

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 20, 1988

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JULY 18, 1988

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **September 14, 1988**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

The following proposals and preproposal are authorized by Ronald I. Parker, Acting Director, Office of Administrative Law.

Submit comments by September 14, 1988 to:
 Steven L. Lefelt, Deputy Director
 Office of Administrative Law
 Quakerbridge Plaza, CN 049
 Building No. 9
 Quakerbridge Road
 Trenton, New Jersey 08625

(a)

Uniform Administrative Procedure Rules of Practice Clerk's Notices

Proposed Amendment: N.J.A.C. 1:1-9.5

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
 Proposal Number: PRN 1988-402.

The agency proposal follows:

Summary

The Clerk of the Office of Administrative Law (OAL) is required under N.J.A.C. 1:1-9.5 to provide all parties with notice that a case has been filed with OAL and with notice of any scheduled proceeding. It has been OAL's practice to send copies of notices to a party even when that party has retained legal representation.

The proposed amendment provides that notices will be transmitted only to counsel of record or other authorized representatives when OAL has been notified that the party is represented. This is the practice followed by the judiciary. The amendment will also eliminate the confusion which occasionally occurs when a party receives copies of notices.

Social Impact

The proposed amendment will conform OAL's practice where a party is represented to that generally used and will eliminate the confusion that sometimes results when a represented party receives copies of notices.

Economic Impact

The proposed amendment will reduce the number of notices which must be sent by the OAL and eliminate some manpower, copying and postage costs.

Regulatory Flexibility Statement

The proposed amendment does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses.

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

1:1-9.5 Clerk's notices

(a)-(f) (No change.)

(g) Subsequent to notice to the Office of Administrative Law that a party is represented by counsel or other authorized representative under N.J.A.C. 1:1-5.4, notices shall be transmitted only to counsel or other authorized representative.

(b)

Uniform Administrative Procedure Rules of Practice Interpreters; Payment

Pre-proposed Amendment: N.J.A.C. 1:1-14.3

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
 Pre-Proposal Number: PPR 1988-12.

The agency pre-proposal follows:

Summary

Under N.J.A.C. 1:1-14.3(a), a party who needs an interpreter at a contested case hearing is required to pay for that interpreter. The pre-

proposed amendment would conform this rule with the requirements of N.J.S.A. 34:1-69.8 which provides that a qualified interpreter must be appointed and paid for by the agency to assist a hearing impaired person at any proceeding of a quasi-judicial nature.

The pre-proposed amendment implements that statute by exempting hearing impaired parties from the requirement that they must pay for their interpreters, by providing that an interpreter for the hearing impaired shall be appointed by the administrative law judge from a list of qualified interpreters and by specifying that the cost of such interpreters shall be paid by the transmitting agency.

Social Impact

The pre-proposed amendment simply sets forth the requirements of N.J.S.A. 34:1-69.8 which entitles hearing impaired parties to a qualified interpreter at an administrative hearing.

Economic Impact

The pre-proposal amendment incorporates the requirements of N.J.S.A. 34:1-69.8, which will have a negative economic impact upon the case transmitting agencies required to pay for interpreters for the hearing impaired. The statute's and pre-proposal amendment's economic impact on hearing impaired individuals affected will be positive, as they will no longer be required to pay for interpreters in Office of Administrative Law proceedings.

The pre-proposed amendment does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses.

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

1:1-14.3 Interpreters; payment

(a) **Except as provided in (d) below**, [Any] any party at his or her own cost may obtain an interpreter if the judge determines that interpretation is necessary.

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

(d) In cases requiring the appointment of a qualified interpreter for a hearing impaired person pursuant to N.J.S.A. 34:1-69.8, the administrative law judge shall appoint an interpreter from the official registry of interpreters. The fee for the interpreter shall be paid by the transmitting agency.

(c)

Uniform Administrative Procedure Rules of Practice Conduct of Proceedings on the Papers

Proposed Amendment: N.J.A.C. 1:1-14.8

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
 Proposal Number: PRN 1988-404.

The agency proposal follows:

Summary

The Uniform Administrative Procedure Rules at N.J.A.C. 1:1-9.1(e) permit scheduling a proceeding on the papers for certain types of cases. This process is used primarily with points and surcharge cases from the Division of Motor Vehicles. Currently, these cases are scheduled for an in-person hearing, but the party requesting the hearing may select a telephone hearing or a proceeding on the papers by completing a certification and returning it to the Clerk of the Office of Administrative Law 10 days before the scheduled hearing date.

If the party fails to appear at the hearing and does not submit a certification, the judge must still decide the case based on those documents transmitted by the agency. However, in all other cases, a party who fails to appear has 10 days to submit an explanation for the nonappearance. If the party does not submit an explanation, the judge will dismiss the matter or grant the requested relief, in accordance with N.J.A.C. 1:1-14.4.

The proposed amendment conforms the proceedings on the papers process to that used in all other cases. Thus, a party who fails to appear in a motor vehicles points or surcharge case, who has not requested a telephone hearing and who does not submit a certification, will be treated under the failure to appear process set forth in N.J.A.C. 1:1-14.4.

Social Impact

Automobile licensees in cases which may be scheduled as proceedings on the papers will now be required to take some action on their hearing request, either by appearing in person, requesting a telephone hearing or submitting a certification, to receive a decision on the merits.

Economic Impact

The proposed amendment will eliminate the need for reviewing the file and writing a decision in cases where the party has not taken any action to pursue the hearing request. It therefore should reduce hearing costs at the Office of Administrative Law and review costs at the agency.

Regulatory Flexibility Statement

The proposal does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses.

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

1:1-14.8 Conduct of proceedings on the papers

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

(e) [If no certification is received, the case will be heard as scheduled in (a) above. If the party requesting the hearing does not appear at the in-person hearing, the judge will decide the case on documents transmitted by the agency and contained in the file.] **If the party requesting the hearing does not appear at the scheduled in-person or telephone hearing and no certification is received, the matter shall be handled pursuant to N.J.A.C. 1:1-14.4.**

(a)

**Uniform Administrative Procedure Rules of Practice
Discovery**

Proposed Amendment: N.J.A.C. 1:6-10.1

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1988-403.

The agency proposal follows:

Summary

Under the current N.J.A.C. 1:6-10.1, parties in a school budget case are required to exchange certain documentation prior to the hearing. The governing body must submit these documents within 10 days of receipt of the notice of hearing and the district board of education must submit the required documents within 20 days of receipt of the notice of hearing. It is the experience of the Office of Administrative Law (OAL) that expeditious discovery aids settlement in these cases. Additionally, expeditious processing of budget disputes is desirable because of the taxation cycle. The required documentation should be in the possession of the parties prior to transmittal of the case to the OAL.

The proposed amendment maintains the required exchange of specified documents, but changes the timing of the exchange to receipt of the notice of filing of the case, rather than the notice of hearing.

Social Impact

The proposed amendment will facilitate prompt settlement or disposition of education budget dispute cases.

Economic Impact

The proposed amendment does not require the exchange of any additional materials. The required materials also should be in the possession of the parties prior to transmittal of the case to the OAL: therefore, no additional costs to the parties are anticipated. By facilitating the settlement of certain cases, cost to the parties and to OAL may be reduced.

Regulatory Flexibility Statement

The proposal does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses.

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

1:6-10.1 Discovery: exchange of documents

(a) Within 10 days of receipt of the notice of [hearing] **filing of the contested case**, the governing body shall forward to the [judge assigned to hear the case] **Clerk of the Office of Administrative Law**

a copy of the information which was given to the district board of education when the reduction was made, including the following documents:

1.-2. (No change.)

(b) Within 20 days of receipt of the notice of [hearing] **filing of the contested case**, the district board of education shall forward a copy to the governing body and two copies to the [judge] **Clerk of the Office of Administrative Law** of each of the following:

1.-9. (No change.)

(c) The governing body and the district board shall submit their statements of supporting reasons in the form of written testimony, verified by each and accompanied by a certified copy of each official document to the **judge assigned to hear the case not less than 10 days before the hearing.**

(d) (No change.)

PERSONNEL

(b)

MERIT SYSTEM BOARD

Layoffs

Proposed New Rules: N.J.A.C. 4A:8

Proposed Repeals: N.J.A.C. 4:1-16.1 through 16.6, 4:1-24.2, 4:2-16.1, 4:2-16.2, 4:3-16.1 and 4:3-16.2

Notice of Withdrawal of Proposal

Take notice that the Merit System Board has determined to withdraw the proposed new rules on Layoffs, N.J.A.C. 4A:8, and the accompanying proposed repeals, which were published in the New Jersey Register on August 3, 1987 at 19 N.J.R. 1363(a).

Considerable comment was received on these new rules, both in written form and in testimony presented at three public hearings. Based on a review of these comments, substantial changes to the proposed rules are warranted. Accordingly, instead of adopting the current proposed rules, new proposed rules will be submitted and published in a future issue of the New Jersey Register.

EDUCATION

STATE BOARD OF EDUCATION

The following proposals are authorized by Saul Cooperman, Commissioner, Department of Education and Secretary, State Board of Education.

Submit comments by September 14, 1988 to:

Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

(c)

Substance Awareness Coordinator

Proposed New Rule: N.J.A.C. 6:11-12.5

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38, 18A:26-10, and N.J.A.C. 18A:40A-18.

Proposal Number: PRN 1988-406.

The agency proposal follows:

Summary

On January 13, 1988, P.L. 1987, c.387, an act establishing substance abuse prevention, intervention, and treatment referral programs, was signed into law. Section 11b of that law requires the New Jersey State Board of Education to establish the education and experience, as well as the necessary certification requirements, for substance awareness coordinators.

Proposed new rule to N.J.A.C. 6:11-12.5 provides for the endorsement of substance awareness coordinators under the educational services certificate and sets forth the required education and experience criteria.

Social Impact

This proposed new rule will have a favorable impact upon the public in that certification standards will enable local school districts to draw from a pool of candidates specifically knowledgeable of the issues of substance abuse. This in turn would allow students to benefit from the services of appropriately trained professionals responsible for coordinating required programs on drug and alcohol abuse prevention and intervention. The position is necessary in order to deliver a comprehensive program of substance abuse prevention and intervention in school districts, where needed.

Economic Impact

Adoption of this new rule will encourage local school districts to hire qualified professionals to coordinate their drug and alcohol programs. These added positions Statewide are being partially supported by appropriated Federal and State funds for an initial three-year period (P.L. 99-570 and P.L. 1987, c.387).

Regulatory Flexibility Statement

The proposed new rule will have no reporting, recording, or compliance requirements for small businesses. The new rule impacts directly and only upon New Jersey public school districts.

Full text of the proposal follows.

6:11-12.5 Substance awareness coordinator

(a) This endorsement is required for anyone, regardless of his or her current endorsements, who is responsible for performing the duties stated in N.J.S.A. 18A:40A-18C.

(b) The requirements for the substance awareness coordinator endorsement are as follows:

1. A bachelor's degree from an accredited institution in health, human services, psychology, social work or in a field leading to teacher certification.

2. A program of studies beyond the bachelor's degree which meets the approval of the New Jersey State Department of Education and which includes the seven topics of study listed below:

- i. Fundamentals of drug and alcohol abuse and dependency;
- ii. Child and adolescent development;
- iii. Curriculum planning, implementation, and staff development in chemical health education;
- iv. Coordination and delivery of intervention and referral services in a school setting;
- v. Evaluation and counseling of drug and alcohol affected students and their families;
- vi. Coordination of prevention program services in school and family settings; and
- vii. School culture and the dynamics of policy and program development.

3. Satisfactory completion of a State-approved school district residency requirement lasting at least six months, but no more than one year. Candidates who meet the bachelor's degree requirement may be employed provisionally pursuant to N.J.A.C. 6:11-4.2 while they complete the residency requirement.

i. The substance awareness coordinator residency is a training program conducted under the direction of a State-approved administrator or supervisor of the public school district or non-public school that employs the certification candidate.

ii. The requirements for the State-approved residency program are as follows:

(1) The State Department of Education shall issue a standard agreement detailing the experiences and requirements of the residency. This agreement shall be entered into by the State Department of Education, the sponsoring district or non-public school, the residency administrator or supervisor and the candidate before the residency may be initiated.

(2) The residency agreement shall consist of but not be limited to a minimum of 300 clock hours of supervised practicum and professional experiences in chemical health curriculum planning, implementation and staff development, development and coordination of substance abuse intervention and referral services, development and coordination of prevention program services, and the development of school drug and alcohol policies and procedures.

(3) The State-approved administrator or supervisor may propose modifications to the standard residency agreement in order to accom-

modate the backgrounds and special training needs of individual candidates. The agreement shall specify a period of residency between six months and one year.

(4) No residency program may be undertaken without a valid agreement.

iii. The State-approved administrator or supervisor shall evaluate and verify the completion of all required experiences according to the terms and conditions of the residency agreement.

(1) The primary responsibility of the administrator or supervisor is to assure that the resident receives appropriate training, support, practicum experiences and professional opportunities in the critical job responsibilities specified in the agreement.

(2) Before the end of the residency period, the administrator or supervisor shall complete a comprehensive evaluation report on the resident's performance using State-approved forms and criteria. The administrator or supervisor shall discuss the evaluation report with the resident, and the administrator or supervisor shall sign the report as evidence of such discussion. Upon completion of the evaluation, the report shall be submitted to the Secretary of the State Board of Examiners. This report on each resident shall include one of the following recommendations:

(A) "Approved" which recommends issuance of a standard certificate pursuant to the completion of all other requirements of this section;

(B) "Insufficient" which recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to another residency for a maximum of one additional year; or

(C) "Disapproved" which recommends that a standard certificate not be issued and that the candidate be prohibited from continuing or re-entering a residency.

(3) If the candidate disagrees with the residency administrator or supervisor's recommendation, the candidate may within 15 days of receipt of the evaluation report and certification recommendation submit to the Bureau of Teacher Preparation and Certification written materials documenting the reasons why the candidate believes standard certification should be awarded.

4. Demonstration of knowledge of the preparation areas contained in (b)2 above through the achievement of a passing score on an examination as approved by the State Department of Education.

(c) In accordance with N.J.A.C. 6:11-4.3, emergency certification may be issued to individuals who meet the following requirements:

- 1. A baccalaureate from an accredited college or university; and
- 2. Documented training in the substance abuse field.

(d) For the renewal of the emergency certificate, individuals must demonstrate documented progress toward meeting the requirements for endorsement.

(e) The emergency certificate authorized under this section will cease on October 1, 1990, the effective date of the substance awareness coordinator endorsement.

(a)

Testing for Tuberculosis Infection

Proposed Amendment: N.J.A.C. 6:29-4.2

Authority: N.J.S.A. 18A:16-2 and 18A:40-16.

Proposal Number: PRN 1988-405.

The agency proposal follows:

Summary

The New Jersey State Department of Health (NJSDOH) has recommended that N.J.A.C. 6:29-4.2, which relates to tuberculin skin testing of employees, student teachers, and others who have contact with pupils, be amended to reflect recent evaluation of current practices. The proposed amendment, which has been discussed with and agreed to by the Centers for Disease Control (CDC), pertain specifically to that portion of the rule that addresses procedures regarding employees of the school district.

The current rule requires that school districts administer the Mantoux tuberculin skin test to employees upon hiring and, if no significant reaction is found, to re-administer the test every three years. The proposed amendment, to require testing only upon or within six months prior to employment, is based on three factors:

1. The low reactor rate (1.7 percent) identified among all employees tested during the 1986-87 school year is well below that anticipated for the general population (seven percent).

2. Approximately 54 percent of the reactors identified were from new employees.

3. The single administration of the test would be consistent with practices in the contiguous states (that is, New York and Pennsylvania).

Following the recommendation by the NJSDOH, the Department is also proposing to reduce from one year to at least six months the term of chemoprophylaxis or preventive therapy with isoniazid (INH) if the chest x-ray of a significant tuberculin reactor is negative for evidence of tuberculosis.

Social Impact

The Department does not anticipate an adverse medical impact on society as a result of requiring tuberculin skin testing only for new employees, student teachers, and others who have contact with pupils. The school tuberculin skin testing program is an infection detection, not a case detection program. During the school year 1986-87, only one verified case of tuberculosis was identified as a result of the testing program, and this involved a new employee. Some cases may occur among currently employed personnel in the future and contact follow-up procedures would be initiated among those employees and students exposed to the index case. The provisions of the State Sanitary Code (N.J.A.C. 8:57-1.9) could be invoked against those exposed who refuse to be voluntarily tested. A local school district could also mandate subsequent tuberculin skin testing of employees on a need basis in response to changing disease trends.

Economic Impact

Monies saved by eliminating the repeat tuberculin testing would benefit the local school districts and other agencies which purchase the PPD antigen and syringes. Estimated Statewide savings would total \$80,734.

Regulatory Flexibility Statement

The proposed amendment will have no reporting, recording, or compliance requirements for small businesses. The amendment impacts directly and only upon New Jersey public school districts.

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

6:29-4.2 Testing for tuberculosis infection

(a) The following are rules of the State Department of Education concerning testing for tuberculosis infection by district boards of education for implementation of N.J.S.A. 18A:16-2 and 40-16.

1.-2. (No change.)

3. In every school district, a Mantoux intradermal tuberculin test shall be given upon employment to all newly hired employees (full-time and part-time), all student teachers, school bus drivers on contract with the district and other persons who have contact with pupils. An employee with a documented Mantoux test administered within the previous six months does not have to be re-tested. An employee transferring between school districts within New Jersey would not have to be tuberculin tested if there is a documented record of a Mantoux tuberculin skin test being administered upon his or her initial employment in a New Jersey public school. Individuals who are currently employed (on the effective date of this amendment) shall also be tuberculin tested if there is no valid record that a Mantoux tuberculin test was administered during the previous four years. [If the Mantoux intradermal tuberculin test shows less than 10 mm of induration, the above persons shall be retested with a Mantoux intradermal tuberculin test every three years.]

4. (No change.)

5. All tuberculin reactors as defined in (a)4 above shall be referred to the family physician and appropriate official health agency for necessary follow-up. The following shall constitute standards for referral:

i. If there is documentation showing that vesiculation resulted from a previous multiple puncture test, the individual shall be recorded as a [positive] significant tuberculin reactor, and no further tuberculin testing is required;

ii. If the reaction to the Mantoux intradermal tuberculin test is [doubtful (between five to nine mm of induration)], it shall be repeated [at a different site] on the [forearm] other arm. If the result of the second Mantoux intradermal tuberculin test is also five to nine

mm of induration, the individual shall be recorded as tuberculin [negative] not significant. If the result of the second Mantoux test shows 10 or more mm of induration, the individual shall be recorded as a significant tuberculin reactor, and no further tuberculin skin testing is required.

6.-7. (No change.)

8. If the chest X-ray of a significant tuberculin reactor is negative for evidence of tuberculosis, chemoprophylaxis or preventive therapy, with [one year] at least six months of isoniazid (INH) is strongly recommended.

[9. A tuberculin reactor who is certified in writing by a licensed physician to have completed one year of preventive treatment (chemoprophylaxis) with isoniazid (INH) shall not be required to undergo any further testing for tuberculosis.]

[10.]9. Employees and pupils who have a significant reaction to the Mantoux intradermal tuberculin test and an initial chest X-ray that was negative, or who present a medical certificate from a licensed physician showing a significant tuberculin reaction and a subsequent negative chest X-ray, shall require no further tuberculin skin testing for tuberculosis infection.

[11.]10. The reporting of the testing for evidence of tuberculosis infection by each district board of education shall be as follows:

i. The name and address, grade (of pupils), age and school of all newly discovered significant tuberculin reactors, chest X-ray results and prescription of preventive therapy are to be reported immediately upon discovery to the New Jersey State Department of Health, and to the local health department or local tuberculosis control center, on a special form provided for this purpose so that the appropriate tuberculosis control measures can be instituted;

ii. At the end of the annual tuberculosis testing program for staff and in grades and schools as specified by the New Jersey State Department of Health, the following information shall be reported to the New Jersey State Department of Health, and the local health department or tuberculosis control center, with one copy to be retained by the district board of education:

(1) The number of Mantoux tuberculin tests performed by grade and school, on pupils, employees and other persons who have contact with pupils;

(2) Mantoux tuberculin test results;

[(2)](3) X-ray findings;

[(3)](4) Number of pupils and employees for whom isoniazid prophylaxis was prescribed; and

[(4)](5) The name, address, date of birth, school and grade of each [case of tuberculosis] significant tuberculin reactor found as a result of the Mantoux intradermal tuberculin testing program.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

**Coastal Resource and Development
Hudson River Waterfront Development**

Proposed Amendment: N.J.A.C. 7:7E-3.46

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 12:5-1 et seq. and 13:1D-1 et seq.

DEP Docket Number: 029-88-07.

Proposal Number: PRN 1988-415.

Submit written comments by September 14, 1988 to:

Michael P. Marotta, Esq.

New Jersey Department of Environmental Protection

Office of Regulatory Services

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

On January 19, 1988 the Department proposed amendments to N.J.A.C. 7:7E-3, 7 and 8 and a new rule at N.J.A.C. 7:7E-3.46. The

proposed new rule and amendments, which were published in the New Jersey Register at 20 N.J.R. 139(a), were designed to modify the Department policy concerning the construction of buildings or piers in the Hudson River Waterfront Area.

Public hearings were conducted on February 10, 1988 in Jersey City and Weehawken, New Jersey. As a result of the comments received, the Department adopted the proposal with a number of minor changes. The notice of adoption appears in this issue of the New Jersey Register.

In addition to the changes which were made to N.J.A.C. 7:7E-3.46 as adopted, the Department is proposing further modifications to the rule, at N.J.A.C. 7:7E-3.46(d), concerning the provision of public open space areas and the access requirements to those areas. As proposed and adopted, the rule requires, at N.J.A.C. 7:7E-3.46(d)vi, that a 15-foot wide walkway be provided along each side of the pier, or a single such walkway if the pier is less than 60 feet wide. A number of comments were submitted which suggested that the requirement was more than is needed to meet the objectives of providing an attractive, inviting linkage between the walkway and the waterward end of the pier.

Upon a review of the public comments received, the Department has determined that the walkway requirements to and from the public open areas are more stringent than they need be to assure access to these areas. It is, therefore, proposed that these standards be modified from two 15-foot wide walkways, one along each pier side, or a single 15-foot wide walkway on a less than 60 feet wide pier, to one 16-foot wide walkway at any location on the pier.

Social Impact

The proposed modification will have a social impact because it will reduce the minimum size requirements and location for the walkways to and from the public open areas on the piers. The purpose of the walkway, however, is simply to provide access to the public open space areas. The amendment continues to provide for public open space areas and adequate access to these areas. The social impact which may result from a size reduction of the walkways is expected to be minimal.

Economic Impact

The proposed modifications are expected to result in a positive economic impact because they will result in a standard which allows a broader range of design possibilities for construction on piers. Adequate access to the required public open space areas may be provided at a lower cost to the development community.

Environmental Impact

No environmental impact is anticipated as a result of the proposed modifications to the walkway requirements.

Regulatory Flexibility Statement

The Department has determined, pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that, due to the nature of the development regulated and the modifications proposed, the proposed amendments would impose no additional requirements of compliance upon small business.

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

7:7E-3.46 Hudson River Waterfront Area

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

(d) The following standards apply to all developments proposed on piers and will be used by the Division as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under policies that regulate upland development. Developers proposing platform development that does not adhere to this section's requirements are encouraged to contact the Division for guidance when conceptual plans have been prepared.

1. Non-industrial development upon piers [in] is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:
i.-v. (No change.)

vi. [Except as provided in (d)vi(1) below, 15 foot wide] **At least one public access [walkways] walkway of at least 16 feet in width shall be provided along the entire length of a pier, [along both long sides of the pier,] from the landward to the waterward ends. All such walkways shall be at pier deck level or ramped so that disabled access is provided between the public open space areas at both ends of a pier:**

[(1) Where piers are less than 60 feet wide, the requirement for public access along the length of the pier shall be reduced to a single fifteen foot wide walkway, on one side, at pier deck level.]

vii-ix. (No change.)

(e)-(f) (No change.)

(a)

DIVISION OF WATER RESOURCES

Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities

Proposed New Rules: N.J.A.C. 7:22-10.

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: P.L. 1985, c. 302; P.L. 1985, c.329; N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 13:1B-15.128 et seq.; N.J.S.A. 13:1B-15.131; N.J.S.A. 58:10A-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:11B-1 et seq.; and Executive Order No. 53 (1973).

DEP Docket Number: 027-88-07.

Proposal Number: PRN 1988-413.

A public hearing concerning this proposal will be held on: September 9, 1988 at 10:00 A.M.

