall be repaid, upon the sale, disposition or abandonment of the rail line receiving assistance.]

(b) Applications for assistance may be addressed to: [Director, Office] **Manager, Bureau** of Freight Services, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625.

16:53C-6.2 [Acquisition assistance] **(Reserved)**

[(a) In addition to meeting the requirements of N.J.A.C. 16:53C-6.1 each application for acquisition shall include:

1. Copies of the materials and data used as the basis for the proposed acquisition price;

2. A description of the necessary steps and timing for completion of the acquisition;

3. Anticipated dates when rail service is to be provided over the line, a description of the arrangements made for rail service operation, including copies of proposed operating agreements, and leases.]

16:53C-6.3 Rehabilitation or improvement assistance and rail facility construction assistance

(a) In addition to meeting the requirements of N.J.A.C. 16:53C-6.1, each application for rehabilitation or improvement assistance, and/**or** rail facilities construction assistance shall include:

1.-2. (No change.)

3. A description of the arrangements made for the operation of rail service over the property, including copies of the proposed operating agreements[,] or leases, and the proposed method of financing the operation of such service.

16:53C-7.1 Requirements **for application for assistance**

Applications for assistance under the program shall conform to the requirements for environmental [impact] assessments under State and Federal regulations, **laws,** directives, or policies governing existing or new facility construction.

16:53C-8.1 Grant agreement

(a) Upon the approval of an application meeting the requirements of N.J.A.C. 16:53C-[7,]**1 through 7,** an agreement for the State share of the approved amount of the estimated project costs will be executed by the applicant and the Commissioner or his designated representative.

(b) The agreement will [identify]:

1. Identify the amount of the grantee's share of the program costs to be furnished in cash[/] or through approved in-lieu-of-cash contributions as defined in N.J.A.C. 16:53C-4. The applicant shall expend a pro-rata share of its contributions at the same time payments of the State share are made available[.];

2. Provide assurances that the applicant will comply with applicable State laws, policies, directives, and regulations dealing with discrimination in employment and prevailing wage rate requirements on public contracts; and

3. Provide assurances by the applicant that a contingent interest shall be retained by the State for a period equal to the service life of the project. Further, that during any time within this period, the State's share shall be repaid, upon the sale, disposition or abandonment of the rail line receiving assistance.

16:53C-8.3 Final settlement

Final [Settlement] **settlement** under the agreement will be made on the basis of a State audit which has determined the allowable costs over the entire term of the agreement. If the State audit determined that the allowable costs under the agreement are less than the amount of the agreement, the difference shall be refunded to the program at the end of the fiscal year in which the audit was performed.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF AVIATION

Licensing of Aeronautical Activities

Proposed Readoption: N.J.A.C. 16:55

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.

Proposal Number: PRN 1993-172.

Submit comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to readopt N.J.A.C. 16:55 concerning the Licensing of Aeronautical Activities in the State of New Jersey. This chapter is scheduled to expire on June 14, 1993.

The chapter has been reviewed by the Department's Office of Aviation in compliance with Executive Order No. 66(1978) and was found adequate, reasonable, understandable, and necessary for the purpose for which it was promulgated.

N.J.A.C. 16:55 lists and defines those aeronautical activities (also generally known as fixed base operations or airport service operations) required to be licensed in the State of New Jersey; outlines the procedures for obtaining license(s); specifies the requirements which licensees must observe; specifies the liability for failure to observe the requirements; and describes the procedures for requesting exemption from the rules.

The Department expects to revise N.J.A.C. 16:55 in the future; however, discussion of these revisions is not yet complete, and therefore they are not part of this rulemaking. The chapter governs aeronautical activities conducted at locations away from an airport, such as aerial advertising, aerial application of fertilizers for agricultural uses, aerial

mosquito control, and parachute schools. The rules outline the procedure for obtaining licensure, specify liability requirements, hearing rights, and the procedure for requesting exemptions from the rules.

There are approximately 12 banner-towing operations licensed by this chapter, which primarily operate during the summer months at the New Jersey Shore area, towing advertising banners along the beach. Other possible activities include the use of electric lights or smoke, although no such activities are currently licensed. There are approximately 30 operators licensed by the Department for agricultural uses, such as spraying, seeding, or fertilizing. These operations typically utilize landing areas in fields near the crops. There are four county mosquito commissions which are licensed to perform aerial mosquito control operations, which involve fogging areas from the air. Two parachute schools are licensed at this time within the State.

Social Impact

The chapter proposed for readoption will affect the general public in that they may be assured that safety standards will be maintained by the auxiliary activities governed by the rules, through the Department's review of operations, as specified by the chapter. The individuals who attend parachute school in the State may also be assured that the training is conducted in a safe manner, and complies with the requirements of N.J.A.C. 16:58 and 16:54, in addition to this chapter.

Economic Impact

The economic impact of maintaining public safety in the operation of the regulated aeronautical activities cannot be specifically determined. The operations must be conducted in a safe manner, in accordance with the specifications provided in the chapter and in the appropriate rules of the New Jersey Department of Environmental Protection and the Federal Aeronautics Administration. Accidents or injuries prevented may decrease potential medical costs and costs associated with property damage.

Regulatory Flexibility Analysis

The proposed readoption will place recordkeeping and other requirements on the approximately 46 licensees, all of which are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any person proposing to engage in the regulated activities, or who is currently an applicant for a license will also be affected by the rules being proposed for readoption. Records must be maintained by each type of licensed operation, as specified in the rules. The rules contain the minimum standards necessary for the protection of public safety during the operation of the aeronautical activities. Since the regulated public consists only of small businesses, no differentiation in regard to business size has been provided in the rules. Any differentiation is based upon type of activity.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:55.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF AVIATION

Issuance of Summons and Designation of Enforcement Officer

Proposed Readoption with Amendments: N.J.A.C. 16:60

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 6:1-29.

Proposal Number: PRN 1993-170.

Submit comments by May 5, 1993 to:

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

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to readopt N.J.A.C. 16:60 concerning the issuance of summons and designation of law enforcement officers. This chapter is scheduled to expire on June 14, 1993.

The chapter has been reviewed by the Department's Office of Aviation in compliance with Executive Order No. 66(1978) and was found adequate, reasonable, understandable, and necessary for the purpose for which it was promulgated. Amendments are proposed to change the title "peace officer" to "law enforcement officer."

This chapter sets forth procedures for the issuance of summons and complaints and empowers specific employees of the Office of Aviation with the authority to function as law enforcement officers in compliance with the provisions of Title 6 of the New Jersey Statutes Annotated.

Social Impact

The proposed readoption will continue in force the authority to issue a complaint and summons for noncompliance with the provisions of N.J.S.A. Title 6 (Aviation) to ensure aviation safety and the general safety of the populace.

Economic Impact

The rules proposed for readoption have no economic impact other than direct and indirect costs incurred by the Department for personnel, mileage and equipment used in the inspection of aircraft.

Regulatory Flexibility Statement

Since the rules proposed for readoption do not place any reporting, recordkeeping, or compliance on small businesses (as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.), a regulatory flexibility analysis is not required. The rules designate certain employees of the Division of Aeronautics as law enforcement officers with the authority to issue a complaint and summons for non-compliance with N.J.S.A. Title 6.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:60.

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

16:60-1.1 Scope

This chapter sets forth procedures for the issuance of summons and complaints and empowers specific additional employees of the Division of Aeronautics with the authority of function as [peace] **law enforcement** officers in compliance with the provisions of Title 6 of the New Jersey Statutes Annotated.

16:60-1.2 Issuance of summons

Designated [peace] **law enforcement** officers of the Division of Aeronautics are hereby vested with the authority to issue a complaint and summons for noncompliance with the provisions of N.J.S.A. Title 6 (Aviation) or noncompliance with any of the provisions contained in this chapter. All proceedings shall be brought before a Magistrate having jurisdiction in the municipality in which it is alleged that the violation occurred. Designated [peace] **law enforcement** officers shall file the complaint and issue a summons for any violation of N.J.S.A. Title 6 (Aviation). The special form of complaint and summons prescribed by the Administrative Director of the Courts pursuant to Rule 4:70-3 and Part VII, Rules Governing Practice in the Municipal Court.

16:60-1.3 Designation action

(a) In addition to the personnel specifically designed as [peace] **law enforcement** officers by N.J.S.A. 6:1-29, the members and employees of the Division of Aeronautics assigned to the following authorized positions are hereby designated as [peace] **law enforcement** officers:

1.-4. (No change.)

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

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF AVIATION

Aircraft Accidents

Proposed Readoption: N.J.A.C. 16:61

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.
Proposal Number: PRN 1993-171.

Submit comments by May 5, 1993 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to readopt N.J.A.C. 16:61 concerning aircraft accidents. This chapter is scheduled to expire on June 14, 1993 and has been reviewed by the Department's Office of Aviation in compliance with Executive Order No. 66(1978) and was found adequate, reasonable, understandable, and necessary for the purpose for which it was promulgated.

The chapter outlines the specific steps to be followed in reporting aircraft accidents and delineates the State's responsibilities for assistance in case of aircraft accidents, and inspections subsequent to aircraft accidents. Approximately 600 facilities throughout the State are under the jurisdiction of the Department. Approximately 50 are public-use, and the balance private or restricted use airports or heliports.

Social Impact

The proposed readoption will continue to enhance a program of more focused and prioritized State response to aircraft accidents which may occur in the State of New Jersey. The State provides specialized assistance to local officials who may have little or no knowledge in the correct methods for handling and coordinating aircraft accident matters. This assistance has a beneficial effect, as it helps to preserve the safety and welfare of any members of the public who may be involved in an accident.

Economic Impact

The economic impact of these rules upon the Department is minimal, involving inspection visits and the preparation and maintenance of reports and records. The economic impact on the regulated public consists of the cost of a telephone call to report the accident. The call can be made to the nearest New Jersey State Police, who will then inform the Department and any other agencies necessary. Any savings resulting from the prompt and appropriate handling of an aircraft accident would accrue to the owners of the facility or any property in the vicinity of the accident.

Regulatory Flexibility Analysis

The Department has jurisdiction over 600 facilities in New Jersey, many of which are small businesses. (Newark Airport is under Federal jurisdiction.) There are minimal reporting requirements, involving a telephone call to the Department, or to the State Police, and no recordkeeping requirements. The requirements involve performance on the part of those responsible for the facility at the time of the accident, and include first aid measures and the preservation of any evidence until the arrival of the Department staff or law enforcement officers. Given the minimal nature of the requirements, and the need to preserve the public safety, the Department has determined that no differentiation based on business size can be made in the rules.

Full text of the proposed adoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:61.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Business Personal Property Tax

Proposed Readoption: N.J.A.C. 18:9

Authorized By: Leslie A. Thompson, Director, Division of Taxation.
Authority: N.J.S.A. 54:11A-19.
Proposal Number: PRN 1993-177.

Submit comments by May 5, 1993 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:9, Business Personal Property Tax Rules, expire on June 7, 1993. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change. The rules proposed for readoption are promulgated under the authority granted to the Director of the Division of Taxation by P.L. 1966, c.136, Section 19; N.J.S.A. 54:11A-19.

In 1966, the Business Personal Property Tax Act (P.L. 1966, c.136; N.J.S.A. 54:11A-1 et seq.), was enacted as part of the program recommended by the Governor's Committee on Local Property Taxation (Report—December, 1965). This statute was instrumental in placing New Jersey businesses in a position comparable with New York, Pennsylvania and Delaware, where business personal property was not taxable.

This program was designed to provide tax revenues for businesses as a substitute for the varied tax burdens imposed by municipalities in the form of local personal property taxes. Thus, beginning in 1968, the business personal property tax became State administered.

The Business Personal Property Tax Act imposes a tax upon business personal property in use or held for use, with certain exceptions, at the rate of $6.50 per $1,000 of original cost (1.3 percent on 50 percent of original cost).

Subsequent reference to "the law," "the Act," or "the Tax Act" refers to the Business Personal Property Tax Act 1966, P.L. 1966, c.136; N.J.S.A. 54:11A-1 et seq. The Business Personal Property Tax Act is administered by the Director of the Division of Taxation, hereinafter referred to as the Director, in the Department of the Treasury.

On September 13, 1978, the Division adopted rules which exempt from tax any business personal property tax that was acquired on or after January 1, 1977.

The Business Personal Property Tax is imposed on any individual, trust, estate, partnership, association, company, joint stock company or corporation which conducts a business in the State of New Jersey. Property subject to tax includes all business personal property purchased or brought into New Jersey before January 1, 1977 and includes all tangible goods and chattels used or held for use in any business not expressly exempt from taxation. The definition of taxpayer also includes a lessor of business personal property. Certain business personal property which is exempt includes inventory and goods in process, certain supplies and materials and small tools, and personal property held for leasing. Exempt property also includes real property and fixtures, certain motor vehicles, certain equipment mounted on vehicles, certified vessels, property of utilities, certain farming equipment, personal property of life insurance and nonprofit corporations exempt from tax, certain aircraft, cemetery property, personal property of an unincorporated financial business, personal property of a limited dividend housing corporation and certain pollution equipment.

The rate of tax is 1.3 percent of taxable value which taxable value is 50 percent or original cost; in other words $0.65 per $100.00.

Tax deduction applies to a veteran's or veteran's widow's business personal property who had not used his or her $50.00 deduction against real property.

The return to be filed is made on Form BPT-1 which must be filed on or before February 15 on property owned on the preceding October 1. The tax shall be payable in two equal installments; at the time the annual return is required to be filed and the second installment shall be payable on September 15 following such filing date. A two month extension is possible and returns are confidential. Claims for refund are governed by the same rules as other State tax refunds. The director may assess taxes when taxpayers have omitted taxable business personal property. Penalty and interest payments are the same as under the State Tax Uniform Procedure Law, as well as protests and appeals and statutory criminal violations regarding fradulent filing, failure to file and rights to appeal.

A bulk sale notice must be filed with the Division whenever there is a sale of a substantial part or all of a taxpayer's business in other than the ordinary course of business.

Social Impact

The Business Personal Property Tax rules were enacted to provide taxpayers and their attorneys and accountants guidance and assistance in the administration of the New Jersey Business Personal Property Tax Act, N.J.S.A. 54:11A-1 et seq. These rules were intended as guidelines to assist taxpayers in their preparation of Form BPT-1.

Banking corporation taxpayers were required to file Business Personal Property Tax Returns with payments on or before February 15, 1976 and on or before February 15 of each year thereafter. Due to Chapter 170, Laws of 1975, there was some impact on the banking corporations and their customers by requiring them to file this return. As a group, the banks were added to the taxpayers of other businesses who were also required to file this return. The same amendment in 1975 notified the entity subject to the tax that the interest and penalties were to be assessed pursuant to the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. The uniformity of all penalty and interest provisions made it easier for all types of taxpayers because the general interest and penalty provisions of most State taxes administered by this Division had the same penalty and interest requirements. The public benefitted as well as the taxpayer when the phasing out of the business personal property tax began pursuant to P.L. 1981, c.397 which amended N.J.S.A. 54:11A-3.1. This amendment specifically exempted machinery or equipment brought into the State on or after January 1, 1977, since taxpayers who purchased any machinery or equipment on or after January 1, 1977 knew that such property would not be subject to assessment and taxation. Thus, business and industry is obtaining a business tax benefit knowing that if they purchase new machinery and equipment such property could not be subject to business personal property tax and, in many cases, such property is also exempt from sales and use taxes. In addition, much of this property is not subject to real property taxation. New Jersey fosters a business climate that would induce businesses to come into New Jersey and provide jobs.

Owners of businesses pay a business personal property tax which is usually less than other State taxes. The State benefits from the revenues so collected.

Economic Impact

The 1981 amendment did result in the collection of less business personal property tax as a part of New Jersey State revenue, but, at the same time, the business community and the people of the State may have made new purchases of business personal property with the amounts saved by not having to pay business personal property tax and, in some instances, no sales tax, on said new purchases. The amount of dollars saved cannot be estimated. The following amounts were collected as business personal property taxes in fiscal year:

1988	$23,100,946
1989	19,603,025
1990	14,320,990
1991	14,553,142

These revenues are deposited in the General Treasury for State use. N.J.A.C 18:9, Business Personal Property Tax, imposes minimal costs on the regulated public. While no specific data is available on costs, such costs would be based upon the administrative expenses incurred by a business as it forwards the tax to the Division.

Regulatory Flexibility Statement

N.J.A.C. 18:9, as described in the Summary, concerns the collection of a tax on businesses on the personal property they use.

The rules apply to small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to businesses employing more than 100 people. Any action to exempt small businesses, other than as specified in N.J.S.A. 54:11A-1 et seq. would not be in compliance with applicable statutes; therefore, the provisions of this chapter must be uniformly applied.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:9.

(a)

DIVISION OF TAXATION

Sales and Use Tax

Proposed Readoption with Amendments: N.J.A.C. 18:24

Proposed Repeals: N.J.A.C. 18:24-2.13, 10.7, 11.3, 21, 24, 26.3, 28.6, and 29.3

Proposed Repeals and New Rules: 18:24-3.3 and 7.18

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1993-176.

Submit comments by May 5, 1993 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:24, the Sales and Use Tax Act rules, expires on June 7, 1993. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Division of Taxation proposes to readopt these rules in substantially the same form, with technical corrections and changes to reflect current legislation and/or long standing administrative application.

The Sales and Use Tax Act, P.L. 1966, c.30, N.J.S.A. 54:32B-1 et seq., was enacted on April 27, 1966 and became applicable to transactions occurring on and after July 1, 1966. This tax was adopted as a substitute broad based tax when a State income tax bill, expected to pass as a part of a reorganization of the New Jersey tax structure in 1966, failed passage in the Legislature. The Sales and Use Tax Act was signed on April 27, and became effective on July 1, 1966.

The Sales and Use Tax Act, as is the case with most of the New Jersey tax laws, is subject to the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., by N.J.S.A. 54:32B-28. The State Tax Uniform Procedure Law establishes standard procedures for interest and penalties and applies to taxpayers under the Sales and Use Tax Act. If there is a conflict between the State Tax Uniform Procedure Law and the Sales and Use Tax Act, the latter prevails.

The law applies tax to the receipts from every retail sale of tangible personal property in New Jersey and to the receipts from sales of certain services. Thus, the services of installing or maintaining personal property, producing, processing or printing personal property, or storing personal property are also subject to tax. Also, maintaining or repairing real property, advertising services and telecommunication services are subject to tax. Tax is imposed on hotel occupancies, restaurant meals and admissions as well.

The rate of tax was set at three percent when the law became effective on July 1, 1966. P.L. 1970, c.7 increased the rate to five percent, effective March 1, 1970. P.L. 1982, c.227 increased the tax rate to six percent, effective January 3, 1983. P.L. 1990, c.40 increased the tax rate to seven percent, effective July 1, 1990. P.L. 1992, c.11 decreased the tax rate to six percent, effective July 1, 1992. The Sales and Use Tax Act contains transitional provisions relating to implementation of increased and decreased tax rates.

There are many consumer exemptions in the Sales and Use Tax Act. For example, the law exempts sales of drugs and certain medical equipment, sales of unprepared food, sales of clothing and footwear, sales of newspapers and magazines, casual or isolated sales by persons who are not in business, sales of utilities, sales of motor fuel, sales of manufacturing equipment, sales of property for direct use in farming, and sales of paper products for household use.

The following summarizes the text of the sales and use tax rules promulgated pursuant to the Act as amended and supplemented. Changes proposed with this readoption are set forth.

Subchapter 1 enumerates all of the sales tax certificates by number, etc. and defines certain terms. The proposed amendments incorporate the current sales and use tax registration form, REG-1, Application For Registration. This replaces the form designated CIS-1. The proposed rule also reflects a combined form for certain transactions in Urban Enterprise Zones. The UZ-4A/5A, Exempt Qualified Business Permit/ Exempt Purchase Permit replaces the UZ-4A Urban Enterprise Zone Contractor's Exempt Purchase Permit and the UZ-5A, Urban Enterprise Exempt Purchase Permit.

The Sales and Use Tax Act provides an exemption for sales of magazines and periodicals in N.J.S.A. 54:32B-8.5. In order to clarify the Division's position that the content of a publication will not be considered in determining the exempt status of a publication, the proposed amendment to N.J.A.C. 18:24-1.3 deletes references to the types of articles which would comprise a periodical.

In defining "receipt," the proposed amendment to N.J.A.C. 18:24-1.4 excludes the Federal luxury tax from the base upon which sales tax is computed. The amendment also reflects a change in the law regarding lessors of property. P.L. 1989, c.123 provided a procedural change that accelerated the payment of tax on lease transactions. The definition of "receipt" has also been extended to include the charges for telecommunications which are now subject to the tax imposed by P.L. 1990, c.40.

Subchapter 2 lists what records are required to be kept by the vendor under the Sales and Use Tax Act. The kinds or records which a business must retain will include, in accordance with the proposed amendment to N.J.A.C. 18:24-2.3 and as mandated by P.L. 1989, c.123, records of every purchase and purchases made for leasing purposes.

In order to reflect a statutory deletion (P.L. 1987, c.76) of section 26(b) in the sales tax law, the section on the penalty for failure to keep records (N.J.A.C. 18:24-2.13) has been repealed.

Subchapter 3 deals with room occupancy, particularly related to hotels and apartments, boarding houses, etc. N.J.A.C. 18:24-3.3, effective date tax payable, is being repealed and a new rule proposed with respect to the operation of guest houses to show that sales tax is not imposed on those persons who are permanent residents (See N.J.S.A. 54:32B-2(m).)

Subchapter 4 deals with the taxation and exemption of tangible personal property which was purchased for use in manufacturing, processing, assembling, and refining. The proposed rule amendment of N.J.A.C. 18:24-4.4(g)5 includes provisions to reflect the treatment of lease transactions whereby leases of equipment for more than 28 days are taxed to the lessor under P.L. 1989, c.123. This proposal deletes N.J.A.C. 18:24-4.6(a)1iv which indicates that the installation of property exempt from sales tax under N.J.S.A. 54:32B-8 (except section 8(a) which is now section 8.1) will not be considered a capital improvement. The Division will consider the facts in specific cases rather than categorically state that property exempt under section 8 of the law cannot be the subject of a capital improvement. Since interior cleaning and maintenance services are now taxable (P.L. 1990, c.40), the exemption for these services has been deleted at N.J.A.C. 18:24-4.7(a)2.

Subchapter 5 relates to the building and construction trades. Included in the present rules are definitions and explanations of what materials and supplies used by contractors are subject to sales tax on purchase, equipment rental or use, taxable services, how contractors' and fabricators'/contractors' activities and property are taxed, what rules apply to subcontractors, performance of contracts out of state, out-of-state purchases, purchases relating to issuance and acceptance of certificates, penalties for fraudulent issuances of exemption certificates and recordkeeping.

Housing sponsors receiving financing from the New Jersey Housing and Mortgage Finance Agency and qualified businesses in New Jersey Urban Enterprise Zones are exempt from sales tax. Contractors purchasing building materials for use on construction jobs for these groups are exempt from sales tax in accordance with N.J.S.A. 54:32B-8.22. The proposed amendment at N.J.A.C. 18:24-5.3(b)1 incorporates information on this statutory provision.

With respect to the treatment of equipment rentals by contractors the proposed amendment to N.J.A.C. 18:24-5.4 provides an explanation of the distinction between short term rentals (28 days or less) and lease transactions (more than 28 days) for sales tax purposes. P.L. 1989, c.123 provides for an up front tax payment by lessors of tangible personal property when there is an agreement for the use of property for periods of more than 28 days.

Interior cleaning and maintenance services which were performed on a regular basis were exempt from sales tax prior to the passage of P.L. 1990, c.40 which deleted this exemption provision. The statement and clarification of this provision is deleted in the proposed amendment at N.J.A.C. 18:24-5.8(b)2, thereby indicating that such services are currently subject to sales tax.

The determination of whether an installation of tangible personal property results in a capital improvement to real property is fact sensitive. The categorical statement at N.J.A.C. 18:24-5.6(a), that property exempt from tax under Section 8 of the Act is not the subject of a capital improvement has been deleted from the text of the contractor rule.

To reflect the current tax exemption procedure the proposed amendment to N.J.A.C. 18:24 includes the forms and procedures used by qualified businesses in Urban Enterprise Zones and housing sponsors financed by the Housing and Mortgage Finance Agency.

Subchapter 6, Clothing and Footwear, lists items that are taxable and exempt. Included in the present rules are athletic goods and equipment, clothing and footwear for sporting activities, fur garments and accessories that are taxable. N.J.A.C. 18:24-6.5 has been amended to add motorcycle helmets and ski boots to the list of items not exempt from sales tax under the clothing and footwear exemption, N.J.S.A. 54:32B-8.4. With respect to fur garments which are taxable under the law, a clarification has been proposed at N.J.A.C. 18:24-6.6 to indicate that remodeling services performed on such furs are taxable.

Subchapter 7 deals with the sales and use tax on motor vehicles, including definitions; tax payment prerequisite to registration; the computation of tax on purchase; allowance for trade-in value, computation problems, particularly with out-of-state purchase by resident; transfers of motor vehicle title excluded from tax; procedures; forms and certificates; taxable services; casual sales of motor vehicles; method of computation with regard to manufacturers and automobile dealers; renting and leasing of motor vehicles; issuance and acceptance of resale and exemption certificates; retention of records; and the taxation of mobile homes.

N.J.A.C. 18:24-7.8(d) is amended to reflect a change in the law regarding the treatment of leased tangible personal property. P.L.1989, c.123 (N.J.S.A. 54:32B-8.42) changed the method for taxing property leased for more than 28 days. Tax payment was accelerated by requiring the lessor to pay the tax at the inception of a lease transaction.

Changes have been made to rule provisions dealing with heavy trucks and certain other commercial vehicles. The statutory exemption for these vehicles was repealed by P.L.1990, c.40. The exemption, with modifications, was subsequently reinstated in P.L.1990, c.115. The proposed rule incorporates and explains the current exemption in this area. The proposal also provides that a warranty sold in conjunction with an exempt motor vehicle sale is not subject to tax.

The proposal, at N.J.A.C. 18:24-7.10(a)6 clarifies the treatment of motor vehicle warranties sold in conjunction with sales of vehicles that are not subject to tax. In such cases an exemption for a warranty will follow the exemption for the vehicle purchased.

N.J.A.C. 18:24-7.18 is repealed and a new rule is proposed dealing with sales, renting or leasing of commercial motor vehicles. This new section reflects legislation enacted by P.L.1990, c.115 which reinstated, with modification, an exemption for certain heavy trucks that had been repealed in P.L.1990, c.40.

N.J.A.C. 18:24-7.19(a) has been amended to make it clear that the rule only applies to manufactured or mobile homes as defined in the rule. Sales of modular buildings which are not built on permanent chassis are treated the same as other sales of building materials which are taxable under N.J.S.A. 54:32B-3(a).

Subchapter 8 deals with exempt nongovernmental organizations. Requirements are listed as to qualified organizations and exemptions not based on nonprofit status; change in status; application for exemption; information required; and definition of private shareholder or individual. N.J.A.C. 18:24-8.4(c) has been amended to reflect the Division's policy of requiring that an exempt organization applicant submit a copy of a Federal exemption letter (IRS 501(c)(3)) which will evidence that the

applicant meets the requirements for sales tax exemption since the New Jersey exemption is patterned on the federal exemption.

Subchapter 9 deals with the exemption for organizations operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to animals or children, in which case exempt organization numbers are given to qualified organizations. The rules define exempt purposes; outline organizational and operational tests, and purposes specifically exempt; require that the organization must serve the public interest; and define "charitable," "educational," "scientific," and "testing for public safety." There are special rules for sales of meals and rental of rooms to exempt organizations and a rule regulating organizations carrying on trade or business at N.J.A.C. 18:24-9.11 and 9.12, respectively. The rule at N.J.A.C. 18:24-9.12 is amended to reflect the requirement that a purchase by and for an exempt organization must be evidenced by payment from the funds of the organization. The proposed amendment also states at N.J.A.C. 18:24-9.3(a)6 that Federal exemption status under IRS Code Section 501(c)(3) will evidence exempt status under New Jersey sales tax law.

Subchapter 10 deals with the issuance and acceptance of exemption certificates. The rules deal with requirements, responsibilities, acceptance in good faith, disclosure of proper exemption basis, retention of certificates for inspection, and penalty for fraudulent issuance or acceptance of resale or exemption certificates.

N.J.A.C. 18:24-10.7 has been repealed due to a statutory change made by P.L.1987, c.76 which deleted N.J.S.A. 54:32B-26(b).

Subchapter 11 deals with the obligation of the vendor to collect the tax and to make monthly filings of returns with payments and special cases, the making of quarterly returns and payments.

Transitional provisions which are no longer relevant to transactions subject to the provisions of the Act have been repealed at N.J.A.C. 18:24-11.3.

Subchapter 12 deals with the criteria for determining which sales of food or drink are taxable; in general, food or drink sold for immediate consumption is subject to tax while unprepared food or drink sold for home consumption is exempt. The sales tax exemption for retail sales of alcoholic beverages was repealed by P.L.1990, c.40. The proposed amendments to N.J.A.C. 18:24-12.1, 12.3 and 12.5 reflect this statutory change. Sales tax on food furnished to employees is also clarified by the addition of text at N.J.A.C. 18:24-15.5(a)6.

Subchapter 13 deals with trash removal services. A clarification is given at N.J.A.C. 18:24-13.2(b) of some activities which constitute a trash removal service; specifically parking lot sweeping, snow removal and construction site clean-up.

Subchapter 14 deals with the taxability of certain hospital sales and services.

Subchapter 15 deals with the taxability of certain linen rentals.

Subchapter 16 deals with the sales of food and drink through coin-operated vending machines which are sold for more than $0.10 an item. Since sales of cigarettes became subject to the sales tax by virtue of the removal of the statutory exemption provided in N.J.S.A. 54:8-24, an amendment is proposed at N.J.A.C. 18:24-16.6 to show that sales of cigarettes from vending machines are subject to tax in accordance with P.L.1990, c.40.

Subchapter 17 deals with coin-operated vending machines which sell tangible personal property at $0.10 or less.

Subchapter 18 specifies that motor fuel sales are exempt from tax under the Sales and Use Tax Act.

Subchapter 19 deals with personal property used directly and exclusively in the production for sale of tangible personal property on farms. An amendment to N.J.A.C. 18:24-19.4(c) is made in order to reflect the sales tax exemption for certain farm vehicles which was enacted as part of P.L.1990, c.115.

Subchapter 20 deals with commercial advertising film negatives, original production video tapes and similar materials.

Subchapter 21 sets forth accounting procedures relating to the collection of sales tax on alcoholic beverages. This subchapter is proposed for repeal. Sales of alcoholic beverages are taxed when sold to consumers. P.L.1990, c.40. Retail licensees do not pay the retail sales tax and the rules relating to such transactions are no longer valid or necessary under the current law.

Subchapter 22 deals with taxation of sales made by floor covering dealers.

Subchapter 23 deals with treatment of bad debts for all sales tax matters.

Subchapter 24 deals with the sale and installation of gasoline and service station equipment, including work performed on leased real estate and perimeter lights. This subchapter is proposed for repeal.

The subchapter sets forth various equipment used in the operation of gasoline service stations and classifies this equipment as personal property for sales and installation purposes under the sales tax law. The proposed deletion of the rule does not change the classification of the equipment; however, the determination of whether the installation of service station equipment will result in a capital improvement to real property will be made in accordance with the facts of each case, rather than on a categorical basis.

Subchapter 25 deals with data processing taxation including electronic data processing.

Subchapter 26 deals with taxation or exemption of solar energy devices or systems. N.J.A.C. 18:24-26.3 is proposed for repeal, "since it is transitional provision and is no longer applicable or necessary to clarify the application of the sales and use tax to solar energy equipment."

Subchaper 27 deals with sales tax treatment of transportation charges relative to the sale of tangible personal property in New Jersey.

Subchapter 28 sets forth the sales tax treatment of race horses. N.J.A.C. 18:24-28.6 is proposed for repeal.

This provision explained the procedure for taxing leases of race horses. Since a lessor is considered the user and thus the taxpayer under current law (P.L.1989, c.123) the subsection is no longer valid.

Subchapter 29 covers the exemption of soap and paper products from sales tax. Disposable household paper products are exempt from the sales tax. P.L. 1991, c.209. Household soap products are subject to tax, since the exemption for this product was repealed by P.L. 1990, c.40. Amendments to the subchapter rules are proposed and N.J.A.C. 18:24-29.3 is proposed for repeal to eliminate references to the currently taxable soap products.

Subchapter 30 is reserved.

Subchapter 31 regulates the sales and use tax exemptions provided qualified businesses in an urban enterprise zone. The proposed amendments to subchapter 31 (Urban Enterprise Zones Act rules) are to make minor technical clarifications and to conform the rules to P.L. 1988, c.93 and P.L. 1990, c.40.

The proposed rules would amend subsection (c) of N.J.A.C. 18:24-31.1 to clarify that the Urban Enterprise Authority (not the Division of Taxation) makes the determinations of whether a business meets the criteria for being a qualified business. Further, the proposed amendment to subsection (c) clarifies that the definition of qualified business provided in the subsequent code section (N.J.A.C. 18:24-31.2) is not a verbatim repetition of the legal definition found in the Urban Enterprise Zones Act.

The proposed rules would amend the subchapter 31 definition of "qualified business" in N.J.A.C. 18:24-31.2 to conform the rule to P.L. 1988, c.93, §1, which amended the definition of "qualified business" in the Urban Enterprise Zones Act. Further, within the proposed rule's definition of "qualified business," the detailed definition for "economically disadvantaged" (taken from the Federal Jobs Training Patnership Act) would be deleted. This proposed deletion would bring the rule into closer conformity with the definition for "qualified business" in the Urban Enterprise Zones Act, which, like the proposed rule, does not contain a detailed description of the federal definition for "economically disadvantaged." Also, this proposed deletion will prevent the definition in N.J.A.C. 18:24-31.2 from becoming technically incorrect when and if the federal definition is amended.

The proposed subchapter 31 rules would amend N.J.A.C. 18:24-31.3 to clarify that leases to qualified businesses are exempt from sales tax and to clarify that sales of telecommunications services are not exempt. The amendment related to telecommunications services would bring rule 18:24-31.3 into conformity with P.L. 1990, c.40, §9, which amended the Urban Enterprise Zones Act to provide that sales of telecommunications services to qualified businesses are not exempt from sales tax. The proposed rules would also amend N.J.A.C. 18:24-31.3 to clarify that qualified businesses, when making exempt purchases, are required to furnish their UZ-5 form to their vendors, suppliers and lessors. This proposed amendment merely states a Division policy that has been followed by qualified businesses for many years.

The proposed subchapter 31 rules would amend N.J.A.C. 18:24-31.4 and 31.5 to conform those rules to P.L. 1990, c.40, §10, which amended the Urban Enterprise Zones Act to provide that sales of cigarettes and alcoholic beverages are not eligible for reduced rate sales tax collections. The proposed rules would also amend N.J.A.C. 18:24-31.4 to clarify that

lessors that are qualified businesses are eligible for paying reduced use tax on their lease transactions, as long as the transactions meet the same requirements that sales must meet for collection of sales tax at the reduced rate.

Social Impact

These rules have provided taxpayers, their attorneys and accountants with guidance and assistance in the administration of the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq. These rules also serve as guidelines to assist taxpayers in their preparation of various sales and use tax returns and forms.

The social impact of a sales tax on the public is universal, since every person purchases, or has purchased, property or services that are taxable or exempt. The State of New Jersey realizes revenue from sales and use taxes which are generally applied to State use. Forty-five states and the District of Columbia levy a consumers' sales tax on retail sales of property or services for use or consumption. Thus, sales and use taxes are a major source of state and local revenue for government purposes throughout the United States.

The impact of the Sales and Use Tax Act in New Jersey is comparable to nearby states. The neighboring states of Connecticut, Maryland, Massachusetts, New York, Ohio and Pennsylvania each have sales and use taxes, with fairly similar rates: Connecticut at eight percent, Pennsylvania at six percent, the others at five percent and New York at four percent. Both New York and Ohio authorize counties or municipalities to add to the state rate. The 2.5 percent to 4.25 percent spread these states authorize brings their rates into line with New Jersey. Delaware has no sales and use tax but has a personal income tax with rates running up to 13.5 percent.

The Sales and Use Tax Act is a retail sales tax, which is distinguishable from other types of sales taxes in several ways. First is the distinction made between retail and nonretail sales. Only sales to the ultimate consumer, or retail sales, are meant to be taxed. Further, various exemptions, such as the exemption of tangible personal property used in manufacturing and tangible personal property purchased for resale, are intended to reduce the tax burden on the consumer that would otherwise result from the application of tax to every sale which precedes the retail sale.

Principal liability for the retail sales tax in New Jersey falls on the consumer who cannot shift payment of the tax to anyone else or otherwise be relieved of such liability. The vendor, in turn, acts as an agent of the State in collecting and remitting the tax. Because the consumer is ultimately liable, New Jersey requires that the tax be separately stated on the bill of sale.

The retail sales tax is a destination tax. The point of delivery or transfer or possession from vendor to purchaser determines the rate of tax to be collected. The purchaser may become liable for an additional use tax if the property is later used in a jurisdiction with a higher tax rate than the one in which purchase of the item was originally taxed.

The retail sales tax is also a transaction tax, meaning that the tax is generally due at the same time of sale, without regard to the time or kind of payment. Needless to say, this requirement can cause problems with respect to installment sales. For this reason, the statute grants the Director of the Division of Taxation discretionary authority to permit collection of the tax in installments, when payment is made in this manner. To date, no rule has been promulgated to permit retailers to utilize this method of collection. As a result, the vendor must remit the full amount of the sales tax based on the date of sale, regardless of when payment is actually received.

The retail sales tax is based on the price charged by the seller for the taxable property or service. This can and does result in some confusion about whether the sales price is determined before or after discounts, trade-ins, other State or Federal taxes, postage and handling charges, coupons, transportation charges, etc. In New Jersey, the sales price or taxable receipt for sales tax purposes excludes consumer taxes, trade discounts, trade-in allowances, the value of a vendor coupon and purchases made with food stamps. A separately stated charge to the purchaser for the transportation of property is excluded from the taxable receipt, as is a reasonable and separately stated charge for postage. However, a separately stated charge for transportation to the vendor's place of business is includible in a taxable receipt. Rules, such as those adopted in subchapter 27, help one to understand the tax in application.

The retail sales tax is a broad-based tax imposed on the receipts from every retail sale of tangible personal property in this State, with certain exceptions. Sales tax is also imposed on receipts from sales of food and drinks sold in or by restaurants or similar establishments in this State or by caterers; charges for admission to a place of amusement in this State; and rents for the transient occupany of a room in a hotel or motel in this State.

Lessors of tangible personal property are considered retail purchasers under the Act. When a lease transaction (agreement for use of taxable property for more than a 28 day period) is executed, a lessor is responsible for the tax on either the purchase price or the total lease agreement price at the option of the lessor.

Certain vendors and purchasers have not been affected by these rules. Exceptions from the retail sales tax include property purchased for resale and the exemptions specified in the Act, including sales to or by nongovernmental exempt organizations (N.J.S.A. 54:32B-9); sales of food and food products for off-premises consumption (N.J.S.A. 54:32B-8.2); sales of clothing and footwear (N.J.S.A. 54:32B-8.4); sales of utility services (N.J.S.A. 54:32B-8.7); casual sales of property (N.J.S.A. 54:32B-8.6); sales of equipment for use directly and primarily in manufacturing (N.J.S.A. 54:32B-8.13); sales of commercial motor vehicles registered in New Jersey for more than 26,000 pounds (N.J.S.A. 54:32B-8.43); and certain sales of aircraft for use by an air carrier (N.J.S.A. 54:32B-8.35).

New Jersey's law subjects to tax certain enumerated services: producing, fabricating, processing, printing or imprinting tangible personal property; installing, maintaining, servicing or repairing tangible personal property; storing tangible personal property; maintaining, servicing or repairing real property; telecommunications; and advertising services. Major exemptions from the sales tax on services include: receipts from the installation of property that after installation results in a capital improvement to real property; sales of services for resale; and professional or personal service transactions that may involve the transfer of property as an inconsequential element for which no separate charge is made.

In order to create jobs and stimulate economic growth, urban enterprise zones have been created throughout the State. It is projected that there will be 20 such zones by 1996. In addition to other benefits, businesses in these zones may make certain purchases which are exempt from sales tax and may sell taxable merchandise at one-half the regular sales tax rate.

To complement the sales tax, the statute imposes a compensating use tax. The use tax is levied when a transaction occurs upon which the sales tax would have been imposed in New Jersey had it been possible to collect the sales tax at that time.

The use tax applies to property purchased outside New Jersey for use or consumption by the purchaser in New Jersey. The use tax also applies where property may have been purchased in New Jersey without a sales tax under an exemption certificate and is then used by the purchaser for a purpose other than that upon which the exemption certificate was based. For example, a New Jersey business purchases property for resale and issues to the seller a Resale Certificate (Form ST-3). The items purchased for resale are subsequently converted to a taxable use or consumed by the purchaser.

The use tax in New Jersey also is specifically imposed on the customary sales price of tangible personal property manufactured and used by a business if the same kind of property is regularly sold by that business, and on the use of property in New Jersey upon which certain taxable services were performed. An example is where an automobile is repaired outside of New Jersey and brought into this State for use. Use tax is due on the amount paid for the repair.

Major exemptions from use tax include the use of property in New Jersey by a person who acquired the property while a nonresident; the use of the property or services to property in New Jersey where the property or services are exempt from sales tax; and a credit for sales or use tax paid in another jurisdiction for property or services to the extent the use tax due in New Jersey equals or is less than the tax paid elsewhere.

A two-year period for filing a refund claim is provided by the statute. A refund application may be filed by either the purchaser or the vendor. However, a refund of sales tax will not be granted to a vendor unless the vendor can demonstrate that the tax was previously refunded to the purchaser. A refund may also be applied as a credit against payments due.

A refund will not be granted by the Division where the applicant has previously received and paid an assessment of additional tax and either had a hearing with the Division or failed to avail himself of the right to a hearing.

Readoption of N.J.A.C. 18:24 will ensure continued uniform collection and administration of the State's sales and use taxes.

Economic Impact

The Director, Division of Taxation, collects and administers the State's sales and compensating use taxes. Sales and use tax collections for the State's fiscal year 1991 were $4,013,147,198 and for fiscal year 1990 were $3,202,569,956. Every vendor required to collect sales and use taxes is personally liable as a trustee of the State for the tax collected or required to be collected. There is a rebuttable presumption that all sales of tangible personal property not specifically excluded are taxable, while only the enumerated services are taxable. Retail sales of goods or services whose exemption cannot readily be determined by their nature are deemed taxable, unless the vendor receives a properly completed exemption form from the customer. For example, a vendor must collect a tax on a sale which may be for resale unless he receives a resale certificate from the purchaser. If a customer has failed to pay the applicable sales tax to the vendor because of improper issuance of an exemption certificate or for certain other reasons, the customer is required to file a return and pay the tax directly to the Director, Division of Taxation. The economic effect of the rules on a vendor is small, and consists of the administrative work necessary to write a check and mail it to the Division. The recordkeeping requirements imposed by the chapter are no more than a business would normally follow in any event, and require no specific professional services.

Registered vendors must file returns and remit receipts of taxes for quarterly periods ending March, June, September and December. These returns and payments are due on April 20, July 20, October 20 and January 20, respectively.

Since April 1975 every vendor having total monthly taxable receipts (including purchases subject to use tax) of $100.00 or more in any month has been required to make monthly sales and use tax remittances for each month. Returns and remittances are due 20 days after the end of the month covered.

The following amounts were collected as sales and use taxes in fiscal years:

1989	$3,066,770,144
1988	3,041,633,453
1987	2,822,234,295
1986	2,529,091,374
1985	2,260,827,342
1984	1,974,445,427
1983	1,582,348,981
1982	1,303,877,865
1981	1,201,213,918

Revenues realized from sales and use tax collections are deposited in the General Treasury for general State use.

Regulatory Flexibility Analysis

Reporting, recordkeeping and other compliance requirements imposed by the Act and by N.J.A.C. 18:24 include vendors who meet the definition of small business in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The Sales and Use Tax Act provides that every person responsible for collection of the sales tax is personally liable as a trustee for the tax collected or required to be collected on the sale of taxable property or services. A "responsible person" is defined to include an officer or employee of a corporation who, in such capacity, is under a duty to act for the corporation in complying with the statute. N.J.S.A. 54:32B-2(w).

There is a rebuttable presumption that all sales of property or of the enumerated services are subject to tax, unless expressly exempted. Sales that cannot be readily determined by their nature are deemed taxable, unless the vendor receives a properly completed exemption certificate from the purchaser.

All vendors of taxable property or services are required by the Act to register with the Division of Taxation for collection of the tax. Registered vendors must file quarterly sales and use tax returns with the Division of Taxation on or before the 20th day of the month following the quarter covered by the return. Where the vendor's tax liability exceeds $100.00 for the first or second month of a quarterly filing period, he or she must file a monthly remittance statement (Form ST-51) and pay the tax. The return and payment are due on or before the 20th day of the month following the month in which his or her liability exceeds $100.00. Credit is given on the quarterly return for payments made on a monthly remittance statement.

Filing the returns on a quarterly basis, even if the returns total zero, is extremely important. The Division's audit period for the assessment of additional tax is three years from the filing of a quarterly return, except in the case of fraud or where quarterly returns have not been filed. The period is subject to extension with the taxpayer's written consent for audit purposes. As delineated in the Economic Impact, the costs to the taxpayer for administration are minimal. No professional services are required by the rules.

N.J.A.C. 18:24-2 requires that vendors of taxable property or services maintain specified records, for example, copies of invoices, receipts, or cash register tapes. Other recordkeeping and compliance requirements are established in N.J.A.C. 18:24 in the various subchapters concerning specific types of property and services.

The rules apply to receipt from every non-exempt retail sale of tangible personal property and certain services. Requirements for collection of taxes and recordkeeping must apply uniformly to all vendors covered by the Act, including small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:24.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 18:24-2.13, 3.3, 7.18, 10.7, 11.3, 21, 24, 26.3, 28.6 and 29.3.

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

18:24-1.1 Sales and Use Tax Act forms enumerated

(a) The following list reflects sales and use tax forms currently available for use under N.J.S.A. 54:32B-1[,] et seq.

REGISTRATION APPLICATIONS

[CIS-1] **REG-1** Application for Registration with Division of Taxation

***

SPECIALIZED USE FORMS

***

ST-40 Lessor's Certification

***

URBAN ENTERPRISE ZONE FORMS

***

[UZ-4A Urban Enterprise Zone Contractor's Exempt Purchase Permit]

UZ-4A/5A Exempt Qualified Business Permit/Exempt Purchase Permit

***

[UZ-5A Urban Enterprise Exempt Purchase Permit]

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18:24-1.3 Magazine and periodical defined

(a) A "magazine" means a periodical publication which generally conforms to all the following indicia:

1.-2. (No change.)

3. A periodical contains a variety of articles **or other information** [by different authors devoted to literature, the sciences or the arts, news, some special industry, profession, sport or other field of endeavor];

4.-6. (No change.)

(b) (No change.)

18:24-1.4 Receipt defined

(a) (No change.)

(b) Excise taxes which are imposed on manufacturers, importers, producers, distributors or vendors are included in the receipt on which sales or use tax is computed, even though the excise tax may be separately stated to the purchaser. Thus, the Federal manufacturer excise taxes imposed on the sale or lease of certain automobiles (gas guzzlers) are included in the taxable receipt as are the excise taxes on tires, sporting goods and firearms.

1. Excise taxes which are imposed on the consumer are excluded from the taxable receipt; for example, the Federal retail excise taxes

on heavy trucks and trailers sold at retail **and the Federal luxury tax on certain retail purchases.**

(c)-(k) (No change.)

(l) Any charges for credit imposed by a vendor and paid by a purchaser in addition to the purchase price under a designation such as interest, service charge, or finance charge is not deemed to be part of the sales price of tangible personal property or charge for services rendered. Such charges are consideration for the extension of credit and shall not be included in the receipt subject to sales tax.

Example: A vendor sells furniture for $1,000 and charges 1½ percent interest per month on the outstanding balance. Only the $1,000 is a receipt subject to tax.

1. (No change.)

2. Interest paid by a lessor on the purchase of tangible personal property intended to be [leased] **rented for 28 days or less** to a customer is an expenditure of the lessor and is to be included in the receipt subject to tax.

Example: A [lessor] **taxpayer** purchases equipment on credit for [a lessee] **rental purposes.** The agreement **for 28 days or less** provides that the [lessee] **party renting** is to pay $100.00 per month for equipment rented and $7.00 per month to reimburse the lessor for interest paid. The tax is to be collected on $107.00.

(m)-(n) (No change.)

(o) Charges for the use or rental of tangible personal property for periods of 28 days or less are subject to tax based on the amount billed for the period of use. The lessor is required to collect and remit the tax on the receipts from the rental.

(p) The amount of the sales price of tangible personal property purchased for lease for a period of more than 28 days is subject to tax and means, at the election of the lessor, either:

1. The amount of the lessor's purchase price; or

2. The amount of the total of the lease payments attributable to the lease of such property. A lessor, as a retail purchaser, is required to pay the tax upon the purchase of property for lease.

Example 1: A leasing company purchases an automobile for $20,000. After the purchase the company enters into a three year lease agreement with a customer who will pay a total of $15,000 over this period. The lessor at the time the lease is executed must elect to pay tax on the purchase price of $20,000 or on the contract lease price of $15,000, less the interest charge to the lessee.

Example 2: A rental company purchases automobiles to be held for short term rentals of 28 days or less. In this case the sales tax is not imposed on the rental company; however, it must collect the applicable sales tax on each rental payment from a customer renting an automobile.

(q) The taxable receipt for intrastate and interstate telecommunications is the amount charged to a service address in New Jersey regardless of where the services are billed or paid.

18:24-2.3 General requirements

(a) A true copy of all sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes, issued to any customer by a vendor who is required to be registered pursuant to the provisions of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) **and records of every purchase and purchase for lease** must be available for inspection and examination at any time upon demand by the Director, Division of Taxation, or his duly authorized agent or employee and shall be preserved for a period of three years from the filing date of the quarterly period for the filing of sales tax returns to which such records pertain.

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

[18:24-3.3 Effective date tax payable

(a) The tax is payable on the rent paid for use or occupancy of property for any period commencing on or after July 1, even though payments were received prior to July 1.

(b) If rent paid covers a period of use prior to July 1, the total rent must be prorated before and after July 1, to derive the portion subject to tax.]

18:24-3.3 Guest house

A boarding or rooming house containing fewer than eight units must be registered and collect and remit sales tax on taxable occupancies as a hotel unless it is held out by the operator and kept open for the residence of permanent boarders or lodgers. A permanent boarder or lodger is any person who occupies or has the right to occupy a room or rooms in the house for at least 90 consecutive days.

18:24-4.4 Purchase, rental, lease or use of machinery, apparatus or equipment directly in production exempt from tax

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

(g) The exemption will apply to industrial owners, mechanical contractors and their suppliers where an industrial owner awards a contract to a mechanical contractor to install manufacturing machinery, apparatus or equipment, to produce tangible personal property for sale, to be used by the owner upon completed construction and acceptance after January 1, 1978. The installation may be made in a new or existing industrial plant of the owner designed for or currently used for the manufacture of tangible personal property. For example:

1.-4. (No change.)

5. Under the above facts the rental of equipment or vehicles for use on the job of the mechanical contractor is not exempt from tax. **A rental for 28 days or less is taxable to the contractor and tax is due on the rental charge. On leases for more than 28 days the tax is imposed on the purchase of property for lease and is paid by the lessor. (See N.J.A.C. 18:24-1.4(o)).**

6.-9. (No change.)

18:24-4.6 Services subject to tax

(a) The following enumerated services, purchased or sold by any person engaged in manufacturing, processing, assembling or refining, as defined in section 2 of this subchapter, not purchased for resale, that is, not performed on property offered for sale by the purchaser, are subject to sales and use taxes, as well as services otherwise taxable:

1. (No change.)

2. Installing tangible personal property, except where such installation results in a capital improvement to real property. In determining whether an installation of tangible personal property results in a capital improvement to real property, the following factors should be considered:

i.-ii. (No change.)

iii. The treatment, for accounting purposes, of such improvements for Federal internal revenue purposes [; and].

[iv. The fact that an installation of tangible personal property is deemed not to be a capital improvement to real property where exemption has or will be claimed on the property installed under any provision of section 8 of the Sales and Use Tax Act; except that where the property installed is exempt from tax under the provisions of subsection (a) of section 8 of the Sales and Use Tax Act, no tax on installation charges shall be due, whether or not such installation results in a capital improvement to real property.]

3. (No change.)

18:24-4.7 Services not subject to tax

(a) The following services are not subject to tax.

1. (No change.)

[2. Services performed in interior cleaning and maintenance, performed on a regular contractual basis for a term of not less than 30 days, which for the purposes of this subchapter shall mean interior janitorial services, and which shall not include maintenance services whose purpose is to preserve or increase the useful life of assets.]

Recodify existing 3 and 4 as **2 and 3.**

18:24-5.3 Purchase of materials and supplies by contractors

(a) (No change.)

(b) Except as hereinafter provided, contractors purchasing materials and supplies must pay the sales tax at the time of purchase. This [Subchapter] **subchapter** does not apply where:

1. The purchase of materials and supplies is made for exclusive use in the fulfillment of a contract [with] **to improve or repair the**

real property of an exempt organization[:] **described in N.J.S.A. 54:32B-9(a) and 9(b) or a qualified business described in the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-29, or a housing sponsor described in N.J.S.A. 54:32B-8.22(c).**

i. (No change.)

Recodify ii as **2.** (No change in text.)

18:24-5.4 Equipment purchase, rental or use

The purchase, rental **for 28 days or less,** or use of equipment by a contractor is subject to tax, whether or not the equipment is purchased, rented or used in fulfillment of a contract with an exempt organization. **Lessors shall be taxed on lease transactions of more than 28 days duration. See N.J.A.C. 18:24-1.4(o).**

18:24-5.6 Contractor's tangible personal property installation services

[(a) The services in this N.J.A.C. 18:24-3.2, 7 and 8, performed by contractors, except as hereinafter provided are subject to tax.]

[(b)] Services rendered by a contractor in installing tangible personal property, except in those instances where such services are rendered in connection with the installation of property which, when installed, will constitute an addition or capital improvement to real property are subject to tax.

18:24-5.8 Contractor services maintaining, servicing or repairing real property

(a) (No change.)

(b) The following maintenance, services, and repair operations are not subject to tax.

1. (No change.)

[2. Where such services constitute interior cleaning and maintenance performed on a regular contractual basis for a term of not less than 30 days, which, for the purposes of this subchapter, shall mean interior janitorial services, and which shall not include maintenance services whose purpose is to preserve or increase the useful life of assets;]

[3.]**2.** (No change in text.)

(c) (No change.)

18:24-5.16 Certificate issuance and acceptance procedures

(a) Procedures to be followed by contractors and fabricator/contractors with respect to the issuance and acceptance of certificate forms are as follows:

[(a)]**1.** (No change in text.)

[(b)]**2.** Exempt Use Certificates (Form ST-4) may be issued by contractors and fabricator/contractors only in cases where the materials purchased are for exclusive use in installing machinery, equipment or apparatus exempt at the time of purchase under the provisions of Section 8 of the Sales and Use Tax Act. [In such instances, the contractor must collect the tax on the installation charges. Machinery, apparatus or equipment, upon which exemption is claimed at the time of purchase, is deemed not to be a capital improvement to real property upon installation, except that no tax shall be collected on the charges for installing tangible personal property purchased exempt from tax pursuant to the provisions of subsection (a) of Section 8 of the Sales and Use Tax Act.] In those instances where a valid Exempt Use Certificate may be issued by a contractor or fabricator/contractor, the certificate form must disclose his business name, sales tax registration number, the name and sales tax registration number of any other party to the contract, the nature of the work to be performed, and the date the work will commence.

Recodify existing (c)-(e) as **3.-5.** (No change in text.)

[(f)]**6.** Certificates of Capital Improvement (Form ST-8) should be obtained by a contractor, subcontractor or fabricator/contractor from his customer in any instance where the performance of his work results in a capital improvement to real property. [The installation of property-purchased exempt from tax under any provision of Section 8 of the Sales and Use Tax Act is deemed not to be a capital improvement to real property upon installation.] A contractor or a fabricator/contractor may accept certificates of capital improvement as a basis for exemption from tax on his services only where his work has, in fact, resulted in a capital improvement to real property. The nature of the work performed is the determining factor in deciding whether to collect tax on a contractor's services. The possession of a certificate of capital improvement, in and of itself, is not sufficient to eliminate liability for taxes which should have been collected. The contractor must accept such certificiate in "good faith" to be relieved of liability.

[1.]**i.** "Capital improvement" means an installation of tangible personal property which results in an increase of the capital value of the real property [and an] **or a significant** increase in the useful life of such property. **See N.J.A.C. 18:24-5.7.**

Recodify existing 2.-5. as **ii.-v.** (No change in text.)

[6.]**vi.** The use of the [new] Certificate of Capital Improvement, form ST-8, is required in all applicable transactions. [made on or after the effective date of this regulation. Previously issued certificates may, however, be accepted up to January 1, 1976.]

[(g)]**7.** Contractor's Exempt Purchase [Certificates (forms ST-13 and ST-13T)] **Certificate (Form ST-13).**

[1.]**i.** (No change in text.)

[2. Form ST-13T must be issued to suppliers when purchases of materials, supplies or services are made by contractors for exclusive use in performance of work, which has the subject of a written bid or contract duly tendered or entered into by the contractor prior to May 9, 1966.]

8. An Exempt Qualified Business Permit/Exempt Purchase Permit (Form UZ-4A/5A) must be completed by the contractor when the contractor purchases materials or supplies exclusively for performing work for a qualified business at the business's real property located in an urban enterprise zone. The UZ-4 is obtainable only from the qualified business. After completing the UZ-4, the contractor must issue copies to its vendors and its subcontractors. Any subcontractor receiving a UZ-4 must attach its name, address, and Certificate of Authority number (in addition to the name, address, and number of the contractor) and then give the UZ-4 and attachments to its vendors. "Qualified business" means a person or entity that the Urban Enterprise Zone Authority has certified to be a qualified business according to the criteria in N.J.S.A. 52:27H-62c.

9. If a qualified housing sponsor, as defined in N.J.S.A. 55:14K-3 of the New Jersey Housing and Mortgage Finance Agency Law of 1983, has received Federal, State or local government subsidies, as verified by the New Jersey Housing and Mortgage Finance Agency on a Certification of Housing Sponsor form, in addition to New Jersey Housing and Mortgage Finance Agency financing for the specific housing project, contractors of the housing sponsor, pursuant to P.L. 1988, c.83, may purchase materials, supplies and services tax free for the specific housing project. The contractor must receive a copy of the housing sponsor's Letter of Exemption for his records and may then issue a Contractor's Exempt Purchase Certificate (Form ST-13) to his suppliers to document his exempt purchases for the housing project.

18:24-6.1 Clothing and footwear exempt

Section [8(d)]**8.4** of the New Jersey Sales and Use Tax **Act,** N.J.S.A. 54:32B-1 et seq., exempts receipts from the sale of articles of clothing and footwear for human use except articles made of fur on the hide or pelt of an animal, where such fur is the component material or chief value of the article.

18:24-6.2 Clothing and footwear defined

For the purposes of Section [8(d)]**8.4** (see [Section 1 of this subchapter] **N.J.A.C. 18:24-6.1**), clothing and footwear means all inner and outer wear, footwear, headwear, gloves and mittens, neckwear and hosiery customarily worn on the human body, and shall include baby blankets and bunting, diapers and diaper inserts and baby pants. For the purpose of Section [8(d)]**8.4** special clothing or safety clothing necessary for the daily work of the user shall be considered clothing and footwear.

18:24-6.3 Specific articles of clothing and footwear exempt

(a) The following articles of clothing and footwear are deemed exempt from the [Sales and Use Tax,] **sales and use tax under** N.J.S.A. [54:32B-8(d)] **54:32B-8.4** and N.J.S.A. 54:32B-24:

1.-40. (No change.)

18:24-6.4 Clothing and footwear for sporting activities

Clothing and footwear used in connection with sporting activities or pastimes, which clothing and footwear are not adaptable to a use set forth in [Section] **N.J.A.C. 18:24-**6.2 (Clothing and footwear defined) [of this Chapter] shall not be considered to be clothing and footwear within the meaning of Section [8(d)]**8.4** of the Act.

18:24-6.5 Athletic goods and equipment

(a) Athletic equipment normally worn only in conjunction with the particular activity for which it is designed is subject to the sales tax. This includes, but is not limited to:

1.-8. (No change.)

9. Track shoes and cleats[.];

10. Motorcycle helmets; and

11. Ski boots.

(b) (No change.)

18:24-6.6 Fur garments and articles

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

(d) The sale of remodeling services for fur garments and articles is subject to sales tax.

18:24-7.3 Tax payment prerequisite to registration

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

(c) If the motor vehicle is not required to be registered with the Division of Motor Vehicles, the vendor thereof must collect the tax from the purchaser, if any such tax is due, and must remit the same to the [Sales Tax Bureau] **Division of Taxation**.

18:24-7.4 Computation of tax on purchase price; trade-in

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

(c) A deduction from the purchase price, equal in amount to the amount of a trade-in actually allowed on the purchase, will be permitted; provided, that:

1.-2. (No change.)

3. The trade-in is acquired by a dealer of motor vehicles who is registered as such with the Division of Motor Vehicles and the New Jersey [Sales Tax Bureau] **Division of Taxation**.

18:24-7.8 Sales of motor vehicles specifically exempted

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

(c) Any sale of a motor vehicle to be used exclusively for rental [or leasing] **for a period of 28 days or less** is purchased for resale and is not subject to tax at the time of purchase.

(d) The renting, leasing, licensing or interchanging of trucks, tractors, trailers, or semitrailers by persons not engaged in a regular trade or business offering such renting, leasing, licensing or interchanging to the public; provided, however, that such renting, leasing or interchanging is carried on with persons engaged in a regular trade or business involving carriage of freight by such vehicles[, and further provided, that in the case of any such motor vehicle acquired by the owner or first used by the owner in this state on or after July 1, 1966, any tax presumptively imposed by this act on such acquisition or use shall have been paid at the time of such acquisition or use without claim for exemption,] is exempt from tax. [Provided, however, that on or after January 1, 1978, the following shall not apply; and further provided that in the case of any such motor vehicle acquired by the owner or first used by the owner in this state on or after July 1, 1966, any tax presumptively imposed by this act on such acquisition or use shall have been paid at the time of such acquisition or use without claim for exemption.]

(e) For purposes of subsection (d) of this section, "carriage of freight" means property transported by a common or public carrier, such as regular trucking companies, and does not include the type of business utilizing rented or leased vehicles to transport its own goods. For example, a vendor of welding supplies leases trucks from a person not engaged in the regular trade or business of leasing such vehicles to the public. The trucks are used to transport to the vendor's customers its own goods. The exemption from tax does not apply since the vendor is not engaged in the carriage of freight, unless the trucks qualify for exemption under subsection [(ff) of section 8] **8.43** of the Sales and Use Tax Act (see N.J.A.C. 18:24-7.18).

18:24-7.10 Procedures for motor vehicle dealers; forms and certificates

(a) New Jersey [Motor Vehicle] **motor vehicle** dealers are required to execute and retain as a part of their records Form ST-10 if a purchaser of a motor vehicle:

1.-5. (No change.)

6. The sale of a warranty in conjunction with the sale of a motor vehicle qualified for exemption under this subsection is not subject to sales tax.

(b) A Resale Certificate may be accepted by a dealer of motor vehicles in cases of sales to other licensed dealers where the vehicle is purchased for resale, or is being acquired for rental purposes. **A Resale Certificate may be accepted from a lessor registered for sales tax purposes in New Jersey.** In all such cases, the purchaser's Certificate of Authority number and name and address must be shown on each sales invoice. The certificate itself should be retained in the dealer's files.

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

18:24-7.11 Casual sales of motor vehicles

Under the provisions of N.J.S.A. 54:32B-3(a) and N.J.S.A. [54:32B-8(b)] **54:32B-8.6**, casual sales (as defined in N.J.S.A. 54:32B-2(u)) of motor vehicles, unless otherwise exempted, are subject to tax.

18:24-7.12 Taxable and exempt services

(a) The following services, except as hereinafter provided, sold or purchased by a dealer in motor vehicles, are subject to tax; provided, however, that where the following services are performed on tangible personal property held for sale by the purchaser of such services, the performance of such services is not subject to tax:

1. Installing, maintaining, servicing, or repairing tangible personal property; where such services are sold by a dealer or motor vehicles, or any other person engaged in the performance of such services[, tax must be collected on the total charge for such services are performed by a dealer under a warranty agreement purchased in conjunction with the purchase of the motor vehicle upon which such services are performed, the tax shall be limited to that portion of the charge not covered by such warranty];

2.-3. (No change.)

(b)-(f) (No change.)

18:24-7.13 Taxability of motor vehicles used by manufacturer before sale; computation

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

(d) In computing the tax, the basis for tax as computed in [subsection] (c) **above** [of this Section] shall be multiplied by [.05] **.06** to effectuate the [five] **six** percent tax imposed pursuant to N.J.S.A. 54:32B-6.

18:24-7.15 Renting [and leasing of] motor vehicles

(a) The total charge for the rental [or lease] **for 28 days or less** of a motor vehicle to the customer is subject to the [five] **six** percent New Jersey sales and use tax pursuant to N.J.S.A. [54:32-3(a)] **54:32B-3(a)**, except as set forth in [subsection] (b) above [of this section].

(b) (No change.)

18:24-7.18 Sales, renting or leasing of commercial motor vehicles and vehicles used in combination therewith exempt from tax

[(a) The sale, renting or leasing of commercial motor vehicles and vehicles used in combination therewith, as defined in N.J.S.A. 39:1-1 and registered in New Jersey for more than 18,000 pounds, or which are operated pursuant to a certificate or permit issued by the Interstate Commerce Commission, and repair and replacement parts therefor are exempt from sales and use tax on or after January 1, 1978. Effective on and after January 14, 1980, pursuant to chapter 291, P.L. 1979, the exemption for commercial motor vehicles and vehicles used in combination therewith which are operated under a certificate or permit issued by the Interstate Commerce Commission will apply only when such commercial motor vehicles and vehicles used in combination therewith are registered in this State.

1. Example 1: A purchaser contracts to buy a commercial motor vehicle and a vehicle used in combination therewith on November 1, 1977. The vehicles will be delivered and registered in New Jersey for more than 18,000 pounds or will operate pursuant to a certificate or permit issued by the Interstate Commerce Commission, as the case may be, on January 2, 1978. The vehicles qualify for exemption and are not subject to tax.

2. Example 2: A purchaser contracts to buy a commercial motor vehicle and a vehicle used in combination therewith on December 15, 1979. The vehicles will be delivered and registered in New Jersey on January 15, 1980 and will be operated pursuant to a certificate or permit issued by the Interstate Commerce Commission. The vehicles qualify for exemption and are not subject to tax.

Note: For the purpose of motor vehicle dealer records indicating why sales tax has not been collected on sales of commercial motor vehicles, vehicles used in combination therewith or vehicles operated pursuant to a certificate or permit issued by the Interstate Commerce Commission, or repair and replacement parts therefor, the dealer is required to receive a properly completed exempt use certificate (form ST-4) from the purchaser whether such purchaser is or is not registered with the Division of Taxation. When the purchaser is not registered with the Division of Taxation, a certificate of authority number is not required. However, an Interstate Commerce Commission identification number and New Jersey registration plate number must be shown on form ST-4.

3. Example 3: A 35 ton quarry truck which is used off the road to convey stone from the quarry to the crusher located on the same premises is purchased on January 15, 1978. The truck is not used for commercial purposes on the highways. It is a nonconventional motor vehicle and therefore not exempt from tax.

Note: Nonconventional type motor vehicles not designated or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, such as ditch digging apparatus, well-boring apparatus, road and general purpose construction and maintenance machinery, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, road rollers, earth-moving carryalls, self-propelled cranes, earth-moving equipment, bulldozers, road building machinery, and so forth, vehicles which operate on general registration plates transferable from vehicle to vehicle and which identify the owner rather than the vehicle, are not exempt from sales tax.

(b) For purposes of this section, "commercial motor vehicle" means and includes every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger-car type used for touring purposes or the carrying of farm products and milk, as the case may be, as defined in N.J.S.A. 39:1-1.

(c) For purposes of this section, "vehicle used in combination therewith" means and includes motor-drawn vehicles, such as trailers, semitrailers, pole trailers or any other type of vehicle drawn by a commercial motor vehicle as defined in N.J.S.A. 39:1-1.

(d) Equipment mounted on commercial motor vehicles or vehicles used in combination therewith is eligible for exemption only if it is an integral part of the basic vehicle, and the basic vehicle would lose its identity should the equipment be removed. If the equipment is not an integral part of the vehicle and can be severed from the vehicle, the equipment is not exempt from tax.

1. Example 1: Commercial motor vehicle bodies or bodies on vehicles used in combination with commercial motor vehicles, such as trailers or semitrailers, permanently mounted so that they effectuate the purpose for which the vehicle is intended are exempt from tax.

2. Example 2: Devices used in or on vehicles for effectuating business purposes, such as shortwave receiving and transmitting of messages, are not considered an integral part of such vehicle and are not exempt from tax.

(e) Repair and replacement parts for vehicles described in subsections (b), (c) and (d) of this section purchased on or after January 1, 1978 through January 13, 1980, are exempt from tax. On and after January 14, 1980 the exemption for repair and replacement parts for vehicles described in subsections (b), (c) and (d) will only apply to such vehicles which are registered in this State. The exemption from sales and use tax provided for in this section does not apply to charges for repair service, which charges must be separately stated.

1. Example 1: A commercial motor vehicle was registered in New Jersey for more than 18,000 pounds prior to January 1, 1978. The vehicle was repaired on April 1, 1978. The total invoice was for $550.00. Repair and replacement parts were listed at $300.00, and labor was listed at $250.00. The tax should be imposed on the labor charge of $250.00, which should be separately stated. However, where the charge for repair and replacement parts and labor is not separated, the entire charge is subject to tax.

2. Example 2: Assume the facts as in Example 1 above, except that the repair work is performed prior to January 14, 1980 on a commercial motor vehicle operated under a certificate or permit issued by the Interstate Commerce Commission and registered in another state. The tax is properly imposed on the labor charge of $250.00 which should be separately stated. If, however, on or after January 14, 1980 such vehicle is not registered in New Jersey, the total invoice of $550.00 is subject to tax.

(f) Under a written agreement entered into prior to January 1, 1978, for the rental or lease of vehicles described in subsections (a), (b) and (c) of this section, the periodic rental payments due on or after January 1, 1978 through January 13, 1980, are exempt from tax. For the exemption to apply on or after January 14, 1980, all such vehicles must be registered in this State. A lease is distinguishable from an executed or completed sale. The lease is not considered to be a single and completed transaction at the time that a vehicle was first leased to the lessee. It is, rather, an agreement for a series of transactions to be completed thereafter. The right to the continued use and possession of the vehicle is conditioned upon subsequent payment of rental charges and performance of other covenants. Each rental period relates to a period of possession and the tax becomes chargeable as each rental payment becomes due. Rent which is due before January 1, 1978, is subject to tax irrespective of the period of possession. The payments for each rental period are thus treated as severable portions of the contract. Such a lease agreement differs from an ordinary sale of property since it is not completely executed until the term expires and all of its conditions are fulfilled. For example, on January 1, 1976, a commercial motor vehicle was leased. The lease was for a term of five years (terminate date, December 31, 1980), and rental payments are to be made in advance on the first day of each month. Each monthly rental payment for the rental period up to December 31, 1977, is subject to tax. The monthly rental payments due on or after January 1, 1978 through January 13, 1980, are not subject to tax. For the exemption to apply on or after January 14, 1980, all such vehicles must be registered in this State.]

(a) Receipts from sales of the following are exempted from the tax imposed under the Sales and Use Tax Act:

1. Sales, renting or leasing of commercial trucks, truck tractors, tractors, trailers, semitrailers, and vehicles used in combination therewith, as defined in N.J.S.A. 39:1-1, which are registered in New Jersey, and:

i. Have a gross vehicle weight rating in excess of 26,000 pounds; or

ii. Are operated actively and exclusively for the carriage of interstate freight pursuant to a certificate or permit issued by the Interstate Commerce Commission; or

iii. Are registered pursuant to N.J.S.A. 39:3-24 or N.J.S.A. 39:3-25 and have a gross vehicle weight rating in excess of 18,000 pounds.

2. Repair parts and replacement parts for such vehicles. Parts shall not include lubricants, motor oil or antifreeze.

(b) For the purposes of this section, "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of the single or combination vehicle and, if the manufacturer has not specified a value for a towed vehicle, means the value specified for the towing vehicle plus the loaded weight of the towed unit.

(c) For the purposes of this section, "truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(d) For the purposes of this section, "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) For the purposes of this section, "trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(f) For the purposes of this section, "semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(g) For the purposes of this section, "vehicle used in combination therewith" means and includes motor-drawn vehicles, such as trailers, semitrailers, or pole trailers.

(h) For the purpose of motor vehicle dealer records indicating why sales tax has not been collected on sales of motor vehicles exempt from tax under this section or repair parts and replacement parts therefor, the dealer is required to receive a properly completed Exempt Use Certificate (Form ST-4) from the purchaser whether such purchaser is or is not registered with the Division of Taxation. When the purchaser is not registered with the Division of Taxation, a Certificate of Authority number is not required. However, an Interstate Commerce Commission identification number or New Jersey registration plate number must be shown on Form ST-4.

(i) Nonconventional type motor vehicles not designated or used primarily for the transportation of property and only incidentally operated or moved over a highway, such as ditch digging apparatus, well-boring apparatus, road and general purpose construction and maintenance machinery, asphalt, spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, road rollers, earth-moving carryalls, self-propelled cranes, earth-moving equipment, bulldozers, road building machinery, and so forth, vehicles which operate on general registration plates transferable from vehicle to vehicle and which identify the owner rather than the vehicle, are not exempt from sales tax.

(j) Equipment mounted on vehicles exempt from tax under this section is eligible for exemption only if it is an integral part of the basic vehicle, and the basic vehicle would lose its identity should the equipment be removed. If the equipment is not an integral part of the vehicle and can be severed from the vehicle, the equipment is not exempt from tax.

Example 1: Motor vehicle bodies or bodies on vehicles used in combination with exempt vehicles, such as trailers or semitrailers, permanently mounted so that they effectuate the purpose for which the vehicle is intended are exempt from tax.

Example 2: Devices used in or on vehicles for effectuating business purposes, such as shortwave receiving and transmitting of messages, are not considered an integral part of such vehicle and are not exempt from tax.

18:24-7.19 Taxation of manufactured and mobile homes

(a) This section is intended to clarify the taxation of manufactured [and] **or** mobile homes under the provisions of P.L. 1983, c.400, approved December 22, 1983. **This section does not apply to the sale of modular buildings because they are not on a permanent chassis.**

1. (No change.)

(b)-(h) (No change.)

18:24-8.2 Exemption not based on nonprofit status

An organizaton is not exempt from tax merely because it is a nonprofit organization. In order to establish this exemption, it is necessary that every organization claiming exemption file with the [Sales Tax Bureau] **Division of Taxation** an application form ST-5B.

18:24-8.4 Application for exemption; information

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

(c) To each application should be attached:

1.-4. (No change.)

5. A copy of the organization's Federal tax determination letter or ruling issued by the Internal Revenue Service.

(d) (No change.)

18:24-9.3 Organizational tests

(a) In general[.]:

1.-5. (No change.)

6. An organization should submit a copy of its Section 501(c)(3) determination letter or ruling issued by the Internal Revenue Service as prima facie evidence of exemption under Section 9(b)(1) of the Sales and Use Tax Act. A Federal exemption granted under Section 501(c)(4) or another section of the Internal Revenue Code is not a basis for exemption under the Sales and Use Tax Act.

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

18:24-9.12 Sales of meals and rental of rooms to exempt organizations

(a) Receipts from the sale to exempt organizations of food and drink[, except alcoholic beverages as defined in the Alcoholic Beverage Tax Law,] in or by restaurants, taverns or other establishments in this State, or by caterers, including in the amount of such receipts any cover, minimum entertainment or other charge made to patrons or customers, and rental of rooms to exempt organizations in a hotel shall be treated in the following manner:

1. Whenever there is such a sale of food or drink, the vendor shall charge and collect the sales tax thereon unless[, on and after July 1, 1976,] an organization holding a valid exempt organization permit (Form ST-5A) furnishes the vendor with a valid properly executed exempt organization certificate (Form ST-5) [(4-76, R-3)] which has the name, address and registration number of the exempt organization imprinted on the certificates by the Division of Taxation along with the signature of the director;

2. Whenever there is a room occupancy, the hotel shall charge and collect the sales tax thereon unless[, on and after February 1, 1977,] an organization holding a valid exempt organization permit (Form ST-5A) furnishes the vendor with a valid properly executed exempt organization certificate (Form ST-5) [(4-76, R-3)] which has the name, address and registration number of the exempt organization imprinted on the certificate by the Division of Taxation along with the signature of the director;

3. In all cases, the exempt organization must pay the bill [on its own voucher, there must be no reimbursement by the individual to the organization] **with organizational funds** and the organization must hold a valid exempt organization permit (Form ST-5A) as of the date of the transaction;

4. Any organization holding a valid exempt organization permit (Form ST-5A), which has paid the sales tax in accordance with the foregoing procedure, may apply to the New Jersey Division of Taxation for a refund of the tax if[:] **all the charges on which the tax was calculated were paid by the organization using organizational funds.**

[i. All the charges on which the tax was calculated were paid by the organization using organizational funds; and

ii. There was or is to be no reimbursement to the organization for said charges.]

18:24-12.1 Scope of subchapter

This subchapter will clarify the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1[,] et seq.) to the sale of food and [non-alcoholic] drink in or by restaurants, taverns or other establishments and caterers.

18:24-12.3 Receipts subject to tax

(a) Sales tax is imposed on the receipts, including any cover, minimum, entertainment or other charge, or the value of a coupon, from every sale of food and [non-alcoholic] drink of any nature sold in or by restaurants, taverns or other establishments in this State or by caterers:

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

18:24-12.5 Receipts exempt from sales tax
(a) The tax imposed on the sale of food and drink shall not apply to the following:
[1. Alcoholic beverages;]
Recodify existing 2. through 6. as **1. through 5.** (No change in text.)
6. Food and drink furnished by an employer to employees for the employee's convenience where assigned a money value for purposes of: inclusion in remuneration, which is the basis for computing the employers' contribution to the unemployment insurance fund; social security; or meeting minimum wage requirements (regarding employees of hotels and restaurants). To qualify for exemption, no cash may change hands as payment for the food and drink and the assigned value of such food and drink cannot be classified as income for Federal or New Jersey income tax purposes.
[7. Food or drink provided by an employer to an employee as a convenience to the employer; and
i. The cost of the food or drink is not subject to Federal income tax;
ii. The meal is considered part of the employee's wages and is furnished as a cash substitute.]
[8.]**7.** (No change in text.)
(b) (No change.)

18:24-13.2 Trash removal service defined
(a) (No change.)
(b) Removal includes only the operation of picking up and physically removing [the] **contained** waste from the premises and does not include **activities related to maintaining or servicing property or** any processing of the waste product. Removal would, therefore, not include **sweeping parking lots, snow removal and construction site clean-up, or** a process such as septic tank cleaning.
(c) (No change.)

SUBCHAPTER 14. TAXABILITY OF HOSPITAL SALES AND SERVICES [(Special Ruling No. 1)[3]]

[[3]This ruling is promulgated to clarify the taxable status of sales made and services rendered by a nonprofit charitable hospital which qualifies as an exempt organization pursuant to the provisions of N.J.S.A. 54:32B-9.]

18:24-14.2 Modification by hospital sales exemption for retail sales
(a) The exemption provided in [Section 13.1] **N.J.A.C. 18:24-14.1** [of this Chapter] is modified by N.J.S.A. 54:32B-9(c) which provides in part that the retail sales of tangible personal property by any shop or store operated by such organization shall be subject to the tax unless the purchaser is an exempt organization.
(b) (No change.)

SUBCHAPTER 15. TAXABILITY OF CERTAIN LINEN RENTALS

[(Special Ruling No. 7: Promulgated to clarify taxable status of receipts from certain rentals.)]

18:24-15.3 Tax computation; inclusion on invoice
(a) The tax must be calculated at the rate of [five] **six** percent on the adjusted charge as set forth in N.J.A.C. 18:24-15.2.
(b) The invoice given to the customer must show the total charge prior to the reduction, the percentage reduction and the net total charge subject to the sales tax. It must also contain a calculation showing a multiplication by [.05] **.06** times the net charge to effectuate the imposition of the [five] **six** percent tax due.

18:24-15.4 Improper indication of tax rate
It is improper for a vendor of linen furnishings to indicate that the effective rate of tax is [12;3] **two** percent of the total charge.

18:24-16.6 Tax on gross receipts
(a) Vendors operating vending machines which dispense tangible personal property, other than food and drink, must report and pay to the State the tax upon the gross receipts from all sales of such items made through such machines, subject to the exemptions set forth in the Sales and Use Tax Act such as [cigarettes (exempt under N.J.S.A. 54:32B-8(y)) and] items sold through vending machines for $0.10 or less (exempt under N.J.S.A. 54:32B-8.9 and N.J.A.C. 18:24-17).
(b)-(d) (No change.)
(e) Example:
...
Tax due (at [7]**6** percent) $[462]**396**

18:24-16.9 Responsibility for tax payment; amount
(a) (No change.)
(b) The tax to be remitted to the State of New Jersey by the vendor is the amount of the actual tax collected from all taxable sales, or [seven] **six** percent of the taxable sales, whichever amount is greater.

18:24-17.4 Tax amount payable
The amount of New Jersey sales tax payable is the net taxable receipts multiplied by [.07]**.06** to effectuate application of the [seven] **six** percent tax rate, or the actual tax collected, whichever is the greater.

SUBCHAPTER 18. TAXABILITY OF MOTOR FUELS [(Special Ruling No. 10)[5]]

[[5]This ruling is promulgated to clarify the taxable status of motor fuels.]

18:24-18.1 Motor fuel exempt from Act
(a) N.J.S.A. [54:32B-8(h)] **54:32B-8.8** exempts sales of motor fuels as motor fuels are defined for the purposes of the New Jersey Motor Fuels Tax Law and sales of fuel to an airline for use in its airplanes or to a railroad for use in its locomotives.
(b) In accordance with [subsection] (a) [of this Section, effective this first day of June, 1967,] **above** sales of fuels used to propel any aircraft or motor vessel are exempt from the New Jersey sales and use tax.

18:24-19.1 Scope of rule
This section is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1[,] et seq.) to sale, rental or leasing of tangible personal property used directly and exclusively in the production for sale of tangible personal property on farms. (N.J.S.A. [54:32B-8(p)] **54:32B-8.16**).

18:24-19.3 Exemption
(a) The exemption provided by N.J.S.A. [54:32B-8(p)] **54:32B-8.16** applies to the purchases of tangible personal property.
(b) There is no exemption for the purchase of taxable services.

18:24-19.4 Directly in production
(a)-(b) (No change.)
(c) Production machinery, equipment, implements and other articles have exempt status when used exclusively in the growing, stimulation of growth processing of tangible personal property on farms to a marketable state.
1. (No change.)
2. The purchase or use of tangible personal property by a person engaged in the business of farming is exempt from tax if such property is exclusively used by him directly in farming operations. However, purchases of automobiles, trucks, trailers and truck-trailer combinations as well as supplies and repair parts for such vehicles are subject to tax; provided, however, that **certain** trucks, trailers and truck-trailer combinations [acquired on or after January 1, 1978, are exempt if used directly and exclusively in farming operations. If not used exclusively and directly in farming operations such

vehicles are exempt from the sales tax only if acquired on or after January 1, 1978, and are registered in New Jersey for more than 18,000 pounds.] **are exempt from tax in accordance with N.J.S.A. 54:32B-8.43.** (See N.J.A.C. 18:24-7.18.)

[i. For example, a truck under 18,000 pounds purchased by a farmer on January 2, 1978, is used part of the time in the production for sales for tangible personal property on his farm. The truck is also used for transporting or conveying the farm product after the final farming operation. The truck is not exempt from sales and use tax since it was not used directly and exclusively in the production for sale of tangible personal property on his farm. It would qualify for exemption under subsection (ff) of section 8 of the Sales and Use Tax Act, if registered in New Jersey for more than 18,000 pounds. (See N.J.A.C. 18:24-7.18.)]

(d)-(h) (No change.)

18:24-19.6 Taxable and exempt items

Schedules A and B show examples of items of tangible personal property taxable and exempt under N.J.S.A. [54:32B-8(p)] **54:32B-8.16**.

EXEMPT SALES—(SCHEDULE "A") (No change.)

TAXABLE SALES—(SCHEDULE "B") (No change.)

18:24-23.2 Bad debts; tax refund

(a) Where the sales tax in connection with a sale has been remitted to the Division of Taxation and the account receivable has proven to be worthless and uncollectible, and application for a refund may be filed with the Director within two years from the payment thereof:

1.-3. (No change.)

4. The following [examples illustrate] **example illustrates** the foregoing rules:

[i. For example, if] **If** the sale amounted to $500.00 and the sales tax of [$25.00] **$30.00** was paid over to the Division by the vendor and the total collected by the vendor amounted to $50.00, no refund would be allowed since the amount paid to the Division did not exceed the amount collected by the vendor from his customer. If, however, in the given example, the vendor collected only $15.00 from the customer, he would be entitled to a [$10.00] **$15.00** refund because the amount collected by the vendor was less than the amount paid to the Division. If the vendor collected no money, he would be entitled to a refund of [$25.00] **$30.00**. This assumes, of course, that the debt is proven to the satisfaction of the Division to be worthless and uncollectible.

18:24-26.2 Technical sufficiency standards of solar energy systems; devices for storing solar-generated energy

The technical sufficiency standards of solar energy systems, devices for storing solar-generated energy as established and promulgated under N.J.A.C. [14A:5.1 et seq.] **14.25** by the [Director of the Division of Energy Planning and Conservation in the Department of Energy] **Department of Environmental Protection and Energy** shall be used to determine eligibility for exemption from sales and use tax of such solar energy systems.

18:24-26.5 Nonexempt purchases

The exemption from tax will not apply to those devices or systems for heating or cooling, electrical or mechanical power that would be required regardless of the energy source being [24-110] utilized.

18:24-28.2 Purchase of race horses

(a) (No change.)

(b) The amount of the sales tax due is computed by multiplying the purchase price of the race horse by [five] **six** percent.

(c) The residency of the purchaser is not considered for purposes of imposing the tax where delivery is made to the purchaser in this State.

Example 1: A person purchases a race horse at an auction sale in Colts Neck. The purchase price of the horse is $15,000. The purchaser or his agent takes delivery of the horse at the sale in Colts Neck. The sales tax due on the transaction is [$750.00]**$900.00**.

Example 2. (No change.)

18:24-28.3 Claiming races

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

(c) For the purpose of computing the sales tax due, the purchase price of the claimed horse is the amount paid for the claim. The sales tax is collected at the track at the time the claim is paid.

Example 1: Horse X is entered in a $10,000 claiming race at Monmouth Park. ABC Farms claims the horse. A Taxable transaction has taken place and the tax due is [500.00] **$600.00**.

18:24-28.4 Compensating use tax

(a) (No change.)

(b) The amount of the compensating use tax due is computed by multiplying the purchase price of the race horse by [five] **six** percent. If such horse was used outside of this State for more than six months prior to its first use in this State, the compensating use tax is computed on the fair market value (not to exceed cost) of the race horse. Upon submission of proof that sales tax legally due another state has been paid to that state, New Jersey will allow a credit in that amount against any taxes due this State; but only if a similar credit is allowed by the other state for taxes paid in New Jersey.

SUBCHAPTER 29. [HOUSEHOLD SOAPS AND] DISPOSABLE HOUSEHOLD PAPER PRODUCTS: EXEMPTION FROM SALES AND USE TAX

18:24-29.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1, et seq.) to the purchase and use of [household cleaning agents, soaps, detergents and] disposable household paper products.

18:24-29.2 Definitions

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

. . .

["Detergents" means synthetic water-soluble or liquid organic surface-active agents for use in washing or cleaning and that resemble soaps in the ability to emulsify oils and hold dirt in suspension.]

. . .

["Household cleaners or cleaning agents" means all organic or synthetic surface-active preparations sold for the purpose of removing dirt or any foreign or offensive matter from the surface of property by washing.]

. . .

["Soap products" means items of tangible personal property made of or derived from soap which are intended for use in washing or cleaning the person or property.]

18:24-29.4 Household paper products

[Effective July 1, 1983, the] **The** sale of disposable paper products, such as paper towels, paper napkins, toilet tissue, facial tissue, diapers, paper plates and cups, purchase for household use is exempt from sales and use tax.

Example [1]: The sale of paper place mats, paper bags, wax paper, paper freezer wrap, paper tablecloths and paper straws is exempt from sales and use tax.