Labor Education Center
Ryders Lane
Rutgers University
New Brunswick, New Jersey

Submit written comments by September 14, 1988 to:

Ann Zeloof, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules are required to comply with the Federal Water Quality Act, 33 U.S.C. §1251. This statute requires that, in order for a state to qualify for a Federal capitalization grant to subsidize its state revolving fund for construction of wastewater treatment facilities, a state shall have an environmental review program which contains the essential provisions of the environmental review process set forth in the National Environmental Policy Act, 42 U.S.C. §§4321 et seq., (NEPA), as amended; and its implementing regulations, 40 CFR Part 6 and 40 CFR Part 1500.

Executive Order No. 53, Environmental Assessment, signed October 5, 1973 by Governor Cahill, established the requirement to consider impacts on the environment and modify proposed projects to eliminate or reduce such impacts before a State agency could undertake or financially assist a project with a total cost in excess of \$1,000,000 or which had the potential to have a substantial adverse impact on the environment. While the provisions of Executive Order No. 53 generally parallel the requirements of the implementing regulations of NEPA 40 CFR Part 6, 40 CFR Part 1500, a number of provisions as well as subsequent amendments to these implementing regulations are not reflected.

The United States Environmental Protection Agency has enumerated several elements which must be present in an acceptable state environmental review process. The proposed new rules incorporate those elements. Included in the proposed new rules are provisions to identify the applicable level of environmental review necessary early in the planning process. The preliminary determination will inform the local government unit regarding the documentation needs and the extent of public outreach required and will identify the type of decision document that will be prepared by the Department of Environmental Protection ("Department"). Three levels of environmental review have been developed and tailored to the extent of environmental impact that can be reasonably expected to occur as the result of implementing a proposed project.

Adequate identification of potential impacts and thorough development and evaluation of alternatives early in the planning process will make it possible to select alternatives which eliminate or reduce to an acceptable level the environmental impacts that may be associated with a proposed project. Information developed as environmental planning documentation is intended to be used in an integrated fashion with the

project report and technical design requirements which are also required for projects pursuing financial assistance. By emphasizing development and evaluation of alternatives, wastewater management can usually be achieved without incurring significant adverse environmental impacts.

The Level 1 review is intended for projects which, by their nature, would be expected to have little or no adverse impact on the environment. Such projects may include rehabilitation of existing sewer lines where the proposed activities are limited to grouting and other minor repairs that require little or no excavation. Another example might be addition of support facilities at a treatment facility, replacement of a pump at a pumping station, addition of odor control facilities or other minor construction at or adjacent to an existing wastewater treatment facility which does not adversely affect the quality of or increase the quantity of the discharge of the facility. This level of review requires documentation sufficient to support the determination that this level of review is all that is warranted and does not require a public hearing. Some means of public outreach is necessary to satisfy the criteria that no public controversy is present. This level of review is intended to avoid unnecessary development of documentation and reduce planning time where minor projects are proposed. At the conclusion of a Level 1 review, the Department will prepare a decision statement that shall be published by the local government unit.

The Level 2 review is intended for the majority of the projects anticipated to be proposed. This level of review is generally equivalent to the level of environmental assessment typically required under the Federal construction grants program and under the New Jersey Wastewater Treatment Financing Program as conducted in Fiscal Year 1987. Planning documentation required is equivalent to an environmental information document as described in the implementing regulations for NEPA at 40 CFR Part 6 and 40 CFR Part 1500. At a minimum, a public hearing must be held to satisfy Federal public participation requirements. A decision statement with a summary environmental appraisal will be prepared and issued by the Department to a mailing list of interested and/or affected parties. A 30-day comment period will be required after issuance of the decision document during which no administrative action will be taken by the Department on a proposed project.

The Level 3 review parallels the Environmental Impact Statement process as set forth in the NEPA implementing regulations at 40 CFR Part 6 and 40 CFR Part 1500. A draft and final environmental impact statement are required which will address environmental impact or public controversy issues that were not resolved in the Level 2 review. Although it is possible to enter Level 3 review directly at the preplanning stage, it is expected that the criteria that would trigger a Level 3 review would not be discovered until preparation and review of Level 2 planning documentation has been completed. Evaluation of new or modified alternatives or mitigating measures, extensive coordination with other affected agencies and public outreach are emphasized in this level. A record of decision shall be issued by the Department followed by a 30-day comment period during which no administrative action will be taken by the Department. This level of environmental review is reserved for those projects in which it has not been possible to develop alternatives or mitigating measures which will result in a project that does not have a significant adverse impact on the environment or which continues to generate significant adverse public controversy. The Department intends to require development and selection of alternatives which do not have a significant adverse environmental impact and are not significantly controversial. The Department recognizes that it may not always be possible to achieve this goal. The Level 3 review process will enable the Department to make the best, most informed determination regarding provision of assistance for a project, weighing project need compared to project impact and the findings of affected agencies and the public.

The proposed new rules include a provision to reevaluate projects between issuing a decision statement and making an award of financial assistance. Where significant project changes are proposed, the Department will determine the need for an additional environmental assessment and the issuance of supplementary or additional decision statements. Where five years or more have elapsed between the date of a decision statement and an award of financial assistance, the Department will issue a public notice regarding the findings of the reevaluation, even where no project changes have occurred.

The proposed new rules include minimum mitigating measures that must routinely be included in the design and construction of wastewater facilities and those minimum standards that apply to construction in a number of environmentally critical areas. In addition, during planning, additional necessary measures may be proposed by the local government unit or the Department to mitigate environmental impacts sufficiently to

approve a proposed project unit. Improvements in state of the art may be developed by the local government and utilized in lieu of the minimum standards, if approved by the Department.

Project inspection and acceptance procedures have been included in the proposed new rules which are intended to ensure that prescribed mitigation measures are carried out during construction. Failure to comply with the planning, design or construction requirements will render the project ineligible for financial assistance and/or may subject the local government unit to the penalty provisions as set forth in N.J.A.C. 7:22-3.40, 4.40 and 6.40.

A summary of the provisions of the proposed new rules follows:

N.J.A.C. 7:22-10.1 establishes the scope and purpose of the proposed new rules.

N.J.A.C. 7:22-10.2 provides definitions of terms used in the proposed new rules.

N.J.A.C. 7:22-10.3 contains the procedure for establishing the level of environmental review that will be applied to a proposed project. Levels of environmental review can be Level 1, Level 2, or Level 3.

N.J.A.C. 7:22-10.4 contains the criteria and requirements for a Level 1 environmental review, including the environmental planning documentation and the decision statement.

N.J.A.C. 7:22-10.5 contains the criteria and requirements for a Level 2 environmental review.

N.J.A.C. 7:22-10.6 contains the criteria and requirements for a Level 3 environmental review. The procedure and format for an environmental impact statement are outlined in this section.

N.J.A.C. 7:22-10.7 sets forth the requirement to reevaluate decision statements issued by the Department prior to proceeding with an offer of assistance. This section includes a requirement for publication of a public notice, even when there are no significant changes in scope or impact of a proposed project.

N.J.A.C. 7:22-10.8 contains the requirements and procedures for addressing cultural resource concerns and cultural resource survey documentation requirements. The citations in this section to N.J.S.A. 13:1B-15.129 are in lieu of a citation to Department rules on the Historic Register process now being formulated.

N.J.A.C. 7:22-10.9 contains the requirements to coordinate with other potentially affected agencies regarding environmental concerns.

N.J.A.C. 7:22-10.10 contains requirements with respect to the need for public participation in the planning process.

N.J.A.C. 7:22-10.11 contains minimum requirements for mitigation of environmental and cultural resource impacts that must be included in the design and construction of a proposed project.

N.J.A.C. 7:22-10.12 contains requirements for inspection of the project during construction and outlines procedures for accepting/rejecting a project.

Social Impact

A positive social impact is expected as a result of the proposed new rules. During the planning process, potential social impacts, such as hazards, nuisances, noise, dust, odors and aesthetic considerations, that could result from proposed projects will be identified. The potentially affected public will be informed through public participation and outreach procedures required at each level of environmental review. Both the public and other potentially affected agencies will have the opportunity to have meaningful input during the planning phase in the selection of the alternative to be proposed. As a result of incorporating the legitimate concerns of the public when selecting an alternative and determining mitigating measures, unnecessary negative social impacts will be avoided.

Economic Impact

Project documentation that will be required as a result of the proposed rules is comparable to that which has typically been required to obtain Federal construction grants. No additional economic burden for development of required documentation is anticipated.

As a result of the environmental assessment process, it is possible that the least cost alternative identified to achieve a particular wastewater management objective may be rejected for an alternative which has a higher apparent cost but has a greater environmental acceptability. However, the purpose of the environmental assessment process is to take account of those factors which are not readily assigned a dollar value when selecting the best overall alternative. Therefore, any apparent higher project costs will be offset by protection of environmental resources.

Environmental Impact

The construction of new or improved wastewater treatment facilities has been known to have the potential to directly and indirectly impact the environment in both beneficial and adverse ways. Selection of the sites where facilities will be located and the techniques to be used during construction will determine whether construction of a proposed project will result in a significant or insignificant adverse impact on the environment. Sizing of facilities and designation of sewer service areas will determine whether a proposed project will have indirect adverse impacts on the environment, primarily as the result of induced growth located in environmentally sensitive areas or occurring at a rate that is inconsistent with the available local infrastructure. Environmental assessment procedures have been required since 1969 at the Federal level and since 1973 in New Jersey to encourage the development of alternative solutions to identified needs and to determine the significance of environmental impacts of various alternatives before selecting a proposed plan. These rules establish an environmental assessment procedure, to be applied to wastewater treatment projects seeking assistance under the New Jersey Wastewater Treatment Financing Program, which incorporates the essential elements embodied in NEPA. By conforming to the environmental assessment procedure established in the proposed new rules, it is expected that wastewater treatment projects will be selected in such a way that water quality or public health problems will be improved without incurring significant adverse environmental impacts.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the rules only apply to local government units seeking to obtain financing from the State for the construction of wastewater treatment facilities.

Full text of the proposal follows.

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED WASTEWATER TREATMENT FACILITIES

7:22-10.1 Scope and construction

(a) This subchapter shall constitute the rules of the New Jersey Department of Environmental Protection regarding the environmental assessment requirements for projects receiving financial assistance pursuant to N.J.A.C. 7:22-3, 4, and 6.

(b) This subchapter shall be liberally construed to permit the Department to effectuate the purposes of the Wastewater Treatment Bond Act of 1985 (P.L. 1985 c. 329), the Wastewater Treatment Trust Act of 1985, N.J.S.A. 58:11B-1 et seq., and the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c. 302).

(c) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act of 1985 (P.L. 1985 c. 329), the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), and the Pinelands Infrastructure Bond Act of 1985 (P.L. 1985 c. 302);

2. To establish environmental assessment requirements which must be complied with in order to receive financial assistance provided pursuant to N.J.A.C. 7:22-3, 4, and 6;

3. To protect the public and the State of New Jersey by ensuring that funds appropriated are spent in a proper manner for the intended purposes while avoiding or minimizing adverse environmental impacts; and

4. To identify in a comprehensive manner the environmental objectives and constraints, planning and design requirements, and construction inspection procedures which must be observed in order to achieve the goal of avoiding or minimizing direct and indirect adverse environmental impacts.

7:22-10.2 Definitions

Unless otherwise specified, the terms used herein shall have the same meanings as those terms are defined in N.J.A.C. 7:22-3 and 4. Additional definitions are as follows:

"Administrative action" means Department approval of planning or design documents or offer of award for loan assistance.

"Agricultural Development Areas" means those areas designated as such pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

"Cultural resource" means any prehistoric or historic district, site, building, structure, or object listed in or eligible for listing in the New Jersey Register of Historic Places established pursuant to N.J.S.A. 13:1B-15.128 et seq., or the National Register of Historic Places, established pursuant to 16 U.S.C. §470-470-6 (1982). Eligibility criteria for listing on the New Jersey Register of Historic Places are set forth at N.J.A.C. 7:4-1. Eligibility criteria for listing on the National Register of Historic Places are set forth at 36 CFR Part 60.6.

"Designated habitat" means an area which has been designated as critical habitat for an endangered species in accordance with the Federal Endangered Species Act, 16 U.S.C. §§1531 et seq.

"Direct impact" means an impact that is associated with the location and construction of a proposed project.

"Endangered species" means a plant or animal species which has been designated as endangered pursuant to either the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq. or the Federal Endangered Species Act, 16 U.S.C. §§1531 et seq.

"Environmentally constrained area" means areas in which development is in some way restricted including wetlands, floodplains, endangered species sites or designated habitats, parks and preserves and Agricultural Development Areas.

"Environmentally critical area" means an area or feature which is of significant environmental value, including but not limited to wetlands, floodplains, important farmlands, Agricultural Development Areas, steep slopes, endangered or threatened species and their designated habitats, important aquifer recharge areas, coastal areas, stream corridors, parks, and preserves.

"Floodplain" means the 100-year floodplain as delineated on Federal Emergency Management Agency maps or the area subject to regulation under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 and implementing rules at N.J.A.C. 7:13, whichever is greater.

"Indirect impact" means an impact that may be caused as a result of providing new or improved wastewater management facilities, but not generally as the result of constructing the facilities.

"Important farmlands" are those areas mapped as such on the United States Department of Agricultural, Soil Conservation Service, Important Farmlands maps, subject to update to reflect conversion of use.

"Planning area" means that area for which a wastewater management project is proposed, including the proposed service area, as well as the extent of the area which could be impacted, directly or indirectly, by the proposed project.

"Professional qualified archaeologist" means an archaeologist whose credentials satisfy the criteria as set forth in "Recovery of Scientific, Prehistoric, Historic and Archaeological Data: Methods, Standards, and Reporting Requirements, 36 CFR Part 66, Appendix C(b) incorporated into this chapter.

"Provenience" means the cultural association of an object as well as its horizontal and vertical location at a site or surveyed area.

"Register" means the New Jersey Register of Historic Places and/or the National Register of Historic Places.

"Service area" means that area which is intended to be served by a proposed wastewater management project in the course of the design period.

"Significant" means a subjective determination in terms of both context and intensity of effect as defined at 40 CFR Part 1508.27.

"Threatened species" means a plant or animal species which has been designated as threatened pursuant to either the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., and N.J.A.C. 7:25-4 or the Federal Endangered Species Act, 16 U.S.C. §§1531 et seq.

"Wetlands" means those areas defined as wetlands under any of the following statutes and implementing rules as applicable:

1. New Jersey Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq., at N.J.S.A. 13:9A-2, (Authority of Commissioner to adopt, modify or repeal orders regulating, altering, or polluting coastal wetlands; coastal wetlands defined);

2. New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., at N.J.S.A. 13:9B-3, (Definitions, Freshwater Wetland), N.J.A.C. 7:7A-1.4 (Definitions, Freshwater wetland or wetland);

3. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., at N.J.S.A. 13:19-4, (Coastal Area boundaries); N.J.A.C. 7:7E-3.25 (Wetlands); and

4. Pinelands Protection Act, N.J.S.A. 13:18-1 et seq., at N.J.S.A. 13:18A-3, (Definitions), and N.J.S.A. 13:18A-11, (Boundaries of pinelands and preservation areas; official state planning maps of Pinelands National Reserve, and pinelands protection and preservation areas); N.J.A.C. 7:50-3.1 (Purpose); N.J.A.C. 7:50-6.3, (Wetlands), N.J.A.C. 60-60.4 (Coastal Wetland) and N.J.A.C. 50-6.5 (Inland wetlands).

7:22-10.3 Establishing the level of environmental review

(a) To initiate the planning process, the local government unit may be required by the Department to attend a preplanning meeting with the Department. When a preplanning meeting is required, the local government unit shall be required to provide a preplanning summary including a brief written description of the proposed planning area, the wastewater management needs, the preliminary wastewater management alternatives to be considered, and a preliminary appraisal of potential beneficial and adverse environmental and cultural resource impacts of the alternatives. A map of the proposed planning area shall also be included. On the basis of this information, as well as any other information that may be available to the Department, the Department shall make a preliminary decision regarding the level of environmental review, Level 1, 2, or 3, that shall be required.

(b) The Department shall make a preliminary determination regarding the requirements for cultural resource study on the basis of the preplanning summary or other information available, in accordance with N.J.A.C. 7:22-10.8.

7:22-10.4 Level 1 environmental review

(a) Projects qualifying for this level of environmental review may include the following categories of projects:

1. Rehabilitation of existing conveyance and/or collection facilities; or

2. Construction of ancillary facilities or minor improvements to treatment facilities which do not create a new discharge, reduce the level of treatment, or result in an increase in the quantity of flow of an existing discharge.

(b) Projects which conform to one of the categories identified in (a) above but which have any of the following characteristics shall not qualify for a Level 1 environmental review:

1. The project can be expected to have a permanent adverse or a significant temporary adverse effect on the human environment;

2. The project can be expected to have a permanent adverse or a significant temporary adverse direct or indirect impact on cultural resources, endangered or threatened species or designated habitats, wetlands, floodplains, important farmlands or other environmentally critical areas;

3. The user cost for the project significantly exceeds 1.75 percent of the median annual household income, as determined and modified according to N.J.A.C. 7:22-10.5(b)11; or

4. The project is expected to result in significant adverse public comment.

(c) Where a Level 1 review has been determined to be appropriate, a Level 1 environmental planning document shall be submitted by the local government unit to the Department for review. The Level 1 environmental planning document shall be of sufficient scope to permit the Department to verify the preliminary determination to proceed with this level of review. Information to be provided in the environmental planning document shall include the following:

1. A brief description of the need for the proposed activity, the nature and location of any structures to be built, and a map of the service area of the affected wastewater management facilities;

2. A suitable 8½ inch by 11 inch map of the planning area which depicts the location of the proposed activity. An 8½ by 11 inch site plan showing areas of proposed construction should also be included where appropriate to the type of project proposed;

3. A narrative describing the extent of beneficial and adverse impact on environmental or cultural resource features that can be expected as a result of implementing the proposed project and basis for concluding that the proposed project qualifies for a Level 1 environmental review in accordance with (a) and (b) above;

4. A summary of alternatives available, including, at a minimum, the no action alternative, and the basis for selecting the proposed action. The basis discussion shall include the costs, impacts and effectiveness of the proposed alternatives relative to achieving the identified need as compared with other alternatives considered; and

5. A summary of the involvement of the public in the development and selection of the proposed project.

(d) The Department will review the environmental planning document submitted by the local government unit and will make one of the following determinations:

1. The Level 1 environmental planning document is complete, acceptable, and verifies the preliminary determination to proceed with this level of environmental review. In this case, the Department will issue a Level 1 decision statement which will be sent to a project mailing list developed in accordance with N.J.A.C. 7:22-10.10(c). The local government unit shall publish a notice in a newspaper of general circulation in the planning area within two weeks of the date of the Department's decision statement. The notice shall describe the proposed action, indicate the decision by the Department to approve the project, and advise the public that the local government unit shall, upon written request, make available for public review both the planning documents and the Department's decision statement. Upon issuance of the decision statement, the Department may proceed with award of a loan, subject to the provisions of (e) below, and provided the other requirements of the program have been met as specified in N.J.A.C. 7:22-3, 4 and 6.

2. Additional information is required to make a final determination. In this case, the Department will notify the local government unit in writing of the deficiencies and the local government unit shall be responsible to satisfy the deficiencies. The Department may establish a timeframe for response which, if not met, could result in a bypass of the proposed project in the applicable funding cycle.

3. A Level 1 environmental review is not appropriate. In this case, the Department will notify the local government unit of this determination and will identify whether the project is elevated to a Level 2 or Level 3 environmental review.

(e) If, at any time up until the initiation of construction, additional information becomes available, the project is modified or conditions change, such that the project would not qualify for a Level 1 environmental review, the Department will require the local government unit to proceed with a Level 2 or Level 3 review, whichever is determined appropriate by the Department.

7:22-10.5 Level 2 environmental review

(a) If a project does not qualify for a Level 1 environmental review, but the Department determines that a Level 3 environmental review is not warranted, then a Level 2 environmental review is required.

(b) For a Level 2 review, environmental planning documentation shall be submitted by the local government unit consisting of an environmental information document, results of investigations and consultations conducted pursuant to N.J.A.C. 7:22-10.9, and results of public participation conducted pursuant to N.J.A.C. 7:22-10.10. At a minimum, a public hearing shall be required prior to submittal of the planning document to the Department. The environmental information document shall include, where applicable, the following information:

1. A geographical description of the planning area;

2. A clear map of the planning area. The scale of the map should generally be one inch equal to 2000 feet. However, where the size of the planning area is inappropriate to this scale, a larger or smaller scale map may be required by the Department;

3. A description of and mapping, where applicable, of existing environmental conditions and features including:

i. Existing water quality and uses including a comparison to New Jersey water quality standards and uses established in accordance with N.J.A.C. 7:9-4, 5 or 6;

ii. Hydrologic characteristics;

iii. Water supply source, current demand and current reliable supply. Identify any designated sole source aquifer or critical water supply areas located in the planning area, if applicable;

iv. Geology, topography and soils types and limitations with respect to the use of on-site systems or land application of effluent or residuals. Soil information shall be taken from the Soil Conservation Service county soils maps and interpretations unless more accurate field evaluation of the specific project area is available;

v. Regional air quality and comparison to New Jersey Air Quality Standards established pursuant to N.J.S.A. 26:2C-1 et seq;

vi. General plant and animal communities existing in the planning area;

vii. Existing land use and zoned use permitted for undeveloped areas in the planning area;

viii. Environmentally critical areas within the planning area, including, but not limited to, wetlands, floodplains, important farmlands, Agricultural Development Areas, important aquifer recharge areas, coastal areas, stream corridors, parks and preserves, steep slopes, and locations of endangered or threatened species or designated habitats; and

ix. Areas subject to the jurisdiction of the Pinelands Commission, Coastal Area Facility Review Act, or the Hackensack Meadowlands Development Commission.

4. The purpose and need for the project in terms of surface water or groundwater pollution or public health problems that can be attributed to the existing wastewater management facilities;

5. A description of the future environment without the proposed project;

6. A description of existing wastewater treatment facilities. Include the location of facilities, the service areas, treatment level of treatment plants, the design capacities, and the actual wastewater flows. Provide the actual wastewater flow according to source:

i. Residential;

ii. Commercial;

iii. Industrial; and

iv. Infiltration/inflow.

7. An environmental constraints analysis is required and shall be prepared according to the following procedure:

i. Overlay mapping of environmentally constrained areas, which include wetlands, floodplains, endangered species sites or designated habitats, parks and preserves, and Agricultural Development Areas, in the planning area with mapping of existing land use and permitted zoning for currently undeveloped areas. Areas not yet developed which are not environmentally constrained are considered developable. Environmentally constrained, developed, and developable areas shall be clearly depicted on the mapping to be submitted.

ii. Determine the extent of development which could occur according to permitted zoning in developable areas. This should be represented as the number of dwelling units and population for residential areas and area coverage for commercial and industrial areas. These figures shall be used in calculating the maximum wastewater flow that may be considered in planning wastewater treatment facilities.

8. A description of alternatives considered, including the no action alternative;

9. A cost comparison of alternatives, including capital costs, operation and maintenance costs, user cost and total project cost on a present worth basis;

10. A description of the environmental impacts for each alternative including beneficial and adverse direct, indirect and cumulative effects with other projects. Include an assessment of impacts of alternatives on the following:

i. Surface water and groundwater quality and quantity and hydrology;

ii. Plant and animal communities or other natural resources;

iii. Environmentally critical areas, as identified in (b)3 viii above;

iv. Air quality, especially with respect to consistency with the New Jersey State Implementation Plan prepared pursuant to the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., and the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.; and

v. Social and economic factors including, but not limited to, dust, noise, odors, nuisances, traffic, or hazards.

11. A description of the selected plan including, where applicable, the following:

i. Wastewater treatment processes, treatment level, design flow, capacity of units, effluent quality, discharge location. Include a site plan of the construction area. Design flow shall be broken down into residential, commercial, industrial, and infiltration/inflow components;

ii. A map of the service area of each treatment plant as well as areas to be served with on-site systems. Unless otherwise directed by the Department, this map shall be at a scale of one inch equal to 2000 feet. Include on the map the service area of each treatment plant and the environmentally constrained areas and indicate that no wastewater treatment services shall be provided to environmentally constrained areas, except where development requiring wastewater treatment facilities is specifically permitted by the Department;

iii. Location, size, and capacity of the collection and/or conveyance facilities. Unless otherwise directed by the Department, the location shall be mapped at a scale of one inch equal to 2000 feet;

iv. A summary of costs, including capital, operation and maintenance, present worth of total project cost and anticipated user cost;

v. A comparison of user cost to the median annual household income in the planning area. The base income data source shall be the latest United States Census. Income data shall be updated to the present using the consumer price index or other equivalent means;

vi. A summary of environmental impacts of the selected alternative, as discussed in (b)10 above;

vii. Adverse impacts that cannot be avoided;

viii. The relationship between short term uses of the environment and enhancement of long term productivity;

ix. Irreversible and irretrievable commitments of resources to the project; and

x. Mitigating measures to be incorporated during design, construction, and/or the life of the project.