18:24-29.5 Business use

The exemptions from sales and use tax provided by this subchapter [does] **do** not apply to the sale or any use of [detergents, cleaning agents and soaps and] disposable paper products for industrial, commercial or other business purposes or for the use of any person consuming them in a capacity related to such purposes.

SUBCHAPTER 31. URBAN ENTERPRISE ZONES ACT

18:24-31.1 General

(a) The New Jersey Urban Enterprise Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H-60, et seq., approved August 15, 1983, provides for the establishment of [up to ten] urban enterprise zones in urban areas suffering from high unemployment and economic distress. Each designation shall be for 20 years, and the right to establish enterprise zones shall expire [ten] **10** years from August 15, 1983. Zones are designated by an Urban Enterprise Zone Authority. The [authority] **Authority** may grant certain sales tax and other tax benefits to businesses existing in or formed in enterprise zones, which have met the definition of a qualified business. This subchapter of the sales tax rules sets forth the possible benefits, the necessary definition, and the procedures for qualifying for any of these sales tax benefits.

(b) (No change.)

(c) No business can obtain tax benefits under this subchapter unless [it] **the Urban Enterprise Zone Authority has determined that the business** meets the definition of a qualified business under **N.J.S.A. 52:27H-62c paraphrased below in** N.J.A.C. 18:24-31.2.

18:24-31.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise[;]**:**

[A "qualified] **"Qualified** business" means:

1. (No change.)

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business within that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Residents within the zone**, within another zone** or within the municipality within which the zone **or any other zone** is located; or

ii. Either unemployed [while residing in New Jersey] for at least one year prior to being hired **and residing in New Jersey**, or recipients of New Jersey public assistance program, for at least one year prior to being hired; or

iii. Found to be economically disadvantaged, pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 U.S.C. 1501, et seq.). [Section 1503(8) of that Act defines this term as follows:

"The term 'economically disadvantaged' means an individual who (A) receives, or is a member or a family which receives, cash welfare payments under a Federal, state, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments), which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom state or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."]

. . .

18:24-31.3 Exemption for retail sales to a qualified business

(a) Retail sales **and leases** of tangible personal property (except motor vehicles) to a qualified business and sales of services **(except telecommunications)** to a qualified business for the exclusive use or consumption of such business within an enterprise zone are exempt from the sales and use taxes imposed by N.J.S.A. 54:32B-1, et seq., provided that the designation of the enterprise zone by the Urban Enterprise Zone Authority specifically makes this exemption available to the qualified business.

(b) (No change.)

(c) Qualified businesses purchasing or leasing tangible personal property (except motor vehicles) or services (except telecommunications services) to be used or consumed exclusively within the enterprise zone shall furnish to their vendors, suppliers or lessors a properly completed UZ-5, Urban Enterprise Exempt Purchase Certificate.

18:24-31.4 Partial exemption for retail sales of tangible personal property by a certified vendor

(a) Sales tax is imposed at 50 percent of the [regular] **statutory** rate, on receipts from retail sales, [(except retail sales of motor vehicles, and of manufacturing machinery, equipment or apparatus, not otherwise exempt,)] **with exceptions stated in (b) or (c) below,** made by a certified vendor which is a qualified business from a place of business owned or leased, and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone.

(b) This partial exemption does not extend to sales of motor vehicles**, cigarettes, or alcoholic beverages.**

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

(f) Vendors that meet the requirements in (a) and (b) above and that lease tangible personal property may pay use tax at 50 percent of the regular rate, as long as the lease meets the requirements above. However, if the lessor later leases the property to a lessee that fails to meet the requirements in (e) above of completing the lease transaction at the lessor's place of business, tax shall be due at the regular rate, unless the lessee is exempt under some other exemption provided by the Sales and Use Tax Act.

18:24-31.5 No partial exemption for retail sales of taxable services by a qualifying business

The Urban Enterprise Zones Act in Section 21 provides for an exemption to the extent of 50 percent of the [regular] **statutory** rate of sales and use tax on retail sales, other than motor vehicles, **cigarettes, alcoholic beverages, and** manufacturing machinery, equipment or apparatus, by a certified vendor which is a qualified business. The statute does not provide for any full or partial exemption on the sale or furnishing of taxable services.

(a)

DIVISION OF TAXATION

Transfer Inheritance Tax and Estate Tax

Proposed Readoption: N.J.A.C. 18:26

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1993-188.

Submit comments by May 5, 1993 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The first inheritance tax legislation in New Jersey was passed in 1892 (P.L. 1892, c.122), and imposed a five percent tax on property transferred from a decedent to a beneficiary. In 1909, the present Transfer Inheritance Tax Law (P.L. 1909, c.228) was enacted and in the same year the Transfer Inheritance Tax Bureau was created.

In 1934, the Estate Tax Act (P.L. 1934, c.234) was enacted to absorb the maximum credit allowable for estate death taxes under the Federal Estate Tax Law. This act was retroactive and applied only to the estates of resident decedents. The 1934 act also gave authority to compromise inheritance taxes due where the matter was in litigation. In 1938 the

issuance of a waiver describing real property released from a tax lien was initiated.

Tax rates were substantially increased in 1962. In 1963, transfers to or for the use of charitable or educational institutions were granted complete exemption in the case of persons dying after June 30, 1963.

The Transfer Inheritance Tax Law (N.J.S.A. 54:33-1 to 54:37-8) imposes a tax on the transfer of real and personal property of a value of $500.00 or more. The tax is collected on the estates of both resident and nonresident decedents. However, only real property and tangible personal property located in New Jersey are subject to tax in cases of a nonresident decedent.

The Estate Tax Law (N.J.S.A. 54:38-1 to 16) provides for an estate tax in addition to the inheritance tax on the estate of a resident decedent where the inheritance taxes paid to New Jersey, other states, territories or the District of Columbia are not sufficient to fully absorb the credit allowable for payment thereof against any Federal estate taxes payable to the United States. The credit is provided for under Section 2011(b) of the Federal Internal Revenue Code. This tax is the difference, if any, determined by subtracting the amount of the inheritance, legacy and succession taxes actually paid to this State and the other states, etc. from the amount of allowable credit.

The Transfer Inheritance Tax Act and the Estate Tax Law, as amended and supplemented, are referred to in these rules as the Law, the Act, or the Tax Act.

These rules, among other things, contain tables of rates, exemptions and a description of beneficiary classes.

Technical terms such as "blanket waiver," "proper representative of the estate" and different classes of transferees are defined. These rules indicate what clear market value is, what estate and property means, what gross estate is, and what a transfer is.

The Act imposes a tax on transfers of the value of $500.00 or more. The tax rates range from one percent to 16 percent. In the case of nonresident decedents, the tax is on transfers which consist of real or tangible personal property owned by the decedent situated in New Jersey at the time of death. The law at date of death controls.

Transferees include all persons and entities, corporate, political, charitable, etc. who share in the estate of a decedent.

In the case of a decedent who dies intestate without known heirs, the property escheats to the State of New Jersey.

A testator in a will may dictate whether the tax is to be paid out of the estate or by the beneficiaries, but same has no effect on the computation of tax due this State.

Transfers can be made in a form other than by will, such as joint ownership of assets with right of survivorship, assets held in trust for or payable on death to another, etc. Property transferred by a decedent within three years prior to date of death in contemplation of death must be included in the estate. Life insurance benefits are generally exempt from the tax unless payable to the estate or the executor or the administrator of the decedent.

Annuity contracts are subject to the New Jersey inheritance tax. Property received from the Federal government is ordinarily not subject to the inheritance tax, such as certain Federal pensions payable to beneficiaries other than the estate or the executor or administrator of the decedent.

Deductions from inheritance tax include funeral and administration expenses, executor's expenses and commissions, counsel fees, state, county and local taxes, and transfer taxes paid to other jurisdictions not including the United States.

Upon meeting certain conditions, a properly designated New Jersey Certified Public Accountant may represent an estate.

One-half of a bank account may be withdrawn by the executor or administrator without obtaining a waiver from the Transfer Inheritance Tax Branch. Form L-8 (self executing waiver) may be used to transfer assets to a Class "A" beneficiary. Form L-9 may be used by the representative of an estate to request the issuance of a waiver permitting the transfer of real estate to a Class "A" beneficiary.

All assets includible in a decedent's estate are to be valued at their fair market value as of the date of death. Estates for life or a term of years can occur and, in such a case, the value of same and the contingent remainder interest must be determined.

Failure to file a return within the time prescribed subjects the party responsible for the filing to the penalties provided in N.J.S.A. 54:34-3.

Payment of the tax should be made directly to the New Jersey Inheritance Tax Branch, CN 249, Trenton, NJ 08646 together with the tax return, Form IT-EP (estimated payment) or the tax bill. There is no longer an Inheritance Tax District Supervisor located in each county.

Inheritance tax returns are due within eight months from the date of death of a decedent and the statutory interest begins to accrue after expiration of the eight month period. The inheritance tax is a lien on all of the property of the decedent for a period of 15 years unless paid sooner or secured by acceptable bond.

Certain provisions are made for appeals, refunds, compromises and settlements of tax due. Appeals are to the Tax Court.

In estates of nonresident decedents, New Jersey inheritance tax waivers are required only for real property located in the State of New Jersey. However, an executor, administrator or trustee may not turn over other New Jersey property of the decedent to the beneficiary until the tax is paid.

Effective in estates of decedents dying on and after January 1, 1985, benefits passing to a surviving spouse are totally exempt from inheritance tax. The exemption granted to all other Class "A" beneficiaries (For Class "A" beneficiaries see N.J.A.C. 18:26-1.1) is as follows:

Date of Death	Amount of exemption
January 1, 1985 through June 30, 1985	$ 15,000 (no change)
July 1, 1985 through June 30, 1986	50,000
July 1, 1986 through June 30, 1987	150,000
July 1, 1987 through June 30, 1988	250,000
July 1, 1988 and after	Total Exemption

Class "C" beneficiaries are entitled to a $25,000 exemption in estates of decedents having a date of death on or after July 1, 1988.

Executor's or administrator's commissions are allowable on realty that is actually sold by said executor or administrator or which is expressly directed to be sold by the terms of the decedent's will.

A blanket release has been issued to safe deposit companies, trust companies, banks and other institutions allowing the release of the contents of all safe deposit boxes without inspection by the Division.

Properly filed disclaimers are given effect in computing the tax.

Social Impact

Readoption of these rules will serve to inform and assist taxpayers and their representatives in understanding and meeting the requirements of New Jersey Transfer Inheritance Tax and Estate Tax statutes, as delineated in the Summary, above. The rules will, in effect, tend to minimize any inconvenience to the taxpayer while maximizing the efficiency of the Transfer Inheritance Tax Branch, Division of Taxation.

Economic Impact

The State of New Jersey collected $216,682,304.51 in fiscal year 1992, $216,550,983.57 in fiscal year 1991 and $199,959,028.99 in fiscal year 1990. Actual revenue substantially exceeded anticipated revenue in each of the fiscal years. Legislation passed in 1985 increasing the exemption for various beneficiaries was phased-in during the period from January 1, 1985 through July 1, 1988. Revenues are deposited in the State Treasury for general State use.

Readoption of the rules will have no substantial economic impact in and of itself. There are no amendments proposed, and the rules do not require any fees or expenses to be paid by the taxpayer. Any person subject to transfer inheritance tax or estate tax may receive the assistance of the Division of Taxation, at no cost to the person, although any person is free to use the services of an attorney, accountant, or any other professional to assist in fulfilling that person's responsibilities under the Act.

Regulatory Flexibility Statement

This proposal is for a readoption of inheritance tax and estate tax rules. These taxes do not apply to the conduct of businesses in the State. Instead, these taxes are imposed on the transfer of property to and among individuals. Thus, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:26.

(a)

DIVISION OF TAXATION

Gross Income Tax
Setoff of Individual Liability
Proposed Readoption: N.J.A.C. 18:35

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54A:9-8.1 through 54A:9-8.3, 54A:9-17(a) and 54:50-1.

Proposal Number: PRN 1993-178.

Submit comments by May 5, 1993 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:35-1 and 2 (Gross Income Tax and Setoff of Individual Liability Rules) expire on June 7, 1993. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change.

The New Jersey Gross Income Tax Act as amended and supplemented, N.J.S.A. 54A:1-1 et seq. was approved on July 8, 1976 as P.L. 1976, c.46 but was applicable on July 1, 1976. The gross income tax rules, N.J.A.C. 18:35, have been updated and revised periodically. These rules were promulgated to clarify and interpret various provisions of the tax law. The two subchapters contain provisions concerning the "summer payment plan" authorized under N.J.S.A. 18A:29-3; the income of clergymen, declaration of estimated taxes; treatment of capital gains and losses; information returns; the status of government obligations; accelerated returns and payment of employers' withheld taxes; filing of returns and computation of tax credit; the one-time election to exclude capital gain on the sale of a principal residence; the taxation of partnerships; the employee accident or health insurance exclusion; tax credit for excess contributions of unemployment and disability insurance; extension of time to file returns; procedure for setoff, notice of setoff, agency procedures, etc. In order to continue the orderly administration of the New Jersey gross income tax, these rules will continue in effect until five years after the filing of the readoption.

On July 27, 1981, P.L. 1981, c.239 adopted the setoff provisions of the New Jersey Gross Income Tax Act, N.J.S.A. 54A:9-8.1 through 8.3. This chapter provides that whenever any taxpayer or homeowner is entitled to any refund of taxes for gross income tax purposes or a homestead rebate, and, at the same time the taxpayer or homeowner is indebted to any State agency or institution of State Government or for child support, the Department of the Treasury may apply the refund or rebate, or both, to satisfy the indebtedness. The setoff provisions became applicable on February 1, 1982. The readoption of the gross income tax rules includes the readoption of setoff rules (subchapter 2).

Social Impact

The gross income tax rules affect individuals, estates and trusts other than corporations. The readoption of these rules will continue to provide taxpayers with guidance in complying with the New Jersey Gross Income Tax Act. The readoption will also continue the orderly administration and collection of the tax. Taxpayers are also provided with an interpretation of specific provisions of the New Jersey Gross Income Tax Act.

The setoff rules affect all individuals who owe a debt to the State of New Jersey. The readoption of the setoff rules will continue to permit the orderly recovery of indebtedness owed to State agencies.

Economic Impact

The readoption of these New Jersey gross income tax rules will continue to provide for the accurate filing of tax returns and the proper payment of tax due on gross income.

New Jersey gross income tax revenues are deposited in the "Property Tax Relief Fund" to be used for the purpose of reducing or offsetting property taxes. The following amounts were collected and deposited in the Property Tax Relief Fund for the State's fiscal year:

1988	$2,564,305,127
1989	2,902,892,244
1990	2,957,634,330
1991	3,391,026,222
1992	4,089,812,552

The readoption of the setoff rules will ensure a procedure whereby the State continues to collect debts owed to it. The setoff program collected the following amounts in full or partial satisfaction of debts for the calendar year:

1987	$12,618,378
1988	11,378,584
1989	12,061,660
1990	12,188,310
1991	37,529,627

Regulatory Flexibility Statement

The New Jersey gross income tax applies to the New Jersey gross income of every taxpaying entity subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. N.J.A.C 18:35 applies only to individuals, and not to businesses, small or large. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:35.

OTHER AGENCIES

(b)

NEW JERSEY HIGHWAY AUTHORITY

Use and Administration of the Garden State Parkway
Proposed Readoption: N.J.A.C. 19:8

Authorized By: New Jersey Highway Authority, David W. Davis, Executive Director (with approval of the Board of Commissioners).

Authority: N.J.S.A. 27:12B-5(j) and (s) and 27:12B-20a.

Proposal Number: PRN 1993-166.

Submit written comments by May 5, 1993 to:
David W. Davis, Executive Director
New Jersey Highway Authority
P.O. Box 5050
Woodbridge, NJ 07095

The agency proposal follows:

Summary

In accordance with the sunset and other provisions of Executive Order No. 66(1978), the Highway Authority proposes to readopt N.J.A.C. 19:8, governing use and administration of the Garden State Parkway. These rules were originally filed and became effective prior to September 1, 1969 pursuant to the provisions of N.J.S.A. 27:12B-5(j) and (s). Pursuant to the sunset provisions of Executive Order No. 66(1978), an expiration date of June 30, 1988 was established for all Highway Authority regulations. After readoption on May 25, 1988, a new expiration date of July 5, 1993 was established for all Highway Authority rules.

The rules implement the provisions of N.J.S.A. 27:12B-1 et seq. concerning the establishment and authorization of the Highway Authority, whose principal obligation is construction and operation of the Garden State Parkway and the use and enjoyment thereof by the public. The Highway Authority Act provides for the construction of modern expressways that will facilitate vehicular traffic and reduce congestion on other highways in the State. These rules govern the use of the Garden State Parkway by the motoring public, establish procedures by which materials and supplies may be purchased and sold by the Authority, and govern the use of Parkway property, such as the Garden State Arts Center.

N.J.A.C. 19:8 consists of 12 subchapters. Subchapter 1 contains traffic rules, including definitions of terms used, maximum speed limits, prohibitions regarding parking and other limitations on the use of the Parkway. Subchapter 2 deals with Garden State Parkway property of a non-

vehicular nature, for example, public use of the Garden State Arts Center, prohibition of hitchhiking and loitering and other prohibited uses of Garden State Parkway property. Subchapter 3 sets out the tolls which must be paid for passage of vehicles on the Garden State Parkway. This subchapter includes a breakdown of the toll charges by type of vehicle and distance traveled, which range from .35 to $2.10 per toll barrier. Subchapter 4 deals with penalties for violations of the Highway Authority enabling legislation. Subchapter 5 provides information regarding the methods by which the Authority purchases goods and services. Subchapter 6 provides the method by which the Authority sells its surplus personal property; for example, motor vehicles owned by the Authority are sold to the highest bidder at public auction pursuant to the provisions of this subchapter. Subchapter 7 sets out the methods and ways by which members of the public may obtain certain Authority records and the fees charged for same. Subchapter 8 deals with the procedure for obtaining special permits for oversized vehicles traveling south of Interchange 105. Subchapter 9 governs the issuance of permits for outdoor advertising signs adjacent to the Garden State Parkway pursuant to N.J.S.A. 27:12B-20a. Subchapter 10 regulates pre-employment screening for applicants for employment with the New Jersey Highway Authority and includes the requirement of obtaining a criminal history search. Subchapter 11 sets forth the organization of the New Jersey Highway Authority and advises the general public as to how to obtain general information from the Authority. (See adopted amendments to this subchapter published elsewhere in this issue of the New Jersey Register.) Subchapter 12 sets forth the procedure in which interested persons can apply for the promulgation, amendment or repeal of any Authority rule.

Since June 30, 1988, several sections of N.J.A.C. 19:8 have been amended. These include amendments concerning pre-employment screening regarding criminal history, increasing tolls charged for Parkway passage, setting forth the organization of the Authority's administrative staff, setting forth procedures for filing a rule-making petition, requiring special permits for oversized vehicles, regulating the transportation of explosives and other dangerous articles on the Parkway, amending the definition section by the addition of a definition of "six-wheel vehicles" as well as other technical definitional changes regarding the Garden State Arts Center, making further technical changes to rules regarding the operation of the Garden State Arts Center, permitting providers of emergency services to increase the fees charged for same, and making the permissible speed limit on the Parkway 55 miles per hour, with the exception of the two main bridges within the road system.

These rules have provided an efficient and effective mechanism for the regulation of the safe and efficient use of the Parkway by the motoring public. The enforcement standards which they provide have enabled the traveling and using public to enjoy the use of the Parkway and the Arts Center.

Upon review, it is the Commissioners' opinion that these rules should continue to be just as effective in the future in meeting the legislative goals established by the Highway Authority. Therefore, N.J.A.C. 19:8 is proposed for readoption without change, except for the amendment to Subchapter 11 (Organization Rules) which is being adopted in concert with this readoption, elsewhere in this issue of the New Jersey Register.

Social Impact

Pursuant to legislative command, the Authority adopted N.J.A.C. 19:8, Regulations Governing Use of the Garden State Parkway, which provided traffic rules governing use of the Parkway by the motoring public, including the collection of tolls and other non-vehicular use of the Parkway and other Authority projects, including the Garden State Arts Center. The rules also provided for penalties of violation of any Authority rules (N.J.A.C. 19:8-4).

In addition to other programs, the Authority sponsors the Garden State Cultural Center Fund, which provides a full series of ethnic heritage festivals held at the Garden State Arts Center and also provides free entertainment for senior citizens, the handicapped, school children, the blind, veterans and other civic groups throughout the Arts Center season.

The extent to which these rules ensure the safe and efficient use of the highway by the motoring public, the collection of toll revenues and the provisions of the aforementioned social programs is a key element enabling the Authority to meet the goals mandated by the Legislature in enacting N.J.S.A. 27:12B-1, et seq. For these reasons, the failure to readopt these rules could seriously jeopardize the realization of the Legislative intent spelled out in N.J.S.A. 27:12B-1, et seq., for example, the safe use of the roadway by the public, the collection of necessary tolls to meet bonding indebtedness and the continuance of the Garden State Cultural Center Fund programs.

Economic Impact

The most significant responsibility of the Authority is the operation and maintenance of the Garden State Parkway. The safe and expeditious use of the Parkway by the motoring public increases such use and thereby maintains the Authority's ability to generate sufficient revenues to meet its bonding indebtedness. The safe and efficient use of the Parkway by the motoring public can be said to have added significantly to the development of those areas of the State served by the Parkway. The non-vehicular rules have contributed to the use of the Parkway and the Arts Center by the public by enhancing the ability of the Authority to maintain its projects at maximum efficiency and minimum costs.

The provisions of this chapter create an economic impact upon those driving on the Parkway, who are required to pay tolls ranging from $0.25 to $2.10 at each toll barrier, depending on the size and type of vehicle. Emergency vehicles are permitted passage on the Parkway without the payment of tolls. Certain types of vehicles are prohibited from using the Parkway; however, alternate routes are available for such vehicles. Emergency service can be provided on the Parkway only by approved vendors, and at the rates specified in this chapter, providing an economic benefit to the motoring public, who are assured of specific rates, should they need the service. Purchases are controlled by the bidding procedures delineated in Subchapter 5, which include the submission of bid guarantees in the forms specified in N.J.A.C. 19:8-5.12. The rules in Subchapter 6, governing the sale of surplus property, assure that there is an orderly and equitable procedure for the sale of Authority surplus personal property at the highest possible price. Subchapter 7 includes fees for the provision of specified public documents, when requested by an individual or business. Special permits for oversize vehicles may be applied for under the provisions of Subchapter 8, and include a fee of $10.00 for each permit, required for each one-way trip of an oversize vehicle, and evidence of insurance coverage for bodily injury and property damage. Outdoor advertising is permitted, under the provisions of Subchapter 9, which include requirements for the maintenance of such signs, and for an application fee of $50.00.

Regulatory Flexibility Analysis

N.J.A.C. 19:8 applies to all members of the public, to the extent they use the Parkway and other Authority projects, such as the Garden State Arts Center. Certain provisions of this chapter have direct economic impact on small businesses, such as subchapter 5, which controls bidding; subchapter 6, which governs the sale of surplus property; subchapter 8, which controls the use of the Parkway by oversize vehicles; and subchapter 9, which controls permitting for outdoor advertising. The costs of such requirements, as delineated in the Economic Impact statement, may have an effect on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, the costs are estimated by the Authority to be the minimum required for the fulfillment of its responsibility to assure safe and efficient use of the Parkway. The procedures in the Authority's contract set-aside program, conducted under the rules of the Department of Treasury, assure that small businesses, as well as minority-owned and women's businesses, will benefit.

The Authority believes that no additional differentiation should be provided, since to do so may compromise the safe use and efficient operation of the Parkway and the Arts Center.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:8.

(a)

CASINO CONTROL COMMISSION

General Provisions

Post-Employment Restrictions

Proposed New Rule: N.J.A.C. 19:40-2.6

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-59e(2), 60b, 63c and 69b.

Proposal Number: PRN 1993-192.

Submit written comments by May 5, 1993 to:
Mary S. LaMantia, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Employees of the Casino Control Commission and the Division of Gaming Enforcement are required to observe standards of conduct set forth in the Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq., the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., and each agency's Code of Ethics. Among other things, former Commission and Division employees may not, except as noted below, solicit or accept employment with, or acquire any direct or indirect interest in, any person who is an applicant, licensee or registrant with the Commission for a period of four years after termination of service. The Commission may, however, waive the final two years of this post-employment restriction if it finds that the prospective employment or interest will not create a conflict of interest in fact or in appearance. N.J.S.A. 5:12-59e, 60b. In addition, there is no post-employment restriction on the acquisition of an interest in or the obtaining of employment with any nongaming-related casino service industry enterprise licensee or applicant governed by N.J.S.A. 5:12-92c. N.J.S.A. 5:12-60e.

The proposed new rule codifies the procedures whereby a former Commission or Division employee may request a waiver of the post-employment restriction. Once two years have elapsed since termination of service, the former employee would be permitted to solicit employment with a licensee, registrant or applicant upon written notice of such intent to the Commission's General Counsel. No offer of employment could be accepted or employment commenced, or interest acquired, until such time as a final waiver is granted by the Commission.

Consistent with current practice, the proposed rule requires that the petitioner file a written application for waiver with the Commission. Such petition must identify the applicant, licensee or registrant in which the former employee wishes to acquire an interest or accept an offer of employment; the nature of the interest to be acquired or the particular position offered and the nature of the duties to be performed; and any position held and the nature of the duties performed as a Commission or Division employee.

The Commission's General Counsel will review each petition for waiver and, within 10 days of receipt of such petition, will make a recommendation to the Commission, with copies to the Division and the petitioner. The rule provides that the Commission may grant a waiver upon a finding that the employment or interest will not create the appearance of a conflict of interest or evidence a conflict of interest in fact, and that the petitioner holds any license, qualification or registration that may be required to accept the position or interest or that an application for such license, qualification or registration has been filed with the Commission.

The proposed new rule modifies current practice in specifying that a post-employment waiver applies only to the particular applicant, licensee or registrant and the position or interest disclosed in the petition filed with the Commission. This provision enables the Commission to fulfill its statutory duty to waive the post-employment restriction only where it finds that the duties associated with the potential employment or interest to be acquired do not present a conflict of interest in appearance or in fact.

Social Impact

The proposed new rule should promote public confidence in the integrity and impartiality of the regulatory agencies. The standards set forth therein assure that no former employee of the Commission or Division will acquire an interest in, or accept employment with, any licensee, registrant or applicant where such employment or interest would present a conflict of interest in fact or appearance.

The proposed new rule thus furthers the goals of the Casino Control Act, which expressly recognizes that it is essential to the regulation and control of casino gaming to maintain the public confidence and trust in the efficacy and integrity of the regulatory process. N.J.S.A. 5:12-16(b).

The proposed procedures of course impact upon former Commission or Division employees who intend to seek a waiver of the final two years of the post-employment restriction. Since that restriction is imposed by statute, N.J.S.A. 5:12-59e, 60b, and since such persons have always been required to file a written petition with the Commission requesting waiver, no new or additional burden is imposed by the codification of the waiver process. Further, the proposed rules should benefit these applicants by providing for expeditious determination of petitions for waiver.

Economic Impact

The proposed new rule is not expected to have any significant economic impact. Former Commission and Division employees may incur some time and expense in complying with the notice and filing requirements set forth, as will the regulatory agencies in processing such requests. However, the Commission has always required the filing of a written petition for waiver of the post-employment restriction; codification of this requirement will not result in any incremental economic impact.

Regulatory Flexibility Statement

The proposed new rule affects only former employees of the Commission and the Division, none of whom qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

Full text of the proposed new rule follows:

19:40-2.6 Post-employment restrictions

(a) No employee of the Commission or employee or agent of the Division shall solicit or accept employment with, or acquire any direct or indirect interest in, any person who is an applicant, licensee or registrant with the Commission for a period of four years from the date of termination of his or her employment with the Commission or Division, except as provided in subsection 60b of the Act and this section. Notwithstanding the foregoing, nothing in this section shall prohibit a former employee of the Commission or a former employee or agent of the Division from soliciting or accepting employment with, or acquiring an interest in, any person who is licensed as a casino service industry enterprise pursuant to subsection 92c of the Act or is an applicant for such licensure.

(b) Any person subject to the restrictions in (a) above may solicit employment with an applicant, licensee or registrant if:

1. Two years have elapsed since the date of termination of his or her employment with the Commission or Division; and

2. Such person has provided prior written notice of an intent to solicit such employment to the Commission's General Counsel.

(c) No person subject to the restrictions in (a) above shall accept or commence employment with, or acquire an interest in, an applicant, licensee or registrant unless a waiver of the post-employment restriction has been granted by the Commission for that particular employment or interest. A petition for waiver may be filed with the Commission at any time after two years have elapsed since the date of termination of employment with the Commission or Division. Such petition shall be in writing and shall identify the following:

1. The applicant, licensee or registrant that has made an offer of employment, or in which the petitioner will acquire an interest;

2. The position to be held and the specific nature of the duties to be performed for the applicant, licensee or registrant, or the nature of the interest to be acquired; and

3. Any positions held and the specific nature of the duties performed while employed by the Commission or Division.

(d) The Commission may grant a waiver upon a finding that the acceptance of the employment or the acquisition of the interest identified in the petition will not create the appearance of a conflict of interest or evidence a conflict of interest in fact, and that the petitioner holds any license, qualification or registration that may be required to accept the position or interest, or that an application for such license, qualification or registration has been filed with the Commission.

(e) The Commission's General Counsel shall review each petition for waiver and supporting documentation and shall make a recommendation to the Commission, with copies to the Division and the petitioner, within 10 days of the receipt of a completed petition.

(f) Any waiver granted pursuant to (d) above shall apply only to the applicant, licensee or registrant and the position or interest identified in the petition for waiver. No person subject to (a) above shall accept or commence employment in any other position or with any other applicant, licensee or registrant, or acquire any other interest that is otherwise prohibited unless a request for a waiver

has been granted by the Commission for such employment or interest, or until four years have elapsed from the date of termination of employment with the Commission or Division.

(a)

CASINO CONTROL COMMISSION
ADMINISTRATIVE OPERATIONS
Disability Discrimination Grievance Procedure
Proposed New Rules: N.J.A.C. 19:40-6

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69, 42 U.S.C. §12101 et seq., and 28 C.F.R. §35.107.
Proposal Number: PRN 1993-201.

Submit written comments by May 5, 1993 to:
Inez Killian
ADA Coordinator
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

AGENCY NOTE

This notice of proposed rulemaking is being published as part of a collective process by which several State agencies are intending to adopt a Grievance Procedure for the resolution by each agency of complaints regarding compliance with the Americans with Disabilities Act (ADA). The full text of the proposed new rules may be found under the heading for the Department of Law and Public Safety in this issue of the New Jersey Register. The Casino Control Commission proposes to adopt the rules as they appear in the Department of Law and Public Safety proposal, with the exception of N.J.A.C. 19:40-6.1, Definitions, which for this agency is proposed as follows:

19:40-6.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Casino Control Commission.

"Designated decision maker" means the Chairman of the Casino Control Commission or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
New Jersey Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

(b)

CASINO CONTROL COMMISSION
Accounting and Internal Controls
Gaming Equipment
Slot Drop Boxes
Proposed Amendments: N.J.A.C. 19:45-1.1, 1.10, 1.32, 1.36, 1.37, 1.38, 1.42, 1.43, and 1.44; N.J.A.C. 19:46-1.26 and 1.33
Proposed Repeal: N.J.A.C. 19:46-1.25

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(l), 99(a)10-11, and 100(c).
Proposal Number: PRN 1993-193.

Submit comments by May 5, 1993 to:
Seth Briliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments would revise and recodify the requirements for the use and operation of drop buckets in slot machines. These receptacles collect the coins and slot tokens that are deposited into a slot machine.

The requirements for slot drop buckets presently appear in N.J.A.C. 19:45-1.36, Internal controls, as well as in N.J.A.C. 19:46-1.25, Gaming equipment. The slot drop bucket requirements in N.J.A.C. 19:45-1.36 would be revised and recodified; the duplicate requirements in N.J.A.C. 19:46-1.25 would be repealed and the section reserved.

These proposed amendments would incorporate the concept of a "slot drop box" in N.J.A.C. 19:45-1.36(c) as an alternative to the use of a slot drop bucket. Such a slot drop box would be required to close and lock shut automatically upon its removal from a slot machine, thus offering greater security and control than an open slot bucket. The same type of locking drop box is presently required at gaming tables by N.J.A.C. 19:45-1.16, and is optional in slot machines, pursuant to N.J.A.C. 19:45-1.36(h). The proposed amendment to N.J.A.C. 19:45-1.36(d) would revise and recodify the locking drop box requirements originally found in N.J.A.C. 19:45-1.36(h).

Slot machines which accept tokens in denominations of $25.00 or more would now be required to use a slot drop box, rather than a drop bucket. Additionally, the slot machine itself could be opened only by a slot department supervisor or a supervisor thereof, thus restricting access to the machine's hopper and any tokens contained therein. See N.J.A.C. 19:45-1.36(c). Proposed N.J.A.C. 19:45-1.36(f) is a revision and recodification of N.J.A.C. 19:45-1.36(j) and N.J.A.C. 19:45-1.25(h), which duplicate each other. Proposed N.J.A.C. 19:45-1.36(h), (i) and (j) now incorporate the key controls and the sign-out procedures which were formerly part of N.J.A.C. 19:46-1.25(c) and (e).

Typically, fewer than one percent of the slot machines on a licensee's casino floor use tokens in denominations of $25.00 or higher. Thus, the number of slot machines affected by this requirement would be small, but the impact upon security and control over these gross revenue monies would be important. In the Commission's opinion, the additional security offered by the slot drop box and the personnel restriction are needed for these higher denomination slot tokens.

Additionally, N.J.A.C. 19:45-1.42(b) and (c), which list the procedures for the removal and handling of slot drop buckets and slot cash storage boxes, would also be revised to include the new slot drop boxes. There are presently different personnel requirements for the removal and transport of these containers, depending upon what container is being removed and the time of removal. These amendments would eliminate these various requirements, and substitute one requirement for all such removals, regardless of the type of container involved and whether the casino is open or closed when the removal occurs.

Lastly, the definition of a "drop bucket" in N.J.A.C. 19:45-1.1 would be replaced with "slot drop bucket," and the new term "slot drop box" would be added. The definition of "slot machine drop" would be amended to include both slot drop boxes and slot drop buckets, and the various references to "drop buckets" in N.J.A.C. 19:45-1.10, 1.32, 1.37, 1.38, 1.42, 1.43, 1.44, and N.J.A.C. 19:46-1.26 and 1.33, would also be revised to conform with the new terminology. The definition of "slot machine" would also be revised to delete the reference to "currency," which is technically incorrect. Although currency may be used to play a slot machine, it is actually inserted into a bill changer, which is physically and electronically attached to the slot machine.

Social Impact

The proposed revisions and recodifications should make it easier for licensees to comply with the rules and for the Division to enforce them. Although no other direct social impact is expected, it is anticipated (as discussed below in the Economic Impact statement) that the proposed amendments may help to curtail loss or theft of the slot tokens.

Economic Impact

These proposed amendments may have an economic impact upon casino licensees, since there may be some additional costs in complying

with the increased security measures mandated for higher denominations of tokens. However, it is hoped that such measures will result in increased security and control over such slot token operations, with reduced possibilities of loss or theft of these slot tokens.

Regulatory Flexibility Statement

These proposed amendments would affect only casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no Regulatory Flexibility Analysis is required.

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

19:45-1.1 Definitions

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

...

["Drop bucket" is defined in N.J.A.C. 19:45-1.36.]

...

"Slot drop bucket" is defined in N.J.A.C. 19:45-1.36.

"Slot drop box" is defined in N.J.A.C. 19:45-1.36.

"Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, [currency,] token or similar object therein, or upon payment of and consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value, whether the payoff is made automatically from the machine or in any other manner whatsoever.

"Slot machine drop" means the amount of coins and slot tokens in a **slot** drop bucket **or a slot drop box,** and cash in a slot cash storage box, if applicable.

...

19:45-1.10 Closed circuit television system: surveillance department control; surveillance department restrictions

(a) (No change.)

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i.-vii. (No change.)

viii. The movement of cash, gaming chips and plaques, drop boxes, slot cash storage boxes, **slot drop boxes** and **slot** drop buckets in the establishment;

ix.-x. (No change.)

2.-5. (No change.)

(c)-(h) (No change.)

19:45-1.32 Count rooms; characteristics

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

(d) The count room designated for counting contents of slot [machine] drop buckets **and slot drop boxes**, if a different room than that used for counting contents of drop boxes and slot cash storage boxes, shall meet all requirements herein except for the audio capabilities. In addition, the room shall contain either a fixed-door type or hand-held metal detector to inspect all persons exiting the count room.

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage boxes; [compartments; keys] **entry authorization logs**

(a) Each slot machine located in a casino shall have the following coin or slot token containers:

1. A container, known as a payout reserve container [("Hopper")] **("hopper")**, in which coins or slot tokens are retained by the slot machine to automatically pay jackpots or to dispense change as directed by a bill changer **connected to the slot machine**, provided, however, that the hopper shall not retain slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2;

2. A container, known as a **slot** drop bucket **or slot drop box**, to collect coins or slot tokens that are retained by the slot machine and are not used to make change or automatic jackpot payouts. Each **slot** drop bucket **or slot drop box** shall be identified by a number[, corresponding] **which corresponds** to the asset number of the slot machine, **and** which [shall be at least two inches in height, and] **is** permanently imprinted[,] **on or** affixed [or impressed on] **to** the outside of the **slot drop** bucket **or slot drop box in numerals at least two inches high**; and

3. On those slot machines [where] **to which** a bill changer is attached, a container known as a slot cash storage box**,** in which currency accepted by the bill changer is retained.

(b) [The] **A slot** drop bucket [of each slot machine] shall be housed in a locked compartment separate from any **other** compartment of the slot machine. The compartment shall have two locks [securing the drop buckets and their contents], the keys to which shall be different from each other and from the keys utilized to secure **all other** compartments of the slot machine. [(c)] One key to the compartment [securing the drop bucket] shall be maintained and controlled by a Commission inspector [and the]**. The** second key to [such] **the** compartment shall be maintained and controlled by the **casino** security department in a secure area within [the security] **that** department**,** access to which may be gained only by a **casino** security **department** supervisor. [The security department shall establish a sign-out procedure for all keys removed from the security department.]

(c) A slot drop box shall have:

1. A slotted opening through which coins and tokens can be deposited;

2. A device that will automatically close and lock the slotted opening upon removal of the slot drop box from the slot machine; and

3. Two separate locks securing the contents of the slot drop box, the keys to which shall be different from each other. The key to one of the locks shall be maintained and controlled by a Commission inspector. The key to the second lock, which shall also be different from the keys utilized to secure the compartments of the slot machine and the slot drop box, shall be maintained and controlled by the accounting department in a secure area within that department, access to which may be gained only by a supervisor in that department.

(d) A slot drop box shall be housed in a locked compartment separate from any other compartment of the slot machine. The area in which the slot drop box is located shall be secured by two separate locks, the design, location and operation of which shall be approved by the Commission, and the keys to which shall be different from each other. The key to one of the locks securing this area shall be maintained and controlled by a Commission inspector. The key to the second lock, which shall also be different from the keys utilized to secure any other compartments of the slot machine and the contents of the slot drop box, shall be maintained and controlled by the casino security department in a secure area within that department, and access to the key may be gained only by a supervisor in that department.

(e) Any slot machine equipped to accept slot tokens in denominations of $25.00 or more shall:

1. Be opened only by a slot department supervisor or a supervisor thereof; and

2. Utilize a slot drop box, rather than a slot drop bucket.

(f) Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall contain a separate slot drop bucket or slot drop box to collect and retain all such slot tokens that are inserted into the slot machine.

Recodify (d) as (g) (No change in text.)

[(e)](**h**) The key to one of the locks securing the area where the slot cash storage box is located shall be maintained and controlled by a Commission inspector[, and the]**. The key** to the second lock to such area, which key shall also be different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the **casino** security **department** or the slot department in a secure area within that department.[, and access] **Access** to the

key may be gained only by a supervisor in that department, **provided, however, that if the slot department controls the key, the supervisor of the slot department may issue the key to a casino security department supervisor, who may give it to appropriate casino security department personnel only for the purpose of participating in the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17.** [A sign-out procedure shall be established for all keys removed from that department, in accordance with N.J.A.C. 19:46-1.25.]

[(f)](i) Keys to each slot machine, or any device connected thereto which may affect the operation of the slot machine, with the exception of the keys to the compartments housing the **slot** drop bucket and to the locks securing the areas where the slot cash storage box **and slot drop box,** [is] **are** located, shall be maintained in a secure place and controlled by the slot department. **Keys to slot machines equipped to accept slot tokens in denominations of $25.00 or more shall be maintained and controlled by the slot department in a secure area within that department, access to which may be gained only by a supervisor in that department.**

(j) Any key removed from a department's secure area pursuant to (b), (c), (d), (h) and (i) above shall be returned no later than the end of the shift of the department member to whom the key was issued, and the department shall establish a sign-out and sign-in procedure approved by the Commission for all such keys removed.

[(g)](k) Unless a computer which automatically records the information specified in [(g)](k)1, 2, and 3 below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee;

1. Whenever it is required that a slot machine or any device connected thereto which may affect the operation of the slot machine be opened, with the exception of a bill changer, certain information shall be recorded on a form to be entitled "Machine Entry Authorization Log." The information shall include, at a minimum, the date, time, purpose of opening the machine or device, and **the** signature of **the** authorized employee opening the machine or device. The Machine Entry Authorization Log shall be maintained in the slot machine and shall have recorded thereon a sequential number and a manufacturer's serial number or **the** asset number **of that slot machine.**

2. Whenever it is required that a progressive controller not housed within the cabinet of a slot machine be opened, the information specified in [(g)](k)1 above shall be recorded on a form to be entitled "Progressive Entry Authorization Log." The Progressive Entry Authorization Log shall be maintained in the progressive unit and shall have recorded thereon a sequential number and serial number of the progressive controller.

3. With the exception of the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a), whenever it is required that a bill changer, other than a separate slot cash storage box compartment, be opened, the entry shall be made on a form to be entitled "Bill Changer Log." The entry shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of the authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and [a bill changer] **the** serial number or asset number **of the bill changer**.

[(h) N.J.A.C. 19:45-1.36(b) and (c) may be ignored if the drop buckets described in (a)2 above meet the following requirements:

1. Two separate locks securing the contents placed into the drop bucket, the keys to which shall be different from each other;

2. A separate lock securing the drop bucket to the slot machine or a separate lock to the compartment securing the drop bucket, the key to which shall be different from each of the keys to the locks securing the contents of drop buckets;

3. A slot opening through which coins and currency can be deposited into the drop bucket;

4. A mechanical device that will automatically close and lock the slot opening upon removal of the drop bucket from the slot machine and automatically open the slot upon attaching the drop bucket to the slot machine;

5. The key utilized to unlock the drop bucket from the slot machine or to unlock the compartment securing the drop bucket shall be maintained in a secure place and controlled by the security department; and

6. The key to one lock securing the contents of the drop buckets shall be maintained in a secure place and controlled by the accounting department. The key to the second lock securing the contents of the drop buckets shall be maintained and controlled by Commission inspectors.

(i) Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall contain a separate drop bucket to collect and retain all such slot tokens that are inserted into the slot machine. The separate drop bucket shall comply in all respects with the requirements set forth in this section.]

19:45-1.37 Slot machines and bill changers; identifications; signs; meters

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)

2. A mechanical, electrical or electronic device, to be known as a "drop meter," that continuously and automatically counts the number of coins or slot tokens dropped into the machine's **slot** drop bucket[,] **or slot drop box;** provided, however, **that** for machines equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such slot tokens dropped into the separate **slot** drop bucket **or slot drop box** required by N.J.A.C. 19:45-1.36(i) [and 19:46-1.25(h)];

3.-4. (No change.)

(c)-(i) (No change.)

19:45-1.38 Slot machines and bill changers; location; movements

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

(d) Prior to removing a slot machine from the gaming floor, the **slot** drop bucket **or slot drop box** shall be removed and transported to the count room, and all meters shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42. Any coins or tokens in the payout reserve container and the corresponding hopper storage area shall be removed, transported, and counted with the **slot** drop bucket **or slot drop box** contents; however, a slot machine may be removed from the casino with coins or tokens contained therein when removal of such coins is precluded by mechanical or electrical difficulty. [Immediately upon opening the slot machine, the] **The** removal and transportation to the count room of such coins or tokens must be completed **immediately after the slot machine is opened.**

(e)-(f) (No change.)

19:45-1.42 Removal of slot drop buckets, **slot drop boxes** and slot cash storage boxes; meter readings

(a) For each slot machine and attached bill changer on the gaming floor, the slot drop bucket, **slot drop box** and slot cash storage box shall be removed at least once a week on specific days and at times designated by the casino licensee on a schedule which shall be filed with the Commission and the Division. No slot drop bucket, **slot drop box** or slot cash storage box shall be emptied or removed from its compartment at other than the times specified on such schedule except with the express approval of the Commission. Prior to emptying or removing any slot drop bucket, **slot drop box** or slot cash storage box, a casino licensee shall notify the Commission and the surveillance department of the transportation route that will be utilized.

[(b) Procedures and requirements for removing a slot drop bucket or slot cash storage box from its compartment shall be the following:

1. If the slot drop bucket or slot cash storage box meets the requirements of N.J.A.C. 19:45-1.36(b), (c), (d) and (e):

i. When the casino is not open to the public, the removal of a slot drop bucket or slot cash storage box shall be performed by at least two employees, one of whom shall be a casino security department member and one of whom shall be an accounting department member. Such removal shall be in the presence of a Commission inspector.

ii. When the casino is open to the public, the removal of a slot drop bucket or slot cash storage box shall be performed by at least

three employees, two of whom shall be casino security department members and one of whom shall be an accounting department member. Such removal shall be in the presence of a Commission inspector.

2. If the slot drop bucket meets the requirements of N.J.A.C. 19:45-1.36(h), the removal of a slot drop bucket shall be performed by at least one employee of the casino security department and one employee of the accounting department.

(c) Procedures and requirements for removing slot drop buckets and slot cash storage boxes from the casino shall be the following:

1. If the slot drop buckets and slot cash storage boxes are removed in conformity with (b)1 above:

i. The slot drop bucket shall be removed from its compartment and an empty slot drop bucket shall be placed in the compartment after which the compartment shall be closed and locked; and on those slot machines where a bill changer is attached, the slot cash storage box shall be removed from its compartment and an empty slot cash storage box shall be placed in the compartment and, if applicable, a unique identification number shall be assigned and recorded either upon insertion or removal of the slot cash storage box, after which the compartment and the bill changer door shall be closed and locked;

ii. All slot drop buckets removed from the compartments shall be transported by at least the employees described in (b)1 above and a Commission inspector directly to and secured in the count room for the counting of their contents; and

iii. All persons participating in the slot drop bucket and the slot cash storage box removal procedure, except for casino security department employees and representatives of the Commission and Division shall wear as outer garments only a full-length, one-piece pocketless garment with openings only for the arms, feet and neck.

2. If the slot drop buckets are removed in conformity with (b)2 above:

i. The slot drop bucket shall be removed from its compartment and an empty slot drop bucket shall be placed into the compartment; and

ii. All slot drop buckets removed from compartments shall be transported by at least a Commission inspector, a casino security department member and a count room supervisor directly to, and secured in, the count room for the count of the contents, except that slot cash storage boxes removed on an emergency basis shall be transported by at least a Commission inspector, a casino security department member and a cage supervisor or count room supervisor directly to and secured in the count room.]

(b) Slot drop buckets, slot drop boxes and slot cash storage boxes shall be removed from their compartments in a slot machine or bill changer, in the presence of a Commission inspector, by at least three employees, two of whom shall be members of the casino security department, and one of whom shall be a member of the accounting department.

(c) Procedures and requirements for removing slot drop buckets, slot drop boxes and slot cash storage boxes from the casino shall be as follows:

1. The slot drop bucket, slot drop box or slot cash storage box shall be removed from its compartment and an empty slot drop bucket, slot drop box, or slot cash storage box shall be placed into the compartment, and if applicable, a unique identification number shall be assigned and recorded for the slot cash storage box, either upon its insertion or removal, after which the compartment shall be closed and locked;

2. All slot drop buckets, slot drop boxes and slot cash storage boxes removed from compartments shall be transported by at least the employees described in (b) above and a Commission inspector directly to, and secured in the count room for the counting of their contents, except that slot cash storage boxes and slot drop boxes removed on an emergency basis shall be transported by at least a Commission inspector, a casino security department member and a cage supervisor or count room supervisor directly to and secured in the count room; and

3. All persons participating in the removal of slot drop buckets, slot drop boxes and slot cash storage boxes, except for casino security department employees and representatives of the Commission and Division, shall wear as outer garments only a full-length, one-piece pocketless garment with openings only for the arms, feet and neck.

(d) In addition to complying with the procedures included in (b) and (c) above, a casino licensee shall submit to the Commission for approval its procedures detailing how the slot drop bucket, **slot drop box** and slot cash storage box for each slot machine and attached bill changer on the gaming floor will be emptied or removed from its compartment when the casino is open to the public for 24 hours. Such submission shall include at least the following:

1. How patrons will be notified that a slot machine will be closed for emptying or removing slot drop buckets, **slot drop boxes** or slot cash storage boxes;

2. (No change.)

3. How the area will be secured while the slot drop buckets, **slot drop boxes** or slot cash storage boxes are emptied or removed; and

4. How the compartments in which the full slot drop buckets, **slot drop boxes** or slot cash storage boxes are transported, will be secured [when] **while they are** in the casino.

(e) Accounting department employees with no incompatible functions shall, at least once a week read and record on a Slot Meter Sheet the numbers on the in-meter, drop meter, jackpot meter, manual jackpot meter and change meter. Accounting department employees shall periodically read and record on a Slot Meter Sheet the numbers on the bill meters in accordance with a schedule established by the casino licensee and approved by the Commission, but in no event shall the casino licensee be required to read and record the bill meters more than once a week. These procedures shall be performed in conjunction with the removal and replacement of the slot drop buckets, **slot drop boxes** or slot cash storage boxes prior to opening the slot machines for patron play.

(f)-(g) (No change.)

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets **and slot drop boxes**

(a) The contents of slot drop buckets **and slot drop boxes** shall be counted and recorded in conformity with this section.

(b) Each casino licensee shall file with the Commission and the Division the specific times during which the contents of slot drop buckets **and slot drop boxes** removed from compartments are to be counted and recorded, which shall be immediately after removal [of the drop buckets] from **their** compartments.

(c) The **opening,** counting and recording of the contents of slot drop buckets **and slot drop boxes** shall be performed in the presence of a Commission inspector by at least three employees ("Count Team") with no incompatible functions. To gain entrance to the count room, the Commission inspector shall present an official identification card containing his photograph issued by the Commission.

(d)-(e) (No change.)

(f) Immediately prior to **opening and** counting the contents of the slot drop buckets **and slot drop boxes**, the doors to the count room shall be securely locked, the counting devices to be used shall be checked for accuracy by employees with no incompatible functions, and, except as required by (j)2 below, no person shall be permitted to enter or leave the count room, except during a normal work break or in an emergency, until the entire counting and recording process is completed. During a work break or in the event of an emergency, the counting and recording process shall be discontinued unless the appropriate number of personnel as described in (c) above are present.

(g)-(h) (No change.)

(i) Procedures and requirements for conducting the count shall be the following:

1. Before each slot drop bucket **or slot drop box** is emptied, one count team member shall hold **it** up [the slot drop bucket,] in full view of the closed circuit television camera and the person recording the count, to properly record the [slot drop bucket] number **thereon**;

2. The contents of each slot drop bucket **or slot drop box** shall be emptied, counted and recorded separately and such procedures

shall at all times be conducted in full view of the closed circuit television cameras located in the count room;

3. The [coin] contents of each slot drop bucket **or slot drop box** shall be emptied separately into either a machine that automatically counts the coins **or slot tokens** placed therein, or a scale that automatically weighs the coins **or slot tokens** placed therein;

4. Immediately after the [coin] contents of each slot drop bucket **or slot drop box** are emptied into either the count machine or scale, or if currency, on a table in the count room, the inside of the slot drop bucket **or slot drop box** shall be held up to the full view of the closed circuit television camera and shall be shown to at least one other slot count team member and the Commission inspector to assure all contents of the slot drop bucket **or slot drop box** have been removed;

5. As the contents of each slot drop bucket **or slot drop box** are counted by the count machine or weighed by the scale, [or, if currency, by two count team members,] one member shall record on the Slot Win Sheet, or supporting document, the asset number of the slot machine to which the slot drop bucket **or slot drop box** contents corresponds, if not preprinted thereon, and the number of [coin] **coins or slot tokens,** or the weight of the coin [and/or currency counted] **or slot tokens.** If the coin **or slot token** value is not converted until after the count is completed, the conversion shall be prepared and the dollar value of the drop shall be entered by denomination on the Slot Win Report;

6. After the contents of all the slot drop buckets **and slot drop boxes** are counted or weighed and recorded, each count team member shall sign the Slot Win Sheet or other document as approved by the Commission attesting to their involvement in the county;

7. After the contents of all the slot drop buckets **and slot drop boxes** are counted or weighed and recorded, any count team employees not required pursuant to (i)7ii below may be permitted to exit the count room, provided that the following requirements are satisfied:

i.-iv. (No change.)

v. A security department employee shall check all persons leaving the count room with a metal detector, in the presence of a Commission inspector, at a location approved by the Commission and Division; and

8. At the conclusion of the count process, any slugs that [are found during the slot drop bucket pick-up or count process will] **have been found shall** be delivered to an agent of the Division together with a copy of the Slug Report. The Slug Report shall be a three-part form, at a minimum, which shall include the date, the total number of slugs received and the signature of the preparer, and shall be distributed as follows:

i.-iii. (No change.)

(j) Procedures and requirements at the conclusion of the count shall be the following:

1. (No change.)

2. The wrapped coin and [currency] **slot tokens** removed from the **slot** drop buckets **and slot drop boxes** shall be counted in the count room, in the presence of a count team member and a Commission inspector, by a cage cashier or master coin bank cashier, prior to the cashier having access to the information recorded on the Slot Win Sheet. The cage cashier or master coin bank cashier shall attest by signature on the Slot Win Sheet to the accuracy of the amount of coin and [currency] **slot tokens** received from the slot machines; after which the Commission inspector shall sign the Slot Win Sheet evidencing the inspector's presence during the count and the fact that both the cashier and count team have agreed on the total amount of coin and [currency] **slot tokens** counted. The coin and [currency] **slot tokens** thereafter shall remain in the custody of cage cashiers or master coin bank cashiers.

3.-4. (No change.)

5. The preparation of the Slot Win Sheet shall be completed by accounting department employees with no incompatible functions as follows:

i. Compare for agreement, for each slot machine, the number of coins [and/or amount of currency] **or slot tokens** counted and recorded by the count team to the drop meter reading recorded on the Slot Meter Sheet;

ii.-vi. (No change.)

6. (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the function relating to slot machine meters in the casino as follows:

1. (No change.)

2. Record the number and total value of coins or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 deposited in the **slot** drop bucket **or slot drop box** of the slot machine;

3. Record the number and total value of slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 deposited in the separate **slot** drop bucket **or slot drop box** of the slot machine required by N.J.A.C. 19:45-1.36(i) [and 19:46-1.25(f)];

4.-8. (No change.)

(c) (No change.)

19:46-1.25 [Slot machines and bill changers; coin and slot token containers; slot cash storage box compartments, keys] **(Reserved)**

[(a) Each slot machine located in a casino shall have the following coin or slot token containers:

1. A container, known as a payout reserve container ("hopper") in which coins or slot tokens are retained by the slot machine to automatically pay jackpots or to dispense change as directed by a bill changer connected to a slot machine, provided, however, that the hopper shall not retain slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2.;

2. A container, known as a drop bucket, to collect coins or slot tokens that are retained by the slot machine and not used to make change or automatic payouts; and

3. On those slot machines where a bill changer is attached, a container known as a slot cash storage box in which currency accepted by the bill changer is retained.

(b) The drop bucket of each slot machine shall be housed in a locked compartment separate from any compartment of the slot machine. The compartment shall have two locks securing the drop buckets and their contents, the keys to which shall be different from each other and from the key utilized to secure compartments of the slot machine.

(c) One key to the compartment securing the drop bucket shall be maintained and controlled by a Commission inspector and the second key to such compartment shall be maintained and controlled by the security department. The key maintained and controlled by the security department shall be maintained in a secure area within said department, access to which may be gained only by a casino security supervisor, removal of keys from this area may be undertaken only upon the approval of a casino security supervisor and upon entry into a log maintained for this purpose of:

1. The signature of the security department member to whom the key was issued;

2. The signature of the casino security supervisor authorizing such issuance;

3. The date and time issued;

4. The date and time replaced.

(d) The area in which the slot cash storage box is located shall be secured by two separate locks, the design, location, and operation of which shall be approved by the Commission, and the keys to which shall be different from each other.

(e) The key to one of the locks securing the area where the slot cash storage box is located shall be maintained and controlled by a Commission inspector. The key to the second lock to such area, which key shall also be different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the security or the slot department in a secure area within that

department. Access to this key may be gained only by a supervisor in that department. Removal of keys from this area may be undertaken only for use and return no later than the end of the shift of the department member to whom the key was issued, and upon the approval of a supervisor of that department and entry of the following information into a log:

1. The signature of the department member to whom the key was issued; provided, however, that if the slot department controls the key in accordance with the above, the supervisor of the slot department may issue the key to a security department supervisor, who may give it to appropriate security department personnel only for the purpose of participating in the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a).
2. The signature of the supervisor authorizing such issuance;
3. The date and time issued; and
4. The date and time replaced.

(f) Keys to each slot machine or any device connected thereto which may affect the operation of the slot machine, other than the keys to the compartments housing the drop bucket and to the locks securing the area where the slot cash storage box is located, shall be maintained in a secure place and controlled by the slot department.

(g) Subsections (b) and (c) above may be ignored if the drop buckets described in (a)2 above meets the following requirements:

1. Two separate locks securing the contents placed into the drop bucket, the keys to which shall be different from each other;
2. A separate lock securing the drop bucket to the slot machine or a separate lock to the compartment securing the drop bucket, the key to which shall be different from each of the keys to the locks securing the contents of drop buckets;
3. A slot opening through which coins, tokens and currency can be deposited into the drop bucket;
4. A mechanical device that will automatically close and lock the slot opening upon removal of the drop bucket from the slot machine and automatically open the slot up on attaching the drop bucket to the slot machine;
5. The key utilized to unlock the drop bucket from the slot machine or to unlock the compartment securing the drop bucket shall be maintained in a secure place and controlled by the security department; and
6. The key to one lock securing the contents of the drop buckets shall be maintained in a secure place and controlled by the accounting department. The key to the second lock securing the contents of the drop buckets shall be maintained and controlled by Commission Inspectors.

(h) Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall contain a separate drop bucket to collect and retain all such tokens that are inserted into the slot machine. The separate drop bucket shall comply in all respects with the requirements set forth in this section.]

19:46-1.26 Slot machines and bill changers; identification; signs; meters; other devices

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

(c) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)
2. A mechanical, electrical or electronic device, to be known as a "drop-meter," that continuously and automatically counts the number of coins or slot tokens dropped into the machine's **slot** drop bucket [,] **or slot drop box;** provided, however, for machines equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such slot tokens dropped into the separate [drop bucket] **container** required by N.J.A.C. 19:45-1.36(i) [and 19:46-1.25(h)];
3.-6. (No change.)

(d)-(i) (No change.)

19:46-1.33 Issuance and use of tokens for gaming in slot machines

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

(c) Slot tokens approved for issuance by a casino licensee pursuant to this section shall either be:

1. (No change.)
2. Issued in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46 and:

i. (No change.)

ii. Retained in a separate [drop bucket contained] **container** in such slot machines in accordance with N.J.A.C. 19:45-1.36(i) [and 19:46-1.25(f)];

iii.-iv. (No change.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Wagers
Proposed Amendment: N.J.A.C. 19:47-2.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c) and 69(a).
Proposal Number: PRN 1993-162.

Submit written comments by May 5, 1993 to:
Anthony DiFlorio, Supervising Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 19:47-2.3(j) would require casino licensees to provide notice in accordance with N.J.A.C. 19:47-8.3 when electing to implement any of the mid-shoe options currently permitted by N.J.A.C. 19:47-2.3(j) and (k). The selected option(s) would be posted at the table and uniformly applied to all patrons at that table.

The proposed amendment is intended to clarify and codify the Commission's interpretation of the existing rules and, in addition, in new subsection (k), to permit a casino licensee, in its discretion, to reserve a seat at a blackjack table for a patron who temporarily leaves his or her seat.

It should be noted that the proposed new subsection (j) includes the option of permitting a patron who places a wager on a given round and declines to wager on a subsequent round to continue to play, but to wager only the minimum amount until a reshuffle of the cards has occurred. This option is not contained in the current rules, but has been interpreted by the Commission as being permitted.

Social Impact

The proposed amendment is intended to ensure that the options permitted by N.J.A.C. 19:47-2.3(j) and (k) are applied uniformly to all patrons. This should benefit the general public and, specifically, ensure that a casino licensee does not exercise an option only against more skilled players. There should be no direct social impact from the inclusion of N.J.A.C. 19:47-2.3(j)4, which permits a casino licensee to allow a patron to resume wagering at the minimum limit after declining to wager on a round. This provision merely codifies an existing practice permitted under the Commission's interpretation of its current regulations. Similarly, the provision in N.J.A.C. 19:47-2.3(k) permitting an exception to N.J.A.C. 19:47-2.3(j)3 and 4 for a person who temporarily leaves the table merely codifies existing practice and should therefore have no immediate social impact upon casino licensees or the public.

Economic Impact

The proposed amendment is not expected to have any significant economic impact since it merely requires casino licensees to provide notice when implementing the mid-shoe entry options at blackjack and requires casino licensees to apply the selected option(s) to all players at a blackjack table.

Regulatory Flexibility Statement

This proposed amendment would affect only casino licensees, none of which qualifies as a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:47-2.3 Wagers

(a)-(i) (No change.)

[(j) Unless permitted by the casino licensee, no person who has not made a wager on the first round of play may enter the game on a subsequent round of play prior to a reshuffle of the cards occurring. Any person permitted by the casino licensee to enter the game after the first round of cards is dealt from the dealing shoe may be required by the casino licensee to only wager the limit posted at the table until the cards are reshuffled and a new shoe is commenced.

(k) Any player, who, after placing a wager on a given round of play, declines to place a wager on any subsequent round of play may be precluded by the casino licensee from placing any further wagers until that shoe of cards is completed and a new shoe is commenced.]

(j) A casino licensee may implement any of the following options at a blackjack table provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3:

1. Persons who have not made a wager on the first round of play may not enter the game on a subsequent round of play until a reshuffle of the cards has occurred;

2. Persons who have not made a wager on the first round of play may be permitted to enter the game, but may be limited to wagering only the minimum limit posted at the table until a reshuffle of the cards has occurred;

3. Persons who, after making a wager on a given round of play, decline to wager on any subsequent round of play may be precluded from placing any further wagers until a reshuffle of the cards has occurred; and

4. Persons who, after making a wager on a given round of play, decline to wager on any subsequent round of play may be permitted to place further wagers, but may be limited to wagering only the minimum limit posted at the table until a reshuffle of the cards has occurred.

(k) If a casino licensee implements any of the options in (j) above, the option shall be uniformly applied to all persons at that table; provided, however, that if a casino licensee has implemented either of the options in (j)3 or 4 above, an exception may be made for a person who temporarily leaves the table if, at the time the person leaves, the casino licensee agrees to reserve the person's spot until his or her return.

(1) (No change.)

(a)

CASINO CONTROL COMMISSION

Notice of Public Hearing
Equal Employment Opportunity
Proposed Readoption: N.J.A.C. 19:53

Take notice that on Wednesday, April 21, 1993, the Casino Control Commission will hold a **public hearing** on the proposed readoption of N.J.A.C. 19:53, Equal Employment Opportunity (see 25 N.J.R. 684(b)). This hearing is being held at the request of the Public Advocate pursuant to the provisions of N.J.S.A. 52:14B-4(a)3. The hearing will be conducted as the last agenda item of the regularly scheduled public meeting of the Commission on that date. The Commission public meeting will commence at 10:30 A.M. at the following location:

Casino Control Commission
Joseph P. Lordi Public Meeting Room
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

Persons who wish to participate in this hearing are requested to notify the Commission by calling Mary LaMantia, Counsel, at 609-441-3815 by no later than April 16, 1993. The amount of time allocated to each speaker may be limited depending on the number of participants.

Persons who wish to participate in this hearing are further advised that the Commission is currently in the process of proposing a total revision of N.J.A.C. 19:53 which will likely result in the repeal of the rules proposed for readoption. This proposal will appear in the April 19, 1993 issue of the New Jersey Register. A **public hearing** on the proposal will be held on Friday, May 7, 1993, at 10:00 A.M. at the address indicated above. Persons who wish to participate in the hearing on the new rules are requested to notify the Commission by calling Deborah Boykin-Greenberg, Affirmative Action Coordinator, at 609-441-3564 by no later than April 30, 1993. The amount of time allocated to each speaker may be limited depending on the number of participants.

NOTES

RULE ADOPTIONS

BANKING

(a)

PINELANDS DEVELOPMENT CREDIT BANK

Pinelands Development Credit Bank Rules

Readoption: N.J.A.C. 3:42

Adopted Amendment: N.J.A.C. 3:42-3.6

Proposed: January 19, 1993 at 25 N.J.R. 223(b).
Adopted: March 3, 1993 by Pinelands Development Credit Bank, Board of Directors, Jeff Connor, Chairman, and Commissioner of Banking.
Filed: March 10, 1993 as R.1993 d.151, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:18A-30 et seq.

Effective Date: March 10, 1993, Readoption;
April 5, 1993, Amendments.
Expiration Date: March 10, 1998.

Summary of Public Comments and Agency Responses:

The Pinelands Development Credit Bank **received no comments** on this proposal. However, on adoption two changes are being made. First, N.J.A.C. 3:42-3.6(a) currently requires that when Pinelands Development Credits ("PDCs") are redeemed in association with a residential development project approved by a municipal approval agency, the person redeeming the PDCs must deliver to the Executive Director the certificate properly executed. The rules are amended on adoption to clarify that this is necessary regardless of whether the development project is residential or commercial. Second, the rules are amended to clarify that when PDCs are being required for a Pinelands Commission waiver, they shall be redeemed at the time the waiver is granted.

The changes upon adoption to the rules of the Pinelands Development Credit Bank are necessary to bring the rules into conformity with the rules of the Pinelands Commission. N.J.A.C. 3:42-3.6(e) prior to amendment provides that the credits shall be redeemed at the time of final subdivision or site plan, or when construction permits are issued. N.J.A.C. 7:50-4.61 to 4.70 provide the rules governing the granting of a waiver by the Commission. It is only natural that, in the event of such a waiver, that the credits be redeemed at the time of the waiver because the credits may be necessary to obtain the necessary permit. It is the Commission's rules concerning waiver which necessitates this change.

Similarly, rules promulgated by the Commission now recognize that development projects are not limited to residential uses pursuant to N.J.A.C. 7:50-5.27 and 5.28. The change on adoption merely reflects these changes in the Commission rules. Because these amendments on adoption merely reflect changes now in effect in the rules of the Commission, and do not change the operation of the Pinelands Development Credit Bank, additional notice and comment is not necessary.

Full text of the adoption can be found in the New Jersey Administrative Code at N.J.A.C. 3:42.

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

3:42-3.6 Redemption of Pinelands Development Credits

(a) When Pinelands Development Credits are redeemed in association with a *[residential]* development project approved by a municipal approval agency, the person redeeming the Pinelands Development Credits shall, within 10 business days thereafter, deliver to the Executive Director the Certificate properly documented as to the specifics of the redemption as set forth in (b) below.

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

(e) A Pinelands Development Credit shall be redeemed at the time of final subdivision or site plan or, if no such approval is required, when construction permits are issued. ***In the event that Pinelands Development Credits are being required for a Pinelands Commission waiver pursuant to N.J.A.C. 7:50-4.61 through 4.70, they shall be redeemed at the time the waiver is granted.***

PERSONNEL

(b)

MERIT SYSTEM BOARD

Selection and Placement Appeals

Adopted Amendments: N.J.A.C. 4A:4-6.4 and 6.6

Proposed: December 21, 1992 at 24 N.J.R. 4467(a).
Adopted: March 12, 1993 by the Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.
Filed: March 18, 1993 as R.1993 d.162, **without change.**

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

Effective Date: April 5, 1993.
Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on the proposed amendments to N.J.A.C. 4A:4-6.4 and 6.6 was held on January 12, 1993. Henry Maurer served as hearing officer. No comments were presented at the hearing, and no recommendations were made by the hearing officer. In addition, four persons submitted written comments.

COMMENT: Kenneth L. Frazee, Director of Human Resource Management, Office of Attorney General; Lawrence Pollex, Business Administrator, City of Perth Amboy; and Henry Martinez, Councilman—East Ward, Newark, all commented in support of the proposal, stating that it would promote efficiency and economy in the examination appeals process.

RESPONSE: The Merit System Board appreciates this positive reaction to its proposal on reducing the examination appeal process from a three-step to a two-step process, and intends to adopt these changes as proposed.

COMMENT: Donald R. Philippi, Business Manager, Local 195, International Federation of Professional and Technical Engineers, commented that the Board should further amend the rules to require a 20 day time limit for first level examination appeal decisions and the same time limit for such appeal decisions by the Merit System Board.

RESPONSE: The Board does not believe that it would be appropriate or necessary to impose a time limit on the review of examination appeals at the first or second level. Staffing and budgetary limitations on departmental operations would make adherence to a 20 day schedule difficult. Nevertheless, in view of the proposed elimination of one of the steps in the appeal process, the amount of time for resolving examination appeals will be dramatically reduced.

Full text of the adopted amendments follows:

4A:4-6.4 Review of examination items, scoring and administration

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

(f) The appropriate section of the Department to which the appeal is assigned shall review the appeal and render a written decision and include notification of a right of appeal to the Merit System Board.

(g) A party may appeal the first level decision to the Board within 20 days of its receipt.

1. The appeal shall contain all information which was presented to the first level, plus a copy of the decision below and shall be forwarded to the Merit System Board, CN 312, Trenton, New Jersey 08625.

2. The Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

(h) The Board may bypass any other level of appeal for its direct review.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5), shall follow the following procedures:

1. An appeal must be filed within 20 days of notice of the action, decision or situation being appealed.

2. The appeal shall be filed with Department of Personnel as indicated on the notice advising of disqualification.

3. The appropriate section of the Department to which the appeal is assigned shall review the appeal and render a written decision and include notification of a right of appeal to the Merit System Board.

(b) A party may appeal the first level decision to the Board within 20 days of its receipt.

1. The appeal shall contain all information which was presented to the first level, plus a copy of the decision below and shall be forwarded to the Merit System Board, CN 312, Trenton, New Jersey 08625.

2. The Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

(c) The Board may bypass any other level of appeal for its direct review.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Notice of Effective Date of Model Codes

Take notice that the CABO One and Two Family Dwelling Code/1992 and the 1993 editions of the BOCA National Building Code, the BOCA National Energy Code, the BOCA National Mechanical Code, the National Standard Plumbing Code and the National Electrical Code will be published and available for purchase from the sponsoring organizations on or before May 1, 1993. The effective date of these editions of the adopted model codes is therefore established as May 1, 1993, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-123b) which provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." Proposed amendments containing all necessary technical and editorial changes will be published in the New Jersey Register in due course.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Interpretations
Adopted New Rule: N.J.A.C. 5:23-9.7

Proposed: October 5, 1992 at 24 N.J.R. 3458(a).
Adopted: February 11, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.
Filed: February 23, 1993 as R.1993 d.132, **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. 52:27D-124.

Effective Date: April 5, 1993.
Expiration Date: February 3, 1998.

Summary of Public Comment and Agency Response:

Comments were received from W.F. Lippincott, P.E. and Larry Schneeman of E.I. DuPont de Nemours & Company and from Dennis A. Hayes of Handex of New Jersey, Inc.

COMMENT: N.J.A.C. 5:23-9.7(b)11 should be amended to include the dikes around exempt tanks.

RESPONSE: The Department has made this change, since it is a clarification of the standards at N.J.A.C. 5:23-9.7(b)11 regarding tanks which constitute part of a controlled industrial process, specifically, those tanks which contain flammable and combustible liquids. Tanks which contain flammable and combustible liquids are surrounded by dikes, as an integral part of the tank system, which are used as a protective measure to control spillage and spread of fire from the tanks. It is, therefore, appropriate to include such dikes in the requirements pertaining to the tanks to which they are related.

COMMENT: N.J.A.C. 5:23-9.7(b)13 should be amended to include as process equipment pipe support units which include foundation and support steel when they do not transfer loads to structures whose main function is something other than supporting process pipe.

RESPONSE: The Department has made this change as well, since the change clarifies that pipe support units which support process equipment are to be considered as a part of that equipment. As part of the equipment, they are not part of the building, and are therefore not regulated by the chapter, since N.J.A.C. 5:23 contains only requirements pertaining to buildings and structures.

COMMENT: In N.J.A.C. 5:23-9.7(b)15, it should be made clear what information must be included on the nameplate.

RESPONSE: The National Electrical Code, which has been adopted as the electrical subcode, contains three references to the information that is required, at sections 110-3, 422-30 and 670-3. Additional clarification is not necessary.

COMMENT: N.J.A.C. 5:23-9.7(b)17 should be redrafted to include the specialized equipment that is utilized in the process of remediation of subsurface (ground water and soil) contamination. It would be counterproductive at this time to introduce an exemption for oil/water separators when remediation systems, which include the separator, are not also included in the exemption.

RESPONSE: N.J.A.C. 5:23-9.7(b)17 is being reserved, pending further discussions with affected parties.

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

5:23-9.7 Manufacturing, production and process equipment

(a) Manufacturing, production and process equipment is not under the jurisdiction of the Uniform Construction Code. Manufacturing, production, and process equipment is defined as all equipment employed in a system of operations for the explicit purpose of the production of a product.

(b) Manufacturing, production, and process equipment shall include, but is not limited to, the following:

1. Electrical generation equipment, such as turbines, condensors, generators, and the like;

2. Electrical transmission equipment such as transformers, capacitors, regulators, switchgears, and the like;

3. Air pollution equipment, such as scrubbers;

4. Metal working equipment, such as castings, screen machines, grinders, lathes, presses, drills, welders, and the like;

5. Material handling equipment, such as rollers, control belts, and the like;

6. Packaging equipment, such as bottling machines;

7. Process drying equipment, such as ovens, kettles, fans, and the like;

8. Finishing equipment, used for such purposes as heat treatment, plating, painting, and the like;

9. Petrochemical refinery/plant equipment used for distillation, conversion, treatment and blending;

10. Electric, steam, pneumatic- or hydraulic-actuated equipment, such as motors, pumps, compressors, and the like;

11. Tanks which constitute part of a controlled industrial process, including those tanks containing flammable and combustible liquids ***, together with the dikes surrounding the tanks***;

12. All piping used to transport products to and between industrial processes; any piping connected to the potable water supply downstream of an appropriate backflow prevention device; any piping located upstream of the first joint at the outlet of the equipment or upstream of the indirect connection to the sanitary or storm sewer;

13. Pipe racks, hangers, and the like that support the process piping and the storage racks for the raw materials and finished products. Building structural systems supporting the racks, hangers, storage loads, and the like are excluded from the definition of

process equipment*, **except that pipe support units that include a foundation and support steel shall be included as process equipment when they do not transfer loads to structures whose main function is other than supporting process pipe***;

14. Boilers, pressure vessels, furnaces and the like used exclusively for industrial process;

15. Pre-wired and/or pre-engineered (bearing name plate) electro-mechanical equipment or machinery used exclusively for an industrial process;

16. Electrical work which forms a part of the power or control system of industrial process equipment, up to the point where that work connects to the plant electrical distribution system. Such a point shall be considered a suitable junction box, panel board, disconnect switch, or a terminal box which constitutes the final connection to the factory-installed equipment wiring. Where these items are not supplied as a part of the equipment, they shall be subject to local enforcing agency jurisdiction; and

17. *[An oil/water separator used in ground water remediation if the following conditions are met:

i. The separator is directly upstream of at least two water decontamination processes;

ii. The downstream decontamination process ceases if the oil/water separator fails; and

iii. The separator is located in an already contaminated area, so that failure of the separator would not result in any new or extensive contamination.]* ***(Reserved)***

HIGHER EDUCATION

(a)

OFFICE OF STUDENT ASSISTANCE

Notice of Administrative Corrections
Student Assistance Programs
Creation of Student Advisory Committee; Payments; Academic Requirements
N.J.A.C. 9:7-1.2, 2.11 and 4.2

Take notice that the Department of Higher Education has discovered errors in the text of N.J.A.C. 9:7-1.2, 2.11 and 4.2 as published in the December 21, 1992 update to the New Jersey Administrative Code. Amendments made upon readoption (see 24 N.J.R. 2510(a) and 4373(a)) are not reflected in that update.

At N.J.A.C. 9:7-1.2, the phrase ", and each of whom shall complete their degree requirements within one academic year from the time of their selection" was deleted in the published proposal and adoption, but not in the update. In N.J.A.C. 9:7-2.11(a)1, the second enrollment status under "TWO-YEAR COLLEGES" was proposed and adopted as "Remedial/Developmental or Bilingual (ESL) Curriculum"; however, in the update, "Remedial/Developmental" remained "Remedial-Developmental." The phrase "or grade point average" concluding the first sentence in N.J.A.C. 9:7-4.2(b) was proposed and adopted, but not published in the update. Through this notice, published pursuant to N.J.A.C. 1:30-2.7, these errors are corrected.

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

9:7-1.2 Creation of Student Advisory Committee

The Student Assistance Board shall create a Student Advisory Committee whose purpose shall be to advise the Student Assistance Board on the effect of Board policy and regulations; suggest alternative policy and regulations to the Board; and provide a means of communication between the Student Assistance Board and students. The Student Assistance Board shall initially appoint a nine member Student Advisory Committee from nominations provided by the student government associations of each individual college in New Jersey. The nine members, all of whom shall be full-time students, shall consist of two students from independent colleges, two students from Rutgers, The State University, two students from the State colleges, one student from the New Jersey Institute of Technology, and two students from the county colleges. Students representing each sector shall be chosen such that in any given year one of the representatives shall complete his or her degree requirements within one academic year from the time of his or her selection and one shall be of lower class rank. Members of the Student Advisory Committee shall serve one year terms and their appointments may be renewed according to the initial appointment process. The Student Advisory Committee shall elect a Chairperson and Vice Chairperson from among its members one of whom shall be a student at an independent institution and one of whom shall be a student at a public institution[, and each of whom shall complete their degree requirements within one academic year from the time of their selection]. The Chairperson and Vice Chairperson shall serve as voting members on the Student Assistance Board. In the event of a vacancy on the Student Advisory Committee, the Student Assistance Board may fill the vacancy in the same manner as the original appointment.

9:7-2.11 Payments

(a) The maximum number of semester award payments which students may receive are as follows:

1. Tuition Aid Grant Program		Maximum Semesters for Award Payments
	Enrollment Status	
TWO-YEAR COLLEGES:	Regular 2-Year Program	5
	Remedial[-]/Developmental or Bilingual (ESL) Curriculum	6
	EOF Program	6/8[1]
FOUR-YEAR COLLEGES:	Regular 4-Year Program	9
	County College Transfers/Remedial/Developmental/Bilingual Curriculum	10[2]
	5-Year Program	11/12[3]
	EOF Program	12[1]

[1]As stipulated in N.J.A.C. 9:11-1.8.

[2]Remedial/Developmental or Bilingual (ESL) Curriculum must contain the equivalent of 18 or more credit hours of remedial or bilingual (ESL) courses.

[3]County College Transfer, Remedial/Developmental or Bilingual (ESL) curriculum.

i. (No change.)

2. (No change.)

(b) (No change.)

9:7-4.2 Academic requirements

(a) (No change.)

(b) The academic requirements for Garden State Scholarships shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores **or grade point average.** Where SAT scores are not available, the appropriate equivalent from the American College Testing (ACT) Program may be used.

(c)-(h) (No change.)

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Administrative Correction
Manual for Hospital Services
Out-of-State Inpatient Hospital Services
N.J.A.C. 10:52-1.17

Take notice that the Office of Administrative Law has discovered an error in the codification of the fifth subsection in N.J.A.C. 10:52-1.17. This subsection, which begins "The following procedures . . .," bears the codification of subsection (c), whereas its proper codification as the fifth subsection is (e). This codification is corrected by this notice, published pursuant to N.J.A.C. 1:30-2.7.

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

10:52-1.17 Out-of-state inpatient hospital services
(a)-(d) (No change.)
[(c)](e) The following procedures must be followed when an appeal is filed by an out-of-state hospital:
1.-6. (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, PAAD Prescription Co-payment

Adopted Amendments: N.J.A.C. 10:69A-2.1, 4.1, 4.2, 4.3, 4.4, 5.3 and 5.4

Proposed: December 7, 1992 at 24 N.J.R. 4328(a).
Adopted: March 10, 1993 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: March 12, 1993 as R.1993 d.155, **without change.**

Authority: N.J.S.A. 30:4D-22, 30:4D-25, 30:4D-34 and P.L. 1992, c.40.

Effective Date: April 5, 1993.
Expiration Date: April 20, 1993.

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

Full text of the adoption follows.

10:69A-2.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.
...
"PAAD Co-pay" means the amount of $5.00 which must be paid by each PAAD beneficiary to the pharmacy toward the cost for each prescription for a legend drug and/or insulin, insulin syringes, and insulin needles and certain diabetic testing materials. The co-pay is not reimbursable by the PAAD Program. The $5.00 co-payment shall be paid in full by each eligible person to the pharmacist at the time of each purchase of prescription drugs, and shall not be waived, discounted or rebated in whole or in part.
...

10:69A-4.1 Statutory limitations
By statute, the Pharmaceutical Assistance to the Aged and Disabled Program is limited to payment or reimbursement to pharmacies for the reasonable cost of prescription drugs, insulin, insulin syringes, insulin needles, and certain diabetic testing materials for eligible persons which exceeds a $5.00 co-payment per prescription, which is to be paid by each PAAD beneficiary.

10:69A-4.2 Principles of reimbursement to participating pharmacies
(a)-(b) (No change.)
(c) Reimbursement on behalf of PAAD beneficiaries will be made directly to the participating pharmacies and will be for the reasonable cost of prescription drugs of beneficiaries as determined by the Commissioner, Department of Human Services, which exceeds the $5.00 co-payment per prescription.

10:69A-4.3 Interchangeable drug products
(a) Whenever any interchangeable drug product contained in the latest list approved and published by the Drug Utilization Review Council is available for the prescription written, the PAAD program shall reimburse only for the reasonable cost of the interchangeable product, less the $5.00 co-pay, unless the prescriber specifies that substitution is not permitted.
(b) If the prescriber does not specify to the contrary, the PAAD beneficiary has two options:
1. To purchase an interchangeable drug product which is equal to or less than the maximum allowable cost, at the $5.00 co-payment; or
2. To purchase the prescribed drug product which is higher in cost than the maximum allowable cost and pay the difference between the two, in addition to the $5.00 co-payment.
(c) If the prescriber specifies on the prescription that substitution is not permitted, the PAAD program will reimburse for the reasonable cost of the prescribed product, less the $5.00 co-pay. In this instance, the beneficiary may purchase the prescribed product at the $5.00 co-payment.

10:69A-4.4 Beneficiary co-payment
(a) No direct payment to beneficiaries will be made under the PAAD program except as noted in (b) below. The beneficiary must pay the pharmacy a non-refundable $5.00 co-payment per prescription or per purchase of insulin, insulin syringes, insulin needles or diabetic testing materials.
(b) (No change.)

10:69A-5.3 Eligibility effective date
(a) (No change.)
(b) The Division shall conduct periodic redeterminations of the eligibility of PAAD beneficiaries. Generally, renewals of eligibility shall be conducted every two years. Renewals will be conducted annually in those instances when the PAAD beneficiary's income approaches the eligibility limits for a single person or married couple as defined in N.J.A.C. 10:69A-6.2.
1.-3. (No change.)

10:69A-5.4 Exceptions from normal standards
(a)-(b) (No change.)
(c) In the event that mailing of the eligibility card is delayed, the PAAD Bureau will reimburse the PAAD beneficiary directly for the cost (minus a $5.00 co-payment per prescription) of all prescription drugs purchased by the person on or after the 30th day after his/her properly completed application was received by the PAAD Bureau, subject to the following conditions:
1.-3. (No change.)

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Administrative Corrections Approval of Foster Homes; Initial Response N.J.A.C. 10:122C-2.15 and 10:133A-1.1

Take notice that the Division of Youth and Family Services has discovered errors in the text of N.J.A.C. 10:122C-2.15 and 10:133A-1.1 as adopted in the January 4, 1993 New Jersey Register at 25 N.J.R. 117(a) and 134(a), respectively.

At the end of N.J.A.C. 10:122C-2.15(a), the reference to N.J.A.C. 10:122E-3.7(a) is incorrect, due to a printing error. As indicated in the Summary of Agency-Initiated Changes at 25 N.J.R. 118, and as reflected in the original notice of adoption, R.1993 d.16, the reference should be to N.J.A.C. 10:122E-3.7(c).

At N.J.A.C. 10:133A-1.1, the phrase "the rights and responsibilities of applicants and clients of the Division and" should have been deleted upon adoption, as is indicated in the first paragraph of the Summary of Agency-Initiated Changes at 25 N.J.R. 134(a) and in the original notice of adoption, R.1993 d.20.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

10:122C-2.15 Closure at reevaluation
(a) When the Division reevaluates a foster home which does not meet the requirements of N.J.A.C. 10:122C-1.7 regarding disorderly persons offenses or crimes of violence or of a sexual nature, or other act of a similarly serious nature, or in which the foster parent or

any household member has caused injury through child abuse or neglect, the Division shall close the foster home. See N.J.A.C. 10:122E-3.4(b) and 3.7[(a)](c).

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

10:133A-1.1 Purpose

The purpose of this chapter is to make known [the rights and responsibilities of applicants and clients of the Division and] the process used by the Division to determine what action to take when a referral or application is made.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families
Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes
Adopted Amendment: N.J.A.C. 10:123-3.4

Proposed: January 19, 1993 at 25 N.J.R. 229(a).
Adopted: March 4, 1993 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: March 10, 1993 as R.1993 d.152, **without change.**

Authority: N.J.S.A. 44:7-87.

Effective Date: April 5, 1993.
Operative Date: May 1, 1993.
Expiration Date: July 13, 1995.

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

Full text of the adoption follows.

10:123-3.4 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least $66.50 per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Standards for Children's Shelter Facilities and Homes
Local Government Physical Facility Requirements For Shelter Facilities
Adopted Amendment: N.J.A.C. 10:124-5.1

Proposed: December 21, 1992 at 24 N.J.R. 4482(a).
Adopted: March 10, 1993 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: March 12, 1993 as R.1993 d.156, **without change.**

Authority: N.J.S.A. 30:1-14 and 15, 30:4C-4, 2A:4A-37 and 2A:4A-20 et seq.

Effective Date: April 5, 1993.
Expiration Date: November 4, 1997.

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

Full text of the adoption follows.

10:124-5.1 Local government physical facility requirements for shelter facilities

(a) An applicant seeking initial approval, as specified in N.J.A.C. 10:124-1.5, to operate a shelter facility or home shall comply with all applicable provisions of the New Jersey Uniform Construction Code, as specified in N.J.A.C. 5:23 and hereinafter referred to as the NJDUCC.

1.-5. (No change.)

6. Whenever a municipality grants a shelter facility or home a written variation from any of the requirements of the NJUCC, the Bureau of Licensing of the Division of Youth and Family Services may accept such variations as meeting the requirements of this chapter.

i. When the Bureau does not accept the variation, the non-acceptance shall be based on the best interests of the residents of the shelter, and shall include consideration for their health and safety.

ii. Should the facility or home disagree with the Bureau, the facility or home may seek a hearing in accordance with N.J.A.C. 10:124-1.6 and the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1, as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

LABOR

(c)

DIVISION OF PROGRAMS

Temporary Disability Benefits
Readoption: N.J.A.C. 12:18

Proposed: January 19, 1993 at 25 N.J.R. 262(a).
Adopted: March 5, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: March 5, 1993 as R.1993 d.141, **without change as to the readoption, but with the proposed amendments not adopted at this time.**

Authority: N.J.S.A. 43:21-25 et seq.

Effective Date: March 5, 1993.
Expiration Date: March 5, 1998.

Agency Note: On January 19, 1993, the Department of Labor published a Notice of Proposed Readoption with Amendments of the regulations governing Temporary Disability Benefits N.J.A.C. 12:18. Comments were received until February 18, 1993. The comments submitted addressed only the proposed amendments to the rules, including a suggestion that the amendments be distributed more broadly.

The Department would like to respond affirmatively to this suggestion by distributing the proposed amendments to other members of the public and by providing greater opportunity for comment by the affected public. However, as noted in the original Notice, the rules governing temporary disability benefits will automatically expire on March 7, 1993 pursuant to Executive Order Number 66 (1978). Therefore, in order to avoid a suspension in the governing rules while additional distribution efforts are made, as well as to provide the opportunity to fully consider comments which may be received, the Commissioner has determined to bifurcate the originally proposed readoption with amendments. Accordingly, the Department is at this time readopting the rules without amendment. In doing so, the Commissioner will maintain stability in the administration of the temporary disability benefits program by preserving the existing regulatory framework, while also providing additional opportunity for review of, and comment on, the proposed amendments.

To accommodate the expanded distribution efforts, **the comment period is being extended** until May 5, 1993 pursuant to the Notice of Extension of Comment Period published in this issue of the New Jersey Register.

Summary of Public Comments and Agency Responses:
No comments received on the proposed readoption.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:18.

LAW AND PUBLIC SAFETY

(a)

BOAT REGULATION COMMISSION

Boating Regulations

Seven Presidents Park, Long Branch, Monmouth County

Adopted New Rule: N.J.A.C. 7:6-1.45

Proposed: January 4, 1993 at 25 N.J.R. 57(a).
Adopted: March 10, 1993 by the Boat Regulation Commission, Robert J. Del Tufo, Attorney General.
Filed: March 15, 1993 as R.1993 d.158, **without change.**

Authority: N.J.S.A. 12:7-34.36 et seq., particularly 12:7-34.49 and 12:7-34.53.

Effective Date: April 5, 1993.
Expiration Date: June 9, 1994.

Summary of Public Comments and Agency Responses:
No comments were received on the proposed rule. The Boat Regulation Commission considered the proposal from the Monmouth County Board of Recreation Commissioners at its regular public meetings on November 2, 1992.

Full text of the adoption follows.

7:6-1.45 Seven Presidents Park, Long Branch, Monmouth County
Between Memorial Day weekend and Labor Day, no person shall operate a personal watercraft, power vessel or any other type of vessel (hereinafter referred to as watercraft) within the outer (eastern) most boundaries of the jetties located at Seven Presidents Park, Long Branch, Monmouth County, with the exception of watercraft entering and egressing the water at the Boat Launch Area. Those watercraft entering and egressing the boat launch area are to stay within the entry-egress lane as designated on site and are to maintain a speed no faster than that which is required to safely navigate the surf.

(b)

DIVISION OF CONSUMER AFFAIRS

Notice of Administrative Changes

Rules of the Office of Consumer Protection and the Lemon Law Unit; the Boards of Architects, Cosmetology and Hairstyling, Marriage Counselor Examiners, Physical Therapists, Psychological Examiners, Shorthand Reporting, and Veterinary Medical Examiners; the Audiology and Speech-Language Advisory Committee; and the Advisory Board of Public Movers and Warehousemen

N.J.A.C. 13:27-2.2, 13:28-2.10, 13:29-4.1, 13:33-3.1, 13:34-1.3, 1.5 and 1.6, 13:39A-3.1, 13:40-4.2, 13:42-1.3, 13:43-1.2, 13:44-5.2, 13:44C-3.1 and 5.1, 13:44D-4.2, and 13:45A-12.2, 26.3 and 26.4

Take notice that the Division of Consumer Affairs, on its own behalf and on that of the Boards and Committee referenced above, has requested, and the Office of Administrative Law has agreed to permit administrative changes to addresses and telephone numbers in the above referenced rules to reflect the new address of the Division. In addition, the Division has requested the deletion of N.J.A.C. 13:29-4.1, 13:33-3.1 and 13:40-4.2, which only provide a reference to a form in a version of N.J.A.C. 13:27-5.1 long since repealed. This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7.

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

13:27-2.2 Office location
The offices of the Board are located at [1100 Raymond Boulevard] **124 Halsey Street**, Newark New Jersey [07102] **07101. The mailing address is Board of Architects, P.O. Box 45001, Newark, New Jersey 07101.**

13:28-2.10 Posting of licenses and required notices
(a) All shops shall display the following in a location clearly visible to all patrons:
1.-3. (No change.)
4. The following notice:

NOTICE

This shop and the operators herein are licensed to engage in the practice of cosmetology and hairstyling by the State Board of Cosmetology and Hairstyling, an agency of the New Jersey Division of Consumer Affairs. Any member of the consuming public having a complaint concerning the manner in which this practice is conducted may notify the State Board of Cosmetology and Hairstyling at [1100 Raymond Boulevard] **124 Halsey Street**, Newark, New Jersey [07102] **07101**.

13:29-4.1 [Uniform penalty letter] **(Reserved)**
[This form letter appears in Section 5.1 (Uniform penalty letter) of Chapter 27 of this Title.]

13:33-3.1 [Uniform penalty letter] **(Reserved)**
[This form letter appears in N.J.A.C. 13:27-5.1.]

13:34-1.3 Office location
The offices of the Board shall be at [1100 Raymond Boulevard] **124 Halsey Street**, Newark, New Jersey [07102] **07101**.

13:34-1.5 Applications
Application forms and information regarding licensure of practicing marriage counselors may be obtained from the State Board of Marriage Counselor Examiners, [1100 Raymond Boulevard] **124 Halsey Street**, Newark, New Jersey [07102] **07101**.

13:34-1.6 Licensee to display notice
Every licensee shall prominently display in a conspicuous location in his or her office the following notice:
(Name of individual) is licensed by the State Board of Marriage Counselor Examiners, an agency of the New Jersey Division of Consumer Affairs. Any member of the consuming public having a complaint concerning the manner in which this practice is conducted should notify the State Board of Marriage Counselor Examiners, [1100 Raymond Boulevard] **Post Office Box 45007, 124 Halsey Street**, Newark, New Jersey [07102] **07101**, or the New Jersey Division of Consumer Affairs, [1100 Raymond Boulevard] **Post Office Box 45027, 124 Halsey Street**, Newark, New Jersey [07102] **07101**.

13:39A-3.1 Business practices
(a) The following acts or business pratices shall be deemed to be professional misconduct in violation of N.J.S.A. 45:9-37.11 et seq. and N.J.S.A. 45:1-2(e):
1.-9. (No change.)
10. Failure to post in a conspicuous place in any office or health care facility at which the practice of physical therapy is conducted a notice containing the name, mailing address and telephone number of the Board and the following statement:

NOTICE

(Name of licensee, license held) (is) (are) licensed to engage in the practice of physical therapy by the New Jersey State Board of Physical Therapists, [1100 Raymond Boulevard, Room 513,] **Post Office Box 45014, 124 Halsey Street**, Newark, New Jersey [07102] **07101, Tel. (201) 504-6455.**
11.-15. (No change.)

13:40-4.2 [Uniform penalty letter] **(Reserved)**
[This form letter appears in N.J.A.C. 13:27-5.1.]

13:42-1.3 Licensee to display notice

(a) Every licensee shall prominently display in every place of conducting independent practice the following notice:

(Name of individual) is licensed by the Board of Psychological Examiners, an agency of the Division of Consumer Affairs. Any member of the consuming public may notify the Board of any complaint relative to the practice conducted under this license at the Board of Psychological Examiners, Division of Consumer Affairs, [1100 Raymond Boulevard] **Post Office Box 45017, 124 Halsey Street**, Newark, New Jersey [07102] **07101**.

13:43-1.2 Methods of operation

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

(c) All communications, submissions and requests to and all inquiries for information from the Board of Shorthand Reporting should be directed to the Office of the State Board of Shorthand Reporting, [which address can be secured through the Division of Consumer Affairs at 1100 Raymond Boulevard, Newark, New Jersey] **Post Office Box 45019, Newark, New Jersey 07101**.

13:44-5.2 Methods of operation

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

(c) All communications, submissions, and requests to and all inquiries for information from the Board of Veterinary Medical Examiners should be addressed to:

State Board of Veterinary Medical Examiners
[1100 Raymond Boulevard] **Post Office Box 45020**
124 Halsey Street
Newark, New Jersey [07102] **07101**

13:44C-3.1 Application forms

(a) Applications for licensure may be obtained at the office of the Advisory Committee, [Room 510, 1100 Raymond Boulevard] **124 Halsey Street**, Newark, New Jersey [07102] **07101. The Committee's mailing address is Audiology and Speech-Language Pathology Advisory Committee, Post Office Box 45002, Newark, New Jersey 07101**.

13:44C-5.1 Applications

(a) Applications for temporary licensure may be obtained at the Office of the Advisory Committee [Room 510, 1100 Raymond Boulevard] **124 Halsey Street**, Newark, New Jersey [07102] **07101. The mailing address is Audiology and Speech-Language Pathology Committee, Post Office Box 45002, Newark, New Jersey 07101**.

13:44D-4.2 Legal liability and insurance

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

(g) All required insurance filings shall be made at the Office of the Advisory Board of Public Movers and Warehousemen, [1100 Raymond Boulevard] **124 Halsey Street**, Newark, New Jersey [07102] **07101. The Board's mailing address is Advisory Board of Public Movers and Warehousemen, Post Office Box 45018, Newark, New Jersey 07101**.

13:45A-12.2 General provisions

(a) Without limiting the prosecution of any other practice which may be unlawful under N.J.S.A. 56:8-1 et seq., the following acts, practices or omissions shall be deceptive practices in the conduct of the business of a pet dealer:

1.-8. (No change.)

9. To fail to display conspicuously on the business premises a sign not smaller than 22 inches by 18 inches which clearly states to the public in letters no less than one inch high the following:

KNOW YOUR RIGHTS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. Read your animal history and health certificate, the Statement of New Jersey Law Governing the Sale of Dogs and Cats and your Contract. In the event of a complaint you may contact: Division of Consumer Affairs, [1100 Raymond Boulevard] **Post Office Box 45025, 124 Halsey Street**, Newark, New Jersey [07102] **07101**. (201) [648-3622] **504-6200**.

13:45A-26.3 Statements to consumer

(a) At the time of purchase or lease of a motor vehicle in the State of New Jersey, the manufacturer, through its dealer or lessor, shall provide the following written statement directly to the consumer on a separate piece of paper, in 10-point bold-face type:

"IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER NEW JERSEY LAW TO A REFUND OF THE PURCHASE PRICE OR YOUR LEASE PAYMENTS. FOR COMPLETE INFORMATION REGARDING YOUR RIGHTS AND REMEDIES UNDER THE RELEVANT LAW, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, AT [1100 RAYMOND BOULEVARD] **POST OFFICE BOX 45026, 124 HALSEY STREET,** NEWARK, NEW JERSEY [07102] **07101**, TEL. NO. (201) [648-3135] **504-6226**."

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

13:45A-26.4 Lemon Law Unit

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

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
Post Office Box 45026
Newark, New Jersey 07101
Tel. No. (201) [504-6376] **504-6226**

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Rural Secondary Road Systems Aid

Adopted Repeal: N.J.A.C. 16:13

Proposed: January 4, 1993 at 25 N.J.R. 59(b).

Adopted: February 4, 1993 by Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Filed: March 9, 1993 as R.1993 d.149, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 et seq. and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240.105 stat. 1914).

Effective Date: April 5, 1993.

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

Full text of the repealed chapter can be found in the New Jersey Administrative Code at N.J.A.C. 16:13.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Federal Aid Urban Systems

Adopted Repeal: N.J.A.C. 16:20

Proposed: January 4, 1993 at 25 N.J.R. 60(a).

Adopted: February 4, 1993 by Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Filed: March 9, 1993 as R.1993 d.150, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 et seq. and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 109-240.105 stat. 1914).

Effective Date: April 5, 1993.

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

Full text of the repealed chapter can be found in the New Jersey Administrative Code at N.J.A.C. 16:20.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

State Health Benefits Program
Part-Time Deputy Attorneys General; Eligibility
Adopted Amendment: N.J.A.C. 17:9-4.2

Proposed: July 6, 1992 at 24 N.J.R. 2345(a).
Adopted: December 23, 1992 by the State Health Benefits Commission, Patricia A. Chiacchio, Acting Secretary.
Filed: December 29, 1992 as R.1993 d.57, **without change**.

Authority: N.J.S.A. 52:14-17.27.

Effective Date: April 5, 1993.
Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:
On November 19, 1992, the State Health Benefits Commission, pursuant to N.J.S.A. 52:14-17.27 and in accordance with applicable provisions of the Administrative Procedure Act, voted to adopt continuation of health care benefits for part-time deputy attorneys general until June 30, 1994. Notice of the proposal was published on July 6, 1992 at 24 N.J.R. 2345(a).

The State Health Benefits Commission received comments from the Communications Workers of America, the Division of Youth and Family Services, Allyson Yanta, Carmen Williams, Kathy Fischer and Eileen M. Costello. The thrust of those comments was that all other part-time State employees be afforded health coverage. The Commission has decided not to include any additional employees at this time, and no change has been made to the proposed amendments on adoption. While the Department of Law and Public Safety's part-time program with deputy attorneys general has been successful, the Commission feels that extending health benefits coverage to all other part-time employees would be too expensive. There are currently 25 deputy attorneys general in the part-time program and its financial impact upon the State Health Benefits Plan is minimal. Other than cost, the Commission is unaware of any reasons which would prevent health benefits from being extended to other similarly situated employees at some point in the future.

It is noted that the part-time program in the Department of Law and Public Safety has been in effect for several years. It has attracted highly qualified and competent attorneys to work for or remain with State government. The Commission feels that it should not take a benefit away from employees who already have it. It is also noted that part-time deputy attorneys general are expected to, and do in fact at times, work in excess of their normal work week to complete their assignments without any overtime pay.

Full text of the adoption follows.

17:9-4.2 State; full-time defined
(a) For the purposes of State coverage, "full-time" shall mean:
1.-6. (No change.)
7. Deputy attorneys general in the Office of the Attorney General and the Divisions of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are paid for a minimum of 20 hours per week, notwithstanding the provisions of N.J.A.C. 17:9-4.4, until June 30, 1994.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Gross Income Tax
Credit for Excess Contributions
Adopted Amendment: N.J.A.C. 18:35-1.17

Proposed: January 4, 1993 at 25 N.J.R. 62(a).
Adopted: March 2, 1993 by Leslie A. Thompson, Director, Division of Taxation.
Filed: March 2, 1993 as R.1993 d.136, **without change.**

Authority: N.J.S.A. 54A:9-17(a).

Effective Date: April 5, 1993.
Expiration Date: June 7, 1993.

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

Full text of the adoption follows:

18:35-1.17 Credit for excess contributions
(a) Credit for excess amounts deducted and withheld as worker contributions for unemployment and disability insurance shall be treated as follows:
1. Employers issuing a W-2 form to employees shall include on it:
i.-ii. (No change.)
iii. The amount withheld for Workforce Development Partnership Fund contributions;
Recodify existing iii and iv as iv and v (No change in text.)
(b) The latter two numbers referred to in (a)1iv and v above are assigned by the New Jersey Division of Unemployment and Disability Insurance in the Department of Labor.
(c) An individual claiming a credit against gross income tax for overpayment of unemployment, disability insurance or Workforce Development Partnership Fund contributions shall claim such credit by including with his New Jersey 1040 or New Jersey 1040-NR a completed New Jersey Form 2450, in duplicate. A claim not received within two years after the end of the calendar year in which the contributions were deducted is void. Such claims are not applicable to withholdings made during calendar years prior to 1983.
Examples 1-2. (No change.)
(d) (No change.)

OTHER AGENCIES

(c)

NEW JERSEY HIGHWAY AUTHORITY

Organizational Rules
Adopted Amendment: N.J.A.C. 19:8-11.2

Adopted: January 28, 1993 by New Jersey Highway Authority, David W. Davis, Executive Director (with approval of the Board of Commissioners).
Filed: February 25, 1993, as R.1993 d.161.

Authority: N.J.S.A. 52:14B-3(l) and N.J.S.A. 27:12B-5(a), (j) and (t).

Effective Date: February 25, 1993.
Expiration Date: July 5, 1993.

Summary

In 1989, pursuant to N.J.S.A. 52:14B-3, the New Jersey Highway Authority adopted a rule which described its organization and method of operation. Since that time, the Authority has determined to amend its organizational structure, and this adoption reflects the change in that structure. In accordance with N.J.S.A. 52:14B-4, the Authority is adopting these amendments without prior notice or public comment. Subchapter

11 contains a description of the Authority's structure and is an organizational rule, as defined in N.J.A.C. 1:30-1.2.

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

19:8-11.2 Organization of the New Jersey Highway Authority

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

(d) The Departments are further broken down into subunits designated Divisions as follows:

[1. Executive:
i. General and Administrative;
ii. Internal Audit;
iii. Law;
iv. Public Relations;
v. Personnel;
vi. Central Purchasing;
vii. Arts Center;
viii. Cultural Center Fund;
ix. Printing Services; and
x. Management Information & Computer Services.
2. Operations:
i. General and Administrative;
ii. State Police Troop "E"; and
iii. Patron Services.
3. Finance:
i. General and Administrative;
ii. Accounting; and
iii. Audit.
4. Engineering:
i. General and Administrative;
ii. Traffic Planning.
5. Maintenance:
i. General and Administrative;
ii. Roadway Division; and
iii. Building Division.
6. Tolls:
i. General and Administrative; and
ii. Toll Collection Division.]
1. Executive:
i. General and Administrative;
ii. General Attorney;
iii. Public Affairs;
iv. Internal Audit; and
v. State Police.
2. Administrative and Financial Planning:
i. General and Administrative;
ii. Human Resources;
iii. Central Purchasing;
iv. Technology and Information Systems; and
v. Printing Services.
3. Finance:
i. General and Administrative;
ii. Accounting; and
iii. Financial Audit and Revenue Control.
4. Engineering.
5. Maintenance:
i. General and Administrative;
ii. Roadway; and
iii. Building.
6. Operations:
i. Tolls;
ii. Garden State Arts Center; and
iii. General Services.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Readoption: N.J.A.C. 19:45

Proposed: January 19, 1993 at 25 N.J.R. 277(a).
Adopted: March 3, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 5, 1993 as R.1993 d.147, **without change.**

Authority: N.J.S.A. 5:12-63(c) and (f), 69, 70(g), (j), (l)-(n), 99 and 101.

Effective Date: March 5, 1993.
Expiration Date: August 15, 1997.

Agency Note: The Casino Control Commission has determined that N.J.A.C. 19:45 will expire on August 15, 1997, rather than upon the five-year expiration date which would otherwise apply pursuant to Executive Order No. 66(1978). Such change is part of a comprehensive revision of the readoption schedule which the Commission intends to implement for all chapters in Title 19.

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

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:45.

(b)

CASINO CONTROL COMMISSION

Notice of Administrative Corrections
Internal Controls
Definitions
Jobs Compendium Submission
Slot Machines and Bill Changers; Location; Movements
Removal of Slot Drop Buckets
Rules of the Games
Wagers
Shuffle and Cut of the Cards
N.J.A.C. 19:45-1.1, 1.11A, 1.38 and 1.42; 19:47-2.3 and 2.5

Take notice that the Casino Control Commission has discovered errors in the current text of N.J.A.C. 19:45-1.1, 1.11A, 1.38 and 1.42, and 19:47-2.3 and 2.5.

At N.J.A.C. 19:45-1.1, the definition of "slot counter machine" was proposed and adopted as the definition of "Slot Counter Check" (see 22 N.J.R. 3205(a) and 23 N.J.R. 1455(a)).

In the section heading of N.J.A.C. 19:45-1.11A, the inappropriate use of slash marks ("/") is corrected.

At the end of N.J.A.C. 19:45-1.38(c)4, the missing conjunction "and" is added (see 23 N.J.R. 2920(a) and 24 N.J.R. 974(a)).

The term "slot bucket" in N.J.A.C. 19:45-1.42(b)1ii is corrected as "slot drop bucket" to conform to the terminology used throughout the section.

At N.J.A.C. 19:47-2.3(k), the phrase "play may by precluded" is corrected as "play may be precluded" (see 14 N.J.R. 559(b) and 841(b)).

The reference to N.J.A.C. 19:47-2.6(k) at N.J.A.C. 19:47-2.5(g) needs to be corrected to a reference to N.J.A.C. 19:47-2.6(l), due to the recodification of N.J.A.C. 19:47-2.6(k) through (n) as (l) through (o) (see 23 N.J.R. 1782(a) and 3353(a)).

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

19:45-1.1 Definitions

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

...

"Slot [counter machine] **Counter Check**" is defined in N.J.A.C. 19:45-1.25A.

19:45-1.11A [Jobs/compendium/submission] **Jobs compendium submission**

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

19:45-1.38 Slot machines and bill changers; location; movements

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

(c) Once a slot machine or bill changer has been placed in the casino, all movements of that machine and/or bill changer from or to a location shall be recorded by a slot department member in a machine movement log which shall include the following:

1.-3. (No change.)

4. The location to which the slot machine and/or bill changer was moved; **and**

5. (No change.)

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

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; meter readings

(a) (No change.)

(b) Procedures and requirements for removing a slot drop bucket or slot cash storage box from its compartment shall be the following:

1. If the slot drop bucket or slot cash storage box meets the requirements of N.J.A.C. 19:45-1.36(b), (c), (d) and (e):

i. (No change.)

ii. When the casino is open to the public, the removal of a slot **drop** bucket or slot cash storage box shall be performed by at least three employees, two of whom shall be casino security department members and one of whom shall be an accounting department member. Such removal shall be in the presence of a Commission inspector.

2. (No change.)

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

19:47-2.3 Wagers

(a)-(j) (No change.)

(k) Any player, who, after placing a wager on a given round of play, declines to place a wager on any subsequent round of play may [by] **be** precluded by the casino licensee from placing any further wagers until that shoe of cards is completed and a new shoe is commenced.

(l) (No change.)

19:47-2.5 Shuffle and cut of the cards

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

(g) A reshuffle of the cards in the shoe shall take place after the cutting card is reached in the shoe as provided for in N.J.A.C. 19:47-2.6[(k)](**l**) except that:

1.-2. (No change.)

(h) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Definitions; Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs

Adopted Amendments: N.J.A.C. 19:45-1.1 and 1.46

Proposed: August 3, 1992 at 24 N.J.R. 2692(b).

Adopted: March 3, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: March 5, 1993 as R.1993 d.144, **without change.**

Authority: N.J.S.A. 5:12-63c, 69a, 70j, 70l, 99 and 102.

Effective Date: April 5, 1993.

Expiration Date: August 15, 1997.

Agency Note: The remainder of this proposal was adopted by the Commission on November 18, 1992, and became effective on December 21, 1992 (see 24 N.J.R. 4570(a)). The Commission reserved action on the two amendments which are currently being adopted until additional related amendments concerning complimentary reporting requirements could be promulgated. These amendments are contained in a separate notice of adoption in this Register.

Summary of Public Comments and Agency Responses:

COMMENT: The only comment submitted with regard to these proposed amendments was received from the Showboat Casino Hotel (Showboat). Showboat was concerned that the proposed amendments would shift control of slot club programs from the provisions of N.J.A.C. 19:45-1.46 to 19:45-1.9 and expressed concern that such change would require "a radical and burdensome change in the accounting and internal controls governing these programs."

RESPONSE: The concerns expressed by Showboat have been addressed through the promulgation of additional regulatory amendments to N.J.A.C. 19:45-1.9 and 1.9B which are effective with the publication of this Register. These amendments, while recognizing that table game and slot machine complimentary incentive programs involve the issuance of complimentaries within the scope of N.J.A.C. 19:45-1.9, create a new exemption from daily reporting for such complimentaries. The Commission agrees that requiring individual reporting of high volume, low value complimentaries granted pursuant to preestablished gaming incentive programs would constitute an expensive and time consuming burden on casino licensees without any offsetting benefit in terms of the information available to the regulatory agencies.

Full text of the adoption follows:

19:45-1.1 Definitions

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

...

"Complimentary distribution program" is defined in N.J.A.C. 19:45-1.46.

...

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) For the purposes of this chapter, a complimentary distribution program is a contest or promotion pursuant to which complimentary services or items are provided directly or indirectly by a casino licensee to the public without regard to the identity or gaming activity of the individual recipients. The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption complimentary distribution programs which entitle patrons to redeem coupons for complimentary cash or slot tokens including, but not limited to, complimentary cash or slot tokens issued in connection with bus programs. No complimentary cash or slot tokens may be distributed by a casino licensee under any coupon redemption complimentary distribution program that does not comply with the requirements of this section.

(b) Detailed procedures controlling all complimentary distribution programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be submitted by the casino licensee to the Commission and Division at least 15 days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all complimentary distribution programs entitling patrons to complimentary items or services other than cash or slot tokens shall be prepared prior to implementation of the programs and shall be maintained as an accounting record by the casino licensee. Complimentary items or services, including cash or slot tokens, distributed through programs regulated by this subsection shall be reported in accordance with the procedures contained in (l) and (n) below.

(c)-(m) (No change.)

(n) In addition to the monthly report required to be filed in (l) above, the casino licensee shall accumulate both the dollar amount

of and the number of persons redeeming coupons pursuant to (a) above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including cash and slot tokens, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-1.9.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Complimentary Services or Items; Procedures for Complimentary Cash and Noncash Gifts; Alternative Reporting Procedures—Accessible Complimentaries Database

Adopted Amendments: N.J.A.C. 19:45-1.9, 1.9B and 1.46
Adopted New Rules: N.J.A.C. 19:45-1.9C

Proposed: December 21, 1992 at 24 N.J.R. 4505(a).
Adopted: March 3, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 5, 1993 as R.1993 d.145, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70j, 70l, 99 and 102.

Effective Date: April 5, 1993.
Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), the Sands Hotel and Casino (Sands), TropWorld Casino and Entertainment Resort (TropWorld), Resorts International Hotel, Inc. (Resorts), Bally's Park Place, Inc. and GNOC, Corp. (Bally's), and Caesars Atlantic City (Caesars).

COMMENT: The Division, Sands, Resorts and TropWorld expressed support for the amendment to N.J.A.C. 19:45-1.9(e)1 which would raise the threshold for reporting the issuance of individual complimentary services or items from $50.00 to $100.00. Bally's expressed its support for the amendment but suggested that the threshold should be raised to $250.00.

RESPONSE: The comments in support of the $100.00 threshold have been accepted. The Commission believes it would be inappropriate to consider any further increase in the threshold until the effect of the current increase has been evaluated through actual experience.

COMMENT: The Division, Sands and Bally's each submitted comments in support of the proposed amendment creating an exception to the daily complimentary reporting requirement for complimentaries which are issued as part of a slot machine complimentary incentive program which meets the requirements set forth in N.J.A.C. 19:45-1.9(f). TropWorld indicated its support for the concept, but proposed that the threshold for complimentaries eligible for this exception be raised to $1,000.

RESPONSE: The Commission has accepted those comments which support the proposal as indicated by its adoption. The suggestion of TropWorld to raise the threshold by $500.00 is beyond the scope of this adoption. Again, the Commission believes it would be appropriate to evaluate the present regulatory structure in actual practice before considering any further amendments.

COMMENT: Caesars commented that the threshold contained in N.J.A.C. 19:45-1.9(f)4 should be modified to read "$500.00 or less" rather than "less than $500.00 since numerous complimentaries offered through these incentive programs have a value of $500.00.

RESPONSE: The comment of Caesars has been accepted and a minor substantive change to N.J.A.C. 19:45-1.9(f)4 has been made upon adoption.

COMMENT: Resorts suggested that the amendment to N.J.A.C. 19:45-1.9(f) should include table game complimentary incentive programs which are subject to the same restrictions as slot machine programs since the Commission has in fact already approved such table game programs in the past.

RESPONSE: The Commission has accepted the comment of Resorts. Table game complimentary incentive programs which meet the restrictions set forth in N.J.A.C. 19:45-1.9(f)1 through 4 are equally appropriate for the exemption from daily reporting created by that subsection and a substantive amendment has been made upon adoption to clarify the scope of the exemption.

COMMENT: The Division objected to the proposed amendments to N.J.A.C. 19:45-1.9B(g) on the basis that theoretical win should be the primary limit on the amount of cash complimentaries which may be given to a patron during any year. Although the Division recognized that theoretical win could not be applied in all situations, the Division did not offer any standards as to when the alternative limits should be applicable.

RESPONSE: The Commission believes the alternative limits are a reasonable method of implementing the statutory obligation to impose a limit on the issuance of cash complimentaries, and thus the comment of the Division has been rejected.

COMMENT: The Division also objects to a standard which would allow a casino licensee to return all of a patron's gaming losses through the issuance of cash complimentaries. The Division commented that such a standard could, through uncontrolled competition, adversely affect the financial condition of the industry.

RESPONSE: The Commission has no reason to believe at this time that casino licensees will use the issuance of cash complimentaries to engage in ruinous financial competition; therefore, the comment of the Division has been rejected.

COMMENT: The Division also objects to a regulatory standard which would permit a casino licensee to give a person $25,000 in cash complimentaries for any reason whatsoever. The Division is concerned that this standard, without further guidance from the Commission, could lead to uses of cash complimentaries which were not contemplated by the Commission.

RESPONSE: As a general proposition, the Commission believes that a casino licensee should be permitted to use complimentaries to cultivate any legitimate business relationship which furthers its business interests, subject, of course, to its obligation to maintain compliance with the licensing standards of the Casino Control Act and the requirements of the Commission's rules. Casino licensees are required to identify the recipient of any cash complimentary which is not subject to one of the exemptions authorized by the rules and any complimentary gifts, including cash, given in a 5 day period which have a value of $2,000 or more must be recorded by the casino licensee with a justification as to why the complimentaries were issued. The Commission believes that these regulatory requirements are adequate to monitor the activities of casino licensees in the issuance of cash complimentaries.

COMMENT: Sands objects to the proposed limits on cash complimentaries contained in N.J.A.C. 19:45-1.9B(g) because Sands asserts that it is inappropriate for the State to attempt to regulate business decisions such as the amount of cash complimentaries which a casino licensee should give to a particular patron. Bally's, Resorts and TropWorld agree with the opinion voiced by Sands but support the adoption of the proposed amendments.

RESPONSE: The Sands' comment is rejected because the Commission is obligated under subsection 102m of the Casino Control Act to adopt a regulation setting a limit on the amount of cash complimentaries which may be issued by a casino licensee to any person in a given year.

COMMENT: The Division, Sands and Bally's supported the proposed amendment to N.J.A.C. 19:45-1.46 which would increase the threshold for reporting the names of individual recipients of complimentaries issued pursuant to complimentary distribution programs from $100.00 to $500.00.

RESPONSE: The comments have been accepted.

COMMENT: Sands, Bally's and TropWorld each expressed concerns that the proposed new rule, N.J.A.C. 19:45-1.9C, is somehow intended to require casino licensees to give the regulatory authorities unfettered access to the computer systems in which their complimentary records are maintained. The commenters also express concern about the amount of data which would have to be maintained on a current basis as opposed to being available in stored files.

RESPONSE: The proposed new rule, which creates a completely optional filing system, is not intended to require a casino licensee to give the State access to anything other than the data which the casino

licensee is otherwise obligated to file under the reporting provisions contained in N.J.A.C. 19:45-1.9 and 1.9B. A casino licensee may do this by creating completely segregated files of raw data which can be downloaded by the regulatory agencies or made available in any other manner which is acceptable to the casino licensee. It is impossible to include all the technical specifications in the rule itself since casino licensees may wish to design different types of systems. Ideally, the system will allow both the casino licensee and the regulatory agencies to load the raw data into their own database programs and to analyze it in whatever serves the purposes of the particular user. The rule is not intended and, in the Commission's opinion, does not require a casino licensee to provide access to any data which does not otherwise have to be reported pursuant to N.J.A.C. 19:45-1.9 and 1.9B. It will be up to each casino licensee that wishes to avail itself of this option to propose, like any other internal control submission, a database system which meets these requirements. This proposal should identify the amount of data which the casino licensee intends to maintain on a current basis and should address how the regulatory agencies will be able to obtain reasonable access to data which is stored. The Commission rejects the comments of the commenters to the extent that they suggest that this rule needs to be further amended before it can achieve its intended purpose.

COMMENT: The Division supports the adoption of N.J.A.C. 19:45-1.9C.

RESPONSE: The comment of the Division has been accepted.

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

19:45-1.9 Complimentary services or items

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

(e) Each casino licensee shall record, on a daily basis, the name of each person provided with complimentary services or items, the category of service or item provided, the value (as calculated in accordance with (c) above) of the services or items provided to such person, and the person authorizing the issuance of such services or items. A copy of this record shall be submitted to the Division's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary services or other items which:

1. Have a value (as calculated in accordance with (c) above) of $100.00 or less; or

2. (No change.)

(f) Notwithstanding any other provision of this section or N.J.A.C. 19:45-1.9B to the contrary, any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a ***table game or*** slot machine complimentary incentive program shall be recorded in accordance with the requirements of N.J.A.C. 19:45-1.46 and shall not be included on the daily complimentary report required by (e) above if:

1. The program is submitted to and approved by the Commission in accordance with the requirements of N.J.A.C. 19:45-1.46 as if the program were a complimentary distribution program;

2. The program is open to participation by all members of the public;

3. Each participant in the program is issued complimentaries in accordance with a predetermined schedule as a result of his or her ***table game or*** slot play; and

4. The complimentary service or item has a value (as calculated in accordance with (c) above) of *[less than]* $500.00 ***or less***.

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) (No change.)

(b) Except as otherwise provided in N.J.A.C. 19:45-1.9(f), all complimentary cash and noncash gifts provided by a casino licensee shall be recorded in accordance with the provisions of N.J.A.C. 19:45-1.9(e). If a complimentary cash and noncash gift has a value of $500.00 or more, the casino licensee shall also:

1.-3. (No change.)

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

(g) Notwithstanding any other provision of this section, no casino licensee shall provide to any patron, during any 12-month period, complimentary cash gifts which exceed the greater of:

1. The casino licensee's theoretical win from that patron during that same 12-month period, as reasonably determined from data contained in the player rating system of the casino licensee; provided, however, that each casino licensee shall include in its procedures developed in accordance with N.J.A.C. 19:45-1.9(b), the mathematical formula by which it calculates its theoretical win from the information contained in its player rating system; or

2. The actual gaming losses of the patron to that casino licensee during that same 12-month period as reasonably determined from data contained in the player rating system of the casino licensee; or

3. $25,000.

19:45-1.9C Alternative reporting procedures; accessible complimentaries database

(a) A casino licensee which records all information concerning complimentary services or items which is required by N.J.A.C. 19:45-1.9 or 1.9B in a computer database which is accessible by the Commission and Division from remote locations and conforms to standards established and approved by the Commission pursuant to this section shall be exempt from filing all reports required pursuant to N.J.A.C. 19:45-1.9(e), 1.9B(b), and 1.9B(f).

(b) The structure and accessibility of the complimentaries database shall be subject to review and approval by the Commission and such submission shall include, without limitation, the following:

1. A complete description of the computer hardware, file formats and software products to be used;

2. The hours of the day and the days of the week, if any, that the database will be inaccessible on a routine basis due to system maintenance or other technical reasons;

3. The procedures by which the Division and, if requested, the Commission will be able to read and copy data files, both current and stored; and

4. Security procedures for database access and secondary data dissemination.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(k) (No change.)

(l) Each licensee shall:

1. (No change.)

2. Prepare a monthly report for all programs regulated by (b) above, which shall list, by program offered during the month, a description of the complimentary items and services provided, the total number of persons receiving complimentary items or services, the total dollar amount of complimentary items or services provided, and the names of all persons receiving a complimentary item or service in a dollar amount equal to or greater than $500.00. Such report shall be available upon request by the Commission or Division.

(m)-(n) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Procedures and Requirements for the Use of Automated Coupon Redemption Machines; CCTV Coverage

Adopted Amendments: N.J.A.C. 19:45-1.10, 1.11 and 1.46A (Alternative A)

Proposed: January 19, 1993 at 25 N.J.R. 278(a).

Adopted: March 3, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: March 5, 1993 as R.1993 d.142, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and Alternative B not being adopted.**

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g), (l) and 99(a).
Effective Date: April 5, 1993.
Expiration Date: August 15, 1997.

Summary of Agency Initiated Changes:
The references to N.J.A.C. 19:45-1.10(b)1v-viii and N.J.A.C. 19:45-1.11(b)1iv-viii have been changed to reflect intervening amendments to each of those sections.

Summary of Public Comment and Agency Response:
COMMENT: Greate Bay Hotel and Casino, Inc. (Sands Hotel and Casino), Trump Taj Mahal Associates (Taj Mahal), Adamar of New Jersey, Inc. (TropWorld Casino and Entertainment Resort) and Boardwalk Regency Corporation (Caesars) indicated that they support Alternative B, which would not require CCTV coverage of automated coupon redemption machines.
RESPONSE: Rejected. As noted below, the Commission does not agree that existing security and accounting controls would be adequate to safeguard these machines without the added requirement of CCTV coverage.
COMMENT: The Division of Gaming Enforcement indicated that it supports Alternative A, which would require CCTV coverage of automated coupon redemption machines.
RESPONSE: Accepted. The Commission agrees with the Division that these machines are performing a casino-related function by redeeming promotional coupons, and that scrutiny of the machines by CCTV coverage should be maintained, whether the machines are located on or immediately adjacent to the casino floor.

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

ALTERNATIVE A

19:45-1.10 Closed circuit television system: surveillance department control; surveillance department restrictions

(a) (No change.)

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i.-iv. (No change.)

v. The operations conducted at automated coupon redemption machines;

Recodify existing vi.-ix. as ***vi.-x.*** (No change in text.)

2.-5. (No change.)

(c)-(h) (No change.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-iii. (No change.)

iv. The clandestine surveillance of the operation of automated coupon redemption machines;

Recodify existing v.-ix. as ***v.-x.*** (No change in text.)

2.-9. (No change.)

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

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

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

(f) Automated coupon redemption machines may be located on or immediately adjacent to the casino floor, provided that closed circuit television coverage of all automated coupon redemption machines is provided, pursuant to N.J.A.C. 19:45-1.10 and 1.11. Each automated coupon redemption machine shall have imprinted, affixed or impressed on the outside of the machine a unique asset identification number. Each automated coupon redemption machine shall contain a lockable coupon storage box which retains the coupons accepted by the machine. Each coupon storage box located inside the machine shall also have imprinted, affixed or impressed thereon the asset identification number of the corrresponding machine.

(g)-(p) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Drop Boxes and Slot Cash Storage Boxes
Procedure for Opening, Counting and Recording Contents of Drop Boxes and Slot Cash Storage Boxes
Removal of Slot Drop Buckets and Slot Cash Storage Boxes; Meter Readings
Computer Recordation and Monitoring of Slot Machines
Adopted Amendments: N.J.A.C. 19:45-1.16, 1.33, 1.42 and 1.44

Proposed: January 19, 1993 at 25 N.J.R. 279(a).
Adopted: March 3, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 5, 1993 as R.1993 d.143, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30).

Authority: N.J.S.A. 5:12-63(c), 69, 70(f), and 99.
Effective Date: April 5, 1993.
Expiration Date: August 15, 1997.

Summary of Public Comment and Agency Response:
COMMENT: The Division of Gaming Enforcement supports the adoption of the proposed amendments.
RESPONSE: Accepted.
COMMENT: Greate Bay Hotel and Casino ("Sands") supports the adoption of the proposed amendments with one minor change. The Sands believes clarification is necessary so that it is clear that the identification number of the slot cash storage box need not be recorded upon insertion of the slot cash storage box into the bill changer and again when the slot cash storage box is removed from the bill changer.
RESPONSE: Accepted. Clarification has been added to make it clear that a casino licensee need only record the unique identification number either upon insertion or removal of the slot cash storage box.

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

19:45-1.16 Drop boxes and slot cash storage boxes

(a) (No change.)

(b) Each bill changer in a casino shall have contained in it a secure metal container known as a "slot cash storage box" in which shall be deposited all cash inserted into the bill changer. Each slot cash storage box shall:

1.-4. (No change.)

5. Have an asset number, at least two inches in height, permanently imprinted, affixed or impressed on the outside of the slot cash storage box which corresponds to the asset number of the slot machine to which the bill changer has been attached. In lieu of the asset number, a casino licensee may develop and maintain, with prior Commission approval, a system for assigning a unique identification number to its slot cash storage boxes, which system ensures that each slot cash storage box can readily be identified, either manually or by computer, when in use with, attached to, and removed from a

particular bill changer. Each such unique identification number shall be at least two inches in height and shall be permanently imprinted, affixed or impressed on the outside of each slot cash storage box that does not otherwise bear an asset number. In addition, emergency slot cash storage boxes may be maintained without such numbers, provided the word "emergency" is permanently imprinted, affixed or impressed thereon, and when put into use, are temporarily marked with the asset number of the slot machine to which the bill changer is attached, and provided further, that the casino obtains the express written approval of the Commission before placing an emergency slot cash storage box into use.

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

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

(a)-(g) (No change.)

(h) Procedures and requirements for conducting the count shall be the following:

1. As each drop box or slot cash storage box is placed on the count table, one count team member shall verbalize, in a tone of voice to be heard by all persons present and to be recorded by the audio recording device, the game, table number, and shift marked thereon for drop boxes, or the asset or unique identification number market thereon for slot cash storage boxes;

2.-8. (No change.)

11. As the contents of each slot cash storage box are counted, one count team member shall record on the Slot Cash Storage Box Report or supporting documentation the following information:

i. The asset number of the bill changer to which the slot cash storage box contents correspond or, if a casino licensee utilizes slot cash storage boxes with a unique identification number, the number shall be recorded along with the asset number of the slot machine;

ii.-v. (No change.)

12.-13. (No change.)

(i)-(j) (No change.)

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; meter readings

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

(c) Procedures and requirements for removing slot drop buckets and slot cash storage boxes from the casino shall be the following:

1. If the slot drop buckets and slot cash storage boxes are removed in conformity with (b)1 above:

i. The slot drop bucket shall be removed from its compartment and an empty slot drop bucket shall be placed in the compartment after which the compartment shall be closed and locked; and on those slot machines where a bill changer is attached, the slot cash storage box shall be removed from its compartment and an empty slot cash storage box shall be placed in the compartment and, if applicable, a unique identification number shall be assigned and recorded, after which the compartment and the bill changer door shall be closed and locked;

ii.-iii. (No change.)

2. (No change.)

(d)-(g) (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the function relating to slot machine meters in the casino as follows:

1.-3. (No change.)

4. Record the number and total value of coins or slot tokens automatically paid by the slot machine as the result of a jackpot;

5. Record the number and total value of coins and slot tokens to be paid manually as a result of a jackpot;

6. Record the number and total value of coins or slot tokens vended from the slot machine hopper to make change;

7. Record the total value of each denomination of currency accepted and stored in the slot cash storage box; and

8. Record, if applicable, the unique identification number on the corresponding slot cash storage box and the asset number of the slot machine in which the slot cash storage box was placed for the purpose of recording and determining which slot cash storage box was placed into which slot machine bill changer.

(c) Procedures and requirements for removing slot drop buckets and slot cash storage boxes from the casino shall be the following:

1. If the slot drop buckets and slot cash storage boxes are removed in conformity with (b)1 above:

i. The slot drop bucket shall be removed from its compartment and an empty slot drop bucket shall be placed in the compartment after which the compartment shall be closed and locked; and on those slot machines where a bill changer is attached, the slot cash storage box shall be removed from its compartment and an empty slot cash storage box shall be placed in the compartment and, if applicable, a unique identification number shall be assigned and recorded ***either upon insertion or removal of the slot cash storage box***, after which the compartment and the bill changer door shall be closed and locked;

ii.-iii. (No change from proposal.)

2. (No change from proposal.)

(d)-(g) (No change from proposal.)

(a)

CASINO CONTROL COMMISSION

Taxes

Gross Revenue Tax; Section 144 Investment Obligation Alternative Tax; Section 144.1 Investment Tax Credits

Readoption with Amendments: N.J.A.C. 19:54 Adopted Repeal: N.J.A.C. 19:54-2

Proposed: January 19, 1993 at 25 N.J.R. 280(a).
Adopted: March 3, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 5, 1993 as R.1993 d.146, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69, 70e, 144a and f, and 144.1c.
Effective Date: March 5, 1993, Readoption.
April 5, 1993, Amendments and Repeal.
Operative Date: May 5, 1993, Repeal of N.J.A.C. 19:54-2.
Expiration Date: December 15, 1994.

Agency Note: The Commission has, at the request of the Casino Reinvestment Development Authority, delayed the operative date of the repeal of N.J.A.C. 19:54-2 for a period of 30 days. In addition, the Commission has determined to establish an expiration date of December 15, 1994, for the provisions of N.J.A.C. 19:54 as part of an ongoing effort by the Commission to distribute evenly the expiration dates of its rules.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division) and the Sands Hotel and Casino (Sands).

COMMENT: The Division commented that the definition of "casino management agreement" should be modified to eliminate casino service industry enterprise licensees as parties who are eligible to participate in such agreements.

RESPONSE: The comment of the Division has been accepted and a minor substantive amendment has been made upon adoption to reflect the fact that section 82 of the Casino Control Act specifically requires that all parties to a casino management agreement hold a casino license. See N.J.S.A. 5:12-82c(7).

COMMENT: The Sands supported the adoption of the amendments contained in the proposal.

RESPONSE: The comment of the Sands has been accepted.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:54.

Full text of the adopted amendments follows (deletions from the proposal indicated in brackets with asterisks *[thus]*):

19:54-1.1 Description of tax

Subsection 144a of the Act imposes an annual tax on gross revenues, as defined in section 24 of the Act, in the amount of eight percent of such gross revenues.

19:54-1.2 Definitions

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

"Casino licensee" or "licensed casino" includes the holder of a casino license or interim casino authorization.

"Casino management agreement" means a written agreement between one or more casino licensees *[or casino service industry enterprise licensees]* and another casino licensee whereby the latter agrees to provide complete management of a casino in accordance with section 82 of the Act.

...

"Casino operator" means:

1. Where there is no casino management agreement with regard to the casino hotel facility, the casino operator shall be the casino licensee which is responsible for submitting and maintaining the internal controls required by section 99 of the Act; or

2. (No change.)

"Casino Revenue Fund" means a separate special account established in the Department of the Treasury for deposit of all revenues from the tax imposed by subsection 144a of the Act, the investment alternative taxes imposed by subsections 144e and 144.1a of the Act, any interest earned pursuant to paragraph 2 of subsection 144.1a or section 145.1 of the Act and any penalties payable to the Casino Revenue Fund pursuant to section 145 of the Act.

"Gaming day" is defined in N.J.A.C. 19:45-1.1A.

"Lease" or "lease agreement" means a written agreement for the lease of the approved hotel in accordance with section 82 of the Act, including any such lease which is capitalized under generally accepted accounting principles.

19:54-1.3 Tax year

For the purposes of the tax on gross revenues, the tax year shall be the calendar year. In the year in which a casino operator commences gaming operations, the tax year for that casino operator shall begin with the commencement of operations and terminate on the last gaming day of the current calendar year.

19:54-1.4 Tax payer

(a) The obligation to file returns and reports and to pay the gross revenue tax and any investment alternative taxes shall be upon the casino operator who shall be primarily liable therefor. In the event of a transfer of operations to a different casino operator, the transferror-operator will be obligated to file a return and to pay all taxes based upon gross revenues derived by the said transferror during the tax year in which the transfer occurred. The appointment of a conservator under the Act shall not be deemed a transfer to a different casino operator but, for the duration of the conservatorship, the conservator shall file all returns and pay all taxes on behalf of the former or suspended casino licensee who shall remain primarily liable therefor.

(b) In accordance with section 82 of the Act, each casino licensee which is a party to either a casino management agreement or a lease with the casino operator, shall be individually and severally liable for any acts, omissions and violations by the casino operator regarding the taxation obligations imposed by the Act regardless of actual knowledge of such act, omission or violation and notwithstanding any provision of such agreement or lease to the contrary.

(c) In the event of a sale or other transfer by the casino operator of its interest in the licensed premises to another casino licensee, the transferee shall be liable for any default by the former casino operator in its taxation obligations with respect to the licensed premises. The liability of the transferee shall not, however, release any other party from potential liability.

(d) Nothing in this section shall be construed to limit the authority of the State Treasurer or the Commission to enforce any tax obligation by way of a lien against the property of a taxpayer or otherwise as provided by the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the revised Statutes, by the Act or by any other applicable law.

19:54-1.5 Payment of tax

(a) In accordance with subsection 148a of the Act, the gross revenues tax shall be due and payable annually on or before the 15th calendar day of March except that if the 15th calendar day of March is a Saturday, Sunday or legal holiday, the due date shall be advanced to the next preceding regular business day. The gross revenues tax shall be based upon the gross revenues derived by the casino operator during the previous tax year. The amount of the annual tax shall be computed in accordance with N.J.A.C. 19:54-1.6.

(b) The annual nature of the tax notwithstanding, the casino operator shall make weekly deposits of the tax at such times, under such conditions, and in such depositories as shall be prescribed by the State Treasurer pursuant to subsection 145b of the Act, provided that deposits for a given week shall be made no later than the Monday of the succeeding week. If such Monday is a legal holiday, the deposit shall be made on the next business day. In the event that the week for which the weekly deposit is being made includes gaming days from two calendar months, the casino operator shall deposit and report separately, the amount of the deposit attributable to the gaming days of each month. The deposits shall be deposited to the credit of the Casino Revenue Fund.

(c) The amount of the required weekly deposit for a given week shall be determined by subtracting the total amount of deposits made by the casino operator in the current tax year up to and including the week preceding the given week from the total tax liability incurred by the casino operator for the current tax year. The total tax liability for the current tax year shall be based upon the gross revenues derived by the casino operator from the commencement of the current tax year to the end of the gaming day which commenced on the Friday of the given week.

(d) The amount of deposits required for a given month shall be the amount determined by subtracting the total amount of deposits made by the casino operator in the current tax year up to and including the month preceding the given month from the total tax liability incurred by the casino operator for the current tax year. The total tax liability for the current tax year shall be based upon the gross revenues derived by the casino operator from the commencement of the tax year to the end of the gaming day which commenced on the last calendar day of the given month.

(e) In the event that the total amount of deposits made for the entire tax year is determined to be less than the annual tax liability for the entire year, the casino operator shall remit the requisite additional payment to the State Treasurer. In the event that the total amount of such deposits is determined to be greater than the annual tax liability, the casino operator may be allowed to reduce the amount of its weekly deposits in the succeeding tax year by the amount of the overpayment, provided, however, that the casino operator shall not claim any such credit against deposits unless the Commission first certifies the existence and amount of the overpayment. Nothing in this section shall limit any authority of the Commission under sections 149 and 150 of the Act and the "State Tax Uniform Procedure Law," Section 9 of Title 54 of the Revised Statutes, including the authority to determine the insufficiency of any deposit or deposits, to require payments of penalties and interest or to allow or disallow any claim for refund due to overpayment of taxes.

19:54-1.6 Computation of tax

(a) The gross revenues tax shall be eight percent of gross revenues. The gross revenues for the tax year, or portion thereof, shall be the amount obtained from the following calculation:

1. The sum of the totals for the tax year, or portion thereof, which appear in the casino department accounts for revenues from table games, the casino department accounts for revenues from coin-operated devices, and the casino department accounts for any other authorized games approved by the Commission, which accounts are

to be maintained in accordance with generally accepted accounting principles as part of the uniform chart of accounts for casino departments;

2. Minus only the lesser of the following:

i. Four percent of the sum total derived in (a)1 above; or

ii. (No change.)

(b) Nothing in this section shall be construed to limit the authority of the Commission to redetermine the amount of tax liability or to require adjustments or corrections to the accounts of the casino operator.

19:54-1.7 Return and reports

(a) The casino operator shall file with the Commission an annual tax return for purposes of the gross revenues tax. The return shall be filed no later than March 15 following the tax year. Filing of the annual tax return shall satisfy the reporting of gross revenues requirement imposed by subsection 148a of the Act. The annual tax return shall be made on a form promulgated and distributed by the Commission pursuant to section 151 of the Act. The casino operator shall provide all information required on the form and shall attest to the accuracy of such information. The annual tax return shall be signed by the chief executive officer, chief financial officer, treasurer, or controller if the casino operator is a corporation; by a general partner if the operator is a partnership; by the chief executive officer if the operator is any other form of business association; or by the proprietor if the operator is a sole proprietorship.

(b) On or before the 10th calendar day of each month, the casino operator shall file with the Commission a monthly gross revenue tax report which shall reflect the amount of gross revenues derived during the preceding month, the amount of tax deposits required for that month, the amount of gross revenues derived during the year to the end of the preceding month, and the tax liability for the year calculated to the end of the preceding month. The monthly gross revenue tax report shall be on a form promulgated and distributed by the Commission, pursuant to section 151 of the Act. The casino operator shall provide all information requested on the form which shall be sworn to and signed by the same individual designated in (a) above to sign the annual return.

19:54-1.8 Examination of accounts and records

The casino operator shall permit duly authorized representatives of the Commission to examine the operator's accounts and records for the purpose of certifying gross revenues. In the event that any records or documents deemed pertinent by an examiner are in the possession of another licensee or entity, the casino operator shall be responsible for making those records or documents available to the examiner. Further, the casino operator shall be individually and severally liable for any relevant accounts, records or documents maintained or required to be maintained by any other licensee or entity with regard to the casino.

19:54-1.9 Determination of tax liability; notice; disputes; hearings

(a) If a return or deposit required by section 145 of the Act or by these regulations with respect to the gross revenue tax is not filed or paid, or if a return or deposit when filed or paid is incorrect or insufficient in the opinion of the Commission, the amount of tax due or deposit shall be determined by the Commission through an examination of the casino licensee's books and records. The Commission is empowered to determine whether a casino operator or other casino licensee has fully satisfied its obligations with regard to the gross revenues tax and to require that a casino operator or casino licensee make additional payments, including the payment of interest or penalty, or take additional steps to comply.

(b) If the Commission determines that the casino operator has not satisfied its obligation as to payment of tax or deposit, a notice of such determination shall be given to the casino operator and to other licensees liable for the payment under N.J.A.C. 19:54-1.4. Such determination shall finally and irrevocably fix the tax unless within 30 days after receiving notice of such determination, the casino operator or any other licensee liable for the payment shall apply to the Commission for a hearing, or unless the Commission on its own motion shall redetermine the same. Any Commission hearing will be governed as to notice and procedure by the general hearing rules of the Commission (see N.J.A.C. 19:42).

(c) In discharging its responsibilities under this Act, the Commission shall have all the authority granted by the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes, and all proceedings shall be conducted in accordance with said law, except to the extent that a specific provision of the Act or these regulations may be in conflict therewith. Nothing herein shall prevent the Commission from employing additional procedures including informal conferences with a licensee at which the licensee may present legal and factual contentions to the Commission. Such informal conferences shall not, however, be a substitute for a formal hearing as defined and described in the said "State Tax Uniform Procedure Law."

19:54-1.10 Penalties and sanctions

(a) A casino operator who shall fail to file its return when due or to pay the tax or deposit when the same becomes due shall be subject to such penalties and interest as provided in the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes.

(b) If the Commission determines that any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In this regard, a monthly deposit shall be considered part of the tax required to be shown on a return.

(c) (No change.)

(d) In addition to the foregoing, any casino operator or other casino licensee which violates any of the provisions of the Act or these regulations regarding the gross revenues tax shall be liable to any sanction, penalty or other consequence which the Commission may be authorized to impose, such as those delineated in sections 111, 129 and 130 of the Act.

(AGENCY NOTE: N.J.A.C. 19:54-2 is proposed for repeal, but not reproduced herein.)

SUBCHAPTER 2. SECTION 144.1 INVESTMENT TAX CREDITS

Recodify existing N.J.A.C. 19:54-3.1 and 3.2 as 19:54-2.1 and 2.2 (No change in text.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Workers' Compensation Self-Insurance

Adopted New Rules: N.J.A.C. 11:2-33

Adopted Amendment: N.J.A.C. 11:1-32.4

Proposed: June 1, 1992 at 24 N.J.R. 1944(a) (see also 24 N.J.R. 2708(b)).

Adopted: March 15, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: March 15, 1993 as R.1993 d.157, **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. 17:1C-6(e), 17:1-8, 17:1-8.1 and 34:15-77.

Effective Date: April 5, 1993.

Expiration Date: November 30, 1995, N.J.A.C. 11:2; January 31, 1996, N.J.A.C. 11:1.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received seven timely written comments from employers, employer trade associations, a self-insurance administrator, a government authority, an attorney, and a producer trade association, as follows:

1. The New Jersey Self Insurer's Association;

2. The New Jersey Catholic Conference (on behalf of the Latin Rite Catholic dioceses of New Jersey);

3. Salerno and Son;
4. The New Jersey Highway Authority;
5. Robinson, St. John and Wayne (on behalf of employers seeking to self-insure workers' compensation liability);
6. Kenneth H. Wind, PA; and
7. The Independent Insurance Agents of New Jersey.

COMMENT: Several commenters objected to the imposition of the $1,000 processing fee for the issuance or renewal of a Certificate of Order Granting Exemption from Insuring Liability for Workers' Compensation (Certificate) pursuant to N.J.A.C. 11:1-32.4(b)12 as referenced in N.J.A.C. 11:2-33.3(b)4 and 11:2-33.4(a)5.

One commenter specifically stated that most of the necessary data required under these rules is presently submitted pursuant to current Department guidelines without any required fee. The commenter further stated that other jurisdictions generally charge between $100.00 and $500.00. The commenter believes that the present practice of providing annual information to the Department with the initial Certificate remaining in effect continuously until revoked for cause best serves the regulated community. In the alternative, the commenter suggested that the Certificate be renewed every three years as this would eliminate any burdens on the Department and employers resulting from the time involved in renewing a Certificate each year.

Another commenter noted that N.J.A.C. 11:2-33.3(a) requires an employer to apply for the exemption. The commenter, which represents religious corporations, stated that if this provision is interpreted to require each employer to file an initial application, the commenter believes that every parish corporation in the several dioceses which it represents would be required to pay the $1,000 fee. The commenter stated that since there are 710 Catholic parishes in New Jersey, it would cost the dioceses $710,000 in filing fees.

Another commenter similarly believed that the application fee was excessive. The commenter noted that the average fee charged for such applications in other states is approximately $235.00, with the highest being $2,500 and the lowest being $50.00. The commenter also noted that almost half of the jurisdictions charged no fee. The commenter thus suggested that the fee be changed to $200.00 and additionally suggested that the fee be waived for those entities which are "not-for-profit."

RESPONSE: Upon review of the commenters' concerns, the Department has determined not to change this provision. The Department notes that the $1,000 application/renewal fee is consistent with application/renewal fees currently imposed on motor vehicle self-insurers and with the fee charged other entities for which the Department performs a similar service. The fee does not fully reimburse the Department for all costs incurred in reviewing these applications but merely helps defray such costs. The Department, therefore, believes that this fee is reasonable and appropriate as it merely brings workers' compensation self-insurers on par with other self-insurers and other entities for which the Department performs a similar service. While the Department recognizes that no fee was previously imposed, the Department notes that it has recently begun reviewing those services currently provided by the Department and has either increased fees previously charged or has established a fee for services provided for which no fee was previously charged to more accurately reflect actual costs incurred by the Department and to help defray such costs. See N.J.A.C. 11:1-32.

With respect to the comment that the present practice of providing annual information to the Department with the initial Certificate remaining in effect continuously until revoked would be more appropriate, or in the alternative that the Department should provide a three year renewal period for each Certificate, the Department notes that the actual issuance of the Certificate is independent of the imposition of the fee. As the commenter noted, certificate holders are currently required to submit specified information each year. The $1,000 renewal fee is intended to help defray costs incurred by the Department in the review of such information. The Department has also determined it appropriate to provide for the annual issuance of a new Certificate each year. This procedure is consistent with the Motor Vehicle Self-Insurance rules, N.J.A.C. 11:3-30. Moreover, the Department believes that the procedure provided in these rules will ensure that the Department performs an in-depth review of each certificate holder on an annual basis to determine whether the employer continues to qualify as a self-insurer.

Finally, with respect to religious corporations, the Department does not believe that the application/renewal fee should impose any undue burden. The commenter has apparently misinterpreted the rules to require that each individual parish represented by a diocese pay the application/renewal fee. Currently, the individual diocese is considered the employer for purposes of obtaining the exemption. These rules do not change that procedure. Accordingly, each diocese is considered to be the employer, not each individual parish within the diocese. The Department believes that this should address the commenter's concern. The Department, however, does not believe that an exemption from the fee should be granted to not-for-profit corporations as this would obviate the purpose for which the fee is imposed (that is, help defray costs incurred in reviewing filings). The Department is required to dedicate the same amount of resources and staff to review a filing from a not-for-profit corporation as is required to review a filing from a "for profit" corporation. The Department further notes that not-for-profit corporations, including not-for-profit religious corporations, are required to pay the application/renewal fee for approval to self-insure motor vehicle insurance pursuant to N.J.A.C. 11:3-30. The Department therefore believes imposition of the application/renewal fee for workers' compensation self-insurance is reasonable and appropriate.

COMMENT: Several commenters objected to the imposition of the fee to reimburse the Department for expenses incurred in obtaining a risk assessment report on the applicant or certificate holder, as required by N.J.A.C. 11:2-33.3(e) and 33.4(b).

One commenter specifically stated that the information already required by the rules should be sufficient for the Department to determine the financial stability of an initial applicant or certificate holder. The commenter further stated that all public corporations issue quarterly and annual reports which disclose their financial position. The commenter therefore believes that an additional risk assessment report with its attendant costs is both redundant and punitive. The commenter therefore suggested that N.J.A.C. 11:2-33.3(e) be revised to read as follows: "In addition to the filing fee set forth in (b)4 above, the applicant, upon application or renewal, shall submit a risk assessment report on the applicant from a rating agency as determined by the Commissioner."

Another commenter specifically stated that since it is unsure of the actual costs involved in the Department's obtaining the risk assessment report, it is concerned that the Department's proposed fee could have a substantial adverse economic impact.

RESPONSE: The Department believes that it is both reasonable and appropriate to provide for the submission of a risk assessment report. The risk assessment report will provide information beyond that contained in quarterly and annual reports issued by the employer, and will provide the Department with an independent evaluation of an individual corporation compared with other similar corporate entities. The risk assessment report will rate the company's present financial condition as well as provide the Department with projections of financial condition into the future, and provides a report that applies a rating (low risk to extreme risk) to a corporation in relation to its ability to operate as a self-insurer. The Department, therefore, does not believe that the risk assessment report requirement is either redundant or punitive.

The Department similarly disagrees that N.J.A.C. 11:2-33.3(e) should be revised to provide that an applicant submit the risk assessment report on itself from a rating agency determined by the Commissioner. The form of the risk assessment report to be utilized was specifically developed for the Department to provide the Department with specified information. The Department does not believe that it would be feasible to permit applicants to attempt to duplicate the data and format already developed. Moreover, the Department believes that the procedure set forth in the rules is less burdensome than that suggested by the commenter. Under the Department's procedure, the employer will be required to submit a report in the format presently acceptable to the Commissioner, rather than requiring the employer to "guess" what format would be acceptable, possibly requiring numerous submissions with attendant costs.

The Department agrees, however, that it is not necessary to require a risk assessment report from all certificate holders every year. The Department believes it appropriate to require a risk assessment report from all initial applicants and all certificate holders at least one time after the effective date of the rules to provide the Department with a standard "benchmark." The rules are revised upon adoption to provide that after the one-time submission, a risk assessment report shall be required only when the Commissioner determines that there may have been deterioration in the employer's financial condition (for example, a major loss over the previous year or a trend of losses over several years; a significant decrease in bond rating over the previous year or a trend of decreases over several years; or a significant increase in claim payments to employees), or an event occurs which is reasonably likely to cause a deterioration in the employer's financial position, such as a

strike of significant duration or other major adverse contingency (for example, environmental litigation or asbestos litigation). The Department believes that these procedures are both reasonable and appropriate in that they provide the Department with an independent evaluation of the financial condition as well as a standard benchmark of all applicants and all present certificate holders, while limiting additional expenses incurred in providing the risk assessment report to those instances where the Commissioner has determined that an employer's financial condition may have deteriorated or is reasonably likely to deteriorate.

With respect to the comment requesting the costs involved in the Department's obtaining of the risk assessment report, the Department notes that the present cost for the risk assessment report is $1,500.

The Department notes, however, that risk assessment reports will not be required for not-for-profit corporations. Not-for-profit corporations utilize fund accounting which is different than the accounting method used by "for profit" corporations. Accordingly, the comparisons provided by the risk assessment report would be of little value to the Department in evaluating the financial condition of these entities.

COMMENT: Several commenters objected to N.J.A.C. 11:2-33.4(a)2ii, which requires as part of an application for renewal the submission of a supplementary statement of outstanding death or disability claims certified by a qualified actuary who must attest to the adequacy of reserves for such outstanding claims. The commenters generally believe that this requirement imposes unnecessary additional costs.

One commenter specifically stated that this requirement appears to be designed to enable the Department to ascertain a certificate holder's existing liabilities. The commenter believes that insofar as establishing the appropriate penal sum of a surety bond to cover liability is concerned, this method is extremely costly to the regulated community and does not address the Department's apparent concerns (that is, whether there is enough surety in place to cover the liability). The commenter stated that several jurisdictions address this problem in a different manner. The commenter cited as an example the State of Indiana, which requires a three year review of medical expenses incurred and compensation paid as criteria for determining the penal sum of the surety bond. The commenter thus believes that the actuarial certification requirement is unnecessary, costly and discriminatory against self-insured employers. The commenter therefore suggested that the Department adopt the "bond calculation formula" utilized by the State of Indiana, or a similar formula to test the adequacy of reserves for outstanding death or disability claims.

The commenter further stated that the rules failed to consider their economic impact on self-insured employers in the State of New Jersey. The commenter stated that based on its research the cost of an actuarial service could range between $1,200 and $1,500 for each file examined. Accordingly, a company with 1,000 employees could incur an additional expense in excess of $50,000 annually. The commenter therefore believes that the Department should balance the cost of the proposed regulations against their benefits more accurately and evaluate the economic impact of the proposed regulations "more realistically."

RESPONSE: The Department initially notes that the purpose of the actuarial certification is to enable the Department to determine whether an employer's reserves are sufficient to cover its workers' compensation liability and to provide additional assurance that the penal sum of a surety bond established to cover any losses is sufficient if the employer should become insolvent. The actuarial certification also provides an assurance that the individual responsible for establishing loss reserves is experienced in such matters.

The Department recognizes, however, that the requirement that an employer obtain an actuarial certification of its outstanding loss reserves each year may impose an unreasonable expense to such employers. The Department has, therefore, determined to revise the rules to eliminate the requirement that an actuarial certification be provided by all employers each year. However, as a condition of renewal of a certificate, the rules at N.J.A.C. 11:2-33.4(a) are revised, and a new section added at N.J.A.C. 11:2-33.4(e) to provide that a certificate holder recognize that the Commissioner retains the general authority to conduct further examinations of the certificate holder when he or she deems it necessary based on a review of other information required to be submitted or information obtained from other sources. Such further examinations, however, would only be conducted when the Commissioner determines that there may have been a deterioration in the employer's financial condition or an event occurs which is reasonably likely to cause a deterioration in the employer's financial condition (see discussion in the response to the previous comment). Such examination may involve the sending of an examiner to the employer's offices, or a request for further information that the Commissioner may deem necessary, including, but not limited to, an actuarial certification. The costs of such examination will be borne by the employer examined. The Department believes that this revised procedure addresses the commenter's concerns by limiting additional costs generally imposed on all employers, while clarifying that the Commissioner retains the authority to conduct additional examinations and request additional information from an employer as he or she deems necessary to ensure that the employer continues to satisfy the requirements for the issuance of a certificate set forth in N.J.S.A. 34:15-77 and these rules.

COMMENT: One commenter who represents nonprofit religious institutions objected generally to the application of additional fees to their particular entities. The commenter stated that the financial burdens of these rules would fall heavily upon a religious corporation which, unlike a commercial enterprise, cannot raise prices to pass along costs of compliance with these rules. The commenter therefore requested that an exemption from the application/renewal fee, the risk assessment report fee, and the actuarial statement requirement be granted to a religious corporation organized under Title 16 or to a non-profit corporation organized under Title 15A which is affiliated or associated with a religious corporation.

RESPONSE: As noted in responses to previous comments, nonprofit corporations will not be required to obtain a risk assessment report and the Department has revised the rules to eliminate the general requirement that reserves for outstanding claims be certified as adequate by an actuary. However, as previously noted, the Department believes it reasonable and appropriate to require that all applicants and certificate holders pay the application/renewal fee to help defray Department costs incurred in review of information submitted.

COMMENT: One commenter expressed concern with N.J.A.C. 11:2-33.3(c)1, which provides that the applicant may request that the Commissioner include the name of any subsidiary corporation under the Certificate, provided the ultimate parent corporation guarantees that it will discharge the subsidiary's liability as evidenced by the filing of an indemnity agreement. The commenter stated that there are 710 Catholic parishes in this State. The commenter cited as an example the Archdiocese of Newark, which covers 240 parishes and approximately 20 nonprofit entities under its existing Certificate. The commenter stated that the filing of a separate indemnity agreement for each of the 710 parishes and other nonprofit entities would pose unreasonable administrative burdens. The commenter suggested that each diocese be permitted to file a single indemnity agreement and corporate resolution, signed by the diocese only, covering the parishes and related nonprofit corporations covered by the diocese. The commenter therefore suggested that N.J.A.C. 11:2-33.3(c) be revised to add a new paragraph 3 as follows:

"The Commissioner may accept substitute submissions from an applicant if strict compliance with the foregoing requirements would be unduly burdensome, provided that the Commissioner is satisfied that the applicant will discharge the compensation liability of each of its subsidiary corporations."

RESPONSE: The commenter has apparently misinterpreted N.J.A.C. 11:2-33.3(c)1 to require that one archdiocese execute an indemnity agreement for each of the parishes and other nonprofit entities under its control. This rule merely codifies existing Department requirements. Based upon the unique relationship between an archdiocese and the parishes and nonprofit entities under its control, the Department has not required, and did not intend to require through these rules, that each diocese provide a separate indemnity agreement for each parish or nonprofit entity which that diocese covers. Each diocese will be permitted to file a single indemnity agreement to cover the parishes and related nonprofit entities covered by that diocese.

The Department also recognizes that other applicants may have a substantial number of subsidiaries in New Jersey which the applicant seeks to cover under its certificate. The Department therefore believes that it is reasonable and appropriate to revise N.J.A.C. 11:2-33.3 by adding a new subsection (d) to provide that an applicant with a substantial number of subsidiaries in New Jersey may request permission to file a consolidated application on behalf of itself and its subsidiaries. Such an application must be in a form acceptable to the Commissioner and contain any information he or she deems necessary to ensure that the applicant and its subsidiaries satisfy the requirements set forth in N.J.S.A. 34:15-77 and these rules. The applicant also must demonstrate that the relationship between the subsidiaries and the parent company is clearly evident to covered employees. The Department is aware that corporate

structures exist wherein a great number of individual corporations are readily identifiable as units of the larger parent entity. The Department believes that this revision appropriately provides additional flexibility for applicants and reduces any attendant costs and burdens to both the applicant and the Department in such limited circumstances.

COMMENT: One commenter stated that while it believed that the minimal penal sum of $500,000 for any surety bond is reasonable, bond companies are reluctant to write workers' compensation self-insurance bonds without complete collateralization. The commenter stated that this often requires the applicant to use an irrevocable letter of credit. Accordingly, the applicant is required to pay a fee for the letter of credit as well as the bond premium. The commenter therefore suggested that the Department also allow a letter of credit to satisfy the security requirement.

RESPONSE: The Department does not believe it appropriate to allow a letter of credit to satisfy the security requirement. A letter of credit is not necessarily perpetual, may expire, must be renewed at regular intervals, etc. Adoption of the commenter's suggestion would unduly strain the Department's limited resources to verify that the letter of credit from each applicant remains in full force and effect.

COMMENT: One commenter requested clarification about how the rules will apply to State, counties, municipalities, and governmental authorities.

RESPONSE: These rules apply to any employer required to provide workers' compensation liability coverage for its employees pursuant to N.J.S.A. 34:15-70. Pursuant to N.J.S.A. 34:15-71, the State, municipalities, counties, and school districts are specifically not considered "employers" for purposes of N.J.S.A. 34:15-70 et seq.

COMMENT: One commenter expressed concern with N.J.A.C. 11:2-33.3(a)1, which requires an accountant to certify that financial statements are "correct." The commenter stated that no accountant will so certify because all financial statements cannot be absolutely correct. The commenter stated however that accountants do certify that statements have been compiled in accordance with Generally Accepted Accounting Principles. The commenter therefore suggested that N.J.A.C. 11:2-33.3(a)1 be revised to read as follows:

A copy of its most recent annual financial report certified to present fairly, in accordance with Generally Accepted Accounting Principles or Generally Accepted Accounting Principles for Insurers, the financial position of the applicant.

The commenter further suggested that N.J.A.C. 11:2-33.4(a)4 be similarly revised.

RESPONSE: The Department agrees. For the reasons expressed by the commenter, the rules have been changed upon adoption to reflect the language suggested by the commenter. However, the phrase "or Generally Accepted Accounting Principles for Insurers" has not been included as insurers do not utilize generally accepted accounting principles but rather utilize statutory accounting principles. Accordingly, the rules have been further revised to clarify that corporations should submit financial reports certified in accordance with Generally Accepted Accounting Principles basis, and Statutory Accounting Principles basis where applicable. This clarifying change appropriately addresses submissions by corporations which are insurers, which may not necessarily have reports certified in accordance with Generally Accepted Accounting Principles. Moreover, this change will appropriately codify and clarify current Department practice.

COMMENT: One commenter noted that N.J.A.C. 11:2-33.4(a)2iii provides that the supplementary statement and actuarial certification of outstanding death or disability claims is confidential. The commenter suggested that confidentiality be extended to financial statements, which the commenter believes are far more sensitive documents for privately held companies. The commenter thus suggested that the rules provide a new subsection as follows:

All financial reports required by [N.J.A.C. 11:2-33.3(a)1], and [N.J.A.C. 11:2-33.4(a)4], and all supplementary statements required by [N.J.A.C. 11:2-33.4(a)2ii and iii] shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., or to any common law doctrine. However, financial statements which have been filed with the Securities and Exchange Commission or the New Jersey Bureau of Securities are not confidential and are not declared confidential by this regulation.

RESPONSE: The Department agrees with the comment for the reasons expressed by the commenter. Indeed, the Department did not intended to require that documents otherwise confidential be made public or not documents otherwise public should be made confidential, solely as a result of being filed as part of an application or renewal. Accordingly, the rules have been changed for adoption to reflect this clarification. However, this clarifying change addresses documents other than the supplementary statement and will clarify the Department's intent regarding confidentiality of information filed. Therefore, for purposes of codification, and to avoid any confusion regarding the Department's intent, the Department has determined it appropriate to incorporate this change in a new rule at N.J.A.C. 11:2-33.5.

COMMENT: One commenter stated that the application from set forth in Appendix A to the rules should not require the "retyping" of the financial statements onto the actual form. The commenter believes that the form should only require that the financial statement be annexed to the form. The commenter then suggested that the application form in Appendix A be revised to read: "Annexed hereto are the financial statements for the applicant for the fiscal year immediately preceding this application. Such statements will remain confidential. See N.J.A.C. 11:2-33.7."

RESPONSE: The Department initially notes that these rules essentially codify existing guidelines. The application form set forth in Appendix A reflects the current application form utilized by the Department. The Department has never prohibited an applicant form incorporating by reference and attaching its financial statements to the form rather than actually typing the required information on the form. Since the rules as drafted do not prohibit an applicant form incorporating by reference its financial statements rather than typing them on the actual form, the Department does not believe that any change to the rules is required.

COMMENT: One commenter requested that the Department present approximate costs for the following items required by these rules: (1) the cost of audited financial statements; (2) the cost of excess insurance; (3) the cost of the surety bond; and (4) the cost of a risk assessment report. The commenter further stated that the costs of audited financial statements may be $20,000 or more. The commenter believes that if the applicant has not obtained such statements in the past, obtaining them now would require extensive rechecking of prior fiscal years which would impose great economic burdens.

RESPONSE: The Department initially notes that the rules essentially codify current Department guidelines with respect to application for approval to self-insure workers' compensation insurance. For the past 20 years, the Department has required an applicant to submit audited financial statements, provide evidence of excess insurance, and provide a surety bond in a form and amount acceptable to the Commissioner. The Department, therefore, does not believe that the rules impose any new burdens on applicants. Moreover, the Department notes that all publicly held companies are required to have audited financial statements and that privately held companies customarily have audited financial statements. The Department however is unable to quantify the exact cost of audited financial statements for any individual applicant as such costs would vary based upon a number of factors (for example, the size of the company, the number of employees, the accuracy of its financial records, etc.). Similarly, the Department is unable to quantify the actual cost of excess insurance or of a surety bond for an individual applicant as such items are subject to open competition and would vary based upon the amount of risk actually retained by the employer. With respect to the cost of the risk assessment report, as previously noted, the Department projects the initial cost to be $1,500.

COMMENT: One commenter stated that it is unnecessary to require a surety bond and excess insurance for a self-insurer with a high net worth. The commenter recommended that the rules be revised to exempt an applicant or certificate holder from the surety bond requirement and excess insurance requirement if the company has a net worth, exclusive of good will, in excess of $5 million.

RESPONSE: The Department disagrees. The Department believes that it is reasonable and appropriate to require an applicant or certificate holder to provide a surety bond in an amount determined by the Commissioner and excess insurance in a form and amount acceptable to the Commissioner. This will ensure that adequate funds will be available to pay the employer's New Jersey claimants should it be unable to satisfy its obligations. A large current net worth is not necessarily a guarantee against future financial difficulty. The Department therefore believes that it is reasonable and appropriate to require a surety bond and excess insurance of any applicant or certificate holder to provide adequate protection for New Jersey claimants.

COMMENT: One commenter stated that the penal sum of $500,000 for any surety bond is insufficient. The commenter stated that under the workers' compensation law, significant benefits (that is, medical, lost

wage and permanent disability) are provided to employees. The commenter stated that with increasing medical costs, one major injury could create medical costs in the millions of dollars. The commenter stated that the workers of this State must be adequately protected and it would be unfair to permit companies to do business in this State and not fully protect their workers. The commenter therefore suggested that the penal sum of any surety bond be set at a minimum of $5 million and/or a requirement that the company obtain excess insurance with a licensed insurer. The commenter stated that this is of particular concern in that no guaranty fund currently exists for self-insured employers.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The rules provide general standards for the approval of an employer to self-insure its workers' compensation liability. The filing requirements and general standards set forth in the rules are designed to enable the Department to determine whether an employer is or will continue to be able to satisfy its obligations to pay its workers' compensation liability. As one of the requirements, the rules require that an applicant submit a surety bond in a form and amount determined by the Commissioner. The penal sum of $500,000 is only a minimum as set forth in N.J.A.C. 11:2-33.3(f). In addition, N.J.A.C. 11:2-33.4(c) authorizes the Commissioner to require that a current certificate holder upon renewal submit a surety bond or increase the penal sum of an existing surety bond as the Commissioner deems necessary to ensure that the certificate holder satisfies the requirements for the issuance of a Certificate set forth under N.J.S.A. 34:15-77. Accordingly, the Commissioner would not be precluded from requiring a surety bond with a penal sum of $5 million. However, a $5 million bond may not be necessary in all cases. The Department thus believes it appropriate to provide the Commissioner with discretion to determine the appropriate amount of the bond on a case by case basis.

COMMENT: One commenter generally objected to these rules as an erosion of the workers' compensation mechanism. The commenter believes that these rules will result in the adverse selection by those risks who insure through the traditional workers' compensation market. The commenter stated that in recent years many employers have utilized self-insured funds, pooling mechanisms, or both, to provide workers' compensation insurance. Due to unequal treatment of these mechanisms, the traditional workers' compensation market has seen a decrease in its premium base, thereby increasing costs to those who remain with the traditional market. The commenter further stated that self-insured plans avoid the tax and assessment burdens on traditional insurance carriers, and thus places traditional insurers at a competitive disadvantage. The commenter concluded that unless these rules are "more carefully constructed," they will further contribute to the erosion of the workers' compensation market in this State.

RESPONSE: N.J.S.A. 34:15-77 permits an employer desiring to carry its own liability insurance to make an application to the Commissioner to be exempted from insuring its workers' compensation liability. The law further provides the Commissioner shall exempt, in whole or in part, the employer from insuring its workers' compensation liability if satisfied of the applicant's financial ability and the permanence of his business. This general statutory provision has been in effect since 1917. As previously noted, these rules essentially codify existing Department guidelines governing the approval of applications by employers seeking to self-insure their workers' compensation liability insurance and revise those current guidelines to address the Department's current concerns. It is unclear exactly what action the commenter suggests that the Department take regarding workers' compensation self-insurance. While the commenter suggests that the rules be "more carefully constructed," it failed to suggest any alternative to address its concerns. The Department believes that the procedures and requirements are reasonable, appropriate, and will help ensure that an applicant or certificate holder will have the ability to pay claims arising out of its workers' compensation liability.

Summary of Agency-Initiated Changes

1. N.J.A.C. 11:2-33.3(a)3 is revised to provide that the description of the applicant's operations should relate solely to its operations in New Jersey, rather than in all jurisdictions in which it operates. This change appropriately limits both the information required to be filed by the applicant and the scope of review by the Department.

2. N.J.A.C. 11:2-33.3(b)2 is revised to clarify that the applicant must include as part of evidence that excess insurance will be obtained in an amount acceptable to the Commissioner, the amount of risk the applicant intends to retain itself. This information is necessary for the Commissioner to determine whether the amount of reinsurance is sufficient. This does not impose any additional burden on applicants in that a corporation applying for approval to self-insure its workers' compensation liability must have previously determined the amount of liability it intends to self-insure. Accordingly, this clarifying change does not require the development of additional data.

3. N.J.A.C. 11:2-33.3(c)1 is revised to provide that the indemnity agreement, as well as the certification of the resolution of the board of directors, shall be in the format set forth in the appendices to rules, or in such other form which is acceptable to the Commissioner. This change appropriately permits an applicant to utilize its own form indemnity agreement other than that set forth in Exhibit B to the rules, provided such form is acceptable to the Commissioner.

4. Technical changes are made to N.J.A.C. 11:1-32.4 and 11:2-33.2 (Applicant), 33.3(a)1, 33.3(b)3, 33.3(c), 33.3(h) and 33.4(a)4, and Exhibit C to correct printing errors, ensure consistency with other provisions of the rules, and as a matter of form.

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

11:1-32.4 Fees; general

(a) (No change.)

(b) The following fees shall be paid for services provided by the Commissioner in addition to those set forth in (a) above as follows:

1.-9. (No change.)

10. Filing each annual statement of a dental service corporation—$100.00;

11. Filing an application for a certificate of authority to transact business as a dental service corporation—$25.00; *[and]*

12. Processing an application for the issuance of a Certificate of Registration pursuant to N.J.A.C. 11:3-3—$1,000; processing an application of renewal of Certificate of Registration—$250.00*[.]*; **and***

*[12.]***13.*** Processing an application for issuance or renewal of a Certificate of Order Granting Exemption from Insuring Liability for Compensation pursuant to N.J.A.C. 11:2-33—$1,000.

SUBCHAPTER 33. WORKERS' COMPENSATION SELF-INSURANCE

11:2-33.1 Purpose and scope

(a) This subchapter sets forth the filing requirements for an employer seeking to self-insure its workers' compensation liability pursuant to N.J.S.A. 34:15-77.

(b) This subchapter applies to all employers seeking to self-insure workers' compensation liability in this State.

11:2-33.2 Definitions

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

"Applicant*[s]*" means an employer applying for an exemption from insuring its compensation liability.

"Certificate of Order Granting Exemption from Insuring Liability for Compensation" or "certificate" means the written order of the Commissioner that exempts the applicant from insuring its workers' compensation liability pursuant to N.J.S.A. 34:15-77.

"Certificate holder" means an employer who currently possesses a valid certificate.

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

"Compensation liability" means loss or damage from liability as established by N.J.S.A. 34:15-1 et seq.

"Employer" is as defined at N.J.S.A. 34:15-36.

11:2-33.3 Exemption from insuring compensation liability; filing requirements

(a) Any employer which applies for an exemption from insuring all or part of its compensation liability shall submit the following to the Commissioner:

1. A copy of its most recent annual financial *[report]* ***statement*** certified *[to be correct]* by an independent certified public accountant ***to present fairly, in accordance with generally accepted***

accounting principles, and statutory accounting principles where applicable, the financial condition of the applicant*;

2. A copy of its Form 10K filing;

3. A brief description of the following, inclusive of all operations in *[all jurisdictions]* ***New Jersey***, for every separate applicant seeking an exemption:

i. The nature and location of the applicant's business operations;

ii. The applicant's number of employees; and

iii. The estimated average annual payroll; and

4. For corporate applicants domiciled in a state other than this State, a copy of the applicant's registration with the New Jersey Secretary of State.

(b) Upon the Commissioner's review and acceptance of the information submitted pursuant to (a) above, the applicant shall submit the following information to the Commissioner:

1. A completed application form in the format of Exhibit A in the Appendix incorporated herein by reference;

2. Evidence that excess insurance will be obtained in a form and amount acceptable to the Commissioner ***including the amount of liability that the applicant intends to retain***;

3. A loss history on open and closed claims for the applicant's workers' compensation and *[employee]* ***employers'*** liability for the three years immediately preceding the date of the application; and

4. The application filing fee as set forth in N.J.A.C. 11:1-32.4(b)12.

(c) If the applicant is a corporation, the applicant may request that the Commissioner include the name of any subsidiary corporation under the control of that corporation in the certificate conditioned upon the applicant's compliance with the requirements of (a) ***and (b)*** above for each subsidiary corporation.

1. The Commissioner shall not include the name of any subsidiary in the certificate unless the ultimate parent corporation guarantees that it will discharge the subsidiary's liability as evidenced by filing an indemnity agreement in the format of Exhibit B in the Appendix incorporated herein by reference***, or in such other form which is acceptable to the Commissioner***. The applicant shall also file a certification of the resolution of the board of directors, in the format of Exhibit C in the Appendix incorporated herein by reference, or in such other form which is acceptable to the Commissioner.

2. If the name of the subsidiary is included in the certificate of the ultimate parent corporation and ownership of the ultimate parent or subsidiary corporation changes, the ultimate parent or subsidiary shall reapply for the certificate within 30 days of the ownership change. The Commissioner may revoke the existing certificate if the ultimate parent or subsidiary fails to reapply for the certificate as set forth above.

(d) An applicant with a substantial number of subsidiaries in New Jersey may request permission to file a consolidated application on behalf of itself and its subsidiaries which shall be in a form acceptable to the Commissioner. The applicant shall demonstrate that the relationship between the parent company and the subsidiaries is clearly evident to covered employees.

1. Upon granting any such request, the Commissioner shall require such information as he or she deems necessary to ensure that the applicant and its subsidiary corporations will satisfy the requirements for the issuance of a certificate pursuant to N.J.S.A. 34:15-77 and this subchapter, including, but not limited to, a listing of all subsidiary corporations to be included in the certificate(s).

2. If the application is approved pursuant to this subsection, the certificate holder shall notify the Commissioner of any additions or deletions to the list of subsidiaries covered under the certificate(s) within 15 days of such change. Coverage for a subsidiary under the parent corporation's certificate(s) shall not terminate until notice has been filed with the Commissioner.

3. The Commissioner may subsequently require an applicant or certificate holder permitted to file consolidated information pursuant to this subsection to file information for each subsidiary corporation based upon any changes in the relationship between the parent and its subsidiaries occurring after permission was granted.*

*[(d)]****(e)**** If the applicant is a subsidiary, and the subsidiary's ultimate parent does not apply for a certificate, the subsidiary shall obtain a guarantee from the ultimate parent that it will discharge the subsidiary's liability as evidenced by the filing of an indemnity agreement and certification of the resolution of the board of directors as set forth in (c) above.

*[(e)]****(f)**** In addition to the filing fee set forth in (b)4 above, the applicant shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the applicant from a rating agency as determined by the Commissioner.

*[(f)]****(g)**** If an application is approved, the applicant shall submit a surety bond in a form and amount determined by the Commissioner, with a minimum penal sum of $500,000 and an executed contract of excess insurance in an amount acceptable to the Commissioner. Upon receipt of the required surety bond and executed contract of excess insurance, the Commissioner shall issue a "Certificate of Order Granting Exemption from Insuring Liability for Compensation" to the applicant.

*[(g)]****(h)**** All certificates shall be valid from the date of issuance until June 30 immediately following and may be renewed thereafter, pursuant to N.J.A.C. 11:2-33.4, for a one-year period beginning July 1 and ending June 30 the following year.

*[(h)]****(i)**** All information or notifications required by this subchapter or other information reasonably deemed necessary by the Commissioner or otherwise required by law shall be sent to:

New Jersey Department of Insurance
Division of Financial Examinations *[and Liquidations]*
Attention: Workers' Compensation Self-Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625

11:2-33.4 Renewals

(a) Any certificate holder which applies for renewal shall submit the following so that it is received by the Commissioner not later than 60 days prior to the expiration of its current certificate:

1. A completed "Statement by Employer Exempted From Insuring Liability For Compensation" as set forth in Exhibit D in the Appendix incorporated herein by reference;

2. A supplementary statement of outstanding death or disability claims as set forth in Exhibit E in the Appendix incorporated herein by reference for the calendar year immediately preceding the expiration date of the certificate;

i. The certificate holder shall provide the name, address and telephone number of the person who actually completed the supplementary statement, and shall provide the location of the claim records utilized in the preparation of the statement.