12. A description of steps needed and timeframe for implementation of the project;

13. The identity of the owner or operator of the proposed facilities;

14. A list of any permits needed to implement the project and the status of obtaining the applicable permits;

15. A summary of the results of coordination with affected Federal, State, regional, or local agencies and the public, carried out in accordance with N.J.A.C. 7:22-10.9 and 10.10; and

16. Identification and assessment of consistency of the proposed project with the areawide Water Quality Management Plan which would apply to the planning area, and an assessment of whether or not the proposed project would trigger preparation of a wastewater management plan or a water quality management plan amendment in accordance with N.J.A.C. 7:15.

(c) The Department will review the environmental planning documentation submitted by the local government and will make one of the following determinations:

1. The Level 2 environmental planning documentation is complete, and acceptable, and there will be no significant adverse impacts as a result of the proposed project. In this case, the Department will prepare and issue a preliminary Level 2 decision statement and an environmental appraisal as set forth in (d) and (e) below.

2. The Level 2 environmental planning documentation is incomplete. The Department will provide written notification to the local government unit regarding the deficiencies. The local government unit will be responsible for correcting the deficiencies. The Department may establish a timeframe for response which, if not satisfied, could result in the bypass of a proposed project in the applicable funding cycle.

3. The Level 2 documentation is complete or incomplete but there would be a significant adverse impact if the proposed project were implemented. The Department will initially direct the local government unit to develop and evaluate other alternatives which would not have a significant adverse impact. If such an alternative is available, the Department will direct the local government unit to select an alternative with no significant adverse impact or forgo financial assistance. If no such alternative can be identified, then the Department will require the applicant to initiate the Level 3 environmental review process as set forth in N.J.A.C. 7:22-10.6.

(d) When appropriate, in accordance with (c)1 above, the Department will prepare and issue a preliminary Level 2 decision statement and environmental appraisal to the mailing list developed for the project in accordance with N.J.A.C. 7:22-10.10(c). The Department will take no further administrative action until after the conclusion of a 30-day comment period on the decision statement. If no significant adverse comment is received at that point, the Department will approve the planning and may proceed with an offer of loan assistance, provided the other requirements of the program, as set forth at N.J.A.C. 7:22-3, 4 and 6, have been met.

(e) The Level 2 environmental appraisal attached to the decision statement will be the Department's summary of the proposed project and its impact and will include the following information:

1. A proposed project identification;
2. A proposed project description;
3. An evaluation of alternatives considered for the project area;
4. The environmental consequences of the selected plan. This will include beneficial and adverse direct and indirect impacts to water quality and hydrology, air quality, noise, natural resources, cultural resources, and environmentally critical areas;
5. Population and wastewater flow projections;
6. Social and economic impacts of the proposed project;
7. Required mitigating measures;
8. A summary of the coordination with other agencies and the public regarding the proposed project;
9. References to documents used in preparation of the environmental appraisal; and
10. Maps of the planning area, service areas and the location of the proposed construction.

7:22-10.6 Level 3 environmental review

(a) The Department may determine that a Level 3 environmental review is required pursuant to N.J.A.C. 7:22-10.3, 10.5(c), or as a result of significant adverse comment received in response to the Department's issuance of a Level 1 or Level 2 decision statement.

(b) Additionally, the Department will require a Level 3 review when any of the following conditions are present:

1. The proposed project is expected to have significant adverse effects on the pattern and type of land use or growth and distribution of population in the project area;
2. Construction of the proposed project is expected to directly displace a significant amount of population or have a significant adverse effect on a residential area;
3. The proposed project is expected to directly or indirectly conflict significantly with Federal, State, regional, or local land use plans or policies;
4. The proposed project is expected to have significant adverse effects on environmentally critical areas either directly or indirectly or as the result of cumulative effects with other related projects; or
5. The proposed project may directly or indirectly have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife or their natural habitats.

(c) If a Level 3 environmental review is required by the Department prior to completion of a Level 2 environmental information document, then an environmental information document shall be prepared in accordance with N.J.A.C. 7:22-10.5(b). In addition, an environmental impact statement shall be prepared under a Level 3 environmental review. Environmental impact statements shall be prepared by the local government unit. The Department will approve the scope, content and conclusion of both draft and final environmental impact statements prior to publication. The procedure shall be as follows:

1. The Department will issue a notice of intent to prepare an environmental impact statement which will be published in at least two newspapers of general circulation in the State.
2. The Department will conduct a meeting to establish the scope of the environmental impact statement. Affected government agencies, environmental groups, local officials and other interested parties will be invited to the meeting for the purpose of defining the following:

i. Critical issues to be addressed by the environmental impact statement;

- ii. The preliminary range of alternatives to be considered;
- iii. The information or other analysis required from other agencies;
- iv. The method of environmental impact statement preparation;
- v. The strategy for soliciting public participation including the techniques that will be used and the timing of participation activities;
- vi. Consultation requirements with regard to affected government agencies;
- vii. The relationship between the environmental impact statement and other documentation already prepared in support of the project and the information necessary to complete the project documentation requirements; and
- viii. The coordination procedure required between the Department and the preparers of the environmental impact statement to insure the Department's controlling role in environmental impact statement preparation.

3. The local government unit shall prepare a preliminary draft environmental impact statement which contains the information required by (c)2 above in the format required by (d) below.

4. The Department will review the preliminary draft environmental impact statement, and if necessary, require the local government unit to make additions or modifications to the content or conclusions of the preliminary draft environmental impact statement.

5. When the preliminary draft environmental impact statement is determined by the Department to be satisfactorily complete, the Department will direct the local government unit to print the preliminary draft environmental impact statement, which will then become known as the draft environmental impact statement.

6. The local government unit shall distribute the draft environmental impact statement to the mailing list developed for the project pursuant to N.J.A.C. 7:22-10.10(c) and shall place copies in public repositories in the planning area.

7. The local government unit shall give notice of and hold a public hearing on the draft environmental impact statement. Notification of the hearing shall be sent to the persons on the project mailing list and shall be placed in at least two newspapers of general circulation in the State at least 30 days prior to the date of the hearing. The draft environmental impact statement shall be available for public review during the 30 day notice period and the newspaper notice shall advise the public of the locations of copies of the draft environmental impact statement available for public review. The local government unit shall provide a verbatim transcript of the hearing. Written comments shall be accepted by the local government unit for a minimum of 15 days following the public hearing.

8. The local government unit shall prepare a final environmental impact statement in accordance with (f) below. The Department will approve the content and format of the final environmental impact statement prior to publication.

9. The local government unit shall give notice of and hold a public hearing on and distribute the final environmental impact statement, in the same manner as for the draft environmental impact statement in accordance with (c)6 and 7 above.

10. After the conclusion of the comment period for the final environmental impact statement, the Department will prepare a Level 3 decision statement which will respond to comments received on the final environmental impact statement, set forth the decision made by the Department, and the basis for the decision. No administrative action will be taken by the Department prior to the conclusion of a 30-day comment period for the decision statement. If no further significant adverse comment is received during the comment period for the decision statement, the Department will approve the planning and the Department may proceed with an offer of assistance, provided other program requirements as set forth in N.J.A.C. 7:22-3, 4 and 6, have been met. If adverse comment is received which was not adequately addressed in the environmental impact statement process, the Department may require a supplemental evaluation and decision statement or may determine not to participate in the proposed project.

(d) Unless directed otherwise by the Department, the format and content of the draft environmental impact statement shall be as follows:

1. A cover sheet noting title, agencies responsible for development of the draft environmental impact statement, contact person, and the date by which comments must be submitted;
2. A summary which stresses areas of controversy, issues to be resolved, major conclusions, and recommendations;
3. The purpose and need for the proposed project;
4. An identification and comparison of alternatives previously considered including the proposed project and no action, as well as any new alternatives which may be feasible. The comparison shall rigorously and objectively evaluate each alternative and present the beneficial and adverse impacts of each alternative;
5. An identification of the preferred alternative and possible mitigating measures;
6. A description of the affected environment. This description should be brief and draw on or reference information compiled in the Level 2 environmental information document;
7. The environmental consequences of the proposed action, if it were to be implemented, including:
 - i. Adverse environmental impacts that cannot be avoided;
 - ii. The relationship between short-term uses of the environment and the maintenance or enhancement of long-term productivity;
 - iii. Irreversible or irretrievable commitments of resources; and
 - iv. Mitigating measures that would be required to make the proposal acceptable.
8. A description of the coordination and public participation that has occurred for the project;
9. A list of preparers, including names and qualifications;
10. The mailing list developed for the project; and
11. An appendix, if applicable, with analyses or other material which substantiate evaluations contained in the draft environmental impact statement.

(e) The final environmental impact statement, maintained in the Department's file for the project shall contain copies of the correspondence received and responses to written comments, comments received at the hearing for the draft environmental impact statement, any additional information compiled or modifications made to the project as the result of comments, where applicable, and mitigating measures that will be required to make the proposed project acceptable.

7:22-10.7 Re-evaluation of environmental decision statements

(a) The local government unit shall certify in writing that the project submitted in the design phase is the same as that which was described in the environmental decision statement and approved in the planning phase, and includes all mitigating measures developed for the project in the planning phase. If this certification cannot be made, then the local government unit shall describe the proposed project modifications, the reason for the changes, and the costs and environmental impacts of the revised project. The Department may request additional information or additional public participation regarding the proposed modifications. On the basis of information available, the Department will determine if there is a need to issue a revised environmental decision statement or elevate the project to a Level 2 or Level 3 environmental review and proceed accordingly.

(b) Where five or more years have elapsed between the issuance of a Level 1, 2, or 3 environmental decision statement and the proposed award of financial assistance, and where the Department determines that there are no significant changes in the proposed project or its impact based on the certification made according to (a) above, then the Department will issue a public notice to the persons on the previously established project mailing list stating that the Department intends to proceed with an award of financial assistance for the previously approved project.

7:22-10.8 Cultural resource survey requirements

(a) Based upon the preplanning summary prepared in accordance with N.J.A.C. 7:22-10.3, the Department will make a preliminary determination regarding the need for and scope of a cultural resource survey. Factors that will affect this preliminary evaluation include:

1. The type and extent of the activity under consideration, particularly the nature of the physical disturbance that may be associated with the proposed undertaking;

2. The environmental characteristics of the planning area; and
3. If known, the likelihood of cultural resource material being present in the planning area.

(b) The Department may determine during the preliminary evaluation that the nature of the proposed project, in terms of ground disturbance or standing structure modifications, will have no impact upon cultural resources. In such cases, no survey will be required and the project may proceed without further cultural resource consideration.

(c) If the Department determines that a cultural resource survey is required for the proposed project, then the Department shall direct the local government unit to secure the services of a professional, qualified archaeologist to prepare the appropriate level of survey as directed by the Department.

(d) The local government unit shall submit to the Department a scope of work for each level of cultural resource survey required, as directed by the Department in accordance with (c) above. The scope of work shall be prepared by a professional, qualified archaeologist. No cultural resource survey shall be initiated until the Department reviews and approves, in writing, the scope of work for the cultural resource survey.

(e) The levels of cultural resource survey are progressive and the Department may decide at the conclusion of any given level that adequate documentation has been presented for the Department to issue a determination of effect as defined in (i) below. The local government unit shall not proceed with a subsequent survey level until directed to do so by the Department.

(f) The following are the levels of cultural resource survey that the Department may require:

1. The first level of investigation is the Stage IA Documentation Review and Strategy Development Survey which consists of the following:

- i. A broad-based literature search that provides a concise but comprehensive discussion of the prehistoric and historic development of the planning area;
- ii. An analysis of the documentation obtained from the State Historic Preservation Officer, the State Archaeologist, State and local libraries and museums, historic and archaeological societies, and universities;
- iii. An environmental and geological analysis of the planning area, which taken with the archaeological and historic documentation, will predict areas of varying potential for the presence of cultural resources;
- iv. An initial field inspection of the planning area; and
- v. Recommendations for additional surveys, such as field testing and verification, that may be required.

2. The next level of investigation is the Stage IB Site Recognition Survey which consists of the following:

- i. Subsurface testing for the identification of previously undocumented archaeological sites. The subsurface tests shall be of sufficient depth to sample all soil strata that may potentially contain evidence of past human activity;
- ii. An explanation, clearly presented and justified, of the survey methodology employed;
- iii. The identification of previously undocumented historic sites or structures which require further architectural consideration;
- iv. A clear presentation of the results of the survey; and
- v. Recommendations for further actions concerning the avoidance of identified cultural resources or additional surveys.

3. The next level of investigation, the Stage II Site Definition and Evaluation Survey, is required if the potential direct or indirect impacts of the proposed project cannot be reasonably avoided by project modification or when there is insufficient data (extent, depth, significance) about the resource to assess avoidance or preservation alternatives. The Department will determine the need for a Stage II survey based upon an evaluation of the Stage IB survey report in conjunction with planning documentation prepared by the local government unit in support of the project. A Stage II survey consists of the following:

i. An assessment of the resource's eligibility to be listed on the New Jersey Register of Historic Places and the National Register of Historic Places;

ii. A draft determination of eligibility for nomination to the National Register of Historic Places prepared in accordance with N.J.S.A. 13:1B-15.129;

iii. An assessment of the probable impact the proposed project may have on Register-listed resources or resources eligible to be listed on the New Jersey Register of Historic Places or the National Register of Historic Places; and

iv. A proposal for mitigating measures that may be implemented should it be determined that avoidance of a Register-listed resource or a resource eligible to be listed on the New Jersey or National Registers of Historic Places is not feasible.

(g) Where a Stage II survey has been required, then, upon acceptance by the Department of the Stage II survey documentation, the Department will make one of the following determinations:

1. It is practicable to avoid potential impacts to Register-listed or eligible resources through project modification. In this case, the local government unit shall be directed to make the appropriate project modifications.

2. It is not practicable to avoid potential impacts to a Register-listed or eligible resource. In this case, the Department will assess the need to request a determination of eligibility from the Keeper of the Register in accordance with (h) below.

(h) The Department, after consultation with the appropriate Federal agencies, in accordance with N.J.S.A. 13:1B-15.129 will prepare the appropriate documentation for submittal to the Keeper of the Register for a determination of eligibility.

(i) After the satisfactory completion of the required cultural resource surveys, the Department, after consultation with the appropriate Federal agencies, in accordance with N.J.S.A. 13:1B-15.129 will issue one of the following determinations of effect:

1. Determination of No Effect: This determination will be issued when the proposed project will have no direct or indirect effect on Register-listed or eligible resources. No further cultural resource review will be required.

2. Determination of No Adverse Effect: If there will be an effect on a resource listed or eligible for listing on the Register, the Department will determine the nature of the effect in accordance with State and, when appropriate, Federal laws and regulations. If a determination of no adverse effect is made, the Department will prepare the documentation required by 36 CFR 800.8 for submittal to the Advisory Council on Historic Preservation. Effects of an undertaking that would otherwise be found to be adverse may be determined to be not adverse when both the nature of the impact is limited and appropriate data recovery is implemented. If the Advisory Council on Historic Preservation concurs with the documentation submitted, or does not object within 30 calendar days of receipt of the submittal, the undertaking may proceed in accordance with all provisions delineated in the documentation submitted to the Advisory Council on Historic Preservation.

3. Determination of Adverse Effect: An adverse effect is an alteration to a Register-listed or eligible resource that detracts from those characteristics by which it was determined eligible for inclusion on the Register. Examples of adverse effects include, but are not limited to, partial or total destruction of the resource, alteration of the resource's environment, neglect of the resource resulting in its deterioration, or transfer or sale of the property which contains a resource without adequate conditions regarding preservation, maintenance or use.

i. If the Department, in consultation with the appropriate Federal agencies, determines that a project has the potential to adversely affect a Register-listed or eligible resource, or if the Advisory Council on Historic Preservation objects to a determination of No Adverse Effect, the Department will initiate the preparation of a preliminary case report incorporating a proposal to avoid or mitigate the adverse effect.

ii. This documentation, submitted to the Advisory Council on Historic Preservation, will be utilized, through a consultation process, in the preparation of a memorandum of agreement in accordance with N.J.S.A. 13:1B-15.129.

iii. The consultation process involves an examination, by the Department, the Advisory Council on Historic Preservation, and other appropriate State and Federal agencies, of all feasible alternatives that would avoid adverse effects to the resource.

iv. The memorandum of agreement shall be signed by the Advisory Council on Historic Preservation, appropriate State and Federal agencies as well as other interested parties, as required. Such signatures shall constitute acceptance of the terms of the agreement.

v. No action will be authorized by the Department that will have an adverse effect on Register-listed or eligible resources until all reasonable alternatives have been examined and until the Advisory Council on Historic Preservation issues comments on the request for guidance in the resolution of the issue.

(j) Where it is determined that the alternative to avoid the adverse effect is not feasible, measures to minimize the potential effects shall be developed by the Department in consultation with the Advisory Council on Historic Preservation, appropriate State and Federal agencies, and, as required, other interested parties. A mitigation plan outlining these measures shall be included in the memorandum of agreement signed by the consulting parties specified in (i)3 iv above. Mitigation shall be commensurate with the nature and the significance of the resource adversely affected by the project.

(k) All reports of cultural resource surveys submitted for review by the Department shall contain the following elements:

1. A table of contents, list of figures, maps and plates;

2. A concise description of the proposed project, particularly in terms of its potential for ground disturbance and possible effects on cultural resources;

3. A clear discussion of the objectives of the survey, the methodology employed to achieve these objectives and an interpretation of the survey results;

4. A list of all sources and authorities consulted;

5. A map of sufficient scale upon which all identified cultural resources as well as potential project impacts are plotted;

6. A United States Geological Survey 7.5 minute quadrangle map of the planning area upon which cultural resources and areas surveyed are noted;

7. A map of sufficient scale identifying and plotting the locations of all tests and excavation units as well as areas of potential impacts;

8. A bibliography of all publications and manuscripts consulted;

9. An inventory of all artifacts recovered and analyzed according to provenience;

10. Stratigraphic profile information for all test units; and

11. Resumes of the individuals responsible for the survey and the report preparation.

(l) All cartographic and document reproductions contained in the report must be clear and legible.

(m) Reports shall have original photographic plates or high quality offsets.

(n) All reports shall satisfy the requirements set forth in "Certain Technical Prescription for Preparing Reports of Surveys of Cultural Resources" which are to be reviewed by the Office of New Jersey Heritage, New Jersey Department of Environmental Protection, which is available upon request from the Department.

7:22-10.9 Environmental coordination

(a) The local government unit shall consult, coordinate with, or apply to those agencies responsible for issuing permits or which have other jurisdiction regarding environmental concerns with respect to the proposed project and its impacts. Those agencies include, but are not limited to, the agencies responsible for administering the following:

1. New Jersey Wetlands Act, N.J.S.A. 13:9A-1 et seq;
2. New Jersey Freshwater Protection Wetlands Act, N.J.S.A. 13:9B-1 et seq;
3. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50;
4. Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq;
5. Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq;
6. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq;
7. Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq;

8. Archeological and Historic Preservation Act of 1974, 16 U.S.C. §§ 469 et seq;

9. Clean Air Act, 42 U.S.C. §§7401 et seq;

10. Coastal Barrier Resources Act, 16 U.S.C. §§3501 et seq;

11. Coastal Zone Management Act of 1972, 16 USC §§1451 et seq., as amended;

12. Endangered Species Act, 16 U.S.C. §§1531, et seq;

13. Federal Executive Order No. 11593, (1971), Protection and Enhancement of the Cultural Environment.

14. Federal Executive Order No. 11988, (1977), Floodplain Management.

15. Federal Executive Order No. 11990, (1977), Protection of Wetlands;

16. Farmland Protection Policy Act, 7 U.S.C. §§4201 et seq;

17. Fish and Wildlife Coordination Act, 16 U.S.C. §§661 et seq. as amended;

18. National Historic Preservation Act of 1966, 16 U.S.C. §§470 et seq. as amended;

19. Safe Drinking Water Act, 42 U.S.C. §300(h) as amended;

20. Wild and Scenic Rivers Act, 16 U.S.C. §§1271 et seq. as amended; and

21. Historic Sites Act, 16 U.S.C. §§461 et seq.

(b) The local government unit shall provide a written report on the results of consultation, the status of permit acquisition, statements of no jurisdiction from each applicable agency or other suitable demonstration of non-applicability, as part of the environmental planning documentation required at all levels of environmental review. Any written determination received by the local government unit from the jurisdictional agency shall be included in the documentation of coordination.

7:22-10.10 Public participation

(a) The local government unit shall inform the affected public regarding the intent to develop and implement a wastewater management project and shall solicit input from the affected public prior to selection of the alternative which will become the proposed project. The local government unit is encouraged to utilize appropriate public participation mechanisms, which shall include, but are not limited to, notices, newsletters, citizens advisory groups, public meetings, and public hearings, to solicit comments. The minimum requirements for public participation at each level of environmental review are specified in N.J.A.C. 7:22-10.4, 5 and 6.

(b) Where a public hearing is required, a public hearing shall be noticed and documented by the local government unit in the following manner:

1. A retail or display advertisement located in the body of the newspaper noting the date, time, place and subject of the hearing shall be placed at least 30 days in advance of the hearing. The advertisement shall indicate repositories where planning documentation prepared for the project will be available for public review. The advertisement shall be placed in a newspaper of general circulation in the planning area for a Level 2 review and in at least two newspapers statewide for a Level 3 review.

2. A verbatim transcript or detailed minutes shall be prepared of the proceedings. The transcript or minutes, any written comments received on the proposed project, and a summary of significant public comments along with the response to the comments, shall be submitted by the local government unit to the Department as part of the planning documentation.

(c) A mailing list shall be developed by the Department for each project. The mailing list shall include elected officials, Federal, State and local government agencies, environmental groups, and other interested groups and individuals appropriate to the planning area for the proposed project.

(d) The Department may require supplemental measures to inform and solicit comment from the public under the following conditions:

1. Where factors, such as delays in project implementation or errors in cost estimation, result in significant increases in the user cost burden prior to the award of financial assistance, the local government unit may be required to place a retail or display advertisement in the body of a newspaper of general circulation in the planning area which describes the proposed project and the

revised costs, including user cost, and which establishes a comment period of 30 days. A summary of any public comment received during the comment period shall be submitted by the local government unit to the Department. Based on the response of the public to the advertisement, the Department will determine if further project evaluation is required.

2. Where, as a result of the re-evaluation of the environmental review conducted in accordance with N.J.A.C. 7:22-10.7, the Department determines that significant changes in the project or project impact have occurred, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

7:22-10.11 Design requirements

(a) The local government unit shall be required to prepare design plans and specifications which include mitigating measures developed during planning and incorporated in the approved planning documentation. In addition, the design plans and specifications shall conform to the minimum standards for each area of concern which is applicable to the proposed project as set forth below.

(b) The contract documents shall be prepared to clearly identify environmental protection measures and shall conform to the following:

1. Unless otherwise approved by the Department, the format of the contract documents shall consolidate environmental and cultural resource protection/restoration measures in a single section of the design specifications as well as on appropriate sheets of the design plans. The specifications which spell out the environmental and cultural resource protection/restoration measures shall be identified in the specifications as having precedence over other potentially contradictory language contained elsewhere in the design contract documents.

2. Environmental and cultural resource protection/restoration measures should generally include the following subject areas:

- i. General;
- ii. Clearing;
- iii. Erosion and sedimentation control;
- iv. Protection of environmentally critical areas;
- v. Stockpiling and waste disposal;
- vi. Prohibited construction procedures;
- vii. Dust control;
- viii. Noise control;
- ix. Cultural resources;
- x. Dewatering;
- xi. Restoration;
- xii. Environmental maintenance bond; and
- xiii. Inspection.

3. The method of payment for environmental and cultural resource protection/restoration measures shall be specified in the applicable section of the contract documents. Where restoration and maintenance of environmental quality are necessary outside of the designated construction area or when measures for maintenance of environmental quality are required after the date of completion and acceptance of the wastewater treatment facilities, the local government unit shall so state in the specifications. The local government unit shall include minimum per unit prices for materials needed for environmental and cultural resource protection and restoration.

4. Where construction will occur within or adjacent to environmentally critical areas, as approved by the Department, those areas shall be identified on design plans.

(c) Every effort shall be made to prevent and correct problems associated with erosion and sedimentation which could occur during and after project construction. At a minimum, design specifications shall incorporate the following erosion and sedimentation control measures:

1. All erosion and sedimentation control measures shall be in place prior to any grading operations or construction of proposed facilities and shall be maintained until construction is complete and the construction area is stabilized. After restoration is complete, temporary control measures shall be removed and disposed of properly.

2. All erosion and sedimentation control measures shall be constructed and maintained in accordance with the "Standards for Soil

Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987.