*[ii. The certificate holder shall include, as an addendum to the supplementary statement, a statement of opinion by a qualified actuary attesting to the adequacy of reserves for outstanding death or disability claims that meets the requirements of N.J.A.C. 11:1-21.

iii. The supplementary statement shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right to Know" Law, N.J.S.A. 47:1A-1 et seq.;]*

3. A copy of the certificate of renewal of excess insurance;

4. A financial *[report]* ***statement*** for the fiscal year immediately preceding the expiration date of the certificate which is certified *[to be correct]* by an independent certified public accountant ***to present fairly, in accordance with generally accepted accounting principles, and statutory accounting principles, where applicable, the financial condition of the certificate holder***;

*****5. A certification that the certificate holder recognizes that it may be subject to examination by the Commissioner as required pursuant to (e) below;****

*[5.]*****6.**** The renewal fee as set forth in N.J.A.C. 11:1-32.4(b)12; and

*[6.]*****7.**** Any other information that is materially different from the information provided in the original application or from the information provided in the last renewal period.

(b) In addition to the renewal fee set forth in (a)5 above, ***upon the initial renewal of its certificate*** the certificate holder shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk

assessment report on the certificate holder from a rating agency as determined by the Commissioner.

***1. The requirement in (b) above shall not apply to any certificate holder that was required to submit a risk assessment report as part of the initial application pursuant to N.J.A.C. 11:2-33.3(e).**

2. After the initial submission of the risk assessment report pursuant to N.J.A.C. 11:2-33.3(e) or 33.4(b), the Department may obtain a risk assessment report on the certificate holder and assess the certificate holder the costs of obtaining such report as set forth herein if the Commissioner determines that the certificate holder's financial condition may have deteriorated, or an event occurs which is reasonably likely to cause the certificate holder's financial condition to deteriorate as provided at (e) below.*

(c) After the submission of the application for renewal, the Commissioner may require a surety bond, or an increase in the penal sum of an existing surety bond, in an amount determined by the Commissioner if he or she deems it necessary to ensure that the certificate holder satisfies the requirements for the issuance of a certificate set forth in N.J.S.A. 34:15-77 and this subchapter.

(d) Upon approval of the application for renewal, the Commissioner shall issue a new certificate.

***(e) If the Commissioner determines that the certificate holder's financial condition may have deteriorated, or an event occurs which is reasonably likely to cause the certificate holder's financial condition to deteriorate, he or she may conduct such further examination of the certificate holder as he or she deems necessary to ensure that the certificate holder continues to satisfy the requirements for the issuance of a certificate set forth in N.J.S.A. 34:15-77 and this subchapter.**

1. In determining whether to conduct such an examination pursuant to this section, the Commissioner shall consider the following factors, without limitation:

i. A major loss suffered by the certificate holder over the previous year or a trend of losses over several years;

ii. A significant decrease in the certificate holder's bond rating over the previous year or a trend of decreases over the past several years;

iii. A significant increase in claims payments by the certificate holder to employees; or

iv. Major environmental litigation or asbestosis litigation to which the certificate holder has or may become subject.

2. The examination may consist of an examination at the certificate holder's offices conducted by the Commissioner's designee; a review of such additional information as the Commissioner may request, including, but not limited to, a risk assessment report as set forth in (b) above, and a statement of opinion by a qualified actuary attesting to the adequacy of reserves for outstanding death or disability claims that meets the requirements of N.J.A.C. 11:1-21; or both.

3. The costs of any examinations shall be borne by the certificate holder.

11:2-33.5 Confidentiality

The financial reports submitted pursuant to N.J.A.C. 11:2-33.3(a)1 and 33.4(a)4, and the supplementary statement submitted pursuant to N.J.A.C. 11:2-33.4(a)2, shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq. However, financial reports or statements which have been filed with the Securities and Exchange Commission or the New Jersey Bureau of Securities shall not be confidential pursuant to this section.*

11:2-*[33.5]****33.6*** Cancellation of exemption

(a) A certificate holder may cancel its exemption from insuring compensation liability by notifying the Commissioner in writing by certified letter return receipt requested not later than 30 days prior to date such cancellation takes effect.

(b) Notwithstanding the cancellation of the exemption, the employer shall continue to file with the Commissioner a supplementary statement of outstanding death or disability claims as set forth in Exhibit E not later than June 1 of each year until such time as all open claims are resolved to final payment.

(c) If no surety bond is in effect at the time of the notification of cancellation, the Commissioner may require as a condition of cancellation the certificate holder to provide a surety bond, deposit or other security to ensure the discharge of its obligations under N.J.S.A. 34:15-1 et seq.

11:2-*[33.6]****33.7*** Failure to comply with subchapter; denial of exemption

Failure to submit the information required by this subchapter completely and accurately shall constitute grounds for and may result in the denial or refusal to renew an exemption from insuring workers' compensation liability.

11:2-*[33.7]****33.8*** Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

APPENDIX
EXHIBIT A
(290)

Exemption No. .....

NOTE:—All Information Given in this Application is Confidential.

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE

EMPLOYER'S APPLICATION FOR THE PRIVILEGE OF PAYING COMPENSATION WITHOUT INSURANCE

(As provided by Title 34, Chapter 15, Article 77, of the "Revised Statutes")

To the Commissoner of Insurance of New Jersey:

The undersigned, an employer, subject to the provisions of Title 34, Chapter 15, of the "Revised Statutes" of New Jersey, hereby applies for the privilege of being exempt from insuring the payment of compensation, and submits the following facts under oath to the Commissioner of Insurance to enable him to determine if sufficient financial ability exists to render certain the payment of such compensation.

1. Name of applicant .....

2. P. O. address ..... (Number) (Street) (City or Town) (County) (State)

3. The applicant is ..... (State whether individual, co-partnership, limited partnership, corporation, receiver or trustee)

4. If a partnership: Date of formation of partnership ..... Date of commencement of business.....

Name of each partner	*Address*	*Amount of capital contributed*	*Individual's worth outside of interest in this business*
.....	.....	$.....	$.....

5. If a corporation: Date of incorporation.....Date of commencement of business .....

Incorporated under the laws of the State of .....Rates of dividends paid during each of the last five years? .....

List below the names and addresses of officers and directors and the par value of the stock owned by each.

Title	*Name*	*Address*	*Stock owned*
President			
Vice-Presdent			
Secretary			
Treasurer			
Director			
Director			
Director			
Director			
Director			
Director			
Director			
Director			

Is the employer a subsidiary? ..... If so, give name and address of parent company?

.....

6. Safety, sanitation and welfare conditions:

Is your plant inspected otherwise than by State authority? .....

If so, by whom? .....

Have you a committee of safety whose duty it is to recommend safety devices and to secure compliance with statutes or general orders of the Department of Labor as to safety and sanitation? .....

Do you maintain a hospital in connection with your works? ..... If so, state description of its equipment and service .....

.....

7. Do you maintain any reinsurance against losses?..... If so, furnish copy of policy.

8. Have you set aside any special funds in trust specifically designated for the discharge of outstanding claims of long duration? ..... If any, give name of beneficiary, amount and place of deposit.

.....

9. Give complete description of the organization, personnel and other special arrangements or facilities for performing the duties of a self-insurer .....

.....

.....

.....

10. FINANCIAL STATEMENT, AS OF THE LAST CLOSING DATE ....., 19.....

Assets	*Amount*	*Liabilities*	*Amount*
Cash on hand	$	Open accounts owing (not due)	$
Cash in ..... Bank		Open accounts owing (past due)	
Cash in ..... Bank		Notes payable	
Cash in ..... Bank		Owing to ..... Bank	
Stocks and Bonds owned (Schedule B)		Owing to other banks, bankers or brokers	
Merchandise in stock, at cost		Owing to other persons, relatives or friends	
(Insurance on same $.....)		Deposits and other trust funds	
Work in process or raw material in warehouse at cost		Goods held on consignment	
(Insurance on same $.....)		Liens on merchandise	
Bills receivable, Less than 12 mos. due		Chattel mortgages on	
Bills receivable, Over 12 mos. due		Bonded indebtedness	
Accounts, receivable, GOOD		Mortgages or deeds of trust on real estate (see Schedule C)	
Secured loans owned (Schedule A)		Unpaid workmen's compensation claims	
Machinery & fixtures (Cost $.....)		Other liabilities including reserves (specify):	
Animals & vehicles (Cost $.....)			
Real estate owned (Schedule C)			
If the employer is a partnership or a corporation, state the amount, if any, of bills and accounts owing from partners, officers, stockholders, directors or employees. (NOTE: The amount if any, should also be included among the accounts and bills receivable listed above.)			
..... $			
..... $			
..... $			
..... $			
Other assets (specify):		CONTINGENT LIABILITIES (Do not carry amounts out into column)	
		Upon bills receivable, not included in above statement, rediscounted ..... $	
		Accommodation paper or endorsements ..... $	
		Exchanged paper ..... $	
		Guarantees ..... $	
		Bonds ..... $	
		Capital stock outstanding	
	$	Surplus	
Total		Total	$

Are the above assets pledged as collateral? .....
If yes, explain .....

Are any of the above liabilities secured by collateral? .....
If yes, explain .....

Is foregoing statement based on actual inventory? ..... If so, date .....
Have the books been audited by a public accountant? ..... If so, when and by whom? .....

11. PROFIT AND LOSS STATEMENT AS OF THE LAST CLOSING DATE ....., 19.....

Losses	*Amount*	*Profits*	*Amount*
Expenses of operation	$	Surplus beginning of period	$
Taxes, rentals and interest paid		From operations	
Bad debts charged off		interest and discounts	
Depreciation charged off		investments	
Repairs or betterment charges		bad debts previously charged off	
Dividends paid or amounts otherwise withdrawn		All income other than from usual operations	
All other amounts withdrawn			
Surplus end of period			
Total	$	Total	$

What is the amount of net profits from operations during period? $ .....

12. Schedules referred to in above Financial Statement.

SCHEDULE A.—SECURED LOANS OWNED.

Description of Security	*Name of Maker*	*Address*	*Amount of Loan*
		Totals	$

SCHEDULE B.—STOCKS AND BONDS OWNED.

Description of Bonds or Stocks—(Give rate of interest and year of maturity of bonds, and number of shares of stock.)	*Par Value*	*Book Value*	*Market Value*
	$	$	$
Totals	$	$	$

SCHEDULE C.—REAL ESTATE OWNED.

Description and Location of Property	*Amount at Which Carried on Books*	*Amount of Liens on Property, if any*	*Estimated Actual Value of property*	*Fire Insurance Carried on property*
	$	$	$	$
Totals	$	$	$	$

13. Statement of Locations of Shops and other Workplaces, Number of Employees, Payrolls and Description of Operations in New Jersey.

This report covers the latest fiscal period of the Employer, extending from ..... to .....

Location of Factory, Office or other work place by town, city or other designation	*Estimated Average Number of Employees at Each Location*	*Division of Operations* (Payroll and number of employees are to be given on separate lines for each operation at each location.)	*Actual Payroll Expenditure for past Year*	*Rate (Do not fill in)*	*Premium (do not fill in)*
		(a) Clerical office employees and draftsmen engaged exclusively in office duties. (b) Outside salesmen, collectors and messengers. (c) Drivers and helpers. (d) Chauffeurs and helpers. (e) General operations at plant of employer or elsewhere within the State of New Jersey. Note: Classify each separate operation as closely as possible in accordance with insurance rate manual in force.			

14. Total estimated average number of employees ....., and total payroll expenditure in the past year $ ..... for *all* operations wherever conducted.

15. The applicant agrees to discharge faithfully and promptly all payments and obligations which are now due or shall become due under the provisions of Title 34, Chapter 15, of the "Revised Statutes" of New Jersey; to furnish to the Commissioner of Insurance such further information as is from time to time requested as a condition to the privilege of going without insurance; and to advise the said Commissioner of Insurance immediately of any accident resulting fatally to two or more employees.

.....
(Signature of Applicant Employer)

By .....
(Name) (Title)

Dated at ....., ..., 19.....

AFFIDAVIT

(The person subscribing to the below affidavit should be the employer himself; or if the employer be a partnership, one of the partners; or if employer be a corporation, its president, vice-president, secretary or treasurer.)

STATE OF NEW JERSEY }
} ss.
County of ..... }

..... first being duly sworn on oath deposes and says that he is acquainted with the affairs of the above-mentioned applicant employer, to which representations and statements set forth in the foregoing application relate; that he has read said application, knows the contents thereof and that said representations and statements therein contained are true to the best of his knowledge and belief.

Subscribed and sworn to before me at
..... N. J.
this ..... day of
....., A. D. 19.....

.....

.....
(Official Title)

EXHIBIT B
INDEMNITY AGREEMENT

This agreement is made on _____, 19___, in the City of _____, County of _____, State of _____,

The parties to the agreement are _____, of _____, City of _____, County of _____ State of _____, hereinafter called "indemnitor," and _____, of _____, City of _____, County of _____ State of _____, hereinafter called "indemnitee."

Since indemnitee is a subsidiary of indemnitor and is an employer subject to the provisions of N.J.S.A. 34:15-1 et seq. and, as such, has applied to the Commissioner of Insurance of New Jersey for exemption from insuring payment of workers' compensation liability in conformity with the provisions of said statutes and an assumption by indemnitor of the self-insurance obligations of indemnitee is essential to secure payment thereof pursuant to the provisions of N.J.A.C. 11:2-33, in consideration of the grant of exemption from insuring liability by the Commissioner of Insurance of New Jersey to indemnitee,

It is hereby agreed:

In the event (indemnitee) shall not pay or cause to be paid directly to claimants the benefits due or that may become due under N.J.S.A. 34:15-1 et seq., then (indemnitor) covenants and agrees that it will pay to all such claimants the benefits due, with the expressed knowledge and understanding that the execution and acceptance of this agreement is for the benefit of unknown and unnamed claimants of (indemnitee) and (indemnitor) does hereby recognize this agreement as a direct financial guarantee to said claimants.

PROVIDED HOWEVER, (indemnitor) shall have a right to cancel and terminate this agreement at any time upon giving the New Jersey Insurance Department at least thirty (30) days written notice of its desire to do so; provided such cancellation shall not affect its liability as to any benefits payable for claims occurring prior to the date of cancellation specified in such notice.

This agreement shall be effective as of _____, 19___. Signed and sealed this _____ day of _____, 19___.

ON BEHALF OF INDEMNITOR

BY: _____
(signature and title)

ATTEST: _____
(signature and title)

ON BEHALF OF INDEMNITEE

BY: _____
(signature and title)

ATTEST: _____
(signature and title)

EXHIBIT C
CERTIFICATION OF RESOLUTION OF THE
BOARD OF DIRECTORS OF _____

Whereas the _____ and _____ [titles of corporate officers] of this corporation propose to execute a general indemnity agreement in favor of _____, a subsidiary, by which this corporation agrees and undertakes to guarantee the payment of any sum of money for compensation, including disability benefits, which may be or become legally due from said subsidiary under the provisions of *[the]* N.J.S.A. 34:15-1 et seq., and that this resolution will not be amended or abrogated without prior notice to the Commissioner of Insurance, State of New Jersey; and such agreement having been fully considered and approved by the directors present at this meeting;

Now, therefore, be it resolved that the _____ and _____ [titles of officers] are hereby expressly authorized to execute the general indemnity agreement in favor of _____ [subsidiary] by unanimous vote of the directors of this corporation.

I hereby certify that I am the _____ [secretary] of _____ [corporation], and that the above resolution is a true and accurate copy of a resolution unanimously adopted by the board of directors at a meeting duly called and held on _____, 19___, in the office of the corporation, at which a quorum of the directors was present.

Dated _____, 19___

_____
Signature and Title

[Corporate seal]

EXHIBIT D

(291) Exemption No._____

NOTE:—All Information Given in this Statement is Confidential

STATE OF NEW JERSEY

DEPARTMENT OF INSURANCE

STATEMENT BY EMPLOYER EXEMPTED FROM INSURING LIABILITY FOR COMPENSATION

To the Commissioner of Insurance of New Jersey:

The undersigned employer, being the holder of a certificate of exemption from insuring liability for compensation, in accordance with Title 34, Chapter 15, Section 77 of the "Revised Statutes," desires to have such certificate continued in force and for that purpose submits the following verified statement:

1. Name of employer_____

2. P. O. address _____
(Number) (Street) (City or Town) (County) (State)

3. The applicant is_____
(State whether individual, co-partnership, limited partnership, corporation, receiver or trustee)

4. If a partnership: Date of formation of partnership_____ Date of commencement of business_____

Name of each partner	Address	Amount of capital contributed	Individual's worth outside of interest in this business
		$	$

5. If a corporation: Date of incorporation_____ Date of commencement of business_____
Incorporated under the laws of the State of _____ Rate of dividend paid during the past year?____
List below the names and addresses of your officers and directors and the par value of the stock owned by each.

Title	Name	Address	Stock owned
President			
Vice-President			
Secretary			
Treasurer			
Director			
Director			
Director			
Director			
Director			
Director			
Director			
Director			

Is the employer a subsidiary?_____ If so, give name and address of parent company?

6. Safety, sanitation and welfare conditions:
Is your plant inspected otherwise than by State authority?_____
If so, by whom?_____
Have you a committee of safety whose duty it is to recommend safety devices and to secure compliance with statutes or general orders of the Department of Labor as to safety and sanitation?_____
Do you maintain a hospital in connection with your works?_____ If so, state description of its equipment and service_____

7. Do you maintain any reinsurance against losses?_____ If so, file copy of policy unless already on file_____

8. Have you set aside any special funds in trust specifically designated for the discharge of outstanding claims of long duration?_____ If any, give name of beneficiary, amount and place of deposit.

9. Give complete description of the organization, personnel and other special arrangements or facilities for performing the duties of a self-insurer_____

10. FINANCIAL STATEMENT, AS OF THE LAST CLOSING DATE ...., 19.....

ASSETS	AMOUNT	LIABILITIES	AMOUNT
Cash on hand	$	Open accounts owing(not due)	$
Cash in ____ Bank		Open accounts owing(past due)	
Cash in ____ Bank		Notes payable	
Cash in ____ Bank		Owing to ____ Bank	
Stocks and Bonds owned(Schedule B)		Owing to other banks, bankers or brokers	
Merchandise in stock, at cost		Owing to other persons, relatives or friends	
(Insurance on same $____)		Deposits and other trust funds	
Work in Process or raw material in warehouse at cost		Goods held on consignment	
(Insurance on same $____)		Liens on merchandise	
Bills receivable, { Less than 12 mos. due		Chattel mortgages on	
Over 12 mos. due		Bonded indebtedness	
Accounts receivable, GOOD		Mortgages or deeds of trust on real estate (see Schedule C)	
Secured loans owned (Schedule A)		Unpaid workmen's compensation claims	
Machinery & fixtures (Cost $____)		Other liabilities including reserves (specify):	
Animals & vehicles (Cost $____)			
Real estate owned (Schedule C)			
If the employer is a partnership or a corporation, state the amount, if any, of bills and accounts owing from partners, officers, stockholders, directors or employees. (NOTE: The amount if any, should also be included among the accounts and bills receivable listed above.)			
____ $____			
____ $____		CONTINGENT LIABILITIES (Do not carry amounts out into column)	
____ $____		Upon bills receivable, not included in above statement, rediscounted	
____ $____		____ $____	
Other assets (specify):		Accommodation paper or endorsements $____	
		Exchanged paper $____	
		Guarantees $____	
		Bonds $____	
		Capital stock outstanding	
		Surplus	
Total	$	Total	$

Are the above assets pledged as collateral?____

If yes, explain____

Are any of the above liabilities secured by collateral?____

If yes, explain____

Is foregoing statement based on actual inventory?____ If so, date____

Have the books been audited by a public accountant?____ If so, when and by whom?____

11. PROFIT AND LOSS STATEMENT AS OF THE LAST CLOSING DATE____, 19____

Losses	Amount	Profits	Amount
Expense of operation	$	Surplus beginning of period	$
Taxes, rentals and interest paid		From operations	
Bad debts charged off		interest and discounts	
Depreciation charged off		investments	
Repair or betterment charges		bad debts previously charged off	
Dividends paid or amounts otherwise withdrawn		All income other than from usual operations:	
All other amounts withdrawn			
Surplus end of period			
Total	$	Total	$

What is the amount of net profits from operations during period? $____

12. Schedules referred to in above Financial Statement.

SCHEDULE A.—SECURED LOANS OWNED.

Description of Security	Name of Maker	Address	Amount of Loan
			$
		Total	$

SCHEDULE B.—STOCKS AND BONDS OWNED.

Description of Bonds and Stocks—(Give rate of interest and year of maturity of bonds, and number of shares of stock.)	Par Value	Book Value	Market Value
	$	$	$
Totals	$	$	$

SCHEDULE C.—REAL ESTATE OWNED.

Description and Location of Property	Amount at Which Carried on Books	Amount of Liens on Property, if any	Estimated Actual Value of Property	Fire Insurance Carried on Property
	$	$	$	$
Totals	$	$	$	$

13. Statement of Locations of Shops and other Work places, Number of Employees, Payrolls and Description of Operations in New Jersey.

This report covers the latest fiscal period of the Employer, extending from _____ to _____

Location of Factory, Office or other work place by town, city or other designation	Estimated Average Number of Employees at Each Location	Division of Operations (Payroll and number of employees are to be given on separate lines for each operation at each location.)	Actual Payroll Expenditure for past year	Rate (Do not fill in)	Premium (Do not fill in)
		(a) Clerical office employees and draftsmen engaged exclusively in office duties..			
		(b) Outside salesmen, collectors and messengers.			
		(c) Drivers and helpers.			
		(d) Chauffeurs and helpers.			
		(e) General operations at plant of employer or elsewhere within the State of New Jersey. Note: Classify each separate operation as closely as possible in accordance with insurance rate manual in force.			

14. Total estimated average number of employees _____, and total payroll expenditure in the past year $_____ for *all* operations wherever conducted.

15. **Loss Exhibit**

A. Total amount of compensation (indemnity only) PAID during past year _____ $_____

B. Total amount of medical, hospital and surgical expense for the past year including cost of supplies and equipment for employer's plant hospital (paid $_____) total incurred_____ $_____

C. Outstanding Indemnity Reserve (total of reserve as per Col. 10 of supplementary statement) _____ $_____

D. Total incurred loss for past year [A. + B. + C. - C. (Prior Year)] _____ $_____

_____
(Signature of Employer)

By _____
(Name) (Title)

Dated at _____, _____ 19_____

AFFIDAVIT

(The person subscribing to the below affidavit should be the employer himself; or if the employer be a partnership, one of the partners; or if the employer be a corporation its president, vice-president, secretary or treasurer.)

STATE OF NEW JERSEY, }
_____County. } ss.

_____first being duly sworn on oath deposes and says that he is acquainted with the affairs of the above-mentioned employer, to which the foregoing statement and supplementary statement of outstanding disability claims accompanying the same relate, that he has read said statements, knows the contents thereof and that the same are true and completely answer the several questions to the best of his knowledge and belief.

Subscribed and sworn to before me at _____, this _____day of _____, A. D. 19____

_____

_____
(Official Title)

EXHIBIT E

(201 A)

Supplementary Statement by.....(name of employer).....(address).....

Outstanding Death or Disability Claims, as of the last closing date.....19.....

Include all accidents occurring prior to above date which resulted in death or in disability exceeding seven days unless final payment has been made prior to said date in accordance with award or agreement approved by the Workmen's Compensation Bureau, or the right to recovery is barred by limitation of statute.

☞This statement is to be rendered in all cases. If there are no claims of the kind indicated write "none" in the column numbered 2.

Workmen's Compensation Bureau Case No. 1	Name of Injured or Deceased 2	Date of Accident 3	Weekly Wages at Time of Accident 4	Weekly Compensation 5	Nature of Injury 6	Number of Dependents and Ages of each (Fatal Cases Only) 7	Year of Birth (when Injury is Permanent) 8	Probable Future Duration in Weeks 9	Estimated Total Future Payments 10

Additional supply of this sheet, if required, will be furnished upon request.

(a)

DIVISION OF PROPERTY AND CASUALTY

Automobile Insurance: Rate Filing Requirements Filings Reflecting Paid, Apportioned MTF Expenses and Losses

Adopted New Rule: N.J.A.C. 11:3-16.12
Adopted Amendment: N.J.A.C. 11:3-16.2

Proposed: December 21, 1992 at 24 N.J.R. 4486(a) (see also 25 N.J.R. 56(a)).

Adopted: March 5, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: March 5, 1993 as R.1993 d.148, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-40.3).

Authority: N.J.S.A. 17:1C-6(e); 17:29A-1 et seq.; 17:29A-36.2; 17:29A-36.3; and 17:33B-1 et seq.

Effective Date: April 5, 1993.

Expiration Date: January 4, 1996.

Summary of the Hearing Officer's Report and Recommendations:

Pursuant to N.J.S.A. 52:14B-4, and the request of a Legislative Committee, the Department conducted a public hearing on the proposed rule on January 29, 1993. Notice of the hearing was published in the New Jersey Register on January 4, 1993 at 25 N.J.R. 56(a). A verbatim transcript of the hearing was taken. Both the transcript and the hearing officer's report dated March 1, 1993 are included in the rulemaking record.

Copies of the Hearing Officer's Report are available from the Department upon payment of $10.00 (pursuant to N.J.S.A. 47:1A-2) and request directed to:

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

The Hearing Officer's Report (Report) discussed the comments of the eight individuals that testified at the hearing and many of the substantive issues raised by the written comments. The Report first set forth the factual background of the rule and described its provisions and effect based upon the statements of the Department spokesperson and the Summary provided in the published notice of proposal. It noted that three basic issues were presented as follows: (1) whether the proposal of the rule was necessary at all based on a variety of reasons; (2) various technical concerns related to the filings authorized by the proposed rule; and (3) clarification of questions concerning the application of the rule.

With regard to whether the rule is necessary, the Report noted that those commenters who expressed opposition did so for widely varying reasons. With regard to those commenters who stated that the MTF deficit should not be assessed to insurers, the Report found that the origin of the MTF deficit and the method for the allocation of the deficit are outside the scope of the rule. With regard to those commenters who stated that insurers should not be permitted to raise rates to account for deficit payments under any circumstances, the Report found that the rule is reasonable in recognizing insurers' right to make an adequate rate of return while minimizing any charges to policyholders. With regard to those commenters who suggested that insurers should be able to pass through deficit payments in their entirety without making a rate filing, the Report found that the rule is reasonable since it conforms with long-standing, existing ratemaking methods, established pursuant to applicable statutes.

Regarding the substantive issues raised by the filing requirements or process, and the requests for clarification of certain rule provisions, the Report found that, upon adoption of the rule, the Department should clarify: the application of charges on policies insured by the assigned risk plan; whether the unearned portion of an approved charge is subject to refund upon policy cancellation; what constitutes a payment to the MTF; whether alternate ratemaking methodologies are permitted; and the application of the rule to member reinsurers of the New Jersey Voluntary Private Passenger Automobile Insurance Pool. These questions are answered below in the Summary of Public Comments and Agency Responses and, as necessary, in clarifying amendments upon adoption to the rule.

The Report concluded that the proposed rule is a reasonable means of allowing insurers to make rate filings to seek to raise rates to account for MTF deficit, and recommended that the rule be adopted with certain clarifications as set forth above.

Summary of Public Comments and Agency Responses:

In addition to the testimony at the public hearing, 646 timely written comments were received from insurers (New Jersey Manufacturers, Prudential, Selective, State Farm, Liberty Mutual, Chubb, Aetna and CNA), an industry trade association (American Association of Insurers), a producer trade association (Professional Insurance Agents of New Jersey), a consumer organization (National Motorist Association), and other members of the public as follows:

Arlene Jacobson; Hilda Forber; Theodore J. Spara; Charles Nuzio; William Mostica; Joseph Naddeo; Harriet Frances; Nicholas Fiore; Mr. & Mrs. William Holub; Mrs. William McEnroe; Kim Carrera; Gerhard Mueller; Raymond Korbobo; Helen Shopp; Assemblyman Lee Solomon; Matthew Evans; Marjorie P. Evans; Nadine Evans; Dr. Roland A. Evans; Richard T. Evans, Sr.; Frank Sesinni; Stanford Bloomer; Barbara Karolski; Jessica Groark; Healther L. McGee; Mary E. Paone.

Frances Karolski; Stanley Karolski; Patricia A. Tomeske; Kathleen Karolski; Mildred Gammaro; Julia Kubat; Mrs. S. Bloomer; Marie E. Byines; Robert Garofolo; Anne Garofolo; Margart Everswick; Mary Halpin; Arsenio Ippolito; Stella Jackson; Mrs. U. Cisz; Emily P. McAnale; James Palmer; Mary P. Yehreng; Hilda Kacki, Etta Guerrino; Claire Grazani.

Mary C. Millen; Joseph Murphy; Anna Giordano; Genevieve Floyd; Daniel Andrews; Sarah T. Andrews; Mrs. Anna Torsiello; Elsie Lipari; Ottilie Fucho; Catherine King; Clara Frusteri; Mary McEnroe; Robert Liptai; Mary Yuhas; Olga Del Rosso; Gloria Ricca; Diana DelVecchia; Nettie Gerarf; Catherine Catalano; Sarag Bachmann; Jerry Barbone; Angie Nardone; Sally Farrantano.

Edith Albanese; Sally DeMarzio; Cecille Gallis; Michelina Cestone; Mary Ungemah; Dolores Swanson; Gertrude Kavanaugh; Richard Rice; Marie Kikkert; Katherince Morgan; Vincentina Vitelli; Susan Feeney; Anne Petronace; Constance Roupas; Charles Bott; Beatrice Calcagano; Catherine DeMattia; Leo Kennedy; Hedwig Morrow; Niomas Stirrat; Roger and Jeanette Petrillo; Palma Boruta; Mary Francisco; Anthony Nisivoccia; Joseph Giordano; Ruth Park; Stella Strenckowski; Madelyn Talbot.

Linda Accordino; Paul Deflaviis; Janet Pavlica; Mr. & Mrs. Donald Lucas; Margaret Bailey; Levin Hanigan; Peter Paone; Margaret Papavick; Edward Bader; Stephen Gilbert.

Gary Hugh; Michael Reiter; Marcy Palladino; Theresa DeBenedictis; Charles Rinando; Ann Genova; Patrick Giannettino; Ray Warshaw; Eugene Mascher; Carol Mascher; Dale Harman; Anna Angelakes; Nicholas Krawczuk; Joselyn Maurer; Bettie Fitzpatrick; John McLay; Melinda Scalzo; Clifton Jensen; Doris & Donald Megill; Robin Witkowski; Winifred Matthews; Howard Porter; Patricia Sisson; Menjamin Shuski.

Merle Brown; Alice Blum; A. David Yakam; Susan & Patrick Hartman; Jerome & Dorothy Johnson; Edward W. Keyes; Patricia Ludwig; Anthony Williams; Edward Perdek; Margaret Dougherty; Marcella Glynn; Loretta Perdek; Charles Hayes; Alan & Kathleen Elfner; Clare Ann Keating Guinee; William T. Guinee; Kathy Byrne; Ed Byrne; Jill Lang; Martha Dinch.

Thomas Meehan; Frank McHugh, Bernard Kirk; Edward Mead; Robert Seiller; Vernon & Linda Reid; Margaret Pooler; Joann Litwino; Harold Baynton; Claire Carr; Ralph Weseman, Jr.; Paul Stahl; Walter Pinca; Anton Al Spector; William & Barbara Bloodgood; Gavin Ayanian; Ray W. Mead; Gary Chaffkin.

Mr. & Mrs. John Cesaro; Elaine Strycker; Cristin Klepp; Kevin Klepp; Maura R. Klepp; Mrs. Joan Kahn; Arlebe Mace; Keith Mendalbaum; Betty Mandelle; Tracey Edwards; Clara & Gordon Dunlop; Anna S. Gillespie.

E.M. Gall; Aaron Gerber; James Booth; Gloria Delgase; Raymond R. Ciani; Harry A. Syring; Concetta Clemens; Jacqueline Clemens; Dawn Clemens; John Clemens; George D. Prestwich; Mr. & Mrs. Donald Thoms; Joseph Phransfiled; Francis L. Mayer; Mrs. Frances Cinia; George Schaaf; Michael Calarco; Louis Drummond; Anthony DeConca; Jim & Anne Smith; Philip & Aletta Roets.

George Poloso; Mrs. F. O'Brien; Viola Annpamar; Anthony Palletti; Matilda Sallitto; Luis Cuocho; Josephine Fezorello; Nancy Coalso;

Camille DePinto; Myrna Dietz; Geneva Reillo; August Riello; Maryann McEnroe; Steven Bromowich; Irene Dubiel; Peter Stiliaone; D. Bataleas; Miguel Galindo; Mario Lisbon; Evelyn Galindo.

Alicia Roa; Miriam Gordova; Jose Ovalles; Mario Lisboa, Jr.; Pedro Cordova; Rosemary Assici; Joseph Guff; James Tuffo; Joann Guffo; Susan Chuisano; Joann Costantini; Margaret Schmidt; Jerome Bancer; Joseph Hulat; Ken Crawbuck; Christopher Wey; George Mangino; John Meer; Doris Felese; Andrea Pinckney; Dana Puchouk.

Marjori Pinckney; William Pinckney; Laurie Lio; Karen Crank; Donna Bellido; Arwa Hazin; Christine Zieliniewski; Daniell Comforte; Irene Grovenco; Sharon Comforte; Darlene Columbia; Mae Russo; Susan Evans; Patricia Stons; Vincenzo Montanti; Joe Lio; Tony Lio; Santina Lio.

William Scheerer; Sarah Booth; R. Cambria; Richard Shaller; David T. Kulchinsky; Roy Bollinger; Jay Gleiberman; Michael Pierce; John Kalt; Marilyn Ellner; Pauline Boyd; Diane Majugyh; Ken Kotiska; Rudy Chicalese; Allan Goldberg; Ralph Weber; Laura Caribello; Doug Chirafis; Suzanne Karp; Philip Chirafisi; Ginger A. Grasser; Elaine Lotyserd; Mary Ann Linnehan; Elaine Reilher; June McGrath; Patricia Dengiman.

Edmund Koch; Janet Brunetti; Greg Ratons; James Davidson; John J. Tobin, Jr.; M. Abate; A. Gough; C. Papp; Mary Ann Quirk; L. Lichter; Frances Waverni; Vincent DiLeo; Paul & Regina Hayes; Mary Ann Burke; Fang & Barbara Wong; Sherfey & Virginia Randolph; Gus & Dolores Milak; Robert Wittenburg; Richard Legg; Chloe Brokaw; Larry Berkowitz; Francis Wogan; Richard Varenick; Michael Brown; Donald Buckner; John Gleren; Robert W. Hoebee.

Robert Phillips; Joseph Lapone; Ralph Miller; Jane Flora; Leslie Flora; Dominic Manderano; George Wohbril; Eileen Amendola; George Wohbril, Jr.; Gary Wohbril; Susan Wohlbril; Dawn Wohlbril; Pamela Bruno; Sue Ellen McDermott; Julie Kashian; Alan Kashian; Brenda Callwar; Nicole Rich; Louis Rich; Randy Walsh; Dean Largmann; Nicoletta Vamakidis; James Carter; Tara Rich.

William Herbs; Sherri Lee Merlo; Gabrielle D'Auria; Patrick D'Auria; M. Sami Khadi; Gary & Carol Borysewicz; Evelyn Mauro; Henry Ramos; Carmen Ramos; Stephen Ramos; Ivy & Clinton Klopfeustein; Alan & Joan Hermalee; Arle Dye; Mark Gilden; Francis Loscoe; Stanley Zebrowski; Alan G. Rollins; Henry Fernandez.

Michael L. Jaffe; Monica Bucholtz; Richard & Jean Houston; Mrs. Joselyn Maunez; C.A. Palmiere; Patricia G. Duhig; Patricia Morris; Arlene Treffinger; Connie Barraco; Nancy Goetzhus; William & Kimberly Hope; Ronald & Ellen Obach; Susan K. Mancini; Lory Mancini; Otto Stasglo; Peter Kiczuk; Dennis Wholey.

Sharon Letu; Margaret Reginald; Walter Reinhard; Harold Welch; Fern Citron; Angela Pontrillio; Marilyn Stapko; Kathy Kenney; Karen Sufeg; Nancy Downey; Kathleen Rez; Lynn Jeston; Diane Kroh; Howard Kessler; Marsha Houller; Kelly Hunt; Rushimah Watson; Barbara Carson; Margaret Alfano; Jody Provenzano; Karen Nolin; Ken Fass.

Ronald Kamin; Joann Menahan; Barbara Kearns; Michelle Lorenzen; Paul Jaworski; Edwin Baqfivia; Pat O'Donnell; John Daly; Kristin Morra; Terry Moora; Carolyn Rehmann; Ken White; Sharon Kamin; Susan Marly; Lorraine Barnett; Joseph Knodel; Susan Dunlavy; Lynette Samuel; Sandra Costin; Geri Grzylb; Joyce Ulrich; James Urguhart; Anna & Charles Riusich.

Mr. & Mrs. R. Belcher; Thomas M. West; Frank Attarch; William Chodsho; Arthur Balor; Frank Pape; Robert D'Anna; Richard Brower; Charles Loftland; Thomas Faillaci; F.W. Earll; Barbara Magrino; Evelyn Dull; Sherry Lynn Chogzko; Debra Lynn Chodzko; Karen Ann Chidzko; Carol Strano; John A. Strano; Joseph Strano; Richard Vizenfelder; Cheryl D'Anna.

John D. Dull; Thomas Murphy; Robert & Francis Brien; Norman Mendoza; David Buckley; Charles Brabiak; Dr. & Mrs. Frank Ortolano; Robert Shipa; Bill Fizzell; Michael Distefano; Jerome Rothman; Jean Spataro; Mary Ellen Thornton; David Martin; George D. Prestwich; J.R. Cladhaur; Michael Medici; John Greybill; Robert Graybill; Kristin Graybill; Joyce Seaber; Nicole & Dean Pacich; Marilyn Murray; Judee Shermann; Larry Liebowitz; Buz Swanik.

Harvey & Joan Phillips; Jack R. Karel; Kent K. Smith; Edward Michalski; Walter Camuso; Jack Schneider; Peter Terranova; Ann M. Rowe; Irwin Weinberg; Lois Fawcett; Carl Mennie; Viola R. Suriuda; Chester J. Parker; Arlene Sotirakis; Frank Sole; Mrs. William Paasch; Virgil Johannes; A.P. Gaddis.

Warren Missueschmitt; Earl DeZutti; Alan Meyerberg; Michael Moran; Dorothy Paley; Diane Melillo; Mary Kallaur; Reta Rosenberg; Rolf F. Kamp; Joyce Eganhalf; Paul & Fraces Carpenter; Mary Lewis; Diane Distefano; Anne B. Mann; Pauline Victor; Bryan & Sue Todd; Cleonice Tornberg; Helen Jacobson; James Pitt; Martin Hambrose; Edmund Kappy; D.M. Mahalick.

Alice A. Dorn; Monica Kaszuba; Jane Niebuhr; Patricia Gardner; Mr. & Mrs. Morton Levine; Margaret Fisler; Kathy Heffley; Frances Huckel; Helen Ferschmann; Eileen L. Gallagher; M.D. Haworth; Jerald A. Tice; Mr. & Mrs. Robert Witt; Earl Hyson; Richard Witkowski; Edward Gallagher; John & Karen Federico; Rita Gray; Joseph Paxia; Thomas Swider; Jacqueline Orsita; John Crowley; Richard Guter; Claire Nani; J. McRae Thorlton; David W. James; John Munzer; Robert Nabrzeski; Valerie Battistuta; Gloria Havens; Laurence McGrath; William S. Caldwell; Patricia Osmun; Rose Marie Ross-Hamidi; Melissa Popovitch; Bruce Gray; John Crockenberg; Henry A. Nocella.

Robert Beswick; Mr. & Mrs. Arthur Mudd; Janet Velykis; Laurence & Jacqueline Chaise; Alma Patrillo; Lester D. Simon; Ralph Malfatone; Elizabeth Kostula; John & Joyce Engallena; Beatrice Marcus; Dean Dabrowski; Diane Rankel; Marjorie Schermund; John E. Dabrowski; Mr. & Mrs. T. Malinconico; Mr. & Mrs. John D. Connolly; Mr. & Mrs. Robert Genova; Margaret K. Valentina.

Ralph R. Balestrieri; Marlene Forrest; William E. Petersen; Elizabeth Fitch; Donald Skozko; Arthur Wolcott; John & Grace Burke; Marilyn S. Howell; Stephen W. Banar; Kevin Bender; Wendy Gallagher Bender; Tracy Erickson; A. Chapnick; Sophia Liang; Elizabeth W. Vacca; Laura Hartman.

Nancy Bellasina; Patricia Garbrati; John Calia; Mrs. Dorothy Donechie; N. Deluca; Estelle Freehoff; Terry A. Taylor; Mrs. Leoncia Walz; Donald A. Cioffi; Donald Corbett; Boguslawa Muller; Renee Padavano; Al Bartony; Diane Erosa; John E. Garrison; Paula Oliveria; William Holohan; Thomas Trochek.

James McCook; Harold Bowker; Stephen C. Hills; Kenneth McCarty; Christine Miller; Dawn Sumrall; Robert Guijarro; Richard Nabrzeski; Lawrence Quigley; Michael R. Ruther; Jean Zignorski; Paul & Lesley Caffery; Richard Goldberg; Aleta & Jack Heir; Ralph Rivera; Norman Wllfson.

Robert Frolow; Kathleen McKeever; Elizabeth Nagy; Diana Picerno; Robert Schwartzo; Mary Carter; Anthony Vaccarelli; Barbara & Joseph Tremhloy; E.T. Mauer; Robert LaMaire; Louis Metzier; B. & J. Caffrey; Henry Cresclbene; Frank J. Guerrizio; John Podracky; Robert Koniafel; Cecillia Domidion; Mrs. L. Vernon; Mae B. Bennett; Halyna Iwasieck.

Thomas Fone; Sally Bennett; Joseph Bruncsak; J. Michael Baker; Cheryl Lynn Paulino; Rose Carvalko; Lisa Farley; Gloria Pacheco; Jim Peirce; Kimberly & Michael Bungay; George Sumrall; Carol Casement; Michael Shernicoff; John Hunt; Michelle Walter; Charles R. Bender; Mary E. Bender; Bernadette Fitzpatrick; Margaret Trochek; Jane Pompel.

Lorene & William Greena; Fabio Josjowicz; Thomas Minogue; Michael Levy; Dorothy Duelfer; Alfred Duelfer; Nancy Fiore; Angela Romanelli; Fuery A. Lerro; Betty Jones; George Norton; Maria Sisinni; John Crockenberg; Donna Ahlenyer; Timothy G. Burke; Karen Mascellino; James E. Daly; Marlene Scheini; Susan Gaul; Sam Alfano; Monika Alfano; Evelyn Scalera.

Christine Alfano; Hollis C. Edwards; Nancy Sisinni; George Schaefe; Sheldon Leibowitz; Joseph McCormick; Jim Van Dyke; Patricia de la Fuente; Vernie Van Dyke; Elizabeth Schafer; Lesa Ann Schaefer; Carolyn Duelfer; Marie Tuohy; Constance Gall; Gary Cohen; Helen Cohen.

The public comments and agency responses are set forth below:

COMMENT: Many commenters generally addressed the deficit of the New Jersey Market Transition Facility (MTF) and generally discussed problems in the residual market.

RESPONSE: This rule is limited to how monies paid to the MTF as an insurer's apportioned share of MTF expenses and losses shall be treated if an insurer files a request for a rate increase. To the extent that the comments address the MTF deficit itself (that is, the size of the MTF deficit), the comments are beyond the scope of this proposal. The procedures and requirements set forth in this rule would be applicable to rate filings regardless of the amount of insurer assessments.

COMMENT: Many commenters, specifically the individual public commenters, objected to the rule generally as permitting a surcharge based on payments by insurers for the insurer's share of MTF losses and expenses. These commenters uniformly urged that the rule not be adopted.

RESPONSE: While the Department appreciates the sentiments expressed by these commenters, the Department notes that in the absence of this rule, insurers could apply for rate increases based upon the

additional expense of payments to the MTF pursuant to N.J.A.C. 11:3-16.6 through 16.10. Any such increase granted would be "grossed up" (that is, the application of ratemaking formulae would multiply the expense) for other insurer expenses, including commissions and premium taxes, and any increase would become a permanent part of the insurers approved rates. Both the Federal and State constitutions mandate that insurance companies be given the opportunity to achieve an adequate rate of return. Thus, the Department must provide some avenue for insurers to seek rate relief for the MTF payments. By separately identifying these expenses and providing for a non-recurring special surcharge, this rule prevents the payments to the MTF from being "grossed up" and provides for its elimination when the insurer has recouped the amount permitted. The Department believes that this will more closely achieve the commenters' objectives in minimizing the burden of such charges if, after review of the insurer's rate increase request, sufficient need is demonstrated to warrant an increase.

COMMENT: Several insurance industry commenters suggested that insurers be permitted to simply "pass through" any payments to the MTF as an automatic policy surcharge, similar to the surcharges permitted by N.J.S.A. 17:30A-16 and N.J.A.C. 11:1-6 for assessments to the New Jersey Property-Liability Insurance Guaranty Association (PLIGA). Some commenters stated that the existing excess profits law, N.J.S.A. 17:29A-5.1 et seq., would serve to mitigate any concern that the resultant charges to policyholders would be excessive.

One commenter stated that a direct pass through would represent "a simple and fair procedure to recoup the MTF assessment." That commenter and others expressed concern that the rule requires that insurers submit a prior approval rate filing, which increases insurer expense. These commenters were also concerned that the procedures involved in deciding a prior approval rate filing may result in delay or denial of relief. One commenter suggested that the rule be amended to include an expedited approval process, in that these filings should not be subject to the same "lengthy evaluation process" as other rate requests. Another commenter suggested that the direct recovery could be accomplished either in one year or spread over a three to five year period including interest.

RESPONSE: The Department believes that the commenters' suggested alternative is not consistent with the requirements of current law, which provides both for prior approval of rates and return of excess profits to policyholders. N.J.S.A. 17:29A-14 sets forth the process for altering automobile insurance rating systems. That statute requires that rate changes be subject to the prior approval of the Commissioner. Additionally, N.J.S.A. 17:29A-36.2 requires the Commissioner to provide both the data and information specifications and the standard ratemaking methodology which shall apply to private passenger automobile insurance. Exceptions to that statute are limited to other statutes that address specific rate changes or charges, such as the "flex rate" provisions of N.J.S.A. 17:29A-44 and the PLIGA assessment recoupment provisions at N.J.S.A. 17:30A-16.

With regard to the asserted problems of delay in the disposition of automobile insurance rate cases, the Department notes that the procedures set forth in N.J.A.C. 11:3-18 provide for a prompt disposition within the time frame set by N.J.S.A. 17:29A-14. Failure of an insurer to respond to requests for additional information by the Department within the time set forth at N.J.A.C. 11:3-18.6(d), or by the Public Advocate as provided in N.J.A.C. 11:3-18.6(e)1, often serves to delay the resolution of the filing. Additionally, requests by insurers (or the Public Advocate) for a hearing before the Office of Administrative Law also serve to extend the time for disposition of the filing, as such hearings are conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14-1 et seq. and applicable administrative procedure rules. The Department notes that both commenters who complained that resolution of their recent filings took an extended period of time requested a hearing on those filings.

COMMENT: Two commenters stated that N.J.A.C. 11:3-16.12(a) "does not clearly define what constitutes a payment to the MTF." The commenter suggested that the rule be amended to note that payments on account are considered payment to the MTF, not just payments made in response to a "cash call" by the Commissioner.

RESPONSE: Although the Department believes that the rule clearly states that any amount paid to the MTF as an insurer's proportionate share of MTF losses and expenses may be included in rates in accordance with the provisions of this rule, the Department has added a definition of "amount(s) paid to the MTF" to N.J.A.C. 11:3-16.2 and conformed language at N.J.A.C. 11:3-16.12(a) and (f).

COMMENT: One commenter objected generally to the special rate filing procedure and stated several reasons. First, the commenter asserted that the rule contains an "inherent inconsistency" in that an insurer should not be required to make a rate filing in order to impose a surcharge. Secondly, the commenter stated that requiring the special filing imposes additional costs, delays and attendant expenses that may be passed on to policyholders. Thirdly, the commenter stated that the rule will create inequities among insurers and policyholders because they will be affected differently, that is, some insurers may receive rate increases while others may not. Finally, the commenter stated that the proposal duplicates the purpose of the excess profits report, stating that the excess profits mechanism should provide adequate protection against excessive rates.

RESPONSE: The Department disagrees with the commenter. As set forth in the Summary when the rule was proposed, there are a number of special circumstances surrounding the nature of insurer payments for apportioned shares of the MTF losses and expenses, most significantly the temporary nature of the payment or payments. These payments should not become a part of an insurer's permanent rates because the obligation is discharged after payment is made, unlike insurer expenses which are normally paid year after year. The Department notes that, in the absence of this rule, insurers could apply for rate increases and include payments to the MTF among their other expenses. The Department believes that this is an undesirable method of handling these payments for ratemaking purposes because such payments are not permanent, ongoing expenses. Additionally, to treat them as normal expenses would require that they be "grossed up" with premium taxes, commissions and other expenses resulting in an improper burden on policyholders.

Secondly, while the Department accepts that there are additional costs involved in applying for rate increases, these costs are no different than the costs of filing for a rate increase pursuant to N.J.A.C. 11:3-16.6 through 16.10, which would be required if this rule were not adopted. Thirdly, the Department acknowledges that insurers and policyholders may experience a different result (that is, an insurer that does not demonstrate need for a rate increase will not receive approval for a surcharge, and its insureds will pay no surcharge, while another insurer may receive approval and its insureds will pay the increased charges). Nevertheless, the Department does not believe that this result is improper in that it is no different than any other rate proceeding which results in different rates for different insurers with different losses and expenses. As noted in the Summary when these rules were proposed, the Department recognizes the potential for market dislocations based on the potential for different surcharges, and the rule provides that the annual cost may be mitigated by spreading it out over a period of up to three years if an approved per vehicle surcharge exceeds $50.00.

Finally, as noted in response to a prior comment, the Department does not believe that the proposed rule improperly duplicates the excess profits report. By statute, New Jersey requires both prior approval of automobile insurance rate increases and an excess profits report.

COMMENT: One industry commenter noted that while the rule presents a method for reflecting an insurer's share of MTF losses and expenses that could produce an equitable result, it was concerned that the review process may result in the denial of necessary relief because the Department could prevent an insurer that needs relief from obtaining it through "manipulation of loss development factors, trend factors, investment income, etc."

RESPONSE: The Department agrees that the rule should provide an appropriate result based on insurer need, and notes that filings made in accordance with this rule will be subject to the same review and scrutiny as other rate increase requests.

COMMENT: Two commenters inquired how payments to the MTF and collection of the special policyholder surcharges provided by this rule, if approved, would be handled for the purpose of filing the excess profits reported required by N.J.S.A. 17:29A-5.1 et seq.

RESPONSE: These comments, while obviously related to this rule, are outside its scope. The Department is reviewing its rules for reporting financial disclosure and excess profits at N.J.A.C. 11:3-20 to determine what amendments to the rules or reporting forms are necessary. Amendments will be promulgated when that review is complete. The Department expects that its proposed amendment to the excess profits rules will provide that insurers may deduct, as expenses, the amount of unrecouped MTF payments in filing their excess profit report.

COMMENT: One commenter expressed its concern that an application under this rule may force insurers into a "Catch 22" situation

because insurers have been prohibited from including MTF losses in rates prior to payment, and that normal ratemaking is prospective and does not generally permit recoupment of past expenses. The commenter noted that while the rule on its face would address this problem, the Department of the Public Advocate, Division of Rate Counsel (Public Advocate) might initiate a legal challenge to the procedure. Such a challenge, if successful, would leave insurers in the position of having no mechanism for recoupment.

RESPONSE: As noted both in the Summary when this rule was proposed and in response to a previous comment, the Department believes that insurer payments to the MTF represent a special situation which requires a departure from normal ratemaking. The rule is intended to address this special situation in a manner consistent with other applicable laws regarding automobile insurance rates, including the provision in the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (FAIR Act) at N.J.S.A. 17:33B-2g which acknowledges that automobile insurers are entitled to earn an adequate rate of return through the ratemaking process. Moreover, the Public Advocate representative at the public hearing stated that the Public Advocate supports the proposition that insurers should not be allowed to seek rate increases until payments to the MTF have actually been made. While the Department does not speak for the Public Advocate, or any court that may entertain such a legal challenge, the Department believes that this rule is consistent with all applicable laws.

COMMENT: One commenter stated that the rule does not provide any guidance as to the size or frequency of cash calls that may be made and commented that cash calls could be structured in small amounts and with great frequency so as to discourage application for rate relief under this rule. The commenter suggested that the cash calls be structured so as not to unduly protract the assessment process and require an "inordinate number of filings."

RESPONSE: This rule does not address the "cash call" process, which is set forth in the MTF Plan of Operation. To the extent that the commenter is requesting that the rule set forth the procedure for cash calls, it is making a suggestion beyond the scope of this proposal. Nevertheless, the Department notes that the commenter's concern is misplaced since the rule, as proposed and adopted, permits filings to be made that include more than one payment by the insurer to the MTF, so long as the filings reflect payments made within the previous 12 months. Further, a pending filing may be amended to reflect additional payments by the insurer to the MTF in accordance with applicable administrative rules. As set forth in N.J.A.C. 11:3-16.12(f), however, the Department will not issue more than one approval with an effective date between April 16 of any year and April 15 of the subsequent year, so as to avoid disparate treatment among a single insurer's policyholders based on the date of policy renewal and to reduce the potential administrative burden on the Department. The Department believes that these procedures provide a fair process for insurers, without overburdening either the insurer's or the Department's ability to administer the process.

COMMENT: One commenter noted that it has joined the New Jersey Voluntary Private Passenger Automobile Insurance Pool the "Lion Pool" (Pool) as a means of meeting its FAIR Act depopulation requirements. The commenter stated that as a member of the Pool it is responsible for paying a proportionate share of Pool expenses. Since the Pool is operated by a "non-quota" company which may be responsible for a portion of the MTF deficit and the Pool members would share in any assessments of the Pool, the commenter stated that it would be assessed a double share of the MTF losses. The commenter suggested that the MTF assessments of the Pool members be adjusted downward to reflect their participation in the Pool.

RESPONSE: The commenter's suggestion that MTF assessments of Pool members be reduced is outside the scope of this rule. The Department notes, however, that the premise that the Pool members would be assessed a double share of the MTF deficit is mistaken, since the Pool is not a "non-quota company." The commenter's concern was addressed when amendments to the MTF plan of Operation were certified by the Commissioner on December 29, 1992.

COMMENT: One commenter stated that N.J.A.C. 11:16-12(b)1 needs to "change its reference to N.J.A.C. 11:3-16.10." The commenter is apparently concerned that N.J.A.C. 11:3-16.10 does not provide for FAIR Act surtaxes and assessments to be considered in a normal prior approval rate request, and suggested that these taxes and assessments be incorporated into the expense base for calculation of the insurer's indicated rate change in this rule.

RESPONSE: The Department disagrees. Other provisions of the FAIR Act require that these expenses generally not be included for standard ratemaking purposes. Special filing requirements are provided in N.J.A.C. 11:3-16.11. Nothing in this rule affects the ability of an insurer to request rate relief, when appropriate, in accordance with the provisions of that rule. It is not the Department's intention to provide a means through this rule to circumvent the requirements of N.J.A.C. 11:3-16.11.

COMMENT: Two commenters objected to the provisions of N.J.A.C. 11:3-16.12(d)1, which requires that the overall percent rate change indication shall be calculated in accordance with the standard ratemaking methodology at N.J.A.C. 11:3-16.10. The commenters noted that N.J.A.C. 11:3-16.10(f) permits a filer to propose an alternate procedure. The commenter requested that the rule be amended to allow alternatives to the Department's methodology.

RESPONSE: The Department disagrees that the change is necessary, although it acknowledges that the rule's existing reference to "standard ratemaking methodology at N.J.A.C. 11:3-16.10" includes the ability of a filer to propose an alternate procedure, in total or in part, supported with calculations and other information. In doing so, the Department notes that N.J.A.C. 11:3-16.10(f)2 requires that fliers which propose an alternate ratemaking methodology show the overall statewide rate change indication by both the standard and alternate methodologies. An insurer which advances an alternate procedure has the burden to demonstrate the superiority of the alternate procedure in the determination of the filer's rates.

COMMENT: One commenter stated that it preferred a percentage surcharge based on direct written premium rather than a flat charge per policy. With regard to a flat charge per policy, the commenter inquired whether the surcharge must be returned to the policyholder on the same basis as the unearned premium.

RESPONSE: The Department believes that a flat charge per automobile is preferable to a percentage of premium because it is consistent with the treatment required for other taxes, fees, and similar levies pursuant to N.J.S.A. 17:29A-37a, and is more equitable to policyholders in that the surcharge will not vary based upon classification differentials.

Nothing in the rule mandates different treatment than that which is currently provided for a return of both unearned premiums pursuant to N.J.S.A. 17:29C-4.1 and the PLIGA surcharge authorized by N.J.S.A. 17:30A-16 and N.J.A.C. 11:1-6. Upon cancellation of a policy, the insured is entitled to a proportionate refund in accordance with the refund of premium and similar charges.

COMMENT: Two commenters stated that N.J.A.C. 11:3-16.12(d)4 should be amended to allow for the accrual of interest from the date payment is made, rather than the date of the cash call. The insurer stated that this would encourage insurers to pay in advance of cash call deadlines, and stated that the rule, as written, provides a disincentive since accrual of interest can only run from the date of the specific cash call, rather than from the date of a payment on account.

RESPONSE: The rule provides for appropriate interest on timely payments from the due date of the cash call, but this rule must be read in conjunction with the MTF Plan of Operation provision regarding payments on account. Insurers that have made a payment on account receive a discount applied as an additional reduction to their apportioned cash call liability, computed using the average annualized rate of return of the best performing MTF investment intermediary for the period from the payment until the due date of the cash call. To provide additional interest from the date of payment in this rule would, in effect, permit a recovery of double interest.

COMMENT: Several commenters stated that the rule should be clarified with respect to those individuals who are insured through the New Jersey Personal Automobile Insurance Plan (PAIP), the assigned risk plan established by the FAIR Act which commenced operations October 1, 1992. One commenter stated that N.J.A.C. 11:3-16.12(d), which sets forth the method for calculating the per automobile policyholder surcharge, should be clarified to set forth the types of risks to be used in the calculation of earned premium, that is, whether PAIP policies written by an insurer should be included when determining earned premium. Another commenter inquired whether PAIP policies should be included in the calculation of exposures subject to the policyholder surcharge. One commenter stated that it does not seem fair that a PAIP insured may pay a surcharge based solely on the company to which it is assigned, but that it likewise seems unfair that PAIP exposures not be required to pay a surcharge if an insurer's other policyholders were paying it. This commenter suggested that the MTF Plan of Operation

be changed so that the PAIP is responsible for a share of the MTF deficit.

Another commenter stated that PAIP policyholders should pay a uniform surcharge, either by permitting all insurers to charge the full average assessment on all assigned risk vehicles, or to have all PAIP insureds pay the maximum surcharge approved for any voluntary carrier at any particular point in time. The commenter stated that since the PAIP insureds constitute the worst drivers in the State, PAIP insureds were most likely significant contributors to the MTF shortfall, and thus it would not be reasonable to have them pay less than the maximum assessment.

RESPONSE: The commenter's point that the rule requires clarification regarding PAIP exposures is well taken and the Department has added clarifying language in the rule as adopted at N.J.A.C. 11:3-16.12(d)2iv. PAIP exposures should be included in "earned exposures" for determining the per automobile charge. Premium from PAIP policies should not, however, be included in earned premium and PAIP losses and expenses should not be included in calculating the insurer's percent rate charge indication. The PAIP has a separate rating system, and to include these items in the filing would distort the insurer's calculations with respect to its rate need.

With regard to the comments on the fairness of the above, the Department notes that the PAIP is an assigned risk plan by which the insurer assumes the risk of its assigned insureds. The PAIP was created pursuant to sections 24 and 34 of the FAIR Act (N.J.S.A. 17:33B-22 and 17:29D-1) and represents a significant departure from the prior residual market mechanisms (the New Jersey Automobile Full Insurance Underwriting Association and the MTF) which were insuring entities separate from the member companies. In this instance, the Department believes that the principle of equal treatment of all persons insured by a particular insurer outweighs the importance of all PAIP insureds being charged the same premium.

The Department disagrees with the commenter which suggested that all PAIP insureds be charged uniformly. To do so would allow insurers without any clearly demonstrated rate need to recover excessive amounts from PAIP insureds. The Department rejects the suggestion that the PAIP be assessed a share of the MTF deficit as contrary to statute (see N.J.S.A. 17:33B-11d), and notes that the suggestion is outside the scope of this rule.

COMMENT: Several commenters addressed the question of when filings may be made pursuant to this rule. One commenter stated that the 12 month time period in N.J.A.C. 11:3-16.12(f)3 should be clarified. The commenter inquired whether this provision allowed a company to submit a filing within 12 months of payment, or whether the insurer must have obtained approval of its filing within 12 months of payment. Another commenter suggested that this provision be modified to permit a filing no more than 12 months after the due date of the actual cash call, noting that the extra latitude would serve as an added incentive for insurers to make payments earlier. The commenter also suggested that a single uniform deadline would make it easier for the Department to administer. Another commenter simply inquired when a filing may be made.

RESPONSE: The rule as proposed permits a filing to be made during the 12 month period beginning when the payment is made to the MTF and ending 12 months later. Nothing in the rule would preclude the effective date from being more than 12 months after payment. In fact, the rule contemplates that if an order of approval is issued, it will include both an effective date and a termination date in order to ensure that only the approved amount is collected.

The Department believes that permitting filings up to 12 months after the due date of the cash call, rather than the date of payment, would be extremely difficult to administer. First, payments on account may be in amounts that exceed a particular cash call; in such an event there would be an uncertainty as to what date should be used and whether amounts attributable to the payment on account could be included in a filing made 12 months after the second cash call. Moreover, the Department anticipates that having a single uniform deadline for all insurers would make it more difficult to administer, in that all insurer filings could conceivably be made on the same date which could overtax the ability of the Department to make a thorough review of each filing.

COMMENT: A commenter objected to the 12 month limitation in N.J.A.C. 11:3-16.12(f)3, stating that there is no authority for the Department to impose such a restriction on insurers making filings. The commenter noted that under the process outlined in the rule, an insurer may want to save money and submit a single filing which pertains to more than one MTF assessment, and that a 12 month filing limitation would restrict an insurer's ability to accomplish this efficiently.

RESPONSE: The Department disagrees with the commenter. As proposed and adopted, the rule recognizes the unique nature of payments to the MTF and the necessity of comparing those payments over 12 months to the adequacy of an insurer's rate level for the same period of time. The commenter's suggestion would permit an insurer to accumulate years of MTF payments and seek recoupment by comparing the accumulated expense of several years' payments to its rate adequacy for a single year. As a result, policyholders could be improperly overcharged when an insurer's rates were otherwise more than adequate during each year in which payments were made to the MTF.

As provided in the rule, however, an insurer's filing may include more than one payment, if made in a single year, and may be amended if appropriate in accordance with applicable rules of administrative procedure. The Department believes that this provides sufficient flexibility and provides a fair opportunity to request rate relief for any payment.

COMMENT: One non-industry commenter expressed general agreement with the Department's conclusion, as provided in the rule, that a special, non-recurring policyholder surcharge is a better alternative for policyholders then a standard prior approval premium increase. The commenter stated, however, that its experience to date does not indicate a likelihood of significant market dislocations as policyholders seek lower cost coverage. The commenter specifically addressed N.J.A.C. 11:3-16.12(g), which authorizes the Commissioner to direct whether a policyholder surcharge should be set forth as a separate item on the premium bill and, if so, how it should be identified. The commenter stated that the insurer should have flexibility to decide how to show the charge.

RESPONSE: The Department believes that the present provision provides sufficient flexibility. Whether the charge will be shown separately, and if so, how it would be identified, is appropriate to be resolved in the approval process. An insurer may, in its filing, suggest how it wishes to bill for such a surcharge, should one be approved. Some of the considerations involved are the Department's ability to ensure that the charge is not continued after the termination date; whether a particular method of showing it may encourage market dislocations; and the particular insurer's data and billing systems. An appropriate resolution of these potentially competing concerns can be made during the approval process.

COMMENT: A producer trade association generally supported the rule, but objected to the exclusion of commissions. The commenter noted that its members would have received higher commissions if MTF rates had been higher, and thus, that its membership should have received these commissions in the past. Additionally, the commenter stated that if the charges are broken out and shown separately, or if they merely result in a higher premium, its members will be required to respond to the questions and complaints about them. Additionally, the commenter stated that its members will incur additional expenses to "move business" if policyholders seek to change coverage to a different insurer.

RESPONSE: While the Department appreciates the commenter's concerns, it has decided not to change this provision. Treating this charge separately minimizes the cost to the individual policyholder because agent commissions are paid as a percentage of premium. The Department notes that voluntary market rates were generally lower than MTF rates and, had the MTF been depopulated as provided in N.J.S.A. 17:33B-11, aggregate producer commissions may in fact have been lower in the past. The Department does not agree that this rule necessarily means that the producer will perform more work. Accepting this commenter's suggestion would merely inflate the cost paid by the individual policyholder.

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

11:3-16.2 Definitions

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

. . .

***"Amount(s) paid to the MTF" includes all payments actually made by insurers to the MTF, which are to be credited as all or part of the insurer's apportionment share of MTF losses, pursuant to N.J.S.A. 17:33B-11d and the MTF Plan of Operation, including**

any payment made on account of the insurer's liability or in response to an Order of the Commissioner directing that payment be made.*

. . .

11:3-16.12 Filings reflecting paid, apportioned MTF expenses and losses

(a) Upon approval of the Commissioner pursuant to this section, an insurer may charge and collect a special surcharge to recover from policyholders amounts *[actually paid by the insurer to the MTF]* ***paid to the MTF by the insurer*** as its apportioned share of MTF operational losses and expenses. An amount so charged and collected shall not be considered premium except for the limited purpose of allowing cancellation of the policy for non-payment of the surcharge pursuant to N.J.S.A. 17:29C-7 and N.J.A.C. 11:3-7.6.

(b) An insurer desiring to provide for a policyholder surcharge pursuant to this section shall provide the following information:

1. All of the data required for prior approval filings submitted pursuant to N.J.A.C. 11:3-16.6, which shall include an exhibit of the insurer's overall percent rate change indication, calculated in accordance with the Department's standard ratemaking methodology as set forth in N.J.A.C. 11:3-16.10, but without any consideration of its apportioned share of MTF operational expenses and losses;

2. A certified statement signed by an officer of the insurer that sets forth the amount paid to the MTF and the date of payment;

3. An exhibit that sets forth the calculation of the proposed policyholder surcharge, in accordance with the methodology set forth at (d) below; and

4. The proposed effective date and termination date of the policyholder surcharge.

(c) Upon receipt of a filing made pursuant to this section, the Department shall review it for completeness pursuant to N.J.A.C. 11:3-18.6(b), which review shall specifically include a determination that (b)2 above is complete and accurate.

(d) The filer shall use the following methodology to determine the proposed amount of the policyholder surcharge:

1. Its current overall percent rate change indication shall be calculated in accordance with the standard ratemaking methodology at N.J.A.C. 11:3-16.10, excluding all apportioned MTF operational expenses and losses.

2. If the current overall percent rate change indication is negative, the amount of policyholder surcharge shall be calculated as follows. The filer shall:

i. Convert the amount paid to the MTF to a percentage of premium by dividing it by earned premium;

ii. Add the result of (d)2i above to the current overall rate change indication;

iii. If the result of (d)2ii above is positive, multiply it by earned premium to obtain the amount of gross policyholder surcharge; and

iv. Divide the result of (d)2iii above by earned exposures***, including exposures insured pursuant to the Personal Automobile Insurance Plan created at N.J.A.C. 11:3-2,*** to obtain the per automobile policyholder surcharge in dollars.

3. If the current overall percent rate change indication is zero or positive, the amount of policyholder surcharge shall be calculated by dividing the amount paid to the MTF by earned exposures to obtain the per automobile policyholder surcharge in dollars.

4. The calculation of the policyholder surcharge shall include a provision that permits the filer to recover interest at the rate set forth in N.J.A.C. 11:3-16.10(a)8 from the due date of the cash call made pursuant to the MTF Plan of Operation.

5. If the per automobile policyholder surcharge, including any interest as provided in (c)4 above, exceeds $50.00, then the Commissioner in his or her discretion may provide that the policyholder surcharge be collected over a period of up to three years; otherwise, it shall be collected over one year.

6. The Commissioner's approval of a policyholder surcharge shall include a termination date, after which the policyholder surcharge shall be deleted from future billing statements.

(e) Subsequent amounts paid to the MTF by the insurer may be charged and collected from policyholders only after a further filing is approved by the Commissioner as provided in this section. Nothing in the proceedings concerning any subsequent filing shall affect the approval of a prior filing.

(f) No more than one policyholder surcharge shall be approved pursuant to this section with an effective date between April 16 of any year and April 15 of the subsequent year.

1. A filing when made may include more than one payment by the insurer to the MTF.

2. A pending filing may be amended pursuant to N.J.A.C. 1:1-6.2 to reflect additional *[payments by the insurer to the MTF]* ***amounts paid to the MTF by the insurer***.

3. Insurers shall make filings that request approval of a policyholder surcharge no more than 12 months after payment of the assessment for which the insurer seeks relief.

(g) Should a policyholder surcharge be approved, the Commissioner shall direct whether it shall be set forth as a separate item on the premium bill, and if so, how it shall be identified.

(h) The procedures for review and approval of filings made pursuant to this section shall be in accordance with N.J.A.C. 11:3-18.6, Insurer filings for rates requiring prior approval, and, as applicable to filings requiring prior approval, N.J.A.C. 11:3-16.3.

(i) If so requested by the filer, when the overall percent rate change indication as calculated in (d)1 above is positive, proceedings to approve the policyholder surcharge in accordance with this rule may include consideration of a prior approval rate change pursuant to N.J.A.C. 11:3-16.6.

Recodify existing 11:3-16.12 and 16.13 as 11:3-16.13 and 16.14 (No change in text.)

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Real Estate Guaranty Fund

Adopted Amendment: N.J.A.C. 11:5-1.36

Proposed: January 4, 1993 at 25 N.J.R. 56(b)
Adopted: February 23, 1993 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Filed: March 11, 1993 as R.1993 d.153, **without change.**

Authority: N.J.S.A. 45:15-6 and 45:15-40.

Effective Date: April 5, 1993.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The Real Estate Commission received one written comment concerning this proposed rule amendment.

COMMENT: The Commission received one comment on this proposal from Roy E. Duffield, a licensed broker from Wenonah, New Jersey. This commenter objected to the utilization of the rulemaking process to impose a special guaranty fund assessment upon real estate licensees because the Commission is statutorily required to impose the assessment if the balance in the fund plus anticipated revenues is less than the amount of anticipated disbursements based upon pending claims. Given the statutory requirement to impose the assessment in such circumstances, the commenter averred that it was a waste of the Commission's and of licensees' time to go through the rule promulgation and public comment process. In addition, Mr. Duffield objected to honest licensees being required to pay into the fund as a result of the activities of "crooks."

RESPONSE: The Commission feels that there is some validity to Mr. Duffield's statements regarding the use of the rulemaking process to impose the special guaranty fund assessment. However, it is required by law to make such assessments in this manner. N.J.S.A. 45:15-40 provides, in pertinent part that where the need for the imposition of an additional assessment becomes evident, "... the Real Estate Commission shall **by regulation** impose further additional amounts to be paid by brokers and salesmen to replenish the guaranty fund" (emphasis added). On the other point raised by this commenter, the Commission would respond that the legislatures of this and most other states have determined that funds such as the Real Estate Guaranty Fund are an excellent means by which to afford the victims of fraudulent activity by licensees a substantial amount of protection while imposing a minimal burden upon the other members of the profession in which the

perpetrator was licensed. While the Commission agrees with this policy decision, even if it did not it would have no choice but to continue making assessments for the replenishment of the fund until such time as the law establishing the fund was changed.

Full text of the adoption follows.

11:5-1.36 Real estate guaranty fund

(a) Every licensed real estate broker and licensed broker-salesperson shall pay an additional amount as specified in N.J.S.A. 45:15-35 and every licensed real estate salesperson shall pay an additional amount as specified in N.J.S.A. 45:15-35 with their application for license renewal next following January 1, 1993.

1. (No change.)

(b) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF POLLUTION PREVENTION

Notice of Administrative Correction

Pollution Prevention Program Requirements
Pollution Prevention Plan Progress Reporting Requirements

N.J.A.C. 7:1K-6.1

Take notice that the Department of Environmental Protection and Energy has discovered an error in the text of N.J.A.C. 7:1K-6.1, the adoption of which was published in the March 1, 1993 New Jersey Register at 25 N.J.R. 930(a). The shown deletion upon adoption of proposed N.J.A.C. 7:1K-6.1(c)4ii at 25 N.J.R. 980 is a printing error. The original adoption document, R.1993 d.108, provides for the recodification of that subparagraph on adoption as N.J.A.C. 7:1K-6.1(c)4i, not for its deletion. Through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, the published rule text is conformed to the adopted text.

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

7:1K-6.1 Pollution Prevention Plan progress reporting requirements

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

(c) A Pollution Prevention Plan Progress Report shall consist, at a minimum, of the following:

1.-3. (No change.)

4. Facility-level information on pollution prevention reductions:

i. Calculations of the reduction or increase in use of each hazardous substance in comparison to the previous year;

ii.-vi. (No change.)

5.-7. (No change.)

(b)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Transportation Use Policies

Adopted Amendments: N.J.A.C. 7:7E-7.5

Proposed: June 1, 1992, at 24 N.J.R. 1986(a).

Adopted: March 1, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: March 5, 1993 as R.1993 d.140, **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. and 13:19-1 et seq.

DEPE Docket Number: 017-92-05.

Effective Date: April 5, 1993.

Expiration Date: August 20, 1995.

Summary of Public Comment and Agency Responses:

On June 1, 1992, the Department of Environmental Protection and Energy (Department) proposed amendments at N.J.A.C. 7:7E-7.5(d). The Department held a public hearing concerning the amendments on June 16, 1992 in Atlantic City, New Jersey and accepted written comments through July 1, 1992. Eight out of the 16 people who attended the hearing provided oral comments, and one individual commented on behalf of two organizations. The Department received written comments from five parties during the commenting period and one party after the commenting period. The Casino Association of New Jersey, Trump Plaza Hotel-Casino and Claridge Hotel-Casino, in particular, were responsive to the Department's request for additional comments at the public hearing and made specific recommendations to further refine the proposal. Individuals that provided comments were:

Nicholas Amato, Casino Reinvestment Development Authority
Thomas P. Carver, Casino Association of New Jersey
Joseph A. Corbo, Resort International Hotels, Inc.
George W. Dix, Mayor of the City of Pleasantville
Tom Foley, Freeholder
Redenia Gillam-Mosee, Bally's Park Place and Bally's Grand Casino Hotel
Redenia Gillam-Mosee, Chair of the Board of Directors, Greater Atlantic Chamber of Commerce
Steve Hankin, Trop World Hotel Casino
James E. Howard, Property Manager
Ian P. Jerome, Claridge Casino Hotel
Patrick Killian, Casino Association of New Jersey
Joe Micale, City of Atlantic City
Helen E. Rahn
Thomas Russo, Atlantic City Councilman
Patricia M. Wild, Trump Plaza Hotel and Casino

John R. Weingart, Assistant Commissioner of the Department, who presided the hearing, recommends that the Department adopt the proposed amendments with technical changes to further clarify the amendment language.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Robert Santaloci
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625

Comments (1) through (13) concern issues related to the existing rule or issues that are tangential to the proposed amendments. The Department acknowledges these concerns and has responded in an effort to further develop the context for the proposed amendments as well as to provide information.

Numerous commenters expressed their opposition to the employee intercept program in concept, but nevertheless offered specific recommendations to further refine the intercept parking facility requirement and its implementation standards. These concerns are addressed in Comments (14) through (21).

COMMENT (1): Several commenters indicated that they support downtown parking, because it will bring more people into town and allow more hotel-casino employees to park within walking distance to work, which in turn will create an environment that is more conducive for business development. (The City of Atlantic City, the Greater Atlantic Chamber of Commerce, MFA Properties, Casino Reinvestment Development Authority and Bally's Park and Bally's Grand Hotel Casinos, Casino Association of New Jersey and an Atlantic County Freeholder.)

RESPONSE: The Department acknowledges this support for downtown parking and surmises that the commenters favor the proposed amendments to the extent that the amendments will permit additional hotel-casino employees to park in the City.

COMMENT (2): The proposed change will not help the development of the City because the van pool and bus schedules will be made to provide services at the beginning and ending of shifts and will not allot extra time to be spent in town. (Claridge Casino Hotel)

RESPONSE: The intent of the amendments is to add flexibility to the existing intercept parking rule by allowing the casino industry to satisfy the Department's objectives through other less costly and/or more effective measures. Any benefits the City gains from this change will be secondary. In addition, the schedules of buses and van pools need not be made to service only those who want to leave immediately at the end of a shift. Hotel-casinos and Atlantic City and Atlantic County agencies could develop a schedule that could accommodate those who might be leaving work late or want to spend the extra time to pick up a few things before heading home.

COMMENT (3): Several commenters opposed the off-island intercept parking concept because it is too costly to implement, it is not the preferred solution to Atlantic City's transportation problems and/or it benefits the agencies that have financial interests in the existing intercept parking facilities. (the Greater Atlantic City Chamber of Commerce, the Casino Association, Bally's Park Place and Bally's Grand Hotel Casinos, Resorts International Hotel Inc., Trump Plaza Hotel and Casino and Trop World Casino-Hotel)

RESPONSE: The existing requirement for off island intercept facilities has played a role in reducing traffic congestion and air pollution, but it is by no means the only or ideal solution. It was the intent of the proposed amendments to improve upon the existing rule so that its objectives could be met through other measures which can be individually tailored to suit the needs of the employees of a particular casino-hotel and, at the same time, are less expensive and/or more effective for the employer to implement.

COMMENT (4): Several commenters questioned the need for the existing intercept parking requirement and stated that they believe the air quality and traffic concerns will most likely be taken care of through the traffic signalization project, which is about to go out for bid, and the widening of Delaware Avenue Atlantic City Council (Trop World Hotel Casino and Casino Association).

RESPONSE: The ambient air quality of Atlantic City fails to meet the acceptable Federal air quality standards for both ozone and carbon monoxide. Consequently the area is classified as a nonattainment area with respect to the emission level of these two pollutants. The area is therefore bound by the requirements of the Federal Clean Air Act (CAA) to reduce its ambient air pollutants to the acceptable levels as implemented through the State Implementation Plan (SIP).

The intercept parking requirement as well as the roadway and signalization improvements are all elements of the area-wide air pollution reduction strategy identified in the 1983 State Implementation Plan (SIP). The General Saving Clause, Section 193 of the 1990 Clean Air Act Amendments (CAAA) precludes substitution of the signalization improvements for the intercept parking strategy in future SIPs. All SIP specified measures are required in order for the area to achieve and maintain attainment status.

COMMENT (5): The amendments' adoption should state that once the proposed Atlantic City computerized traffic signal system is operational, intercept parking will no longer be required of any hotel-casino operator (Casino Association of New Jersey).

RESPONSE: As stated earlier in the Department's response to comments (3) and (4), roadway improvements and intercept parking cannot replace each other since both have been identified in the SIP as necessary strategies for air quality improvements.

COMMENT (6): What air quality standards (Federal or State) have been violated in Atlantic City to warrant these measures? What is the magnitude of the air quality "problem" that this policy is intended to solve? What is the legal basis for the application of this policy? Assuming that all casinos comply to the extent required, what will be the magnitude of the improvement in the problem condition? (Claridge Casino Hotel)

RESPONSE: Atlantic County has been designated a nonattainment area for ozone (designation class: moderate with a design value of 0.145 parts per million (ppm)) and Atlantic City a nonattainment area for carbon monoxide (CO) as cited in the Federal Register of November 6, 1991 (56 FR 56708). The acceptable Federal standard for ozone is 0.121 ppm, which is the level mandated by the CAAA for attainment by November 1996. The Department estimates that the intercept requirement reduces up to approximately 10 percent of the mobile hydrocarbon (ozone) and carbon monoxide emissions, from 241.6 to 217.1 tons and 924.5 to 828.2 tons per year, respectively. This reduction is needed, along with other reduction measures, for reaching and maintaining the attainment status required under CAAA.

COMMENT (7): How will this policy be affected if the proposed New Jersey Traffic Congestion Management Act (NJTCMA) becomes a law (it calls for all employers with more than 100 employees to create 30 percent reduction in on-site peak hour employee trips)? (Claridge Casino Hotel)

RESPONSE: The proposed NJTCMA became a law on June 30, 1992, and is now referred to as the "New Jersey Traffic Congestion and Air Pollution Control Act" (TCAPCA). It requires employers with 100 or more employees to increase the average passenger occupancy per vehicle by 25 percent above the average vehicle occupancy for all trips generated in the nonattainment area for ozone during peak hours. This law sets forth the framework for New Jersey to implement the Federal Clean Air Act's mandates and requires that a compliance plan be filed with the Department of Transportation (DOT) by all affected employers by November 1994. The DOT projects that a proposed set of "Employer Trip Reduction Regulations" will be developed by June 1993.

The Department and DOT have jointly determined that the Intercept Parking Policy requirement with the adopted amendments is consistent with the Employer Trip Reduction Requirement in concept. Both rules will have comparable reduction standards and are similar in implementation strategy. As casino-hotels in Atlantic City have been the only industry in the State subject to this type of requirement and have, in effect, served as a pilot for the requirements that will now be imposed Statewide, the two Departments do not anticipate that they will be subject to any additional requirements under the to-be-proposed TCAPCA regulations.

The two Departments also anticipate that if the TCAPCA regulations are imposed on Atlantic County, each hotel-casino shall be afforded the choice of either complying with them or with the DEPE's Coastal regulations. Until the TCAPCA regulations take effect, each hotel-casino will remain subject to the Coastal regulation as imposed here. If TCAPCA regulations are not imposed for Atlantic County, the DEPE Coastal regulations shall continue to be implemented for each hotel-casino.

COMMENT (8): One commenter supported the existing regulation without any changes, because it accommodates the parking needs of the casino employees (Helen E. Rahn).

RESPONSE: The Department recognizes that the existing intercept parking facilities are being used and do serve a transportation need in the area. The amendments, as adopted, will not eliminate these facilities. However, the revisions will encourage both the casino employers and employees to consider other means of transportation besides single-occupancy vehicles.

COMMENT (9): One commenter noted that of the five alternatives listed in the proposal, the only real alternatives that can effectively replace intercept parking are buses and van pools. (Trop World Casino Hotel)

RESPONSE: While not all of the five listed alternatives are equally effective in their intercept parking replacement value, there is no reason not to recognize and accept all of them as potential alternatives. A casino-hotel employer may find that a combination of alternatives, along with the use of intercept parking, may be the most effective strategy in meeting the goals of the regulation. For example, Caesar's Hotel-Casino has submitted a draft plan that would include all five alternatives, that is, car pool, van pool, bus, train and bicycle. The DEPE has reviewed the plan and is prepared to approve it as soon as these rule changes are adopted.

COMMENT (10): If this is a necessary program, why does it apply to a class of Atlantic City businesses, that is, the casinos, and not to all Atlantic City employers with more than 100 employees, as would be required under the proposed New Jersey Traffic Congestion Management Act (Claridge Casino Hotel)?

RESPONSE: This requirement is applied to the casino-hotel industry because the Department initially targeted employers with more than 300 employees. Since practically all of the facilities subject to CAFRA review and which employee 300 or more staff have been casino-hotel facilities at this location, the Department decided to apply this requirement to just casino-hotels in the existing regulation.

COMMENT (11): How long is this demand reduction requirement going to remain in effect? (Claridge Casino Hotel)

RESPONSE: This requirement shall remain in effect until it is replaced by other more effective and equitable regulations, or until the area has achieved and can maintain the attainment status without this requirement.

COMMENT (12): One commenter requested that the CAFRA permit for the Gateway Project be modified and extended to compensate for

the negative impact of the proposed rule change on the Gateway Development Plan (City of Pleasantville).

RESPONSE: The Department anticipates a CAFRA permit modification request in the near future and will consider the impact of this rule change as part of that review.

COMMENT (13): One commenter in support of the amendments urged that the amendments include strict guidelines to be placed on the casino industry to insure that the additional city parking will not adversely affect the residential areas of the City and that innovative alternative measures, such as the issuance of coupons from local stores, be used in conjunction with car pooling, so that everyone may benefit from the measure (Casino Reinvestment Development Authority).

RESPONSE: The Department has added a provision to the rule adoption addressing the implementation standards to be applied to this policy. However, specific guidelines with regard to identifying the appropriate locations for additional parking facilities in Atlantic City will remain largely the responsibility of the City government.

COMMENT (14): Is the objective of this requirement peak hour trip reduction or vehicle miles traveled reduction, or both? These measures are not equivalent. If the appropriate measure is peak hour trip reduction, at what location is it measured and does that location vary for each casino? (Claridge Casino Hotel)

RESPONSE: It is the objective of this rule to reduce both peak hour auto trips and vehicle miles traveled. All of the alternative measures as well as the existing intercept parking requirement reduce both. However, the existing rule places greater emphasis on the reduction of the peak hour auto trip and uses the reduction in peak hour auto trip as the yardstick for measuring this requirement's success. The Department has modified the adoption language to make this explicit.

The measure for peak hour auto trip reduction is done through the rate of employee participation in the intercept facility and/or alternative measures. The location of the measure is irrelevant. The Department, of course, will continue to monitor air quality. A monitor to record carbon monoxide is located within Atlantic City and a monitor for ozone is at Nacote Creek in Atlantic County.

COMMENT (15): In addition to Atlantic City residents, residents from Margate, Ventnor, Long Port and Brigantine should also be excluded from the formula because employees from these locations do not commute via Route 30 or 40, or the Atlantic City Expressway. (Claridge Hotel Casino and Trump Plaza Hotel Casino and Casino Association of New Jersey)

RESPONSE: The Department agrees and has excluded casino-hotel employees who are residents of these communities from the formula.

COMMENT (16): What constitutes Absecon Island? Does it include the intercoastal waterway or not? (Trop World Casino Hotel and Trump Plaza)

RESPONSE: For the purpose of this rule, Absecon Island shall include all areas within the municipal boundaries of the City of Atlantic City, Margate and Ventnor and the Borough of Long Port. This clarification is incorporated in the adoption language.

COMMENT (17): The proposed amendment should clarify that the 1:5 ratio applies to an average shift of employees. (Trump Plaza Hotel and Casino, Claridge Hotel Casino, Casino Association of New Jersey and Trop World Hotel Casino)

RESPONSE: The Department agrees that the language in the amendment referring to the number of employees to be used in the 1:5 ratio needs to be further refined, but disagrees that it should refer to the number of employees of an average shift as the base number. As stated in the proposal, the existing rule was designed primarily to reduce the peak hour vehicular traffic in and out of the Absecon Island. Therefore, the number of employees to be used in the 1:5 ratio formula should be the number of employees commuting during the peak hour. This number is the sum of the number of non-island employees of the largest shift of the day and the number of non-island employees of the shift which has the greatest amount of employee overlap with the largest shift, that is, utilize the peak overlap period between shifts as the baseline policy reference. The adopted regulation contains this clarifying language.

COMMENT (18): Could each hotel-casino receive travel demand reduction credits for the air and traffic benefits that resulted from the area-wide transportation improvements? If so, how would the formula work? (Claridge Hotel Casino)

RESPONSE: The Department does not plan to credit the casino-hotels for the Delaware Avenue improvement and the computerized signalization projects toward meeting this rule. As stated earlier in our response to comment (3), Atlantic County is a nonattainment area for ozone and Atlantic City is a nonattainment area for carbon monoxide. There continues to be a projected noncompliance problem despite these two planned improvements. Atlantic City will need to implement these and other air pollution measures identified in the SIP in order for it to achieve and maintain the acceptable National Ambient Air Quality Standard (NAAQS).

COMMENT (19): The proposed amendments do not take into account that a particular casino may already have a high percentage of its employees traveling via multiple occupancy vehicles, transit, bicycle or by foot. It is unfair to require every hotel-casino to reduce its employee vehicle travel demand to a certain level without first taking its existing employee travel pattern into account. (Claridge Hotel Casino)

RESPONSE: It was the intention of the Department to account for the difference in the existing casino-hotel employees' travel patterns among the casino-hotels. This is why the casino facilities will be required to submit the existing employees travel pattern as part of the required documentation to indicate their compliance with this rule. The credits however would only be given to those employees who are non-Absecon and non-Brigantine Island residents.

COMMENT (20): The proposed amendments do not address the difference in traffic impacts that result from the different employees parking facilities' locations throughout the island. Presumably those employees whose designation is at the end of the Expressway would have less of a traffic impact than those whose designation is further in town. (Claridge Casino Hotel)

RESPONSE: The intent of the rule is to provide an equitable regional transportation solution to the existing traffic and air problem. The amendments, as proposed and adopted, permit the use of alternatives to the intercept parking requirement that provide an in-kind reduction in auto trips to the island. The locations of on-island employee parking facilities do not affect off-island peak hour employee travel demand. Therefore, they are not in-kind reductions that can be accounted for.

COMMENT (21): Is it intended that the amended policy be applied to all casinos? It is unclear whether prior inequities will be resolved within the language of this amendment. Also what standardized measures of effectiveness will be applied in the evaluation of a casino's demand reduction program and what reporting requirements, such as methodology and frequency, will be called for? (Claridge Casino Hotel).

RESPONSE: Because of the additional factors that will be taken into account in the implementation of this rule, such as the existing casino employees travel pattern, the identification and exclusion of Absecon and Brigantine Island residents, and the clarification on the number of casino-employees to be used for the calculation of the 1:5 ratio, the Department believes that this requirement could be carried out in a fair and uniform manner.

Any casino-hotels required to comply with this rule as a condition of its CAFRA permit shall be required to submit a compliance plan to the Department by July 5, 1993. This plan shall provide the necessary documentation indicating whether this requirement is met. If not, it shall also contain an implementation plan showing how will this requirement be met by January 5, 1994. Casino-hotels subject to this rule also will be required to submit an annual monitoring report to verify the success of the implementation plan for that year and to modify the plan if its actual employee participation rate falls below the anticipated rate. Provisions have been added in the adoption language at N.J.A.C. 7:7E-7.5(d)3ii and iii to reflect this concern.

This requirement's effectiveness will be measured by the amount of reduction in trip demand in total vehicle miles travelled by the casino-hotel employees during peak hour traffic. The reduction in air pollutant emissions from mobile sources can be estimated from the reductions in trip demand, average travelling time and total vehicle miles travelled. In addition, the Department will continue to monitor the ambient air quality of the area which shows the combined emission level from both stationary and mobile sources.

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

7:7E-7.5 Transportation Use Policies

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

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. Any parking facility of which any part is within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.);

ii. Any parking facility for 300 or more cars and related access, of which any part of the facility or related access is located in the coastal zone; or

iii. Any paved area of which any part is located in the coastal zone, which area is equal to or greater than three acres excluding access drives.

2. (No change.)

3. Each hotel-casino facility located in Atlantic City shall *[furnish employee intercept parking space at a rate sufficient to]* provide one of every five *[non-Atlantic City]* ***non-Absecon and non-Brigantine Island*** resident hotel-casino employees ***commuting during the daily peak hour*** with an intercept space. ***Absecon Island residents are residents of Atlantic City, Margate, Ventnor, and Long Port. Brigantine Island residents are residents of the City of Brigantine. Non-Absecon and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon and non-Brigantine Island resident employees of the next largest adjoining shift.*** This intercept parking space shall be located off Absecon ***and Brigantine*** Island***s, specifically outside of the municipal boundary of the five municipalities identified above***. If off-island sites are not available, temporary use of other sites is conditionally acceptable if an applicant can demonstrate that *[they]* ***it*** will be *[able to move]* ***moved*** to *[on]* **an** off-island site within one year.

i. Alternatives that would reduce vehicle miles travelled and peak hour employee travel demand may be substituted for employee intercept parking space requirements for casino facilities. The Department will review proposed alternatives in consultation with the Department of Transportation. The Department will approve alternatives which it determines will reduce vehicle miles travelled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not necessarily limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

ii. Alternative scheme proposals must include documentation indicating the existing travel pattern and mode of travel characteristics of ***non-Absecon and non-Brigantine Island residents*** employees. This information shall be provided to the DEPE along with the necessary data used to establish the vehicle miles travelled and peak hour employee travel demand with and without the proposed ***peak hour*** traffic reduction program. All proposals shall include a monitoring *[system designed to collect data that will]* ***program to*** be submitted to the DEPE to verify the success of the proposed traffic reduction program***, update the employee travel characteristic pattern,*** and serve as a basis for future adjustments if necessary.

iii. All casino-hotel facilities which are required by their CAFRA permits to contribute toward an equitable regional transportation solution in reducing traffic congestion in and out of Absecon Island shall comply with this requirement by January 5, 1994. Casino-hotel facilities which do not currently comply with this requirement shall submit a peak hour travel demand reduction plan to the DEPE for approval by July 5, 1993.*

4. Rationale: See OAL Note at the beginning of the subchapter.

(a)

WATER TECHNICAL PROGRAMS

Notice of Administrative Corrections

Ground Water Quality Standards

Definitions; Antidegradation Policy; Specific Ground Water Quality Criteria—Class II-A and Practical Quantitation Levels

N.J.A.C. 7:9-6.4, 6.8 and Table 1

Take notice that the Department of Environmental Protection and Energy has discovered several errors in the adopted text of N.J.A.C. 7:9-6.4, 6.8 and Table 1 published in the February 1, 1993 New Jersey Register at 25 N.J.R. 464(a).

At N.J.A.C. 7:9-6.4, the word "waste" should have been deleted upon adoption from the definition of "constituent" (see Response to Comments 171 and 172, 25 N.J.R. 478). The correct citation for the Resource Conservation and Recovery Act referred to in the definition of "hazardous pollutant" is 42 U.S.C. §6901 et seq." In the third sentence of the definition of "pollutant," the word "included" should be "includes."

At N.J.A.C. 7:9-6.8(b), "Class II-A 50%" is erroneously shown as being deleted upon adoption. This printing error does not reflect the Department's intention to retain this line (see R. 1993 d.73). In addition, the formula spelling of "Constituent" is corrected.

N.J.A.C. 7:9 Table 1 as added upon adoption includes numerous instances in which numbers or words are set out in brackets. It was the intention of the Department in producing the notice of adoption that these bracketed numbers and words be deleted in the adopted Table 1. This intention, however, was not correctly reflected in the notice as published. A corrected Table 1 appears below. In addition, at the request of the Department, column entries which are not replaced with other entries will be marked by "NA" (signifying "not available for this constituent") rather than empty space.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in boldface **thus** and deletions indicated in brackets [thus], except for N.J.A.C. 7:9 Table 1, in which additions are indicated in boldface with asterisks ***thus*** and deletions are indicated in brackets with asterisks *[thus]*):

7:9-6.4 Definitions

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

...

"Constituent" means a specific chemical substance (that is [waste,] element or compound) or water quality parameter (for example, temperature, odor, color).

...

"Hazardous pollutant" means:

1.-4. (No change.)

5. Any hazardous waste as designated pursuant to section 3 of P.L. 1981, c.279 (N.J.S.A. 13:1E-51) or the "Resource Conservation and Recovery Act," Pub. L. 94-580 (42 U.S.C. [§5901 et seq.] **§6901 et seq.**); or

6. (No change.)

...

"Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural or other residue discharged into the waters of the State. "Pollutant" includes both hazardous and nonhazardous pollutants. "Industrial, municipal or agricultural or other residue" specifically [included] **includes**, without limitation, constituents that are not considered wastes (that is, process chemicals) prior to discharge, but which are discharged and may or do degrade natural or existing ground water quality.

7:9-6.8 Antidegradation policy

(a) (No change.)

(b) For constituents whose concentrations in background water quality are less than the ground water quality criteria in N.J.A.C. 7:9-6.7 (excluding those constituents whose criteria are expressed as a range of concentrations), the antidegradation limits shall be determined by adding to background water quality concentration the difference between the ground water quality criterion and the background water quality concentration times the following percentages for each of the corresponding classes of ground water as follows:

Class I-A 0%
Class I-PL 0%
Class II-A 50%

The calculation of antidegradation limits may be expressed by the following formula:

[Constitutent] **Constituent** Standard = BWQ + (GWQC – BWQ) × %

where BWQ is the background water quality for a given constituent, GWQC is the ground water quality criterion and % is the antidegradation factor given above.

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

TABLE 1
SPECIFIC GROUND WATER QUALITY CRITERIA—CLASS II-A AND PRACTICAL QUANTITATION LEVELS

Constituent	CASRN	Ground Water Quality Criteria*	Practical Quantitation Levels (PQLs)*	Higher of PQLs and Ground Water Quality Criteria (ug/L)*
Acenaphthene	83-32-9	400	10	400
Acenapthylene	208-96-8	NA	10	NA
Acetone	67-64-1	700	NA	700
Acrolein	107-02-8	NA	50	NA
Acrylamide	79-06-1	0.008	NA	0.008
Acrylonitrile	107-13-1	0.06	50	50
Adipates (Di(ethylhexyl)adipate)	103-23-1	*[[5,000]]* *NA*	6	*[[5,000]]* *NA*
Alachlor	15972-60-8	0.43	2	2
Aldicarb sulfone	1646-88-4	2	3	3
Aldrin	309-00-2	0.002	0.04	0.04
Aluminum	7429-90-5	*[[150 to]]* 200	200	200
Ammonia		500	200	500
Anthracene	120-12-7	2000	10	2000
Antimony	7440-36-0	2	20	20
Arsenic (Total)	7440-38-2	0.02	8	8
Asbestos	1332-21-4	7×10^6f/L>10um[a]	10^5f/L>10um[a]	7×10^6f/L>10um[a]
Atrazine	1912-24-9	3	1	3
Barium	7440-39-3	2,000	200	2000
Benz(a)anthracene	56-55-3	*[[0.03]]* *NA*	10	*[[10]]* *NA*
Benzene	71-43-2	0.2	1	1
Benzidine	92-87-5	0.0002	50	50
Benzyl Alcohol	100-51-6	2000	NA	2000
Benzo(a)pyrene (BaP)	50-32-8	*[[0.003]]* *NA*	20	*[[20]]* *NA*
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	*[[0.03]]* *NA*	10	*[[10]]* *NA*
Benzo(ghi)perylene	191-24-2	NA	20	NA
Benzo(k)fluoranthene	207-08-9	*[[0.03]]* *NA*	2	*[[2]]* *NA*
Beryllium	7440-41-7	0.008	20	20
alpha-BHC (alpha-HCH)	319-84-6	0.006	0.02	0.02
beta-BHC (beta-HCH)	319-85-7	0.2	0.04	0.2
gamma-BHC (gamma-HCH/Lindane)	58-89-9	0.2	0.2	0.2
Bis(2-chloroethyl) ether	111-44-4	0.03	10	10
Bis(2-chloroisopropyl) ether	39638-32-9	300	10	300
Bis(2-ethylhexyl) phthalate	117-81-7	3	30	30
Bromodichloromethane (Dichlorobromomethane)	75-27-4	0.3	1	1
Bromoform	75-25-2	4	0.8	4
Butylbenzyl phthalate	85-68-7	100	20	100
Cadmium	7440-43-9	4	2	4
Carbofuran	1563-66-2	40	7	40
Carbon tetrachloride	56-23-5	0.4	2	2
Chlorobenzene	108-90-7	*[[5]]*4	2	*[[5]]*4
Chlordane	57-74-9	0.01	0.5	0.5
Chloride	16887-00-6	250,000	*[[3000]]*2000	250,000
Chloroform	67-66-3	6	1	6
4-Chloro-3-methyl (o-chloro-m-cresol)	59-50-7	NA	20	NA
2-Chlorophenol	95-57-8	40	20	40
Chlorpyrifos	2921-88-2	20	0.2	20
Chromium (Total)	7440-47-3*[^]*	100	10	100
Chrysene	218-01-9	*[[0.03]]* *NA*	20	*[[20]]* *NA*
Color		10 CU	20 CU	20 CU
Copper	7440-50-8	1,000	1,000	1,000
*[Corrosivity		Non-corrosive	NA	Non-corrosive]*
Cyanide	57-12-5	200	40	200
2,4-D	94-75-7	70	5	70
Dalapon	75-99-0	200	10	200
4,4'-DDD (p,p'-TDE)	72-54-8	0.1	0.04	0.1
4,4'-DDE	72-55-9	0.1	0.04	0.1

4,4'-DDT	50-29-3	0.1	0.06	0.1
Demeton	8065-48-3	0.3	NA	0.3
Dibenz(a,h)anthracene	53-70-3	*[[0.003]]* *NA*	20	*[[20]]* *NA*
Dibromochloromethane (Chlorodibromomethane)	124-48-1	10	1	10
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	*[[0.002]]* *NA*	2	*[[2]]* *NA*
Di-n-butyl phthalate	84-74-2	900	20	900
1,2-Dichlorobenzene	95-50-1	600	5	600
1,3,Dichlorobenzene	541-73-1	600	5	600
1,4-Dichlorobenzene	106-46-7	75	5	75
3,3'-Dichlorobenzidine	91-94-1	0.08	60	60
1,1-Dichloroethane	75-34-3	70	NA	70
1,2-Dichloroethane	107-06-2	0.3	2	2
1,1-Dichloroethylene	75-35-4	1	2	2
cis-1,2-Dichloroethylene	156-59-2	10	2	10
trans-1,2-Dichloroethylene	156-60-5	100	2	100
2,4-Dichlorophenol	120-83-2	20	10	20
1,2-Dichloropropane	78-87-5	0.5	1	1
cis-1,3-Dichloropropene	10061-01-5	NA	5	NA
trans-1,3-Dichloropropene	10061-02-6	NA	7	NA
1,3-Dichloropropene (cis and trans)	542-75-6	0.2	NA	.02
Dieldrin	60-57-1	0.002	0.03	0.03
Diethyl phthalate	84-66-2	5,000	10	5,000
2,4-Dimethylphenol	105-67-9	100	20	100
Dimethyl phthalate	131-11-3	*[[7,000]]* *NA*	10	*[[7,000]]* *NA*
4,6-Dinitro-o-cresol	534-52-1	NA	60	NA
2,4-Dinitrophenol	51-28-5	10	40	40
2,4-Dinitrotoluene/2,6-Dinitrotoluene mixture	121-14-2	0.05	10	10
2,6-Dinitrotoluene	606-20-2	NA	10	NA
Di-n-octyl phthalate	117-84-0	100	NA	100
Dinoseb	88-85-7	7	2	7
1,2-Diphenylhydrazine	122-66-7	0.04	NA	0.04
Diquat	85-00-7	20	NA	20
Endosulfan	115-29-7	0.4	NA	0.4
alpha-Endosulfan (Endosulfan I)	959-98-8	0.4	0.02	0.4
beta-Endosulfan (Endosulfan II)	33213-65-9	0.4	0.04	0.4
Endosulfan sulfate	1031-07-8	0.4	0.08	0.4
Endothall	145-73-3	100	NA	100
Endrin	72-20-8	2	0.04	2
Epichlorohydrin	106-89-8	4	NA	4
Ethylbenzene	100-41-4	700	5	700
Ethylene dibromide	106-93-4	0.0004	0.05	0.05
Fluoranthene	206-44-0	300	10	300
Fluorene	86-73-7	300	10	300
Fluoride	16984-48-8	2000	500	2000
Foaming agents (ABS/LAS)		500	0.5	500
Glyphosate	1071-83-6	700	NA	700
Hardness (as $CaCO_3$)		*[[50 < H <]]* 250mg/L	10 mg/L	250 mg/L
Heptachlor	76-44-8	0.008	0.4	0.4
Heptachlor epoxide	1024-57-3	0.004	0.2	0.2
Hexachlorobenzene	118-74-1	0.02	10	10
Hexachlorobutadiene	87-68-3	1	1	1
Hexachlorocyclopentadiene	77-47-4	50	10	50
Hexachloroethane	67-72-1	0.7	10	10
Hydrogen sulfide	7783-06-4	20	NA	20
Indeno(1,2,3-cd)pyrene	193-39-5	*[[0.03]] *NA*	20	*[[20]]* *NA*
Iron	7439-89-6	300	100	300
Isophorone	78-59-1	100	10	100
Lead (Total)	7439-92-1	5	10	10
Malathion	121-75-5	200	5	200
Manganese	7439-96-5	50	6	50
Mercury (Total)	7439-97-6	2	0.5	2
Methoxychlor	72-43-5	40	10	40
Methyl bromide (bromomethane)	74-83-9	10	2	10
Methyl chloride (chloromethane)	74-87-3	30	2	30
Methyl ethyl ketone	78-93-3	300	NA	300

3-Methyl-4-chlorophenol	59-50-7	NA	20	NA
Methylene chloride	75-09-2	2	2	2
4-Methyl-2-pentanone	108-10-1	400	NA	400
Mirex	2385-85-5	0.01	NA	0.01
Nickel (Soluble salts)	7440-02-0	100	10	100
Nitrate (as N)	14797-55-8	10,000	400	10,000
Nitrate and Nitrite (as N)		10,000	NA	10,000
Nitrite (as N)	14797-65-0	1,000	400	1,000
Nitrobenzene	98-95-3	3	10	10
N-Nitrosodimethylamine	62-75-9	0.0007	20	20
N-Nitrosodiphenylamine	86-30-6	7	20	20
N-Nitrosodi-n-propylamine	621-64-7	0.005	20	20
Odor		3[b]	NA	3[b]
Oil & Grease and Petroleum Hydrocarbons (PHC)		None Noticeable	NA	None Noticeable
Oxamyl	23135-22-0	200	20	200
PCBs (Polychlorinated biphenyls)	1336-36-3	0.02	0.5	0.5
Pentachlorophenol	87-86-5	0.3	1	1
pH		6.5-8.5	NA	6.5-8.5
Phenanthrene	85-01-8	NA	10	NA
Phenol	108-95-2	4000	10	4000
Picloram	1918-02-1	500	1	500
Pyrene	129-00-0	200	20	200
Selenium (Total)	7782-49-2	50	10	50
Silver	7440-22-4	*[[20]]* *NA*	2	*[[20]]* *NA*
Simazine	122-34-9	1	0.8	1
Sodium	7440-23-5	50,000	400	50,000
Styrene	100-42-5	100	5	100
Sulfate	14808-79-8	250,000	5000	250,000
Taste		None Objectionable *[[Noticeable]]*	NA	None Objectionable *[[Noticeable]]*
TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin)	1746-01-6	0.0000002	0.01	0.01
1,1,1,2-Tetrachloroethane	630-20-6	10	NA	10
1,1,2,2-Tetrachloroethane	79-34-5	2	1	2
Tetrachloroethylene	127-18-4	0.4	1	1
2,3,4,6-Tetrachlorophenol	58-90-2	NA	10	NA
Thallium	7440-28-0	0.5	10	10
Toluene	108-88-3	1,000	5	1,000
Total dissolved solids (TDS)		500,000	10,000	500,000
Toxaphene	8001-35-2	0.03	3	3
2,4,5-TP	93-72-1	50	5	50
1,2,4-Trichlorobenzene	120-82-1	9	1	9
1,1,1-Trichloroethane	71-55-6	30	1	30
1,1,2-Trichloroethane	79-00-5	3	2	3
Trichloroethylene	79-01-6	1	1	1
2,4,5-Trichlorophenol	95-95-4	700	10	700
2,5,6-Trichlorophenol	88-06-2	3	20	20
Vinylchloride	75-01-4	0.08	5	5
Xylenes (Total)	1330-20-7	40	?	40
m&p-Xylenes	NA	NA	2	NA
o-Xylene	NA	NA	1	NA
Zinc	7440-66-6	5,000	30	5,000
Microbiological criteria[m], Radionuclides & Turbidity	Prevailing Safe Drinking Water Act Regulations (N.J.A.C. 7:10-1 et seq.)			

Explanation of Terms:

* = Ground Water Quality Criteria and PQLs are expressed as ug/L unless otherwise noted. Table 1 criteria are all maximum values unless clearly indicated as a range for which the minimum value is to the left and the maximum value is to the right.

PQL—Practical Quantitation Level as defined in N.J.A.C. 7:9-6.4

CASRN—Chemical Abstracts System Registration Number

NA = not available for this constituent

a = Asbestos criterion is measured in terms of fibers/L longer than 10 micrometers (f/L>10 um)

ug = micrograms, L = liter, f = fibers, CU = Standard Cobalt Units

b = Odor Threshold Number, mg = milligrams, H = Hardness

(Total) means the concentration of metal in an unfiltered sample following treatment with hot dilute mineral acid (as defined in "Methods for Chemical Analysis of Water & Wastes", EPA-600/4-79-020, March 1979) or other digestion defined by the analytical method. However samples that contain less than 1 nephlometric turbidity unit (NTU) and are properly preserved, may be directly analyzed without digestion.

m = Pursuant to prevailing Safe Drinking Water Act Regulations any positive result for fecal coliform is in violation of the MCL and is therefore an exceedance of the ground water quality criteria.

(a)

ENGINEERING AND CONSTRUCTION ELEMENT
Flood Plain Redelineation of Green Brook
Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: December 21, 1992 at 24 N.J.R. 4475(a).
Adopted: March 16, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Filed: March 16, 1993 as R.1993 d.160, **without change.**

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

DEPE Docket Number: 57-92-11.
Effective Date: April 5, 1993.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Response:
Notice of the proposed amendment was published on December 21, 1992, in the New Jersey Register at 24 N.J.R. 4475(a). The Department held a public hearing on January 7, 1993, at 501 E. State Street, Trenton, New Jersey. In addition, secondary notice of the proposal was published on December 21, 1992, in the Courier-News. Both notices announced the holding of the public hearing and invited written comments to be submitted by February 19, 1993. Ms. Delores Kresge, Chairperson of the Watchung Environmental Commission, was the only person in attendance from the general public at the hearing.

No comments were received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles showing the location of the revised delineated flood hazard areas may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway is identified on the plates specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
DELINEATON of FLOODWAY and FLOOD HAZARD AREA
Green Brook
Plate Nos. 1 and 2

(b)

DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL
1993-94 Fish Code
Largemouth Bass and Smallmouth Bass
Adopted Amendment: N.J.A.C. 7:25-6.13

Proposed: January 19, 1993 at 25 N.J.R. 224(a).
Adopted: February 20, 1993 by the Fish and Game Council, Cole Gibbs, Chairman.
Filed: March 5, 1993 as R.1993 d.139, **without change.**

Authority: N.J.S.A. 13:1B-29 et seq.

DEPE Docket Number: 61-92-12.
Effective Date: April 5, 1993.
Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:
Secondary notice was achieved by mailing news releases to 72 newspapers of general circulation and approximately 50 outdoor writers and specialty publications.

A public hearing concerning the proposal was held before the Chairman of the Fish and Game Council and members of the Council's Fisheries Committee on February 9, 1993 at the Assunpink Wildlife Conservation Center of the Division of Fish, Game and Wildlife (Division) located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. Notice of the hearing was filed with the Secretary of State on January 27, 1993, was posted on the Secretary of State's bulletin board and was delivered to the Newark Star-Ledger and Atlantic City Press. The hearing was attended by 55 members of the general public of which nine presented verbal comment. Eight letters relevant to the proposal were received by the Division during the public comment period which closed on February 18, 1993. The record of the public hearing may be inspected or a copy obtained by contacting Robert McDowell, Director, New Jersey Division of Fish, Game and Wildlife, CN 400, Trenton, NJ 08625.

The commenters at the public hearing were:
1. Agust Gudmundsson, Central Jersey Trout Unlimited
2. Gary Kreckie, Howell Township Environmental Commission
3. Joseph Gula
4. Joseph Miller
5. Paul Renaldo, Rogue Bass Fishing Club
6. David Leeds, Jr., Atlantic County BASS Anglers
7. Steve Guerriero, New Jersey Anglers Fishing Association
8. George P. Howard, President, New Jersey Federation of Sportsmen Clubs
9. Tim Roach, New Jersey Bass Federation

Written comment was received from:
1. Janet L. Castello, Paradise Fishing Club
2. Mike von Ohlen
3. John Connally
4. Edward Ford
5. David Berlin
6. Jerry Iannuzzi
7. Richard Martin
8. Kent Ravaioli

COMMENT: All but three of the commenters expressed support for the proposal, although several had additional suggestions which were beyond the scope of this proposal.

RESPONSE: The Council and the Division acknowledge the support of the proposal by these commenters. The suggestions and issues relating to bass management were discussed between the commenters and the Division's fisheries biologists following the termination of the hearing.

COMMENT: Two commenters felt that the proposal did not go far enough and that bass fishing should be prohibited during this period.

RESPONSE: The normally low mortality rate of hooked and released bass allows for catch and release fishing without significantly jeopardizing the resource.

COMMENT: One commenter opposed the proposal because it could require him to release a potential State record bass or the bass "of a lifetime."

RESPONSE: The Council held that the conservative position presented in this proposed amendment best protects the resource and ensures the sustained viability of the bass population.

Full text of the adopted amendment follows.

7:25-6.13 Warmwater fish

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

(d) The minimum size of smallmouth bass shall be 12 inches.

(e) The minimum size of largemouth bass shall be 12 inches.

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

(g)-(p) (No change.)

(c)

HAZARDOUS WASTE REGULATION PROGRAM
Notice of Administrative Corrections
Hazardous Waste Manifest Discrepancies
Hazardous Waste Facility Operator Responsibilities
N.J.A.C. 7:26-7.6

Take notice that the Department of Environmental Protection and Energy has requested, and the Office of Administrative Law has agreed to permit, an administrative correction to N.J.A.C. 7:26-7.6(a)4ii to replace "facility operator" with "facility owner or operator." This change

provides a clarification of the joint responsibility of facility owners and operators, as reflected throughout the Department's hazardous waste rules and most recently demonstrated in the adoption of amendments to this rule at 25 N.J.R. 98(a). This change is also necessary to maintain equivalence with USEPA requirements, necessary for the continued authorization of the State's hazardous waste program.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:26-7.6 Hazardous waste facility operator responsibilities

(a) General requirements are as follows:

1.-3. (No change.)

4. If at the time of acceptance or after acceptance of the hazardous waste delivery, the facility operator determines that there is a "significant discrepancy," as described below, between the waste accepted and the waste described in the manifest, the operator shall comply with this paragraph.

i. (No change.)

ii. When a significant discrepancy is discovered, the facility **owner or** operator shall attempt to reconcile the discrepancy with the waste generator or transporter: and

iii.-iv. (No change.)

5.-6. (No change.)

(b)-(g) (No change.)

(a)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Environmental Cleanup Responsibility Act Rules

Adopted Amendments: N.J.A.C. 7:26B-1.3, 1.5, 1.6, 1.8 and 1.9

Proposed: March 2, 1992 at 24 N.J.R. 720(a).

Adopted: March 1, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: March 1, 1993 as R.1993 d.137, **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., 13:1K-6 et seq., particularly 13:1K-10, and 58:10-23.11 et seq.

Effective Date: April 5, 1993.

Operative Date: These amendments shall become operative upon publication of a notice in the New Jersey Register reflecting approval by the Governor of ECRA reform legislation currently pending in the Legislature as S-1070, or on August 5, 1993, whichever is earlier.

Expiration Date: November 18, 1997.

Summary of Public Comments and Agency Responses:

On March 2, 1992, the Department of Environmental Protection and Energy (Department) proposed amendments to its rules implementing the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. (ECRA). The Department published notice of the proposal in the Trenton Times, the Star Ledger, and the Atlantic City Press. The Department held a public hearing on the proposed amendments on March 30, 1992, at which two people testified, and accepted written comments through May 6, 1992.

A bill (S-1070) which would amend portions of ECRA is currently pending in the Legislature. In anticipation of the possibility that the legislation would affect the applicability provisions of ECRA, the Appellate Division granted a motion by the Chemical Industry Council of New Jersey (an appellant in *In re Adoption of N.J.A.C. 7:26B* 250 *N.J. Super.* 189 (App. Div. 1991)) to extend to February 15, 1993 the court's deadline for completion of the rulemaking on remand. As of the time of this rule adoption, it appeared that the rule as adopted would be consistent with the legislation. Accordingly, to comply with the Appellate Division's deadline and to avoid the expiration of the rule amendments proposed on March 2, 1992, the Department is proceeding with this rule adoption.

Portions of the March 2, 1992 rule proposal were not mandated by the Appellate Division in *In re Adoption of N.J.A.C. 7:26B.* These portions included amendments to N.J.A.C. 7:26B-1.3, 1.10, 1.13, 5.4, 13.1 and Appendix A. The Department promulgated the amendments to those provisions on January 4, 1993 at 25 N.J.R. 100(a).

The following persons submitted written comments or testified at the public hearing on the March 2, 1992 rule proposal:

Name—Affiliation

Lee A. Braem, Esq., Senior Counsel—Schering-Plough Corporation
Gary F. Danis, Esq.—Kerby, Cooper, English, Danis, Popper and Garvin
Matthias D. Dileo, Esq., President—New Jersey State Bar Association
Jay Jaffe, Esq.—Farer, Siegal and Fersko
Kenneth H. Mack, Esq.—Picco Mack Herbert Kennedy Jaffe & Yoskin, on behalf of the Chemical Industry Council of New Jersey
Jayne A. Pritchard, Esq. and Norman W. Spindel, Esq.—Lowenstein, Sandler, Kohl, Fisher & Boylan
William L. Warren, Esq.—Cohen, Shapiro, Polisher, Shiekman and Cohen
Christopher Marrarro, Esq.—Kaye, Scholer, Fierman, Hays & Handler

The written and oral comments are summarized and responded to below:

N.J.A.C. 7:26-1.3 Definitions

Cessation of all or substantially all the operations

1. COMMENT: New Jersey State Bar Association stated that the Department failed to provide standards for "cessation of all or substantially all the operations."

RESPONSE: The rule does establish standards for determining when a "cessation of all or substantially all the operations" has occurred. The standards are set forth in the definition of that term. Under that definition, an industrial establishment has ceased all or substantially all of its operations if it reduces its units of product output by 90 percent or more. If the establishment has an undefined unit of product output (for example, for a warehouse operation), a cessation is deemed to have occurred if either the number of employees or the area of operations is reduced by 90 percent or more.

2. COMMENT: Chemical Industry Council of New Jersey stated the Department's revision of the definition of "cessation of all or substantially all the operations," which deleted the requirement of a 90 percent reduction in units of products output if an industrial establishment has "an undefined unit of product output," does not address the court's concern and violates the mandate. Lowenstein, Sandler, Kohl, Fisher and Boylan agreed, stating that DEPE's change to the definition of "cessation of all or substantially all operations" from one using three criteria (number of employees, area of operation and units of output) to one primary criteria, units of output, does not address the court's concerns regarding a cessation of one facet of the business. Lowenstein, Sandler, Kohl, Fisher and Boylan recommended that the "units of output" criterion be clarified to mean a 90 percent reduction in total units of product output from the industrial establishment and not in the units of output from distinct operating portions.

RESPONSE: The revised definition provides that the Department will apply criteria other than the "units of product output" standard if an industrial establishment has an undefined unit of product output (such as a warehouse operation), because the "units of product output" standard would not be helpful when the units of product output are undefined.

The Department agrees with the Lowenstein, Sandler, Kohl, Fisher and Boylan that the definition should be further revised to fully address the concern discussed by the court in *In re Adoption of N.J.A.C. 7:26B,* 250 *N.J. Super.* 189 (App. Div. 1991). The court perceived a danger in the existing ECRA regulations, because a 90 percent reduction of employees or production in one facet of a business would not necessarily approach a cessation of "substantially all" of its total operations. The Department has modified the rule upon adoption to clarify that a 90 percent reduction in units of output from a distinct operating portion of the industrial establishment, rather than from the industrial establishment as a whole, will not be a cessation. The Department notes that in evaluating the reduction from a distinct operating portion of the industrial establishment, it will look to the percentage of the value of the total output which is being reduced.

3. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan pointed out that the Summary section of the proposal erroneously states

that a cessation resulting in a 90 percent reduction in units of output is not subject to ECRA. The commenter suggested that this misstatement be clarified.

RESPONSE: The commenter is correct. A reduction of 90 percent in the units of output of an industrial establishment is subject to ECRA.

Closing, terminating or transferring operations

4. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan stated that the deletion of the phrase "except for any corporate reorganization not substantially affecting ownership" from the definition of "closing, terminating or transferring operations" removes by regulations a limiting provision established by legislation. The commenter went on to say that the deletion of the phrase would require all owners and operators to file an initial notice including those previously statutorily exempted.

RESPONSE: The Department had deleted the phrase because it appeared duplicative, without any intent to change the meaning of the rule. Inasmuch as the deletion appears to have caused some unnecessary confusion, the Department has decided not to adopt the proposed change and is restoring the deleted language upon adoption.

Controlling interest

5. COMMENT: Chemical Industry Council of New Jersey questioned the definition of "controlling interest" at N.J.A.C. 7:26B-1.3. The commenter stated that by defining "controlling interest" to include the interest of a person who directly or indirectly possesses the power to "direct or cause the direction of the management and policies of a corporation," the Department could find a "controlling interest" in any case it wished to find one. The commenter added that the problem was exacerbated by language in N.J.A.C. 7:26B-1.9(b)3ii, which considers whether a voting trust, shareholders agreement or proxy exists which would enable a person to elect a majority of the board of directors, or a smaller number of directors sufficient to effectively direct the management and policies of the corporation. The commenter stated that this provision becomes most troublesome when a small corporation with a limited number of shareholders, all of whom are related, is involved. The commenter pointed out that in many such corporations, those shareholders will disagree frequently enough that they will not be acting as a bloc to direct the management and policies of the corporation.

RESPONSE: The Department believes that the definition of "controlling interest," and the related language in N.J.A.C. 7:26B-1.9(b)3ii cited by the commenter, is only as broad as is necessary to ensure that an effective transfer of a controlling interest in a corporation cannot easily be structured in a manner which will avoid triggering ECRA. If the rule established a bright-line test for "controlling interest," such as ownership of a specified percentage of stock in a corporation, the shareholders could ensure that no one held a "controlling interest" (the transfer of which would trigger ECRA) simply by dividing ownership of stock among themselves so that no one person held the specified percentage; at the same time, a voting trust, shareholders agreement or proxy could ensure that one person could effectively control voting of all of that stock. That person would effectively hold a controlling interest, which could be transferred without triggering ECRA if the rule did not contain the provisions questioned by the commenter.

The commenter envisions a situation in which related shareholders own all of a corporation's stock but frequently disagree. The rule would not unnecessarily make a transfer of stock in this situation an ECRA trigger. Those shareholders could obtain a letter of non-applicability based primarily upon their certification of certain facts to the Department, which would not be a problem in the circumstances to which the commenter refers.

Corporate reorganization not substantially affecting ownership

6. COMMENT: New Jersey State Bar Association stated that it continues to believe that the Department's definition of "corporate reorganization" is overly restrictive.

RESPONSE: The Department believes that the definition accurately implements the intent of ECRA. The Department is unable to respond to this comment in more detail, because the commenter has not indicated the manner in which it believes the definition is overly restrictive.

7. COMMENT: New Jersey State Bar Association stated that the rules governing corporate reorganization apparently require a transferror to obtain a letter of nonapplicability in order to take advantage of the exemption. The commenter believed that this de facto requirement is in error because the statute does not require persons proposing exempt transactions to seek applicability determinations. The commenter stated that the Department's regulations must be clear and complete enough to enable a person to determine whether a transaction will trigger ECRA, without going to the Department for a determination.

RESPONSE: The commenter is correct. A person proposing a transaction which qualifies as a "corporate reorganization not substantially affecting ownership" is not required to seek an applicability determination; the applicability of ECRA does not depend upon the issuance of a letter of non-applicability. Accordingly, the Department has clarified the definition of "corporate reorganization not substantially affecting ownership" upon adoption. The revised provision states that a transaction satisfying the standards for non-applicability under N.J.A.C. 7:26B-1.9(b)2 is not subject to ECRA, but that the person proposing the transaction is not required to seek the applicability determination.

However, the Department notes that under the standards in N.J.A.C. 7:26B-1.9(b)2, the Department's involvement will be necessary in certain types of transactions to determine whether ECRA is applicable. Specifically, in certain types of corporate reorganizations, the transferee is required to agree with the Department to assume certain liabilities of the transferror.

8. COMMENT: Chemical Industry Council of New Jersey commented that the phrase "or otherwise hinder the owner or operator's ability to clean up the industrial establishment" was inappropriate in the definition of a "corporate reorganization not substantially affecting ownership" at N.J.A.C. 7:26B-1.3.

RESPONSE: The phrase which the commenter questions was part of the definition of "corporate reorganization not substantially affecting ownership" which the Appellate Division upheld in *In Re Adoption of N.J.A.C. 7:26B*. In upholding the definition, the Appellate Division noted that the ECRA encompasses events which could affect a corporation's financial ability to clean up hazardous wastes. 250 *N.J. Super.* at 216.

The Department notes that the phrase in the definition questioned by the commenter was not affected by this rulemaking. The Appellate Division remanded the rule to the Department to formulate clear standards under which the corporate reorganization exemption would be applied. The Department has included those standards at N.J.A.C. 7:26B-1.9(b)2, and has amended the definition in this rulemaking only to include a cross-reference to that provision.

Industrial establishment

The Department had proposed amendments to the definition of "industrial establishment" in N.J.A.C. 7:26B-1.3. The intended purpose of these amendments was simply to clarify that the term "industrial establishment" includes not only contiguous parcels of vacant land, but also contiguous parcels containing vacant buildings and other unused improvements. The proposed amendments did not adequately express this purpose, and were open to intepretations that raised unnecessary concerns. Therefore, the Department is not adopting the proposed amendments to the definition of "industrial establishment" at this time. Amendments to the ECRA statute which may affect the definition are pending in the Legislature; accordingly, the Department will await the outcome of the Legislature's deliberations before proposing the necessary clarification.

The comments regarding the proposed amendment to the definition of "industrial establishment" are summarized below, without responses, for the reason discussed above.

9. COMMENT: Chemical Industry Council of New Jersey commented that the revisions to the definition of "industrial establishment" do not spring from the Appellate Division's mandate.

10. COMMENT: Chemical Industry Council of New Jersey commented that the revisions to the definition of "industrial establishment" do not meet the Department's announced goal of greater precision and guidance.

11. COMMENT: Chemical Industry Council of New Jersey questioned the amendments to the definition of "industrial establishment" to include "blocks and lots upon which the business is or has been conducted" and "improvements or portions of improvements that are or were used in conjunction with such business". The commenter asked if these changes mean that ECRA will have effect upon operations which existed before but not after its effective date. The commenter stated that this position would contradict case law and the Department's announced position that it would adhere to the provisions of the Standard Industrial Classification Manual.

12. COMMENT: Kerby, Cooper, English, Danis, Popper and Garvin suggested limiting the proposed changes to the industrial establishment definition regarding "property upon which business has been conducted" to the time period beginning December 31, 1982, the effective date of ECRA. In addition, the commenter suggested clarifying the proposal

regarding "improvements or portions of improvements that are or were used in conjunction with the business" as those located on contiguous property controlled by the same owner or operator and not on property no longer under their control.

13. COMMENT: Chemical Industry Council of New Jersey commented that the revisions to the definition of "industrial establishment" would conflict with law established by judicial decisions under ECRA.

14. COMMENT: Chemical Industry Council of New Jerey stated that the word "improvements" as used in the definition of "industrial establishment" is an ill-defined real estate term, and that the definition provided no guidance as to its meaning. The commenter understands the word "improvements" to mean "buildings," and suggests that the definition should use that word instead.

15. COMMENT: Chemical Industry Council of New Jersey questioned the use of the phrase "portions of improvements that are or were used in conjunction with such business" in the definition of "industrial establishment." The commenter asked whether the phrase means that a building razed 100 years ago and buried must be excavated and its foundations examined to establish that none of such material has had an adverse environmental impact. The commenter also asked what impact the phrase would have on landlord/tenant situations, in which a tenant is undergoing ECRA compliance, and an underground storage tank (which may or may not be an "improvement") was removed in the past, and neither the landlord nor the tenant know whether it once served the tenant's leasehold.

16. COMMENT: New Jersey State Bar Association stated that the DEPE's proposed changes to the definition of industrial establishment are unauthorized and inappropriate. The commenter stated, through the use of an example, that it would be inappropriate to compel a tenant ceasing operations to deal with an underground tank not located on its demised premises merely because a former tenant once used the tank to support operations in the present tenant's demised premises. In the alternative, if the Department disagrees with this position, the commenter suggests limiting the historical review to past operations conducted and improvements utilized after the latter of (a) December 31, 1982 or (b) since the last approved negative declaration or cleanup plan.

17. COMMENT: Chemical Industry Council of New Jersey questioned whether the phrase "were used" in the definition of the industrial establishment at N.J.A.C. 7:26B-1.3 is intended to include periods before the effective date of ECRA. Chemical Industry Council of New Jersey noted that, if this were the intent of the phrase, it is in conflict with the SIC manual.

N.J.A.C. 7:26B-1.5 Applicability

General Comments

18. COMMENT: New Jersey State Bar Association made general comments regarding the past and present policies of the Department in connection with indirect owners and corporate reorganizations. The commenter felt that the broad application of ECRA to transactions involving indirect owners was mitigated by the Department policy regarding corporate reorganizations. That policy exempted transactions where the ultimate control and equity interest did not change by more than 50 percent. The commenter commended the Department for this application in that the policy avoided complicated assessments of financial information as condition of exemptions. According to the commenter, in 1988 and 1989 the Department narrowed its application to the corporate reorganization exemption. He closed by stating that the current method is difficult to understand and expensive for the regulated community to appeal while yielding little to no benefits to the environment.

RESPONSE: The Department acknowledges that its policies regarding corporate reorganizations have been modified over the years. The proposal, however, offers clear guidance to the regulated community in rule form as to what the Department considers a corporate reorganization to be and what standards must be met to qualify for the exemption. In addition, the proposed regulations offer relief to indirect owners, pursuant to N.J.A.C. 7:26B-1.9, which did not exist in previous rules.

19. COMMENT: New Jersey State Bar Association felt that the Department should allow an exemption for new triggers occurring within some period after an approved negative declaration. The commenter suggested rule language which would exempt transactions among or between affiliates (who control, are controlled by or under common control with others) within two years of a prior ECRA clearance provided that the owner or operator certifies that no discharges had occurred as defined by the Spill Act.

RESPONSE: The Department is considering a number of alternatives to offer relief to owners or operators of industrial establishments which have previously complied with ECRA. In addition, the Legislature is also considering changes to ECRA which may change the way the Department processes filings of owners and operators who previously complied with ECRA. The Department will await the outcome of the Legislature's deliberations before modifying procedures for these situations.

Partnership transactions

20. COMMENT: New Jersey State Bar Association stated that the mere transfer of a general partner's interest should not trigger ECRA.

RESPONSE: The Department believes that in many cases, the transfer of a general partner's interest alone should trigger ECRA. In a general partnership, all partners are jointly liable for all debts and obligations of the partnership. N.J.S.A. 42:1-15. In a limited partnership, with certain exceptions not normally applicable in this context, a general partner has that same liability. N.J.S.A. 42:2A-32. For these reasons, the withdrawal of a general partner from a partnership could materially affect the assets available to pay for a cleanup unless he or she was replaced by a new partner with comparable net worth. The Appellate Division recognized in *In Re Adoption of N.J.A.C. 7:26B* a transaction having this effect should trigger ECRA. 250 *N.J. Super.* at 226. In the context of partnership transactions, the court pointed out that a "money partner" could withdraw, and allow the business to be sold later, when that partner's assets may or may not be available for a cleanup. 250 *N.J. Super.* at 236.

21. COMMENT: New Jersey State Bar Association stated that the regulations dealing with partnerships were sufficiently vague to require an applicant to obtain a letter of non-applicability in order to take advantage of an exemption. The commenter believes that this defeats a requirement to seek Department approval, due to the confusing nature of the rolls, is an error and that the statute does not require exempt transactions to seek applicability determination.

RESPONSE: The Department agrees with the commenter. A partnership transaction meeting the standards for non-applicability under N.J.A.C. 7:26B-1.9(b)5 is not subject to ECRA. Accordingly, the Department has clarified 7:26B-1.5(b)10 upon adoption.

N.J.A.C. 7:26B-1.9 Applicability determinations

N.J.A.C. 7:26B-1.9(a)4

22. COMMENT: N.J.A.C. 7:26B-1.9(a)4 provides for a person seeking an applicability determination to demonstrate to the Department's satisfaction that the Act and N.J.A.C. 7:26B are not applicable. Chemical Industry Council of New Jersey noted that the proposed amendment to this provision can be read to mean that all requirements of N.J.A.C. 7:26B-1.9(b) (which apply disjunctively to various transactions and proceedings) must be satisfied before a non-applicability determination will be rendered. The commenter suggested that it was not clear that the applicant was required to satisfy only those provisions of N.J.A.C. 7:26B-1.9(b) pertinent to the facility or transaction for which the determination is sought.

RESPONSE: The Department believes that the wording of N.J.A.C. 7:26B-1.9(b) already makes it clear that requirements which are not pertinent to the facility or transaction in question need not be satisfied. The amendment to N.J.A.C. 7:26B-1.9(a)4 states that as part of the applicant's demonstration, "all applicable requirements of (b) below shall be satisfied." Under this language, if a requirement of N.J.A.C. 7:26B-1.9(b) is not pertinent to a particular facility or transaction, there is no implication that an applicant is subject to that requirement.

N.J.A.C. 7:26B-1.9(b)1

As the Appellate Division suggested in *In re Adoption of N.J.A.C. 7:26B,* ECRA is triggered by events which could affect a corporation's financial ability to clean up hazardous wastes. 250 *N.J. Super.* at 216. To determine whether an event involving an "indirect owner" of industrial establishment could have this effect, the Department must first determine that the assets of the indirect owner may be available to pay for a cleanup. If the Department could not reach the indirect owner's assets, then even a transaction which strips the indirect owner of those assets entirely would not affect the ability to pay for a cleanup.

As discussed in the proposal of these amendments, court decisions support the conclusion that the indirect owner's assets may be available to pay for a cleanup if the indirect owner exercised control over the direct owner or operator of the industrial establishment. See, e.g., *DEP v. Ventron Corp.,* 94 *N.J.* 473 (1983). Accordingly, the amendments to N.J.A.C. 7:26B-1.9(b)1 establish criteria for determining whether the indirect owner has exercised control, and make the existence or lack of that control relationship (and the resulting possible availability or unavailability of the indirect owner's assets) relevant to ECRA applicability. In deciding whether the indirect owner has exercised control,

the Department will accord substantial weight to the indirect owner's certified statement that, based on those criteria, it has not exercised control.

Several commenters questioned the criteria for determining whether control exists. The Department believes that many of those questions reflect a concern that some common corporate structures will always be seen as establishing a control relationship. As a result, many indirect owners may feel that they cannot comfortably certify that all of the criteria are satisfied.

To address this problem, the Department has revised the rule upon adoption to allow an indirect owner to limit its certification when it has concerns over one or more of the criteria, and to explain the circumstances which cause that concern. The Department will evaluate those circumstances and determine whether they satisfy the criteria in question. This provision will add some flexibility to the rule, while preserving the value of the guidance offered by the criteria.

The Department also has simplified the rule upon adoption, by eliminating one criterion which concerned issues already addressed in other criteria. N.J.A.C. 7:26B-1.9(b)1ii(4), as proposed, found control to exist unless "no officers, directors or employees of the indirect owner determine the policies or decisions of the owner." The Department has concluded that N.J.A.C. 7:26B-1.9(b)1ii(2) and (5) already cover this ground. N.J.A.C. 7:26B-1.9(b)1ii(2) establishes control when officers, directors and employees of the indirect owner hold sufficient seats on the direct owner's board of directors to direct its management and policies. N.J.A.C. 7:26B-1.9(b)1ii(5) establishes control when the indirect owner has the ability to control the direct owner's activities relevant to the generation, handling, storage or disposal of hazardous substances or hazardous waste. An indirect owner can exercise control over these activities by directing the policies or decisions of the direct owner. Accordingly, the deletion of N.J.A.C. 7:26B-1.9(b)1ii(4) does not affect the substance of the rule.

23. COMMENT: Lowenstein, Sandler, Kohl, Fisher & Boylan noted that as written, N.J.A.C. 7:26B-1.9(b)1 is applicable only to "indirect owners or operators" of the industrial establishment and not to "direct owners or operators;" this feature, it is asserted, unduly restricts the availability of the "safety valve" to indirect owners or operators. The commenter notes that the N.J.A.C. 7:26B-1.5, the applicability section of the regulations, does not distinguish between "indirect" and "direct" owners or operators and limits the availability of the safety valve to indirect owners only. The commenter states that restricting the safety valve at N.J.A.C. 7:26B-1.9 to indirect owners and operators is inconsistent with N.J.A.C. 7:26B-1.5 and limits the Department's authority to make an applicability determination for direct owners or operators under N.J.A.C. 7:26B-1.5(b)1, 2 and 6, and is beyond the Department's authority. N.J.S.A. 13:1K-8.

RESPONSE: The Department disagrees with the commenters position. N.J.A.C. 7:26B-1.9(b)1 concerns applicability determinations under N.J.A.C. 7:26B-1.5(b)1, 2 and 6, which address the following types of transactions: a merger or consolidation affecting the direct or indirect owner; a stock transfer resulting in a change in control of the direct or indirect owner; and a dissolution of the direct or indirect owner. If the entity involved in the transaction directly owns or operates the industrial establishment, then the transaction definitely will trigger ECRA. In contrast, a merger, consolidation, change in control or dissolution affecting only an entity which indirectly owns or operates the industrial establishment will not trigger ECRA in all cases. The criteria for applicability in N.J.A.C. 7:26B-1.9(b)1 are based upon whether the entity involved in the transaction is sufficiently removed from control over the industrial establishment to avoid liability for its cleanup; the direct owner or operator of the industrial establishment will never be so removed.

24. COMMENT: Farer, Siegal and Fersko questioned whether an indirect owner seeking an applicability determination for a transfer of stock would be required to satisfy the requirements of both N.J.A.C. 7:26B-1.9(b)1 and (b)3.

RESPONSE: The requirements of both provisions would have to be satisfied in order to establish non-applicability.

25. COMMENT: Schering-Plough Corporation commented that the rules under N.J.A.C. 7:26B-1.9(b)1 are overly broad, overreach the Department's authority and are not factually supported. The commenter noted that while the Department's stated interest is in ensuring that the assets of the indirect owner are available for a cleanup, the Department has failed to consider whether those assets will ever be needed for a cleanup. The commenter pointed out that many direct owners may have more than sufficient assets to fund a cleanup. For this reason, the commenter recommended that the rule require analysis concerning the indirect owner only if the direct owner cannot pay for a cleanup.

RESPONSE: The Department has not made the recommended change. As the Appellate Division pointed out in *In re Adoption of N.J.A.C 7:26B*, ECRA defines changes in ownership to encompass events which could affect a corporation's financial ability to clean up hazardous wastes. In requiring that the Department analyze the availability of an indirect owner's assets to pay for a cleanup, and the effect a transaction will have on the assets available, the rule is drafted in a manner which covers exactly this type of transaction; if the assets of a corporation could have been available to pay for a cleanup, then a transaction which makes a lesser amount of assets available should trigger ECRA.

The Department acknowledges that, in some cases, the direct owner will turn out to have had more than enough assets available to pay for a cleanup, so that the assets of the indirect owner may be unnecessary. However, at the time an ECRA-triggering transaction is proposed, an estimate of cleanup costs is likely to be extremely speculative; without substantial investigation and study of the industrial establishment (and of adjacent properties to which contamination may have spread), no reasonably accurate estimate of the cleanup costs is possible, and the Department would have no reasonable basis for determining whether the direct owner's assets would be sufficient to pay for the cleanup.

In addition, as the New Jersey Supreme Court pointed out in *In re Adoption of N.J.A.C. 7:26B,* 128 *N.J.* 442 (1992), the intent of the Legislature in enacting ECRA was to marshall economic forces which arise from business transactions to achieve the cleanup of industrial wastes. The essential goal of ECRA is to secure the cleanup of industrial sites at the earliest possible date. *Id.* at 5. For these reasons, even if the Department were able to determine that a direct owner had assets sufficient to pay the cost of a cleanup, delaying the ECRA trigger for this reason would be inconsistent with the legislative intent.

26. COMMENT: Schering-Plough Corporation commented that the criteria in N.J.A.C. 7:26B-1.9(b)1ii contains vague, ill-defined terms, making it difficult to determine whether ECRA applies to a particular transaction. As examples, the commenter cited the clauses "are involved" and "does not have knowledge."

RESPONSE: The Department disagrees that these clauses are vague or ill-defined. Both clauses have a plain meaning and are used in that sense. N.J.A.C. 7:26B-1.9(b)1ii3 concerns whether officers, directors or employees of an indirect owner "are involved" in the day-to-day operations of the owner. This provision could also be phrased to ask whether these persons "participate in" or "are engaged in" the day-to-day operations of the owner; however, the Department does not believe that the use of these clauses would make the meaning of the provision any more plain. Similarly, the Department believes that the clause "does not have knowledge" in N.J.A.C. 7:26B-1.9(b)ii5 is definite and establishes a bright-line test.

27. COMMENT: New Jersey State Bar Association recommended that N.J.A.C. 7:26B-1.9(b)1ii define "indirect owner." Chemical Industry Council of New Jersey stated that the phrase "indirect owner" as used in N.J.A.C. 7:26B-1.9(b) is unclear.

RESPONSE: N.J.A.C. 7:26B-1.9(b)1 already provides that an "indirect owner" is "an indirect owner or operator of the industrial establishment within the meaning thereof in N.J.A.C. 7:26B-1.5(b)1, 2 and 6." Those provisions use the term to mean an entity which owns or operates an industrial establishment indirectly through any of its subsidiaries.

28. COMMENT: New Jersey State Bar Association stated that N.J.A.C. 7:26B-1.9(b)1i has a reference that seems misplaced, noting that the regulation is written as if the definition of "indirect owner" were in N.J.A.C. 7:26B-1.5 rather than N.J.A.C. 7:26B-1.9.

RESPONSE: As noted above, N.J.A.C. 7:26B-1.9 does not define "indirect owner." The cross-reference in the rule is correct as written.

29. COMMENT: Cohen, Shapiro, Polisher, Shiekman and Cohen expressed concern that the rules inappropriately involve the Department in internal corporate business decisions. The commenter recognized that the Department may have an interest in ensuring that intra-corporate transactions are not structured for the purpose of avoiding environmental obligations, but stated that the rules go beyond what is needed to address this problem. The commenter stated that the Department should not apply ECRA to legitimate corporate reorganizations in the interest of preventing the circumvention of ECRA by the hypothetical actions of a very few recalcitrants. The commenter concluded that if the Department intends to structure its regulations to eliminate any possible

loophole, the costs to private industry and to the State will be astronomical.

RESPONSE: The Department disagrees with the commenter's description of the Department's goals in implementing ECRA. ECRA makes no distinction between a legitimate transaction undertaken in complete good faith, and a sham structured to avoid environmental liabilities. As noted in *In re Adoption of N.J.A.C. 7:26B,* ECRA is triggered by "events which could affect a corporation's financial ability to clean up hazardous wastes," 250 *N.J. Super.* at 216, without regard to the legitimate business purposes of the event. For this reason, the Department's proposal to amend the ECRA rules to define more clearly when a transaction could affect a corporation's financial ability to perform a cleanup, without making any attempt to single out bad faith transactions as ECRA triggers.

In developing the provisions which the commenter questions, the Department's goal is not to eliminate any possible loophole, but to establish a method to determine whether a transaction is subject to ECRA in a manner which makes administration and compliance reasonably practicable. For this reason, the determination whether an indirect owner's assets could be available for a cleanup will depend largely upon the indirect owner's statement in the applicability affidavit. The Department recognizes that it could possibly subject additional transactions to ECRA if it could perform a comprehensive investigation of the parties to each transaction; however, the rules reflect the Department's conclusion that the resulting environmental benefits would not justify the enormous additional costs of such a structure.

30. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan commented that the universe of activities listed in N.J.A.C. 7:26B-1.9(b)1 that will subject an "indirect" owner to liability under ECRA is excessive.

RESPONSE: The criteria to which the commenter refers do not subject the indirect owner to liability under ECRA. These criteria are used in applicability determinations, not enforcement actions. In accordance with the Appellate Division's direction in *In re Adoption of N.J.A.C. 7:26B,* applicability depends in part upon whether a transaction will affect a corporation's financial ability to clean up hazardous wastes. 250 *N.J. Super.* at 216. To determine whether a transaction concerning an indirect owner will have such an effect, the Department must determine whether the assets of the indirect owner could have been available to pay for a cleanup.

It is important to distinguish between this determination, and a conclusion that the indirect owner is in fact liable for the costs of the cleanup, or an attempt to subject an indirect owner to liability. Whether the indirect owner's assets could have been available is relevant to a determination that ECRA is or is not applicable. In the context of an applicability determination, the possible liability of the indirect owner is purely hypothetical. There is no need to attempt to subject the indirect owner to liability unless and until the direct owner has failed to proceed with a cleanup as required.

31. COMMENT: New Jersey State Bar Association is concerned that under the proposed regulation, the Department's procedures will evolve into excessive, time consuming and unsatisfactory inquiries. The commenter states that application of the exception ultimately involves complex conclusions of law and fact. The commenter concludes that the test should be stricken because (a) most applicants will merely state that to the best of their knowledge the test is met and (b) the Department will be unable to reasonably, quickly and efficiently make a contrary determination. The commenter added that the use of this test will be difficult and confusing, and likely to result in arbitrary decisions and increased hostility of the regulated community to the State and the Department.

RESPONSE: The Department understands the commenter's concern, but believes that it has structured the applicability rules in a manner which addresses that concern. The Department recognizes that it would be impracticable to administer the rule if it required the Department to investigate the circumstances of every proposed transaction to determine whether a control relationship exists.

To avoid this problem, the rule requires that the applicability determination form include a statement by the indirect owner that it has not exercised control over the direct owner or operator, within the meaning of the criteria listed in N.J.A.C. 7:26B-1.9(b)1ii. As part of the applicability determination form, the statement includes a certification that the information provided in the document is true, accurate and complete. N.J.A.C. 7:26B-1.13(d)5i. In making an applicability determination, the Department will accord substantial weight to this certified statement, unless the circumstances of a particular transaction indicate that further study is necessary. As a result, the Department believes that it will avoid unnecessary delay, difficulty and confusion in making the applicability determination.

32. COMMENT: Chemical Industry Council of New Jersey stated that the phrase "the indirect owner has not exercised control over the industrial establishment at any time" at N.J.A.C. 7:26B-1.9(b)1ii is vague since a time frame is not referenced.

RESPONSE: The Department disagrees. The criterion concerns the indirect owner's control over the industrial establishment "at any time."

33. COMMENT: Chemical Industry Council of New Jersey disagreed with the Department's statement that the applicability criteria in N.J.A.C. 7:26B-1.9(b)1ii are based upon the New Jersey Supreme Court's decision in *DEP v. Ventron Corp.,* 94 *N.J.* 473 (1983). The commenter characterized the criteria as "a litany of criteria iterated by various courts as potential veil-piercing methodologies," but which have never provided sufficient basis for a court to pierce a corporate veil. The commenter noted that *Ventron* held a parent corporation liable under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., because (a) the parent owned or controlled the use of the real property on which dumping of waste material occurred, (b) the parent's personnel, officers and directors were involved in the subsidiary's day-to-day operations in a constant basis, and (c) the parent permitted the dumping of the waste material. The commenter suggested that the Department use the following standards at N.J.A.C. 7:26B-1.9(b)1ii:

ii. That the assets of the indirect owner would not have been available to pay for compliance with the Act because, since December 31, 1983:

(1) The indirect owner's personnel, officers and directors were not involved in the day-to-day operations of the industrial establishment on a constant basis; and did not control the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes on the industrial establishment; and

(2) The application for the applicability determination includes a statement by the indirect owner that the indirect owner has not engaged in the conduct set forth in (1) hereof.

The commenter also stated that this was the direction given to the Department by the Appellate Division.

RESPONSE: The Department disagrees with the commenter's suggestion. As the commenter notes, *Ventron* did not apply a "piercing the corporate veil" analysis to hold a parent corporation liable for a discharge by its subsidiary. *Ventron* specifically stated that the case was an inappropriate one for "piercing the corporate veil." 94 *N.J.* at 501-502. Nonetheless, the court found the parent corporation liable under the standards for liability established in the Spill Act; specifically, the court found that the parent was "in any way responsible" for the discharge. *Id.* at 502.

The commenter correctly describes the relationship between the parent and subsidiary in *Ventron.* However, the court in *Ventron* did not limit its holding to the particular circumstances of that relationship. The court held that "control over the property at the time of the discharge ... will suffice" to hold the parent responsible. *Id.* In accordance with this holding, the criteria set forth in N.J.A.C. 7:26B-1.9(b)1ii establish a method to determine whether the indirect owner had control over the industrial establishment. For this reason, the Department believes that those criteria are consistent with *Ventron.*

34. COMMENT: New Jersey State Bar Association stated that the presumption at law is that assets of an indirect owner, such as a shareholder or a parent corporation, are unavailable for the debt and obligations of the subsidiary. "Piercing the corporate veil" is an exception to this rule and rarely applied.

The commenter added that the Department's use of a fiscal control test and proposed application of a list of factors for exerting fiscal control is clearly erroneous. The commenter states that by statute and long history, parent corporations and shareholders often do one or more of the items considered by the Department to be fiscal control and that few, if any, cases or commentators consider such a test to be determinative of the degree of control needed to justify piercing the corporate veil or treating two persons or entities as alter egos.

RESPONSE: As discussed above, under *Ventron* an indirect owner can be liable for a cleanup even when it is inappropriate to "pierce the corporate veil" to reach the assets of the indirect owner. 94 *N.J.* at 501-502. The indirect owner's liability is based upon the indirect owner's control over the property which is the subject of the cleanup. Accordingly, the criteria under N.J.A.C. 7:26B-1.9(b)1 concern the existence of control, rather than whether "piercing the corporate veil" would be applicable.

The Department notes that the criteria do not purport to establish that the indirect owner is liable for the cost of cleaning up a subsidiary's industrial establishment. The criteria are relevant only to determining whether a transaction involving the parent may trigger ECRA applicability. In making this determination, the Department must consider whether the assets of the parent may possibly be available to pay for a cleanup; however, nothing in that consideration, or in the Department's decision that ECRA is or is not applicable, will operate to impose liability upon the parent.

35. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan commented that the Department's proposed requirement that all of the criteria in N.J.A.C. 7:26B-1.9(b)1ii be satisfied in order to avoid triggering ECRA for transactions involving an indirect owner or operator is an unwarranted and unwise extension of the position adopted by the Supreme Court in *Ventron*.

Similarly, Kerby, Cooper, English, Danis, Popper and Garvin stated that the Department based criteria for the indirect owner's potential liability upon New Jersey common law principles for piercing the corporate veil, but that the Department deviated from the common law in requiring that all of the criteria be satisfied instead of using a balancing approach practiced by the courts.

RESPONSE: The Department disagrees. As discussed above, the criteria are based not upon common law principles of "piercing the corporate veil, but upon principles established by the Supreme Court in *Ventron*. *Ventron* held that a parent's control over property held by its subsidiary was a sufficient basis to hold the parent liable for the subsidiary's discharges, even when piercing the corporate veil was not appropriate. Each of the criteria listed in N.J.A.C. 7:26B-1.9(b)1ii concerns a different manner in which an indirect owner can exercise such control. If the indirect owner exercises control in any of these manners (and thereby fails to satisfy any one of the criteria), it is reasonably possible that the exercise will be a sufficient basis to hold the indirect owner liable for the cleanup of the industrial establishment. Accordingly, requiring that all of these criteria be satisfied is consistent with *Ventron*

36. COMMENT: New Jersey State Bar Association commented that the standards for exempted transactions found in the regulation proposed at N.J.A.C. 7:26B-1.9(b) are "so restrictive that no parent company which owns a majority of the stock of subsidiary which owns an industrial establishment would ever be deemed to be an "indirect owner" of the industrial establishment." The commenter observes that to consider a parent to be a direct owner because it directs the form, times and places for financial reporting, or because some employee of the parent is loaned to the subsidiary or has his/her time allocated between the parent and subsidiary seems irrelevant at best and does not seem to be the sort of reasonable restriction the Appellate Division called for.

RESPONSE: To first resolve some apparent confusion over terminology, the criteria listed in N.J.A.C. 7:26B-1.9(b) are not for the purpose of distinguishing between "indirect owner" and "direct owners." The direct owner or operator is the entity which directly owns or operates the industrial establishment; an indirect owner is a related entity, such as a parent corporation of the direct owner or operator, with a relationship to the direct owner or operator which gives it an indirect interest in the industrial establishment. The criteria listed in N.J.A.C. 7:26B-1.9(b) are for the purpose of determinng whether the assets of an indirect owner may be available to pay for the cleanup of the industrial establishment, a factor which is relevant to ECRA applicability.

The Department agrees with the commenter that the types of circumstances cited by the commenter, without any additional link evidencing an exercise of control, should be insufficient to justify a finding that the indirect owner exercises control over the direct owner or operator. To ensure that in such circumstances, the indirect owner would satisfy the criteria in N.J.A.C. 7:26B-1.9(b), the Department has revised N.J.A.C. 7:26B-1.9(b)1ii(1) upon adoption, to remove the word "reporting."

37. COMMENT: Chemical Industry Council of New Jersey stated that N.J.A.C. 7:26B-1.9(b)1 would have an unfair impact on United States corporations. This provision concerns ECRA applicability for certain transactions involving indirect owners; it states that ECRA is inapplicable only if the assets of the indirect owner would have been unavailable for the cleanup of the industrial establishment, and establishes criteria for determining whether those assets would have been available. The commenter states that United States corporations and other corporations worth less than $15 million or $20 million will never satisfy these criteria. According to the commenter, these corporations will fail to satisfy the criteria because officers and employees of the indirect owner are often on the board of directors of the direct owner, or may otherwise act as representatives of the owner in one capacity or another.

RESPONSE: The Department agrees with the commenter in part, but generally disagrees with the commenter's description of the effect of the rule upon United States corporations and other corporations worth less than $20 million.

As the commenter points out, officers, directors and employees of the indirect owner frequently act as representatives of the owner in one capacity or another. Whether those actions will be sufficient to justify an ECRA trigger will depend upon whether these persons "are involved in the day-to-day operations of the owner" or give the indirect owner "knowledge of or the ability to control the owner's activities, including its environmentally related activities." The Department agrees with the commenter that the last criterion would be sufficient to cause transactions involving almost any indirect owner to be an ECRA trigger. Accordingly, the Department has revised this criterion upon adoption, to provide instead that these persons must give the indirect owner the ability to control the owner's environmentally related activities. This criterion, as revised, is narrow enough to cover only those indirect owners who would be considered "in any way responsible" for a discharge by the direct owner, and is thus consistent with the standard established in *DEP v. Ventron Corp.* 94 *N.J.* 473 (1983). The other criteria, as proposed, also cover only that limited class of indirect owners. Therefore, the Department disagrees with the commenter's assertion that no American corporation and no corporation under a certain size can satisfy these criteria.

The commenter also accurately states that officers and employees of indirect owners often serve as directors of the direct owner. However, the presence of officers, directors and employees of the indirect owner on the direct owner's board of directors will not necessarily result in an ECRA trigger. The trigger will depend upon presence of those persons in numbers sufficient to enable the indirect owner to effectively direct the management and policies of the direct owner. In that circumstance, the indirect owner effectively controls the direct owner. If those persons are present on the board of directors in lesser numbers, their presence will not assure the indirect owner of control, and will not result in an ECRA trigger.

The commenter's statement reflects the concern that certain common corporate structures will be considered to constitute a "control" relationship. As discussed above, the Department has revised the rule upon adoption to provide that the indirect owner can include in its certification an explanation of the circumstances of the particular corporate structure. The Department believes that when those circumstances show that no control exists, it will be able to determine that the criteria in N.J.A.C. 7:26B-1.9(b)1ii are satisfied.

38. COMMENT: Kerby, Cooper, English, Danis, Popper and Garvin commented that it is too stringent to provide that the assets of an indirect owner would be available to pay for a cleanup if the indirect owner had knowledge of the direct owner's activities. The commenter stated that it would be unreasonable to hold an indirect owner liable if it were not in a position to influence the direct owner's activities.

RESPONSE: The Department agrees with the commenter. As discussed above, the rule has been revised upon adoption so that a finding that the indirect owner's assets may be available will not be based solely on the indirect owner's knowledge of the direct owner's activities.

39. COMMENT: Schering-Plough Corporation commented that the criteria in N.J.A.C. 7:26B-1.9(b)1ii, for determining whether the assets of an indirect owner would have been available to pay for a cleanup, are far too restrictive and do not reflect modern corporate structures and relationships. The commenter noted that the Department's intent is to impute responsibility to the parent where there has been the type of pervasive relationship that would generate liability under statutes such as the Spill Act. The commenter stated that the Department should not use a regulation to write the statutory scheme for Spill Act liability into ECRA.

RESPONSE: The provisions to which the commenter refers do not write the statutory scheme for Spill Act liability into ECRA. The proposed amendments do not affect any potential liability of the parent for the cost of cleaning up a subsidiary's industrial establishment. The provisions to which the commenter refers are relevant only to determining whether a transaction involving the parent may trigger ECRA applicability. In making this determination, the Department must consider whether the assets of the parent may possibly be available to pay for a cleanup; however, nothing in that consideration, or in the Department's

decision that ECRA is or is not applicable, will operate to impose liability upon the parent.

40. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan commented that the criteria for evaluating the potential availability of an indirect owner's assets focus on whether the indirect owner has "exercised control" over any aspect of the industrial establishment or the direct owner or operator, regardless of the ultimate effect which such control may have on environmental contamination. The commenter recommended that the scope of activities listed in these criteria should be limited to those activities which carry some environmental risk. The commenter pointed out that fiscal control imposing any restriction on borrowing, cash management, etc. does not automatically affect a subsidiary's ability to manage its production and/or its handling of hazardous substances in a manner which would be deleterious to the environment. Similarly, policies and/or decisions by the indirect owner in areas unrelated to potential environmental contamination, that is, marketing, advertising, employee relations, etc. should not be the basis for subjecting the indirect owner to ECRA liability.

RESPONSE: The Department agrees that the activities listed in N.J.A.C. 7:26B-1.9(b)1ii should be limited to those which carry environmental risk. However, the Department believes that all of the criteria, with the exception of N.J.A.C. 7:26B-1.9(b)1ii(5), are related to environmental risk.

As discussed above, the criterion at N.J.A.C. 7:26B-1.9(b)1ii(5) as proposed concerns "activities including the environmentally related activities of the owner." The Department agrees that this criterion should be restricted to the environmentally related activities of the owner, and has clarified the rule accordingly upon adoption.

The commenter's concern appears to be based upon a reading of the rule language which is unsupported by its plain meaning. The circumstances cited by the commenter as examples would not cause an indirect owner to fail to satisfy the criteria. For example, if an officer of the indirect owner were intimately involved in the direct owner or operator's advertising decisions, this fact alone would not be sufficent to support a conclusion that any "officers, directors or employees of the indirect owner are involved in the day-to-day operations of the owner."

The Department has not added language expressly linking the other criteria to environmental risk, because these criteria are related to environmental risk even without the qualifying language. For example, the criterion in N.J.A.C. 7:26B-1.9(b)1ii(1) concerns the indirect owner's fiscal control over the direct owner or operator. The indirect owner may exercise that fiscal control by restricting the direct owner or operator's borrowing for non-environmental purposes. That restriction, though not expresssly linked to environmental risk, can increase that risk; the restricton may force the direct owner or operator to fund non-environmental activity by using cash which would otherwise be available to pay for necessary environmental safeguards.

The other criteria are similar in this regard. If representatives of the indirect owner control the direct owner or operator's board of directors (N.J.A.C. 7:26B-1.9(b)1ii(3)), the control includes environmental concerns of the direct owner or operator. If representatives of the indirect owner are involved in the day-to-day operations of the direct owner or operator, this will again encompass environmental issues which arise in those operations.

It is important to note that these criteria do not determine or affect any actual environmental liabilities of the indirect owner. They are applied for the more conservative purpose of determining whether such liability is reasonably possible, and only because that issue is relevant to ECRA applicability.

41. COMMENT: New Jersey State Bar Association commented that the use of the "control" test, if applied literally, will essentially deny an exemption to the regulated community both intended by the Legislature and actually applied by the Department from 1983 to 1988.

RESPONSE: The Department disagrees that the use of the control test will have the effect of denying any currently existing exemption.

The control test affects Department's application of ECRA to transactions involving mergers and consolidations, stock transfers and dissolutions affecting only a parent corporation of a subsidiary which directly owns or operates an industrial establishment. The test is also relevant to corporate reorganizations. *In re Adoption of N.J.A.C. 7:26B* addressed a challenge to the Department's application of ECRA to these types of transactions. In that case, the Appellate Division agreed that the Legislature authorized the application of ECRA to these transactions. 250 *N.J. Super.* at 216, 218. As the court's decision to uphold this application in the face of the challenge shows, the Department has not historically exempted these types of transctions from ECRA. The purpose of the addition of the control test is not to eliminate a previously existing exemption, but to comply with the Appellate Division's direction to incorporate appropriate standards into the applicability determination provisions at N.J.A.C. 7:26B-1.9.

42. COMMENT: New Jersey State Bar Association commented that the required statement that the indirect owner has never exercised control at any time is inappropriate, since owners exercise control merely by owning and exercising the inherent rights that accompany ownership.

RESPONSE: The Department disagrees. The New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 et seq., clearly distinguishes between the persons who own a corporation and those who control it. A shareholder holds a proprietary or ownership interest in a corporation. N.J.S.A. 14A:1-2.1(1), (m). However, the business and affairs of a corporation are managed by or under the direction of its board of directors, and by its officers. N.J.S.A. 14A:6-1(1), 14A:6-15(4).

The commenter is correct that one inherent right accompanying the indirect owner's ownership is the ability to elect the directors of the direct owner, who in turn appoint the officers. However, this fact alone will not automatically cause the indirect owner to fail to meet the criteria in N.J.A.C. 7:26B-1.9(b). Accordingly, the Department has not changed the provision questioned by the commenter.

43. COMMENT: Schering-Plough Corporation suggested revisions to the criteria in N.J.A.C. 7:26B-1.9(b)1ii, to distinguish between an indirect owner who exercises control over a direct owner (and who therefore should be subject to ECRA), and an indirect owner who is merely involved with a subsidiary's operations (and who therefore should not be subject to ECRA). The commenter first suggested that N.J.A.C. 7:26B-1.9(b)1ii(1) ("The indirect owner has not exerted fiscal control over the owner ...") be revised to refer only to "day-to-day" fiscal control.

RESPONSE: The Department has not made the suggested change. The Department's position is that an indirect owner which exerts control over a direct owner's major financial affairs such as financing, borrowing, budgeting, dividends, reporting and cash management can control spending necessary to avoid environmental contamination of an industrial establishment. As a result, the indirect owner could be considered "in any way responsible" for such contamination, and its assets could potentially be available to pay the costs of a cleanup. In contrast, day-to-day fiscal control, which would encompass the direct owner's most routine operational spending, is not a necessary element of such responsibility. Accordingly, the Department has not revised N.J.A.C. 7:26B-1.9(b)1ii(1) to require day-to-day fiscal control.

44. COMMENT: New Jersey State Bar Association stated that mere numbers of officers or directors shared by a parent and a subsidiary cannot be determinative in establishing the parent's "control" over the subsidiary.

RESPONSE: The Department disagrees. The rule provides that if officers, directors or employees of a parent hold a majority of the seats on the board of directors of the subsidiary (or a smaller number of seats, if sufficient to effectively direct the management and policies of the subsidiary), that circumstance is sufficient to establish the parent's control over the subsidiary. The assumption underlying that provision is that when the parent exercises its ability to elect directors of the subsidiary by choosing to elect its own officers, directors or employees, it can control how those directors vote. A majority of votes (or a smaller number, in some cases) should therefore be sufficient to manage the business and affairs of the subsidiary, since this is the role of the board of directors. N.J.S.A. 14A:6-1(1).

45. COMMENT: Schering-Plough Corporation suggested revising N.J.A.C. 7:26B-1.9(b)1ii(2) (overlap between the direct owner's board of directors and the indirect owner's officers, directors and employees), so that the indirect owner would be considered in control of the direct owner only if the indirect owner controlled a majority of the direct owner's board of directors. The commenter suggested deleting language which states that control of a smaller percentage of the board, sufficient to effectively direct the management and policies of the direct owner, would show a control relationship.

RESPONSE: The Department has not made the suggested change. If employees, officers and directors of the indirect owner hold a number of seats on the direct owner's board sufficient to enable them to effectively direct the management and policies of the direct owner, the indirect owner will have control over the direct owner. For example, if an indirect owner's representatives hold five seats on an 11-member board, and the remaining six members are divided and are not expected to unite, it

is likely that at least one of those members will vote with the indirect owner's representatives and enable them to exercise control. This control will make it reasonably likely that the indirect owner eventually could be held liable for the cleanup of the industrial establishment. Therefore, applying the Appellate Division's reasoning in *In Re Adoption of N.J.A.C. 7:26B*, a transaction involving the indirect owner cannot automatically be excluded from ECRA.

The Department acknowledges that it is difficult for anyone other than the indirect owner to evaluate whether it effectively has the ability to direct the direct owner's management and policies when the indirect owner holds less than a majority of seats on the direct owner's board. For this reason, the Department will accord substantial weight to the indirect owner's statement in the applicability application that it has not exercised control. N.J.A.C. 7:26B-1.9(b)1iii.

46. COMMENT: New Jersey State Bar Association stated that corporate officers are often involved in day-to-day operations of two or more corporations, and that to deny an exemption merely on this basis is error.

RESPONSE: The commenter is correct. The Department has revised the rule upon adoption, to narrow this criterion for evaluating control.

The following example illustrates the problem identified by the commenter. The same person regularly hires temporary typists for both a parent and subsidiary. That person would be "involved in the day-to-day operations" of both companies. Under the rule as proposed, this fact would be sufficient to establish that the parent controls the subsidiary. The Department recognizes that this result cannot be correct, and would be inconsistent with the purpose of the criterion.

Therefore, the Department has revised this provision upon adoption, to make it clear that the day-to-day operations in question must be of a nature relevant to the generation, handling, storage or disposal of hazardous substances or hazardous wastes.

47. COMMENT: Schering-Plough Corporation suggested revising N.J.A.C. 7:26B-1.9(b)1ii(3) (involvement by officers, directors and employees of the indirect owner in the day-to-day operations of the owner), to provide that the indirect owner would be considered in control only if its representatives "direct" the owner's day-to-day operations, and not if they are merely "involved" in those operations.

RESPONSE: As noted in the response to the previous comment, the Department has narrowed the criterion questioned by the commenter. However, the Department has not made the additional change which the commenter suggests. The indirect owner can effectively exert control over the owner without directing its day-to-day operations, by directing only its management and policies. Direction of the day-to-day operations of the owner is likely to occur only when the owner is the alter ego of the indirect owner; while it might be necessary to establish this type of relationship to "pierce the corporate veil" to hold the indirect owner liable for the acts of the owner, under *Ventron* it is necessary only to establish control to support a determination that the indirect owner is subject to liability for a cleanup. 94 *N.J.* at 502.

48. COMMENT: Farer, Siegal and Fersko commented that it is overly broad to require that no officer, director or employee of the indirect owner either is involved in the day-to-day operations of the owner or determines the policies or decisions of the owner in order to obtain a determination of non-applicability. The commenter suggested limiting these criteria by requiring only that officers, directors and employees of the indirect owner not be involved in the management of waste disposal practices and the handling and use of hazardous substances by the owner.

RESPONSE: The Department has not made the suggested change. Involvement in the day-to-day operations of the owner necessarily will include involvement in aspects of the operations relevant to the handling and use of hazardous substances and the generation and handling of hazardous wastes at the industrial establishment. However, involvement in a minor aspect of those operations (for example, if one employee handles photocopying for both the indirect owner and the direct owner) will not be sufficient to show a control relationship under the criteria questioned by the commenter. Similarly, determination of the policies or decisions of the owner necessarily will include policies and decisions relevant to the handling and use of hazardous substances and the generation and handling of hazardous wastes at the industrial establishment. However, determination of a small part of those policies (for example, a policy concerning personal use of a photocopier by employees) if one employee handles photocopying for both the indirect owner and the direct owner) will not be sufficient to show a control relationship under the criteria questioned by the commenter.

The Department recognizes that several commenters have expressed concern over the ability to certify that an indirect owner has not exercised control over the direct owner, as control is described in the criteria in the rule. For that reason, as discussed above, the Department has revised the rule upon adoption to provide that the indirect owner can instead certify to the existence of particular circumstances relevant to the criteria, thus enabling the Department to determine whether the criteria are met.

49. COMMENT: New Jersey State Bar Association stated that officers may set policy for many different corporations including affiliated corporations, and that to deny an exemption on this basis is error.

RESPONSE: As discussed above, the Department has revised the rule upon adoption to delete the criterion questioned by the commenter. However, as also discussed above, this deletion does not change the substance of the rule. Accordingly, it is still necessary to respond to the commenter's concern.

The officers of a parent may set policies for the subsidiary through control of the subsidiary's board of directors. Alternatively, the parent may place its officers in strategic positions with the subsidiary, from which they are able to make policy or decisions for the subsidiary. In either case, this power is equivalent to control over the subsidiary. The Department's position is that when this control exists, the parent may be liable for a cleanup of an industrial establishment. The Department recognizes that some overlap in policies may not be sufficient to support a conclusion that control exists. If there is a question on this issue, the indirect owner should explain the circumstances in its certification under N.J.A.C. 7:26B-1.9(b)1iii. Based on that explanation, the Department may be able to determine that no control relationship exists.

50. COMMENT: Schering-Plough Corporation suggested revising N.J.A.C. 7:26B-1.9(b)1ii(4) ("no officers, directors or employees of the indirect owner determine the policies or decisions of the owner"), to read as follows: "The indirect owner does not determine, as opposed to participate in, the policies or decisions of the owner."

RESPONSE: As discussed above, the Department has revised the rule upon adoption to delete the provision questioned by the commenter.

51. COMMENT: New Jersey State Bar Association commented that it is difficult and unwise for an indirect owner to be ignorant of the environmental activities of its affiliates. While such activities may be relevant in rare circumstances to impose liability upon one who controls a particular environmental decision that results in harm, general involvement of this kind should not justify the denial of an ECRA exemption. The commenter noted that the rules should encourage such involvement and not deter it, because it usually improves environmental compliance and management.

RESPONSE: The Department agrees with the commenter's concern. As discussed above, N.J.A.C. 7:26B-1.9(b)1ii5 has been revised upon adoption so that the indirect owner's "knowledge" of the direct owner's activities will not be sufficient to establish control.

52. COMMENT: Schering-Plough Corporation suggested revising N.J.A.C. 7:26B-1.9(b)1ii(5) ("The indirect owner does not have knowledge of nor the ability to control the activities including the environmentally related activities of the owner") to be limited to inquiring whether the indirect owner controls the environmentally related activities of the owner at the industrial establishment.

RESPONSE: The Department agrees, and has made the suggested change to the rule upon adoption.

The Department received several comments in response to its request for input regarding whether certain transactions should be exempt from ECRA if the transferee had a certain minimum net worth:

53. COMMENT: Cohen, Shapiro, Polisher, Shiekman and Cohen suggested amending N.J.A.C. 7:26B-1.9(b)1 to provide that ECRA would not be applicable to a transaction involving an indirect owner, even if the assets of the indirect owner could have been available to pay for a cleanup, if "the net worth of the indirect owner or the transferee, after the proposed transaction takes place, is more than $60 million." The commenter suggested similar amendments to N.J.A.C. 7:26B-1.9(b)2, concerning corporate reorganizations not substantially affecting the ownership or control of the industrial establishment.

54. COMMENT: Schering-Plough Corporation stated that if the intent of the law and regulations is to ensure a financial ability to comply with ECRA, the 10 percent net worth diminution test would not be appropriate in the following situation: company A with a net worth of $100 million transfers an industrial establishment to company B with a net worth of $89 million. The commenter points out that in subjecting this transaction to ECRA, the Department is saying that the $89 million has no relevance to an assurance that company B can comply with ECRA.

The commenter therefore recommends that the Department simply look at the transferee's ability to finance a cleanup, and not at the difference between the net worth of the two companies. Otherwise, the rule will punish transactions between companies with disproportionate assets and inhibits corporations from organizing or moving assets to best suit business needs.

The commenter recommended further that based upon the average costs of cleanup under the Superfund program, a minimum net worth of $50 million would be appropriate. The commenter suggested that the rule could provide for a higher minimum net worth in an extraordinary situation in which the cleanup cost may potentially exceed $50 million.

55. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan commented that a $100 million minimum net worth requirement is excessively limiting. The commenter pointed out that the great majority of ECRA proceedings have been concluded for costs which are a small fraction of this figure, and that financial assurances required in ECRA cases rarely exceed $5 million or $10 million. The commenter suggested that the threshold net worth for the exemption should be $5 million.

56. COMMENT: Kaye, Scholer, Fierman, Hays & Handler states that the Department should include language under N.J.A.C. 7:26B-1.9(B)2 which will incorporate an exemption to the "corporate reorganization" rule at the $20 to 30 million level, or another reasonable threshold level should the Department decide it is appropriate.

57. COMMENT: New Jersey State Bar Association suggested that the transaction which resulted in a diminution in net worth of more than 10 percent should not necessarily be subjected to ECRA. Specifically, the commenter recommended that a transaction resulting in a greater diminution should still be eligible for an exemption if the diminution still allows sufficient net worth to provide for the future correction of known problems.

RESPONSE: As noted in the proposal, the Department has solicited public comment regarding whether the rule should be further amended to establish a "safe harbor," exempting certain transactions from ECRA if the transferee has a certain minimum net worth. The Department will consider these written comments as part of the process of determining whether the rule should contain the "safe harbor." In addition, the Department conducted a public meeting to discuss the issue, and will take those discussions into account as well.

The Legislature is considering amendments to the ECRA statute which may provide additional direction in resolving this issue. Accordingly, the Department will await the outcome of the Legislature's deliberations before proposing to amend the rule to establish the safe harbor.

However, the Department disagrees with the Cohen, Shapiro, Polisher, Shiekman and Cohen's suggestion to exempt a transaction from ECRA applicability if the indirect owner has a certain minimum net worth after the transaction takes place. After the transaction is completed and the indirect owner divests itself of its indirect interest in the industrial establishment, further transactions involving that former indirect owner will not trigger ECRA, even if the transactions reduce or eliminate the former indirect owner's ability to pay for a cleanup. For this reason, the net worth of that indirect owner after the transaction is completed is not relevant to ECRA applicability.

Based upon the comments received, the Department is considering including two alternative "safe harbors" in the rule. One would exempt a transaction from ECRA if the transferee has a certain minimun net worth. The second, which would be available when the transferee has a lesser net worth, would compare the transferee's net worth against the projected cost of cleaning up the industrial establishment. The Department welcomes additional comments on this issue, especially regarding the following.

1. How to project the cost of a cleanup (for example, by conducting a remedial investigation and feasibility study);

2. Whether the transferee's net worth should exceed the projected cleanup cost by a certain dollar or percentage amount; and

3. The possible reluctance of a person seeking a letter of non-applicability to advise the Department of the nature and extent of contamination of an industrial establishment.

58. COMMENT: Cohen, Shapiro, Polisher, Shiekman and Cohen suggested revising N.J.A.C. 7:26B-1.9(b)2i to provide that a transaction could be considered a "corporate reorganization not substantially affecting the ownership or control of the industrial establishment" if the transaction involved a transfer of stock and/or assets between a corporation and its direct or ultimate shareholders. As proposed, the rule includes only transactions among corporations under common ownership or control.

RESPONSE: The Department has made the suggested change, but notes that in practice, it will not be helpful in many transactions. The following example of a transaction which would be included as a "corporate reorganization" under the suggested change, and therefore could potentially be exempt from ECRA, illustrates the practical problems posed by the suggestion.

Corporation B is a wholly-owned subsidiary of Corporation A. Corporation B owns an industrial establishment. Corporation A is a publicly held corporation. Corporation A proposes a transaction in which it would distribute all of its stock in Corporation B to the shareholders of Corporation A. Assume that Corporation A "controls" Corporation B, based on the criteria in N.J.A.C. 7:26B-1.9(b)1ii.

Under the change suggested by the commenter, this transaction would be a "corporate reorganization." However, it would be almost impossible to determine whether the transaction is subject to ECRA: to determine that the transaction was not subject, it would be necessary to evaluate the aggregate net worth of all of the shareholders of Corporation A (potentially thousands or millions of persons), and to have each of those shareholders agree to assume any liability Corporation A may have had for the cleanup of the industrial establishment.

However, for a transaction involving a privately held corporation, the suggested change may be more useful. For example, it would be practicable to apply it to the above transaction if Corporation A were a privately held corporation with two shareholders instead of a publicly held corporation.

N.J.A.C. 7:26B-1.9(b)2 Corporate reorganization

59. COMMENT: N.J.A.C. 7:26B-1.9(b)2 establishes the procedure and criteria for applicability determinations for "corporate reorganizations not substantially affecting the ownership or control of the industrial establishment." Chemical Industry Council of New Jersey recommended deleting the phrase "or control." The commenter stated that there is seemingly no purpose for the use of the phrase, that it conflicts with the ECRA statute and, internally, with the existing regulatory definition.

RESPONSE: The commenter correctly states that the statutory definition of "closing, terminating or transferring operations" does not use the phrase "or control." To preserve consistency with the statutory language, the Department has revised the rule upon adoption to delete the phrase from N.J.A.C. 7:26B-1.9(b)2.