3. Disturbed areas that will be exposed in excess of 14 days shall be temporarily seeded and/or mulched until proper weather conditions exist for establishment of a permanent vegetative cover except in areas where final restoration is expected to be completed within seven days after the completion of construction, in which case no temporary protective measures will be required. If final restoration is expected to begin more than seven days and completed more than 30 days after the start of construction, seeding shall be required for temporary protection, except where seasonal conditions are not suitable for growing vegetation. In this case, mulch may be applied until conditions are suitable for establishing vegetative cover or until final restoration is implemented.

(d) Site and access clearing shall be confined to approved construction areas. Protection of existing vegetation shall be practiced wherever possible. At a minimum, the local government unit shall include provisions in the contract documents which conform to the following:

1. Easement widths shall be reduced to the minimum feasible for the proposed construction. Unless specifically approved by the Department, permanent access roads shall not be more than eight feet wide and there shall be no permanent access roads in environmentally critical areas.

2. Only those portions of the site which are absolutely necessary and essential for construction shall be cleared. Whenever possible, excavation shall include the removal and storage of topsoil from the site for future use. The length of time of ground disturbance shall be reduced to the minimum practicable, especially in environmentally critical areas. Ground disturbance shall be avoided until immediately preceding construction to minimize exposure of soils.

3. Trees and shrubs within construction easements, which are not required to be removed to permit construction, shall be protected to the drip line with appropriate protection measures such as snow fencing or batter boards. Trees and shrubs whose removal is necessary to facilitate construction shall either be replanted at the same location or replaced with nursery stock of the same kind. Trees of greater than 12 inches in diameter should be preserved whenever possible by implementing slight shifts in alignment or tunneling under tree roots. Specimen trees, as identified in the "New Jersey's Record Trees", New Jersey Outdoors, September/October, 1984, the New Jersey Outdoors publication listing specimen trees in the State, shall be preserved.

4. Except in heavily wooded areas, the plans shall designate trees and shrubs which are to be protected as well as trees and shrubs which are to be removed. In addition, plans shall provide details which depict methods of protection to the drip line.

5. In heavily wooded areas, every effort shall be made to avoid the destruction of common native trees and shrubs so as not to unduly disturb the ecological balance or environmental quality of the area. Trees of 12 inch diameter or greater should be preserved whenever possible and protected to the drip line. Where practical, common native trees and shrubs, of one through three inch caliper, which must be cleared from the construction area shall be stockpiled for use in restoration. Straggling roots shall be pruned. Trees which must be pruned to facilitate construction shall be cut cleanly and painted with tree paint. If a tree not intended to be removed is damaged, the wood shall be repaired according to common nursery practice and painted with tree paint.

(e) Restoration measures to be identified and designated on the environmental plans and specifications include the following: ground preparation, topsoiling, fertilizing, liming, reseeding, and replanting/replacement of trees and shrubs. The aim of restoration is to restore the disturbed area to a condition as nearly equal to pre-disturbance condition as possible. The environmental specifications shall set forth the procedure for accomplishing these restoration measures. The plans shall include the location of various types of restoration and shall include details depicting typical methods to accomplish restoration. The provisions shall include the following when applicable:

1. Final restoration shall be undertaken as soon as an area is no longer needed for construction, stockpiling or access. Excavated ma-

terial unsuitable for backfill as set forth at N.J.A.C. 7:14-2.13 and considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be removed from the construction site and disposed of at a sanitary landfill approved and licensed by the Department. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded or removed in accordance with (1)3 below. When access roads are no longer needed, road fill shall be removed and the access area shall be restored to pre-disturbance conditions. Care should be taken to avoid damage to adjacent vegetation and to prevent the formation of depressions that would serve as mosquito pools.

2. Topsoil shall be replaced with adequate amounts of topsoil material to restore the disturbed area to its original, pre-disturbance grade and depth of topsoil.

3. Rates and types of fertilization, liming, and seeding shall be as recommended by the local Soil Conservation District based on soil tests and local conditions. Seed mixtures shall be selected that are best suited for the particular site conditions. Seed selection shall provide for a quickly germinating initial growth, to prevent erosion, and for a secondary growth that will survive without continuing maintenance. Mulching shall occur immediately after seeding, and in no case shall more than five days elapse between seeding and mulching.

4. In wooded areas, for a 50 foot wide construction easement, generally 10 trees should be planted for every 100 feet of length of the easement. More trees would be required in wider easements or densely wooded areas. Plans shall include a restoration schedule specifying the quantity, common and botanic names, sizes, and spacing of trees to be planted and the type of seed mixtures to be used from station to station. Trees to be replaced should be trees native to New Jersey suitable for the particular site and generally should conform to the list of trees found in the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987.

5. In landscaped areas, environmental features shall be replaced or restored to pre-disturbance condition or better. This includes sodding, replacement of trees and shrubs, fences, drives, and other landscape features in kind.

(f) A listing of prohibited construction procedures shall be incorporated into the specifications. These procedures include, but are not limited to, the following:

1. Dumping of spoil material into any stream corridor, any wetlands, any surface waters, or at unspecified locations;

2. Indiscriminate, arbitrary or capricious operation of equipment in any stream corridors, wetlands or surface waters;

3. Pumping of silt-laden water from trenches or other excavations into any surface waters, stream corridors or wetlands;

4. Damaging vegetation adjacent to or outside of the access road or the right-of-way;

5. Disposal of trees, brush and other debris in any stream corridors, wetlands, surface waters or at unspecified locations;

6. Permanent or unspecified alteration of the flow line of any stream;

7. Open burning of project debris;

8. Use of chemicals for dust control; and

9. Use of asphaltic mulch binder.

(g) Construction in wetlands shall conform to requirements imposed through applicable permits and, at a minimum, the following:

1. Before excavation is initiated in the wetlands, a line of hay bales or other siltation control barriers shall be staked in place along the edges of the construction area and shall remain in place until restoration is complete. In addition, marsh mats shall be used for heavy construction equipment;

2. Topsoil shall be stripped and soil layers replaced in the excavated area in the same order that they were removed. Final grade shall match the elevation prior to disturbance;

3. The cleared easement shall be revegetated with a mix and density of species similar to that which was removed. Material for vegetation can be preserved from the areas cleared and replanted or provided from nursery stock;

4. Anti-seep collars shall be installed as needed in the trench to avoid draining the wetland; and

5. Coastal wetland areas disturbed during the construction shall be restored to pre-disturbance conditions by an environmentally-oriented concern with documented successful experience in the restoration of wetland areas.

(h) Where stream crossings are necessary, adverse impacts shall be minimized by including appropriate mitigating measures and restoration techniques in plans and specifications. At a minimum, mitigating measures and techniques shall include the following requirements:

1. Avoid clearing until immediately preceding construction;
2. Prior to clearing, place staked hay bales across the sloped approach to the crossing and maintain, except during actual crossing, until restoration is complete;
3. Avoid stockpiling material in the floodplain of the stream;
4. Set up in-stream sediment controls prior to commencing construction;
5. Complete crossing expeditiously. Consider weather and anticipated stoppages for weekends and holidays and plan to cross at such a time that the work can be continued until complete;
6. Maintain effectiveness of sediment control features throughout the crossing process;
7. Construction through stream corridors, wetlands and other surface waters shall be scheduled to minimize damage to fish populations wherever possible. Recommend periods during which construction is to take place shall be in accordance with N.J.A.C. 7:13-5.6(g) and N.J.A.C. 7:7E; and
8. Restoration shall be initiated immediately following the crossing and be completed as soon as possible. Restoration shall conform to the following:
 - i. Re-establishing channel contours;
 - ii. Replacing bottom with native material, or in very silty bottoms, with crushed stone (one through three inch diameter);
 - iii. Stabilizing banks with rip-rap. The size and nature of the rip-rap shall conform to the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987. Jute mesh may be used to stabilize intermittent or extremely low flow streams with shallowly sloping banks in sand/silt bottomed streams; and
 - iv. Revegetating banks with appropriate native materials such as grasses, ground covers, trees and shrubs.

(i) Slopes exceeding 15 percent require special treatment. Specifications shall call for measures such as water diversion berms, sodding, or the use of jute or excelsior blankets. Hay bales shall be placed at the base of the slope prior to ground disturbance. Steep slopes that have been disturbed, if not sodded, shall be seeded immediately after construction is complete. Slope boards or other measures necessary to prevent slumping of the disturbed slope shall be incorporated, where appropriate.

(j) If there is the possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, special requirements and conditions shall apply and shall be incorporated in the specifications as follows:

1. In vegetated areas, the top two feet of soil shall be stripped and stockpiled separately from the material to be excavated. A soils specialist, to be provided by the local government unit, shall monitor the stripping operation. If any acid-producing deposits are identified, this material and any contaminated soil shall be disposed of on the same day. The presence of acid-producing deposits is detected by the use of the following tests:
 - i. Determining the pH of the soil when suspended in 0.5 Molar calcium chloride solution (of neutral pH). A pH value below 3.0 indicates presence of ferrous sulfate and presence of acid-producing deposits is strongly suspected.
 - ii. Test for sulfate by adding a drop of 10 percent barium chloride solution to a water extract of the material. If voluminous flocks of barium sulfate form immediately the presence of acid-producing deposits is strongly suspected.
2. The disposal site shall be approved by the Department. Any soil of this type disposed of shall be covered with a minimum of two feet of cover to prevent rapid oxidation and subsequent acid formation.

3. In both vegetated and paved areas, when acid-producing deposits are encountered, as determined by the soil specialist, excavated trench material shall be returned to the trench in order of removal, that is, lower material first, followed by upper material. In addition, the top one to two inches of soil on which the deeper soil was stockpiled shall be scraped and placed below a depth of two feet. For interceptor construction, the quantity of material to be displaced by bedding and pipe, as well as soil scraped from the stockpile area, shall be subtracted from the deeper, excavated material and this quantity of deeper material removed to an approved disposal site and covered as described above. After backfilling the deeper soil, one ton of limestone per 2,000 square feet shall be spread over the deeper soil in the trench. This liming requirement shall be applicable in areas of well drained, non-saturated soils, as determined by the soils specialist. In vegetated areas, the top two feet of soil, stockpiled for this purpose, shall then be replaced. If the top two feet of soil was also contaminated, clean backfill material similar to the native topsoil shall be used.

4. The excavated acid-producing deposits shall not be exposed for a period longer than eight hours. When acid-producing deposits are encountered, the trench opened in any construction day shall be backfilled and the areas cleaned up by the close of the day. Alternatively, exposed acid-producing deposits shall be covered with limestone screenings at a rate of 100 tons per acre and then covered with six inches of compacted soil within one week of exposure or before the exposed soil drops to pH 3, whichever occurs first. The pH shall be monitored daily under this option.

5. Temporary restoration of vegetated areas shall consist of mulching and shall be put in place at the end of each day's construction. Permanent restoration of the area shall begin as soon as construction is complete and after the results of incubation tests, where necessary, are available.

6. Prior to restoring vegetated areas, the soil specialist shall perform pH tests on the soil. If the pH is below 4, intensive liming shall be required in order to make the soil suitable for plant survival.

7. Lime requirement tests shall be performed by the soil specialist to determine the lime application rates. This shall require an incubation test in which the sample is oxidized for a period of six weeks, as follows. The sample shall be air dried and ground so that the whole sample passes a 0.5 millimeter sieve. The lime requirement to reach pH 6.5 shall be determined initially, and again at two week intervals for six weeks, using standard soil testing techniques. The lime requirement can be extrapolated to the area under consideration.

8. A minimum of 30 tons of limestone per acre or the amount of lime required according to the incubation test result shall be applied prior to seeding and planting where the pH is less than 4. Where the pH is greater than 4, liming and fertilizing requirements set out in the planting and environmental specifications shall apply.

9. The spreading and mixing of the subsoil and any topsoil contaminated with acid-producing deposits around the site and beyond the site is prohibited. Areas used for stockpiling acid-producing deposits shall be minimized. Equipment used for excavation and backfilling shall be cleaned, to the extent practicable, at the end of each day's operation and the soil removed shall be placed in the trench below a depth of two feet. No construction shall take place during significant rainstorms or while the area is saturated to avoid smearing or spreading of the acid-producing deposits over the area.

(k) Discharges from dewatering activities which contain silt or hydrogen sulfide shall be subject to the following controls:

1. All discharges from dewatering activities to surface waters, wetlands or storm sewers shall be free of sediment. Care shall be taken not to damage or kill vegetation by excessive watering or by damaging silt accumulation in the discharge area. If discharges are sediment laden, techniques shall be employed to remove sediment prior to discharge. A sedimentation basin shall be constructed and used as specified, where necessary, to protect vegetation and to achieve environmental objectives.

2. Sewer inlets within construction areas shall be provided with perimeter hay bales or other appropriate siltation control measures.

3. In coastal areas, it is possible that water emanating from dewatering operations may contain hydrogen sulfide concentrations that

could adversely impact areas to which the water is discharged. In these areas, at no time shall the water emanating from dewatering operations be allowed to contain concentrations of hydrogen sulfide in excess of 40 parts per billion (ppb). Prior to, and periodically during, dewatering, tests shall be conducted on the groundwater and dewatering discharge to determine if the hydrogen sulfide concentration is within the prescribed limits. In the event that these limits are exceeded, the contractor shall pretreat the discharge water prior to disposal. Pretreatment shall maintain the hydrogen sulfide concentrations at or below the 40 ppb level and shall be in use during those times when dewatering is occurring and the concentrations are exceeded.

(l) Contract requirements with regard to the location of stockpile, storage and disposal areas, and erosion control measures shall conform to the following:

1. Only environmentally suitable stockpile sites shall be used for the purposes of storing materials, equipment and suitable trench backfill material. Environmentally suitable sites shall be level, and devoid of mature stands of natural vegetation. Drainage facilities and features, wetlands and stream corridors are not environmentally suitable sites.

2. The boundary of the stockpile area shall be clearly marked by hay bales, silt fencing or another appropriate method. Where fill is to be stored in excess of 14 days, a suitable means of protecting excavated material from wind and water erosion shall be employed. Erosion control methods may include one or more of the following: mulching, sprinkling, silt fencing, haybaling and stone covering.

3. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded on-site or removed from the site and disposed of at a site approved by the Department in accordance with the following:

i. The disposal of excess excavated material in wetlands, stream corridors and floodplains is strictly prohibited, even if the permission of the property owner is obtained. The contractor shall be responsible to remove any fill improperly placed by the contractor at the contractor's expense and restore the area impacted.

ii. If excess excavated material is placed on private property, a hold harmless release in favor of the local government unit and the Department shall be obtained from the property owner; and

iii. Erosion by wind and water of excess excavated materials disposed of on private lands by sewer contractors is a concern. Therefore, when obtaining releases from private property owners, the contractor shall include a statement from the property owner that he or she has been apprised by the contractor of this need for erosion control and accepts complete responsibility for its implementation.

(m) In order to control dust, as often as required during each working day, and particularly prior to the conclusion of each working day, areas under immediate construction (including access roads and other areas affected thereby) shall be swept and wet down with water sufficiently to lay dust. In addition, these areas shall be wet down during non-working hours (including weekends) as often as required to keep the dust under control. The use of calcium chloride or petroleum products or other chemicals for dust control is prohibited.

(n) In order to limit noise impacts, construction operations and activities shall be limited to Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M. unless variances to these times are granted in times of emergency. No driving, pulling or other operations entailing the use of vibratory hammers or compactors shall be permitted, other than between the hours of 8:00 A.M. and 5:00 P.M. The number of machines in operation at a given time shall be limited to the minimum practicable. All engine generators or pumps shall have mufflers and be enclosed within a temporary structure.

(o) If a cultural resource is encountered during the course of construction, the contractor is directed to halt all construction activities in that area. The contractor shall immediately contact the local government unit who shall contact the Department. The Department will determine and require initiation of the appropriate actions in accordance with N.J.A.C. 7:22-10.8.

(p) The local government unit shall require that the contractor supply an environmental maintenance bond in the amount of \$25,000 or 50 percent of the price bid for the materials needed to fulfill the

environmental specifications, whichever is greater. The environmental maintenance bond shall provide that the contractor shall remedy, without cost, any defects, which are proved to result from faulty workmanship or from failure to comply with the specifications and which develop during the period of one year from the expiration of the performance bond, required pursuant to N.J.S.A. 40A:11-22.

(q) The local government unit shall obtain photographs of existing conditions prior to the start of site and access clearing and construction. At a minimum, one eight inch by 10 inch color glossy print photograph shall be obtained for each 100 feet of the construction area. Special attention shall be given to environmentally critical areas and areas outside of the public right-of-way. Photographs shall be labelled by station so that upon completion of the construction, or during construction if necessary, subsequent photographs can be taken from the same control points. The local government unit shall file copies of the above photographs with the Department.

7:22-10.12 Construction phase requirements

(a) The local government unit shall employ a sufficient number of environmental inspectors to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. The Department shall utilize environmental inspectors to oversee the conduct of the protection/restoration measures. Responsibilities of the environmental inspectors include the following:

1. The maintenance of a daily job diary in which they shall record the progress of the work and of any problems encountered. The environmental inspectors shall notify the contractor in writing immediately upon noticing that environmental specifications are not being met.

2. At frequent intervals during construction, the loan recipient, the resident engineers, the environmental inspectors and the Department inspectors shall meet to review progress and to resolve difficulties that might result in unnecessary delays in the work.

(b) After award of a contract and before construction commences, a pre-construction conference shall be held. The loan recipient, the resident engineer, the environmental inspectors, the Department inspectors and the contractor should reach general agreement upon procedures to be followed to comply with the plans and specifications intended to provide environmental and cultural resource protection and restoration that have been approved by the Department.

(c) A final inspection shall be required following completion of all construction and restoration work encompassed by each contract. The final inspection shall be conducted as follows:

1. Upon completion of all construction and restoration work of each contract of a project, the loan recipient shall submit a letter to the Department, Municipal Wastewater Assistance Element, CN-029, Trenton, New Jersey 08625, stating that the project (or contract) is ready for final inspection. No final inspection can be scheduled until formal notification is received.

2. The final inspection shall be a joint inspection with the loan recipient and/or the resident engineer, the environmental inspector, the contractor and representatives from the Department in attendance.

3. The Department shall make a determination, within 12 days of the final inspection, regarding the adequacy of the contractor's performance of the specifications relative to environmental and cultural resource protection and restoration. If the performance is not acceptable, this finding and the procedures and schedules needed to effect acceptable performance will be conveyed in writing to the local government unit. Failure of the local government unit to comply with the Department's requirements may subject the local government unit to the non-compliance provisions of N.J.A.C. 7:22-3.40, 4.40 and 6.40.

(a)**DIVISION OF HAZARDOUS WASTE MANAGEMENT
Hazardous Waste Fees****Proposed Amendments: N.J.A.C. 7:26-1.1, 1.4, 4,
7.3, 7.5, 12.2, 13A.6, 16.2 and 16.3.****Proposed New Rules: N.J.A.C. 7:26-4A.**Authorized By: Richard T. Dewling, Commissioner, Department
of Environmental Protection.Authority: N.J.S.A. 13:1E-3 and 13:1E-1 et seq., particularly
13:1E-6, 13:1E-18, 13:1E-42.2, 13:1E-60d, and 13:1E-87.

DEP Docket Number: 031-88-07.

Proposal Number: PRN 1988-424.

A public hearing concerning this proposal will be held on:

August 30, 1988 at 1:00 P.M. to 4:00 P.M.

New Jersey State Museum Auditorium

205 West State Street

Trenton, New Jersey

August 31, 1988 at 6:00 P.M. to 10:00 P.M.

Labor Education Center Auditorium

Cook College

Ryderson Lane

Rutgers University

New Brunswick, New Jersey

Submit written comments by September 14, 1988 to:

Carl Will

Office of Regulatory Services

New Jersey Department of Environmental Protection

CN 402

Trenton, N.J. 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to establish a fee schedule for specific services, including inspections, in its administration of the State's hazardous waste management program. The proposed amendments and new rules increase the existing fees for hazardous waste transporter registrations and treatment, storage, or disposal (TSD) facility applications and establish new fees for hazardous waste transporter registration and inspections, generator annual reporting and inspections, TSD facility annual report reviews, inspections, and permit reviews and issuance, hazardous waste classifications and delistings, public hearings costs, and for manifest forms.

The proposed fees will generate approximately \$3.6 million in revenues annually to be used to offset shrinking Federal grant funding, to supplement deficits being created by escalating costs, and to increase resources in existing program areas and expand into newly mandated areas.

The Department is responsible for administering the State's hazardous waste regulatory management program, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., as supplemented in part by "An Act concerning the inspection of certain solid waste disposal facilities" (the "Inspection Act"), N.J.S.A. 13:1E-42.1 et seq., and the Major Hazardous Waste Facilities Siting Act (the "Siting Act"), N.J.S.A. 13:1E-49 et seq., and by State rules promulgated pursuant thereto. In addition, since February, 1985, the Department has had final authorization from the United States Environmental Protection Agency (USEPA) to administer a hazardous waste program at least as stringent as that mandated by the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 et seq. (1976), and Federal regulations promulgated pursuant thereto.

N.J.S.A. 13:1E-18 authorized the Department to collect "fees for any of the services it performs in connection with" the Solid Waste Management Act. Fees charged pursuant to N.J.S.A. 13:1E-18 are limited thereby to no less than \$10.00 or greater than \$500.00. N.J.S.A. 13:1E-42.2 specifically allows the Department to assess fees "in an amount sufficient to cover the costs of the inspections" of major hazardous waste facilities under the Inspection Act. N.J.S.A. 13:1E-60d and 13:1E-87 specifically allow the Department to charge and collect "reasonable fees as may be necessary to cover the costs of reviewing applications" for new or expanding major hazardous waste facilities under the Siting Act. The term "major hazardous waste facility" as used in the Inspection and Siting Acts is defined at N.J.S.A. 13:1E-42.1 and 13:1E-51 as any commercial

hazardous waste facility which has a total capacity of more than 250,000 gallons or the equivalent thereof, excepting facilities that meet the definition solely as the result of the recycling or rerefining of hazardous wastes that are or contain certain precious metals. The term "commercial hazardous waste facility" is also defined at N.J.S.A. 13:1E-51 as a facility which accepts hazardous waste from more than one off-site generator.

Hazardous waste fees are currently collected pursuant to State rules regarding hazardous waste transporter registration and TSD facility permit applications, at N.J.A.C. 7:26-4.3 and 4.7, last amended in 1978 and 1984, respectively. Monies collected have not been sufficient to cover the costs of hazardous waste management program services provided by the Department in these categories. These fees have been supplemented by general State funds and by Federal RCRA grant funds. In the State fiscal year 1986 (FY86), beginning July 1, 1985 and ending June 30, 1986, the Department received a total of \$3.3 million from the USEPA under RCRA, while in FY89, beginning July 1, 1988 and ending June 30, 1989, the Department expects to receive only \$2.9 million from the USEPA under RCRA. This decrease of \$500,000 between FY86 and FY89 is a reduction in Federal support of over 12 percent. In addition, between July 1, 1985, and July 1, 1988, salary costs for positions funded under the RCRA grant have increased by 29 percent. No new State-funded hazardous waste management positions have been added since FY86 due to these declining Federal grants and escalating salary costs.

The current total funding for the New Jersey hazardous waste program is approximately \$7 million per year, which is made up of about \$4 million in State funds and \$3 million in Federal funds. Federal revenues are expected to continue to decline during the next few years, while overall program costs are expected to increase during the same period due to increased salary and operation expenses and expanding State responsibilities under RCRA.

The Hazardous and Solid Waste Amendments to RCRA (HSWA), Pub. L. No. 98-616 (1984), imposed significant and far reaching additional requirements on the USEPA and on the State hazardous waste program. In the three years since enactment of HSWA, USEPA has directed increasing amounts of its financial support under the RCRA grant program towards assuring State compliance with HSWA mandates. This has resulted in a shift of many pre-HSWA RCRA responsibilities to the Department at the same time that the Department has been required to conduct additional HSWA—mandated activities with shrinking Federal financial support. The Department has always sought to maintain its authorization under RCRA in part to avoid dual regulation of the New Jersey hazardous waste industry.

Additional responsibilities mandated by HSWA and by the Superfund Amendment and Reauthorization Act (SARA), Pub. L. No. 99-499 (1986), include expanded enforcement requirements, land disposal bans, regulation of radioactive mixed waste, an increase in the number of substances regulated as hazardous waste, and expanded annual reporting requirements. In addition, the Department has expanded its hazardous waste activities to include, among other things, waste minimization and household hazardous waste collection programs.

The proposed expanded annual reporting requirements for generators and for TSD facilities will be used by USEPA and the State in certifying that the State has adequate capacity to manage hazardous wastes generated in New Jersey. These certifications are required under SARA in order for the State to receive Federal Superfund moneys in future years. In Federal FY88, New Jersey will receive over one-third of the entire Federal budget for Superfund, or \$248 million of the \$775 million total available to the entire nation. It is critical that the continued receipt of these funds be ensured as the capital intensive construction phase at Superfund sites is entered.