However, the Department stresses that a corporate reorganization which results in a change of control over the industrial establishment will remain subject to ECRA, despite the deletion of the phrase "or control" from N.J.A.C. 7:26B-1.9(b)2. This position is consistent with the Appellate Division's opinion in *In re Adoption of N.J.A.C. 7:26B.*

The Appellate Division upheld provisions of the ECRA rules which provided that ECRA was applicable to changes in control over the direct or indirect owner or operator of an industrial establishment. The court held that a change in the holder of a controlling interest amounted to a "change in ownership." As a result, the court sustained the rules even while noting that the language of the ECRA statute addressed only changes in ownership, and was silent about changes in control, 250 *N.J. Super.* at 219, 220.

For the same reason, a transaction will not be considered a "corporate reorganization not substantially affecting ownership" if it results in a change in the holder of a controlling interest in the direct or indirect owner of the industrial establishment.

60. COMMENT: Farer, Siegal and Fersko suggested that N.J.A.C. 7:26B-1.9(b)2, which concerns applicability determinations for corporate reorganizations, should be recodified elsewhere in the rule. The commenter stated that the current codification of this provision is confusing, because N.J.A.C. 7:26B-1.9(b) generally deals with specified provisions other than corporate reorganizations.

RESPONSE: The commenter correctly notes that the introductory language to N.J.A.C. 7:26B-1.9(b) does not refer to corporate reorganizations. The Department has corrected this introductory language, rather than recodifying the provision in question.

61. COMMENT: Farer, Siegal and Fersko suggested that the corporate reorganization provision should be clarified to provide that N.J.A.C. 7:26B-1.9(b)2iii and iv (concerning the potential availability of the assets of indirect owners) need be satisfied only in transactions involving an indirect owner.

RESPONSE: The Department has not made the suggested change. The provisions questioned by the commenter place requirements on "any indirect owner transferring any direct or indirect interest in the stock or assets of the industrial establishment." A transaction which has no

effect on any indirect owner's interest, or one in which there is no indirect owner, will satisfy these requirements automatically.

62. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan noted that a transaction can be considered a "corporate reorganization not substantially affecting ownership or control" only if the transaction would not diminish the industrial establishment's net worth by more than 10 percent. The commenter stated that this test is unauthorized and beyond the Department's power, because the Legislature defined ECRA triggering effects to include changes in ownership, not changes in the economic characteristics of owners.

RESPONSE: The Department disagrees with the commenter's interpretation of ECRA. In *In re Adoption of N.J.A.C. 7:26B,* the Appellate Division stated that ECRA is triggered by events which could affect a corporation's financial ability to clean up hazardous wastes. 250 *N.J. Super.* at 216. The purpose of the test for diminution of net worth is to enable the Department to determine when such an event is occurring.

63. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan stated that setting a threshold of 10 percent diminution in net worth was an example of the Department's micromanagement.

RESPONSE: The Department disagrees. The rule provides that a transaction that reduces the net worth of the direct owner or operator of an industrial establishment by more than 10 percent will not be considered a "corporate reorganization not substantially affecting ownership or control of the industrial establishment." The purpose of this 10 percent threshold is to establish a bright-line test to determine when a transaction will materially affect the owner or operator's financial ability to comply with ECRA. In establishing the threshold, the Department is attempting not to manage the affairs of a business planning a reorganization, but only to give the business some reliable guidance to determine what type of a transaction will trigger ECRA.

64. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan, New Jersey State Bar Association and Farer, Siegal and Fersko stated that the Department provided no basis for its choice of the 10 percent threshold for diminution of net worth. Lowenstein, Sandler, Kohl, Fisher and Boylan also noted that a determination of a successor's ability to properly address its environmental responsibilities cannot be made in the abstract by a universally applicable standard. Lowenstein, Sandler, Kohl, Fisher and Boylan recommended that the test should allow the parties to a transaction the flexibility to demonstrate that adequate resources are available to address the reasonably expected environmental consequences of their activities. Similarly, Schering-Ploug Corporation stated that the 10 percent threshold is not appropriate in all circumstances, especially when the transferee has a substantial net worth which is more than sufficient to pay for a cleanup. Lowenstein, Sandler, Kohl, Fisher and Boylan made the same recommendation regarding the requirement that a transferee of an indirect owner's interest have a net worth equal to at lest 90 percent of the net worth of the transferor.

RESPONSE: The Department agrees that a single universally applicable standard is not the most accurate possible means of determining whether a transaction will materially impair a person's financial ability to comply with ECRA. However, a means tailored to each particular transaction would fail to satisfy the Appellate Division's direction to provide guidance to the regulated community for its conduct, and structure for the Department's "fair administration of its sound exercise of discretion." 250 *N.J. Super.* at 224.

In developing these rules, the Department had considered establishing a verbal threshold of "material diminution" of net worth. Such a threshold would have provided more of the case-by-case flexibility which the commenter has stated to be important. However, the appellants in *In re Adoption of N.J.A.C. 7:26B* believed that this type of threshold would have failed to comply with the Appellate Division's direction. Accordingly, in consultation with those appellants, the Department determined that a numerical threshold was necessary. The 10 percent threshold represents a compromise number which the appellants had found acceptable.

65. COMMENT: Schering-Plough Corporation commented that the 10 percent net worth diminution test at N.J.A.C. 7;26B-1.9(b)2ii is too restrictive a threshold. The commenter suggested that the threshold should be a 20 percent diminution, consistent with the test used in the "limited conveyance" provision under N.J.A.C. 7:26B-13.

RESPONSE: The Department disagrees with the commenter's reasoning. The diminution threshold in the context of a Certificate of Limited Conveyance serves a different purpose than the net worth diminution threshold under N.J.A.C. 7:26B-1.9. The grant of a Certificate of Limited Conveyance depends in part upon whether 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. The purpose of the net worth diminution test under N.J.A.C. 7:26B-1.9 is to determine whether a transaction will materially affect financial ability to pay for a cleanup. In contrast, the purpose of the limited conveyance threshold is to establish that only a minor portion of the industrial establishment is being conveyed. In the context of a limited conveyance exemption, the financial condition of the owner or operator following the transaction, is not relevant.

As discussed above, the 10 percent figure represents a compromise between the Department and the appellants in *In re Adoption of N.J.A.C. 7:26B.* The appellants representing the regulated community had sought a higher threshold, which would result in fewer transactions being subject to ECRA; the Department and the appellants representing the environmental community had sought a lower threshold which would ensure that somewhat more assets would remain available for a cleanup.

66. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan recommended that the rule be clarified to provide that the determination regarding the transferee's net worth is to be made at the time of the closing of the transaction.

RESPONSE: The Department has not made the recommended change, because it would create serious practical problems for the regulated community. The applicability determination depends in part upon the evaluation of the transferee's net worth. If the Department were to delay making that evaluation until the time of closing, thereby delaying the applicability determination, the parties would come to the closing not yet knowing whether their transaction was subject to ECRA. In recognition of the potential cost of complying with ECRA, the parties to the transaction generally request an applicability determination at an early stage of the transaction so that they can consider that issue in structuring the transition. The suggested change would make this impossible in many transactions.

67. COMMENT: N.J.A.C. 7:26B-1.9(b)2ii concerns diminution in the net worth of the industrial establishment or its direct owner or operator, "whether through one or several independent transactions." Farer, Siegal and Fersko suggested that the rule provide that the "several independent transactions" should have occurred within a certain time period in order to be considered. Lowenstein, Sandler, Kohl, Fisher and Boylan stated that a five-year time period should be included, noting that this time period applies to the definition of "sale or transfer of the controlling share of the assets" under N.J.A.C. 7:26B-1.3.

RESPONSE: The Department agrees with the commenters. It would frequently be burdensome to require the applicant and the Department to analyze every transaction ever involving the direct owner or operator, and aggregate the effect of those transactions upon its net worth. The burden would not be justified by the need to ensure that a transaction does not materially affect the ability of the direct owner or operator to pay for a cleanup, because over a long period several other factors other than transactions could significantly affect net worth. The Department also agrees that the reasoning behind the five-year time period in the definition of "sale or transfer of the controlling share of the assets" applies in this context as well. Accordingly, the Department has revised the rule upon adoption to provide that only transactions occurring within the five years preceding the proposed transaction will be considered.

68. COMMENT: Chemical Industry Council of New Jersey questioned the requirement at N.J.A.C. 7:26B-1.9(b)2ii that the "one or several independent transactions" not result in an aggregate diminution of more than 10 percent of the net worth of the industrial establishment. The commenter stated that it could not tell what this language meant, and that it may be mathematically impossible to calculate. The commenter suggested that if the purpose of this provision is to avoid evasion of the rule through multiple transactions, each diminishing net worth by less than 10 percent, the Department should address this issue using a "step transaction" analysis of the type commonly used in tax law. The commenter suggested substituting the following for the quoted language "through one or a series of transactions so related that they constitute in effect, a single transaction."

RESPONSE: The Department has not used the "step transaction" analysis in the rule, because it would substantially and unnecessarily complicate compliance and administration. The "step transaction" doctrine evaluates a group of transactions based upon the following factors the timing of the transactions; the end result intended by the parties the interdependence of the steps in the transaction; and whether, at the time the first step was entered into, there was a binding commitment to undertake the later step or steps. See, e.g., *Yamamoto v. Comr.,* 73 *T.C.* 946 (1980). Application of these factors is so fact-specific that i

would require substantial factual investigation, and would be likely to result in substantial dispute. The language suggested by the commenter poses the same problem; determining whether a series of transactions is "so related" is fact-specific and subjective.

69. COMMENT: Chemical Industry Council of New Jersey commented that the references in the rule to diminutions in net worth resulting from a transaction are flawed; the commenter stated that a diminution, to be a diminution, must have something to be measured against. The commenter suggested revising these references to read as follows: "The transaction will not result in a diminution of more than 10 percent between (x) the net worth of the industrial establishment or of its direct owner immediately before the proposed transaction is to occur and (y) that of the industrial establishment or its direct owner immediately after the proposed transaction occurs."

RESPONSE: The Department has not made the suggested change. The commenter is correct in describing the concept of a diminution in net worth resulting from a transaction. However, the Department disagrees that the concept needs explanation at the level suggested by the commenter. In determining how much an entity's net worth has diminished *as a result of a transaction,* the only possible comparison is between the net worth immediately before and immediately after the transaction.

70. COMMENT: In determining whether a transaction is exempt from ECRA as a "corporate reorganization not substantially affecting ownership or control," under N.J.A.C. 7:26B-1.9(b)2 the Department will determine whether the assets of any indirect owner may be available to pay for a cleanup; if so, the Department will evaluate the net worth of the indirect owner and the transferee of the indirect owner's interest. Chemical Industry Council of New Jersey stated that it was unnecessary to evaluate the potential availability of the indirect owner's assets if the transferee satisfied the net worth test in the rule, and suggested that the provision for that evaluation be deleted.

RESPONSE: The commenter is correct. However, the Department has not made the suggested change to the rule, because the change would work to the disadvantage of the regulated community without providing any environmental benefit. Under the rule as written, the indirect owner may elect to make no showing that its assets would be unavailable to pay for a cleanup. If the indirect owner made no such showing, the applicability of ECRA would depend solely on the net worth test, as stated by the commenter.

However, it is much more likely that the indirect owner would prefer to show that its assets would have been unavailable to pay for a cleanup, and avoid the need to make any showing of its net worth and the net worth of the transferee. The "availability of assets" test depends primarily upon a certification of the indirect owner. In contrast, to satisfy the "diminution of net worth" test the indirect owner must obtain the certification of an independent certified public accountant, which is likely to be more expensive to obtain.

For this reason, the Deparment has kept open the option of using the "availability of assets" test to establish non-applicability.

71. COMMENT: Farer, Siegal and Fersko stated it is unnecessary to require that the transferee of the indirect owner's interest must have at least a net worth of 90 percent of the net worth of the transferor. The commenter stated that the goal of assuring that sufficient funds are available for a cleanup is met by requiring that the transaction diminish the net worth of the industrial establishment by more than 10 percent. The commenter stated that the additional requirement appeared to be mere surplus and which will provide additional burden to the regulated community.

RESPONSE: The Department disagrees with the commenter's assessment. The rule addresses two different ways in which a transaction may reduce the assets available to pay for a cleanup. First, the transaction may diminish the net worth of the industrial establishment itself, or the net worth of the direct owner or operator of the industrial establishment. Second, the transaction may diminish the net worth of an indirect owner whose assets may have been available to pay for a cleanup. The commenter states that evaluating the effect of the transaction upon the net worth of the industrial establishment and its direct owner or operator is sufficient to ensure that sufficient assets remain available. However, if the direct owner is a thinly capitalized shell corporation, and its parent is likely to provide the assets to pay for the cleanup, evaluating only the direct owner will not be helpful in determining whether sufficient assets will remain available. It is necessary to evaluate the effect of the transaction upon the indirect owner's net worth as well.

72. COMMENT: Under N.J.A.C. 7:26B-1.9(b)2, a corporate reorganization involving an indirect owner whose assets may be available for a cleanup is excluded from ECRA only if (i) the transferee of the indirect owner's interest meets certain minimum net worth requirements, and (ii) the transferee agrees with the Department to assume the transferor's liability, if any, for the cleanup of the industrial establishment. Farer, Siegal and Fersko commented that the Department has no authority to require the assumption of liability. Similarly, Chemical Industry Council of New Jersey stated that ECRA does not encompass any mandatory assumption by anyone.

RESPONSE: The transferee of the indirect owner's interest in the industrial establishment is not required to assume the transferor's liability for the cleanup. The assumption is through an agreement which the transferee enters into voluntarily; there are other means of complying with ECRA which do not require the transferee to assume liability. While the Department recognizes that specific statutory authority would be necessary if it were to make the assumption of liability a required element of ECRA compliance, the Department believes that providing for an assumption of liability as an element of one possible method of compliance is within its authority under the statute, as interpreted by the Appellate Division in *In re Adoption of N.J.A.C. 7:26B.*

The court stated that ECRA is triggered by events which could affect a corporation's financial ability to clean up hazardous wastes. If an indirect owner would be liable for the costs of a cleanup, and it transfers its interest in the industrial establishment to a transferee who would not otherwise be liable, that transaction will reduce the assets available to pay for a cleanup. Once the transaction is completed, the original indirect owner can undertake any further transaction (including transactions which will strip it of its assets) without triggering ECRA. Therefore, the assumption of liability is necessary so that the transferee can be counted on to take on the obligation of the original indirect owner to pay for a cleanup of the industrial establishment.

The Department stresses that the transferee can elect not to assume the liability of the original indirect owner. Depending upon the specific circumstances of the transaction, there may be other provisions under which the Department can determine that the transaction is not subject to ECRA. Alternatively, the parties to the transaction can structure the transaction in any manner they see fit, even if the transaction would drastically reduce the assets available to pay for a cleanup, as long as they are willing to subject the transaction to ECRA.

73. COMMENT: Chemical Industry Council of New Jersey commented that the assumption of liability should be an option in lieu of the "diminution of net worth" test. Specifically, the commenter suggested that the rule provide for the transferor (if it remains in existence) to stipulate that its liability, if any, for compliance with the Act with respect to the industrial establishment will not be affected by the transfer, and that the transferee also assumes that liability. The commenter stated that the combination of the stipulation and assumption would result in the same assets being available before and after the transaction.

RESPONSE: The Department has not made the suggested change. The commenter is correct in stating that the suggestion would result in the same assets being available before and immediately after the transaction. However, since the transferor would have divested itself of its interest in the industrial establishment, future transactions involving the transferor would not trigger ECRA for that industrial establishment. For example, immediately following the transaction, the transferor could distribute all of its assets to its shareholders and dissolve. It is unlikely that the Department would be able to reach those assets when the time came to pay for a cleanup. Therefore, the test of the transferee's net worth is necessary to establish that the transaction will not materially reduce the assets available to pay for a cleanup.

74. COMMENT: Farer, Siegal and Fersko characterized the requirement for assumption of liability by the indirect owner's transferee as an unwarranted extension of liability in the law. The commenter added that the law is already clear as to liability in this context, and should be left to speak for itself.

RESPONSE: If the law already clearly provided that the transferee of the indirect owner's interest in the industrial establishment was subject to the indirect owner's possible liability for the cleanup of the industrial establishment, there would be no need to provide for the express assumption of liability (which, in turn, would not be an extension of liability in the law). However, as discussed above, there is no assurance that the transferee will be subject to such liability without an express assumption. Therefore, for the reasons discussed above, leaving the law on liability

in this context to speak for itself would frequently leave the Department without recourse against the transferee.

75. COMMENT: Farer, Siegal and Fersko objected to the assumption of liability provision, noting that this is not a situation in which the Department should be looking for assurances as it does when an ACO is involved.

RESPONSE: The Department disagrees that it should not be seeking financial assurances in the context of an applicability determination, as it does when an ACO is involved. However, the Department disagrees that the assumption of liability provides any such assurance. The financial assurance obtained with an ACO provides an actual source of funds upon which the Department can draw to pay for a cleanup. These sources of funds may include letters of credit, surety bonds, performance bonds, and trusts. The assumption of liability provides nothing of the kind.

76. COMMENT: Chemical Industry Council of New Jersey stated that requiring the transferee of the indirect owner's interest in the industrial establishment to assume the liability of the transferor for a cleanup is inconsistent with the "buyer protection" goal of the statute.

RESPONSE: The Department disagrees. The assumption of liability provision arises in the context of a "corporate reorganization" involving only related corporations. The need for "buyer protection" would arise only in arm's-length transactions; in transactions involving transfers of property among corporations so closely related that the transfer does not "substantially affect ownership or control" over that property, the buyer needs no protection from the seller.

77. COMMENT: Chemical Industry Council of New Jersey questioned that how the Department intends to determine which entity in a corporate reorganization is the transferee. The commenter suggested a transaction involving three affiliated chains where the transfer is going from chain one to chain two. The commenter questioned whether the transferee would be the affiliate on chain two, or the ultimate parent.

RESPONSE: If any indirect owner transfers its interest in the industrial estalishment, the recipient of that interest is the "transferee." For example, the direct owner of the industrial establishment (Company A) may be a wholly-owned subsidiary of another corporation (Company B). If Company B conveys all of its stock in Company A to another entity, that entity is the transferee, regardless of whether that company is one of a chain of affiliated entities. If that company is part of a chain, the parents in that chain obtain an indirect interest in the industrial establishment as well; however, the parents would not be required to agree to assume the transferor's liabilities unless their net worth is to be included in determining whether the minimum net worth requirement is met.

78. COMMENT: Chemical Industry Council of New Jersey suggested deleting the requirement for an express assumption of liability when the reorganization is a corporate merger, because that transaction would result in an assumption of liability in any event. However, the commenter acknowledged that the assumption should be required for a dissolution or an asset transfer, because the department's concern regarding who assumes liability is valid.

RESPONSE: The commenter is correct. Under New Jersey law, the surviving or new corporation resulting from a merger or consolidation is liable for all of the obligations and liabilities of its predecessors. N.J.S.A. 14A:10-6. Accordingly, the Department has revised the rule upon adoption to provide that the express assumption is not necessary for a merger or consolidation when the applicable statute provides that the liabilities will follow as a matter of law.

The Department appreciates the commenter's support for the assumption of liability provision in other types of transactions.

79. COMMENT: Chemical Industry Council of New Jersey noted that the "assumption of liability" language is used inconsistently throughout the rule. The commenter noted that in some provisions it refers to assuming liability for a cleanup, in others it refers to assuming liability for compliance with ECRA, and in still others it refers to both. The commenter suggested that the phrase "compliance with the Act" be used throughout the rule.

RESPONSE: The Department agrees that the language in question should be consistent throughout the rule. To reflect the Appellate Division's guidance more closely, the Department has revised the conflicting provisions upon adoption to use the clause "any liability which the transferor may have for the cleanup of the industrial establishment or compliance with the Act."

80. COMMENT: Schering-Plough Corporation commented that the term "net worth" is used throughout the corporate reorganization section without being defined. The commenter recommended that the rule include a definition, because net worth is the basis for several important thresholds in the proposed regulations. The commenter further recommended defining "net worth" as the fair market value of the assets (including real property, tangible personal property, and intangible personal property related primarily to the industrial establishment or the operations thereon) and a proportionate share of intangible personal property not primarily related to the industrial establishment or the operations thereon less liens and non-contingent liabilities. To determine the proportionate share of intangible personal property not primarily related to the industrial establishment, the ratio of the value of the industrial establishment to the value of all facilities of the owner should be the fraction used for prorating.

RESPONSE: The Department has added a definition of "net worth" to the rule upon adoption, for purposes of clarity. The definition reflects the standard accounting understanding of the term, specifically that net worth is assets minus liabilities. Contingent liability for cleanup of the industrial establishment is not included in the definition, because the extent and possibly the existence of that liability is likely to be speculative.

81. COMMENT: N.J.A.C. 7:26B-1.9(b)2i provides that corporations are presumed to be under "common ownership or control" if they prepare financial statements and tax returns on a consolidated basis. Chemical Industry Council of New Jersey stated that this language includes only "brother-sister" corporate relationships, and not parent-subsidiary relationships. The commenter suggested that corporations should be presumed to be under common ownership or control if they prepare financial statements *or* tax returns on a consolidated basis.

RESPONSE: The Department agrees that the use of the word "and" was in error, and has revised the rule accordingly upon adoption.

82. COMMENT: New Jersey State Bar Association questioned the phrase "net worth of the industrial establishment." The commenter suggested that if the term means the fair market value of the assets of the industrial establishment (including real property) net of liabilities, the phrase should be revised along these lines.

RESPONSE: As discussed above, the Department has added a definition of "net worth" upon adoption having the same meaning as the language suggested by the commenter.

83. COMMENT: New Jersey State Bar Association questioned how to calculate net worth for an industrial establishment, which may be a place or one facility owned by one entity owning many others. The commenter also stated that N.J.A.C. 7:26B-1.9(b)4i and ii should refer to the fair market value of the assets of the industrial establishment, rather than to the assets of the transferor.

RESPONSE: The Department recognizes that the phrase "net worth of the industrial establishment" is problematic in N.J.A.C. 7:26B, because it is the net worth of the *owner or operator* of the industrial establishment, and not of the industrial establishment itself, that is relevant to applicability determinations. The commenter correctly points out that some provisions of N.J.A.C. 7:26B refer to the net worth of the industrial establishment.

The use of that phrase is incorrect. When the Department proposed new ECRA rules in 1987, one commenter stated that the sale of assets not used in the operation of the industrial establishment should not be included within the concept of "sale or transfer of the controlling share of the assets." Responding to that comment upon adoption, the Department stated:

The assets not used in the operation of the industrial establishment 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 sale or transfer will continue to trigger compliance with the Act. [19 N.J.R. 2440, December 21, 1987]

However, other ECRA rule adoptions further confused this issue. See, e.g., 21 N.J.R. 2367(a), 2373, August 7, 1989, response to comment 52.

When the Department proposes additional rule amendments following the enactment of pending amendments to ECRA, this problem will be corrected.

84. COMMENT: Schering-Plough Corporation noted that the corporate reorganization exemption applies only to corporations "under common ownership and control." The commenter states that the term "control" in this provision should not be equivalent to the term "control" used to determine whether an indirect owner could be liable for cleanup of an industrial establishment. Control under N.J.A.C. 7:26B-1.9(b)2i for corporate reorganizations, the commenter states, should only constitute some involvement by a parent corporation or indirect owner and not the pervasive control needed to establish cleanup liability. The com-

menter states that there is no basis to use the pervasive control definitions under N.J.A.C. 7:26B-1.9(b)2i, and recommends that a definition of "control" should be added to the final rule.

RESPONSE: The commenter incorrectly quotes the rule; the actual language leads to substantially different results. The commenter states that the corporate reorganization is available only to corporations under common ownership and control. N.J.A.C. 7:26B-1.9(b)2i provides that the corporations must be under common ownership *or* control. As a result, if a reorganization involves two subsidiaries of the same parent, but the parent does not exercise "control" in a manner which would potentially subject it to liability for a cleanup of one subsidiary's industrial establishment, the lack of control would not disqualify the transaction from eligibility for the corporate reorganization exemption. Both subsidiaries are under common ownership, a relationship which satisfies the requirement of the rule.

If the corporations involved in a transaction are not under common ownership, and no one entity exercises "control" over those corporations within the meaning of the criteria for determining an indirect owner's potential liability, then the transaction would appear to be among unrelated corporations. Accordingly, treating the transaction as a "corporate reorganization" would be inappropriate.

For these reasons, the Department has not added a definition of "control" separate from the description of that term in N.J.A.C. 7:26B-1.9(b)1ii.

85. COMMENT: N.J.A.C. 7:26B-1.9(b)2iv(3) requires that, in certain circumstances, if the transferor of an indirect interest in the industrial establishment is a New Jersey corporation or a foreign corporation authorized to do business in New Jersey, then the transferee must be so organized or authorized as well. Lowestein, Sandler, Kohl, Fisher and Boylan commented that this fact has no bearing upon whether a company has the financial resources available to address the Department's environmental concerns. The commenter states that this provision will impede the investment of foreign (non-New Jersey) entities in the State, an undesirable result which will severely impact the State's ability to return to economical health. The commenter also asserts that financial resources will remain available to the Department, because the industrial establishment and its assets, by definition, will be in the state of New Jersey and available to address any environmental concerns.

Similarly, New Jersey State Bar Association questioned why the Department states a preference for New Jersey corporations, or for foreign corporations authorized to do business in New Jersey succeeding to interests of New Jersey domiciled or authorized corporations. Perhaps a restriction to domestic U.S. corporations, or corporations who have an authorizing agent for acceptance or service in New Jersey would address the Department's goals, without raising constitutional issues.

RESPONSE: The purpose of the provision is to enable the Department to determine whether a transaction will impair the Department's ability to reach assets to pay for a cleanup. A New Jersey corporation or a foreign corporation authorized to do business in New Jersey will have a registered agent, upon whom process against the corporation may be served. N.J.S.A. 14A:4-1, 2. A foreign corporation not authorized to do business in New Jersey will not have a registered agent. If a transaction resulted in a transfer from a corporation with a registered agent to one without a registered agent, it would be significantly more difficult to sue the transferee than the transferor.

For this reason, the Department disagrees that the presence of the industrial establishment in New Jersey would ensure that assets would be available to pay for a cleanup. Furthermore, the net worth of the industrial establishment frequently will be far short of the cost of a cleanup, especially considering the likelihood that the industrial establishment will have liabilities other than the cleanup obligation.

The Department also disagrees with the commenter's evaluation of the effect of the provision. The procedure for obtaining a certificate of authority to transact business is simple and inexpensive, making it unlikely that it could ever be a factor in determining whether a corporation will invest in New Jersey business.

However, the Department has clarified the rule upon adoption to more clearly reflects its purpose. The rule now provides that if the transferor has or is required to have a registered agent upon whom process against the transferor may be served, the transferee must as well.

86. COMMENT: Kerby, Cooper, English, Danis, Popper and Garvin questioned whether the Department has the authority to limit the exemption from ECRA to New Jersey corporations or foreign corporations authorized to transact business in New Jersey.

RESPONSE: The exemption is not limited to New Jersey corporation or foreign corporations authorized to transact business in New Jersey. As proposed, the rule required only that if the transferor was within either of these categories, the transferee must be as well. As discussed above, the purpose of the requirement is to exclude transactions from ECRA only if the Department's ability to reach assets to pay for a cleanup is not materially impaired. The Department therefore believes that the requirement is within the statutory authority under ECRA, as interpreted in *In re Adoption of N.J.A.C. 7:26B.* Also as discussed above, the Department has clarified the rule upon adoption to provide that if the transferor has or is required to have a registered agent upon whom process against the transferor may be served, the transferee must as well.

N.J.A.C. 7:26B-1.9(b)3

87. COMMENT: In providing a framework for evaluating the applicability of ECRA to stock transfers, N.J.A.C. 7:26B-1.9(b)3ii asks whether any arrangement exists which would enable the transferee to elect a majority of the board of directors "or such smaller number of directors as may be sufficient to effectively direct the management and policies of the corporation." Chemical Industry Council of New Jersey stated that the words "may be" in the quoted language should be replaced by "is," because what may theoretically be differs from what actually is. The commenter cited an example in which a majority of the board of directors constitutes a quorum, and that a majority of votes of a quorum are sufficient to carry a question; the commenter believes that the Department did not intend that the rule encompass this type of situation.

RESPONSE: The commenter is correct. The Department has clarified the rule upon adoption by making the suggested change.

88. COMMENT: Chemical Industry Council of New Jersey states that the "and" which follows subparagraph (b)3ii of this section should be an "or."

RESPONSE: The Department disagrees. The purpose of this provision is to establish whether the sale or transfer of stock in a corporation will result in a change in the holder of the controlling interest of the direct or indirect owner or operator of the industrial establishment. Such a change will result unless all of the following circumstances exist:

1. The transfer concerns no more than 50 percent of the voting stock of the corporation;
2. No voting trust, shareholders agreement or proxy exists which would enable the transferee to elect a number of directors sufficient to effectly direct the management and policies of the corporation; and
3. If the transferor holds a controlling interest before the transaction, this will not change after the transaction.

Accordingly, N.J.A.C. 7:26B-1.9(b)3 requires that ECRA will apply to the transaction unless all of these circumstances exist. However, as discussed in more detail in the response to the next comment, the Department has narrowed the scope of the facts which each party to the transaction must certify.

89. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan recommended that N.J.A.C. 7:26B-1.9(b)3 be clarified to require the transferor's certification only in instances where the "transfer" consists of a stock offering to more than three transferees. The commenter states that this limitation will avoid an unreasonable and unnecessary procedural burden for transactions involving multiple transferees.

RESPONSE: The Department has not made the suggested change. The facts contained in the certification will be in question regardless of the number of transferees; and, depending upon the circumstances of the transaction, neither the transferee nor the transferor alone will be able to certify those necessary facts.

First, the transferor will know directly whether a transaction transfers 50 percent or less of the voting stock of the corporation, while the transferee may or may not have this knowledge. Second, only each transferee will know directly whether a voting trust, shareholders agreement or proxy exists which would enable that transferee to elect a number of directors sufficient to effectively direct the management and policies of the corporation. Third, the transferor will know directly whether it holds a controlling interest in the corporation before the transaction, while either the transferor or any transferee may know whether there is a new holder of a controlling interest.

For these reasons, the Department disagrees that the certification requirement is either an unnecessary or unreasonable burden in transactions involving multiple transferees.

However, the Department recognizes that certain facts contained in the certification will be within the direct knowledge of only one party

to the transaction, and that a certification of such facts by the other party is neither necessary nor helpful. Accordingly, the Department has clarified the rule upon adoption to provide for separate certifications by the transferor and any transferees, each certification to contain only those facts which should be known to that party.

In addition, the Department recognizes that a transferee may receive such a small amount of stock in a transaction that a certification from that transferee is not necessary to determine whether a change in control has occurred. Therefore, the Department has revised the rule upon adoption to provide that transferees of less than five percent of the voting stock of the corporation need not submit the certification.

90. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan pointed out that while N.J.A.C. 7:26B-1.9(b)3i addresses a transfer of 50 percent or less of the "voting stock" of a corporation, the definition of "controlling interest" at N.J.A.C. 7:26B-1.3 includes an interst of more than 50 percent of the "issued and outstanding stock" of a corporation. The commenter recommended that the Department resolve the discrepancy between these two sections.

RESPONSE: The commenter is correct. The Department has clarified the definition of "controlling interest" upon adoption so that it refers to voting stock.

N.J.A.C. 7:26B-1.9(b)4

91. COMMENT: Farer, Siegal and Fersko recommended that the Department clarify the term "compilation of the total fair market value of the transferor's assets" at N.J.A.C. 7:26B-1.9(b)4, to indicate whether the Department is looking for a list of some other financial statement provided by an auditor or an accountant in applicability determinations regarding sales or transfers of the controlling share of the assets.

RESPONSE: A compilation is essentially no more than a list, with no requirement that an accountant must have reviewed its accuracy. The Department has added a definition of "compilation" upon adoption to reflect this meaning.

92. COMMENT: Chemical Industry Council of New Jersey questioned the use of the phrase "fair market value of the assets" in N.J.A.C. 7:26B-1.9(b)4. The commenter asked whether the fair market value of the asset was to be measured as of the time of the transaction or as of the time it was actually sold. The commenter noted that obtaining a current valuation from an appraiser for an asset sold in a prior transaction would be expensive and probably not meaningful. The commenter suggested that using the book value of the asset as of the time of its sale may be a more consistent approach.

RESPONSE: The fair market value of the asset is to be measured as of the time it was actually sold. The Department agrees that it would be unnecessarily burdensome and not meaningful to require an appraisal at the time of the transaction for which the applicability determination is sought.

It is unlikely that the book value of the asset as of the time of its sale will be the correct value to use. If the sale was a good faith, arm's-length transaction, the actual sale price will be the best indicator of the fair market value of the asset. The book value normally will be based upon the cost originally paid for the asset, less any depreciation; as a result, the book value normally will not reflect fair market value unless the asset was sold shortly after it was purchased.

93. COMMENT: New Jersey State Bar Association noted that N.J.A.C. 7:26B-1.9(b)4i does not include the reference in the current regulations to replacements of equipment being excluded from the calculation. The commenter questioned whether the Department omitted this language because it believes that those sales are not included in N.J.S.A. 12A:6-102(1).

RESPONSE: The Department did not delete the exclusion of replacements of equipment from the calculation of what constitutes a controlling share of the assets. The definition of "sale or transfer of the controlling share of the assets" contains that exclusion.

However, the Department notes that the proposed amendments to N.J.A.C. 7:26B-1.9(b)4 caused some ambiguity because they could be read to conflict with the definition of "sale or transfer of the controlling share of the assets." The Department has corrected this potential conflict upon adoption.

N.J.A.C. 7:26B-1.9(b)5

94. COMMENT: N.J.A.C. 7:26B-1.9(b)5 provides that a sale or transfer of a general partner's entire interest in a partnership (or the sale or transfer of a limited partner's interest in certain circumstances in which the limited partner is liable for partnership obligations) is excluded from ECRA if the deserting partner holds no more than a 50 percent voting interest in the partnership, the sale or transfer will not diminish the aggregate net worth of the partnership and the general partners by more than 10 percent, and the entering partner assumes the liability (if any) of the departing partner for the cleanup of the partnership's industrial establishments. Chemical Industry Council of New Jersey commented that the provision for the entering partner to assume the liability of the departing partner for a cleanup of the partnership's industrial establishment should be elective, and in lieu of the net worth diminution test, rather than mandatory.

RESPONSE: For the reasons discussed in the proposal (see 24 N.J.R. 722), the Department disagrees that no assumption of liability is necessary if the net worth diminution test is satisfied. As the Appellate Division pointed out in *In re Adoption of N.J.A.C. 7:26B,* in the absence of an agreement among the withdrawing partner, the entity continuing the partnership business, and the partnership creditor:

a person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before admission thereto as though the person was a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. In other words, the new partner does not have the personal liability that is typical of general partners with respect to prior transactions. [250 *N.J. Super.* at 235.]

Accordingly, without the assumption of liability, the assets available to pay for a cleanup would be reduced because the assets of the new partner would not be available.

95. COMMENT: Chemical Industry Council of New Jersey asserts that any "diminution" test as to either or both of the partnership and its partners would necessarily be satisfied if the transferee partner assuming the liability has a net worth which is ninety percent or more of the transferring partner's, and that further inquiry is unnecessary.

RESPONSE: The Department disagrees. If one of the remaining partners or the partnership has a negative net worth, the transaction will result in a diminution of the aggregate net worth by more than 10 percent. For example, assume that a general partnership has a negative net worth of –$50.00, one of its partners has a net worth of $100.00, and the other partner has a net worth of $10.00. The aggregate net worth of the partnership and its partners is $60.00. If the partner with a net worth of $100.00 transfers her interest to a person with a net worth of $90.00, the resulting aggregate net worth will be $50.00, a reduction of 16.7 percent.

96. COMMENT: N.J.A.C. 7:26B-1.9(b)5ii provides that a sale of a partnership interest which diminishes the aggregate net worth of the partnership and the general partners by more than 10 percent, whether "in one or several independent transactions," is subject to ECRA. Farer, Siegal and Fersko suggested that the rule include a time frame in which the "several independent transactions" must have occurred in order to be included in the calculation. New Jersey State Bar Association agreed, suggesting that the rule be modified to state the period in which unrelated transactions are to be aggregated, and recommending the same five-year time period used for asset transfers. Chemical Industry Council of New Jersey stated that the phrase is "particularly meaningless here (and it is difficult to determine what transaction is referred to)."

RESPONSE: The Department agrees with the commenters. It would frequently be burdensome to require the applicant and the Department to analyze every transaction ever involving the partnership, and aggregate the effect of those transactions upon its net worth. The burden would not be justified by the need to ensure that a transaction does not materially affect the ability of the direct owner or operator to pay for a cleanup, because over a long period several other factors other than transactions could significantly affect net worth. The Department also agrees that the reasoning behind the five-year time period in the definition of "sale or transfer of the controlling share of the assets" applies in this context as well. Accordingly, the Department has revised the rule upon adoption to provide that only transactions occurring within the five years preceding the proposed transaction will be considered.

97. COMMENT: Lowenstein, Sandler, Kohl, Fisher and Boylan states that N.J.A.C. 7:26B-1.9(b)5i contains two potentially conflicting criteria to determine the applicability of ECRA to the partnership transaction. The commenter states that the first criterion focuses upon whether a change in control will affect a partnership's actions, whereas the second criterion concerns a partnership's economic resources. The commenter states that the Legislature defined ECRA triggering events to include changes in ownership, not changes in economic characteristics of owners, and therefore concluded that the establishment of a diminution of assets test is unauthorized and beyond the Department's power.

RESPONSE: The Department disagrees with the commenter's interpretation of ECRA. In providing guidance for amendments to the regulations in *In re Adoption of N.J.A.C. 7:26B,* the Appellate Division stated:

Certainly, the sale of [a general partnership] interest could legitimately trigger concern that the withdrawal of a partner, particularly a "money partner," might leave a partnership unable to fund an ECRA cleanup "down the road" because . . . that person (or their personal assets) might not be available at cleanup time, should the partnership property be insufficient to finance a cleanup. [250 *N.J. Super.* at 236.]

The appellants in that case had argued that the Department's regulations were inconsistent with the ECRA statute because they subjected transfers of partnership interests to ECRA even though no change in ownership would occur. *Id.* at 233. The court stated that it was unpersuaded by the appellants' argument, because their approach "would permit a money partner to withdraw, and allow the business to be sold later, when the partner's assets may or may not be available for a cleanup. *Id.* at 236.

For these reasons, the Department disagrees with the commenter's assertion that ECRA is triggered only by changes in ownership, and not changes in the economic characteristics of owners.

98. COMMENT: Kerby, Cooper, English, Danis, Popper and Garvin stated that requiring the transferee partner to assume the liability of the selling or transferring partner is extremely burdensome to the transaction and is not necessary. The commenter stated that the transferring partner remains liable for any damage that occurred while he was a partner and that therefore, that partner's assets would still be available.

RESPONSE: For the reasons discussed in the previous response, the Department disagrees. As the Appellate Division pointed out, a "money partner" could withdraw, and allow the business to be sold later, when that partner's assets may or may not be available for a cleanup. 250 *N.J. Super.* at 236. As a result, the possible continuing liability of the departing partner does not preserve the availability of assets to pay for a cleanup.

99. COMMENT: New Jersey State Bar Association notes that under the "diminution of net worth" test, a transfer of a 10 percent general partner's entire interest would be subject to ECRA merely if that general partner was sufficiently wealthy and the new partner was not. The commenter stated that to trigger ECRA in this circumstance without any consideration of actual liabilities and ability to satisfy those notwithstanding the change is error. The commenter suggested that it would be better to say that a reduction of less than 10 percent is exempt but that a reduction exceeding 10 percent may also be exempt if the change allows sufficient net worth to provide for the future correction of known problems.

RESPONSE: The Department is currently reviewing several proposals regarding exempting corporate reorganizations where the transaction results in a greater than 10 percent "diminution of net worth" and where the transferee has sufficient net worth to cover the costs involved in cleaning up the site. The Department will also consider the appropriateness of extending the same exemption to partnership transactions.

100. COMMENT: Chemical Industry Council of New Jersey disagreed with the concept underlying the diminution of net worth test, which aggregates net worths of the partnership and its partners as if they were one. Specifically, the commenter disagreed with the underlying legal premise that all of a general partner's assets may be liable for partnership obligations.

RESPONSE: The Department disagrees. In a general partnership, all partners are jointly liable for all debts and obligations of the partnership. N.J.S.A. 42:1-15. In a limited partnership, with certain exceptions not normally applicable in this context, a general partner has that same liability. N.J.S.A. 42:2A-32.

101. COMMENT: New Jersey State Bar Association stated that, as with the corresponding provisions pertaining to corporations, the Department does not explain the basis for the choice of a 10 percent reduction in net worth test.

RESPONSE: In *In re Adoption of N.J.A.C. 7:26B,* the Appellate Division noted that while the existing rules allowed a corporation to demonstrate that certain events included in the statute as ECRA triggers should not trigger ECRA in particular circumstances, no corresponding "safety valve" was available for partnership transactions. 250 *N.J. Super.* at 238. The purpose of the amendment is to establish that safety valve for partnerships, and to make it available in the same type of circumstance in which it is available to corporations. Specifically, it is available in types of transactions which are not truly "changes in ownership" and which will not materially diminish the assets available to comply with the law.

The Department agrees that a single universally applicable standard (such as the 10 percent net worth diminution) is not the most accurate possible means of determining whether a transaction will materially impair a person's financial ability to comply with ECRA. In developing these rules, the Department had considered establishing a verbal threshold of "material diminution" of net worth; however, while that verbal threshold could possibly have been more accurate, that accuracy would have come at the cost of predictability and consistency in the rule. Therefore, the Department and the appellants in *In re Adoption of N.J.A.C. 7:26B* agreed that this type of threshold would have failed to comply with the Appellate Division's direction.

Accordingly, in consultation with those appellants, the Department determined that a numerical threshold was necessary. The 10 percent threshold represents a compromise between the Department and the appellants. The appellants representing the regulated community has sought a higher threshold, which would result in fewer transactions being subject to ECRA; the Department and the appellants representing the environmental community had sought a lower threshold which would ensure that somewhat more assets would remain available for a cleanup.

102. COMMENT: New Jersey State Bar Association stated that the availability of the concept of fraudulent conveyance, that is, to set aside conveyances that render a person or entity unable to satisfy its obligations because it is insolvent, would reduce the need for the "net worth diminution" test.

RESPONSE: The Department disagrees that the ability to avoid a fraudulent transfer can substitute for an ECRA trigger based upon diminution of net worth.

Under the Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 et seq., this remedy will be available to set aside two types of transfers:

a. Transfers made with actual intent to hinder, delay or defraud any creditor; and

b. Transfers made without the transferor receiving a reasonable equivalent value in exchange for the transfer, but only if:

1. The transferor was engaged or was about to engage in a business or transaction for which the remaining assets of the transferor were unreasonably small; or

2. The transferor intended to incur, or believed or reasonably should have believed it would incur, debts beyond its ability to pay as they become due. [N.J.S.A. 25:2-25.]

The need to prove that these circumstances exist will frequently make it unlikely that the Department will be able to set aside a transfer which is not subjected to ECRA. With respect to (a) above, it will usually be difficult to prove that the transferor had the requisite intent to defraud. With respect to (b) above, unless the transferor knew or should have known of the existence, extent and cost to remedy environmental problems at the industrial establishment, it will be difficult to prove either that the transferor had insufficient assets to continue engaging in its business or that it would become unable to pay its debts.

For this reason, the Department has not relied upon the availability of fraudulent conveyance remedies in lieu of the "diminution of net worth" tests.

103. COMMENT: N.J.A.C. 7:26B-1.9(b)5i(1) refers to "50 percent of the voting interest in the partnership." New Jersey State Bar Association stated that unlike the practice with respect to corporate voting structures, it is not common to refer to the 'voting interest in the partnership' of the general partner. The commenter suggested that more common usage would be "50 percent of the general partnership interest." The commenter stated that the word "general" in that phrase distinguishes the general partner from the limited partner (with specialized voting rights) without referring to the voting interest.

RESPONSE: The Department believes that the suggested change would be ambiguous and less precise than the existing language. The "50 percent of the general partnership interest" language suggested by the commenter does not distinguish among voting rights, allocations of partnership profits and losses, or rights to distributions from the partnership. While a partnership agreement may provide a partner with the right to a particular percentage of votes, the agreement may allocate a different percentage of partnership profits and losses to that partner, or give that partner a right to a different percentage of distributions from the partnership. For the purpose of ECRA applicability, the most relevant of these types of interests is the voting interest, which evidences the ability to control the partnership. The rule avoids unnecessary ambiguity by stating that expressly.

N.J.A.C. 7:26B-1.9(c)

As proposed, N.J.A.C. 7:26B-1.9(c) requires that when net worth is relevant to an applicability determination, the applicability application must be accompanied by a certification from an independent certified public accountant. Several commenters strongly objected to this requirement. Based upon a review of those comments, and upon further analysis of the rule, the Department agrees that this requirement would not be consistent with other provisions of the rule. The Department has modified the requirement upon adoption to make it consistent.

As noted in the proposal and in responses to several comments throughout this adoption notice, the Department will accord substantial weight to certain statements which applicant makes in the applicability affidavit. For example, in transactions involving an indirect owner, the applicability determination will depend to a large extent upon the indirect owner's statement that it has not exercised control over the direct owner. Similarly, the Department will give substantial weight to the certification of the transferor and transferee regarding the circumstances of a stock transfer.

In many cases, the Department may elect to refrain from independently investigating the facts in these certifications. The certification will be inherently reliable for at least two reasons: first, that it is sworn and given under penalty of perjury; and second, that a letter of nonapplicability issued on the basis of inaccurate factual statements is essentially worthless.

These types of "control" information described above differ from the financial information related to net worth. The applicant is the best person to evaluate and make statements regarding a control relationship, and it is often difficult for anyone other than the applicant to verify those statements. In contrast, an accountant is the most qualified person to evaluate and make statements regarding financial information such as the applicant's net worth. Nonetheless, in light of the weight given to the applicant's statements on other important issues, it would be incongruous to require that the net worth information be independently verified through a certification of an independent certified public accountant.

For this reason, the Department has revised the rule upon adoption, to reduce the level of verification required for the net worth information. In place of the "certification" requirement, the rule now requires that the net worth information be compiled by an accountant, based upon information provided by the applicant seeking the applicability determination. While the accountant will not normally investigate this information, he or she will do so based upon a belief that the information is in error or is incomplete. This level of involvement is sufficient to make the net worth determination as reliable as the other facts which will support an applicability determination.

The accountant need not be "independent"; an accountant in the employ of the applicant will suffice. The person signing the applicability application will also certify that the information supplied to the accountant is accurate.

These changes do not affect the substance of the net worth tests in the applicability standards. The sole purpose of the change is to make the procedure for evaluating net worth consistent with the procedures for evaluating other aspects of ECRA applicability. For this reason, the Department believes that the changes are within the scope allowed under N.J.A.C. 1:30-4.3.

Summaries of the relevant comments regarding N.J.A.C. 7:26B-1.9(c) follow, along with the Department's responses:

104. COMMENT: N.J.A.C. 7:26B-1.9(c) requires that when an applicability determination requires net worth information, the applicability determination form must contain a certification by an independent certified public accountant licensed to practice in New Jersey. Chemical Industry Council of New Jersey stated that this requirement should be deleted as wholly unworkable, unfounded in ECRA and unnecessary. The commenter added that the provision requires actions which are impossible to effectuate. Similarly, New Jersey State Bar Association stated that the requirement would deny the benefit of an exemption from ECRA to many legitimate transactions.

RESPONSE: For the reasons discussed above, the Department believes that the changes to the accountant's certification requirement discussed above will allay much of the commenters' concern, by eliminating unnecessary procedural requirements.

105. COMMENT: Farer, Siegal and Fersko stated that there is no need to require that the accountant's certification be made by an accountant licensed in New Jersey. The commenter added that the requirement is an arbitrary additional burden on businesses which use out-of-State accountants.

RESPONSE: The Department agrees with the commenter, and has revised the rule upon adoption to provide only that the accountant is to be licensed to practice in the state in which he or she practices.

106. COMMENT: New Jersey State Bar Association states that the requirement of a certification from a CPA is very burdensome, especially for smaller businesses. The commenter suggests that the Department accept submissions from an accountant in the employ of the applicant and stipulate some form of requirement for submission of worksheets in order to document that the work to support the conclusions has been performed.

RESPONSE: For the reasons discussed above, the Department has made the suggested change.

107. COMMENT: Chemical Industry Council of New Jersey questioned the requirement that the applicability determination form contain a certification by an independent certified public accountant. The commenter stated that accountants do not "certify," they "opine."

RESPONSE: As discussed above, the Department has deleted the "certification" requirement upon adoption.

108. COMMENT: Chemical Industry Council of New Jersey questioned the need for the accountant's certification, noting that accountants give opinions based upon records and statements made available to them by corporate management, which are assumed to be true.

RESPONSE: As discussed above, the Department has revised the rule in a manner which substantially reflects the commenter's point. However, the Department notes that in compiling the net worth information, the accountant will not completely assume that the information provided is true. If the accountant becomes aware that the information provided is in error or is incomplete, he or she will not accept that information at face value. The level of inquiry required is the same as for a "compilation" of financial statements.

109. COMMENT: New Jersey State Bar Association states that timing often makes it difficult to obtain the needed information on a timely basis.

RESPONSE: The Department believes that the reduction in the level of verification required from the accountant will substantially reduce or eliminate timing problems.

110. COMMENT: Chemical Industry Council of New Jersey questioned whether accountants could provide a "certification" regarding a future event (specifically, the proposed transaction). The commenter pointed out that accountants' give opinions as to future events through projections, which contain numerous disclaimers.

RESPONSE: Regardless of whether the document is referred to as a "certification" or a "projection," the Department agrees that the accountant will need to make certain disclaimers in the document, made necessary because the transaction is indeed a future event. The Department has clarified the rule upon adoption to state that the net worth data will be acceptable with those disclaimers.

The accountant's compilation will necessarily be based upon the assumption that the value of the assets transferred to or from any party to the transaction, and the extent of any liabilities created, reduced, or assumed in connection with the transaction, will not materially change between the date of the certification and the date of closing of the transaction. In addition, the compilation will also reflect the assumption that there will be no material change in any other assets or liabilities of the parties between the date of the compilation and the date of closing. The inclusion of these disclaimers in the certification will not make the certification unsatisfactory for purposes of N.J.A.C. 7:26B-1.9(c).

For the same reasons that these disclaimers are necessary to the accountant submitting the certification, the Department notes that its applicability determination is based upon the same assumptions. Therefore, if any of those assumptions prove to be untrue, the applicant should seek a revised applicability determination; the original one would be of little comfort because it would be based upon a statement facts different from those in the actual transaction.

111. COMMENT: Chemical Industry Council of New Jersey stated that N.J.A.C. 7:26B-1.9(c) appears to require audited statements as a basis for the accountant's certification. The commenter stated that many small companies, as well as subsidiaries of large companies, do not have audited statements. Preparation of such audited statements is time-consuming and a needless expense. New Jersey State Bar Association agreed that many individuals and entities do not routinely use or generate data, statements, procedures and personnel to enable a CPA to give the needed certifications.

RESPONSE: As discussed above, the accountant's statement of net worth will be in the nature of a compilation rather than an audit.

The Department recognizes the possibility that an individual or entity may not routinely generate even the data required to support an accountant's compilation. However, this data is necessary to enable the Department to evaluate whether a transaction or occurrence will materially reduce the assets available to pay for a cleanup. The "closing, terminating or transferring of operations" which will trigger ECRA is not itself routine; for this reason, the Department has not eliminated this requirement solely because it is not routine.

112. COMMENT: Chemical Industry Council of New Jersey states that the Department's current practice requires the president, chief financial officer, controller or similarly placed person with the applicant to state the net worth of the transferor at the time of the application and the projected net worth of the transferee or entity resulting from the transaction immediately after the occurrence of the proposed transaction. The commenter states that this type of statement is what an accountant will rely upon in expressing an opinion on financial statements.

The commenter recommends that this practice be continued under the amended rules. Similarly, Schering-Plough Corporation stated that since certified public accountants are not regularly engaged in providing such certifications, the certification of a corporation's chief financial officer, when supported by attached audited financial statements and/or appraisals furnished by recognized appraisal authorities, should satisfy the Department's requirement for independent verification. New Jersey State Bar Association suggests that an affidavit from appropriate individuals that the needed information is reasonably believed to fairly reflect the financial condition should suffice in lieu of such requirements.

Chemical Industry Council of New Jersey suggests that as an option, an applicant with existing audited financial statements be permitted to rely upon them as evidence of net worth, and to submit with them a statement that there has been no material adverse change in the net worth between the date of the statement and the date of the application. The statement of the projected net worth following the transaction would be made by the applicant as well.

RESPONSE: Again, the Department believes that the changes to the rule discussed above substantially address the commenters' concerns. The changes will result in a procedure which is less burdensome than what some of the commenters have suggested, because there will be no need to submit audited financial statements.

However, the Department has not eliminated the requirement for the accountant's involvement entirely. As discussed above, the accountant is the person most qualified to evaluate and make statements regarding the applicant's net worth. That accountant may be employed by the applicant. The statement of an accountant who is a corporation's chief financial officer or controller would be acceptable under the rule.

113. COMMENT: Cohen, Shapiro, Polisher, Shiekman and Cohen suggested revising N.J.A.C. 7:26B-1.9(c), by adding "as may be required by subsection (b) above" at the end of the introductory language.

RESPONSE: The Department has revised the rule upon adoption to include the suggested clarification.

N.J.A.C. 7:26B-1.9(d)

114. COMMENT: Chemical Industry Council of New Jersey stated that if "assumptions" of liability continue to be present in the rule at all, the phrase "required by" in the first two lines of this section should be changed to "elected under."

RESPONSE: As discussed in detail in the responses to Comments 73, 74 and 75, the Department has not changed the assumption of liability provisions in the rule. For this reason, the words "required by" have not been changed.

Summary of Hearing Officer Recommendations and Agency Response:

The Department held a public hearing on the proposed amendments on March 30, 1992 in Trenton, New Jersey. Karl Delaney, Director of the Division of Responsible Party Site Remediation in the Department, served as hearing officer.

Mr. Delaney reviewed the testimony submitted at the public hearing, and the other comments which the Department received. Based upon that review, Mr. Delaney recommended that the Department make several minor changes to the rule upon adoption. The Department agreed with the recommendation, and has incorporated the suggested changes. The reasoning behind the suggested changes is described in the responses to public comments set forth above.

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

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 in the ***total value of the*** units of product output *[by]* ***from*** the ***entire*** industrial establishment. For industrial establishments that have an undefined unit of product output, the following criteria are to be applied:

1. Ninety percent reduction in number of employees; or
2. Ninety percent reduction in area of operations.

...

"Closing, terminating or transferring operations" means any one of the following:

1.-2. (No change.)

3. Any judicial proceeding or final agency action through which an industrial establishment becomes nonoperational for health or safety reasons;

4. (No change.)

5. *[Any]* ***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.

...

"Compilation" means a presentation of financial information by a certified public accountant, based upon data supplied by the person who is the subject of such information, and presented without independent inquiry into the accuracy of such information by the accountant unless he or she has reason to believe that the data is in error or is incomplete.

"Controlling interest" means the interest held by the person or persons who own more than 50 percent of the *[issued and outstanding]* ***voting*** stock of a corporation; it also means the interest held by the person or persons who own 50 percent or *[fewer]* ***less*** of the *[issued or outstanding]* ***voting*** 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 except *[as provided]* ***under the standards set forth*** at N.J.A.C. 7:26B-1.9.

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the board of directors or the shareholders of a corporation, which***, based on the standards in N.J.A.C. 7:26B-1.9,*** 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]* ***clean up*** the industrial establishment *[as provided at N.J.A.C. 7:26B-1.9]*, and where the purpose is merely as set forth in 1 to 3 below. ***Notwithstanding the reference to N.J.A.C. 7:26B-1.9, this definition does not require a person to submit an application for an applicability determination in order for a transaction or occurrence to qualify as a "corporate reorganization not substantially affecting ownership."***

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 financial, administrative or managerial convenience, or for any other legitimate business purpose.

"Department" means the New Jersey Department of Environmental Protection and Energy.

...

"Hazardous substances" means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

...

"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 disposal 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 *[or has been]* conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or *[improvements or portions of improvements]* that are *[or were]* 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.

...

"Net worth" means total assets minus total liabilities, other than contingent liabilities for cleanup of the industrial establishment and other compliance with the Act.

...

"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 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 *[inlcude]* ***include*** a sale or transfer *[satisfying the requirements set forth in]* ***which satisfies these requirements based upon the transferor's demonstration pursuant to*** N.J.A.C. 7:26B-1.9(b)4. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery.

...

"Small business" means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees.

...

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.-9. (No change.)

10. Sale or transfer ***(other than a sale or transfer satisfying the standards set forth in N.J.A.C. 7:26B-1.9(b)5)*** 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***.**[, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;]* ***Notwithstanding the reference to N.J.A.C. 7:26B-1.9(b)5, this definition does not require that a person submit an application for an applicability determination in order for a transaction or occurrence to satisfy the standards set forth in N.J.A.C. 7:26B-1.9(b)5.***

11.-13. (No change.)

14. Any judicial proceeding or final agency action through which an industrial establishment becomes non-operational for health or safety reasons;

15. Cessations 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);

16.-18. (No change.)

(c) (No change.)

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.-9. (No change.)

10. The date fixed in a judgment or final agency action (or, if such judgment or final agency action is stayed, the expiration or any stay thereof) entered in a judicial or regulatory proceeding through which the industrial establishment becomes non-operational for health or safety reasons as described at N.J.A.C. 7:26B-1.5(b)14;

11.-14. (No change.)

(b) (No change.)

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.-24. (No change.)

25. Construction loans obtained by the owner or operator of an industrial establishment;

26. The termination of a lease of an industrial establishment where the lease is renewed by the same tenant without a disruption in operations; and

27. A change in SIC number as the result of a change in the SIC manual without a change in the operations of the industrial establishment.

(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 facility or transaction, a person shall:

1.-3. (No change.)

4. Demonstrate to the Department's satisfaction, that the Act or this chapter is not applicable. As part of such demonstration, all applicable requirements of (b) below shall be satisfied.

(b) For applicability determinations requested for a transaction of any of the types described at N.J.A.C. 7:26B-1.5(b)1, 2, 3, 6 or 10 ***or N.J.A.C. 7:26B-1.8(a)4***, the person requesting the applicability determination shall comply with the procedural requirements set forth in (a) above, and shall satisfy the following requirements:

1. As to applicability determinations under N.J.A.C. 7:26B-1.5(b)1, 2 and 6, the applicant shall demonstrate to the Department that:

i. The corporation which is to be dissolved, or the shares or assets of which are to be sold or transferred, as the case may be, is an indirect owner or operator of the industrial establishment within the meaning thereof in N.J.A.C. 7:26B-1.5(b)1, 2 and 6 (an "indirect owner"); and

ii. Based upon the existence of all of the following circumstances, and upon the statement required under (b)1iii below, the assets of the indirect owner would not have been available for the cleanup of the industrial establishment because the indirect owner has not exercised control over the industrial establishment or the direct owner or operator thereof:

(1) The indirect owner has not exerted fiscal control over the owner including, but not limited to, imposing any restriction upon the financing, borrowing, budgeting, dividends*[, reporting]* and cash management of the owner;

2. Officers, directors and employees of the indirect owner do not constitute a majority of the directors of the owner or such smaller number of directors as *[may be]* ***is*** sufficient to effectively direct the management and policies of the corporation;

(3) No officers, directors and employees of the indirect owner are involved in the day-to-day operations of the owner ***relevant to the***

generation, handling, storage or disposal of hazardous substances or hazardous wastes*; ***and***

[(4) No officers, directors or employees of the indirect owner determine the policies or decisions of the owner; and]

*[(5)]****(4)*** The indirect owner does not have *[knowledge of nor]* the ability to control the activities***, policies or decisions*** *[including the environmentally related activities]* of the owner ***relevant to the generation, handling, storage or disposal of hazardous substances or hazardous wastes***; and

iii. The application for the applicability determination includes ***the following:***

(1) A* *[a]* statement by the indirect owner that the indirect owner has not exercised control, at any time, over the industrial establishment or the direct owner or operator thereof, based on the criteria listed in *[N.J.A.C.]* (b)1ii above***, as supplemented under (b)1iii(2) below; and***

(2) In lieu of certifying that all criteria listed in (b)1ii above are satisfied, an identification of any criteria which the indirect owner is excluding from the certification, together with a description of the circumstances relevant to such criteria. The Department shall determine whether those circumstances satisfy the criteria.*

2. The Department shall determine that a transaction is a corporate reorganization not substantially affecting the ownership *[or control]* of the industrial establishment, and therefore not subject to the *[provision of the]* Act, if the requirements set forth in (b)2i and ii below, and the requirements set forth in either (b)2iii or iv below are satisfied:

i. The transaction involves the transfer of stock, assets, or both, solely among corporations under common ownership or control ***and/or the shareholders of such corporations***. For the purposes of this subsection, a transaction between related corporations that prepare financial statements *[and]* ***or*** tax returns on a consolidated basis will be presumed to be among corporations under common ownership or control; and

ii. The transaction will not result in an aggregate diminution of more than 10 percent in the net worth of the industrial establishment, or of the person directly owning or operating the industrial establishment. *[For the purposes of this section, the aggregate diminution, whether through one or several independent transactions, shall not result in a diminution of more than 10 percent of the net worth of the industrial establishment itself, or its direct owner or operator]* ***All transactions occurring within the five years period preceding the date of the proposed transaction are included in the calculation of the aggregate diminution***; and

iii. With respect to any indirect owner transferring any direct or indirect interest in the stock or assets of the industrial establishment, the assets of such indirect owner would not have been available for the cleanup of the industrial establishment, based upon the criteria set forth in (b)1ii and iii; or

iv. With respect to any indirect owner described in (b)2iii above, for which the Department cannot determine that the assets would have been unavailable for the cleanup of the industrial establishment:

(1) The transferee of the indirect owner's interest has a net worth equal to at least 90 percent of the net worth of the transferor;

(2) The transferee of the indirect owner's interest agrees with the Department in writing to assume any liability which the transferor may have for the cleanup of the industrial establishment ***or for any compliance with the Act***. ***No such assumption is required if the transaction is a merger or consolidation for which the applicable statute provides that as a matter of law, the merged or consolidated entity assumes the liabilities of the parties to the transaction.*** No such assumption shall constitute or be construed to constitute an admission that the transferor, or any other party, is or may be liable for ***the cleanup of the industrial establishment or for*** any compliance with the Act. Neither shall such assumption affect any liability of the transferee to any person or entity other than the Department with respect to the cleanup of the industrial establishment or compliance with the Act. Neither shall such assumption be deemed a submission to the jurisdiction of the Department or any other agency, court or tribunal; and

(3) If the transferor is *[a New Jersey corporation, or is a foreign corporation authorized to transact business in New Jersey]* ***required by law to have a registered agent in New Jersey upon whom process against the transferor may be served***, then the transferee shall *[be either a New Jersey corporation or be authorized to transact business in New Jersey]* ***have a registered agent in New Jersey upon whom process against the transferee may be served***.

3. As to applicability determinations under N.J.A.C. 7:26B-1.5(b)2,*[the transferor and transferee of the stock shall certify the following to the Department]*:

i. The transferor ***shall certify to the Department that it*** is transferring 50 percent or less of the voting stock of the corporation ***, and that if the transferor holds a controlling interest in the corporation, the transferor will continue to hold a controlling interest after the transfer***; ***and***

ii. *[No]* ***Any transferee of more than five percent of the voting stock of the corporation shall certify to the Department that no*** voting trust, shareholders agreement or proxy exists which would enable the transferee of the stock to elect a majority of the board of directors or *[such]* ***a*** smaller number of directors *[as may be]* sufficient to effectively direct the management and policies of the corporation*[; and

iii. If the transferor holds a controlling interest in the corporation, the transferor will continue to hold a controlling interest after the transfer]*.

4. As to applicability determinations under N.J.A.C. 7:26B-1.5(b)3, the sale or transfer of assets will not be considered a sale or transfer of the controlling share of the assets of the industrial establishment, if the transferor complies with (b)4*i*, ii and iii below ***and thereby establishes that the sale or transfer does not fall within the definition of "sale or transfer of the controlling share of the assets" in N.J.A.C. 7:26B-1.3***:

i. The transferor includes in the applicability application a complete list of asset transfers and sales not in the ordinary course of business (as that term is used in N.J.S.A. 12A:6-102(1) for the five years preceding the date of the applicability application) which list shall include a statement of the fair market value of the assets included in such asset sales;

ii. The transferor includes in the applicability application a compilation of the total fair market value of the transferor's assets at the time of the applicability application; and

iii. The transferor certifies in the applicability application that the transfer or sale of assets is not part of a plan to sell all of the assets of the industrial establishment.

5. For applicability determinations under N.J.A.C. 7:26B-1.5(b)10, the following requirements are satisfied:

i. The applicant demonstrates to the Department that:

(1) The selling or transferring general partner holds no more than 50 percent of the voting interest in the partnership; and

(2) The sale or transfer of the partnership interest, whether in one or several independent transactions ***occurring within the five years preceding the proposed transaction***, will not result in an aggregate diminution of the net worth of the partnership and the general partners by more than 10 percent; and

ii. The transferee of the interest of the selling or transferring general partner agrees with the Department in writing to assume any liability of the selling or transferring general partner with respect to the cleanup of any industrial establishments directly or indirectly owned or operated by the partnership***, or for compliance with the Act by the partnership***. No such assumption shall constitute or be construed to constitute an admission that the transferor, or any other party, is or may be liable for any compliance with the Act ***or cleanup of an industrial establishment***, nor affect in any manner the transferee's liability to any person or entity other than the Department in respect of the Act ***or of an industrial establishment***. No person entering into such an assumption shall be deemed thereby to have submitted itself to the jurisdiction of the Department ***or*** of any other agency, court or tribunal.

(c) If the applicant for an applicability determination is required under *[this section]* ***(b) above*** to provide information concerning

the net worth of any person, the applicant shall submit with its applicability application form *[a certification by an independent certified public accountant licensed to practice in New Jersey, stating the following:]* ***a statement signed by a certified public accountant in accordance with (c)1 through 4 below. The certified public accountant shall be licensed to practice in the state in which he or she practices. The certified public accountant may be an officer or employee of the applicant or of another party to the transaction for which the applicability determination is sought. The certified public accountant shall state the following:***

1. That the transaction which is the subject of the applicability determination will not reduce the net worth of the person in question by more than 10 percent *[nor]***, and*** in *[culmination]* ***combination*** with one or several previous independent transactions, *[does]* ***will*** not result in a diminution of more than 10 percent *[of]* ***in*** the net worth of the industrial establishment itself, or ***of*** its direct owner or operator; *[and]*

2. That the conclusion set forth in (c)1 above is based upon *[a review of this]* ***the accountant's compilation of information supplied by the applicant regarding the subject*** transaction***,*** *[as well as any previous transfers undertaken by the applicant and upon financial statements which fairly represent the financial condition of the person in question as of the date of the certification required hereunder, which financial statements have been prepared in accordance with generally accepted accounting principles, and consistently applied.]* ***regarding other transactions occurring within the five years preceding the subject transaction, and regarding the persons whose net worth is at issue;***

3. That the accountant has no reason to believe that the information listed in (c)2 above is in error or is incomplete; and

4. That in reaching the conclusion set forth in (c)1 above, the accountant has assumed that between the date of the statement and the date the transaction closes there will be no material change in the value of the assets transferred to or from any party to the transaction, in the extent of any liabilities created, reduced, or assumed in connection with the transaction, or in any other assets or liabilities of the parties.

(d) If the applicant for an applicability determination is required under this section to provide information concerning the net worth of any person, the applicant shall include in its applicability application form a statement that the information provided to the accountant under (c)1 above is true, accurate and complete.*

*[(d)]***(e)*** If the applicant for an applicability determination is required by either (b)2iv2 or (b)5ii above to provide a certification by a transferee, the document shall be an affidavit executed in accordance with the provisions outlined in N.J.A.C. 7:26B-1.13(b)2i(1) through (3) and certified as set forth below:

"The undersigned, [name of transferee] ("Transferee"), hereby agrees with the Department of Environmental Protection and Energy ("Department") to assume any liability which [name of transferor] ("Transferor") may have for the cleanup of [identify the industrial establishment] (the "Industrial Establishment"). The assumption shall not constitute or be construed to constitute an admission that Transferor, or any other person or entity, is or may be liable for any cleanup of the Industrial Establishment or compliance with the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. Neither shall this assumption affect any liability of Transferee to any person or entity other than the Department with respect to the cleanup of the Industrial Establishment or Compliance with the Environmental Cleanup Responsibility Act. Neither shall this assumption be deemed a submission to the jurisdiction of the Department or any other agency, court or tribunal."

*[(e)]***(f)*** The Department will, within 45 days after receipt of a complete application for an applicability determination, advise the applicant of its decision. Any person who requests an applicability determination pursuant to this chapter and does not receive a written response from the Department within the deadlines imposed by this subchapter shall not be entitled to assume that the application was found not subject to the Act.

PUBLIC NOTICES

LEGISLATURE

(a)

OFFICE OF LEGISLATIVE SERVICES

Including the Senate and the General Assembly Executive Director

Notice of Adoption of ADA Grievance Procedure

Take notice that the New Jersey Office of Legislative Services (including the Senate and the General Assembly) intends to adopt substantially the same Americans with Disabilities Act Grievance Procedure that is the subject of a Notice of Proposed Rulemaking by the New Jersey Department of Law and Public Safety, which Notice appears in this issue of the New Jersey Register. You are referred to that Notice for a full description of the origin, purpose and impacts of the grievance procedure.

Although the Office of Legislative Services (including the Senate and the General Assembly) is not adopting this procedure by formal rulemaking, and will be free to deviate from the policy and will make any revised policy available through distribution, it gives this notice in satisfaction of its duty under the Department of Justice regulations, 28 C.F.R. §35.107. The Office of Legislative Services (including the Senate and the General Assembly) will adopt the proposed rules of the Department of Law and Public Safety as they appear in the above-referenced notice, except that Subchapter 1. Definitions is as follows:

SUBCHAPTER 1. DEFINITIONS

Definitions

As used in this chapter, the following terms have the indicated meanings.

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Office of Legislative Services (including the Senate and the General Assembly).

"Designated decision maker" means the Executive Director of the New Jersey Office of Legislative Services or his or her designee.

In addition, the ADA Coordinator identified in the rule for this agency is:

ADA Coordinator
Office of Legislative Services
CN 068
Trenton, New Jersey 08625-0068

EDUCATION

(b)

DIVISION OF ADMINISTRATION AND POLICY

Notice of Availability of Federal and State Grant Funds

Take notice that the New Jersey Department of Education has available for the general public the 1992-93 edition of the Directory of Federal and State Programs which gives information regarding the availability of the federal and state grant funds pursuant to N.J.S.A. 52:14-34.5. A copy of this directory has been given to each Local Education Agency and County Office of Education. Copies may be obtained by writing to:

Bureau of Budget, Accounting and Contracts
N.J. State Department of Education
CN 500
Trenton, NJ 08625

Please note: This public notice is in accordance with N.J.S.A. 52:14-34.5 which requires . . . "state agencies that award federal and state grant funds to publish a semi-annual notice regarding the availability of those funds in the New Jersey Register or an appropriate publication of the department. . . ."

ENVIRONMENTAL PROTECTION AND ENERGY

(c)

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking N.J.A.C. 7:27-6.2(a)

Petitioners: Exxon Company, U.S.A., Linden, New Jersey
Tosco Corporation, Stamford, Connecticut.

Take notice that on March 3, 1993, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the amendment of the Department's rules setting forth the allowable emission rates for particles released through stacks into the air from manufacturing processes at N.J.A.C. 7:27-6.2(a), Standards for the emission of particles.

Petitioners request that the Department amend N.J.A.C. 7:27-6.2(a) so that the allowable particle emission rate limit for units with a source gas flow rate greater than 175,000 standard cubic feet per minute could exceed the current maximum allowable particle emission rate by 0.02 grains for each standard cubic foot of source gas emitted per minute.

Petitioner Exxon Company is the operator of the Bayway Refinery in Linden and petitioner Tosco Corporation has entered into a contract to purchase the refinery. Petitioner Exxon states that it has been able to meet the existing particle emission limit under N.J.A.C. 7:27-6.2(a) by, in part, its selection of feedstocks for the Fluid Catalytic Cracking Unit at the refinery. Petitioner Tosco Corporation points out that, as an independent refiner, it will be purchasing feedstocks on the open market; thus, the current limit, petitioner believes, will constrain its selection of feedstocks from the range available to its competitors. Petitioners also note that the current particle emission limit prevents either petitioner from operating the cracking unit at maximum capacity or potential for certain feedstocks.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department will subsequently mail to petitioner and file with the Office of Administrative Law a notice of action on the petition.

(d)

COMMUNITY AFFAIRS

Notice of a Roundtable Discussion Proposal to Create an Environmental Subcode as an Addition to the Uniform Construction Code

Take notice that the Departments of Community Affairs and Environmental Protection and Energy will hold a public roundtable discussion on a proposal to create an Environmental Subcode within the context of the Uniform Construction Code.

The roundtable discussion of this proposal will be chaired jointly by Assistant Commissioner Charles Richman from the DCA and Assistant Commissioner John Weingart from the DEPE, and will be held starting at 1:30 P.M. on:

Tuesday, May 20, 1993
Department of Environmental Protection and Energy
Public Hearing Room, 1st Floor
401 East State Street
Trenton, New Jersey

If you would like to participate in the discussion, interested persons should register with Carrie Anne Calvo, in the Office of the Assistant Commissioner for Environmental Affairs, at (609) 292-2795.

The text of the proposal follows:

Introduction

An Environmental Subcode, within the framework of the existing Uniform Construction Code, is proposed to streamline the permit process, make better use of the expertise, resources and perspectives of local government and of the State Departments of Community Affairs (DCA) and Environmental Protection and Energy (DEPE), enhance

local involvement in the permit process, and strengthen enforcement and compliance with DEPE regulations. This subcode would enable the review and issuance of several types of permits, now under DEPE jurisdiction, by a State licensed Environmental Subcode Official at the local level. The Environmental Subcode Official would be responsible for ensuring that all approvals required by the DEPE are obtained prior to the issuance of a construction permit by the Municipal Construction Official. Moreover, the Environmental Subcode Official would monitor a construction site to ensure compliance with DEPE permit conditions. In this way, local permit officials would act as an information resource for environmental issues, offer guidance about the regulatory process, expedite the issuance of authorized permits and ultimately improve enforcement and compliance efforts by State agencies with local involvement. The Environmental Subcode can be developed and implemented by State agencies with local involvement without additional legislative authorization.

Institutional Framework

The New Jersey Uniform Construction Code created the mechanism for local officials to implement and enforce State construction regulations. Local construction code review and inspection has been in operation for 15 years. This existing framework can accommodate the addition of an Environmental Subcode.

The Uniform Construction Code (UCC) enables the Commissioner of Community Affairs to propose and adopt regulations to create additional subcodes for local implementation. The UCC also enables the DCA Commissioner to enter into agreements with other State agencies to permit single agency review of plan review and enforcement. Under this proposal, the DEPE would create subcode standards and the DCA would implement these standards.

The types of permits best suited for delegation will require additional discussion within the DEPE and with the public. Those that appear to be good initial candidates are permits related to construction activities. These are routine activities with non-analytical standards. Activities requiring a more complex, technical analysis do not seem to be good candidates for delegation and are proposed to remain within the jurisdiction of the DEPE's Trenton offices.

The State-issued land use permits and County Environmental Health Act (CEHA) program activities are separated into two suggested subcode classes: "The Resource Protection" Subcode and "The Environmental Health Protection" Subcode. Some types of permits that may lend themselves to delegation are listed below. The following list of permits is not intended to be inclusive and exhaustive; the listed permits are only examples of permits that might be delegated.

Resource Protection Subcode Categories

1. Freshwater Wetlands
   (a) Statewide General Permit
   (b) Transition Area Waivers
   (1) averaging plans
   (2) straight reductions
   (3) special activity waivers
   (c) Letters of Interpretation
   (1) presence/absence determination
   (2) delineation on sites of less than one acre
2. Stream Encroachment
   (a) General Permits
   (b) Waivers
3. Waterfront Development Permits
   (a) maintenance dredging
   (b) minor upland development
4. Coastal Wetlands, Type A Permits
5. Industrial Stormwater Permits

These permits, waivers and interpretations are related to resource protection during construction activities and are associated with many development activities that would require other construction subcode permits and inspections. These permits and certifications have established specific, technical standards, allowing only limited discretion. Activities needing these permits would include construction of single housing units, residential subdivisions and small commercial developments. If a construction project required additional permits available only from Trenton, an applicant could be given the option of having all of the required permits issued from Trenton offices.

Environmental Health Subcode

1. Underground Storage Tanks Permits (compliance and field inspection)
2. Well Construction Permits
3. Septic Construction Permits

These permits, while also involving construction, primarily address environmental health issues. These construction activities have the potential to have an impact on potable water supplies. Local health officials have the capability, by virtue of education and licensing, to assume these tasks.

Environmental Subcode Official

The responsibility for issuance and compliance monitoring of these permits would be with the "Environmental Subcode Official." A subcode official is a public official who, though appointed by a municipality, is licensed by the DCA and is answerable only to the DCA with regard to all code implementation. Municipal construction and subcode officials are paid by the municipalities. As municipal employees, most would belong to the same retirement system (PERS) as do State employees. Individual subcode officials could, therefore, pursue employment opportunities in State agencies and vice versa, facilitating a healthy exchange of skills and perspectives between local and state government.

License qualifications require professional education and experience. Officials are required to pass a licensing examination and participate in continuing education programs as a condition for license renewal. The technical nature of the permits require qualified individuals to implement the program. Continuing education requirements ensure officials keep abreast of scientific advancements.

To initiate the subcode program, volunteers from existing DEPE permit programs could be initially licensed as Resource Protection Subcode Officials. Licensed health officers and sanitarians, first grade, could be initially licensed as Environmental Health Subcode Officials. Provisional license holders could be given four years to pass a licensing exam, which would have to be developed. Environmental Subcode officials, after completing required education programs and passing examinations, could qualify for additional construction subcode licenses thereby enhancing employment opportunities.

State Oversight

The existing subcode programs are closely monitored by the DCA. Local subcode departments are required to submit monthly reports detailing permit activity and inspections within their jurisdiction. The DCA has provided computer software to assist municipalities in this reporting system. The DCA performs routine audits of local subcode departments to assure adequacy of standards and job performance.

The DCA retains the authority to take jurisdiction on any permit. This authority has been upheld by case law. The DCA can close a municipal subcode department or appoint an administrator. The DCA and DEPE will maintain a staff of technical experts in their Trenton offices to offer technical assistance to local officials.

Enforcement and Violations

It is the responsibility of subcode officials to find violations within their jurisdiction. Failure to investigate can result in the loss of license.

Code violations are administrative civil enforcement actions with penalties ranging from stop-work orders to monetary penalties. Certificates of occupancy are not issued until all conditions of the permit are fulfilled.

Subcode officials are responsible for plan approval and inspection. If a local subcode official is not qualified to review a certain type/class of plan, plan review occurs in the DCA's Trenton office. Local inspection to ensure compliance to an approved plan remains a local responsibility. In these cases, permit fees are shared between the DCA and the municipal subcode official. The exact nature of environmental subcode fee sharing would need to be determined.

Subcode Budget

The fees for construction permits are used to fund the operation of a local subcode office, not the municipal budget. Subcode fees cover salaries, benefits, equipment (including vehicles and computers) and overhead. DCA reviews the local subcode budget as part of the annual municipal audit to ensure subcode fees accurately reflect the expense of running a local program. Under this proposal, the DCA and the DEPE would receive a percentage of the local permit fee to underwrite training, administration, investigation and technical assistance programs.

Conclusion and Proposed Action Steps

The DCA and the DEPE are soliciting public comments as to whether they should continue this initiative. If it is to be pursued, the following are steps that could be taken to make the concept a reality:

1. The DEPE and the DCA should further examine which permits should be delegated. Permit standards and regulations should be re-examined and revised to ensure permit rules are clear and performance standards for permits are established. The permit fee structure should be reexamined to ensure permit fees generate sufficient funding to pay for a decentralized program.
2. An interagency agreement establishing the Environmental Subcode should be executed between the DCA and the DEPE.
3. Regional environmental subcode field offices should be established using the three existing DCA regional field offices. Interested DEPE employees could transfer to regional offices and become licensed Resource Protection Subcode officials. Qualified County Health Officers and licensed sanitarians, first grade, could become Environmental Health Subcode Officials.
4. An educational and testing program to accommodate the training, licensing and continuing education of Environmental Subcode officials should be developed.
5. The concept and benefits of Environmental Subcode Officials should be discussed with county governments. Assist interested counties in the creation of County Environmental Subcode offices.

Public Comments

Public comments on the ideas raised in this document should be submitted by June 5, 1993 to:

Carrie Ann Calvo
Office of the Assistant Commissioner for Environmental Regulation
Department of Environmental Protection and Energy
401 East State Street
CN 401
Trenton, N.J. 08625-0401

(a)

WATER SUPPLY ELEMENT

Water Supply Loan Programs

Notice of Availability of Loan Funds

Take notice that the Department of Environmental Protection and Energy (Department) announces the availability of the following State loan funds:

A. Name of program: Water Supply Rehabilitation and Interconnection Loan Programs.

B. Authority: Water Supply Bond Act of 1981, P.L.1981, c.261, as amended, and the Water Supply Loan Programs Rules, N.J.A.C. 7:1A.

C. Purpose: The purpose of the Water Supply Rehabilitation and Interconnection Loan Programs is to provide financial assistance in the form of low-interest loans to local units for projects involving the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply facilities, and/or the interconnection of unconnected or inadequately connected water supply systems.

D. Amount of money in the program: To date, the Legislature has appropriated to the Department $100 million in bond funds from the Water Supply Fund to fund water supply rehabilitation projects, and has appropriated $8 million to fund water supply interconnection projects. The Department will apply the uncommitted balance of these loan funds to projects for which it has received applications during all previous funding periods. Once it has funded all eligible projects from previous application periods, the Department estimates that a balance of approximately $3.8 million will be available to fund 1993 rehabilitation loan applications, and that $4.3 million will be available to fund 1993 interconnection loan applications. Any loans issued by the Department under these programs are subject to this appropriation and the availability of funds.

E. Individuals or organizations who may apply for funding under this program: Any political subdivision of the State or agency thereof may apply for a loan under these programs.

F. Qualifications needed by an applicant to be considered for the program: Loans awarded under the Water Supply Rehabilitation and Interconnection Loan Programs are governed by the Water Supply Loan Programs Rules at N.J.A.C. 7:1A. These rules define eligible rehabilitation and interconnection projects, prescribe procedures and standards for obtaining loans from these programs, and establish minimum standards of conduct for borrowers.

G. Procedures for potential applicants: Applications for water supply rehabilitation and interconnection loans may be requested from:

Phil Royer
Department of Environmental Protection and Energy
Water Supply Element
CN 426
Trenton, New Jersey 08625-0426
(609) 292-5550

Pursuant to N.J.A.C. 7:1A-2.3(a), all applicants must schedule an informal pre-application conference with the Water Supply Element prior to submitting a formal application for a water supply loan under these programs.

H. Deadline by which applications must be submitted: Applications for funding during calendar year 1993 must be submitted by June 30, 1993.

I. Date by which applicants will be notified of preliminary approval or disapproval: Within one month of submission, the Department will send applicants for water supply rehabilitation and interconnection loans a status letter regarding their applications.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on February 11, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment allows for an expansion of the sewer service area to the Sparta Plaza sewage treatment plant (STP), as delineated in the Sparta Township Wastewater Management Plan (WMP), to serve additional residential and commercial areas surrounding the existing service areas. The design capacity of the Sparta Plaza STP will remain at 125,000 gallons per day. In addition, Plate V-1, the service area map within the Sparta Township WMP, is revised to delineate the entire service area of the Sussex County Vo-Tech High School in Sparta Township.

(c)

OFFICE LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan. This amendment proposal was submitted by W.J. Kelly Engineering on behalf of Wanaque Borough. This proposal would amend the Wanaque Borough Wastewater Management Plan (WMP). The amendment proposes expansion of the sewer service area of the Wanaque Valley Regional Sewerage Authority (WVRSA) sewage treatment plant (STP) to serve (1) existing and proposed development within the "Bird Sanctuary" area of Wanaque Borough (94 homes) and (2) the Elks Camp Moore (140 campers and counselors). The total projected wastewater flow to the WVRSA STP as specified in the Wanaque Borough WMP is amended to 1.522 million gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN 423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEPE address cited above with a copy sent to William J. Kelly of W.J. Kelly Engineering Associates at 211 Parsippany Road, Parsippany, N.J. 07054. 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 NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Dr. Van Abs at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on March 8, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment transfers wastewater management planning (WMP) responsibility from the following agencies to the Somerset County Board of Chosen Freeholders: Bedminster Township, Bernardsville Borough, Branchburg Township, Far Hills Borough, Hillsborough Municipal Utilities Authority, Manville Borough, Millstone Borough, Peapack-Gladstone Borough, Somerset Raritan Valley Sewerage Authority, and Warren Township Sewerage Authority for a portion of the Township approximating the Raritan River Basin.

COMMENT: Comments were received from the Environmental Disposal Corporation (EDC) expressing its fear that the amendment was ill-timed, could be counterproductive, and would result in delays in implementation of the proposed regionalization concerning wastewater facilities in Bedminster Township, and the Boroughs of Far Hills and Peapack-Gladstone.

RESPONSE: Efforts allowing for the continued progress toward the regionalization of wastewater facilities in the EDC area have proceeded within the Department. Amendments allowing for the conversion of the Village of Bedminster Sewage Treatment Plant (STP) to a pump station and the abandonment of the Peapack-Gladstone STP with flows from both facilities being conveyed to EDC were adopted July 20, 1992 and February 1, 1993, respectively.

COMMENT: Comments were received from Bedminster Township and the Warren Township Sewerage Authorty (WTSA) expressing their concern that the local entities would lose control of their local planning prerogatives, that the amendment would interfere with their ability to manage their local sewer systems, and that Water Quality Management Plan amendments would be processed by the County and the local entities would lose amendment proposal control. They felt a non-adversarial public hearing was needed to discuss the implications of the amendment more fully. WTSA further requested that a decision be delayed several months to see whether litigation several parties have with Somerset Raritan Valley Sewerage Authority (SRVSA) regarding membership can be favorably resolved. In the event the amendment proceeded, requests were made relative to modifications being made to the "Upper Raritan Watershed Management Planning Procedures" prepared by the Somerset County Planning Board.

RESPONSE: On July 7, 1992 the County and Department held an informal meeting in Somerset County in which all the affected parties were invited. The purpose of the meeting was to clarify some of the misunderstanding surrounding the present Water Quality Management Planning Rules (N.J.A.C. 7:15) and the implications of the proposed amendment. Again on October 9, 1992 the Department and County held a meeting to which representatives of Bedminster Township and WTSA were invited (as they continued to be the only opposing parties). Discussion centered around the feared loss of local planning authority and amendment responsibility. Following these meetings Bedminister Township took the position that there was no longer a need for a public hearing to address its concern.

Somerset County has agreed to allow municipalities the option of preparing the WMP for their own municipality and having it incorporated into the WMP being prepared by the County. In this way the municipality will be directly responsible for its local planning proposal, but it will allow for comprehensive planning to be coordinated on the same time schedule. The County would also like to establish a Wastewater Advisory Committee comprised of representatives from each municipality or utility/sewerage authority within the WMP area. The role of this Committee would be to assist the County in development of the WMP proposal. Establishment of the Wastewater Advisory Committee is outlined in the "Upper Raritan Watershed Management Planning Procedures". Bedminster Township provided comments on draft verions of this document of which most were incorporated by the County. The County has made provisions for occurrences in which a local authority may not agree with the County proposal. The County has agreed to forward along with its WMP the dissenting local authority's recommendation. The Wastewater Advisory Committee will be established to assist in the WMP preparation, but it would be unrealistic to expect that in all instances local entities will agree with regional planning proposals. The Department feels that the County has sufficiently accommodated this opposition potential and particular instances will be evaluated by the Department based on the merits of each particular instance.

The Statewide Water Quality Management Planning Rules at N.J.A.C. 7:15-5.18(b) provide that the WMP must be based on land uses allowed by zoning ordinances and master plans already adopted. Proposals made in WMPs do not force municipalities to change their zoning, rather the WMP is a reflection of the zoning and master plans.

Relative to the loss of amendment control, regardless of who is the WMP Agency, amendments may be proposed to WMPs by other parties. Thus, even now, without obtaining WMP responsibility Somerset County could, if desired, propose amendments to the adopted WMPs. Likewise, local entities may do the same.