A new subchapter at N.J.A.C. 7:26-4A is created for the proposed hazardous waste fee schedule. The amendments to N.J.A.C. 7:26-4 delete hazardous waste fees, so that subchapter 4 contains the fee schedule for non-hazardous solid waste only.

The amendment to N.J.A.C. 7:26-1.4 adds definition for hazardous waste cab, hazardous waste trailer, and hazardous waste transport unit, and amends the definition of hazardous waste vehicle. The cab, trailer, and transport unit are to be registered with the Department, separately if detachable and as a unit if permanently attached. The definition of cab is limited to road vehicles, that is, trucks, while trailer includes flat rail cars and barges as well as truck trailers. The transport unit is that part of the vehicle that actually holds the hazardous waste, for example, a dumpster, but does not include disposable containers, for example, drums. The hazardous waste vehicle is the complete operational vehicle for transporting hazardous waste by road, meaning any combination of cab, trailer, and transport unit.

The term "collection-hauler" is replaced by "transporter" at N.J.A.C. 7:26-1.4, 4.7, 7.4, 7.5, and 16.2.

Proposed new rule N.J.A.C. 7:26-4A.4 provides for exemptions from the fee schedule for small quantity generators and homeowners seeking classification of home heating oil spill residues.

The amendment to N.J.A.C. 7:26-7.3 deletes a reference to Federal regulations regarding manifesting procedures and adds a reference to the procedure under State rules. The amendment to N.J.A.C. 7:26-7.4(e) deletes the bulk rail or water shipment exemption from the requirement that hazardous waste generators use properly registered hazardous waste transporters, so that rail and water carriers will be subject to the proposed fees and registration requirements. The amendment to N.J.A.C. 7:26-7.4(j) updates the address for registration with the Department's waste reuse facility program. The amendment to N.J.A.C. 7:26-7.5(a) adds a reference to additional hazardous waste transporter requirements found at N.J.A.C. 7:26-3.4. The amendment to N.J.A.C. 7:26-7.5(c) deletes a reference to 7:26-5.9 because that section has been repealed. The amendment to N.J.A.C. 7:26-7.5(a) requires that hazardous waste vehicles display their registration decals and numbers, and that hazardous waste facilities accept waste only from vehicles properly displaying registration numbers.

The amendment to N.J.A.C. 7:26-13A.6 requires that fees pursuant to N.J.A.C. 7:26-4A be submitted along with TSD facility permit applications and amendments when an industry requests designation by the Hazardous Waste Siting Commission of a TSD facility site pursuant to the Siting Act.

The amendment to N.J.A.C. 7:26-16.3 updates the address for filing of disclosure statements.

Social Impact

A positive social impact will result from the proposed hazardous waste fee schedule. The schedule will impose increased costs on all aspects of the hazardous waste industry, which may be transferred to hazardous waste generators in the form of increased rates for transporting and disposal. The fees collected will allow the Department to expand its hazardous waste program as is essential to protect public health and the environment and as mandated under State and Federal law. In addition, a beneficial social impact will result from the shift of financial responsibility for the State's hazardous waste program from the general taxpaying public to those who produce, transport, dispose of, and otherwise directly derive monetary benefit from the management of hazardous waste.

Economic Impact

The proposed hazardous waste fees are estimated to cost the regulated community approximately \$3.6 million annually. The cost will be distributed among the regulated community which is made up of the following numbers and types of businesses:

- 6,000 hazardous waste generators
- 280 hazardous waste transporters (5,000 to 7,000 vehicles)
- 180 hazardous waste TSD facilities (eight major and 172 non-major)

The proposed amendments and new rules may result in increased charges for hazardous waste transporting and disposal.

Fees for hazardous waste vehicle registrations are increased from the current \$50.00 to from \$100.00 to \$300.00 per vehicle. A new fee of \$500.00 is established for inspections of transporter facilities.

New fees for hazardous waste generators include up to \$400.00 for annual reporting, \$500.00 for facility inspections, from \$250.00 to \$500.00 per classification for waste classifications, \$200.00 for sampling plan reviews and a total of \$1,500 for delisting evaluations and publications. Hazardous Waste Manifest forms are \$10.00 for a package of 10 forms.

The current fee for TSD facilities is a \$500.00 application fee. Proposed fees for non-major facilities include \$500.00 for annual reporting review, \$500.00 for inspections, and \$500.00 for permit application initial reviews, permit application revisions and amendments, permit issuance, and closure approvals. Major TSD facility inspection fees will be determined by calculating a facility's percentage of total Departmental major facility inspection time used and percentage of total major facility hazardous waste generated and received. Major facility inspection fees are estimated to be up to approximately \$3,200 per inspection. Proposed major facility permit application review fees are from \$23,000 for a storage facility to \$172,000 for a land disposal, storage, and incineration facility. The \$172,000 fee is a small portion of the total cost of construction of a new major facility.

The cost of specific Departmental activities upon which these fee amounts are based is calculated by determining the number of full-time staff positions, or full-time equivalents (FTEs), required for the activity

and multiplying this figure by the average cost per FTE. The average cost of each FTE is made up of salary and normal operating expenses. The costs have been calculated using the annual dollar amounts listed in paragraphs 1 and 2 below. In addition, the cost of special equipment (examples given at paragraph 3 below) is added as necessary.

1. *Salaries*—staff salaries, indirect costs, and fringe benefits average \$45,000 per each staff person required.

2. *Normal operating expenses*—postage, telephone, travel, supplies, and data system maintenance average \$4,000 per each staff person required.

3. *Special equipment*—vehicles and maintenance, scientific equipment and supplies, safety equipment and safety training, and data processing equipment as needed.

Transporter fees will be used to fund 13 FTEs and the associated special equipment costs essential for administering hazardous waste transporter enforcement operations, including special investigations, roadside checks, and other activities required to assure that hazardous wastes are being transported in compliance with Federal and State law. The Department currently regulates approximately 280 hazardous waste transporter facilities and 5,000 to 7,000 vehicles. When fully staffed with the 13 FTEs, the Department can conduct approximately 40 transporter facility inspections and 180 roadside checks annually. The fees for hazardous waste cabs and carriages reflect the cost to the Department of registration alone, while the higher fees for transport units, which contain and transport the hazardous waste, reflect the costs to the Department of its tracking and enforcement activities. The registration fee is lower for transport units of one ton or less capacity. (The conversion data used for capacity is one ton = one cubic yard = 200 gallons, derived from the Hazardous Ranking System Users manual developed by the Mitre Corporation for USEPA.) Annual Departmental costs for transporter enforcement activities are:

Salaries/indirect/fringe	\$585,000
Normal operating expenses	\$ 52,000
Special equipment	\$300,000
	<u>\$937,000</u>

The Department performs hazardous waste classifications and reviews delisting petitions pursuant to N.J.A.C. 7:26-8.17 as a service to hazardous waste generators. Fees collected for waste classification and delisting will be used to fund seven FTEs. Annual Departmental costs for classification and delisting is:

Salaries/indirect/fringe	\$315,000
Normal operating expenses	\$ 28,000
	<u>\$343,000</u>

Hazardous waste generators and TSD facility owners/operators are required at N.J.A.C. 7:26-7.4, 7.5, and 7.6 to file annual reports with the Department. Proposed fees for annual report review and for manifest forms will be used to support the 20 FTEs required for administration, review, and evaluation of annual reports and for processing of associated manifest data from the approximately 6,000 generators and 180 TSD facilities. The proposed fees will only partially support the 20 FTEs necessary to perform these functions due to the \$500.00 cap established by N.J.S.A. 13:1E-18. Operating expenses are slightly higher for these activities, at \$5,000 per FTE, because of greater printing and mailing expenses. Annual Departmental costs for annual report review and associated activities are:

Salaries/indirect/fringe	\$ 900,000
Normal operating expenses	\$ 100,000
Data Processing	\$ 500,000
	<u>\$1,500,000</u>

The Departmental resources needed in terms of work-years, which are equivalent to FTEs, for hazardous waste facility permit issuance and closure approval have been established by the USEPA as a national standard under the RCRA grant program. The following are the required human resources for various permit and closure plan reviews established by the USEPA:

Storage (including treatment) permit	0.55 work-years
Incineration permit	1.52 work-years
Land disposal permit	1.98 work-years
Storage (including treatment) closure review	0.25 work-years
Incineration closure review	0.34 work-years
Land disposal closure review	0.55 work-years

New major commercial facilities as defined by the Siting Act will be assessed fees in an amount sufficient to fund the required FTEs for the

facilities permit reviews, which may be as high as \$172,000. Non-major hazardous waste facility fees are limited by the Solid Waste Management Act's \$500.00 cap. For non-major facilities, the proposed amendments and new rules will establish a fee of \$500.00 for each new application review, \$500.00 for each amendment or revision to an application review, \$500.00 for each permit issuance, and \$500.00 for closure approval. These fees are only a small fraction of the actual costs incurred by the Department in reviewing and issuing non-major hazardous waste facility permits.

A total of 25 FTEs is required for major and non-major permit application reviews and closure approvals. The proposed fees will only partially support those activities because of the \$500.00 statutory cap. Annual Departmental costs for major and non-major permit and closure reviews are:

Salaries/indirect/fringe	\$1,125,000
Normal operating expenses	\$ 100,000
Special equipment	\$ 20,000
	<u>\$1,245,000</u>

The Department performs approximately 1,200 to 1,400 inspections of hazardous TSD waste facilities each year. Proposed fees for major TSD facility inspections are based on inspection time, the amount of waste generated by or manifested to the facility, and the total cost of conducting all major facility inspections. Inspection fees for major hazardous waste facilities are based on actual Departmental costs as required by N.J.S.A. 13:1E-42.2. It is estimated that seven FTEs will be needed to perform weekly inspections of the eight currently existing major hazardous waste facilities as required by the Inspection Act. Annual Departmental costs for major hazardous waste facility inspections are:

Salaries/indirect/fringe	\$315,000
Normal operating expenses	\$ 28,000
Special equipment/training	\$129,850
	<u>\$472,850</u>

Inspections of non-major TSD facilities and hazardous waste generators require 11 FTEs to perform 200 generator and 808 non-major facility inspections. The proposed inspection fees for non-major facilities and generators will also only partially support the cost of those inspections because of the Solid Waste Management Act's \$500.00 cap. Annual Departmental costs are:

Salaries/indirect/fringe	\$499,500
Normal operating expenses	\$ 44,400
Special equipment/training	\$137,459
	<u>\$681,359</u>

The administration of the proposed hazardous waste fees will require 15 FTEs. Annual Departmental costs are:

Salaries/indirect/fringe	\$675,000
Normal operating expenses	\$ 60,000
Special equipment	\$ 50,000
	<u>\$785,000</u>

The proposed fees will be distributed among the regulated community and will generate approximately \$3.6 million annually. The Department's estimate of expected income from the proposed fees for FY89 is as follows:

Manifest forms	\$ 64,000
Annual reporting fees	\$ 954,000
Waste classification fees	\$ 343,000
Inspections—generator and non-major TSD facility	\$ 473,000
major TSD facility	\$ 477,750
Vehicle registration and transporter inspections	\$1,270,000
Permit review/issuance	\$ 25,000
	<u>\$3,606,750</u>

A total of 98 FTEs is required in order for the Department to fulfill its responsibilities under the State's hazardous waste management program. Fifty-four FTEs currently exist in the Department. The proposed new rules and amendments herein will provide for the additional 44 required positions.

Environmental Impact

Proper management of New Jersey's hazardous waste is essential to the health, safety, and welfare of New Jersey's residential and business communities. The proposed amendments and new rules will provide adequate funds so that the Department can ensure that hazardous waste is disposed of in an environmentally sound manner. In addition, hazardous waste fees provide an incentive to minimize the amount of hazardous

waste generated by increasing the cost to the generator of managing that waste. Increased revenues dedicated to supporting the activities as outlined in this notice of proposal will provide the Department with increased capabilities for protecting the public health, safety, and welfare and the environment.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, (Act) N.J.S.A. 52:14B-16 et seq., the Department has determined that these proposed amendments and new rules will impose new or increased compliance requirements on small businesses as defined by the Act.

The proposed new rules and amendments apply to hazardous waste generators, transporters, and TSD facilities, and will have a significant economic impact on facilities that are small businesses. Based upon statistics from the Department of Commerce and Economic Development, approximately 5400 businesses affected by these amendments and new rules are small businesses as defined by the Act. Costs of compliance will range from \$200.00 to \$400.00 annually for a company producing small quantities of hazardous waste to up to \$172,000 for major TSD facility permit reviews. Hazardous waste registration fees for hazardous waste cabs, trailers, and transport units will range from \$25.00 to \$300.00. The transporter registration fee is partially based upon vehicle or unit capacity and is lower for vehicles or transport units of one ton or less capacity. Hazardous waste transporter facilities will be charged a fee of \$500.00 for facility inspections. Small businesses may wish to engage the services of consultants or accountants.

In developing these new rules and amendments, the Department has balanced the need to protect public health and the environment against the economic impact of the rules as proposed and has determined that further reducing the requirements of the rules for small businesses would unacceptably endanger the environment, public health, and public safety. No exemption from coverage is provided unless companies are otherwise exempt from regulation, for example as small quantity generators under N.J.A.C. 7:26-7.7 and 8.3, or unless the activities are exempt from permit requirements under N.J.A.C. 7:26-9.1 or 12.1.

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

7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection which govern the registration, operation, and closure maintenance of sanitary landfills [in the State of New Jersey,] and other solid [and liquid] **and hazardous waste facilities in the State of New Jersey** as may be approved by the Department; registration, operation, and maintenance of [collection and haulage] **solid waste transporting operations and facilities in the State of New Jersey**; a fee schedule for engineering review, registration, and inspection of solid **and hazardous waste facilities, hazardous waste generators' reporting, classification, and delisting,** and registration of [collection, haulage,] **solid waste, including hazardous waste, transporters and disposal operations and facilities in the State of New Jersey.** These rules shall not apply to the following:

1.-6. (No change.)

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

7:26-1.4 Definitions

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

...
 "Approved registration" means the registration of solid waste disposal site, [collector/hauler] **transporter,** or other solid **or hazardous waste [facilities] facility** issued by the Department of Environmental Protection after review and approval of the registration statement.

...
 "Collection or collecting" means the act of picking up solid waste at its point of generation or storage and placing it in a **solid or hazardous waste vehicle.**

["Collection-hauler" means a person engaged in the act of collection of solid waste and/or transporting such waste between solid waste facilities.]

"Hazardous waste cab" means any powered device to which a hazardous waste transport unit or trailer can be attached for transporting hazardous waste off-site or to a hazardous waste facility by road.

"Hazardous waste trailer" means any non-powered device that is used to carry a hazardous waste transport unit. The hazardous waste trailer may be permanently attached to or detachable from the hazardous waste cab. A hazardous waste trailer includes, but is not limited to, trailer flat beds, flat rail cars, and flat barges.

"Hazardous waste transport unit" means any portable non-powered device that is used to contain and transport hazardous waste off-site or to a hazardous waste facility by road, rail, water, or air and that is not normally disposed of with the waste. Hazardous waste transport unit includes, but is not limited to, trailer roll-offs, roll-off containers, hoppers/dumpsters, rail cars, and barges. (Note: Permanently attached hazardous waste trailer/hazardous waste transport units include, but are not limited to, trailer boxes/vans, trailer dumps, trailer tanks, and trailer vacs, and will be assessed the fee specified therefor at N.J.A.C. 7:26-4A.3(c)1.)

"Hazardous waste vehicle" means any [vehicle registered by the Department to transport hazardous waste.] self-propelled device that is used to move hazardous waste off-site or to a hazardous waste facility by road. Hazardous waste vehicle is any combination of hazardous waste cab, trailer, and transport unit, whether detachable or permanently attached, and includes, but is not limited to, straight boxes/vans, straight dumps, straight tanks, straight vacs, straight roll-offs, and pick-up trucks.

"Transporter" means a person engaged in the act of collection and/or transporting of solid waste off-site or to a solid or hazardous waste facility by road, rail, water, or air.

"Transportation" or "transporting" means the act of collecting and/or moving solid waste off-site or to solid or hazardous waste facility by road, rail, water, or air.

SUBCHAPTER 4. [FEES]SOLID WASTE FEES EXCLUDING HAZARDOUS WASTE FEES

7:26-4.1 General provisions

In accordance with N.J.S.A. 13:1E-18 and N.J.S.A. 13:1E-6, there is hereby established a Fee Schedule. Said schedule shall apply to all sanitary landfill operations, incinerators, transfer stations, processing facilities, resource recovery facilities or any other methods of collection or disposal of solid waste, excluding hazardous waste, requiring registration with the Department.

7:26-4.2 (No change.)

7:26-4.3 Fee schedule for solid waste facilities

(a) The Fee Schedule for solid waste facilities is as follows:

1.-2. (No change.)

3. Inspection and Regulation Fee: Fee per quarter
 Solid Waste Facilities accepting during which wastes
are accepted

i. [Hazardous wastes, nonhazardous] Nonhazardous bulk liquids, nonhazardous semiliquids and nonhazardous chemicals (in quantities greater than normally present in municipal refuse and excluding septic tank clean-out waste): \$500;

ii.-viii. (No change.)

7:26-4.4 through 4.6 (No change.)

7:26-4.7 Fee schedule for [collection and haulage] transporting

(a) For all solid waste [collectors/haulers], excluding hazardous waste transporters, an annual registration and inspection fee shall be paid. The fee shall be \$20.00 for each vehicle per year or part thereof. The registration year shall extend from May 1 through April 30.

(b) For all hazardous waste collector/haulers, an annual registration and inspection fee shall be paid. The registration year shall extend from October 1 through September 30. The registrant may elect either of the following schedules:

1. \$50.00 for each vehicle per year or part thereof; or
2. \$50.00 for each vehicle up to 20 vehicles and \$5.00 per additional vehicle per year or part thereof. If the registrant intends to register more than 20 vehicles, he or she must notify the Department with the initial application in order to qualify for the reduction of fee for additional vehicles.]

[(c)](b) The Registration of a solid waste [and/or hazardous waste collection/haulage] vehicle is non-transferable.

7:26-4.8 through 4.10 (No change.)

SUBCHAPTER 4A. HAZARDOUS WASTE FEES

7:26-4A.1 General provisions

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

7:26-4A.2 Payment of fees

(a) Fees for activities related to hazardous waste generators, transporters, and treatment, storage, or disposal facilities shall be paid by certified check or money order payable to: Treasurer, State of New Jersey. Payment shall be submitted to:

New Jersey Department of Environmental Protection
 Attention: Hazardous Waste Fee Unit
 Division of Hazardous Waste Management
 401 E. State St.
 CN 028
 Trenton, New Jersey 08625

(b) All fees shall be paid within 30 days of the date on the bill issued by the Department unless otherwise specified herein. Those fees not paid within the time due shall be subject to penalties pursuant to N.J.S.A. 13:1E-9 and 13:1E-12.

7:26-4A.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) The fee schedule for hazardous waste facilities is as follows:

1. Annual reporting fee: \$500.00;
2. Fee for inspection of hazardous waste facilities, other than major hazardous waste facilities as defined at N.J.S.A. 13:1E-42.1, per inspection: \$500.00;
3. Fee for inspection of major hazardous waste facilities, as defined at N.J.S.A. 13:1E-42.1, will be determined on an annual basis by the following formula:

$$F = \text{Fee}$$

$$T = \text{Inspection time (expressed as a percentage of the Department's total annual inspection time for all major facilities)}$$

$$W = \text{Total quantity of hazardous waste generated and manifested off-site and hazardous waste manifested into the facility (expressed as a percentage of total hazardous waste generated and received annually from off-site for all major facilities)}$$

$$I = \text{Total annual cost for major inspections}$$

$$F = (T + W) / 2 \times I$$

4. Fees for review of permit applications for new major hazardous waste facilities, as defined at N.J.S.A. 13:1E-51, and expansions of 50 percent or more at major hazardous waste facilities, shall be paid at the time of application submission, and are as follows:

- i. Land disposal: \$84,000.00;
- ii. Storage (including treatment): \$23,000.00;
- iii. Incineration with trial burn: \$65,000.00; and
- iv. Incineration without trial burn: \$40,000.00;

5. Fees for review of permit applications and issuance of permits for hazardous waste facilities, other than major hazardous waste facilities as defined at N.J.S.A. 13:1E-51, which are required to be permitted pursuant to N.J.A.C. 7:26-12, are as follows:

- i. Fee for permit application review: \$500.00

(1) The permit application review fee shall be paid at the time of each submission of a permit application;

ii. Fee for permit issuance: **\$500.00**

(1) The permit issuance fee shall be paid at the time of public notice of the draft permit, including draft permits for permit modifications;

iii. Fee for each revision or amendment to a permit application: **\$500.00**

(1) The permit application revision or amendment fee shall be paid at the time of submission of a request for revision or amendment;

(2) No fee is required for permit application revisions or amendments that are mandatory under State or Federal statute or regulation; and

iv. Fee for issuance of closure approval: **\$500.00**

(1) The fee for issuance of closure approval shall be paid at the time of submission of the application for closure.

(b) The fee schedule for hazardous waste generators is as follows:

1. Annual reporting fees are as follows. Annual reporting fees shall be based on manifest information and/or annual reports for the previous calendar year:

i. Hazardous waste generators manifesting 1.33 or more tons but less than 10 tons of hazardous waste annually: **\$200.00;**

ii. Hazardous waste generators manifesting 10 or more tons but less than 100 tons of hazardous waste annually: **\$300.00; and**

iii. Hazardous waste generators manifesting 100 or more tons of hazardous waste annually: **\$400.00;**

2. Fee for inspection of hazardous waste generators, per inspection: **\$500.00;**

3. Fees for waste classification and delisting are as follows. Fees for waste classification shall be paid upon submission of each request for classification. A fee will be assessed for each separate waste classification requested:

i. The fee for the classification of the following wastes is **\$500.00** per classification:

(1) Manufacturing process waste streams;

(2) Wastes for which the source of contamination is unknown; and

(3) Wastes for which an analytical assessment of the presence of substances listed at N.J.A.C. 7:26-8.13 through 8.16 is required;

ii. Fee for the classification of wastes where the source of contamination is known and an analytical assessment of the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is greater than or equal to 200 cubic yards of solids or 500 gallons of liquids, per classification: **\$350.00;**

iii. Fee for the classification of wastes where the source of contamination is known and an analytical assessment of the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is less than 200 cubic yards of solids or less than 500 gallons of liquids, per classification: **\$250.00;**

iv. Fee for review of sampling plans submitted in support of waste classification requests, for each plan submitted: **\$200.00;**

v. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26-8.17 shall be paid upon submission of the document, and are as follows:

(1) Review of delisting petition: **\$500.00;**

(2) Development, monitoring, and review of sampling plan: **\$500.00; and**

(3) Development and publication of each public notice in the New Jersey Register: **\$500.00; and**

vi. The fee for Hazardous Waste Manifest forms is \$10.00 for a package of 10 forms and shall accompany the request for forms.

(c) The fee schedule for hazardous waste transporters is as follows:

1. All hazardous waste transporters shall pay an annual registration fee. A State of New Jersey hazardous waste transporter registration decal will be issued for each hazardous waste cab, trailer, and transport unit, as defined at N.J.A.C. 7:26-1.4. The fee registration year shall extend from October 1 through the following September 30. The fee shall accompany the submission of the annual registration application.

All vehicles registered with the Department must be owned or leased by the applicant. If the vehicle is leased, a copy of the lease must be submitted with the registration application. The registration of a hazardous waste transporter is non-transferable and fees are not refundable. The annual registration fees are as follows:

i. Each hazardous waste cab: **\$25.00;**

ii. Each hazardous waste cab with permanently attached trailer: **\$50.00;**

iii. Each hazardous waste trailer: **\$25.00;**

iv. Each hazardous waste transport unit, either detachable or with a permanently attached hazardous waste cab or trailer, or both, having a capacity less than or equal to one ton (one ton = one cubic yard = 200 gallons): **\$100.00;**

v. Each hazardous waste transport unit without a hazardous waste trailer having a capacity greater than one ton (one ton = one cubic yard = 200 gallons): **\$250.00;**

vi. Each hazardous waste transport unit with a permanently attached hazardous waste trailer having a capacity greater than one ton (one ton = one cubic yard = 200 gallons): **\$275.00; and**

vii. Each hazardous waste transport cab with permanently attached hazardous waste trailer and hazardous waste transport unit with a capacity greater than one ton (one ton = one cubic yard = 200 gallons): **\$300.00.**

2. Fee for inspection of transporter facilities, per inspection: **\$500.00.**

7:26-4A.4 Exemption from fee payment

(a) A hazardous waste generator is exempt from annual reporting fees if the quantity of manifested waste is less than 1.33 tons per year.

(b) Homeowners seeking waste classification of oil spill residues from home heating oil tanks are exempt from the classification fees.

7:26-7.3 Hazardous waste manifest forms

(a) For the purpose of [these rules] this chapter, only the [national] uniform hazardous waste manifest forms as described in the Appendix for 40 CFR Part 262 (1987) are to be used for hazardous waste shipments originating in or destined for New Jersey. Manifests shall be obtained in accordance with the procedures set forth [in 40 CFR 262.11] below, for the fee established at N.J.A.C. 7:26-4A.3(b)3iv, and filled out and distributed according to the instructions set forth at N.J.A.C. 7:26-7.4, 7.5, and 7.6.

1.-3. (No change.)

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

7:26-7.4 Hazardous waste generator responsibilities

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

(e) It shall be considered a violation of [these regulations] this section for a hazardous waste generator to:

1. (No change.)

2. Utilize a [hauler] transporter of hazardous waste who is not properly registered with the Department pursuant to N.J.A.C. 7:26-7.5 and/or who fails to display a current Department registration number (see N.J.A.C. [7:26.3.4(h)] 7:26-7.5(d)) [unless the hauler ships by bulk rail or water transportation]; or

3.-4. (No change.)

(f)-(i) (No change.)

(j) A generator shall not offer hazardous waste to a waste reuse facility for use or reuse unless:

1. The generator has registered with the Department's waste reuse facility program. To register, a generator shall submit the following information to: New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, [Bureau Chief, Bureau of Hazardous Waste Engineering,] Waste Reuse Program, 401 East State Street, 5th Floor, CN 028, Trenton, NJ 08625.

i.-vii. (No change.)

2.-5. (No change.)

7:26-7.5 Hazardous waste [hauler] transporter responsibilities

(a) This section applies to all hazardous waste [hauling] transporting, including the [hauling] transporting of hazardous waste fuels, except for the transportation of hazardous waste from one point to another on the site where the hazardous waste is generated, stored,

or disposed. **Hazardous waste transporter requirements are also found at N.J.A.C. 7:26-3.4(d), (e), (f), and (i).**

(b) (No change.)

(c) License issuance, renewal and revocation requirements are as follows:

1.-6. (No change.)

7. The failure to submit updated information and to submit all applicable fees (See N.J.A.C. [7:26-4] 7:26-4A) within 30 days after the annual renewal/expiration date of a hazardous waste [hauler] transporter license shall be sufficient cause for the Department to revoke the license or to declare it expired [pursuant to N.J.A.C. 7:26-5.9(b)].

8.-9. (No change.)

10. The Department, after notice and opportunity for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, may revoke the license of a hazardous waste hauler for the causes listed in this paragraph which are in addition to, and not a limitation of, any disqualifying reasons set forth in N.J.A.C. 7:26-16.8 and 16.9:

i.-iv. (No change.)

(d) General requirements are as follows:

1.-18. (No change.)

19. All hazardous waste vehicles, including the hazardous waste cab, trailer, and transport unit individually if detachable, used in the transporting of hazardous waste shall properly and conspicuously display a current State of New Jersey hazardous waste transporter registration decal, issued by the Department, and the New Jersey Solid Waste Administration (N.J.S.W.A.) registration number in letters and numbers at least three inches in height. In addition, the capacity of the vehicle in cubic yards or in gallons, with the appropriate unit designated, shall be marked on both sides of the vehicle so as to be visible to the operator of the hazardous waste facility to which the hazardous waste is being transported.

(e)-(i) (No change.)

7:26-7.6 Hazardous waste facility operator responsibilities

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

(e) It shall be considered a violation of [these regulations] this section for a hazardous waste facility operator[,] or any other person to:

1.-2. (No change.)

3. Accept waste from a hazardous waste [hauler] vehicle which fails to display a current Department registration number, as required by N.J.A.C. [7:26.3.4(h)] 7:26-7.5(d).

(f) (No change.)

7:26-12.2 [Permit application]Public participation in the permit process

(a)-(k) (No change.)

(l) All costs to conduct a public hearing such as stenographer fees and notice of public hearing shall be paid by the applicant. The applicant will be billed by the Department prior to permit issuance. The Department has the right to withhold the issuance of the final permit until all applicable fees have been paid in full.

7:26-13A.6 Procedure for designating a facility site at the request of any hazardous waste industry pursuant to N.J.S.A. 13:1E-59

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

(e) Upon receiving notice of transmittal of the request as required in (c)2[.] above, the requester may, at its discretion, submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26-12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26-4A to the Department. The requester may also, at its discretion, authorize the Commission to prepare at the requester's expense, an environmental and health impact statement, which meets the requirements of N.J.A.C. 7:26-12.2, concerning the proposed site. Should the Commission arrange for preparation of the environmental and health impact statement by contract with a consultant, the requester shall be afforded the opportunity to:

1.-2. (No change.)

(f)-(i) (No change.)

(j) If the requester's proposed site is adopted by the [c]Commission, the requester, if it has not previously exercised its discretion to do so, shall:

1. Authorize the commission to prepare an environmental and health impact statement as provided for in (e) above; [and]

2. Thereafter be considered an applicant and be bound by the procedures for the review of all applications for registration and engineering design approval for new major hazardous waste facilities as set forth in N.J.S.A. 13:1E-60 and the applicable rules of the [d]Department[.]; and

3. Submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26-12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26-4A to the Department.

(k) Any amendment to a major commercial hazardous waste facility's permit or engineering design which would result in an increase of 50 percent or more of the capacity of that facility shall be reviewed and approved by the Department according to the procedure in N.J.S.A. 13:1E-60 and any applicable rules pursuant thereto.

[(k)](l) (No change in text.)

7:26-16.2 Definitions

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

... "License" means the initial approval and first renewal of any registration statement or engineering design pursuant to N.J.S.A. 13:1E-1 et seq. and/or N.J.S.A. 13:1E-49 et seq. for the collection, transportation, treatment, storage or disposal of solid waste [or] including hazardous waste in this [s]State, except that "license" shall not include any registration statement or engineering design approved for any of the persons listed in N.J.A.C. 7:26-16.3(d). "License" includes any authorization equivalent to an approved registration, including any temporary operating authorization, hazardous waste [hauler] transporter license, or hazardous waste facility permit.

7:26-16.3 Filing of disclosure statement

(a) (No change.)

(b) Disclosure statements shall be filed by submitting an original and one conformed copy of all papers, including Personal History Disclosure Forms, to the Department at the following address:

Department of Environmental Protection
Division of Solid Waste Management
Bureau of [Field Operations (D.I.U.)]
Registration and Permits Administration
CN [407] 414
Trenton, New Jersey 08625

1.-3. (No change.)

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

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Environmental Cleanup Responsibility Act Fees Proposed Amendment: N.J.A.C. 7:26B-1.10

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1K-6 et seq., specifically 13:1K-10.

DEP Docket Number: 028-88-07.

Proposal Number: PRN 1988-414.

Submit written comments by September 14, 1988 to:

Carl Will
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is responsible for administering the Environmental Cleanup Responsibility Act (the Act or ECRA) and is authorized by the Act to adopt rules, including a fee schedule, as necessary to implement the Act.

The Department is proposing to change the fee schedule at N.J.A.C. 7:26B-1.10(c), increasing its current fees in order to meet the Department's actual costs under the Act for Fiscal Year 1989 (FY89). In addition, the fee for processing of confidentiality claims has been moved to the fee schedule from N.J.A.C. 7:26B-1.10(f).

The proposed amendment exempts from the fee for sampling data review data submitted for three or fewer underground storage tanks. In this way, small operations will be saved the initial fee for a determination of whether or not their tanks are sound. This exemption will not affect the discovery of or the response to leaking tanks.

The Department is also now accepting partial cleanup plans, and the proposed amendment clarifies that a fee must be submitted with the partial plans.

In determining the individual increases, the Department has considered the relative resources that have been required to provide each service, while attempting to distribute the costs so as to avoid burdensome increases in any one area. A more detailed explanation of the basis for the fees may be found in the original fee proposal of July 1, 1985 at 17 N.J.R. 1622(a). The increases in the fees for Initial Notices, Applicability Determinations, and Administrative Consent Orders will enable the Department to collect adequate revenues in these areas to develop efficient data processing systems. All three of these areas are paper intensive operations and, after effective data management systems supported by the proposed new fees are developed and implemented, response times will be reduced.

Social Impact

The proposed amendment will have a positive social impact by providing funds which are necessary for the Department to carry out its responsibilities under the Act. The modest increase in costs for businesses subject to the Act is justified by the benefit to society as a whole from the effective cleanup of contaminated sites. Only the ECRA fee schedule is changing. All other rules will remain the same.

Economic Impact

The existing ECRA fee schedule will be inadequate to collect sufficient revenue for FY89. Required funding for FY89 will increase to \$5,940,000 if the ECRA program is to maintain an adequate and efficient operating level. The increase is due to inflation and normal cost of living increases. Under the current fee schedule operative on January 1, 1988, the projected revenue for FY89 will be \$3,634,500.

During 1986, the New Jersey Office of Management and Budget (OMB) performed an analysis of the ECRA program and arrived at the following three criteria by which to establish the ECRA funding level:

1. Average individual salary for ECRA personnel (\$30,000);
2. A fringe benefit rate of 25 percent of salaries; and
3. A non-personnel cost of 25 percent of salaries.

These criteria were used to arrive at a figure of \$45,000 per position to fund the entire ECRA program. Two factors have changed since 1986. The average individual salary for ECRA personnel is currently \$32,000. In addition, the Department has assessed an indirect cost rate of 15 percent on salaries and fringe benefits for all fee based programs in the Department.

The new criteria are as follows:

1. Average individual salary costs for ECRA personnel (\$32,000);
2. A fringe benefit rate of 25 percent of individual salary costs (\$8,000);
3. A non-personnel cost of 25 percent of individual salary costs (\$8,000); and
4. An indirect cost of 15 percent on salary and fringe benefits (\$6,000).

These criteria produce a figure of \$54,000 per position to fund the entire program. It is anticipated that there will be 110 full-time equivalents in the ECRA program, thus producing a projected total budget figure of \$5,940,000 for FY89.

The proposed amendment will require those parties subject to ECRA and those requesting applicability determinations to submit higher fees. Each fee remains based on work-hours required to perform specific tasks as outlined in the OMB report completed in 1986.

Environmental Impact

The proposed amendment will have a positive environmental impact. By providing funds necessary for effective implementation of ECRA, the amendment will facilitate the cleanup of hazardous substances and wastes.

Regulatory Flexibility Statement

The proposed amendment will result in a small increase in costs for small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. When the ECRA rules were adopted in December, 1987, the small business fees were reduced in several areas. The new fees reflect modest increases relative to the current fees. The amendment applies to those places of business which fall into the major Standard Industrial Classification number groups 22 to 39, 46 to 49, 51, or 76, involved in the generation, manufacture, treatment, storage, or disposal of hazardous substances and wastes, that are closing, terminating, or transferring operations. It is estimated that of the total number of businesses (approximately 1300) that would be affected by the amendment each year, approximately 700 would be "small businesses" as defined by the Regulatory Flexibility Act.

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

7:26B-1.10 Fee schedule

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

(c) Fees for those Departmental services listed below shall be as follows:

	Standard	Small Business
1. Initial Notice Review		
i. Without Sampling Plan	\$[1,400.00] 2,000	\$ [250.00] 750.00
ii. With Sampling Plan that includes only underground storage tank analysis without ground water monitoring	[2,400.00] 3,000	[1,250.00] 1,500
iii. With Sampling Plan other than ii above or iv below	[3,900.00] 5,000	[2,750.00] 3,000
iv. With Sampling Plan that includes any ground water monitoring	[5,400.00] 7,500	[4,250.00] 4,500
2. Sampling Data Review	[500.00] 1,000	[500.00] 1,000
3. Negative Declaration Review	[200.00] 500.00	[100.00] 250.00
4. Cleanup Plan Review (based on cost of cleanup)		
i. \$1-\$9,999	[500.00] 1,000	[500.00] 1,000
ii. \$10,000-\$99,999	[1,000.00] 2,500	[1,000.00] 2,500
iii. \$100,000-\$499,999	[2,000.00] 5,000	[2,000.00] 5,000
iv. \$500,000-\$999,999	[6,000.00] 8,000	[6,000.00] 8,000
v. Over \$1,000,000	[10,000.00] 11,000	[10,000.00] 11,000
5. Oversight of Clean up Plan Implementation (based on cost of cleanup)		
i. \$1-\$9,999	[500.00] 1,000	[500.00] 1,000
ii. \$10,000-\$99,999	[1,000.00] 3,000	[1,000.00] 3,000
iii. \$100,000-\$499,999	[6,000.00] 7,000	[6,000.00] 7,000
iv. \$500,000-\$999,999	[8,000.00] 10,000	[8,000.00] 10,000
v. Over \$1,000,000	[10,000.00] 12,000	[10,000.00] 12,000
6. Applicability Determination	[100.00] 200.00	[100.00] 200.00
7. De minimus Quantity Exemption	[250.00] 300.00	[250.00] 300.00
8. Limited Conveyance Review	500.00	250.00

9. Administrative Consent Order	[1,000.00] 2,000	[1,000.00] 2,000
10. ACO Amendment	500.00	500.00
11. Confidentiality Claim	350.00	350.00

(d) (No change.)

(e) The schedule for submission of fees shall be as follow:

1. (No change.)

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 data review fee.**

3. (No change.)

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.

5.-9. (No change.)

[(f) Any owner or operator asserting a confidentiality claim shall submit \$350.00 for any number of pages submitted in connection with a single industrial establishment for which a confidentiality claim is asserted.]

(a)

**DIVISION OF ENVIRONMENTAL QUALITY
Volatile Organic Substances in Consumer Products
Proposed New Rules: N.J.A.C. 7:27-23**

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 030-88-07.

Proposal Number: PRN 1988-416.

A **public hearing** concerning this proposal will be held on: September 22, 1988 at 2 P.M. to 6 P.M. and 7 P.M. to close of comments
War Memorial Ballroom
War Memorial Building
West Lafayette Street Entrance
Trenton, New Jersey 08608

Submit written comments by September 26, 1988 to:

Gary J. Brower, Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN-402
Trenton, NJ 08625

Copies of this notice and of the proposed new rule are being deposited and will be available for inspection during normal office hours until September 26, 1988 at:

Atlantic County Health Department
201 South Shore Road
Northfield, New Jersey 08225
New Jersey Department of Environmental Protection
Environmental Enforcement
Central Regional Office
Twin Rivers Professional Building
Route 33
East Windsor, New Jersey 08520
New Jersey Department of Environmental Protection
Environmental Enforcement
Northern Regional Office
1259 Route 46
Parsippany, New Jersey 07054
New Jersey Department of Environmental Protection
Environmental Enforcement
Southern Regional Office
20 East Clementon Road
3rd Floor North
Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection
Environmental Enforcement
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052
Warren County Health Department
108 West Moore Street
Hackettstown, New Jersey 07840

The new rules will become operative 60 days after adoption by the Commissioner. (See N.J.S.A. 26:2C-8.)

The agency proposal follows:

Summary

New Jersey Department of Environmental Protection (the Department) is proposing to add a new subchapter to N.J.A.C. 7:27 entitled "Volatile Organic Substances in Consumer Products", hereinafter referred to as subchapter 23. This subchapter controls the emissions to the atmosphere of volatile organic substances (VOS) from consumer products. The Department proposes to accomplish this by limiting the amount of VOS permitted in certain consumer products. This subchapter is proposed as part of the Department's continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone.

Volatile organic substances, in the presence of sunlight, participate in the formation of ozone and other reactive pollutants. Ozone is a known respiratory irritant seriously affecting those with chronic respiratory illnesses. Further, it significantly reduces the yield of important food crops and causes degradation of plastics and rubber. Control strategies for reducing atmospheric ozone concentrations are primarily directed toward the control of emissions of VOS.

At the present time, New Jersey is not in compliance with the NAAQS for ozone. Between May and September of 1987, this standard was exceeded on 32 days. As of July 14, 1988, there were 25 days on which the NAAQS was exceeded at one or more monitoring locations in the State. All 14 monitoring sites have recorded at least one violation. The highest ozone concentration monitored in New Jersey for 1988 as of July 14, was 0.22 parts per million (ppm), nearly twice the NAAQS of 0.12 ppm average for one hour.

Subchapter 23 initiates a new approach to VOS control. The traditional means of reducing VOS emissions to the atmosphere from non-transportation sources has been to require stationary industrial and commercial sources to control processing and manufacturing emissions. These new rules will stipulate how much of the content of a consumer product can be VOS. Potential emissions of VOS from the use of such a product are thus reduced. It establishes VOS content limits for three categories of consumer products: architectural coatings, air fresheners, and consumer insecticides.

Architectural Coatings

Architectural coatings are used to paint or coat items such as buildings, walls, bridges, fences and billboards. They have several components: pigments, binders, additives, and solvents. Pigments are small, hard particles in a coating which give it color, conceal surfaces, and may impart certain mechanical properties to the dried film. Typical pigments are inorganic oxides. Binders are the solids which form the bulk of the dried film. Acrylics and epoxies are two types of binders. Additives are chemicals added to a coating in small quantities to enhance certain properties, such as pigment dispersion or dried film gloss. Solvents are used to dissolve or disperse the other components so they can be easily spread on a surface. It is the solvent portion, and sometimes the additives, of an architectural coating which may consist of VOS.

The first rules on the VOS content of architectural coatings were promulgated in the United States over 15 years ago. These were the so-called "exempt solvent" rules. Enacted by several states, they prohibited the use in architectural coating formulations of certain solvents which were determined to be photochemically reactive. Only exempt solvents, that is, those that were not designated as photochemically reactive, were to be used. Such rules were ineffective and have not been enforced because there are very few nonphotochemically reactive solvents. Even those that are low in reactivity will eventually contribute to ozone formation somewhere downwind of the point of release.

In 1977, air quality management districts (AQMDs) in California started promulgating a new, more effective, type of rule limiting the total amount of VOS that can be in architectural coatings. In the years since these pioneering rules on architectural coatings were first adopted, the original rules have been revised and expanded to cover a wide range of

coating types. At present, 23 AQMDs in California have architectural coating rules in effect. A majority of the geographical area of the state and of the manufacturers of architectural coatings are covered by these rules. In March of this year, New York proposed a similar rule based on the model rule developed by the California Air Resources Board (CARB). New Jersey has evaluated the California and New York rules and has found them to be good starting points for the development of a rule for this State. In order to promote national conformity and regional unity, the limits promulgated in California and proposed in New York have been used as a basis for the architectural coating limits proposed in subchapter 23.

The VOS content limits for architectural coatings are set forth in N.J.A.C. 7:27-23.3. The limits listed in Table 1 apply to 29 types of architectural coatings. They range from 0.4 pounds of VOS per gallon for bituminous pavement sealers, to 5.0 pounds of VOS per gallon for lacquers. The individual limits are determined by the desired principal characteristics of the architectural coating, such as fire resistance or metallic pigment content, and by the availability of low solvent alternatives.

Manufacturers of architectural coatings are expected to bring their products into compliance with subchapter 23 through reformulation. Low VOS content formulations exist for most types of architectural coatings. In 1984, in conjunction with the New York Department of Environmental Conservation, the Department performed a survey of manufacturers marketing coatings in New Jersey. The results of the survey indicate that approximately 65 percent of all architectural coatings sold in the State that year already met the proposed VOS limits in Table 1. Reformulation of the non-complying coatings will require either replacing the VOS with water, or increasing the solids content (pigment and binder) of the coating.

Some reformulations will require the use of additives or a change in production methods. Many pigments and binders are not soluble in water. In order to disperse such components in water, some organic solvent will have to be included in the formulation. The coating will then need to be manufactured in a different manner from a coating using VOS as the solvent. This will include things such as grinding and mixing the solid components in a different way, or putting in an additive that will cause the binder to be soluble in water.

Air Fresheners and Consumer Insecticides

Air fresheners and consumer insecticides are the other two consumer products to be regulated by subchapter 23. In a survey developed by Science Applications International Corporation (SAIC) in 1986 for the U.S. Environmental Protection Agency Region II, these categories were determined to be among the largest consumer product sources of VOS emissions. A second study by SAIC in 1987 focused on air fresheners and consumer insecticides. This second study refined the emission inventory and considered various means of reducing the VOS content of these products.

Air fresheners are products that are used to mask unpleasant odors or add a scent to the air. They can be either long-lasting or for short term, intermittent use. The major forms of air fresheners marketed in New Jersey are aerosols, solids, wicks, and powders. The only one of these forms which presently contains greater than five percent by weight VOS is aerosols, which account for roughly 75 percent of air fresheners. The 25 percent of air fresheners which are not aerosols contain little or no VOS. About 35 percent of all aerosol air fresheners sold in the State contain less than 50 percent VOS by weight.

Consumer insecticides have many varied uses. Some are employed to kill insects such as cockroaches in the home and to prevent their return. Some are applied to pets to rid them of fleas and similiar pests. Others are used in backyards or on people or clothing to repel insects such as mosquitos.

Consumer insecticides come in three forms: aerosols, liquids, and solids. Aerosols include sprays and room foggers. Liquids include pet shampoos to kill fleas. Solids include powders, baits, and collars. Aerosols are the only form containing greater than five percent VOS by weight. Most aerosol insecticides sold in New Jersey have greater than 50 percent VOS by weight, and many approach 100 percent VOS.

N.J.A.C. 7:27-23.4 sets forth the VOS content limits for air fresheners and consumer insecticides and establishes a three phase implementation schedule. By February 28, 1990, all affected products sold and used in New Jersey will be required to contain 50 percent VOS by weight or less. By February 28, 1992, this limit falls to 25 percent VOS by weight, and the final limit of five percent VOS by weight is reached by February 28,

1994. This phase in of stricter limits is designed to allow manufacturers the time necessary to research and develop complying products.

Several ways exist to achieve the proposed reductions. However, no specific means has been included in the rule. Manufacturers are best positioned to determine how the VOS content of a given product can be reduced or what substitute can best take its place. The two major means of compliance will most likely be reformulation and change of application method. Reformulation involves changing the mix of ingredients in a product in order to reduce or eliminate the VOS content. This can be done by means such as replacing an organic propellant with an inorganic gas propellant. A change of application method would replace an aerosol with a pump spray, or with a solid form. The new application method will need to contain less VOS than the original form.

Air fresheners can use both reformulation and change of application method to achieve compliance. Aerosol air fresheners are already on the market with VOS contents lower than 50 percent. This is an indication that the 40 percent of air fresheners which are presently high in VOS might be reformulated to meet the 50 percent requirement. Other forms of air fresheners, such as solids and powders, exist and show that change of application method is possible. Substitutions can also be made. For example, items made of sandalwood scent the air.

Consumer insecticides can also use both reformulation and change of application method to achieve compliance. There is at least one aerosol on the market with a VOS content of less than 50 percent. Therefore, low VOS aerosol consumer insecticides are possible. Changes in application method are already represented by the powders, shampoos, and flea collars that can be used on pets instead of aerosols. Insect baits and traps contain little or no VOS and can replace aerosols. Most companies manufacturing insecticides produce a wide range of products and have formulations on the market that could be substituted for many of the high VOS content products.

For some consumer insecticide uses, substitutions can be made. Fly swatters can be very effective against flying insects. Citronella candles or cedar chips can be used instead of insect repellants containing VOS. There are natural substitutes, such as soapy water to kill aphids and mites on house plants, and boric acid to kill ants and roaches. All of these substitutes contain no VOS.

Exemptions from the requirements of this subchapter are contained in N.J.A.C. 7:27-23.4. At the present time, only area foggers are exempt from this subchapter. These products are needed to combat infestations of insects such as fleas. No safe and effective alternative is known at the present time. N.J.A.C. 7:27-23.6 specifies recordkeeping requirements to be followed by those subject to this subchapter.

Social Impact

Proposed new subchapter 23 is designed to control emissions of VOS which are part of a mixture of pollutants that react to form ozone in the outdoor atmosphere. The Federal government has established an NAAQS of 0.12 ppm hourly average for ozone. Attainment of this standard will have a positive social impact by alleviating the effects of exposure to elevated ozone concentrations on the inhabitants of New Jersey.

Exposure to ozone in concentrations greater than the NAAQS causes a decrease in the pulmonary functions in humans and may cause lung damage. Ozone also increases the ability of an inhaled infectious virus to survive within the lung. A reduction of the ambient ozone concentration in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ambient ozone concentrations.

The reduction in the VOS content of consumer products should also help reduce indoor air pollution, which is presently emerging as an important health issue. Some of the VOS in consumer products are known or suspected toxics or carcinogens. Replacement of hazardous compounds with nonhazardous ones, such as carbon dioxide as a propellant or water as a solvent, will lessen possible health effects on the user.

Implementation of subchapter 23 as proposed will have several effects on consumers in New Jersey. The need to reduce the VOS content of regulated products will present the consumer with a changing array of available products. The labelling requirement set forth in N.J.A.C. 7:27-23.5 will enable consumers to choose environmentally safe products. It will make the average citizen an important element in the effort to clean up New Jersey's air.