Relative to the WTSA request to delay a decision on the amendment pending the outcome of litigation with SRVSA, the Department feels this is not a significantly relevant issue. The County has requested WMP responsibility on the basis of a regional watershed perspective, not a particular STP.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Portection and Energy (NJDEPE) is seeking public comments on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment would update the Moorestown Township Wastewater Management Plan and was proposed by Buchart Horn, Inc. on behalf of Moorestown Township. The amendment would transfer designation of the Affordable Living Development (Block 307, Lot 3) and the Moriuchi track (Block 307, Lot 4) located west of Borton Landing Road and north of Westfield Road from sewer service area 2 (the proposed Creek Road Sewage Treatment Plant) to sewer service area 1 (the existing Pine Street Sewage Treatment Plant). The amendment would also update erroneous information contained within the adopted Morrestown Wastewater Management Plan. In addition, a small parcel of land below Salem Road and above Borton Landing Road that was not intended for sewer service will be removed from sewer service area 2 (Block 7400, Lot 2).

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN-423, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. to 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEPE address cited above with a copy sent to Ms. Diane Vesely, Buchart Horn, Inc., 55

South Richland Avenue, P.O. Box 15055, York, PA 17405-7055. 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 NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1992, ending December 31, 1992

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the fourth quarter of 1992, accompanied by a Summary of the Quarterly Report.

At the conclusion of the fourth quarter of 1992, the Notices of Representation filed with this office reflect that 650 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the fourth calendar quarter of 1992, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered Agents, their registration numbers, their business addresses and whom they represent.
- A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.
- A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the fourth calendar quarter of 1992:

No. 816-2 Joseph Cerchiaro representing Schering Corp.
No. 19-7 Shannon Gibson representing N.J. Chamber of Commerce
No. 819-1 Joseph Rohr representing Monsanto Company
No. 820-1 David Pierce representing Linden Industrial Ass'n
No. 821-1 George Osei representing E.I. DuPont de Nemours & Co. Inc.
No. 826-1 Michael Cooper representing Foster Wheeler Enviresponse, Inc.
No. 774-3 Jack Plackter representing Horn, Goldberg, Gorny, Daniels, Paarz, Plackter & Weiss
No. 823-1 Steven Amick representing E.I. DuPont de Nemours & Co. Inc.
No. 774-4 Patrick Madamba representing Horn, Goldberg, Gorny, Daniels, Paarz, Plackter & Weiss
No. 824-1 Rinaldo D'Argenio representing Hackensack Water Co.
No. 22-7 William Megna representing LeBoeuf, Lamb, Leiby & MacRae
No. 291-7 Lynn Nowak representing the client list of Nancy Becker Associates
No. 822-1 Ruth Ann Burns representing Educational Broadcasting Corp.
No. 822-2 George Miles representing Educational Broadcasting Corp.
No. 607-6 Donald Parisi representing the client list of Donington, Karcher, Leroe, Salmond, Luongo, Ronan & Connell
No. 825-1 Thomas Shusted representing Our Lady of Lourdes Medical Center
No. 827-1 Leander Woods representing E.I. DuPont de Nemours & Co. Inc.
No. 828-1 Michael Herbert representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-2 M. Paige Berry representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-3 Kenneth Mack representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-4 Patrick Kennedy representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-5 David Himelman representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-6 Maeve Cannon representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-7 Steven Picco representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-8 Neil Yoskin representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 828-9 Susan Geiser representing the client list of Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin
No. 829-1 Charles Worthington representing NJ Pay Phone Ass'n
No. 45-7 Gordon Ur representing NJ Savings League
No. 10-3 Marci Berger representing NJ Hospital Ass'n
No. 831-1 Vincent Calabrese representing Independent Child Study Teams, Inc.
No. 784-3 Louise Stanton representing the client list of Cohen, Shapiro, Polisher, Shiekman, Cohen
No. 830-1 Jeffrey Pumilia representing Business for a Better Economy
No. 551-7 William Murray representing the client list of MWW Strategic Communications, Inc.
No. 551-8 Matthew Holland representing the client list of MWW Strategic Communications, Inc.
No. 551-9 Susan Kupec representing the client list of MWW Strategic Communications, Inc.
No. 832-1 Timothy Dillingham representing the Sierra Club
No. 833-1 Albert Ruggiero representing South Jersey Gas Co.
No. 833-2 Cynthia Gonzalez representing South Jersey Gas Co.
No. 737-2 Michele Davis representing NJ Citizens for a Sound Economy
No. 834-1 Angelo Morresi representing Givaudan-Roure Corp.

Following is a listing of all Legislative Agents who have filed Notices of Termination during the fourth calendar quarter of 1992.

Legislative Agent	Registration Number
Robert Angelo	655-1
Daniel DiGuglielmo	456-1
Marlene Lynch Ford	759-1
Lorraine Gauli-Rufo	22-5
Henry Gavan	600-1
Morton Goldfein	381-3
Thomas Kelly	694-1
John Haliday Kilbourne	301-1
John Kraft	566-3
Robert Levinson	776-1
Beverly Jean Lynch	232-1
Dennis Nagy	333-6
Maureen O'Day	445-1
Christopher Olszewski	551-4
William Palatucci	551-5
Thomas Possumato	333-3
Richard Roll	96-1
Danny Schick	333-3
Walter Sodie	54-1
Michael Stocker	754-2
George Tyler	706-1
Carrie Muller Wainwright	533-1
Richard Whelan	333-4
Penni Wild	567-2

For further information, contact the staff of the Commission at (609) 292-8700.

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services Reimbursement Methodology

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 10:52-1.1

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 10:52-5, 6, 7, 8 and 9

Emergency Amendment and Concurrent Proposed Amendment and New Rules Authorized and New Rules Adopted By: William Waldman, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 11, 1993.

Emergency Amendment Filed: March 11, 1993 as R.1993 d.154.

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b and c; 30:4D-12, P.L. 1992, c.160; 1902(a)(13) of the Social Security Act; 42 U.S.C. 1396a; 42 CFR 447.251, 253.

Concurrent Proposal Number: PRN 1993-217.

Emergency Amendment and New Rules Effective Date: March 11, 1993.

Emergency Amendment and New Rules Expiration Date: May 10, 1993.

Submit comments by May 5, 1993 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625-0712

The agency emergency adoption and concurrent proposal follows:

These new rules and amendment were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

Summary

The Division of Medical Assistance and Health Services (the Division) is submitting these emergency adopted and concurrently proposed new rules and amendment to establish a rate setting methodology for those Medicaid categorically and optional categorically eligible individuals that require instate inpatient acute care (general) and special (Classification A) hospital care.

The emergency and concurrently proposed rules and amendment is not related to the two proposals that appeared in the December 21, 1992 issue of the New Jersey Register. One proposal concerned reimbursement for special hospitals (24 N.J.R. 4477(a)). The other proposal was an adjustment to the Medicaid Payer Factor at 24 N.J.R. 4478(a). The comment period for both earlier proposals has expired.

The following terms and acronyms shall be used in this summary. The term "Department" refers to the New Jersey Department of Human Services.

The term "Division" refers to the Division of Medical Assistance and Health Services.

The acronym DOH shall refer to the New Jersey Department of Health.

The acronym DRG shall refer to the Diagnosis Related Groups system of classification of patients for the purpose of rate setting.

The Division had previously participated in the Hospital All Payer Rate Setting System, commonly referred to as "Chapter 83" (N.J.S.A. 26:2H-1).

However, on November 30, 1992, State legislation was signed abolishing the all payer system (P.L. 1992, c.160). As a consequence, the Division had to develop its own rate setting methodology for inpatient acute care hospital services. The Division is submitting five subchapters to the current Hospital Manual to establish a regulatory basis for the reimbursement methodology. The five subchapters are N.J.A.C. 10:52-5 through 9 and concern the following topics:

N.J.A.C. 10:52-5—Basis of Payment—hospitals—Acute Care (General) and Special (Classification A) Procedural and Methodological regulations

N.J.A.C. 10:52-6—Various Financial Elements Reporting Principles and Concepts

N.J.A.C. 10:52-7—A description of various Cost Centers

N.J.A.C. 10:52-8—The methodology for payments—Disproportionate Share

N.J.A.C. 10:52-9—Rate Review and Appeals

In addition, the definition section of N.J.A.C. 10:52-1.1 is being amended to include definitions necessary for the terminology in the new subchapters.

Much of the proposed new rules is based upon existing DOH regulations already codified at N.J.A.C. 8:31B. (See attached parallel citations.) Therefore, the summary will not repeat in detail those regulations that have been adopted from DOH regulations. The hospital industry is generally familiar with hospital inpatient care rate setting methodology under the DRG system, which has been in effect for more than 10 years. This summary will highlight those areas specific to Medicaid which differ significantly from the previous DOH reimbursement methodology for inpatient hospital services.

The new rates to be utilized by Medicaid will contain many of the same financial elements as indicated above. The AP-DRG 8.0 grouper will be used to establish the DRG rate setting system. This grouper assigns patients to a DRG according to primary and secondary diagnosis and age and medical complications variables. The base year used for both hospital costs as well as patient level data is 1988. This base year has been used to develop a standard for Medicaid based on the average non-physician costs of treating all Medicaid patients Statewide within the DRG. Under N.J.A.C. 8:31B, the standard had been established using a blend of Statewide and hospital specific costs for all patients.

Subchapter 5 explains the procedures and methodology which establishes the basis of reimbursement. The methodology for determining a preliminary cost base for each hospital is indicated in N.J.A.C. 10:52-5.1 below. The hospital will continue to be required to submit data which will be used to establish the Medicaid rates. Subchapter 5 also provides an explanation on how costs are allocated for cost finding purposes, and indicates those costs that the Division will recognize for reimbursement.

Subchapter 6 also describes the numerous cost centers (N.J.A.C. 10:52-6.27 to 6.79). These cost centers are related to the various categories of patient services, such as obstetrics, pediatrics, coronary care, etc., and each section specifies what functions are provided attributable to each cost center.

Subchapter 6 also explains the accounting procedures that are used in the rate setting process (see N.J.A.C. 10:52-6.1 to 6.26).

Subchapter 7 lists the broad categories of DRGs which are the basis of payment by Medicaid to the hospital.

Most of the requirements outlined in subchapters 5, 6, and 7 are taken from DOH regulations.

Subchapter 8 establishes a methodology to make disproportionate share payments and adjustments to hospitals who serve a large number of low income clients. The need for disproportionate share payments is a Federal requirement. (See the Federal law and regulations cited in the above caption to this notice of emergency adoption.)

One source of disproportionate share adjustment payments is the Health Care Subsidy Fund established by New Jersey legislation (P.L. 1992, c.160). This fund is to be used *inter alia* to provide payment for charity care and other uncompensated care as disproportionate share adjustment payments to hospitals. This fund shall be comprised of Statewide revenues from employee and employer contributions. This specific State statutory provision is described in N.J.A.C. 10:52-8.

These proposed new rules also make provisions for two other types of disproportionate share payments and adjustments. The second source is called the Hospital Subsidy Fund for the Mentally Ill and Developmentally Disabled. This fund is Medicaid specific and provides additional reimbursement for hospitals who treat patients in the two categories—mental illness and developmentally disabled.

The third source is established for additional disproportionate share payments and adjustments where a hospital demonstrates a commitment to low income clients with AIDS, TB, substance abuse problems, and low birthweight babies.

Subchapter 9 provides for rate review and appeal. This subchapter provides the process for filing an appeal with the Division of Medical Assistance and Health Services. This procedure is new to the Division. Formerly hospitals who wished to appeal their rates under the Chapter 83 under the payer system could do so with DOH. Now, hospitals will file their rate appeals with the Division. Under these proposed rules, the appeal must be filed within a specified time period, that is, 20 days after publication of the rates by the Department of Human Services. The rule also specifies the types of information and the data that the hospital may be required to submit to support their appeal.

If a hospital is not satisfied with the Division's determination, the hospital continues to have the right to request an administrative hearing pursuant to N.J.A.C. 10:49-10 et seq. The OAL hearing will be limited to the reasonableness of the Division's reason for denying the requested rate adjustment. No other documentation can be introduced into evidence at the hearing. Final decision shall be by the Director of the Division of Medical Assistance and Health Services.

Social Impact

This emergency adopted and concurrently proposed new rules and amendment do not directly impact upon Medicaid recipients who are categorically eligible and who require inpatient hospital care. This rule contemplates no change in the availability of hospital services.

The rules impact specifically upon providers of hospital services, but is limited to acute care (general) hospitals, and Classification A special hospitals, that provide inpatient hospital services.

These rules do not apply to out-of-State hospitals. These rules do not apply to Class B and C Special Hospitals. These rules do not apply to any hospital outpatient services.

The rules' impact on hospitals is more economic than social as indicated below.

The rules also impact upon the Office of Administrative Law (OAL), who would be required to conduct an administrative hearing if a hospital chooses to file an appeal following Division review.

Economic Impact

There will be no impact on Medicaid recipients since they are not required to pay towards the cost of inpatient hospital care.

Provider reimbursement may be reduced to some providers due to the change in rate setting methodologies. However, it will also ease the uncertainty among providers resulting from the enactment of P.L. 1992, c.160 by establishing an inpatient hospital rate setting system for Medicaid.

It is anticipated that this change will result in payment of $837,293,655 (Federal/State share combined) for inpatient hospital services (including out-of-State and specialty hospitals) in State Fiscal Year 1994.

Disproportionate share payments and adjustments shall include $525,000,000 (State and Federal share combined) for the Health Care Subsidy Fund, $143,100,000 (State and county share) for the Hospital Relief Subsidy Fund and $20,000,000 for the Hospital Subsidy Fund for the mentally ill and developmentally disabled.

Regulatory Flexibility Analysis

A regulatory flexibility analysis might not be necessary because most hospital providers are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:16 et seq., since hospitals generally employ more than 100 persons full time. However, in the event a hospital might qualify under the terms of the Act, this analysis is included. Hospitals are required to maintain sufficient records to indicate the name of the patient, dates of service, nature and extent of inpatient hospital services, and any additional information as may be required by regulation. The requirement is part of the State Medicaid Statute, N.J.S.A. 30:4D-12. With respect to reimbursement, hospitals will be required to maintain sufficient records, such as cost studies, to enable the Division to establish rates under this regulation. The reporting provisions will be similar to the regulatory requirements that existed under N.J.A.C. 8:41B. These requirements apply uniformly to all providers. There is no differentiation in the reporting, recordkeeping or compliance requirements based upon size. The proposed new rules do not create any additional reporting, recordkeeping or other compliance requirements. There should be no need to hire any additional professional staff other than those persons already involved in preparing cost reports and related reimbursement data.

There are no capital costs associated with these rules.

Full text of the emergency adopted and concurrently proposed new rules and amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

SUBCHAPTER 1. COVERAGE

10:52-1.1 Definitions

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

"Adjusted admissions" means inpatient admissions increased to reflect outpatient activity and is calculated by admissions multiplied by total gross revenue divided by inpatient gross revenue.

...

"Base year" means the year from which historical cost data are utilized to establish prospective reimbursement in the rate year.

...

"Current Cost Base" means the actual costs and revenue of the hospital as identified as the Financial Elements in the base reporting period for the purposes of rate setting.

["Diagnosis Related Group" (DRG) is a term used to describe the reimbursement methodology for acute care general hospitals. Regulation governing reimbursement under the DRG System are published by the New Jersey Department of Health and appear in the New Jersey Administrative Code (N.J.A.C. 8:31B).]

"Diagnosis Related Groups (DRGs)" means a patient classification system in which cases are grouped by shared characteristics of principal diagnosis, secondary diagnosis, age, surgical procedure, and other complications and consuming a similar amount of resources.

"Equalization Factor" means the factor that is calculated based on defined Labor Market Areas and multiplied by hospital costs to permit comparability between differing regional salary costs in setting Statewide standard costs per case.

"Financial Elements" means the reasonable cost of items approved as reimbursable under Medicaid.

"Grouper" means the logic that assigns cases into the appropriate Diagnosis Related Groups in accordance with the clinical and statistical information supplied.

...

"Inliers" means inpatient cases who display common or typical patterns of resource use, are assigned to DRGs and have a length of stay within the high and low trim points.

...

"Labor Market Area" means counties and municipalities in the State that are grouped in accordance with similar labor costs.

...

"Neonate" means a newborn less than 29 days of age.

...

"Outliers" means patients who display atypical characteristics relative to other patients in a DRG and have lengths of stay either above or below the trim points.

"Preliminary Cost Base" means the estimated revenue a hospital may collect based on an approved schedule of rates which includes DRG rate amounts and indirect costs not included in the all-inclusive rate. Those indirect costs will either be the dollar amount specified or the estimated amount determined by a specific percentage adjustment to the rate.

...

"Rate Year" means the year in which current reimbursement takes place.

"Trim points" means the high and low length of stay cutoff points assigned to each DRG.

"Uniform Bill-Patient Summary (UB-PS) (also referred to as the UB-82)" means a common billing and reporting form used by the hospital for each Medicaid inpatient.

...

SUBCHAPTER 5. PROCEDURAL AND METHODOLOGICAL REGULATIONS

5.1 Derivation of Preliminary Cost Base

(a) For a group of hospitals, the Division of Medical Assistance and Health Services (hereafter referred to as the Division or its designee), on or before March 12, 1993 and on or before January 31 of each subsequent rate year shall propose to the Director and Division or its designee hereafter referred to as the Director, a rate. For hospitals with a fiscal year of January 1, the rate year will be the calendar year. For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year will be the year the fiscal year begins and for hospitals on a fiscal year beginning July 1 and December 31, the rate year will be the year the fiscal year ends. The cost base (current cost base) used to set a proposed rate for each hospital shall include:

1. The reasonable direct patient care costs as defined in sections 5.13 through 5.19.
2. The reasonable indirect patient care costs calculated according to sections 5.13 through 5.19.
3. The reasonable physician costs calculated according to sections 5.13 through 5.19.
4. The net income from other sources as defined in section 5.16(f).
5. An economic factor adjustment calculated according to section 5.17.
6. A capital component, as defined in section 5.18.
7. A technology factor, as defined in section 5.17.

5.2 Uniform Reporting: Current costs

Hospitals shall be required to submit reports as required N.J.A.C. 8:31(a). The Director shall review the actual costs for the institutions as reported in accordance with the Financial Reporting Principles and Concepts (Subchapter 6). The review will be performed according to the methodology outlined below. Costs, so reported, shall be subject to revision due to subsequent audits.

5.3 Costs per case

Direct and indirect care costs will be allocated to the Diagnosis Related Groups (DRGs) and to ambulatory services to determine cost per visit for each hospital, and for each patient within the hospital. This cost finding process is described in sections 5.9 through 5.12.

5.4 Development of standards

The Director shall develop standards for each Diagnosis Related Group based on the average cost per case for Medicaid recipients. The standards shall be adjusted to account for significant differences in teaching responsibilities and in labor market areas. These standards are developed according to criteria set in sections 5.13 through 5.20. Standards so developed and issued for a rate year shall remain unaffected and no adjustments, modifications or other changes to the standards shall be made.

5.5 Reserved.

5.6 Schedule of Rates

(a) In order to determine reasonable physician costs, hospitals shall report to the Director any significant changes in the contractual basis of any and all physician compensation arrangements which have occurred after the correct Cost Base. Failure to report these changes shall result in these costs not being recognized.

(b) The dollar amount of indirect patient care costs so derived shall remain fixed for the rate period, unless appealed, except as adjusted for inflation or deflation as described in sections 5.16 through 5.20.

(c) The rates shall include a capital component for Capital Cash Requirements and a Capital Facilities Formula Allowance. Capital Cash Requirements and the Capital Facilities Formula Allowance are described in section 5.18.

(d) For each hospital, the Division shall propose a Schedule of Rates for each Diagnosis Related Group.

5.7 Extraordinary expense

If supported by adequate documentation, the Proposed Schedule of Rates may include an appropriate adjustment for items of extraordinary expense of a non-recurring nature which occurred in the Current Cost Base and which are reported to the Division by October 15 of the year prior to the issuance of the Proposed Schedule of Rates.

5.8 Reserved.

5.9 Current Cost Base

(a) A hospital's Current Cost Base is defined as the actual costs and revenues as identified in the Financial Elements in the base reporting period as recognized by the New Jersey Department of Health for purposes of rate setting.

(b) The Current Cost Base is used to develop the Preliminary Cost Base (PCB) and Schedule of Rates through:

1. Determination of the costs of Medicaid patients treated in the 1988 base year;
2. Identification of fixed and variable components of the Preliminary Cost Base;
3. Calculation of the operating margin as described in section 5.20(a)2;
4. Calculation of the economic factor cost component as defined in section 5.17(a);
5. Calculation of the technology factor as described in section 5.17;
6. The costs used to set rates for the rate year will be based on 1988 costs.

c. A hospital's actual cost reports cannot be substituted or rearranged once the Director has determined that the actual cost submission is suitable for entry into the data base.

5.10 Financial elements reporting/audit adjustments

(a) The aggregate Current Cost Base is developed from Financial Elements reported to Division and includes:

1. Costs related to Medicaid direct patient care as defined in section 6.14;
2. Less net income from specified sources;
3. Capital facilities allowance: Capital cash requirements (as defined in sections 5.18 and 6.18);

(b) All reported financial information shall be reconciled by the hospital to the hospital's audited financial statement. In addition, having given adequate notice to the hospital, the Director may perform a cursory or detailed on-site review at the Division's discretion, of all financial information and statistics to verify consistent reporting of data and extraordinary variations in data relating to the development of the rates. Any adjustments made subsequent to the financial review (including Medicare audits and reviews) shall be brought to the attention of the Division by the hospital, the Department of Health, appropriate fiscal intermediary or payer where appropriate and shall be applied proportionately to the Schedule of Rates. All such adjustments shall be determined retroactively to the first payment on the Schedule of Rates and shall be applied prospectively.

5.11 Identification of direct and indirect costs related to Medicaid patient care

(a) Costs related to Medicaid patient care as adjusted for price level depreciation as reported to the Division are classified as follows:

1. Direct patient costs:
i. Routine service costs;
ii. Ambulatory service costs; and
iii. Ancillary service costs.
2. Mixed direct and indirect costs.
3. Indirect patient care:
i. Institutional costs.

(b) Patient care general service and indirect costs (except as noted below) are then distributed to direct cost centers based on allocation statistics reported to the Division on the following basis:

Patient Care General Service	Allocation Basis
CSS: Central Supply Services	Costed requisitions
DTY: Dietary	Patient Meals
HKP: Housekeeping	Hours of Services
L&L: Laundry and Linen	Pounds of Laundry
MRD: Medical Records	Percentage of Time Spent
PHM: Pharmacy	Cost of Drugs
EDR: Education and Research (not including Schools of Nursing and Allied Health)	Percentage of Time Spent
RSD: Residents	Accumulated Costs in Patient Care Cost Centers
PHY: Physicians Coverage (related to research and medical education)	Patient Days
A&G: Administration and General	Accumulated Cost
FIS: Fiscal	Accumulated Cost
PCC: Patient Care Coordination	Percentage of Time Spent
PLT: Plant (less capitalized interest and depreciation)	Square Feet
UTC: Utilities Cost	Square Feet
MAL: Malpractice Insurance	Accumulated Cost
OGS: Other General Services	Accumulated Cost

5.12 Patient care cost findings: direct costs per case, physician and nonphysician

(a) Hospital case-mix shall be determined as follows:

1. Uniform Bill-Patient Summary (UB-PS) data are used for determination of hospital case-mix. The appropriate patient records for the reporting period corresponding with the Financial Elements Report are classified into Diagnosis Related Groups (DRGs) using the following items:

i. Principal diagnosis;
ii. Secondary diagnosis;
iii. Principal and other procedures;
iv. Age;
v. Sex;
vi. Discharge status; and
vii. Birthweight (newborn).

2. Outliers (patients displaying atypical characteristics relative to other patients, e.g., inordinately long or short lengths of stay) are determined by DRG using established trim points; any case beyond a trim point is considered an outlier. Hospitals must make every attempt to correct unacceptable data and hospitals for which more than 10 percent of the UB-PS data are missing or unacceptable must resubmit data or correct the unusable data before case-mix estimation will be attempted.

3. Outpatient case-mix will consist of emergency service, clinic, home health agency, renal dialysis, home dialysis, ambulatory surgery, same day psychiatry, and private referred patients, as reported to the Division.

4. Same Day Surgical Services are considered a clinical, outpatient service but are assigned to a DRG and reported on a UB-PS (a bill type 13X).

(b) Measures of resource use are listed as follows:

1. For each patient with a UB-PS, measures of resource use are calculated. These measures of resource use per patient with a reliable record are then multiplied by the estimated number of cases determined in (a) above, and the total inpatient estimate of each measure of resource use is then adjusted to the actual amount of each measure. Hospitals shall make reasonable efforts to correct unacceptable data.

	Center	Measure of Resource Use	Calculation of Inpatients
	ROUTINE SERVICES		
MSA &	Medical-Surgical Acute Care Units	Patient Days	Total LOS less ICU, CCU, NBN and OBS LOS ACU
PED & PSA & PSY & OBS	Pediatrics Psychiatric Acute Care Units Psychiatric/Psychological Services Obstetrics		
BCU	Burn Care Unit		BCU LOS
ICU & CCU	Intensive Care Unit Coronary Care Unit	Patient Days	ICU + CCU LOS
NNI	Neo-Natal Intensive Care Unit	NNI Patient Days	Total ICU LOS for Newborn DRGs
NBN	Newborn Nursery	NBN Patient Days	Total LOS for Newborn DRGs less ICU LOS
	AMBULATORY SERVICES		
EMR	Emergency Service	EMR Charges (Inpatient EMR Revenue EMR Admissions)	EMR Admissions
CLN	Clinics	CLN Charges	None
HHA	Home Health Agency	OHS Charges	None
	ANCILLARY SERVICES		
ANS	Anesthesiology	ANS Charges	Direct
CCA	Cardiac Catheterization	CCA Charges	Direct
DEL	Delivery and Labor Room	DEL Charges	Direct
DIA	Dialysis	DIA Charges	Direct
DRU	Drugs Sold to Patients	PHM Charges (DRU)	Direct
EKG NEU	Electrocardiology & Diagnostic Neurology	EDG Charges	Direct
LAB	Laboratory	BBK Charges & LAB Charges	Direct
MSS	Medical Surgical Supplies Sold to Patients	CSS Charges (MSS)	Direct
NMD	Nuclear Medicine	NMD Charges	Direct
OCC	Occupational & Recreational	OPM Charges	Direct
SPA	Therapy & Speech Pathology and Audiology		
ORG ORR	Organ Acquisition & Operating and Recovery Rooms	ORR Charges	Direct
PHT	Physical Therapy	PHT Charges	Direct
RAD	Diagnostic Radiology	RAD Charges	Direct
RSP	Respiratory Therapy	RSP Charges	Direct
THR	Therapeutic Radiology	THR Charges	Direct

(c) Cost per case allocation:

1. The Direct Patient Care Costs of each center (after the allocation of patient care general services in sections 5.11 and 5.12) are separated between inpatient, outpatient, and Skilled Nursing Facility (SNF) costs. Outpatient and SNF costs are then excluded from the Preliminary Cost Base (PCB) based on gross revenue reported to the Division. The costs are then divided by the hospital's corresponding total measures of resource use to compute a cost to measure ratio, cost-to-charge, or cost-per-patient day ratio for each center. Each ratio is then multiplied by the corresponding cost center's measures of resource use of each DRG and outpatient case type to calculate costs per cost center for the hospital's case-mix.

i. Patient days will be employed as the Measures of Resource Use to allocate MSA, PED, PSA, and OBS nursing costs. While patient

days are used, the MSA, PED, PSA, OBS centers will be combined into ACU and ICU, and CCU will be combined into ICU. All other routine centers will remain as above.

5.13 Reasonable cost of services related to patient care

(a) The Reasonable Cost of Services related to Patient Care includes:

1. Current non-physician direct patient care costs per case as adjusted by standard costs per case for Medicaid inpatients;

2. Current physician patient service costs, as modified for physician compensation arrangements pursuant to section 5.12;

3. Indirect cost pursuant to sections 5.11 and 5.16;

4. Less a reduction for income not related to patient care, from those sources specified in sections 6.27 through 6.33 except all items reported as expense recovery to the Division, shall be so treated; and

5. Current major moveable equipment amount pursuant to section 6.2b.

(b) The Reasonable Cost of Services Related to Medicaid Patient Care will be adjusted by the application of economic factors pursuant to section 5.13.

5.14 Standard costs per case

(a) The standard to be used in the calculation of the proposed rates for each inpatient DRG is determined as the mean non-physician patient care costs per Medicaid case in all hospitals whose costs are included in the data base, adjusted for labor market differentials, and amount and type of Graduate Medical Education. Standards shall be calculated across all hospitals for which current cost bases were derived from a common reporting period.

(b) For determination of teaching costs, the following criteria shall be followed:

1. All residents initially employed as first year residents (PGY1) by hospitals on July 1, 1987 or later must meet either criteria in (b)1i and ii, or (b)1.i. and iii. listed below, in order to be included among those residents on which payment is based. To be similarly included, second-year residents (PGY2) must meet these same minimum requirements by July 1, 1988; third-year residents (PGY3), by July 1, 1989; fourth-year residents (PGY4), by July 1, 1990; fifth year residents (PGY5), by July 1, 1991; and all residents by July 1, 1992.

i. Meet all the minimum criteria established by the New Jersey State Board of Medical Examiners required for a New Jersey medical license, with the exceptions of specific requirements for graduate medical education and that, if necessary, foreign medical graduates will be allowed to take the National Boards at the end of their first postgraduate year. The National Boards must be passed before the beginning of PGY3 in order to be counted in such graduates' PGY3.

ii. Graduation from a medical or osteopathic school accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA).

iii. Graduation from a foreign medical school and passage of the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) within three attempts. For residents beginning PGY1 in the State of New Jersey in July 1987 only, an Educational Commission for Foreign Medical Graduates (ECFMG) certificate may be substituted for FMGEMS, and passage of FMGEMS, mandatory before January 1, 1989, shall not be limited to three attempts.

2. For all graduate medical education programs which are subject to accreditation by the Accreditation Council for Graduate Medical Education (ACGME), The American Osteopathic Association (AOA), or, in the case of dental residents, the American Dental Association (ADA), or, in the case of podiatric residents, the Council on Podiatric Medical Education (CPME), accreditation must be maintained for residents in these programs to be used in determining the hospital's payment. Residents in unaccredited programs shall not be recognized in the teaching methodology for determining direct and indirect patient care costs.

3. The transfer of residents and associated costs between hospitals is permitted under the following conditions:

i. The number of positions transferred does not exceed the number relinquished;

ii. Both parties to the transfer must submit a letter of agreement to the DOH; and

iii. The Advisory Graduate Medical Education Council of New Jersey (AGMEC) must have recommended the transfer as being consistent with maintenance or improvement of program quality.

4. The approved costs associated with a transferred resident position shall not increase solely as a result of the transfer.

5. Beginning in rate year 1992, the changes in number of residents and associated costs due to transfers shall be reflected in each hospital's rates for the following rate year if the Division is so advised on or before April 15.

(c) Methodology for determining hospital-specific patient care rate adjustments for graduate medical education (GME) shall be as follows:

1. In order to be eligible for GME reimbursement, hospitals must submit each year, before the issuance of rates, documentation that attests to current accreditation for all programs for which accrediting bodies exist.

2. For all programs which have maintained the appropriate accreditation, and have a minimum number of residents equal to the years in that program necessary for it to receive accreditation, direct and indirect patient care costs associated with Graduate Medical Education plus the hospital current costs must be calculated for each patient DRG as follows:

i. All DRGs shall be assigned to one of four mutually-exclusive residency categories: Medicine, Surgery, Pediatrics and OB/GYN. Assignment will be determined by the specialty of the resident who would, in most New Jersey teaching hospitals, have principal responsibility for care of a patient in a given DRG.

ii. Regarding medicine, the following shall apply:

(1) For teaching reimbursement purposes, a medical teaching hospital is defined as having an accredited program, with at least one Full Time Equivalent (F.T.E.) resident per year of the program, in Internal Medicine; Transitional/Flexible First Year; a medical specialty/subspecialty; and/or Radiology.

(2) Reimbursement shall be based on an increase in rates using the methodology described in N.J.A.C. 8:31B, Appendix XI B.I.

iii. Regarding Surgery, the following shall apply:

(1) For teaching reimbursement, a surgical teaching hospital is defined as having an accredited program, with at least one F.T.E. resident per year of the program, in General Surgery; surgical specialty or subspecialty Anesthesiology; and/or Pathology.

(2) Reimbursement shall be based on an increase in rates using the methodology described in N.J.A.C. 8:31B, Appendix XI B.II.

iv. Regarding Obstetrics/Gynecology, the following shall apply:

(1) For teaching reimbursement, an Obstetrics/Gynecology teaching hospital is defined as having an Obstetrics/Gynecology program with at least one F.T.E. resident per year of the program.

(2) Reimbursement shall be based on an increase in rates using the methodology described in N.J.A.C. 8:31B, Appendix XI B.III.

v. Regarding Pediatrics, the following shall apply:

(1) For teaching reimbursement, a pediatric teaching hospital is defined as having an accredited pediatric program, with at least one F.T.E. resident per year of the program.

(2) Reimbursement shall be based on an increase in rates using the methodology described in N.J.A.C. 8:31B, Appendix XI B.IV.

vi. Regarding Family Practice, the following shall apply:

(1) For teaching reimbursement, a Family Practice hospital is defined as having an accredited Family Practice Teaching Program and shall not be considered in neutralizing costs for standard setting.

(2) For payment purposes, a Family Practice supplement shall be based on an increase in rates using the methodology described in N.J.A.C. 8:31B, Appendix XI vii. A teaching adjustment factor shall be applied in calculating the rates for hospitals experiencing changes in accreditation status or changes in number of residents since the base year, and to reflect any differences between actual and cap resident counts.

(3) Direct and indirect costs, including resident salaries and other educationally related costs, shall be recognized in rates in accordance with the GME reimbursement methodology which neutralizes the costs of teaching within medical, surgical, OB/GYN and pediatric DRG categories and deneutralizes these costs for setting payment rates.

(4) For purposes of payment, all deneutralization factors shall be considered to be equal to 1 or greater.

(d) Determination of the labor equalization factor to calculate Statewide standard costs per case shall be as follows:

1. An equalization factor shall be calculated for the non-physician direct patient care costs of each hospital (excluding ambulatory care centers) to account for differing hospital pay scales in the calculation of standards. Each hospital's equalization factor is determined as non-physician direct patient care costs (prior to allocation of costs from patient care general services) at average pay scales for all New Jersey hospitals (excluding those hospitals classified as Rehabilitation Facilities) divided by Labor Market Area non-physician direct patient care costs.

2. The Labor Market areas recognized in 1990 rate setting at N.J.A.C. 8:31B-3.22(d)3 will be used for rate setting in subsequent years.

3. Labor Market Areas are:

	Counties or Municipalities
i. Paterson—Clifton—Passaic	Passaic
ii. Hackensack	Bergen
iii. Newtown—Phillipsburg	Sussex, Warren
iv. Trenton—Flemington	Mercer, Hunterdon
v. Newark, Suburban	Union, Essex, Somerset, Morris, except cities of Elizabeth, Belleville, East Orange, Irvington and Newark
vi. Jersey City	Hudson
vii. New Brunswick—Perth Amboy	Middlesex
viii. Long Branch—Toms River	Monmouth, Ocean
ix. Atlantic City—Cape May	Atlantic, Cape May
x. Vineland—Millville	Burlington, Gloucester
Camden—Salem	Cumberland
xi. Newark, Central City (not included in v. above)	Newark, Elizabeth, Belleville, East Orange, Orange, and Irvington

4. This factor is multiplied by the hospital's actual cost per case for all DRGs.

5. Labor costs shall be adjusted to Statewide averages by first grouping all non-physician direct patient care labor costs (after fringe benefit costs have been distributed) into eight labor categories as follows:

i. Registered Nursing: Includes non-physician salaries reported in Routine, CCA, DEL, DIA or ORR cost centers.

ii. Licensed Practical Nursing: Includes non-physician salaries reported in Routine cost centers.

iii. Attendants: Includes non-physician reported in Routine and CSS cost centers.

iv. Clerical: Includes non-physician salaries reported in Routine cost centers.

v. Health Technical: Includes non-physician salaries reported in BBK, EDG, LAB, RAD, NMD, and THR cost centers.

vi. Therapists/Technical: Includes non-physician salaries reported in OPM, PHM, PHT, and RSP cost centers.

vii. General Services: Includes non-physician salaries reported in DTY, HKP, and L&L cost centers.

viii. Administrative and Clerical: Includes non-physician salaries reported in the MRD, A&G/FIS, PLT, and PCC cost centers.

6. The portion of the routine cost centers that shall be attributed to each of the four types of nursing skill levels is based on the distribution of costs as reported to the Division.

7. By dividing non-physician direct patient care costs by the non-physician hours in each category, the average hourly rates for the eight labor categories are computed for each hospital. The sum of all of the hospital's non-physician direct patient care costs for the eight labor categories divided by the total non-physician hours is equal to the statewide average. To determine each hospital's labor equalization factor the statewide average cost per hour for each labor category is multiplied by the hospital's number of non-physician labor hours for that category and is added to all other non-physician costs (i.e., supplies, other costs). This amount is divided by the result of the same calculation using the Labor Market Area cost per hour, rather than statewide average, resulting in the hospital's equalization factor.

8. Whenever the number of hospitals in a given labor market area decreases to a number less than four, the Division shall calculate and compare the mean equalization factors of the Labor Market Area, both before and after the decrease. If they differ by plus or minus one percent or more, that Labor Market Area shall be merged with the geographically continguous Labor Market Area having the most similar hourly wage rate, averaged for all salaried employees and based on the most recent data available; the factors of all Labor Market Areas shall be recalculated and effective in the following rate year.

(e) Calculation of standards shall be as follows:

1. The calculation of standards shall be based on an appropriate sample of hospitals. The cost per case of each hospital's Medicaid patients with UB-PS records categorized by inpatient DRGs is multiplied by each hospital's equalization factor and for the appropriate DRGs and hospitals, reduced by a rate expressing the amount and type of graduate medical education for the hospital pertaining to each DRG. The mean equalized cost of all such records in all hospitals calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases is the incentive standard for each DRG.

2. Determination of Labor Unequalization Factor to Calculate Standard Cost Per Case of Each Labor Market Area.

i. An unequalization factor shall be calculated for the non-physician direct patient care costs of each hospital to account for differing prevailing compensation patterns across New Jersey's Labor Market Areas in the comparison of hospital and standard costs per case. The Statewide standard times the unequalization factor is the unequalized standard in terms of the hospital's Labor Market Area.

ii. The reciprocal of the hospital's equalization factor is the hospital's unequalization factor and is applied to non-physician costs only.

5.15 Reasonable direct cost per case

(a) Inpatient direct cost per case shall be determined as follows:

1. The Reasonable Direct Cost Per Medicaid Case for those hospitals receiving rates in accordance with this subchapter determined for all hospitals, for every DRG shall include incentives and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

i. The labor market standard is calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases multiplied by the amount and type of Graduate Medical Education plus the hospital current physician patient service cost per case.

(b) Inpatient outliers: The costs of low length of stay outliers shall be divided by the low length of stay days to arrive at a low per diem. The costs of high length of stay outliers shall be divided between both high outlier per diems and the inlier rate. The mean high outlier cost net of the inlier rate shall be divided by the acute days of the patient's total stay (admission to discharge) to arrive at a high outlier per diem. High outlier cases shall be reimbursed the inlier rate plus the high per diem multiplied by the acute days of the stay.

5.16 Net income from other sources

(a) The net gain (loss) from Other Operating and Non-Operating Revenues (as defined in sections 6.27 through 6.34) and expenses of the reporting period which are items considered as recoveries of or increases to the Costs Related to Patient Care (see sections 6.27 through 6.34) as reported to the Division is subtracted from (added to) indirect costs of the Preliminary Costs Base.

(b) Such revenue shall include all Other Operating and Non-Operating Revenues and Expenses reported per Standard Hospital Accounting and Rate Evaluation (SHARE) cost center costs and "expense recoveries" as Case B and all other items reported as to their case specified in sections 6.27 through 6.34.

5.17 Update Factors

(a) Economic Factor: The economic factor, calculated by the Department of Health, is the measure of the change in the prices of goods and services used by New Jersey hospitals. After the 1993 rate year, the economic factor will be the factor recognized under the TEFRA target limitations.

(b) Technology Factor: The technology factor, calculated by the Department of Health, takes into account the costs of adopting quality-enhancing technologies.

1. The cost components and proxies of the economic factor are shown in N.J.A.C. 8:31B, Appendix II.

i. The remaining proportion of proxy will be multiplied by the percent of change in the Average Hourly Earnings for non-supervisory hospital workers (Northeast).

2. The hospital-specific economic factor is the weighted average of the recorded and projected change in the value of its components. The weight given to each component is its share of that hospital's total expenditure as described in N.J.A.C. 8:31B, Appendix II. The projection of individual components shall be based, where appropriate, on legal or regulatory changes which fix the future value of a proxy. Components which are of particular importance may be projected through the use of time series analysis on other relevant indicators.

(c) Technology Factor: Base-year direct patient care and indirect rates shall be multiplied in succeeding years by a technology factor to provide prospective funds to support hospital adoption of quality-enhancing technologies. The technology factor shall be based on the Scientific and Technological Advancement Allowance recommended annually to the Secretary of the United States Department of Health and Human Services by the Prospective Payment Assessment Commission (ProPAC). The factor shall be composed of the proportion of incremental operating costs associated with ProPAC's identified cost-increasing technologies, and ProPac's allowance for technologies not included in the technology-specific projections, less the proportion of incremental operating costs of cost-decreasing technologies identified by ProPAC.

(c) In addition, the following payment rates will be in effect for these special procedures:

1. Liver Transplants: payment for DRG 480 will be $72,139 in 1988 dollars.

2. Heart Transplants: payment for DRG 103 will be $72,438 in 1988 dollars.

3. Cochlear Implants: payment for DRG 759 will be $21,608 in 1988 dollars.

4. Bone Marrow Transplants: payment for DRG 481 will be $46,599 in 1988 dollars.

5. Neonate rates, DRGs 600 through 630, will be based on 1989 actual New Jersey cost data.

(d) For determination of the payment rates, direct patient care is increased for the following components:

i. Indirect patient care for items other than listed in section 5.11;
ii. Commission fees;
iii. Capital facilities allowance;
iv. Irvington General Affiliation adjustment;
v. Physician fee for service;
vii. Perinatal cooperative adjustment;
ix. Child psychiatric hospital direct and indirect;
x. Resident count correction;
xi. Special perinatal expense adjustment;
xii. Trauma center adjustment;
xv. GME reversal;
xvi. Hemophillia adjustment;
xvii. Regional perinatal adjustment; and
xix. Personnel health allowance;

5.18 Capital Facilities

(a) Capital Facilities, as defined in section 6.18, shall be included in the rate in the following manner:

1. Building and fixed equipment:

i. Capital Cash Requirements are all current payments, excluding cash purchases, made for Capital Facilities utilized for Services Related to Patient Care during a reporting period, including lease, principal, reasonable interest as defined in (a)1i(1) below on long term debt, and certain other debt services payments, but excluding the expenditure of specific purpose grants for capital projects. Capital Cash requirements for any year the Schedule of Rates is to be prospectively set shall not include the whole amount of any balloon payments. Rather, balloon payments shall be reported to the Division in a timely manner in order to examine the possibility of refinancing such payments. Capital Cash Requirements shall be reported per Uniform Cost Reporting Regulations.

(1) Reasonable Interest Expense for Capital Facilities for any rate year is defined as the lower of the hospital's actual interest expense for that year or the interest expense the hospital would have incurred had it refinanced or advance refunded its long-term debt at the average interest rate available during that year on bonds of comparable credit quality and Federal income tax status issued by the New Jersey Health Care Facilities Financing Authority, provided that such a refinancing or advance refunding would result in significant present value savings to consumers and is feasible considering issuance costs and tax laws. If either of these provisions is not met, Reasonable Interest Expense shall equal the hospital's actual interest expense.

ii. Capital facilities indebtedness incurred on or before August 31, 1986 shall be reimbursed in accordance with the following requirements except that where hospitals elect to undertake capital indebtedness on or after September 1, 1986, such hospitals shall be reimbursed in accordance with (a)1vii below.

iii. Capital Facility Formula Allowance: For hospitals receiving a Schedule of Rates the allowance provides funds for replacements or major renovations of the future acute care capital facility needs of the hospital's service area as determined through the planning process; i.e., 20 percent of current replacement costs, less the portion of the fund target designated by the hospital's governing board at the time its initial Schedule of Rates is set, spread over the adjusted remaining useful life of buildings, building components, and fixed equipment for the target bed complement of the hospital, in accordance with the planning needs of the hospital's service area.

iv. The Capital Facilities Formula Allowance is calculated as follows:

(1) As a measure of the scope of Capital Facilities projected to be needed by a hospital when its present facilities are no longer usable, the number of target beds for hospitals receiving a rate shall be based on the following:

(A) For Pediatric and Obstetric Services (for facilities with 1,000 or more deliveries) target beds equal:

(1.33) multiplied by (Most Recent Actual Year Licensed Beds) multiplied by (Most Recent Actual Year Occupancy Rate). For facilities with less than 1,000 deliveries, no target beds will be included unless the criteria are waived by the Division due to accessibility issues. However, in no case will waivers be considered for facilities with less than 500 deliveries.

(B) For all other services, target beds equal:

(1.175 multiplied by Most Recent Actual Year Licensed Beds) multiplied by (Most Recent Actual Year Occupancy Rate).

(2) The number of target beds is multiplied by an estimated current construction cost per bed. This amount shall be the average construction cost per square foot multiplied by gross square feet per bed, determined in the Dodge Construction System Costs, adjusted for location of the hospital (as updated annually).

(3) The result of (a)1iv(B)(2) above, is multiplied by .20 to arrive at an estimate of the money, in current dollars, a hospital should have towards a down payment on future Capital Facilities.

(4) The available portion of the fund target, determined in accordance with sections 6.7 through 6.12 is subtracted from the results of (a)1iii above, (i.e., the Fund Target). Any excess of the

Plant Fund balance over the Fund Target is to be offset against the Current Cost Base in rate determination. Any excess of the Fund Target over the Internally Generated Plant Fund Balance is the allowance for replacements and renovations to be included in a hospital's Schedule of Rates over its remaining useful life.

iv. The yearly Capital Facilities Allowance is computed using information provided by the Uniform Cost Reports as: the prospective year's depreciation and reasonable interest expense (OPTION 2), or the hospital's current yearly amount of capital indebtedness, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (any funds designated by the hospital's board for the Capital Facilities Formula Allowance against the Fund Target) divided by the adjusted remaining useful life of the hospital (OPTION 1).

(1) Hospitals must have elected the method for reimbursement under Chapter 83 of Capital Facilities Allowance by December 31, 1987.

(2) After hospitals elected or were included in either OPTION 1 or OPTION 2, they will remain on the pertinent reimbursement option for the life of the outstanding debt. This method shall continue to apply if refinancing or advance refunding of this debt occurs.

v. Reimbursement for capital facilities indebtedness requiring Certificate of Need approval, batching and incurred on or after September 1, 1986, shall be in accordance with the following requirements:

(1) A Statewide Capital Facilities Allowance shall be calculated as follows:

(A) Total Capital Facilities Allowance including all indebtedness whether or not requiring Certificate of Need approval (as defined in (a)1v above) and an estimate of the annual Capital Facilities Allowance which will result from capital projects approved but not yet bonded or built, for all New Jersey acute care hospitals, will be summed and this sum divided by Total Adjusted Admissions to determine the Capital Facilities Allowance per Adjusted Admission. To initiate these provisions, Capital Facilities Allowance (plus approved projects) for 1986 and Adjusted Admissions for 1985 will be used in the calculations defined in this paragraph. Revised calculations shall be performed as needed.

(B) Hospitals shall be reimbursed their actual Capital Facilities Allowance per Adjusted Admission up to the maximum statewide amount calculated as shown in (a)1vii(1)(A) above. All amounts included in a hospital's Capital Facilities Allowance, whether or not requiring Certificate of Need approval, shall be included in calculating the Capital Facilities Allowance per Adjusted Admission.

vi. Reimbursement for capital facilities which does not require Certificate of Need approval, or which requires Certificate of Need approval but does not require Batching, incurred on or after January 1, 1988 shall be in accordance with the following requirements:

(1) The hospital's Capital Facilities Allowance per Adjusted Admission, including the new capital costs, shall be compared to the statewide Capital Facilities Allowance per Adjusted Admission in accordance with (a)1vii above.

(2) Hospitals with costs per Adjusted Admission below the calculated limit shall be reimbursed their actual costs for additional Capital Facilities Allowance in accordance with (a)1.ii through v above.

2. Major Moveable Equipment: For the purpose of calculating the Price Level Depreciation Allowance, Major Moveable Equipment is grouped into four categories based on the cost center function where the equipment is utilized: Beds and nursing equipment; Diagnostic and therapeutic equipment; General service equipment; and Business service equipment.

i. The following rules shall apply in calculating the Price Level Allowance for a given year:

(1) Only equipment which has not been fully depreciated at the start of the fiscal year is to be used in the calculation of the Price Level Allowance.

(2) The depreciation recorded and reported on all equipment subject to the Price Level Allowance must be calculated by the straight-line method, using at the time of the cost filing the most recent approved American Hospital Association (AHA) Recommended Useful Life (i.e., 1978 revision) or Asset Depreciation Range (ADR).

(3) Only capitalized equipment and related capitalized costs can be used in the calculation of the Price Level Allowance.

(4) The price level factors for each of the four categories will be developed by the Division. For years prior to current cost base year, the factors to be used for price leveling depreciation are as follows:

Category	Proxy
Beds and Nursing Equipment	Marshall and Swift Hospital Equipment Cost Index
Diagnostic and Therapeutic Equipment	Marshall and Swift Hospital Equipment Cost Index
General Service Equipment	Producer Price Index (PPI) 1161, Food Products Machinery (41.18%), PPI 1241.02, Laundry Equipment (23.53%). PPI 113 less 1134 and 1136, Metalworking Machinery less Industrial Furnaces and Abrasive Products (35.29%).
Business Service Equipment	PPI 1193 less 1193.06, Business and Store equipment (less Coin Operated Vending Machines) and PPI 122, Commercial Furniture.

(5) Assets retired before the close of the fiscal year are not to be used in the calculation of the Price Level Allowance.

(6) The amount of the Price Level Allowance may be calculated by one of the options.

OPTION I: (A) Current year straight-line depreciation of each asset being depreciated is multiplied by the price level factor corresponding to the year the asset was acquired to determine price level depreciation. Straight-line depreciation is then subtracted from price level depreciation and the result totaled to determine the amount of the Price Level Allowance provided by Option I. Algebraically the calculation is as follows:

D . . . equals) Current year depreciation, ordered by the year of acquisition of the asset being depreciated.

F . . . equals) Price level factor for the year the asset was acquired.

PLA . . . (equals) Price Level Allowance

PLA . . . (equals) (DxF)-D

(7) The interest component of cash disbursements relative to capitalized Major Moveable Equipment leases is to be classified as interest expense, in accordance with GAAP, and not used as a basis for calculating the price level depreciation premium.

(8) The total Price Level Allowance will be allocated to cost centers based upon the accumulated depreciation of all Major Moveable Equipment not fully depreciated.

5.19 Division adjustments and approvals

(a) Any modifications including any statutory or regulatory changes or changes in patient care physician compensation arrangements shall be classified as direct or indirect and as to the financial elements affected and each element adjusted proportionately.

(b) The Division shall also approve adjustments to hospitals' Schedules of Rates for 1993 and subsequent years as necessary to subtract approved costs associated with residents not meeting the minimum requirements as defined in section 5.14(b); for any costs associated with residents in programs which have lost accreditation as defined in section 5.14(b); and for any costs associated with previously approved but now vacant residency positions which are unfilled as a result of a hospital's inability to recruit residents meeting these minimum standards. These costs shall include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies.

(c) The Division may approve hospital appeals to transfer Division approved resident positions and associated costs between hospitals. A hospital may appeal under any option to reduce or increase the number of resident positions by transfer. An addition of resident positions by transfer may not result in a change to a higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teacher status peer

group. The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

(d) The Division shall decide which hospitals the approved resident positions and associated costs may be transferred.

5.20 Derivation from Preliminary Cost Base

(a) Apportionment of financial elements based on direct costs shall be as follows:

1. All other Financial Elements are added to direct Medicaid patient care costs as percentages of direct costs per Medicaid case. The Schedule of Rates is set such that all Medicaid patients' rates are based on the cost of services received by Medicaid clients, including a proportionate share of indirect financial elements requirements of operating hospital facilities.

2. An operating margin shall be calculated and added to hospital rates as follows:

i. Standard per unit indirect reimbursement as defined in section 5.16 shall be multiplied by 1.01.

ii. The standard amount in each DRG will be multiplied by 1.01.

3. In the event that a hospital is self-insured for employee health benefits, the percentage of personnel health allowance recognized in the rates shall be proportioned to the number of Medicaid clients serviced by the facility to financial elements from payers for such costs.

4. Each hospital shall receive from the Division a base rate order detailing the Schedule of Rates.

5.21 Schedule of rates-effective date

All rates issued pursuant to this subchapter, as approved or modified, shall be effective as of March 12, 1993, of the rate year and then January 1 for subsequent rate years except for fiscal year hospitals whose rates shall be effective as of the first day of the "fiscal" rate year.

SUBCHAPTER 6. FINANCIAL REPORTING PRINCIPLES AND CONCEPTS

6.1 Reporting period

(a) The basic reporting period is the 12 consecutive calendar months utilized for Medicare reporting in the year prior to the hospital's first Medicaid rate.

(b) New hospitals beginning operations on any day other than January 1 must select an initial reporting period beginning on the first day of operation, through the last month preceding the hospital's fiscal year.

(c) Each calendar year's Financial Elements Reporting Forms are due on May 31 of the following year. Each year's Audited Financial Statement is due on May 31 of the following year.

6.2 Objective evidence

(a) Information produced by the accounting process should be based, to the extent possible, upon objectively determined facts. Transactions should be supported by properly executed documents such as charge slips, purchase orders, suppliers' invoices, cancelled checks, etc. Such documents serve as objective evidence of transactions and should be retained as a source of verification of the data in the accounting records.

(b) Certain determinations that enter into accounting records are based on estimates. Such estimates should be based on past experience modified by expected future considerations. Items of Other Operating Expenses, if not directly classified by the hospital, if large in amount, must be identified through a cost study, and if small in amount, costs may be deemed equal to revenue and such costs apportioned among the appropriate natural classifications of expense based on the hospital's estimate or the classifications of the center where originating. Worksheets are provided along with Reporting Schedules to aid the hospital in making all appropriate reclassifications. All such reclassifications should be consistent with the concept of materiality, defined in section 6.5.

(c) Books, papers, records, or other data relevant to matters of hospital ownership, organization, and operation must be maintained. The data must be maintained in an ongoing recordkeeping system which allows the data to be readily verified by qualified auditors.

6.3 Consistency

(a) Consistency refers to continued uniformity during a period and from one period to another in methods of accounting, mainly in valuation bases and methods of accrual, as reflected in the financial statements of an accounting entity. Consistency is very important to the development and analysis of trends on a year to year basis and as a means of forecasting. However, consistency does not require continued adherence to a suboptimal method or procedure. Any change of accounting procedure, consistent with the materiality principle, must be brought to the attention of the Division by way of a cover letter which will accompany the hospital's Financial Elements Report to include both a description and analysis of reporting impact of such accounting procedure changes.

1. As an example, the accounting principle of accrual reporting may cause some hospitals who currently account for vacation on a cash basis to incur a one time reporting of expenses related to vacation time earned by employees but not yet taken. Such one time costs must be included in a cover letter and the Financial Elements Report shall identify only those vacations costs accrued in the current reporting period.

(b) Any accounting and reporting changes due to subsequent revisions of this plan or the documents referred to herein shall be reported in accordance with the instructions which accompany those revisions.

6.4 Full disclosure

The concept of full disclosure requires that all significant data be clearly and completely reflected in accounting reports. If, for example, a hospital were to change its method of accounting for certain transactions, and if the change was a material effect on the reported financial position, or operating when, the nature of the change in method and its effect must be disclosed when reporting costs. No fact that would influence the decisions of management, the governing board, or other users of financial statements should be omitted from or concealed in accounting reports.

6.5 Materiality

Materiality is an elusive concept with the dividing line between material and immaterial amounts subject to interpretation. It is clear, however, that an amount is material if its exclusion from the financial statements would cause misleading or incorrect conclusions to be drawn by users of the statements.

6.6 Basis of Valuation

(a) Historical cost is the basis used in accounting for the valuation of all assets and in recording all expenses (except fair market value in the case of donated non-cash goods and services). Historical cost, simply defined, is the amount of cash or cash equivalents given in exchange for properties or services at the time of acquisition. It is the basis for the valuation of assets and for the recording of most expenses. Cost ordinarily has been the basis of accounting for assets and expenses because it is a permanent and objective measurement that reflects the accountability of management for the utilization of hospital funds.

(b) Although the basis for developing capital-related financial elements shall be Division approved replacement costs of plant and equipment, where appropriate, hospitals shall be required to maintain records and report assets and related depreciation according to both historical values and price leveled values as prescribed in this plan.

(c) Long term investments shall be reported at current market value as with corresponding income or loss reported as realized or unrealized.

(d) Hospitals frequently acquire property, equipment, services and supplies by donation. The property, equipment, service and/or supply shall be considered donated when acquired without the hospital's making any payment for it in the form of cash, property or service. The property, equipment, service or supply shall be valued at acquisition at the fair market value which is the price that the asset would cost by bona fide bargaining between well-informed buyers and sellers at the date of donation (regardless of the date of receipt). The fair market value of donated services must be recorded when there is the equivalent of an employer-employee

relationship and an objective basis for valuing such services. The value of services donated by organizations may be evidenced by a contractual relationship which may provide the basis for valuation. The amounts recorded shall not exceed those paid others for similar work.

(e) The value of donated goods or services of a type not consistent with the definition given shall not be included as operating expenses (e.g., donated services of individuals, such as volunteers, students and trustees).

6.7 Accrual accounting

In order to provide the necessary completeness, accuracy and meaningfulness in reporting data, the accrual basis of accounting is required. Accrual accounting is the recognizing and recording of the effects of transactions and other events on the assets and liabilities of the hospital entity in the time periods in which they apply rather than when cash is received or paid.

6.8 Accounting for minor moveable equipment

(a) Minor moveable equipment includes such items as waste baskets, bed pans, silverware, mops, buckets, etc. The general characteristics of this equipment are:

1. In general, no fixed location and subject to use by various departments within a hospital;

2. Comparatively small in size and unit cost; and

3. Generally, a useful life of less than three years.

(b) There are three ways in which the cost of minor moveable equipment may be recorded:

1. The original cost of this equipment may be capitalized and not depreciated. Any replacement of or additions to this base stock would be charged to operating expense.

2. The original investment in this equipment may be capitalized and written off over three years. All subsequent purchases shall be written off over three years.

3. All purchases of minor equipment may be capitalized and depreciated over their estimated useful lives.

(c) Once a hospital has elected one of these methods, that method must be used consistently thereafter.

6.9 Accounting for capital facilities costs

(a) Capital Facilities include owned or leased land, land improvements, buildings, fixed equipment, leasehold improvements, major moveable equipment and related debt service requirements.

(b) Land improvements include paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, walls, etc. (if replacement is the responsibility of the hospital).

(c) Buildings include the basic walled structure or shell of a hospital and additions thereto.

(d) Fixed Equipment and Building Components include roofs and attachments to buildings such as wiring, electrical fixtures, plumbing, elevators, heating systems, air conditioning systems, etc. The general characteristics of this equipment are:

1. Affixed to the building and not subject to transfer of movement;

2. Used for general purpose rather than for specific department functions.

(e) Leasehold improvements include betterments and additions made by the tenant to the lease property. Such improvements become the property of the lessor after the expiration of the lease.

(f) Major moveable equipment is that equipment which usually was a relatively fixed location in the building, but is capable of being moved, generally was a specific function related to cost center functions, and was a life expectancy of at least three years.

(g) Debt service requirements are principal and interest on buildings, fixed equipment, land, land improvements, leasehold improvements, and capitalized renovations as well as escrow payments, in addition to principal and interest required under the terms of a mortgage, but not including operating expenses as defined by GAAP and lease payments required for leased assets capitalized in accordance with the GAAP.

1. Classification of Fixed Asset Expenditures: Assets and related liabilities, as defined above, must be recorded in Unrestricted Funds, since segregation in a separate fund would imply the existence of restrictions on the use of the asset. This includes the costs of construction in progress.

2. Basis of Valuation: Property, Plant, and Equipment, whether owned or leased, must be reported on the basis of cost. Cost shall be defined as historical cost or fair market value at the date of bequest in the case of donated property.

i. Interest and capitalization on site preparation costs associated with borrowings for, or purchase of, major moveable equipment shall be included with the cost of the equipment.

3. Accounting Control: To maintain accounting control over capital assets of the hospital, a plant asset ledger should be maintained as part of a hospital's general accounting records. Some items of equipment shall be treated as individual units within the plant ledger when their individuality and unit cost justify such treatment. Other items of equipment, if they are similar and are used in a single cost center, may be grouped together and treated in a single unit within the ledger so long as such items are depreciated in a manner equivalent in result to individually depreciating each item.

4. Capitalization Policy:

i. If an asset has, at the time of its acquisition, an estimated useful life of greater than three years and a historical cost in excess of $300.00, its cost must be capitalized.

ii. If an asset does not meet the above criteria, its cost must be recorded as an expense in the year it is acquired. Alterations and renovations which are in excess of $300.00 and which extend the life of the asset renovated a minimum of three years must be capitalized. Alterations and renovations that do not meet the above criteria shall be reported as operating expense under repair and maintenance costs in the current period.

iii. The following shall be the required Capitalization Policy for the reporting assets acquired and renovations per (g)6 below, subsequent to a hospital's Medicaid Schedule of Rates. Assets acquired prior to this date shall be reported in accordance with Generally Accepted Accounting Principles (GAAP).

5. Interest Expense During Period of Construction: Frequently, hospitals borrow funds to construct new facilities or modernize and expand existing facilities. Interest costs incurred during the period of construction must be capitalized as part of the cost of the construction for reporting purposes. The period of construction is considered to extend to the date the constructed asset is put into use. When proceeds from a construction loan are invested and income is derived from such investments during the construction period, the amount of interest expense to be capitalized must be reduced by the amount of such income.

6. Depreciation Policies:

i. Depreciation allowances generated from assets used in the hospital's operations are to be reported as an operating expense in the unrestricted funds. Straight-line depreciation must be reported for all assets, with replacement cost provisions (subject to appropriate planning requirements) and debt service requirements for capital assets utilized for Services Related to Patient Care provided in section 5.13.

ii. The estimated useful life of a depreciable asset is its normal operating or service life in terms of utility to the hospital. Some factors to be considered in determining useful life include normal wear and tear, obsolescence due to reasonably expected technological advances, climatic or local conditions and the hospital's policy of repair and replacement. Costs of alterations, renovations, etc. over $300.00 which extend the life of an asset at least three years shall be added on the remaining book value of the altered or renovated asset and depreciated straight-line over the remaining useful life of the asset.

iii. The preferred depreciation policy for reporting purposes is for hospitals to record one-half year depreciation in the first year an asset is acquired and one-half year depreciation in the last year of the asset's useful life, but that buildings or major renovations be depreciated based on the month first put into use. However, any depreciation policy consistent with GAAP is acceptable.

iv. When an asset is retired, the difference between its book value (historical acquisition cost plus capitalized renovations less accumulated depreciation) and its net salvage value shall be recorded

as an adjustment to that year's depreciation expense in the cost center or classification to which the asset was assigned.

v. When Major Moveable Equipment has reached its useful life, but remains in use, its historical cost and accumulated depreciation may be retained in the accounting records by department. However, hospitals must be able to report fully depreciated assets separately from those which are not fully depreciated.

7. Debt Financing for Plant Replacement, Renovation and Expansion purposes:

i. Debt financing for capital facilities may take many forms. Under the terms of most debt financing agreements, the debtor shall be required to perform or is prohibited from performing certain acts. In many instances, debt financing gives rise to special accounting treatment because of discounts and premiums on bond issues, financing charges, formal restrictions on debt proceeds, and sinking and other required funds.

(1) Discounts and Premiums on Bond Issues: Discounts and premiums arising from the issue of bonds shall be amortized over the life of the related issue(s).

(2) Financing charges: Costs of obtaining debt financing other than discounts (e.g., legal fees, underwriting fees, special accounts costs) shall be reported as deferred costs and amortized over the life of the related debt.

(3) Reporting of Debt Proceeds: Debt agreements for financing plant replacement and expansion programs may or may not require formal segregation of debt proceeds prior to their use. Proceeds which are not required to be formally segregated prior to their use shall be reported as other noncurrent assets in the Unrestricted Fund.

8. Sinking and Other Required Funds:

i. These funds are usually established to comply with loan provisions whereby specific deposits shall be used to insure that adequate funds are available to meet future payments of:

(1) Interest and principal (retirement of indebtedness funds); or

(2) Property insurance, related taxes, repairs and maintenance costs, equipment replacement (escrow funds).

ii. Funds of this nature shall also be required to be held by trustees outside the hospital. Income generated from the investment of such funds may be immediately available to the hospital or such income may be held by the trustee for some future designated purpose.

iii. All internally generating sinking and other required funds shall be accounted for in the following manner:

(1) All fund assets, unless the hospital relinquishes control of the fund through a trustee arrangement, must be recorded in the Restricted Internally Generated Plant Replacement Fund as a long-term investment. Payments to a trustee for sinking fund purposes shall be recorded as reductions in the associated long-term debt.

(2) All income generated from the investment of such funds, except as excluded in (g)8i-iii above, must be recorded as non-operating revenue in this fund, except as required under, "Interest Expense during Period of Construction" (see Section 6.9). Income generated from funds under covenant agreement may be accounted for as an addition to the appropriate restricted fund balance account.

9. Early Debt Retirement:

i. Many bond contracts provide for the calling of any portion or all of the issue at the option of the issuer at a stated value usually above par, for the purpose of enabling the organization to reduce its indebtedness before maturity as occasion arises, or to take advantage of opportunities to borrow on more favorable terms. Bonds are often retired piecemeal through sinking fund operations.

ii. Costs incidental to the recall of bonds before their date of maturity are considered debt cancellation costs. Such costs include bond recall penalties, unamortized bond discounts and expenses, legal and accounting fees, etc. These costs must be reduced by any unamortized bond premiums and recorded in the Unrestricted Fund in accordance with Generally Accepted Accounting Principles.

6.10 Timing differences

Timing differences result when accounting policies and practices used in an organization's accounting differ from those used for reporting operations to governmental units collecting taxes or to outside agencies establishing or making payments based upon the reported operations. These differences shall be reported on the hospital's records when they arise in accordance with relevant American Institute of Certified Public Accountants (AICPA) policies.

6.11 Self-insurance

(a) Self-insurance by a hospital for potential losses due to unemployment, and worker's compensation claims, but excluding self-insurance for employee health care, to be provided by the hospital asserted or otherwise, places all or part of the risk of such losses on the hospital rather than passing all or part of such losses to a third party. Where this method of insuring is used by the hospital, the payments into the fund or pool (if one is maintained) or payments on actual losses incurred shall be considered as insurance expense.

(b) It is required that where self-insurance for other than those items listed above is elected to be used by a facility, the method should conform with the following:

1. Self-Insurance Fund: The hospital or pool establishes a fund with a recognized independent fiduciary such as a bank or a trust company. The hospital or pool and fiduciary enter into a written agreement which includes all of the following elements:

i. General Legal Responsibility: The fiduciary agreement must include the appropriate legal responsibilities and obligations required by State laws.

ii. Control of Fund: The fiduciary must have legal title to the fund and be responsible for proper administration and control. The fiduciary cannot be related to the provider either through ownership or control. Thus, the home office of a chain organization or a religious order of which the hospital is an affiliate cannot be the fiduciary. In addition, investments which may be made by the fiduciary from the fund are limited to those approved under State law governing the use of such fund; notwithstanding this, loans by the fiduciary from the fund to the hospital or persons related to the hospital shall not be permitted.

iii. Payments by Fiduciary: The agreement must provide that withdrawals must be for malpractice and comprehensive general patient liability losses only and those expenses listed in (d) below. Any rebates, dividends, etc. to the hospital from the fund shall be used to reduce allowable cost. Furthermore, evidence of a practice of payments form the fund for purposes unrelated to the proper administration of the fund may result in a withdrawal of recognition of the self-insurance fund. In such instances, payments into the fund shall not be considered an allowable cost.

iv. Reporting: The agreement must require that a financial statement be forwarded to the hospital or pool members by the fiduciary no later than 60 days after the end of each annual insurance reporting period. This statement must show the balance in the fund at the beginning of the period, current period contributions, and amount and nature of final payments, including a separate accounting for claims management, legal expenses, claims paid, etc., and the fund balance. This report and fiduciary's records must be available for review and audit.

v. Income Earned: The agreement must provide that any income earned by the fund less any income taxes attributable to such income must become part of the Fund and must be used in establishing adequate fund levels.

2. Soundness of the Fund:

i. The hospital receives and retains an annual certified statement from an independent actuary, insurance company, or broker that was actuarial personnel experienced in the field of medical malpractice and general liability insurance. To be independent, there must not be any financial ownership or control, either directly or indirectly in the hospital.

ii. The actuary, insurance company, or broker shall determine the amount necessary to be paid into the fund. The fund should include reserves for losses based on accepted actuarial techniques customarily employed by the casualty insurance industry and expenses related to the self-insurance fund as specified in (b)4 below. The actuary, insurance company, or broker shall also provide for an

estimate of the amounts to be in excess of what is reasonably needed to support anticipated disbursements from the fund.

iii. The actuary, insurance company, or broker must state the actuarial basis and the coverage period used in establishing reserve levels. Reserves shall not be recognized as allowable costs for losses specifically denied herein. Thus, reserve payments shall not be recognized for items such as:

(1) Losses in excess of the greater of 10 percent of a hospital's net worth or $100,000 where a hospital elects to pay losses directly in lieu of establishing a funded self-insurance fund;

(2) Losses in excess of coverage levels which do not reflect the decisions of prudent management; and

(3) Losses in excess of coverage for events that occurred prior to a hospital's participation under the Commission.

iv. The actuary, insurance company, or broker must provide its workpapers upon request.

3. Claims Management and Risk Management Program: A hospital or pool shall have an ongoing claims process and risk management program. The hospital or pool must demonstrate that it was an ongoing claims process to determine whether malpractice and comprehensive general patient liability exists, its cause, and the cost of claims. A hospital or pool may either utilize its qualified personnel or an independent contractor, such as an insurance company, to adjust claims. In addition, a hospital or pool must obtain adequate legal assistance in carrying out its claims process. Each hospital must also have an adequate risk management program to examine the cause of losses and to take action to reduce the frequency and severity of them. Such risk mangement program has the essential characteristics of programs required by insurers which currently insure providers for these risks. Therefore, a hospital must have an ongoing safety program and professional and employee training programs, etc., to minimize the frequency and severity of malpractice and comprehensive general patient liability incidents.

4. Expenses Related to Losses Paid Out of Self-Insurance Fund: The following expenses shall be considered costs attributable to a self-insurance fund established by a hospital or pool: expenses of establishing the fund or pool; expenses for administering the claims management program; expenses involved with maintenance of the fund by the fiduciary; legal expenses; actuarial expenses; excess insurance coverage (if purchased by the fiduciary or pool); risk management (if performed by the fiduciary or pool), to the extent that such expenses are related to the hospital's self-insurance program. All other expenses shall not be considered costs attributable to the fund, but shall be included in provider administrative and general costs in the year incurred.

6.12 Related organizations

(a) Auxiliaries, guilds, fund raising groups and other related organizations frequently assist hospitals. Such organizations are independent if they are so characterized by their own charter, by-laws, tax-exempt status and governing board or a sufficient combination of these characteristics to demonstrate their independent existence from the hospital. The financial reporting of these organizations shall be separate from or combined with reports of the hospitals.

(b) A hospital itself may be a subsidiary to or under the control of a large organization such as a university, governmental entity or parent corporation. It is typical in such situations for hospitals to receive services from these related organizations. Examples of services received are: administration; purchasing; general accounting; and menu planning. In addition, related organizations lease property, plant and equipment to hospitals, as well as paying for various other items, such as insurance. The related organization then usually charges for the service either directly or through a management fee. To be included as Costs Related to Patient Care, all such charges must be similar to those which would have been charged if the transacting organizations were not related. The direct charges must be recorded in the appropriate cost centers as billed, and the management fee must be distributed to the functional centers where services are provided. The hospital shall maintain documentation of the actual management service for which a management fee is recorded.

(c) Disclosure of information by hospitals dealing with related firm(s):

1. For the purpose of insuring prudent buying, hospitals shall report the existence of a related organization and each type of service provided, to the Department of Health, if the total transactions amount to greater than $10,000.00 per year.

2. Hospitals may be related to one or more separate organizations if:

i. The hospital controls through contracts or other legal documents the authority to direct the separate organizations' management or policies;

ii. The separate organization controls through contracts or other legal documents the authority to direct the hospitals management or policies; and/or

iii. The hospital is for all practical purposes the primary beneficiary of the separate organization.

(d) At the Commission's request relevant information reported to the Commission may include:

1. The nature of the legal relationship between the hospital and the related firm(s).

2. Frequency of business transactions between the hospital and the firm(s);

3. Purchase or lease contractual arrangements between the hospital and firm(s);

4. The amount of money involved; and

5. The financial statements of all related organizations.

6.13 Financial elements (generally)

The financial elements of the rates shall include the reasonable cost of the following: direct patient care; principal and interest payments; paid taxes, excluding income taxes; education, research and training programs, not otherwise paid for by the State; preservation, replacement and improvement of facility and equipment subject to appropriate planning requirements; reasonable working capital; and where applicable and appropriate, reasonable return on investment. All non-direct costs must be allocated based upon the proportion of Medicaid clients serviced by the hospital.

6.14 Services related to Medicaid patient care

(a) Services related to Medicaid Patient Care include Direct Patient Care; Paid Taxes excluding Income Taxes; and Educational, Research and Training Programs as further defined in sections 6.14 through 6.21.

(b) Services Related to Patient Care include Routine Services, Ambulatory Services, Ancillary Services, Patient Care General Services, and Institutional Services. Costs Related to Patient Care include salaries and wages, physician compensation, employee fringe benefits, medical and surgical supplies, drugs, non-medical and non-surgical supplies, purchased services and other direct expenses and major moveable equipment costs as determined in accordance with sections 6.22 through 6.26.

(c) All non-physician services and supplies provided to hospital inpatients, whether provided directly by the hospital or by a vendor, shall be considered services and costs related to patient care.

(d) All costs of services and supplies purchased from a vendor shall be subject to review for reasonableness by the Division.

6.15 Medicaid direct patient care

Medicaid direct patient care is the provision by a hospital of medically necessary and appropriate health care services to a Medicaid recipient.

6.16 Paid taxes

Taxes are monies paid to a governmental unit for conducting business related to direct patient care within its jurisdiction. Taxes are a financial element of the Preliminary Cost Base except for Federal, State, or local income, excess profit, or franchise taxes, taxes on property not used for direct patient care, and interest and/or penalties paid thereon. Taxes related to financing of operations through the issuance of bonds, property transfers, issuance or transfer of stocks, and the like, are not classified as taxes; rather, they shall be amortized or depreciated with the cost of the security or asset. Sales and real estate taxes paid by a hospital in the provision

of Services Related to Patient Care shall be included as Paid Taxes. All sales and real estate taxes for Services Related to Patient Care shall be reported in the General Administrative Services cost center and also reported separately from other classifications of expense. Employment related taxes, such as FICA, Unemployment Compensation, and Workman's Compensation, shall be classified as employee fringe benefits for all employees, including hospital-based physicians. Monies received by a hospital which chooses to self-insure in lieu of payment of Unemployment Compensation taxes and the associated administrative costs of such a self-insurance program are included as financial elements and classified as employee fringe benefits, if such monies are reasonably related to the hospital's unemployment compensation experience.

6.17 Educational, research and training program

(a) Educational program costs are the costs incurred by a hospital in the provision of a formally organized, planned program of study in a health service profession approved by an organization which recognizes the professional stature of health services education programs at the national level, net of any grants, tuition, and/or donations received for this purpose. To the extent that approved residencies for primary care physicians require training in ambulatory care facilities associated with a hospital, such reasonable expenses are included. Costs incurred by a hospital for direct patient care services rendered by medical, nursing, or allied health school personnel through an approved program in the hospital are financial elements provided that such costs would be included as financial elements if directly incurred by the hospital rather than under such arrangements. If not salaried or paid a stipend by the hospital, students shall not be considered as functioning in an employee capacity and thus no dollar amount shall be imputed and reported for their services.

(b) Research program costs are those costs incurred by a hospital in systematic, intensive study directed toward a better scientific knowledge of the provision of health care services in a program of the National Institutes of Health or other program approved by the Commission. Specific purpose grants or other funds received to offset the costs of such programs from the Federal government, New Jersey State government, New Jersey Heart Association, or other governmental or charitable organizations sponsoring such programs are applied to offset Costs Related to Medicaid Patient Care.

(c) Training program costs are the costs of providing to employees orientation or other health care related training, including inservice and on-the-job training, primarily designed to benefit the hospital by helping employees better perform their assigned tasks. The costs of providing such training shall be classified as administrative expense. Costs of training and/or educational programs which primarily benefit the employee (e.g. tuition reimbursement programs) rather than the hospital shall be classified as employee fringe benefits and shall be reported as such in the appropriate cost centers.

6.18 Capital facilities

(a) Buildings and Fixed Equipment:

1. The cost of Capital Facilities used for Services Related to Medicaid Patient Care, except for Major Moveable Equipment as defined in sections 6.19, are included as financial elements for all hospitals through a Capital Facilities Allowance.

2. The amount of Revenue Related to Patient Care prospectively included for Capital Facilities in a hospital's Schedule of Rates is to be funded in the form of cash and/or investments in the Internally Generated Plant Replacement and Renovation Fund (Plant Fund).

6.19 Major moveable equipment

(a) Major Moveable Equipment includes straight-line depreciation costs on owned or capitalized leased Major Moveable Equipment plus a Price Level Depreciation Allowance in excess of this historical depreciation and operating lease/rent payments relative to Major Moveable Equipment utilized for Services Related to Patient Care. Leased Major Moveable Equipment is to be capitalized or reported as operating lease costs in accordance with Generally Accepted Accounting Principles.

1. Major Moveable Equipment Costs so determined are reported as a Natural Classification of Expense of each cost center.

2. Major Moveable Equipment utilized by more than one functional cost center must be assigned to the using cost centers based on an estimate of each center's utilization.

3. Capitalized repair and installation costs shall be included with the cost of the equipment.

4. Interest associated with capitalized financing purchases or leases shall be excluded and reported as a reconciliation, since the Internally Generated Major Moveable Equipment Replacement Fund is established to provide sufficient funds to replace purchased equipment or meet installment payments for financed equipment (both principal and interest).

6.20 Reserved.

6.21 Reserved.

6.22 Natural Classifications of Expense

(a) Salaries and wages, including stipends, payable in cash, for services performed by an employee for a hospital (except a physician, including compensation for time not worked such as on call) vacation, holiday and sickpay or the monetary value assigned to direct services provided to the hospital by a person performing in an employee relationship are considered remuneration. Monetary value shall not be assigned to the services of students or other volunteer workers. All labor costs (including deferred income which qualifies as pension costs) shall be included in the accounting period during which the employee accrues the payment for their services.

(b) Physician Compensation—Hospital Component

That portion of compensation for a physician's (M.D., D.O., D.D.S./M.D.) activities, provided through agreement with a hospital, representing services which are not directly related to an identifiable part of the medical care of an individual patient is the hospital component of physician compensation, and must be split between salaries and fees. Hospital services include teaching, research conducted in conjunction with and as part of patient care (to the extent that such costs are not met by special research funds), administration, general supervision of professional or technical personnel, laboratory quality control activities, committee work, performance of autopsies, and attending conferences as a part of the physician's hospital service activities. The allocation of physician compensation between hospital and professional components and documentation thereof is to be in accordance with Medicare HIM-15, section 2108 for provider component.

(c) Physician Compensation—Professional Component

That portion of compensation for a physician's services provided through agreement with a hospital pertaining to activities which are directly related to the medical care of an individual patient is the professional component of physician compensation (i.e., remuneration for the identifiable medical services by the physician which contribute to the diagnosis of the patient's condition or to his treatment) and must be split between salaries and fees. The allocation of physician compensation between hospital professional components and documentation thereof is to be in accordance with Medicare HIM-15, section 2108.

(d) Employee Fringe Benefits

Employee Fringe Benefits are amounts paid to or on behalf of an employee, in addition to direct salary or wages, and from which the employee or his beneficiary derives a personal benefit before or after the employee's retirement or death.

1. Fringe Benefits associated with physicians shall be reported with physician's compensation.

2. Pensions, annuities and deferred income arrangement costs for past and current services shall be accounted for and reported in accordance with Employee Retirement Insurance and Security Act (ERISA) and Internal Revenue Service (IRS) requirements. Employee Fringe Benefits include: FICA; State and Federal unemployment insurance; disability insurance; life insurance; employee health insurance; retirement (net of actuarial and realized gains on the investment of related funds); Workman's Compensation insurance; other payroll related employee benefits; tuition reimbursement and other training; moving expenses of new employees

of a non-recurring nature; the cost of providing free or subsidized meals or cost to the employee at less than charges to employees; employee parking lot costs net of any revenue received for operation of the facility, and other non-payroll employee benefits.

3. The cost of providing health care services to employees shall be included in classifications of expense in various cost centers providing the funds. Such costs will be factored into the Preliminary Cost Base and Schedule of Rates by certain revenue adjustments. Where a hospital elects to self-insure for Workman's Compensation or unemployment insurance, costs reported shall be the amounts set aside for that accounting period plus associated administrative costs, where a separate fund was established, to the actual amounts of claims paid during the accounting year if a fund is not established. Where a hospital provides free or subsidized health care services to employees or physicians, the hospital's customary charges shall be generated and accounted for separately as personnel health allowances.

4. In order to preserve comparability of hospital expenses for provision of direct patient care, purchased employee health insurance expenses shall be reported as a separate cost center and shall not be distributed to the labor costs of each center. Employee Fringe Benefits shall be assigned to the cost center in which the employee's compensation is reported on the following bases:

Benefit	Basis of Assignment
FICA-non-physician and physician	Direct Cost
All other Payroll Related Benefits including Unemployment Insurance Disability Insurance, Worker's Compensation and Pension and Retirement	Salaries
Life Insurance	Salaries or FTEs
Employee Education and Training	FTEs
Room and Board	FTEs
Cafeteria	FTEs
Parking Lot	FTEs

(e) Other Direct Expenses

Other Direct Expenses include all other direct non-capital operating expenses not classified elsewhere and reported for Costs Related to Patient Care. Other Direct Expenses include the following utilities; non-physician professional fees; licensing fees; dues assessments; travel; postage; printing and duplicating costs; outside training sessions; subscriptions; paid taxes as defined in section 3.16; and insurance, other than employee fringe benefit insurance programs.

6.23 Medical and Surgical Supplies

(a) Medical and Surgical Supplies are medically necessary supplies, appliances, and minor moveable equipment (as defined in section 6.8) furnished by and used at a hospital for the care and treatment of a patient during a patient's episode of hospital care and reported. Medically necessary supplies exclude all supplies furnished by a hospital but used by a patient after his episode of care except those items where it would be medically unreasonable to limit the patient's use of the item to his episode of hospital care (see section 6.8 for the reporting of minor moveable equipment). The fair market value of donated Medical and Surgical Supplies is assigned to this classification if the commodity would otherwise be purchased by the hospital.

(b) Medical and Surgical Supplies include prosthetic devices, surgical supplies, anesthetic materials, oxygen and other medical gases, intravenous solutions, drugs including medically prescribed food supplements, biologicals, admission kits furnished by the hospital to inpatients not possessing such materials, and other medical care materials. The purchase cost of blood and blood components shall be excluded.

(c) The invoice/inventory cost and related revenue of all Medical and Surgical Supplies for which a separate charge is made to a patient for the use or consumption of the supply must be reported in the Medical and Surgical Supplies or Drugs Sold to Patients cost and revenue centers.

(d) Medical and Surgical Supplies issued by Central Supply Services or Pharmacy for which a separate charge is not made to a patient must be accounted for as an interdepartmental transfer at invoice/inventory cost to the cost center using the supplies and materials. The cost of reusable patient non-charge items used by more than one functional center must remain in or be transferred to the Central Supply Services cost center. The cost of reusable patient non-charged items used by one functional center should be reported in that center. The cost of other Medical and Surgical Supplies not requisitioned from Central Supply Services and for which a separate charge is not made to a patient must be reported in the functional cost center in which the supplies and/or materials are consumed.

(e) The overhead associated with the issuing of Medical and Surgical Supplies shall be reported in the Central Supply Services or Pharmacy cost centers. Except for reusable supplies in (d) above and differences between beginning and end of year inventories, no Medical and Surgical Supplies shall be reported in the Central Supply Services or Pharmacy cost centers.

6.24 Non-Medical and Non-Surgical Supplies

Non-Medical and Non-Surgical Supplies include the invoice/inventory cost of supplies, instruments, and minor equipment (other than Medical and Surgical Supplies) required for the operation of a hospital for purposes other than the direct provision of care to a patient are reported in the using cost and revenue center. All rebates and quantity purchase discounts shall be offset against these costs.

6.25 Purchased Services

Purchased Services include the cost of all services purchased that could be accomplished by a hospital's own employees but for which the hospital elects to contract (not necessarily with a formal contract). All physician services shall be classified as physician compensation.

6.26 Major Moveable Equipment

Major Moveable Equipment, as defined in section 6.8 are expenses to be included in the costs of each center at historical depreciation costs (for both owned and capitalized leased equipment) plus a price level replacement cost premium, as discussed in section 6.8 and operating lease expenses. Interest expense incurred through purchase or capitalized leases of Major Moveable Equipment shall not be included with Major Moveable Equipment costs since the use of price level depreciation of such equipment for the financial elements is intended to replace this financial requirement of hospitals and provide adequate funds to replace equipment at the expiration of useful life.

6.27 Reports of costs and revenues

(a) The financial elements shall take into account a facility's income from all sources, including specific purpose grants and other funds from governmental sources, but excluding income and principal from board or donor restricted funds, gifts and special fund raising projects. Expenses incurred and revenues generated by a hospital for items not included in the definitions of Services Related to Patient Care (i.e. Routine Services, Ambulatory Services, Ancillary Services, Patient Care General Services, and Institutional Services) shall be classified as either other operating expenses and revenues or non-operating revenue and shall be accounted for separately to determine if and how they shall be applied to Costs Related to Patient Care and the Capital Facilities Allowance to determine the hospital's total financial elements or the Current Cost Base. (For PCBs established using data from all Other Operating and Non-Operating Revenues and Expenses reported as Standard Hospital Accounting and Rate Evaluation (SHARE) cost center costs and "expense recoveries" shall be treated as Case B, as defined herein). There are three cases into which such reconciliations are classified:

1. Case A—Expenses and revenues related to activities which the hospital has selected to engage in but which are not an integral

part of, or necessary for, the provision of patient care. Such expenses and revenues are netted against each other. Gains are applied as reductions to the Current Cost Base used to determine hospital payment rates, but any losses are not applied.

2. Case B—Expenses and revenues related to activities which the hospital has elected to engage in and which are an integral part of, or necessary for, the provision of patient care. Such expenses and revenues are netted against each other. Losses are applied as increases to the Current Cost Base and gains are applied as reductions.

3. Case C—Expenses and revenues related to activities which are specifically excluded under the State rules. Expenses and revenues shall not be netted against each other. Neither gains nor losses shall be applied in determination of the Current Cost Base.

(b) Items of other operating expense and revenue shall be excluded from Services Related to Patient Care reporting centers. Other operating expenses and revenues so determined, in addition to non-operating revenues, shall be classified to account for all revenue and expense transactions of the hospital's Unrestricted Fund per the hospital's financial statements. Accounting differences between the hospital's financial statements and the Financial Elements Report shall be reconciled.

(c) Other operating expenses and revenues and non-operating revenues shall be categorized below as:

1. Excluded health care services;
2. Education and research;
3. Sales and services not related to patient care;
4. Patient convenience items;
5. Administrative items; and
6. Other income.

(d) Expenses and revenues of these items are netted against each other and the resulting total gains subtracted from or total losses added to Costs Related to Patient Care and the Capital Facilities Allowance to determine the hospital's Current Cost Base, depending on the Case (A, B, or C) into which the item is classified in sections 6.27 through 6.33. Items not listed in sections 6.27 through 6.33 shall be assigned to the case whose definition in section (c) best matches the nature of the item.

6.28 Excluded Health Care Services

(a) Non-Acute Care Services provided by a hospital such as skilled nursing care (approved or unapproved), intermediate care, residential care services, long term psychiatric care and long term rehabilitation and intermediate care services are not properly acute hospital functions, and hence shall be excluded and treated as Case C. Sufficient accounting records shall be maintained to account for the costs of such operations and such costs shall be excluded from Costs Related to Patient Care by cost center per sections 5.11 and 5.13.