Consumer perception of available products will influence the market forces that determine when and on what manufacturers will spend research and development money. If consumers are reluctant to use a new

product, or feel that it is not as effective as the original, this creates a deterrent to change. In California, such problems have arisen with certain types of architectural coatings. Some consumers perceive waterborne architectural coatings to be inferior to those containing VOS. In the majority of cases this perception is not based on material evidence, but rather on personal opinion. A similar situation may occur in regard to the other affected consumer products.

Economic Impact

The costs incurred for reformulating architectural coatings subject to proposed subchapter 23 will depend upon the type of coating, and the extent of the VOS reduction needed to meet the applicable limit. These costs are expected to be relatively small for large companies which manufacture and sell coatings nationwide. They will have completed their major research and development efforts in order to produce coatings for distribution in California. Their major costs will be for any new equipment which may be necessary to manufacture the new formulas for distribution in New Jersey.

Small regional and local companies will have the expense of research and development. Some raw material suppliers provide research support, which will help defray the cost of developing new coatings. These costs are difficult to estimate because of the diversity of the industry.

When CARB was considering regulating the VOS content of architectural coatings in 1977, it evaluated the various impacts and reported on them in "Consideration of Model Organic Solvent Rule Applicable to Architectural Coatings". One manufacturer estimated the cost of change over to new equipment. Updated to 1988 dollars, the cost includes \$1 million to remove and write off old equipment and \$2.1 million to install new equipment for a total change over cost of \$3.1 million for a facility producing two million gallons of architectural coatings per year. This is approximately \$1.50 in capital costs for each gallon of architectural coatings produced. These costs, amortized over 10 years, come to \$0.18 per gallon. This cost estimate does not include savings for raw materials or recovery of capital through the sale of the old equipment. This estimate gives an idea of costs that could be incurred.

The cost of new equipment is, however, offset by reduced costs in other areas. Water is less expensive than organic solvents. The manufacturing process for some waterborne coatings is easier. Fire insurance costs are reduced because waterborne systems are safer to work with. Overall, benefits and costs balance out and a gallon of waterborne coating is roughly the same price as or slightly less than, a gallon of solvent-borne coating. Coatings with high solids content are more expensive than regular solvent-borne coatings, but the increased solids content will cover more surface area and less coating will be needed to do the same job.

In its 1977 report, CARB compared the cost of solvent-borne and waterborne architectural coatings. They found that waterborne coatings averaged \$1.25 less per gallon. The cost of a gallon of waterborne architectural coating was approximately 10 percent lower than the same type of coating in a solvent-borne formulation. In addition, consumers save money by no longer needing to purchase cleanup solvents. Water can be used to clean up after most waterborne architectural coatings.

Air fresheners and consumer insecticides will have research and development costs and market research costs. Because product development costs are considered proprietary, determining the cost of compliance to the affected industry is quite difficult. In the case of change of application, many companies already manufacture more than one form of a consumer product. Only those products that presently contain a high level of VOS, but which the supplier wishes to continue to market in the same form, will need to be reformulated.

Environmental Impact

The reductions in VOS emissions that will result from the implementation of this subchapter will provide significant progress toward attainment of the NAAQS for ozone. This will alleviate the effects of exposure to elevated ambient concentrations of ozone on the environment of New Jersey.

Foliar damage to sensitive plants is one of the earliest and most obvious manifestations of ozone injury in the environment. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve damage to plants and thereby improve agricultural productivity and support healthier growth of both natural vegetation and ornamental plantings.

Materials such as rubber, textiles, dyes and paints are susceptible to ozone degradation. The damaging effect of ozone is due to its oxidizing ability. For example, natural rubbers and synthetic polymers become hard and brittle at a faster rate by oxidation at high ozone concentrations than

by oxidation by atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate the increased rate of degradation of natural and man-made materials.

When fully implemented, the VOS limits for architectural coatings will prevent approximately 5,250 tons of VOS from being emitted to the atmosphere each year from the use of such coatings, based on the 1984 survey of manufacturers and an estimate of the number of coatings in that survey which did not comply with the proposed limits. Approximately 78 percent of these annual emission reductions will be achieved by lowering the VOS content of architectural coatings. The remaining 22 percent will result from the elimination of thinning with VOS and a reduction in the need for VOS as a cleanup solvent. This estimate is considered to be low, because several large manufacturers were overlooked by the survey.

When the VOS content limits on air fresheners and consumer insecticides are fully implemented, they will prevent approximately 3,300 tons of VOS from being emitted into the atmosphere each year from the use of these household products. This estimated reduction is based on applying the five percent by weight VOS limit to the inventory for New Jersey developed by SAIC. At least 45 percent, or about 1,500 tons, of this reduction will occur by February 28, 1990, when the first phase 50 percent VOS limit is fully implemented. Another 30 percent of the total reduction will be realized by February 28, 1992, when the second phase 25 percent VOS limit is in full effect. The full reduction will be realized by February 28, 1994, when the implementation of the third and final phase five percent limit is completed.

Regulatory Flexibility Statement

This proposed subchapter will apply to all manufacturers, distributors, sellers and users of architectural coatings, air fresheners, and consumer insecticides. The major impact will be on manufacturers. They will be required to market complying products and keep records of products provided. Distributors and sellers can purchase products that comply for distribution and sale. They will also be required to keep records of products received and, in the case of distributors, of products shipped. The users of consumer products will see only complying products on the shelves at their local retailer.

Approximately 70 percent of all architectural coating manufacturers nationwide are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This percentage is assumed to be true for New Jersey. Therefore, roughly 50 manufacturers of architectural coatings in New Jersey are small businesses.

In order to comply with this subchapter, a small business may need to reformulate its coatings and it may need to buy new equipment to manufacture the new coatings. For the development of new formulations, the help of a consultant may be necessary. However, in some cases, raw material suppliers offer assistance for this type of work. Also, many companies already produce complying coatings and will not need to do anything in order to comply. The highest costs that a small business would incur have been estimated at \$3 million. It is believed that actual costs will be much less.

For distributors and retailers, the expense of complying with these rules is minimal. They are required to maintain records. The information required for these records is easily available and in most cases will be provided by the manufacturer.

The effectiveness of these rules depends upon the degree to which coatings marketed in New Jersey comply with the standards required herein. An exemption based on the size of the company could leave up to 50 percent of architectural coatings marketed in the State exempt from this subchapter. The Department has balanced the need to protect the environment against the economic impact of these 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.

There are no known businesses manufacturing air fresheners or insecticides which qualify as small businesses under the New Jersey Regulatory Flexibility Act. Therefore, no exemption is needed.

Full text of the proposal follows.

SUBCHAPTER 23. VOLATILE ORGANIC SUBSTANCES IN CONSUMER PRODUCTS

7:27-23.1 Applicability

This subchapter prescribes the rules of the Department for limiting the volatile organic substances content of consumer products. The following sections shall govern the content of consumer products

used and provided for use in the State and the methods to be followed by manufacturers, distributors, and retailers to assure these standards are met.

7:27-23.2 Definitions

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

"Air freshener" means any product available to a direct consumer which is marketed for the purpose of masking odors, providing a scent, or deodorizing, including but not limited to, sprays, wicks, powders, and crystals. This does not include personal bodily hygiene products.

"Architectural coating" means a surface coating formulation applied and dried at ambient conditions, and used to coat all or parts of buildings, bridges, the interior or exterior of houses, and other items such as signs, curbs and pavements.

"Below ground wood preservative" means any coating which penetrates into the wood and is formulated solely for the purpose of protecting below ground wood from decay or insect attack using a wood preservative product registered with EPA.

"Bituminous coating" or "bituminous sealer" means a coating material, consisting of hydrocarbons and soluble in carbon disulfide, which is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"Bond breaker" means any coating whose sole purpose, when applied between layers of concrete, is to prevent the freshly poured top layer of concrete from bonding to the substrate on which it is poured.

"Concrete curing compound" means any coating whose sole purpose is to retard the evaporation of water from the surface of freshly cast concrete, thereby strengthening it.

"Consumer insecticide" means those insecticide formulations available to a direct consumer which are not classified as restricted-use pesticides under the provisions of N.J.A.C. 7:30-2 of the New Jersey Pesticide Control Code and which are liquids marketed in containers of one gallon (3.79 liters) or less, or which are marketed in pressurized containers of four pounds (1.8 kilograms) or less net weight.

"Consumer product" means any of the wide variety of household products such as architectural coatings, toiletries, and cleaning agents, used by a direct or indirect consumer and available in retail markets, and includes, but is not limited to, personal products, pesticides, automotive products, cleaners, air fresheners, and food products.

"Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

"Department" means the New Jersey Department of Environmental Protection.

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Direct consumer" means an individual who utilizes a consumer product in the satisfaction of his or her personal wants.

"Dry fog coating" means any spray coating which is formulated so that overspray droplets dry before falling on floors and other surfaces.

"Enamel undercoating" means any coating designed to improve the seal, provide better adhesion, and make a smooth base for non-flat coatings when applied over a primer or an existing coat of paint.

"EPA" means the United States Environmental Protection Agency.

"Fire retardant coating" means any coating which is designed to retard fire and which will reduce the rate of flame spread on the surface of a substrate to which the coating has been applied, resist ignition when exposed to high temperatures, or insulate the substrate to which such a coating has been applied and thus prolong the time required to reach ignition temperature.

"General primer" means any coating which is intended to be applied to the surface of a substrate to provide a firm bond between the substrate and subsequent coatings.

"General sealer" means any coating which is intended for use on porous substrates to protect the substrate, to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

"General undercoater" means any coating which is designed for the sole purpose of providing a smooth surface for subsequent coatings.

"High performance coating" means an architectural coating formulated for and exposed to harsh environmental conditions including, but not limited to: outside weather conditions all the time, or temperatures consistently above 95 degrees Centigrade or below zero degrees Centigrade; or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"Indirect consumer" means a person who utilizes a consumer product in providing a service to others.

"Industrial maintenance primer" means any coating which is intended to be applied to the surface of a substrate, prior to the application of an industrial maintenance topcoat, to provide a firm bond between the substrate and subsequent coatings.

"Industrial maintenance topcoat" means any high performance coating which is formulated for the sole purpose of protecting against damage from heavy abrasion, water immersion, chemicals, corrosion, temperature extremes, electric potential, or solvents.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

"Insecticide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any insect, and includes, but is not limited to, ant and roach killers, room and outdoor foggers, flea and tick sprays, and personal and area insect repellants.

"Lacquer" means a clear or pigmented coating formulated with nitrocellulose or synthetic resins which dries by evaporation without chemical reaction and provides a quick drying, solid protective film.

"Mastic texture coating" means any coating, except waterproof mastic coatings, which is formulated to cover holes and minor cracks and to conceal surface irregularities.

"Metallic pigmented coating" means any non-bituminous coating which is formulated with metallic pigment.

"Multicolored coating" means any coating which exhibits more than one color when applied in a single coat and which is packaged in a single container.

"Normal environmental conditions" means temperatures above 50 degrees Fahrenheit (14 degrees Centigrade).

"Non-flat architectural coating" means a coating which registers a gloss of 15 or greater on a gloss meter held at an 85 degree angle to the coated surface or five or greater on a gloss meter held at a 60 degree angle, and which is identified on the label as a gloss, semigloss, or eggshell enamel coating.

"Person" means and includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, or virus, bacteria, or other micro-organism (except viruses, bacterial or other micro-organisms on or in living man or other animals) which is injurious to health or the environment.

"Pesticide" means and includes any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator; provided that the term "pesticide" shall not include any substance or mixture of substances which the EPA does not consider to be a pesticide.

"Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding

the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Quick-dry enamel" means any coating which can be applied directly from the container by brush or roller at ambient temperatures between 60 and 80 degrees Fahrenheit and which is formulated to have a dried film gloss of 70 or greater on a gloss meter held at a 60 degree angle to the coated surface, and when tested in accordance with ASTM-D-1640 will set to touch in not more than two hours; be tack free (mechanical tester) in not more than four hours; and dry hard in not more than eight hours.

"Roof coating" means any coating which is formulated for the sole purpose of preventing penetration of the substrate by water, including but not limited to, bituminous roof and waterproof mastic coatings.

"Room fogger" means any pressurized consumer insecticide used in a room empty of occupants in order to mitigate infestations of insects such as fleas or cockroaches.

"Shellac" means any clear or pigmented coating formulated with natural resins, except nitrocellulose resins, thinned with alcohol, dried by evaporation without a chemical reaction, and intended to provide stain blocking properties as well as a solid protective film.

"Sign paint" means any coating which is marketed solely for the application to indoor or outdoor signs, including lettering enamels, poster colors, and bulletin colors.

"Specialty flat product" means any self-priming flat coating only used to perform one of the following functions: repair fire, smoke or water damage; neutralize odors; block stains; or coat acoustical materials without affecting their acoustical properties.

"Specialty primer, sealer, and undercoater" means any primer, sealer, or undercoater only used to perform one of the following functions: repair fire, smoke or water damage; neutralize odors; block stains; block efflorescence; condition chalky surfaces; or coat acoustical materials without affecting their acoustical properties.

"Stain" means a coating intended to coat the surface of a substrate and reveal some property of the substrate, such as color or texture, as well as provide a protective coating.

"Substrate" means any material to which an architectural coating is applied.

"Swimming pool coating" means any coating used on the interior surface of swimming pools which is specifically formulated to resist swimming pool chemicals.

"Tile-like glaze coating" means any coating which is formulated to provide a tough, extra durable coating system, applied as a continuous (seamless) high-build film, and which cures to a hard glaze finish.

"Traffic coating" means any coating formulated to be applied to public streets, highways, or other surfaces, including, but not limited to, curbs, berms, driveways, and parking lots.

"Varnish" means any clear or pigmented coating formulated with various resins to dry by chemical reaction on exposure to air and intended to provide a durable solid protective film.

"Waterproof mastic coating" means any weatherproof or waterproof coating formulated to cover holes and minor cracks and to conceal surface irregularities and which is applied in thicknesses of at least 15 mils.

"Waterproof sealer" means any coating formulated for the sole purpose of protecting porous substrates by preventing the penetration of water.

"Wood preservative coating" means any stain which is also formulated for the purpose of protecting exposed wood from decay or insect attack by the addition of a wood preservative product registered by the EPA.

"Volatile organic substance" or "VOS" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeter of mercury) absolute or greater measured at standard conditions; and, in the case

of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1, 1, 2 trichloro-1, 2, 2 trifluoroethane, 1, 2 dichloro-1, 1, 2, 2 tetrafluoroethane, and chloropentafluoroethane.

7:27-23.3 Architectural coatings

(a) Effective January 1, 1990, no person shall sell, offer for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as given in Table 1 in (e) below.

(b) For a specific architectural coating to which more than one VOS limit in Table 1 is applicable, or for any architectural coating which has anywhere on the coating container, on any sticker or label affixed thereto, or in any sales or advertising literature, any indication that more than one VOS limit in Table 1 is applicable, the most stringent limit is applicable.

(c) The provisions of (a) and (b) above shall not apply to architectural coatings sold in New Jersey for shipment and use outside of the State. Documentation indicating the final destination of coating shipments shall be made available to representatives of the Department upon request.

(d) Compliance with this section shall be determined using the following test methods: ASTM 3960; ASTM 1475-60; ASTM D-3792-79; any other method approved by the Department.

(e) Table 1 contains the VOS content limits for architectural coatings:

TABLE 1
VOS CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Type of Architectural Coating	Maximum Allowable VOS Content Per Volume of Coating Excluding Water	
	Pounds Per Gallon	Kilograms Per Liter
Below ground wood preservative	5.0	0.60
Bituminous pavement sealer	0.4	0.10
Bond breaker	5.0	0.60
Concrete curing compound	2.9	0.35
Dry fog coating	3.3	0.40
Enamel undercoating	2.9	0.35
Fire retardant coating	2.1	0.25
General sealer, primer, and undercoater	2.9	0.35
Industrial maintenance coatings	3.8	0.45
Lacquer	5.0	0.60
Mastic texture coating	1.7	0.20
Metallic pigmented coating	4.2	0.50
Multicolor coating	3.3	0.40
Non-flats	3.2	0.38
Quick-dry enamel	3.3	0.40
Roof coating	2.5	0.30
Shellac	4.6	0.55
Sign paint	3.3	0.40
Specialty flat products	3.3	0.40
Specialty primer, sealer, and undercoater	2.9	0.35
Stains	3.3	0.40
Swimming pool coating	5.0	0.60
Tile-like glaze coating	3.3	0.40
Traffic coating	2.1	0.25
Varnish	2.9	0.35
Waterproof mastic coating	2.5	0.30
Waterproof sealer	3.3	0.40
Wood preservative coatings	2.9	0.35
All others	2.1	0.25

7:27-23.4 Air fresheners and consumer insecticides

(a) Effective February 28, 1990, no person shall sell, offer for sale, or use any air freshener or consumer insecticide which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(b) Effective February 28, 1992, no person shall sell, offer for sale, or use any air freshener or consumer insecticide which, at the time of sale or manufacture, contains greater than 25 percent VOS by weight.

(c) Effective February 28, 1994, no person shall sell, offer for sale, or use any air freshener or consumer insecticide which, at the time of sale or manufacture, contains greater than five percent VOS by weight.

(d) The provisions of this section shall not apply to room foggers.

7:27-23.5 Labelling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

1. The label shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. The statement shall specify either that the coating is to be applied under normal environmental conditions without thinning, or limit thinning required for normal environmental conditions such that the coating will not exceed its applicable standard as given in Table 1 at N.J.A.C. 7:27-23.3(e).

2. The label shall carry the following statement:

"This product contains x pounds of VOS per gallon of coating, excluding water."

i. Where x is the pounds of VOS in a gallon of the architectural coating, excluding water.

(b) For any consumer product containing greater than five percent VOS and subject to the requirements of N.J.A.C. 7:27-23.4, the following statement shall be displayed on all labels:

"This product contains x percent VOS."

i. Where x is the weight percent of VOS in the consumer product.

(c) The provisions of (a) and (b) above shall not apply to any consumer product whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

7:27-23.6 Recordkeeping

(a) Each manufacturer of a consumer product subject to this subchapter shall:

1. Document the VOS content of the consumer product shipped for use in the State as it leaves the facility. A copy of this documentation shall be provided to the distributor or retailer to whom the consumer product is delivered.

2. Maintain records regarding the consumer products leaving the facility including the VOS content, the destination of the shipment, shipment quantity and such other information as the Department may prescribe.

(b) Each distributor or retailer shall maintain records regarding each delivery of covered consumer products received. Distributors shall additionally maintain records regarding the consumer products leaving the facility including the VOS content, the destination of the shipment, shipment quantity and such other information as the Department may prescribe.

(c) All records and documentation shall be maintained for not less than five years, and shall, upon request of the Department, be available for review.

7:27-23.7 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, 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, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, 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.

(b) Owners or operators and any employees or representatives thereof, shall assist and shall not hinder or delay the Department

and its representatives in the performance of all aspects of any inspection. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of consumer product being provided, stored, transported exchanged in trade, sold, or offered for sale at the manufacturing, retail, or distribution outlet. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

**Tuition Aid Grant Program
Part-Time Students**

Proposed Amendment: N.J.A.C. 9:7-3.5

Authorized By: Student Assistance Board, M. Wilma Harris,
Chairperson.

Authority: N.J.S.A. 18A:71-44 and 18A:71-48.

Proposal Number: PRN 1988-407.

Submit comments by September 14, 1988 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment extends eligibility for Tuition Aid Grants (TAG) to Educational Opportunity Fund (EOF) Program students who are counseled for academic reasons to enroll on a part-time basis in New Jersey institutions approved by the EOF Board of Directors. Eligible students who are identified by the EOF Central Office must be enrolled for at least six credits, matriculated in a degree or certificate program, and maintain satisfactory academic progress as determined by the institution.

Social Impact

The proposed amendment will permit EOF students, who have been counseled for academic reasons to enroll on a part-time basis, to continue their undergraduate education with the additional financial assistance of a Tuition Aid Grant award. An eligible student enrolled on a half-time basis will receive a part-time TAG award equal to the value of one-half of the student's full-time award and a student enrolled on a three-quarter time basis will receive a part-time TAG award equal to three-quarters of the student's full-time TAG award, not to exceed the actual tuition charged for part-time enrollment.

Economic Impact

The Fiscal Year (FY) 1989 Appropriations Act includes funding of \$500,000 to support up to 800 TAG awards for part-time EOF students for the 1988-89 academic year. The EOF Board of Directors has approved proposals from 16 public and independent institutions to participate in the part-time program.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The Department is simply proposing that Tuition Aid Grant awards be extended to Educational Opportunity Fund Program students who have been counseled for academic reasons to enroll on a part-time basis.

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

9:7-3.5 Part-time students

(a) Eligibility for Tuition Aid Grants will be extended on an annual basis to part-time students upon the approval of the Student Assistance Board and the Board of Higher Education depending on the level of appropriated funds.

[(b) Eligible students must be enrolled for at least six credits, matriculated in a degree or certificate program, and maintain minimum standards of academic progress as determined by the institution.]

(b) An eligible student shall:

1. Be enrolled for at least six credits;
2. Be matriculated in a degree or certificate program;
3. Maintain minimum standards of academic progress as determined by the institution; and
4. Be receiving an award under the Educational Opportunity Fund Program pursuant to N.J.A.C. 9:11-1.23.

(c) The provisions of N.J.A.C. 9:7-2 shall apply to part-time students receiving Tuition Aid Grants except where such provisions specifically refer to full-time students.

(d) Payments to eligible students will be counted for the purpose of the requirements set forth in N.J.A.C. 9:7-2.11 as one-half a semester of payment.

(e) An eligible student enrolled on a half-time basis (six to eight credits) shall receive a part-time Tuition Aid Grant award equal to the value of one-half of the student's full-time award. An eligible student enrolled on a three-quarter time basis (nine to 11 credits) shall receive a part-time Tuition Aid Grant award equal to three-quarters of the student's full-time award. The value of the part-time award, however, shall not exceed the actual tuition charge for the student's part-time enrollment.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Eligibility

Proposed Repeal and New Rules: N.J.A.C. 10:46

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-25.1; 30:4-25.2; 30:4-25.3; 30:4-25.4, 30:4-25.6; 30:6D-1 et seq. and 30:6D-23 et seq., especially 30:6D-32.

Proposal Number: PRN 1988-391.

Submit comments by September 14, 1988 to:
James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 700
222 So. Warren Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

An intensive review by Department staff indicates that the existing rules regarding eligibility criteria for the developmentally disabled are outdated. The Department intends to repeal the current chapter and to adopt new rules on eligibility.

The new rules are proposed to establish eligibility criteria for services under the Division of Development Disabilities and to establish the process for determining if those criteria are met. In 1985, N.J.S.A. 30:6D-23 et seq. (P.L. 1985, c. 145) changed the name of the New Jersey Division of Mental Retardation to the New Jersey Division of Developmentally Disabilities. That act charged the Division with the responsibility to develop new eligibility criteria.

In order to be determined eligible, an individual must have a severe and chronic disability attributable to a mental and/or physical impairment. That disability must be manifested before age 22 and must result

in substantial limitation in three or more of the following major life activities: self care, receptive and expressive language, learning, mobility, self direction and capacity for independent living or economic self sufficiency. The disability must result in a condition that is expected to be of life-long or extended duration.

Developmental disability includes severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological disorders.

It is estimated that there are approximately 101,000 developmentally disabled people in the State of New Jersey. Of these, approximately 7,000 may be eligible for the services of the Division, and, of these, the Division expects that approximately 2,300 may apply. The Division has received approximately 750 applications for services from people who may be eligible under the expanded criteria for services. Of the 750 applications, 99 have been reviewed closely and 74 of the 99 appear to meet the proposed criteria. Additional applications are anticipated.

The person on whose behalf application is made must be a resident of New Jersey. The person must need services at the time of application.

The Division has reorganized the eligibility chapter for ease of reference.

The first subchapter (General Provisions) contains three sections containing the purpose, authority and scope of the chapter, and definitions of terms used in the chapter.

Subchapter 2 (Eligibility Criteria) contains specific guidelines used in determining eligibility. Subchapter 3 (Application) contains application procedures. Subchapter 4 (Determination Process) describes how a determination regarding eligibility is made and what notice procedures are required.

Social Impact

The proposed new rules will benefit that group of individuals who have not previously been served by the Division of Developmental Disabilities by setting forth specific criteria that will provide them with procedures by which they may receive services. The rules will benefit Division staff responsible for making initial determinations of eligibility by providing standards to guide their determinations.

Economic Impact

The proposed rules will affect the Division by providing guidelines for a wider population eligible for services, with associated increases in costs of administration and service delivery, subject to legislative appropriation.

The legislature has appropriated \$2.3 million for the 1989 Fiscal Year, to cover costs associated with this proposal. There will be substantial economic benefit to families and/or consumers of services, but this cannot be estimated precisely, due to the wide variation in types of services needed. For example, the typical cost associated with respite care service is \$1,800; however, the typical annual cost associated with services provided to a "special needs" consumer is \$80,000.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, therefore a regulatory flexibility analysis is not required. The proposed new rules describe the eligibility criteria and application process for the services of the Division of Developmental Disabilities.