(b) Organ Donations: Organs acquired by a hospital and donated to a pool or patient at another hospital are not properly service related to care of patients at the donating hospital, and hence costs and revenues shall not be included in the service definitions. The acquisition costs incurred shall be accounted for in accordance with the definition of the Organ Acquisition cost center but not reported therein. However, costs of such donated organs shall be applied as increases to Costs Related to Patient Care and Revenues and shall be applied as offsets (Case B).

(c) Blood: In order to encourage hospital solicitation of blood donations, the purchase cost of whole blood or the equivalent units of blood extender and/or plasma shall be excluded and treated as Case C.

(d) Provisions of Health Care Services to Another Health Care Facility or Shared Services: Where a hospital care facility utilizes the laboratory, data processing, physical therapy department, or other services of a hospital, such costs shall not be included in the Costs Related to Patient Care of the hospital providing the services. The associated costs (including overhead) and revenue shall be excluded from the definitions of those centers in the providing hospital and shall be treated as Case B.

(e) Physician Fees Remunerated to a Hospital: Where a physician's compensation arrangement with a hospital requires some or all of the physician's fees received directly from patients to be turned over to the hospital, such fees shall not be included in Revenue Related to Patient Care and are treated as Case B.

(f) Excluded Ambulatory Services Outpatient Renal and Home Dialysis: The cost and revenue related to these services shall be treated as Case C. Revenues and expenses are netted, and neither gains nor losses shall be added to the Preliminary Cost Base. Sufficient accounting records shall be maintained to account for the costs of such operations and such direct and indirect cost shall be excluded from Costs Related to Patient Care.

(g) Excluded Ambulatory Services; HealthStart Maternity Care Health Support Services: The revenues and expenses associated with the provision of these services shall be treated as Case C, netted against each other, with neither gains nor losses added to the Preliminary Cost Base.

(h) Excluded Ambulatory Services; HealthStart Pediatric Continuity of Care: In hospitals with salaried pediatricians, revenues and expenses associated with the non-institutional Medicaid capitated fee shall be treated as Case C and netted against each other. Gains and losses shall be excluded from the Preliminary Cost Base.

6.29 Education and Research

(a) Approved Education and Research Income such as grants, or contract payments, tuitions and fees received as direct support for approved educational and research programs (with the exception of those from the Graduate Medical Education Program for primary care residency programs in Family Practice, Internal Medicine, Pediatrics or Obstetrics/Gynecology) (see section 6.73) are used to offset such expenses and treated as Case B. Transfers of Specific Purpose Fund Revenues to the Unrestricted Fund shall be reported as non-operating revenue.

(b) Non-Approved Education and Research (not approved in accordance with secton 6.17) costs and revenues up to the amount of such costs are excluded. Overhead expenses shall be included in the costs of such program as Case A.

(c) Salaried house physicians hired by the hospital to supplement house coverage of attending physicians or patient units such as residents of non-hospital programs, shall be included as Case B. Coverage of emergency services and other ambulatory and ancillary services by such physicians shall be included in the cost center definition of these services.

6.30 Sales and services not related to patient care

(a) Provision of General Services to an External Organization: The provision of data processing, laundry, housekeeping, managerial or other general services by a hospital to an organization other than another health care facility shall be excluded and treated as Case A. Costs of such arrangements should include associated overhead and be reported in accordance with the reporting of related organizations (see section 6.12).

(b) Sale of Medical Supplies (other than for an episode of hospital care) to patients such as take-home drugs, excluding those items where it would be medically unreasonable to limit the patient's use to the episode of hospital care, and others shall be excluded. Take-home supplies for renal dialysis and home health care shall be included where included in the provisions of Medicare HIM-29 and HIM-11 (Case A).

(c) Sale of Scrap revenue shall be excluded from the revenue center and treated as Case B.

(d) Medical Records Transcription for patients, their legal advocates, or other non-hospital personnel shall be excluded. Costs (to be reported to the revenue received unless direct costing is available) and revenue shall be treated as Case A.

(e) Cafeteria operations, including vending machines, shall be treated as Case C, except for the subsidization of employee meals and meals for students in approved programs. Cafeteria operating losses shall be apportioned among employees, students and others. Subsidization of employee (including resident) meals shall be included as an employee fringe benefit. Subsidization of student meals shall be included as other direct expenses in either EDU or GME cost centers.

(f) Gift and Coffee Shops revenue and expense (including sales tax expense) as well as other activities which may be supported by

volunteers shall be excluded from Services Related to Patient Care. Net gains from the operation of gift and coffee shops operated by volunteers shall not be offset against Costs Related to Patient Care (Case C).

(g) Services Rendered to Staff physicians by a hospital which normally would be incurred in a physician's private practice, such as the provision of medical secretarial services, shall be excluded and treated as Case C so long as the physician's compensation is not provided through agreement with a hospital.

(h) Parking lot or parking garage expenses and revenues at the site of the hospital shall be netted and the remainder apportioned between employees and others. The provision of parking facilities to:

1. Employees shall be included—Losses incurred from the operation of an employee parking lot shall be included as an employee fringe benefit.

2. Staff physicians parking shall be included and treated as Case B.

3. Others shall be included as Case B if the hospital's charge for parking is not substantially inconsistent with other parking facilities in the community where the hospital is located. If the Commission determines that the hospital's parking charges are not competitive with other parking facilities, the provision of parking to others shall be treated as Case C.

(i) Non-Patient Room and Board expenses and revenues shall be netted and apportioned among employees, students and others. Sufficient accounting records shall be maintained to identify all related expenses as well as number of persons housed. The provision of Room and Board to:

1. Employees and residents (including rotating residents who spend some portion of their residency at the hospital) shall be included. Losses incurred from housing an employee shall be included as an employee fringe benefit as Case B, see Section 6.22(d).

2. Students shall be included if in an approved educational program. Losses incurred from housing a student shall be assigned to Nursing and Allied Health Education (EDU) section 6.72 and Graduate Medical Education (GME) Case B, see section 6.73, or Non-Approved Education and Research as Case A.

3. Others not involved with the patient services of the hospital shall be excluded (Case A).

6.31 Patient convenience items

(a) Television and Radio provided to patients shall be excluded and net gains or losses from such services shall be treated as Case C.

(b) Telephone and Telegraph services provided to patients, including the appropriate portion of the hospital's switchboard costs shall be excluded and net gains or losses from such services shall be treated as Case C.

(c) Luxury Meals and Items provided to patients or guests shall be excluded and treated as Case A.

(d) Non-Patient Room Rental Income generated from boarders related to or visitors of a patient shall be excluded from Revenue Related to Patient Care and treated as Case B.

(e) Private-Duty Nursing Services where provided through the hospital at the request of the patient and not prescribed by the attending physician shall be excluded and treated as Case C.

(f) Private Room Differential Income above a hospital's most common charge for a semi-private room for similar routine services, when specifically requested by the patient shall be excluded and treated as Case C. Where ordered by the attending physician for medical necessity, income shall be excluded and treated as Case C. Hospitals should maintain separate revenue classifications for medically necessary and patient convenience private room revenue. Patients admitted or transferred to private rooms because of the unavailability of semi-private rooms shall be charged at the semi-private room rate, with a courtesy allowance (Policy Discount) generated for the differential. No attempt shall be made to identify private room Routine Service cost differentials.

6.32 Administrative items

(a) Administrative Expense Exclusions, as listed in this section, shall not be included in Costs Related to Patient Care and, as such, shall not be included in expenses defined as General Administrative Services (Case C);

1. Life insurance premiums for employees where the hospital is the direct beneficiary;

2. Stockholders servicing costs, such as those incurred to schedule and hold annual meetings;

3. Advertising costs, conducted by hospital personnel or agents of the hospital, which are directed at increasing utilization or medical staff membership, except where attempts to increase medical staff membership is for the procurement of a scarce medical service needed in the service area of the hospital;

4. Costs of membership in organizations not related to the development and operation of the hospital and the rendering of patient care services (e.g. social or fraternal organizations) shall not be included as an employee fringe benefit; and

5. Monies paid by a hospital to the home office, corporate or order headquarters for:

i. Non-patient care related enterprises;

ii. Abandoned home office planning costs for construction of a new facility; or

iii. The imputed value of services performed by non-paid workers in the case of religious orders.

(b) Income and Other Taxes including penalties for late payment of taxes (see section 6.16 for full description) shall not be included as Costs Related to Patient Care and, as such, shall not be included in expenses defined as General Administrative Services (see section 6.74).

(c) Purchase Discounts, revenue from rebates and quantity discounts shall be reported as expense recoveries.

(d) Non-Capital Interest Expenses (interest other than interest or Capital Facilities or Major Moveable Equipment) shall be excluded from Costs Related to Patient Care since short-term borrowing, etc. is addressed through the Financial Element Working Capital Requirements (see section 6.27(a)) (Case C).

(e) Interest Expense for Major Moveable Equipment shall be excluded from Costs related to Patient Care and treated as Case C. However, hospitals under the "Conditional Accept" or "Not Accept" options, may appeal to the Director to have this interest expense or the interest expense in (d) above included in their PCB.

6.33 Non-operating revenues (net of expenses)

(a) Income, net of expenses, or Investment in Rental Property to physicians or others shall be excluded from Revenue Related to Patient Care and treated as Case A.

(b) Income or Investment, net of transaction expense, of Operating Fund and/or interest income from financial charges on delinquent accounts receivable shall be applied as offsets against Costs Related to Patient Care and treated as Case B.

(c) Income or Investments, net of transaction expense, of Board Designated Funds shall not be included in Costs Related to Patient Care and treated as Case C.

(d) Unrestricted Income from Donor Restricted Plant and Endorsement Funds shall not be included in Revenue Related to Patient Care and treated as Case C.

(e) Transfer from Restricted Funds, other than Specified Purpose Funds (i.e. expenditures from principal and interest on gifts which are donor restricted) shall not be included as Revenue Related to Patient Care and treated as Case C.

(f) Unrestricted Donations, net of Funding Raising Costs, shall not be included at Revenue Related to Patient Care and treated as Case C.

(g) Transfer of Specific Purpose Funds to the Unrestricted Fund and Specific Purpose Grants and other funds received from the Federal Government, New Jersey State Government, New Jersey Heart Association, or other governmental or charitable organizations shall be offset against Costs related to Patient Care (with the exception of those from the Graduate Medical Education Program for primary care residency programs in Family Practice, Internal Medicine, Pediatrics or Obstetric/Gynecology). However, grants on

behalf of the medically indigent shall be reported as contra-deducted from Gross Revenue Related to Patient Care (operating). "Seed Money" received with a grant shall be similarly offset against operating expenses unless this would result in grants being withheld from New Jersey institutions (Case B).

(h) Primary Care residency Specific Purpose Grants and income from primary care residency specific purpose funds (i.e. grants for the support of LCGME approved residency program in Family Practice, Internal Medicine, Pediatrics, Obstetrics/Gynecology) shall not offset the costs of such programs and treated as Case C.

(i) Interest Income on Trustee-held funds related to borrowings or loans is a Case B, unless a hospital is prohibited from using the funds to offset current debt service obligations. If the hospital is prohibited from using the funds, the interest and income earned shall be a Case C until these funds are released for the hospital's benefit.

6.34 Reporting of costs and revenues

Costs and Revenues Related to Patient Care shall be reported per the following definitions and Subchapter 6.

6.35 Medical-Surgical Acute Care Units (MSA)

(a) The functions of Medical-Surgical Acute Care Units (MSA) are as follows:

1. Medical-Surgical Acute Care Units provide care to patients on the basis of physicians' orders and approved nursing care plans. Medical-Surgical Acute Care shall include the cost and revenue associated with services to all patients treated in beds normally designated as Medical-Surgical, regardless of the clinical specialty of attending physicians or age of the patient. Include the cost and revenue of beds designated as definitive observation or intermediate care (i.e., "step down") beds.

2. Revenue generated from charge differentials between private and semi-private rooms (except those assigned for medical necessity) shall be reported were, and also as a reconciliation. Medical and Surgical Supplies should be reported in accordance with section 6.23.

3. Functions include serving and feeding of patients; collecting sputum, urine; and feces samples; monitoring of vital life signs; operating of specialized equipment related to this function; preparing of equipment and assisting of physicians during patient examination and treatment; changing of dressings and cleansing of wounds and incisions; observing and recording emotional stability of patients; assisting in bathing patients and helping into and out of beds; observing patients for reaction to drugs; administering specified medication; infusing I.V. fluids; answering to patients' call signals; and keeping patients' room (personal effects) in order.

(b) Units of Service: Patients (Admissions and Transfers In) and Patient Days.

6.36 Obstetric Acute Care Unit (OBS)

(a) The functions of Obstetric Acute Care Unit (OBS) are as follows:

1. The provision of care to the mother before, during and following delivery on the basis of physicians' orders and approved nursing care plans shall be provided in the Obstetric Acute Care Unit. Obstetrics may include services to clean gynecological patients treated in beds licensed by the Department of Health as obstetrics.

2. All revenue generated from charge differentials between private and semi-private rooms (except those assigned for medical necessity) shall be reported as a reconciliation. Medical and Surgical Supplies shall be reported in accordance with section 6.23.

3. Functions shall include: instructing of mothers in postnatal care and care of the newborn; feeding of patients; collecting of sputum, urine and feces samples; monitoring of vital life signs; operating specialized equipment related to this function; preparing of equipment and assistance of physician in changing of dressings and cleansing of wounds and incisions; observing and recording emotional stability of patients; assisting in bathing patients and helping into and out of bed; observing patients for reaction of drugs; administering specified medication; infusing I.V. fluids; answering of patients' call signals; and keeping patients' rooms (personal effects) in order.

(b) Units of Service: Patients (Admissions and Transfers In) Patient Days.

6.37 Pediatric Acute Care Units (PED)

(a) The functions of Pediatric Acute Care Units (PED) are as follows:

1. Pediatric Acute Care Units provide care to Pediatric patients (normally children less than 14 years and including "boarder patients") in Pediatric nursing units on the basis of physicians' orders and approved nursing care plans. Pediatric Acute Care shall include the costs and revenues associated with all patients, regardless of age, treated on units normally reserved for the care of patients less than 14 years of age and shall not include the costs and revenues of treating patients less than 14 years in Medical-Surgical and Psychiatric Acute Units. Cost and Revenue associated with swing beds (i.e., those not designated excluding for one type of patient) shall be apportioned among the appropriate Routine Service Centers, as defined herein, based on actual utilization.

2. All revenue generated from charge differentials between private and semi-private rooms (except those assigned for medical necessity) shall be reported as a reconciliation. Medical and Surgical Supplies should be reported in accordance with section 6.23.

3. Functions shall include the following: serving and feeding of patients; collecting of sputum, urine and feces samples; monitoring of vital life signs; operating of specialized equipment related to this function; preparing of equipment and assisting of physicians during patient examination and treatment; changing of dressings and cleansing of wounds and incisions; observing and recording emotional stability of patients; assisting in bathing patients and helping into and out of beds; observing patients for reaction to drugs; administering specified medication; infusing I.V. fluids; answering of patients' call signals; and keeping patients' rooms (personal effects) in order.

(b) Units of Service: Patients (Admissions and Transfers In) and Patient Days.

6.38 Psychiatric Acute Care Units (PSA)

(a) The functions of Psychiatric Acute Care Units (PSA) are as follows:

1. Psychiatric Acute Care Units provide care to patients admitted for diagnosis as well as treatment on the basis of physicians' orders and approved nursing care plans. The units shall be staffed with nursing personnel specially trained to care for the mentally ill, mentally disordered, or other mentally incompetent persons. Psychiatric Acute shall include only the costs and revenues associated with services to psychiatric patients in a unit solely designated to the care of the acute mentally ill.

2. All revenue generated from charge differentials between private and semi-private rooms (except those assigned for medical necessity) shall be reported as a reconciliation. Medical and Surgical Supplies should be reported in accordance with section 6.23. Special Service consumed by patients on Psychiatric Acute Care Units shall be reported in the Psychiatric/Psychological Services Center.

3. Functions shall include the following: serving and feeding of patients; collecting of sputum, urine and feces samples; monitoring of vital life signs; operating of specialized equipment related to this function; preparing of equipment and assistance of physicians during patient examination and treatment; observing and recording emotional stability of patients; assisting in bathing patients and helping into and out of bed; observing patients for reaction to drugs; administering specified medication; infusing I.V. fluids; answering of patients' call signals; and keeping patients' rooms (personal effects) in order.

(b) Units of Service: Patients (Admissions and Transfers In) and Patient Days.

6.39 Burn Care Units (BCU)

(a) The functions of Burn Care Units (BCU) are as follows:

1. Burn Care Units provide care to severely burned patients that are of a more intensive nature than the usual acute nursing care provided in medical surgical units. Burn Care Units shall be staffed with specially trained nursing personnel and contain specialized support equipment for burn patients who require intensified, com-

prehensive observation and care. Burn Care Units shall include only the costs and revenues associated with services to burn patients in a unit solely designated for this purpose. Burn patients not in a unit solely designated for this purpose shall be reported in the Intensive Care Units (ICU) center.

2. Functions shall include the following: serving and feeding of patients; collecting of sputum, urine and feces samples; monitoring of vital life signs; operating specialized equipment related to this function; preparing of equipment and assisting of physicians during patient examination and treatment; changing of dressings and cleansing of wounds and incisions; observing and recording emotional stability of patients; assisting in bathing patients and helping into and out of beds; observing patients for reaction to drugs; administering specified medication; infusing I.V. fluids; answering of patients' call signals; and keeping patients' rooms (personal effects) in order.

(b) Units of Service: Patients (Admissions and Transfers In) and Patient Days.

6.40 Intensive Care Units (ICU)

(a) The functions of the Intensive Care Units (ICU) are as follows:

1. Intensive Care Units provide nursing care to patients who, because of surgery, shock, trauma, serious injury or life threatening conditions, require intensified comprehensive observation and care. These units shall be staffed with specially trained nursing personnel and contain specialized equipment for patient monitoring and life support systems. Intensive Care Units include Stroke Care, Pediatric, Intensive Care, Burn Care (not classified in BCU), Medical and Surgical Intensive Care and mixed Intensive Care-Coronary Care Units, but excludes units solely designated 25 Coronary Care Units or Neo-Natal Intensive Care Units, Medical and Surgical Supplies shall be reported in accordance with section 6.23.

2. Functions include monitoring patients' progress; operating specialized equipment; assisting physicians during examinations and treatments; dispensing prescribed medications, including I.V. solutions; cleansing and dressing incisions and wounds; maintaining patients' charts; and requisitioning and storing medical supplies and drugs kept in these units.

(b) Units of Service: Patients (Admissions and Transfers In) and Patient Days.

6.41 Coronary Care Units (CCU)

(a) The functions of the Coronary Care Units (CCU) are as follows:

1. Coronary Care Units provide the delivery of care to a more specialized nature than that provided to the usual Medical, Surgical, and Pediatric patient. The unit shall contain monitoring and specialized support or treatment equipment for patients who, because of heart seizure, open heart surgery or life threatening conditions, require intensified, comprehensive observation and care and shall be staffed with specially trained nursing personnel. Coronary patients treated in mixed Intensive/Coronary Care Units shall be included in the Intensive Care Units (ICU) center. Medical and Surgical Supplies shall be reported in accordance with section 6.23.

2. Functions include the following: serving and feeding of patients; collecting of sputum, urine and feces samples; monitoring of vital life signs; operating of specialized equipment related to this function; preparing of equipment and assistance of physicians during patient examination and treatment; changing of dressings and cleansing of wounds and incisions; observing and recording emotional stability of patients; assisting in bathing patients and helping into and out of bed; observing patients for reaction to drugs; administering specified medication; infusing I.V. fluids; answering of patients' call signals; and keeping patients' rooms (personal effects) in order.

(b) Units of Service: Patients (Admissions and Transfers In) and Patient Days.

6.42 Neo-Natal Intensive Care Units (NNI)

(a) The functions of the Neo-Natal Intensive Care Units (NNI) are as follows:

1. A Neo-Natal Intensive Care Unit provides care to newborn infants that is of a more intensive nature than care provided in Pediatric Acute or Newborn Nursing units. Care shall be provided on the basis of physicians' orders and approved nursing care plans. The units shall be staffed with specially trained nursing personnel and contain specialized support equipment for treatment of those newborn infants who require intensified, comprehensive observation and care. Neo-Natal Intensive Care Units shall be designated perinatal centers by the Department of Health. Medical and Surgical Supplies should be reported in accordance with section 6.23.

2. Functions shall include the following: feeding infants; collecting of sputum, urine and feces samples; monitoring of vital life signs; operating specialized equipment needed for this function; preparing equipment and assisting physicians during infant examination and treatment; changing dressings and cleansing of wounds and incisions; bathing infants; observing patients for reaction to drugs and administering specified medications including I.V. fluids.

(b) Units of Service: Patients (Admissions and Transfers In) and Patient Days.

6.43 Newborn Nursery (NBN)

(a) The functions of the Newborn Nursery (NBN) are as follows:

1. A Newborn Nursery shall provide nursing care to newborns on the basis of pediatricians' orders and approved nursing care plans. Newborn Nursery should include all normal care newborns. Bassinets maintained for infants other than newborn (pediatrics) shall be included were. Medical and Surgical Supplies shall be reported in accordance with section 6.23.

2. Functions include constant observation of newborns; checking on progress of newborns; feeding and diapering newborns; assisting pediatricians during examination and treatment; operating special equipment; dispensing prescribed medication; and educating new mothers on infant care; maintaining newborns' charts; requisitioning and sorting medical supplies, drugs and infants formulae; and scheduling newborns for ancillary services.

3. Costs associated with units designated by the Department of Health as perinatal centers should be reported in this cost center.

(b) Units of Service: Patient and Patient Days (counted comparably with non-newborn patients).

6.44 Emergency Services (EMR)

(a) The functions of the Emergency Services (EMR) are as follows:

1. Emergency Services provide emergency treatment to sick and injured patients requiring medical care on an immediate, unscheduled basis. Also included are non-emergency type patients who request outpatient treatment on an unscheduled basis in the Emergency Room.

2. Functions include: assisting critical patients to and from vehicles; expediting treatment for critical patients for ancillary services; coordinating emergency admissions; operation of an ambulance, operation of cast room; assisting physicians in emergency treatment; cleaning and dressing wounds; applying casts; maintaining aseptic conditions; monitoring of vital life signs.

(b) Units of Service: Visits.

6.45 Anesthesiology Services (ANS)

(a) The functions of the Anesthesiology Services (ANS) are as follows:

1. Anesthesiology Services are a hospital based service conducted under the direction of either a qualified physician trained in anesthesiology (i.e., an anesthesiologist) or the operating surgeon.

2. Anesthesia gases and other anesthesia supplies and minor moveable equipment if not individually charged to the patient shall be reported in Anesthesiology. The cost of anesthesiologists' compensation and any other costs associated with anesthesiologists' practice (i.e., employees of the physician, supplies the physician purchases through their private practice, etc.), as well as the revenue generated by the anesthesiologist and anyone under the physician's employment, shall be reported to the extent that the anesthesiologists' compensation is provided through agreement with the hospital. Cost associated with nurse anesthetists employed by the hospital shall also be reported here.

3. Functions shall include the following: obtaining laboratory findings and patient's anesthetic history prior to administration of anesthetics; administering anesthetics; recording kind and amount of anesthetic administered; observing patient's condition until all effects of anesthesia have passed; accompanying patient to recovery room or intensive care unit; administering treatment to patients having symptoms of post anesthetic complication; prescribing pre- and post-anesthesia medications; and carrying out safeguards for administration of anesthetics.

(b) Units of Services: Anesthesia Minutes.

6.46 Cardiac Catheterization (CCA)

(a) The functions of the Cardiac Catheterization (CCA) are as follows:

1. Cardiac Catheterization includes all invasive cardiac diagnostic procedures performed in dedicated or non-dedicated cardiac catheterization or coronary angiographic laboratories. Cardiac catheterization procedures are performed in a limited number of hospitals that are designated as cardiac diagnostic facilities or regional cardiac surgical centers. Medical and Surgical Supplies should be reported in accordance with section 6.23.

2. Functions include preparation of patients for testing; explaining test procedures to patients; inspecting, testing and maintaining special equipment; and achieving optimal quality physiological and coronary angiographic studies.

(b) Units of Services: Procedures.

6.47 Delivery and Labor Rooms (DEL)

(a) The functions of the Delivery and Labor Rooms (DEL) are as follows:

1. Delivery and Labor Rooms provide nursing care by specially trained personnel to obstetrical patients and patients having gynecological procedures performed in the Delivery Suite. Caesarean sections shall be included if they are performed in a delivery room. Costs of routine housekeeping functions (i.e., those conducted throughout the hospital) performed by delivery and labor personnel shall be included in the housekeeping center—only specialized clean-up procedures unique to Delivery and Labor Rooms functions shall be included in Delivery and Labor. Medical and Surgical Supplies shall be reported in accordance with section 6.23.

2. Functions shall include the following: maintaining aseptic conditions; enforcing of safety rules and standards; arranging sterile setup for deliveries; monitoring patient and caring for patient's needs while in labor and in recovery; transporting patients within the labor and delivery suite; preparing for delivery; comforting the patient during delivery; assisting the physician during delivery; fetal heart monitoring; amniocentesis (if performed in the delivery suite); circumcision of male newborns; and cleaning up after delivery to the extent of preparation for pickup and disposal of used linen, instruments, utensils and waste.

(b) Units of Services:

1. Deliveries;

2. Gynecological Procedures.

6.48 Dialysis (DIA)

(a) The functions of the Dialysis (DIA) are as follows: Dialysis is a hospital based service employing the use of an artificial kidney machine for cleansing the blood. Dialysis shall include both hemodialysis and peritoneal dialysis procedures. The inclusion of Dialysis take-home supplies, if not individually charged, and other costs and revenues shall be in accordance with Medicare HIM 29 instructions. Dialysis take-home and other supplies individually charged for shall be reported in Medical and Surgical Supplies Sold, whether sold or rented, if such supplies shall be included per Medicare HIM 29.

(b) Units of Services: Treatments.

6.49 Drugs Sold to Patients (DRU)

(a) The functions of the Drugs Sold to Patients (DRU) are as follows:

1. The Drugs Sold to Patients center shall be used for the accumulation of the invoice cost and corresponding revenue of all pharmaceuticals and intravenous solutions individually charged to patients including chemotherapy drugs. The invoice/inventory cost of non-charged drugs (pharmaceuticals) or I.V. solutions issued by the Pharmacy to other centers shall be transferred to the using centers, preferably on a monthly basis. If such items are sold in other centers, the cost of those items must be transferred to this center. The overhead cost of preparing and issuing drugs and I.V. solutions sold directly to patients must be accumulated in the Pharmacy center.

2. Medically prescribed food supplements, if charged directly to patients shall be included in Drugs Sold to Patients. Cost and revenue associated with blood (i.e., whole blood and packed red cells) and blood components (i.e., fibrinogen, gamma globulin) shall be excluded from the Laboratory center and reported as reconciliation. Excluded from this center are the cost and revenue associated with drugs furnished to a patient for use after his episode of hospital care (except for those items where it would be medically unreasonable to limit the patient's use to the episode of hospital care). Included in the center are the cost and revenue associated with drugs and I.V. solutions sold under renal dialysis and home health agency programs as specified in Medicare HIM 29 and HIM 11.

6.50 Electrocardiology (EKG)

(a) The functions of the Electrocardiology (EKG) are as follows:

1. Electrocardiology is a hospital service that utilizes specialized electrical equipment to record electromotive variations in actions of the heart muscle on an electrocardiograph for diagnosis of heart ailments under the direction of a qualified physician. The cost incurred and revenue generated by personnel or equipment for electrocardiology procedures continuously available as part of the functions of other centers (i.e., Intensive or Coronary Care Units, Operating and Recovery Rooms, Diagnostic Radiology, and Cardiac Catheterization) shall be included in those centers.

2. The cost of cardiologists' compensation as well as the revenue generated by cardiologists shall be reported to the extent that the cardiologists' compensation is provided through agreement with the hospital.

3. Functions shall include the following: wheeling portable equipment to patient's bedside; conducting stress tests; explaining test procedures to patient; operating electrocardiograph equipment; inspecting, testing and maintaining special equipment; and attaching and removing electrodes from patients.

(b) Units of Service: Electrocardiograms.

6.51 Laboratory (LAB)

(a) The functions of the Laboratory (LAB) are as follows:

1. Laboratory is normally a hospital based pathological or clinical service conducted under the direction of a qualified pathologist. All laboratory operations, including subsidiary laboratories of the hospital, shall be included were, whether purchased from outside or performed by the hospital laboratory. Services provided for outside institutions shall be excluded and reported as a reconciliation. All fields of laboratory work, such as Autopsy, Blood Bank, Chemistry, Cytology, Hematology, Histology, Immunology, and Microbiology shall be included. Laboratory work in poison and infection control, epidemiology (including nursing epidemiology work), and coagulation testing. Infection control officer costs not related to laboratory work shall be apportioned to benefiting patient care areas. The revenue and cost of performing blood gas analyses are to be included in the Respiratory therapy center, and pathologist compensation costs and revenues related to Nuclear Medicine shall be included in that center.

2. The procuring (drawing), receiving, storing, typing and crossmatching of whole blood, blood components and blood products shall be included in Laboratory. Purchase cost of and patient payments for blood and blood products shall be excluded and reported. The costs associated with procuring blood donations shall be included in Laboratory, but payments to donors shall be excluded and reported as a reconciliation per.

(b) Units of Service: College of American Pathologists Relative Value Units.

6:52 Medical and Surgical Supplies Sold (MSS)

(a) The functions of the Medical and Surgical Supplies Sold (MSS) are as follows:

1. The Medical and Surgical Supplies Sold center is used for the accumulation of the invoice cost and revenue of all medical and surgical supplies and equipment sold or rented directly to patients. The invoice/inventory cost of non-charged supplies and equipment issued by the Central Supply Service Center to other centers shall be transferred to the using centers, preferably on a monthly basis. If such items are sold in other hospital centers, the cost and revenue of those items must be transferred to this center. The overhead cost of preparing and issuing medical and surgical supplies and equipment sold or rented directly to patients must be accumulated in the Central Supply Services center.

2. Excluded from this center shall be the cost and revenue associated with supplies furnished to a patient for use after his episode of hospital care (except for those items where it would be medically unreasonable to limit the patient's use to the episode of hospital care, e.g., pacemakers, permanent prostheses, etc., and take-home Dialysis and Home Health Agency supplies included per Medicare HIM 29 and HIM II). Rather, the costs and revenues associated with such items shall be reported as reconciliations.

6.53 Neurology, Diagnostic (NEU)

(a) The functions of the Neurology, Diagnostic (NEU) are as follows:

1. This center shall provide diagnostic neurology services such as electroencephalography and electromyography, under the direction of a qualified physician. Specialized equipment is used to record electromotive variations in brain waves and to record electrical potential variation for diagnosis of muscular and nervous disorders.

2. The cost of compensation of physicians involved in diagnostic neurology, as well as the revenue generated by these physicians for their activities, shall be reported to the extent that their compensation is provided through agreement with the hospital.

3. Functions shall include the following: Wheeling portable equipment to patient's bedside; explaining test procedures to patient; operating specialized equipment; inspecting, testing and maintaining special equipment; and attaching and removing electrodes from patients.

(b) Units of Service:

1. EEGs;

2. EMGs.

6.54 Nuclear Medicine (NMD)

(a) The functions of the Nuclear Medicine (NMD) are as follows:

1. Nuclear Medicine is a hospital based service which provides diagnosis and treatment of patients by injectible or ingestible radioactive isotopes under the direction of a qualified physician.

2. Costs shared with Therapeutic Radiology, Diagnostic Radiology, and Laboratory, such as radiologists, pathologists, radiology office expense and maintenance costs shall be apportioned among the benefiting centers. The cost of compensation of physicians involved in Nuclear Medicine, as well as the revenue they generate shall be reported to the extent that their compensation is provided through agreement with the hospital.

3. Functions shall include the following: Consultation with patient and attending physician; radioactive waste disposal; and storage of radioactive materials.

(b) Units of Service: Procedures.

6.55 Occupational and Recreational Therapy (OCC)

(a) The functions of the Occupational and Recreational Therapy (OCC) are as follows:

1. Occupational therapy is the application of purposeful, goal-oriented activity, under the direction of a registered therapist and medical director, in the evaluation, diagnosis, and/or treatment of persons whose function is impaired by physical illness or injury, emotional disorder, congenital or developmental disability, or the aging process, in order to achieve optimum functioning, to prevent disability, and to maintain health.

2. Recreational therapy is the employment of sports, dramatics, arts and other recreational programs, under the direction of a registered therapist and medical director to stimulate the patient's recovery rate.

3. The cost of compensation of physicians involved in occupational and recreational therapy as well as the revenue generated by these physicians for their activities shall be reported to the extent that their compensation is provided through agreement with the hospital.

4. Functions shall include the following: Education and training in activities of daily living (ADL); the design, fabrication, and application of splints; sensorimotor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaption of physical environments for the handicapped; continuing and organizing instrumental and vocal musical activities; and directing activities of volunteers in respect to these functions. These services shall be provided to individuals or groups.

(b) Units of Service: Visits.

6.56 Operating and Recovery Rooms (ORR)

(a) The functions of the Operating and Recovery Rooms (ORR) are as follows:

1. Operating and Recovery Rooms provide surgical services to both inpatients and outpatients. These rooms shall be staffed with specially trained personnel who assist the surgeon during operations and the patient immediately thereafter. Cost of and revenue from rooms used for minor and ambulatory surgery or special procedures (e.g., cytoscopy, endoscopy, gastroscopy) other than a surgical clinic should be included here. The cost and revenue associated with surgical dental services provided to patients shall also be included.

2. Costs of routine housekeeping functions (i.e., those conducted throughout the hospital) performed by Operating and Recovery Room personnel shall be reported in the housekeeping Center. Only the cost of specialized cleaning procedures unique to Operating and Recovery Rooms and performed by Operating and Recovery Room personnel shall be reported in the Operating and Recovery Room Center. Medical and Surgical Supplies are to be reported per section 6.23.

3. Functions shall include the following: The requisitioning of instruments, utensils, medical supplies, and drugs required for surgery; inspecting, testing and maintaining specialized surgical equipment; maintaining aseptic techniques; enforcing of safety rules and standards; assisting in preparing patients for surgery (only while in the O.R.; exclude preparation work done on patient floors); assisting the surgeon during operations; counting of sponges, needles and instruments used during operations; preparing patients for transportation to recovery room; monitoring patient and caring for patient's needs while recovering from anesthesia; and pickup and disposal of used linen, instruments, utensils and waste.

(b) Units of Service:

1. Procedures;

2. Minutes.

6.57 Organ Acquisition (ORG)

(a) The functions of the Organ Acquisition (ORG) are as follows:

1. These centers acquire, store, and preserve all kidneys and other human organs for their eventual transplantation to patients of the hospital. All direct costs incurred by the Laboratory, Operating and Recovery Rooms and other hospital departments in acquiring organs shall be transferred to the Organ Acquisition Center. The costs and revenues (or value of credits) of acquiring organs for a pool or for transplantation to a patient of another hospital shall be reported as an organ donation reconciliation.

2. Functions shall include the following: Conducting sterile autopsies to obtain organs; purchasing of organs from a central pool; harvesting; and preservation of organs.

(b) Units of Service: Transplants.

6.58 Physical Therapy (PHT)

(a) The functions of the Physical Therapy (PHT) are as follows:

1. Physical Therapy is a service employing therapeutic exercises and massage, and utilizing effective properties of light, heat, cold, water, and electricity in diagnosis and rehabilitation of patients with

neuromuscular, orthopedic, and other disabilities under the medical direction of a physiatrist or other qualified physician. Physical Therapy services shall include the provision of clinical and constructive services and the direction of patients in the use, function, and care of braces, artifical limbs, and other devices. This center shall include the cost of physical therapy, related medical supplies, materials and equipment not requisitioned from Central Supply Services and for which a separate charge is not made to a patient.

2. The cost of all supplies and equipment furnished to a patient for use after his episode of hospital care (e.g., crutches, elastic bandages, etc.) but excluding items where it would be medically unreasonable to limit the patient's use of the item to his episode of hospital care (e.g., customized braces, prostheses, etc.) shall be excluded from this center.

3. Functions shall include the following: Prescription of therapeutic exercises; counseling of patients and relatives; organizing and conducting medically-prescribed physical therapy programs; application of diagnostic muscle tests; administration of whirlpool and compact baths; changing of linen on beds and treatment tables; and assisting patients in changing clothes.

(b) Units of Service: Visits.

6.59 Psychiatric/Psychological Services (PSY)

(a) The functions of the Psychiatric/Psychological Services (PSY) are as follows:

1. This center provides psychiatric and psychological services, such as individual, group, and family therapy to adults, adolescents and families of hospital patients, but excluding costs and revenues associated with psychiatric/psychological clinic visits. Costs and revenues to be reported include those related to the compensation of psychiatrists, psychologists, or psychiatric social workers to the extent that such compensation is provided through agreement with the hospital.

2. Functions shall include the following: Evaluation and psychotherapy provided to inpatients; emergency room psychiatric/psychological care; biofeedback training; psychological testing; and shock therapy.

(b) Units of Service: Hours (spent with patients).

6.60 Radiology, Diagnostic (RAD)

(a) The functions of the Radiology, Diagnostic (RAD) are as follows:

1. Diagnostic Radiology is normally a hospital based service conducted under the direction of a qualified radiologist, and shall include procedures, such as angiograms (except coronary angiograms), arteriograms, computerized axial tomography scans, and echograms (ultrasonography).

2. Cost shared with therapeutic Radiology and Nuclear Medicine such as radiologists, radiology office expense and maintenance costs shall be apportioned among the benefiting cost centers. The salaries of personnel such as bioengineers, assigned substantially full-time for the purpose of maintaining, testing and inspecting Diagnostic Radiology equipment shall be reported here.

3. The cost of compensation of radiologists as well as the revenue they generate, shall be reported in this center to the extent that their compensation is provided through agreement with the hospital.

4. Functions shall include the following: Taking, processing, examining and interpretation of radiographs and fluorographs; consultation with patient and attending physicians; storage of radioactive materials; and radioactive waste disposal.

(b) Units of Service: California Medical Association Relative Value Units.

6.61 Respiratory Therapy (RSP)

(a) The functions of the Respiratory Therapy (RSP) are as follows:

1. Respiratory therapy is a hospital based service for diagnosis and treatment of pulmonary diseases. This shall include pulmonary function testing, the administration of oxygen and certain potent drugs through inhalation or positive pressure, and other forms of rehabilitative therapy, under the direction of a qualified physician. Pulmonary function testing is the testing and thorough measurement of inhaled and exhaled gases and analysis of blood, and evaluation of the patient's ability to exchange oxygen and other gases.

2. The cost of compensation of pulmonary physicians involved in rendering respiratory diagnostic and therapeutic services, as well as the revenue generated by these physicians for such activities, shall be reported to the extent that these physicians' compensation is provided through agreement with the hospital.

3. The costs of and revenue generated from all gases administered to patients shall be included in this center, excluding the costs and revenue associated with gases administered as part of the anesthetizing process which are included in the Anesthesiology Center.

4. Functions shall include the following: Transporting therapy equipment to patient's bedside; setting up and operating various types of oxygen and other therapeutic gas and mist inhalation equipment; blood gas testing; observing and instructing patients during therapy; visiting all assigned respiratory cases to insure that physicians' orders are being carried out; inspecting and testing equipment; and enforcing safety rules.

(b) Units of Service: Treatments

6.62 Speech Pathology and Audiology (SPA)

(a) The functions of the Speech Pathology and Audiology (SPA) are as follows:

1. Speech Pathology provides therapeutic treatment for disorders of production, reception and perception of speech and language. Audiology provides and coordinates services to persons with impaired peripheral and/or central auditory function. The detection and management of any existing communicating handicaps centering in whole or in part on the wearing function. Such activities shall be coordinated with medical evaluation and treatment of hospital patients.

2. Functions shall include the following: Audiologic assessment (including basic audiometric testing and screening, examination for site of lesions non-organic hearing loss and various parameters of auditory processing abilities essential for communication function); hearing aid evaluation, selection, orientation, adjustment and other technical related services; audiologic habilitation and rehabilitation including the development, remediation or conservation of receptive and expressing language abilities; demonstrating and evaluating amplification devices and altering systems; evaluating excessively noisy environments; determining through interviews and special tests the etiology, history and severity of speech disorders; and special speech, hearing and language remedial procedures, counseling and guidance.

(b) Units of Services: Visits.

6.63 Therapeutic Radiology (THR)

(a) The functions of the Therapeutic Radiology (THR) are as follows:

1. Therapeutic Radiology is a hospital based service providing therapy by radium and other radioactive substances, including cobalt therapy and linear accelerator treatment, under the direction of a qualified radiologist.

2. Costs shared with Diagnostic Radiology and Nuclear Medicine, such as radiologists, radiology office expense and maintenance costs including salaries of bioengineering personnel, shall be apportioned among the benefiting centers.

3. The cost of compensation of radiologists involved in therapeutic radiology as well as the revenue they generate shall be reported to the extent that their compensation is provided through agreement with the hospital.

4. Functions shall include the following: Consultation with patients and attending physician; operation of specialized equipment; storage of radioactive material; disposal of radioactive waste; and inspecting, testing and maintaining specialized equipment.

(b) Units of Service: Procedures.

6.64 Central Supply Services (CSS)

(a) The functions of the Central Supply Services (CSS) are as follows:

1. Central Supply Services shall prepare and issue medical and surgical supplies and equipment, except pharmaceuticals and I.V. solutions to patients and to other cost centers.

2. The invoice cost of non-charged supplies and equipment issued to other centers shall be transferred to the using centers, preferably on a monthy basis. The invoice cost of charged medical supplies shall be transferred to the Medical and Surgical Supplies Sold center, preferably on a monthly basis.

3. The cost of non-charged reusable medical supplies and equipment requisitioned from CSS by different centers (e.g., respirators) shall be reported in the Central Supply Service Center. Costs associated with non-charged reusable medical supplies and equipment requisitioned from only one center shall be reported in that center.

4. Functions shall include the following: Requisitioning and issuing of appropriate supply items required for patient care; preparing sterile irrigating solutions; collecting, assembling, sterilizing, and redistributing reusable items; and cleaning, assembling, maintaining, and issuing portable apparatus.

(b) Statistics: Costed Requisitions of All Medical and Surgical Supplies.

6.65 Dietary (DTY)

(a) The functions of the Dietary (DTY) are as follows:

1. Dietary shall be responsible for the procurement, storage, processing of food, delivery and collecting of trays and nourishment to nursing units or outpatient centers. Costs of delivery of trays to the patient once trays have been prepared or have arrived at the nursing unit shall be reported in the appropriate Routine Service center. The cost of preparing meals for cafeterias, residents, students, visitors, or house physicians shall be reported for luxury and guest meals as per section 6.27 through 6.33. Cost and Revenue of food supplements where charged to patients should be reported in the Drugs Sold to Patients center.

2. Functions shall include the following: Preparing diet manuals; recommending diets; preparing selective menus for various diet requirements; recording diet history; nutrition counseling; determining patient food preferences as to type and method of preparation; food storage and preparations; transportation of food trays to and from nursing units; stocking formula room; cashiering; dishwashing; and maintaining sanitary standards in all facilities.

(b) Statistics: Meals.

6.66 Housekeeping (HKP)

(a) The functions of the Housekeeping (HKP) are as follows:

1. Housekeeping shall be responsible for the maintenance of a clean and sanitary environment in the institution. The cost of routine cleansing of all areas, excluding Dietary (DTY) and Boiler Room (RPM) shall be included in housekeeping. The cost of housekeeping to non-acute care areas, gift and coffee shops, offices rented or maintained for fund raising, or non-approved education, and research programs, and for the room and board of employees, students, or others, as well as the expense and revenue of providing housekeeping to entities outside of the hospital shall not be reported were but shall be reported. Specialized clean-up activities associated with direct care of patients in nursing units and outpatient and ancillary centers shall be reported in those centers.

2. Functions shall include the following: Maid service; janitorial service; transporting trash to plant staging areas; mopping, stripping and waxing floors; washing of walls, ceilings, partitions and windows (inside and outside); stripping, disinfecting and making beds; and moving furniture and fixtures.

(b) Statistics: Hours of Services.

6.67 Laundry and Linen (L&L)

(a) The functions of the Laundry and Linen (L&L) are as follows: Laundry and Linen is responsible for the requisitioning, laundering, distribution, control and mending of linen, bedding, wearing apparel, and disposable linen substitutes used by the hospital. The purchase cost and maintenance of all wearing apparel, as well as all linen, bedding, etc., shall be included. The cost of providing laundry and linen services to non-acute care units and for the room and board of employees, students, and others should not be included in this center.

(b) Statistics: Pounds of Laundry.

6.68 Medical Records (MRD)

(a) The functions of the Medical Records (MRD) are as follows:

1. Medical Records shall be responsible for creating and maintaining a medical record for all patients and for maintaining a tumor registry in accordance with Department of Health requirements. The revenue and costs associated with medical records transcriptions for persons outside of the hospital shall be reported as reconciliations.

2. Functions shall include the following: Coding; typing; abstracting; filing; indexing; accessing; preparation of birth and death certificates; processing of court and other types of inquiries; maintenance and reporting of data such as patient days, visits, ancillary services and statistics by patient, disease, physician and operation; and coordinating the flow of statistics with certain hospital stations.

(b) Statistics: Percentage of time spent.

6.69 Pharmacy (PHM)

(a) The functions of the Pharmacy (PHM) are as follows:

1. The Pharmacy procures, preserves, stores, compounds, manufactures, packages, controls, assays, dispenses, and distributes medications (including I.V. solutions) for inpatients and outpatients under the jurisdiction of a licensed pharmacist. Pharmacy services shall include the maintaining of separate stocks of commonly used items in designated areas.

2. The invoice cost of non-charged pharmaceuticals issued to other cost centers shall be transferred to the using cost centers, preferably on a monthly basis. The invoice cost of charged pharamceuticals and I.V. solutions shall be transferred to the Drugs Sold to Patients center, preferably on a monthly basis.

3. Functions shall include the following: Development and maintenance of formulary(ies) established by the medical staff and consultation and advice to medical staff and nursing staff on drug therapy; adding drugs to I.V. solutions; determining incompatibility of drug combinations; and stocking of floor drugs and dispensing machines.

(b) Statistics: Costed Requisition of All Drugs.

6.70 Social Services (SOC)

(a) The functions of the Social Services (SOC) are as follows:

1. Social Services shall obtain, analyze, interpret social and economic information to assist in diagnosis, treatment and rehabilitation of patients. These services shall include counseling of staff and patients in case units and group units; participation in development of community social and health programs and community education. Revenues received by hospitals shall not be reported were, but shall be reported with the routine or ambulatory revenue centers where social services were provided and billed.

2. Functions shall include the following: Interviewing of patients and relatives to obtain a social history relevant to medical problems and planning; interpreting problems of social situations as they relate to medical condition and/or hospitalization; arranging for post discharge care of chronically ill; collecting and revising information on community health and welfare resources.

(b) Statistics: Percentage of time spent.

6.71 Research (RSH)

(a) The functions of the Research (RSH) are as follows:

1. This center shall administer, manage, and carry on research projects of the National Institutes of Health or other projects approved by the Commission in approved research. Approved research shall be reported per instructions in sections 6.27 through 6.29. Separate accounting should be maintained for each research activity in accordance with relevant contracts, grant agreements, or because of restrictions made on donations. Revenue received for research activities such as specific purpose grants shall be recorded as reconciliations. This center shall include expenses related to fellowships.

6.72 Nursing and Allied Health Education (EDU)

(a) The functions of the Nursing and Allied Health Education (EDU) are as follows:

1. The Nursing and Allied Health Education Center provides organized programs, approved by an organization which recognizes the professional statute of health services educational programs at the national level, of nursing and medical related clinical education other than for physicians. Hospitals may either operate a school or provide the clinical training activities where a degree is issued by a college or university.

2. Expenses related to the upkeep of student rooms and dormitories.

3. Functions shall include the following: Selecting qualified students; providing education in theory and practice conforming to approved standards; maintaining student personnel records; counseling of students regarding professional, personal and educational problems; selecting faculty personnel, assigning and supervising students in providing medical or nursing care to selected patients; and administering aptitude and other tests for counseling and selection purposes.

6.73 Graduate Medical Education (GME)

(a) The functions of the Graduate Medical Education (GME) are as follows:

1. Graduate Medical Education shall provide an organized program of graduate medical clinical education to interns and residents. A medical residency training program must be approved by the Liaison Committee on Graduate Medical Education or, in the case of osteopathic residencies, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association. Residency programs in the field of dentistry in a hospital must have the approval of the Council on Dental Education of the American Dental Association.

2. Included were all expenses related to the office of the Director of Medical Education and the housing and board of residents. Expenses associated with fellowships are to be included in the Research (RSH) Center.

3. Functions shall include the following: Selecting qualified students, providing education in theory and practice conforming to approved standards; maintaining student personnel records; counseling of students regarding professional, personal and education problems; and assigning and supervising students.

6.74 General Administrative Services (GAM)

(a) The functions of the General Administrative Services (GAM) are as follows:

1. General Administrative Services shall be those services associated with the overall direction and administration of the institution at all levels that are not readily distinguishable between inpatient and outpatient services. Expenses and revenues directly associable with services not related to patient care (e.g., data processing services sold to outside organizations administrative personnel responsible for the operation of skilled nursing facilities, and other exclusions) should be reported as reconciliations. Detailed reporting of certain Administrative Service expenses shall be provided.

2. General Administrative Services include:

i. Governing Board;
ii. Office of Hospital Administrator Medical Administration;
iii. Medical Administration;
iv. Nursing Administration (persons responsible for more than one functional center);
v. Personnel;
vi. Public Relations;
vii. Communications;
viii. Management Engineering;
ix. Health Sciences Library;
x. Auxiliary Groups;
xi. Data Processing;
xii. Purchasing and Stores;
xiii. Internal Audit;
xiv. Postage;
xv. Medical Library;
xvi. Medical Photography and Illustration;
xvii. Licenses and Taxes (other than income taxes and payroll taxes);
xviii. Insurance (other than Malpractice and Employees Fringe Benefits);
xix. Security;
xx. Planning;
xxi. Professional Association Memberships;
xxii. Legal and Audit Fees;
xxiii. Duplicating and Printing;
xxiv. Financial Administration;
xxv. Motor Pool; and
xxvi. Travel.

6.75 Inpatient Administrative Services (IAM)

(a) The functions of the Inpatient Administrative Services (IAM) are as follows:

1. Inpatient Administrative Services shall be those primarily associated with the overall direction and administration of inpatient services provided in the institution. For example, the hospital admitting office would be assigned to Inpatient Administrative Services, rather than General Administrative Services. Detailed reporting of certain Administrative Services expenses shall be provided.

6.76 Malpractice Insurance (MAL)

(a) The functions of the Malpractice Insurance (MAL) are as follows:

1. Malpractice Insurance shall include the institution's total premium or self-insurance cost for hospital and professional liability coverage. No other type of insurance coverage shall be included here.

6.77 Employee Health Insurance (EHI)

(a) The functions of the Employee Health Insurance (EHI) are as follows:

1. Employee Health Insurance shall include all premium payments and associated costs with union or group health insurance for employees. Hospitals which are self-insured for employees health insurance shall report no insurance costs in this cost center. However, deductions from operating revenue for personal health programs shall be reported by cost center.

6.78 Repairs and Maintenance (RPM)

(a) The functions of the Repairs and Maintenance (RPM) are as follows:

1. The Repairs and Maintenance center shall be responsible for maintenance and operation of an institution's buildings and equipment in a state of readiness required to perform hospital operations. Repairs and Maintenance of physical plant not used for services related to patient care (e.g., rental of apartments) shall be reported as reconciliations. Renovation of capital assets is to be distinguished from Repairs and Maintenance Expenses and capitalized with the asset according to the criteria described in section 6.19.

2. The maintenance and repair of specialized equipment in areas such as Diagnostic Radiology, Therapeutic Radiology, or Laboratory shall report such costs in those centers. Bio-medical engineers shall be treated in this manner.

3. Functions shall include the following: All maintenance of buildings and plant equipment including painting; maintenance of moveable equipment to the extent done by institution employees; and minor improvements and renovation of buildings and plant equipment.

6.79 Utilities Cost (UTC)

(a) The functions of the Utilities Cost (UTC) are as follows:

1. The center shall be used to account for all utility costs such as electricity, gas, oil, disposal services and water. A breakdown of the cost and source of these utilities shall be provided.

2. Telephones shall be considered utilities and thus such costs and revenues shall not be reported in this center. Costs associated with utilities provided to buildings and areas not involved in patient care shall be excluded and reported as reconciliations.

SUBCHAPTER 7. DIAGNOSIS RELATED GROUPS (DRG)

7.1 Diagnosis Related Groups (DRG)

(a) Diagnosis Related Groups (DRG) represent categories of hospital inpatients with similar clinical characteristics and, except for outliers, patients in each DRG can be expected to consume similar amounts of hospital resources. Assignment of a patient to a DRG requires the following information:

1. Principal diagnosis;
2. Secondary diagnosis;
3. Principal and other procedures;
4. Age;
5. Sex;
6. Discharge status; and
7. Birthweight (Newborn).

(b) The appropriate definitions are reported here and these are the only definitions allowable for DRG assignment.

1. Principal diagnosis: The condition established after study shall be chiefly responsible for occasioning the admission of a patient to the hospital for care. The principal diagnosis must be coded using the International Classification of Diseasess, 9th Revision, with Clinical Modifications (ICD-9-CM).

2. Secondary diagnosis: Conditions that exist at the time of admission or develop subsequently which affect the treatment received and/or the length of stay. Diagnoses which have no bearing on the treatment received during a current hospital stay are not appropriate for use in DRG assignment. All secondary diagnoses must be coded using ICD-9-CM.

3. Principal and other procedures: Diagnostic and therapeutic procedures performed during a patient stay. All procedures must be coded using ICD-9-CM.

4. Age: Patient's chronological age at admission in years.

5. Sex: Patient's sex as male or female.

6. Discharge Status: The circumstances under which a patient left the hospital, coded as routine discharge to home, discharged against medical advice, transferred or died.

7. Birthweight: A newborn's weight in grams at birth.

8. Neonate: A newborn under 29 days of age.

(c) Admission: Patient hospitalized for a condition related to a recent spell of illness.

1. Patients who are treated and subsequently admitted through the emergency room shall be considered admitted to the hospital at the time the physician orders the admission. The cause of the admission shall be considered the cause of the emergency room treatment. Therefore the course of treatment shall be considered one admission. Services rendered in the emergency room shall be reflected in the inpatient record and the UB-82 claim form.

2. Similarly, a patient admitted for a course of treatment as a Same Day Surgery (SDS) patient, who subsequently is admitted from that mode of treatment shall be considered one admission. Services rendered in the SDS mode shall be reflected in the inpatient record and UB-82 claim form.

3. Readmissions are patients admitted to an acute care hospital at another time during the last seven days.

7.2 Outliers

Outliers are patients displaying atypical characteristics relative to other patients in a DRG. The five categories of outliers are defined and the methodology for outlier payment is established in this plan.

7.3 List of Diagnosis Related Groups

(a) The following are Major Diagnostic Categories (Organ System Approach):

1. Diseases and Disorders of the Nervous System.
2. Diseases and Disorders of the Eye.
3. Diseases and Disorders of the Ear, Nose, Mouth and Throat.
4. Diseases and Disorders of the Respiratory System.
5. Diseases and Disorders of the Circulatory System.
6. Diseases and Disorders of the Digestive System.
7. Diseases and Disorders of the Hepatobiliary System and Pancreas.
8. Diseases and Disorders of the Musculoskeletal System and Connective Tissue.
9. Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast.
10. Endocrine, Nutritional and Metabolic Diseases and Disorders.
11. Diseases and Disorders of the Kidney and Urinary Tract.
12. Diseases and Disorders of the Male Reproductive System.
13. Diseases and Disorders of the Female Reproductive System.
14. Pregnancy, Childbirth and the Puerperium.
15. Normal Newborns and Other Neonates with Certain Conditions Originating in the Perinatal Period.
16. Diseases and Disorders of Blood and Blood Forming Organs and Immunological Disorders.
17. Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms.
18. Infectious and Parasitic Diseases (Systemic or Unspecified Sites).
19. Mental Diseases and Disorders.
20. Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders.
21. Injuries, Poisonings and Toxic Effects of Drugs.
22. Burns.
23. Factors Influencing Health Status and Other Contacts with Health Services.
24. Human Immunodeficiency Virus (HIV) Infections.
25. Multiple Significant Trauma.

(b) The following are abbreviations used in ICD-9-CM DRG English descriptors in (c) below.

1. w AGE 70 CC: Patients who are over age 70 and/or have a substantial complication or comorbidity.
2. wO AGE 70 CC: Patients who are age 0-70 and have no substantial complication or comorbidity.
3. w CC: Patients with a substantial complication or comorbidity.
4. wO CC: Patients without a substantial complication or comorbidity.
5. O.R. Procedures: therapeutic or diagnostic procedures generally performed in a fully equipped operating room (O.R.).
6. URI: Upper Respiratory Infection.
7. AMI: Acute Myocardial Infarction.
8. CHF: Congestive Heart Failure.
9. D&C: Dilation and Curettage.
10. FUO: Fever of Unknown Origin.
11. NEC: Not Elsewhere Classifiable.

SUBCHAPTER 8

8.1 Disproportionate Share Adjustment

(a) A disproportionate share hospital shall be a hospital designated by the Commissioner of Human Services. At a minimum, each hospital with a Medicaid inpatient hospital utilization rate that is one standard deviation above the mean Medicaid utilization rate for hospitals receiving Medicaid payments in the State, and every hospital with a low income utilization rate above 25% will be treated as a disproportionate share hospital. A hospital shall be designated as a disproportionate share hospital eligible for a charity care subsidy pursuant to P.L. 1992, c.160 Section 9 if upon establishing a rank order of the percentage of uncompensated care for all hospitals, the hospital is determined by the Commissioner of Health to be at or above the 80th percentile of hospitals with the highest percentage of uncompensated care, or if the hospital is eligible for other uncompensated fund subsidy pursuant to P.L. 1992, c.160, Section 11, if upon establishing a rank order of other uncompensated care for hospitals, has other uncompensated care which is at or above the 45th percentile of all hospitals' other uncompensated care levels.

(b) The Commissioner of Human Services may designate additional hospitals as disproportionate share hospitals if it is determined they serve a large number of low income mentally ill or developmentally disabled clients.

(c) The Commissioner of Human Services may make additional disproportionate share payments to facilities operating under

N.J.S.A. 18A:64G-1 et seq. providing a high level of charity and uncompensated care to low income persons and persons with special needs.

(d) The Commissioner of Human Services may also designate a facility as eligible for additional disproportionate share payments if its uncompensated care as a percentage of payments from non-governmental payers is equal to or greater than 30%. In addition, to be designated as eligible for this additional disproportionate share payment, the facility must demonstrate a commitment to the establishment and operation of a managed care program for the uninsured and other low income persons, case management programs for persons with AIDS, tuberculosis or substance abuse and addiction or a program for children at risk of health problems resulting from lack of immunizations, lead poisoning, abuse or birth defects. In addition, a facility must demonstrate a commitment to continuing service to mentally ill clients.

8.2 Method of Payment

(a) The disproportionate share adjustment shall include at least the adjustment amount recommended by the Commissioner of Health based upon a determination regarding payments for charity and uncompensated care from the Health Care Subsidy Fund.

1. For facilities operating under N.J.S.A. 18A:64G-1 et seq., the disproportionate share adjustment recommended by the Commissioner of Health may be increased by an amount recommended by the Office of Management and Budget which will consider the total operating cost of the facility less any third party payments, including all other Medicaid payments, as well as payments from non-State sources for services provided by the hospital during the facility's fiscal year.

2. The recommendation from the Department of Health shall be calculated in the following manner pursuant to P.L. 1992 Chapter 160.

i. Charity Care component of the Hospital Health Care Subsidy Fund shall be calculated by ranking hospitals using the following formula:

Hospital Specific Approved Uncompensated Care 1991
Hospital Specific Preliminary Cost Base 1992
= Hospital Specific % Uncompensated Care (%UC)

ii. If a hospital's Uncompensated Care percentage (%UC) is among the 80% of hospitals with the highest percentage of uncompensated care, it is eligible to receive a Health Care Subsidy Fund Charity Care adjustment. This adjustment shall equal the product of the facility's hospital specific percentage of uncompensated care times the funds allocated to the Charity Care Component of the Health Care Subsidy Fund. The calculation of the hospital's uncompensated care shall be based upon the amount of uncompensated care reported in 1991 to the Department of Health and shall exclude Medicare bad debt, offsetting Indigency Grants/payments and Uncompensated Care for Excluded Health Services.

iii. A hospital's eligibility for the Other Uncompensated Care Hospital Subsidy Fund payment shall be calculated using the following formula:

Hospital Specific Other Uncompensated Care for Year
Hospital Specific Revenue for Year = Hospital Specific Percentage of Other Uncompensated Care (%OUC)

A hospital is eligible for a subsidy if, upon establishing a rank order of the %OUC for all hospitals:

(1) In 1993, the hospital is among the 45% of hospitals with the highest %OUC;

(2) In 1994, the hospital is among the 30% of hospitals with the highest %OUC; and

(3) In 1995, the hospital is among the 15% of hospitals with the highest %OUC.

iv. The amount of the subsidy an eligible hospital shall receive shall be based on the following:

Hospital Specific Other Uncompensated Care for Year
Total Other Uncompensated Care for all Eligible Hospitals for Year
multiplied by Total Amount of Subsidy Allocated for the Year
= Hospital Specific Subsidy for the Year

The monies in the Other Uncompensated Care component of the disproportionate share hospital subsidy account shall be distributed to eligible hospitals in accordance with the formulas provided in this section. In 1993, the fund shall distribute $100 million in subsidies to eligible hospitals; in 1994, the fund shall distribute $67 million to eligible hospitals; and in 1995, the fund shall distribute $33 million to eligible hospitals. For 1993, the formulas shall use 1991 Hospital Specific Other Uncompensated Care and Total Uncompensated Care for eligible hospitals and the hospital's PCB for "Hospital Specific Revenue for Year." In 1994 and 1995, the formulas shall use 1992 other Uncompensated Care and Total Other Uncompensated Care for all eligible hospitals and the hospital's 1993 revenue cap established pursuant to section 3 of P.L. 1992, c.160.

v. Hospitals eligible for additional disproportionate share payments may receive an additional payment adjustment determined by the Commissioner of the Department of Human Services from the Hospital Relief Subsidy fund. This additional payment shall be based upon the facility's percentage of clients with AIDS, tuberculosis, substance abuse and addiction and complex birth eligibility for such additional disproportionate share payments will be determined by the proportion of low income clients served by the hospital.

(d) Payments from the Hospital Relief Subsidy Fund shall be calculated in the following manner:

1. The facility's 1991 Uncompensated Care as Reported to the Department of Health (1991 UCC%) shall be multiplied by the facility's 1992 Preliminary Cost Base most recently approved by the Hospital Rate Setting Commission divided by the product of the total percentage of non-federal payers at the facility multiplied by the facility's 1992 Preliminary Cost Base most recently approved by the Hospital Rate Setting Commission. The product of this formula will identify the hospital's Hospital Relief Subsidy Eligibility Factor (HRSEF). Hospitals with a HRSEF above 30% shall be eligible for a subsidy.

2. The subsidy shall be an amount allocated by the Commissioner during the fiscal year for this purpose and shall be distributed in the following manner:

i. The payments for admissions for the following categories are taken from the 1991 MIDS file maintained by the New Jersey Department of Health:

(1) HIV (MDC 24)

(2) Mental Health (MDC 19)

(3) Substance Abuse (MDC 20)

(4) Complex Neonates (DRG 600 through 618, 622, 623, 626 and 627)

(5) Tuberculosis as a major or minor diagnosis (ICD-9: 010.0 through 018.9)

3. The funding for the subsidy shall be distributed among eligible facilities based upon the facility's percentage of payments for clients with the above categories as a percentage of all payments for clients in these categories in eligible hospitals.

(e) Disproportionate Share Hospitals which service a large number of low income mentally ill or developmentally disabled clients may also be eligible to receive increased disproportionate share payment. The amount of payments to be made to facilities which serve a large number of mentally ill low income clients will be based upon recommendation by the Division of Mental Health and Hospitals within the Department of Human Services to the Commissioner of the Department of Human Services. This recommendation will identify hospitals essential to preserve the fragile network of mental health providers in the State. The Division of Developmental Disabilities may also recommend an additional payment to facilities who serve a large number of developmentally

disabled clients. These additional payments will assure that these low income and special needs clients continue to have access to critical care.

1. The Hospital Subsidy Fund for Mentally Ill and Developmentally Disabled Clients shall be an amount allocated by the Commissioner during the fiscal year for this purpose. It shall be distributed in the following manner:

i. Hospitals who receive funding from the Hospital Relief Subsidy Fund shall only be eligible for a payment from this fund if recognized by the Division of Mental Health and Hospitals and a Short Term Care Facility (STCF) or a Child Community Inpatient Service (CCIS). Payments to STCF and CCIS shall be based upon its distribution of beds for these services times a projection of the cost of providing the service in a state facility.

ii. Hospitals who are not STCF or CCIS, but which are under contract with the Division of Mental Health and Hospitals shall receive an allocation of funds based upon the percentage of services provided by the hospital as a percentage of all services provided by all hospitals.

SUBCHAPTER V. REVIEW AND APPEAL OF RATES

9.1 Review and Appeal of Rates

(a) All hospitals, within 15 working days of receipt of the Proposed Schedule of Rates, shall notify the Division of any calculation errors in the rate schedule. If upon review it is determined by the Division that the error is of substantial value, a revised rate will be issued to the hospital within 10 working days. If the discrepancy is determined to be substantial and a revised Schedule of Rates is not issued by the Division within 10 working days, notification time frames above will not become effective until the hospital received a revised Schedule of Rates.

(b) Any hospital which seeks an adjustment to its rates must agree to an operational review at the discretion of the Department of Human Services.

1. A request for a rate review must be submitted by a hospital in writing to the Department of Human Services, Division of Medical Assistance and Health Services, Office of Budget, Fiscal Affairs and Information Systems, CN 712, Trenton, New Jersey 08625, within 20 days after publication of the rates by the Department of Human Services.

2. The Division will not approve an increase in a hospital's rates unless the hospital demonstrates that it would sustain a marginal loss in providing inpatient services to Medicaid recipients at the rates under appeal even if it were an economically and efficiently operated hospital. Any hospital seeking a rate increase must demonstrate the cost it must incur in providing services to Medicaid recipients and the extent to which it has taken all reasonable steps to contain or reduce the costs of providing inpatient hospital services. The hospital may be required at a minimum to submit to the Department of Human Services, the following information:

i. Operational reviews;

ii. Efficiency studies and reports identifying opportunities for cost savings;

iii. Minutes of the meeting of the hospital's board of directors and board's finance committee;

iv. Reports of the Joint Commission on the Accreditation of Health Care Organizations;

v. Management letters;

vi. The hospital's strategic plans, long range plans, facilities plans and marketing plans;

vii. The hospital's annual report;

viii. Any analyses of the hospital's marginal cost in providing services to Medicaid or other categories of patients;

ix. Cost accounting documentation or reports pertaining to the hospital's cost incurred in treating Medicaid recipients or the comparative cost of treating Medicaid and other patients;

x. A copy of the hospital's most recent Medicare cost report with all supporting schedules;

xi. Contracts with other payors providing for negotiated rates or discounts from billed charges; and

xii. Evidence that the appealed rates jeopardize the long term financial viability of the hospital (that is, that the hospital is sustaining a marginal loss in treating Medicaid recipients) and that the hospital is necessary to provide access to care for Medicaid recipients.

(b) The Division shall review the documentation and determine if an adjustment is warranted.

(c) The Division shall issue a written determination with an explanation as to each request for a rate adjustment. If a hospital is not satisfied with the Division's determination, they may request an administrative hearing pursuant to N.J.A.C. 10:49-10, et seq. The Administrative Law Judge will review the reasonableness of the Division's reason for denying the requested rate adjustment based on the documentation that was presented to the Division. Additional evidence or documentation shall not be considered. The Director of the Division of Medical Assistance and Health Services shall thereafter issue the final agency decision either adopting, modifying or rejecting the Administrative Law Judge's initial Office of Administrative Law decision. Thereafter, review may be had in the Appellate Division.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the February 1, 1993 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JANUARY 19, 1993

NEXT UPDATE: SUPPLEMENT FEBRUARY 16, 1993

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
24 N.J.R. 1139 and 1416	April 6, 1992	24 N.J.R. 3579 and 3784	October 19, 1992
24 N.J.R. 1417 and 1658	April 20, 1992	24 N.J.R. 3785 and 4144	November 2, 1992
24 N.J.R. 1659 and 1840	May 4, 1992	24 N.J.R. 4145 and 4306	November 16, 1992
24 N.J.R. 1841 and 1932	May 18, 1992	24 N.J.R. 4307 and 4454	December 7, 1992
24 N.J.R. 1933 and 2102	June 1, 1992	24 N.J.R. 4455 and 4606	December 21, 1992
24 N.J.R. 2103 and 2314	June 15, 1992	25 N.J.R. 1 and 218	January 4, 1993
24 N.J.R. 2315 and 2486	July 6, 1992	25 N.J.R. 219 and 388	January 19, 1993
24 N.J.R. 2487 and 2650	July 20, 1992	25 N.J.R. 389 and 616	February 1, 1993
24 N.J.R. 2651 and 2752	August 3, 1992	25 N.J.R. 619 and 736	February 16, 1993
24 N.J.R. 2753 and 2970	August 17, 1992	25 N.J.R. 737 and 1030	March 1, 1993
24 N.J.R. 2971 and 3202	September 8, 1992	25 N.J.R. 1031 and 1308	March 15, 1993
24 N.J.R. 3203 and 3454	September 21, 1992	25 N.J.R. 1309 and 1620	April 5, 1993
24 N.J.R. 3455 and 3578	October 5, 1992		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
	Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)			
AGRICULTURE—TITLE 2				
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:32-2.4	Sire Stakes Program: stallion standing full season	24 N.J.R. 3981(b)	R.1993 d.70	25 N.J.R. 463(a)
2:34-2.1, 2.2	Equine Advisory Board rules	25 N.J.R. 740(a)		
2:76-2.1, 2.2, 2.3, 2.4	Recommendation of agricultural management practices	25 N.J.R. 622(a)		
2:76-3.12, 4.11	Farmland preservation programs: deed restrictions on enrolled lands	25 N.J.R. 222(a)		
2:76-6.15	Agriculture Retention and Development Program: lands permanently deed restricted	25 N.J.R. 223(a)		
	Most recent update to Title 2: TRANSMITTAL 1993-1 (supplement January 19, 1993)			
BANKING—TITLE 3				
3:1-2.3, 2.5, 2.21	Depository charter applications and branch applications	25 N.J.R. 1033(a)		
3:1-14.5	Revolving credit equity loans	25 N.J.R. 1033(b)		
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:18	Secondary Mortgage Loan Act rules	24 N.J.R. 3982(a)	R.1993 d.55	25 N.J.R. 463(b)
3:18-3.2, 5.1, 5.3, 8.1	Secondary mortgage loans	25 N.J.R. 1033(b)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:41-2.1, 11	Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)		
3:42	Pinelands Development Credit Bank	25 N.J.R. 223(b)	R.1993 d.151	25 N.J.R. 1511(a)
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4A:4	Selection and appointment	25 N.J.R. 1085(b)		
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5:18-1.5, 2.4, 2.5, 2.7, 3.1–3.5, 3.7, 3.13, 3.17, 3.20, 3.30, App. 3A, 4.7, 4.9, 4.11, 4.12, 4.19	Uniform Fire Code	25 N.J.R. 393(a)		

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5:18-2.9, 2.12, 2.14, 2.16, 2.17	Uniform Fire Code: enforcement and penalties for violations	25 N.J.R. 397(a)		
5:18A-4.6	Fire Code enforcement: review of proposed action against certified fire official	25 N.J.R. 399(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)	R.1993 d.79	25 N.J.R. 686(b)
5:23	Uniform Construction Code	24 N.J.R. 1420(b)	R.1993 d.106	25 N.J.R. 920(a)
5:23	Uniform Construction Code: effective date of Model Codes	————	————	25 N.J.R. 1512(a)
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)	R.1993 d.61	25 N.J.R. 463(c)
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25	Uniform Construction Code: mechanical inspector license and mechanical inspections	25 N.J.R. 624(a)		
5:23-5.4, 5.5	Uniform Construction Code: licensure of elevator subcode officials and inspectors	24 N.J.R. 4309(a)	R.1993 d.105	25 N.J.R. 920(b)
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)	R.1993 d.132	25 N.J.R. 1512(b)
5:27-3.5	Rooming and boarding houses: conformity with Fair Housing Act amendments	24 N.J.R. 4310(a)	R.1993 d.104	25 N.J.R. 920(c)
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91-14	Council on Affordable Housing: interim procedures	25 N.J.R. 1118(a)		
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
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6:3	School districts	25 N.J.R. 1095(a)		
6:5-2.3, 2.4, App.	Organization of Department	Exempt	R.1993 d.107	25 N.J.R. 921(a)
6:8-9.4, 9.8	Educational improvement plans in special needs districts: fiscal, strategy and program requirements	24 N.J.R. 4467(b)	R.1993 d.112	25 N.J.R. 922(a)
6:9	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:11-3.2	Professional licensure and standards: fees	25 N.J.R. 1111(a)		
6:21-12	Use of school buses	25 N.J.R. 1095(a)		
6:28-8.1, 8.3, 8.4	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:29-1.7, 9, 10	Eye protection in schools; reporting of child abuse allegations; safe and drug free schools	25 N.J.R. 1095(a)		
6:29-3.4	Medical examination requirement for interscholastic athletic participation	24 N.J.R. 4150(a)	R.1993 d.80	25 N.J.R. 686(c)
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7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:1G-1.2, 6.1–6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
7:1I	Processing of damage claims under Sanitary Landfill Facility Contingency Fund Act	25 N.J.R. 741(a)		
7:1K	Pollution Prevention Program	24 N.J.R. 3609(a)	R.1993 d.108	25 N.J.R. 930(a)
7:1K-6.1	Pollution Prevention Plan progress reporting: administrative correction	————	————	25 N.J.R. 1549(a)
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:6-1.45	Seven Presidents Park, Long Branch: boating restrictions within jetty areas	25 N.J.R. 57(a)	R.1993 d.158	25 N.J.R. 1516(a)
7:7-1.7	Coastal Permit Program fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)	R.1993 d.140	25 N.J.R. 1549(a)
7:8	Stormwater management	24 N.J.R. 4469(a)	R.1993 d.113	25 N.J.R. 990(a)
7:8	Stormwater runoff and nonpoint source pollution control: public meeting and request for comment	24 N.J.R. 4470(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		

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7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(a)		
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)	R.1993 d.73	25 N.J.R. 464(a)
7:9-6.4, 6.8, Table 1	Ground water quality standards: administrative corrections	———	———	25 N.J.R. 1552(a)
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2–12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		
7:11	New Jersey Water Supply Authority: policies and procedures	25 N.J.R. 1036(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)		
7:13-7.1	Flood plain redelineation of Green Brook in Scotch Plains and Watchung	24 N.J.R. 4475(a)	R.1993 d.160	25 N.J.R. 1556(a)
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:14A-1.9, 2.4, 3.9, 3.13, App. A, B; 13.5, App. H	Statewide Stormwater Permitting Program: administrative corrections	———	———	25 N.J.R. 687(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-4.7	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)		
7:25-6.13	1993-94 Fish Code: harvest of largemouth and smallmouth bass	25 N.J.R. 224(a)	R.1993 d.139	25 N.J.R. 1556(b)
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-16.1	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)	R.1993 d.116	25 N.J.R. 1231(a)
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)	R.1993 d.77	25 N.J.R. 689(a)
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)	R.1993 d.98	25 N.J.R. 990(b)
7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(a)	R.1993 d.109	25 N.J.R. 991(a)
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-7.6	Hazardous waste facility operator responsibilities: administrative correction	———	———	25 N.J.R. 1556(c)

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7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
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7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9	Environmental Cleanup Responsibility Act rules	25 N.J.R. 100(a)	R.1993 d.137	25 N.J.R. 1557(a)
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-1.4, 1.6–1.30, 8.4, 8.14–8.24, 16.9, 21	Air contaminant emission statements from stationary sources	24 N.J.R. 2979(a)	R.1993 d.128	25 N.J.R. 1254(a)
7:27-1.4, 1.36, 1.37, 1.38, 8.1, 8.3, 8.4, 8.24, 18	Control and prohibition of air pollution from new or altered sources: emission offsets	24 N.J.R. 3459(a)	R.1993 d.129	25 N.J.R. 1231(b)
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)	R.1993 d.128	25 N.J.R. 1254(a)
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:29-1.1, 1.5, 2	Determination of noise from stationary sources	25 N.J.R. 1040(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
7:50-4.1, 4.70	Pinelands Comprehensive Management Plan: expiration of development approvals and waivers	25 N.J.R. 225(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		
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8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:24	Retail food establishments and food and beverage vending machines	25 N.J.R. 662(a)		
8:25	Youth Camp Safety Act standards	25 N.J.R. 756(a)		
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)	Expired	
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:33C-10.1	Regionalized perinatal services: administrative correction to adoption notice	———	———	25 N.J.R. 580(a)
8:33G	Computerized tomography services: certification of need	24 N.J.R. 4221(a)	R.1993 d.87	25 N.J.R. 700(a)
8:33I-1	Megavoltage radiation oncology services: certification of need	24 N.J.R. 4222(a)	R.1993 d.88	25 N.J.R. 701(a)
8:33M-1.6	Bed need methodology for adult comprehensive rehabilitation services	24 N.J.R. 4225(a)	R.1993 d.89	25 N.J.R. 703(a)
8:35A-1.2, 3.4, 3.6, 4.1, 5.3	Maternal and child health consortia: fiscal management and staffing	25 N.J.R. 1116(a)		
8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46	Long-term care facilities: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care services	24 N.J.R. 4228(a)		

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8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)		
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)		
8:43G-5.10	Acute care hospital participation in New Jersey Poison Control Information and Education System	25 N.J.R. 792(a)		
8:43G-5.10	Hospital payments to maternal and child health consortia	Emergency (expires 5-1-93)	R.1993 d.138	25 N.J.R. 1295(a)
8:43G-5.10, 19.1, 19.20	Hospital licensing standards: funding for regionalized services; obstetric services structural organization	25 N.J.R. 1117(a)		
8:44-2.2, 3	Limited purpose laboratories	25 N.J.R. 668(a)		
8:59-1, 2, 5, 6, 9, 11, 12	Worker and Community Right to Know Act rules	25 N.J.R. 864(a)		
8:59-3.1, 3.2, 3.3, 3.5-3.9, 3.11, 3.13-3.17	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (24 N.J.R. 2559(a))	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b))	24 N.J.R. 1674(a)	R.1993 d.65	25 N.J.R. 582(a)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a))	24 N.J.R. 2414(b)	R.1993 d.67	25 N.J.R. 583(a)
8:71	Interchangeable drug products (24 N.J.R. 4261(a))	24 N.J.R. 2997(a)	R.1993 d.66	25 N.J.R. 582(b)
8:71	Interchangeable drug products	24 N.J.R. 4009(a)	R.1993 d.64	25 N.J.R. 580(b)
8:71	Interchangeable drug products	25 N.J.R. 55(a)	R.1993 d.124	25 N.J.R. 1221(a)
8:71	Interchangeable drug products	25 N.J.R. 875(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		

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9:4-1.12	County college construction projects	25 N.J.R. 668(b)		
9:4-3.12	Noncredit courses at county colleges	25 N.J.R. 227(a)		
9:6A	State college personnel system	24 N.J.R. 3052(a)	R.1993 d.118	25 N.J.R. 1221(b)
9:7-1.2, 2.11, 4.2	Student Assistance Programs: administrative corrections	———	———	25 N.J.R. 1513(a)

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10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)	Expired	
10:14	Statewide Respite Care Program Manual	25 N.J.R. 876(a)		
10:36	Patient supervision at State psychiatric hospitals	24 N.J.R. 4232(a)	R.1993 d.58	25 N.J.R. 583(b)
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10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)		
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10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:51-1.1	Hospital services reimbursement methodology	Emergency (expires 5-10-93)	R.1993 d.154	25 N.J.R. 1582(a)
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.17	Out-of-state inpatient hospital services: administrative correction	———	———	25 N.J.R. 1513(b)
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10:52-5, 6, 7, 8, 9	Hospital services reimbursement methodology	Emergency (expires 5-10-93)	R.1993 d.154	25 N.J.R. 1582(a)
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10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)		
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual	24 N.J.R. 4479(a)		
10:69A-2.1, 4.1–4.4, 5.3, 5.5	PAAD prescription copayment	24 N.J.R. 4328(a)	R.1993 d.155	25 N.J.R. 1514(a)
10:72-1.1	New Jersey Care—Special Medicaid Program scope: administrative correction	_____	_____	25 N.J.R. 704(a)
10:72-1.1, 4.1, 4.5	New Jersey Care—Special Medicaid Manual: specified low-income Medicare beneficiaries	25 N.J.R. 1042(b)		
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)		
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:83-1.11	Supplemental Security Income (SSI) payment levels	25 N.J.R. 434(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
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10:89-2.3, 3.1, 3.4, 3.6, 4.1	Home Energy Assistance	24 N.J.R. 4593(a)	R.1993 d.97	25 N.J.R. 997(a)
10:122C-2.5	Approval of foster homes: administrative correction	_____	_____	25 N.J.R. 1514(b)
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10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses: annual adjustment	25 N.J.R. 229(a)	R.1993 d.152	25 N.J.R. 1515(a)
10:124-5.1	Children's shelter facilities and homes: local government physical facility requirements	24 N.J.R. 4482(a)	R.1993 d.156	25 N.J.R. 1515(b)
10:133A-1.1	DYFS initial response: administrative correction	_____	_____	25 N.J.R. 1514(b)
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10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)		
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11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)	R.1993 d.157	25 N.J.R. 1526(a)
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-33	Public Advocate reimbursement disputes	24 N.J.R. 2706(a)		
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)	R.1993 d.68	25 N.J.R. 588(a)
11:2-26	Insurer's annual audited financial report: extension of comment period	24 N.J.R. 2708(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)	R.1993 d.157	25 N.J.R. 1526(a)
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:3-2.8, 33.2, 34.4, 44	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	Emergency (expires 4-30-93)	R.1993 d.135	25 N.J.R. 1290(a)
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.12	Automobile insurance: filings reflecting paid, apportioned MTF expenses and losses	24 N.J.R. 4486(a)	R.1993 d.148	25 N.J.R. 1543(a)
11:3-16.12	Automobile insurance: public hearing and extension of comment period regarding filings reflecting paid, apportioned MTF expenses and losses	25 N.J.R. 56(a)		
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11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)		
11:5-1.36	Real Estate Guaranty Fund assessment	25 N.J.R. 56(b)	R.1993 d.153	25 N.J.R. 1548(a)
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:13-8	Commercial lines: prospective loss costs filing procedures	25 N.J.R. 1047(a)		
11:15-3	Joint insurance funds for local government units providing group health and term life benefits	25 N.J.R. 436(a)		
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11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		
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12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
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12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)		
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13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:21-19.9	Motor Vehicle Franchise Committee: administrative hearing costs	24 N.J.R. 3015(c)	R.1993 d.103	25 N.J.R. 998(a)
13:24-4.1, 4.2	Amber light permit for rural route letter carrier vehicles	24 N.J.R. 4236(a)	R.1993 d.115	25 N.J.R. 1222(a)
13:27-2.2 through 13:45A-26.4	Division of Consumer Affairs: administrative changes to various licensing board and committee rules	———	———	25 N.J.R. 1516(b)
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13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)	R.1993 d.93	25 N.J.R. 705(a)
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.JR. 4010(a)		
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13:35-6.13	Physician assistant licensing fees	24 N.J.R. 4334(a)	R.1993 d.92	25 N.J.R. 709(a)
13:35-6.13, 9	Acupuncture Examining Board: practice of acupuncture	24 N.J.R. 4013(a)		
13:35-6.13, 10.9	Board of Medical Examiners: fee schedule; athletic trainer registration fee	25 N.J.R. 1058(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		
13:36-5.12, 5.20	Mortuary Science: licensee advertising; referral fee prohibition	24 N.J.R. 3016(a)	R.1993 d.76	25 N.J.R. 709(b)
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13:37	Board of Nursing rules	25 N.J.R. 455(b)		
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13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
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13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)		
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13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	25 N.J.R. 1060(a)		
13:71-23.3A	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 269(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	25 N.J.R. 1061(a)		
13:75-1.7	Violent Crimes Compensation Board: minimum compensable losses	24 N.J.R. 4491(a)	R.1993 d.133	25 N.J.R. 1224(a)

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13:75-1.19	Violent Crimes Compensation Board: moneys received from other sources by claimants	24 N.J.R. 4239(a)	R.1993 d.74	25 N.J.R. 710(a)
13:75-1.31	Violent Crimes Compensation Board: injury from crime of burglary	24 N.J.R. 4491(b)	R.1993 d.134	25 N.J.R. 1224(b)
13:76	Arson investigators: training and certification	25 N.J.R. 896(a)		
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14:11-8	Natural gas pipelines	25 N.J.R. 897(a)		
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14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
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16:28-1.36	Speed limit zone along Route 24 in Morris, Essex, and Union counties	25 N.J.R. 270(b)	R.1993 d.121	25 N.J.R. 1225(b)
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16:28-1.72	School zones along U.S. 206 in Lawrence Township	24 N.J.R. 4499(a)	R.1993 d.100	25 N.J.R. 1004(a)
16:28-1.108	School zone along Route 82 in Union Township	25 N.J.R. 1061(b)		
16:28A-1.6, 1.9, 1.38	Restricted parking along Route 7 in Belleville, Route 17 in North Arlington, and Route 71 in Bradley Beach	25 N.J.R. 1062(a)		
16:28A-1.7	Restricted parking and stopping along U.S. 9 in Cape May, Atlantic, Burlington, Ocean, Monmouth, and Middlesex counties	25 N.J.R. 271(a)	R.1993 d.119	25 N.J.R. 1227(a)
16:28A-1.13	Restricted parking and stopping along U.S. 22 in Clinton Township	25 N.J.R. 273(a)	R.1993 d.120	25 N.J.R. 1227(b)
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16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	25 N.J.R. 274(a)	R.1993 d.122	25 N.J.R. 1228(a)
16:28A-1.41	No stopping or standing zones along Route 77 in Bridgeton	25 N.J.R. 1063(a)		
16:28A-1.112	Restricted stopping and standing along Route 138 in Wall Township	24 N.J.R. 4334(b)	R.1993 d.63	25 N.J.R. 598(a)
16:29-1.71	No passing zones along Route 41 in Camden County	25 N.J.R. 60(b)	R.1993 d.101	25 N.J.R. 1005(a)
16:31-1.31	Turning restrictions along U.S. 1 Business in Lawrence Township	25 N.J.R. 1064(a)		
16:47-1.1, 3.16, 4.3, 4.4, 4.6, 4.11, 4.13, 4.15, 4.18, 4.20, 4.30, 4.32, 4.40, 5.2, 5.3, 5.4, 6.5	State Highway Access Management Code: administrative changes	_____	_____	25 N.J.R. 1005(b)
16:47-3.8, 3.16, 4.3, 4.6, 4.7, 4.13-4.16, 4.19, 4.27, 4.30, 4.33, 4.41, 5.2, App. B, C, D, E, N, N-1, N-2	State Highway Access Management Code: access standards; permits	25 N.J.R. 903(a)		
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16:53-3.2	Autobus dimensions	25 N.J.R. 459(a)		
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16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 4025(a)		
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17:1-4.12	Purchase of service credit in State retirement systems	24 N.J.R. 4239(b)	R.1993 d.81	25 N.J.R. 710(c)
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17:2-1.4	Public Employees' Retirement System: election of member-trustee	24 N.J.R. 3690(a)	R.1993 d.78	25 N.J.R. 711(a)
17:2-4.3	Public Employees' Retirement System: school year members	25 N.J.R. 908(a)		
17:9-1.5	State Health Benefits Program: local employer reentry	25 N.J.R. 460(a)		
17:9-2.3	State Health Benefits Program: annual enrollment periods	24 N.J.R. 4025(b)		
17:9-2.4	State Health Benefits Program: retirement or COBRA enrollment	24 N.J.R. 4025(c)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)		
17:9-4.2	State Health Benefits Program: part-time deputy attorneys general	24 N.J.R. 2345(a)	R.1993 d.57	25 N.J.R. 1518(a)
17:16-33.1	State Investment Council: repurchase agreement of securities broker	25 N.J.R. 909(a)		
17:16-42.2	State Investment Council: dividend requirement for eligible stock issuers	25 N.J.R. 909(b)		
17:32	State Planning Rules	25 N.J.R. 461(a)		
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