Full text of the proposal follows:

CHAPTER 46 DETERMINATION OF ELIGIBILITY

SUBCHAPTER 1. GENERAL PROVISIONS

10:46-1.1 Purpose; authority

Pursuant to N.J.S.A. 30:4-25.2 (application for determination of eligibility) and N.J.S.A. 30:6D-1 et seq. (P.L. 1985, c. 145), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determinations of eligibility for services, subject to legislative appropriation of funds therefor, to persons with developmental disabilities.

10:46-1.2 Scope

The provisions of this chapter shall apply to all persons making application to the Division for services under N.J.S.A. 30:4-165.1 et seq.

10:46-1.3 Definitions

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

"Application" means the completed form available at Division offices (N.J.A.C. 10:46-3.2(a)). The term includes any supporting documentation necessary to the making of an informed determination with regard to applicant eligibility. Supporting documentation may include, but is not limited to, educational, medical, psychiatric, psychological, vocational, rehabilitation or social service records.

"Appropriate program of training" means that program of training which, at a minimum, includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Child" means a person under 21 years of age.

"Commissioner" means the Commissioner of the State Department of Human Services.

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

6. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met. (N.J.S.A. 30:6D-25.)

"Director" means the Director of the Division of Developmental Disabilities.

"Division" means the Division of Developmental Disabilities.

"Educational and related services" means those programs and/or therapies that are provided to a child in association with a free appropriate education.

"Intake worker" means an employee of the Division who meets the Department of Personnel requirements for that position and who completes an appropriate program of training as provided by the Division.

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

"Services" means either residential or nonresidential functional services as defined in N.J.S.A. 30:4-165.2.

"Support services" means services provided to developmentally disabled persons and their families that are generally of short term duration, that is less than 12 months, or are a specific type of care treatment, training, assistance or device that will help the individual avoid the need for more intensive services.

"Team" means two or more Division employees and/or consultants, professional in their areas of expertise, who review recommendations regarding eligibility. The professions represented on the team will vary according to the presenting developmental disability of the person on whose behalf application is made.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

10:46-2.1 General eligibility

(a) A person determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2, and who is a resident of the State of New Jersey, is eligible for services. If the person on whose behalf application is made was placed in a private institution or facility in New Jersey at a time when that person was not a resident of New Jersey as defined herein, he or she is not a resident for purposes of this chapter. A student's permanent residence is considered to be with his or her parents even though he or she is temporarily absent to

attend school. A student will be determined not a resident when the following conditions exist:

1. The student lives apart from his or her parents for reasons other than the convenience of attending school;

2. His or her parents do not provide one-half or more of his or her support; and

3. His or her parents did not claim the student as an exemption on their most recent federal income tax return or they affirm that the student will not be claimed on their next return.

(b) With regard to a child, the presenting developmental disability shall be evaluated according to expectations based upon the child's chronological age.

(c) With regard to a child who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq., the expenses of educational and related services shall not be borne by the Division.

(d) If a determination has been made by a child's local district board of education that a child's educational needs can only be appropriately served in a living situation other than the child's home, then the expenses of that residential placement may be borne by the Division only after the child attains the age of 21 years.

(e) If the person on whose behalf application is made does not require the services of the Division at the time of application, he or she shall not be declared eligible. The Division shall reevaluate the application at such time it is informed that its services are requested.

(f) The team shall determine the person on whose behalf application is made to be ineligible for Division services, if the team concludes, based upon information obtained during the determination process, that the primary diagnosis is psychiatric in nature and that the individual's needs include the need for psychiatric care, including the following:

1. Ongoing active care by a team of psychiatric professionals;
2. A secure physical environment required because the individual is dangerous to him or herself or to others; or
3. Other services routinely and primarily available in facilities for the mentally ill.

10:46-2.2 Presumptive eligibility

If a person on whose behalf application is made appears to be eligible for services and manifests an emergent need for services from the Division, then that person may be declared presumptively eligible by the Division Director or his or her designee. The eligibility determination process shall be completed subsequent to the admission to service.

10:46-2.3 Support services

Support services may be provided pending completion of the application for eligibility. The purpose of these services is to enable the person to live in the least restrictive environment and/or to live with the natural family or with a parent surrogate in a family environment. Examples of support services include, but are not limited to:

1. Respite care to give families relief from continuous care of the person;
2. Personal care to assist families in giving personal care to the person where the families are unable to do this alone;
3. Assistive devices to assist families in moving and positioning physically handicapped persons while giving personal care; and
4. Supported employment which is:
 - i. Paid employment for persons with developmental disabilities for whom competitive employment at or above minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;
 - ii. Conducted in a variety of settings, particularly work sites in which persons without disabilities are employed; and
 - iii. Supported by any activity needed to sustain paid work by persons with disabilities, including training and transportation.

10:46-2.4 Readmission

If a person voluntarily chooses to cease participation in service delivery by the Division for a period of six months or more, that person, or one permitted under N.J.A.C. 10:46-3.1, shall make reapplication for services pursuant to this chapter.

SUBCHAPTER 3. APPLICATION

10:46-3.1 Who may apply

(a) Application for services under this chapter may be made by the following persons:

1. The parents or guardian of a minor;
2. An agency, public or private, on behalf of a minor of whom it has care and custody;
3. A court having jurisdiction over a minor;
4. An adult on his or her own behalf;
5. The guardian of an adjudicated incompetent adult; or
6. A court of competent jurisdiction on behalf of an adult person who appears to be developmentally disabled.

10:46-3.2 Where to apply

(a) Application shall be made to local offices of the Division or to the Division central office. Forms, instructions and addresses of the local offices may be obtained by writing to:

Division of Developmental Disabilities
Office of Community Services
Capitol Place One
222 South Warren Street
CN 700
Trenton, New Jersey 08625

(b) To request the transfer of a person to the State of New Jersey under the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq.), the application shall be sent to the Assistant Director for Residential Services, Division of Developmental Disabilities, at the address specified in (a) above.

10:46-3.3 How to apply

(a) Application shall be made on forms supplied by the Division.

(b) Minimum information submitted shall include, but not be limited to:

1. Social data, such as name, address, telephone number, social security number and present living arrangement;
2. Present program or employment type;
3. Name, address and telephone number of the applicant, if someone other than the person on whose behalf application is being made; and
4. Presenting request, such as the specific service(s) that may be desired.

(c) It is the responsibility of the person making application to provide all necessary information and supporting documentation, if requested by the Division.

(d) An application shall be deemed complete when all documentation is received by the Division.

SUBCHAPTER 4. DETERMINATION PROCESS

10:46-4.1 Recommendations and determination

(a) A Division intake worker shall begin a case file upon receipt of an application for determination of eligibility for services.

(b) The intake worker shall assist in completion of the application, upon request of the applicant.

(c) Upon completion of the application, including receipt of all appropriate documentation, the intake worker shall make an initial recommendation regarding eligibility, pursuant to N.J.A.C. 10:46-2.

(d) A professional team shall review the intake worker's determination and:

1. Render a final determination of eligibility; or
2. Refer the matter to a second professional team, no member of which shall have participated in the initial team review, for further review.

(e) In cases where the matter is referred for further review, the intake worker shall present the case record to the second team. The second team shall review the record and shall make a final recommendation to the appropriate Regional Administrator of the Division for a final determination.

10:46-4.2 Notice requirements

(a) Division staff shall notify the applicant in writing of the status of the eligibility determination no more than 60 days after the completed application is received.

(b) If the person is found eligible, Division staff shall provide notification in writing regarding the final determination and such notice shall include information regarding the service(s) deemed most suitable by the professional team.

1. If the most suitable service, as determined by the professional team, is not immediately available, the Division shall provide an alternate service. (N.J.S.A. 30:4-25.6)

2. At the request of the applicant, the Division shall also place the eligible person on a waiting list for the preferred service, pending its availability.

(c) If the person is found ineligible, the Division shall notify the applicant with a written statement of ineligibility. Such notification shall include specific criteria that were not met by the applicant, and shall also include information regarding the applicant's right to appeal the determination pursuant to N.J.A.C. 10:48.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

New Jersey Medical Malpractice Reinsurance
Recovery Fund Surcharge

Proposed New Rules: N.J.A.C. 11:18

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:30D-1 et seq.

Proposal Number: PRN 1988-412.

Submit comments by September 14, 1988 to:

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

The agency proposal follows:

Summary

N.J.S.A. 17:30D-1 et seq., the Medical Malpractice Liability Insurance Act ("Act"), was enacted to ensure that medical malpractice liability insurance is readily available to licensed medical practitioners and health care facilities. The Act established the New Jersey Medical Malpractice Reinsurance Association ("Association") which is required to reinsure certain medical malpractice liability insurance policies. The Association is also permitted to write such policies on a direct basis in the absence of a qualified provider willing to issue the needed class of coverage.

As a financial backup, the Medical Malpractice Reinsurance Recovery Fund ("Fund") is established to reimburse the Association for any deficit it might sustain in the operation of the Association. A deficit, as defined in N.J.S.A. 17:30D-9, exists when premium and investment income are exhausted by payment of or allocation for the Association's administrative expenses, losses, loss adjustment expenses and reserves for losses incurred and losses incurred but not reported.

For the purpose of providing monies to the Fund so as to establish it in an amount sufficient to meet the requirements of the Act, the Commissioner of Insurance is empowered, pursuant to N.J.S.A. 17:30D-10, to "establish reasonable provisions through additional premium charges for policies of the various categories and subcategories of medical malpractice liability insurance." The Commissioner may further exercise the broad powers expressly conferred on him to select those classes of insureds or lines of coverage to be surcharged and the amount and duration of such surcharge which in his view accomplishes the statutory objectives.

The Association, although deactivated by 1982, remains obligated on claims presented under the coverage it reinsured or wrote directly during its years of operation. Actuarial studies conducted on behalf of the Association for year end 1982 indicated that the Association would experience substantial deficits and an eventual inability to pay claims on which it was still responsible. The year end actuarial report for 1983 confirmed the existence of a deficit, and the Association has continued to report a deficit to the Department of Insurance each year to the present.

In view of the need to fund the Association's deficit, the Department proposes these new rules at N.J.A.C. 11:18. N.J.A.C. 11:18-1.1 sets forth the purpose of the proposed new rules and N.J.A.C. 11:18-1.2 sets forth the scope. N.J.A.C. 11:18-1.3 contains definitions of terms used throughout the chapter.

The substantive sections of the proposed chapter are N.J.A.C. 11:18-1.4 and 1.5. N.J.A.C. 11:18-1.4 would impose a five percent surcharge on the premiums for all policies of medical malpractice liability insurance covering physicians and doctors. The surcharge is to be a separate charge to the insured in addition to the premium and shall be so identified. This section also allows for cancellation of a policy when the insured fails to pay the surcharge and for pro rata return of collected surcharges when such is appropriate.

N.J.A.C. 11:18-1.5 sets forth collection and remittance requirements. Insurers are to collect surcharges at the time of payment of premium and shall remit such to the State Treasurer within 10 days from collection. The Treasurer shall biannually remit monies received for the account of the Fund, plus interest, to the Association. Each insurer must also biannually file specific information with the Department, such as: listings of each surcharge collected and remitted during the preceding reporting period; the total amounts of surcharges collected and remitted during the preceding reporting period; and a certification of accuracy. Lastly, this section provides for the imposition of penalties where an insurer fails to timely submit the above information and obligates the insurer to collect and remit the surcharge as a condition of maintaining its certificate of authority.

Comments regarding the pre-proposal of the new rules (see the February 1, 1988 New Jersey Register at 20 N.J.R. 242(a)) were received by the Department of Insurance from various parties. The major concern expressed in the comments was the scope of the surcharge contained in the pre-proposal. Many felt the surcharge should apply only to those physicians and doctors who were actually insured or reinsured by the Association, and not to those insured by private insurance providers, or who were not practicing in the State at the time.

Objection was made to the inclusion of chiropractors among those to whom the policy surcharge would apply. Although the Medical Malpractice Liability Insurance Act provided for their potential inclusion in the coverage which might be offered under the Medical Liability Insurance Act, the Association was never activated to insure or reinsure chiropractors. Therefore, the Commissioner agrees that chiropractors will not be surcharged on policies covering them under the proposed new rules.

It also was suggested that rather than the rules taking effect retroactively on January 1, 1988, the chapter should become effective on January 1, 1989. This would alleviate the administrative burden of reissuing policies that have already been renewed for or applicable to 1988. The Commissioner accepts this suggestion and has reflected the change in the proposed new rules.

In addition, a concern was expressed that cancellation of an insured's policy upon the failure to pay the surcharge, as the pre-proposed rules provide, would be a costly endeavor. Also, it was suggested that the requirement that the surcharge collected by insurers be remitted to the State Treasury with 10 days of collection does not take into account the possibility of checks returned for insufficient funds, which in some cases takes 10 or more days to discover. The Commissioner does not believe these concerns warrant modification of the rules as pre-proposed.

Social Impact

The proposed new rules will allow the Association to remain a viable and stabilizing market influence and to continue to service and pay the claims on which it remains liable. The surcharge affects approximately 13,400 of the allopathic physician, osteopathic physician and podiatrist population in the State, effectively raising the average median malpractice premium \$614.00 from \$13,206.

The Department has received a negative comment from the medical society that the across-the-board surcharge of all policies is an unfair subsidy of Association insureds by private insurance provider insureds. However, consistent with the intent of the Act, all doctors have benefited by the Association's assistance in providing availability and affordability of medical malpractice coverage, and those beneficiaries for whom the Association was activated should now contribute to the preservation of the financial stability of the Association to assure its continued ability to accomplish its statutory objectives.

Economic Impact

The proposed new rules will not result in any significant adverse economic impact upon insurers. Insurers may experience a minimal increase

in costs by having to remit the collected surcharges to the State Treasurer and to file certain specified information biannually with the Department.

The insureds which fall within the scope of the proposed new rules will experience an adverse economic impact in that the imposition of the surcharge will result in each insured being responsible for an additional five percent of its premium amounts.

There is the possibility that any increase in medical malpractice premiums ultimately will be passed on to the consumers of health care in the State, raising medical costs and continuing the inflationary spiral indicative of the health care environment.

The Department does not expect to incur any additional expenses as a result of the proposed new rules.

Regulatory Flexibility Statement

Some insurers affected by the proposed new rules may be small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. The compliance requirements imposed upon insurers, including small businesses, are that they collect a surcharge along with the policy premium, remit such to the State Treasurer within 10 days from collection and biannually file with the Department specified information regarding the collected and remitted surcharges. None of the above requirements is expected to have any significant adverse economic impact on insurer small businesses. To provide for uniform and consistent applicability of these rules, and to avoid granting any advantage to insurers which are small businesses, no differential treatment is accorded to small business insureds by these proposed new rules.

Full text of the proposal follows.

SUBTITLE N. NEW JERSEY MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND

CHAPTER 18 NEW JERSEY MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND

SUBCHAPTER 1. FUND SURCHARGE

11:18-1.1 Purpose

Pursuant to N.J.S.A. 17:30D-9, the New Jersey Medical Malpractice Reinsurance Recovery Fund was created to be used to reimburse the New Jersey Medical Malpractice Reinsurance Association, created pursuant to N.J.S.A. 17:30D-4, for any deficit sustained in the operation of the Association. Pursuant to N.J.S.A. 17:30D-10, the Commissioner of the Department of Insurance is authorized to establish reasonable provisions through additional premium charges for medical malpractice liability insurance policies for the purpose of providing monies necessary to establish the Fund in an amount sufficient to meet the requirements of the Medical Malpractice Liability Insurance Act, N.J.S.A. 17:30D-1 et seq. This subchapter establishes such provisions.

11:18-1.2 Scope

This subchapter applies to all insurers authorized to write medical malpractice liability insurance in this State.

11:18-1.3 Definitions

"Association" means the New Jersey Medical Malpractice Reinsurance Association created pursuant to N.J.S.A. 17:30D-4.

"Fund" means the New Jersey Medical Malpractice Reinsurance Recovery Fund created pursuant to N.J.S.A. 17:30D-9.

"Medical malpractice liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any physician or doctor as defined in this section or a claim arising out of ownership, operation or maintenance of the physician's or doctor's business premises, including primary and excess coverage.

"Physician" or "doctor" shall mean a doctor of medicine (M.D.), a doctor of osteopathic medicine (D.O.), and a doctor of podiatric medicine (D.P.M.).

"Treasurer" means the Treasurer of the State of New Jersey.

11:18-1.4 Imposition of surcharge

(a) A surcharge of five percent is imposed on the premiums for all policies of medical malpractice liability insurance covering phys-

icians and doctors as defined in this subchapter, whether practicing individually or as a professional association or employee thereof, or in affiliation or employment with any hospital or health maintenance organization.

(b) The surcharge shall apply to all new and renewal policies effective on or after January 1, 1989, and to the additional premiums on all endorsements effective on or after January 1, 1989.

(c) The surcharge shall be a separate charge to the insured in addition to the premium to be paid and shall be shown separately in dollars and cents on the document stating the policy premium. The surcharge shall be identified to the insured as the "Medical Malpractice Reinsurance Recovery Fund Surcharge".

(d) Commissions and premium taxes shall not be payable on the surcharge and the insurer is prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(e) Failure of the insured to pay the surcharge shall be deemed failure to pay the premium and result in cancellation for nonpayment of premium.

(f) Return of surcharge collected is permitted on policy activity such as endorsement decreasing premium and cancellation effective January 1, 1989 and thereafter. The return surcharge shall be calculated on the same pro rata basis as the return premium.

11:18-1.5 Collection and remittance of surcharge

(a) The surcharge billed to the policyholder shall be collected by each insurer at the time of payment of premium.

(b) The insurer shall remit collected surcharges to the Treasurer for the account of the Fund not later than 10 days from the collection of the surcharge.

(c) Not later than April 1 and October 1 of each year, the Treasurer shall remit the total amount of monies received by the Fund, plus all accrued interest thereon, to the Association pursuant to N.J.S.A. 17:30D-11.

(d) Not later than March 1 and September 1 of each year, each insurer shall file with the Department of Insurance the following:

1. A listing of each Fund surcharge collected during the preceding reporting period;

2. A listing of each Fund surcharge remitted to the Treasurer during the preceding reporting period;

3. The total amount of Fund surcharges collected during the preceding reporting period;

4. The total amount of Fund surcharges remitted to the Treasurer during the preceding reporting period; and

5. A statement from an officer of the company certifying that the information submitted is accurate and complete to the best of his or her knowledge.

(e) The information required in (d) above shall be submitted to:

Statistical Services
Property Liability Division
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625
Attention: MMRRF Surcharge

(f) Failure by an insurer to submit the information required in (d) above in a timely manner may result in the imposition of penalties pursuant to N.J.S.A. 17:33-2.

(g) The surcharge shall be billed to the policyholder, collected by the insurer, and remitted to the Treasurer until such time as the Commissioner of the Department of Insurance determines that the monies in the fund are sufficient to meet the requirements of N.J.S.A. 17:30D-1 et seq.

(h) The insurer's obligation to collect the surcharge and remit it to the Treasurer in a timely manner shall be a condition of maintaining its certificate of authority.

LABOR

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

Submit comments by September 14, 1988 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

(a)

DIVISION OF ADMINISTRATION

Rulemaking

Petitions For Rules

Proposed New Rules: N.J.A.C. 12:6-1

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Proposal Number: PRN 1988-410.

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-4(f), any interested person may petition an agency to promulgate, amend or repeal any rule. N.J.S.A. 52:14B-4(f) also requires an agency to prescribe the form for the petition and the procedure for the submission, consideration and disposition of the petition.

These proposed new rules set forth the form for petitioning the Department of Labor (Department) to promulgate, amend or repeal a rule and the procedure for submitting a petition to the Department.

N.J.A.C. 12:6-1.1 sets forth the scope of the rules.

N.J.A.C. 12:6-1.2 sets forth the procedures for the petitioner to follow.

A petition for rulemaking must be in writing and contain the name of the petitioner; the substance or nature of the rulemaking which is requested; the reasons for the request and the petitioner's interest in the request; and references to the authority of the Department to take action.

N.J.A.C. 12:6-1.3 sets forth the procedure of the Department. Upon receipt of the petition, the Department will file a notice of petition with the Office of Administrative Law. Within 30 days of receiving the petition, the Department will mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition which will be published in the New Jersey Register. Finally, the Department may act on a petition by denying it, filing a notice of proposal or notice of pre-proposal, or referring the matter for further deliberations. The results of the further deliberations will be mailed to the petitioner and published in the New Jersey Register.

Social Impact

The public will benefit from the proposed new rules in that they will be informed as to how to initiate agency rulemaking action.

The Department will benefit from the proposed new rules in that the rules set forth a formalized procedure for handling requests for rulemaking.

Economic Impact

The proposed new rules will have no direct impact on the public or the Department.

Regulatory Flexibility Statement

The proposed new rules will have no direct impact on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not impose different or additional reporting, recordkeeping or other requirements. The new rules provide small businesses interested in initiating rulemaking action by the Department with notice of the procedures to follow.

Full text of the proposal follows.

CHAPTER 6 RULEMAKING

SUBCHAPTER 1. PETITIONS FOR RULES

12:6-1.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Department of Labor, pursuant to N.J.S.A. 52:14B-4(f).

12:6-1.2 Procedure for petitioner

(a) Any person who wishes to petition the Department to promulgate, amend or repeal a rule must submit to the Commissioner, in writing, the following information:

1. Name of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Department to take the requested action.

(b) Petitions shall be sent to the following address:

Commissioner of Labor
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

(c) Any document submitted to the Department of Labor which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Department action pursuant to N.J.S.A. 52:14B-4(f).

12:6-1.3 Procedure of the Department

(a) Upon receipt of a petition in compliance with N.J.A.C. 12:6-1.2, the Department will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register (Register). The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Department will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include:

1. The name of the petitioner;
2. The Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the Commissioner that the petition was duly considered pursuant to law;
4. The nature or substance of the Department's action upon the petition; and
5. A brief statement of reasons for the Department's action.

(c) Department action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the Register.

(a)**DIVISION OF WORKPLACE STANDARDS****Safety and Health Standards for Public Employees Standards on Toxic and Hazardous Substances****Proposed Amendments: N.J.A.C. 12:100-4.2, 5.2 and 6.2****Proposed New Rules: N.J.A.C. 12:100-7**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1988-411.

The agency proposal follows:

Summary

The New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., was enacted on January 17, 1984, to ensure that all public employees are provided with a safe and healthful workplace free from recognized hazards. Under N.J.S.A. 34:6A-25 et seq., applicable

standards under the Federal Occupational Safety and Health Administration (OSHA) program were to be adopted by the State.

On November 5, 1984, at 16 N.J.R. 3051(a), the Department of Labor adopted new rules, N.J.A.C. 12:100, and incorporated by reference the Federal safety and health standards which included general industry standards, construction standards and agriculture standards.

Among the general industry standards adopted as part of N.J.A.C. 12:100-4 were the tables of permissible exposure levels of Subpart Z, Toxic and Hazardous Substances of 29 CFR Part 1910. The purpose of these tables is to set permissible exposure limits for airborne concentrations of materials to which nearly all employees may be exposed day after day without adverse effects. The OSHA tables of regulated substances were substantially established by adoption of the 1968 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value list. Except for a limited number of substances, the OSHA Toxic and Hazardous Substances tables have not been updated since 1968.

The Department of Labor, in consultation with the Departments of Health and Community Affairs, and the Public Employees Occupational Safety and Health Advisory Board, proposes to adopt an expanded and updated Toxic and Hazardous Substances table of permissible exposure levels to reflect current knowledge concerning toxic and hazardous materials. N.J.S.A. 34:6A-30 states in part "where standards more stringent than the federal standards are deemed advisable, the Commissioner shall . . . provide for the development of state standards as may be necessary in special circumstances." The proposed Toxic and Hazardous Substances Table 7.3 was compiled from current information from the National Institute for Occupational Safety and Health (NIOSH) and the American Conference of Governmental Industrial Hygienists (ACGIH), in addition to the OSHA Subpart Z tables.

Under the Occupational Safety and Health Act of 1970 (P.L. 91-596), NIOSH has the responsibility for developing criteria and recommending standards for toxic and hazardous substances to the Occupational Safety and Health Administration. The Federal Secretary of Labor has the responsibility for promulgating the Federal standards.

NIOSH has devised a formal system of research, with priorities determined on the basis of specified indices, to provide relevant data from which valid criteria for effective standards can be derived. Some of the criteria used in selecting substances to be evaluated include the availability of scientific and medical data, the appropriateness of sampling and analytical methods, and the potential for employee exposure in the United States. Recommended standards for occupational exposure, which are the result of this work, are based on the health effects of exposure. These include recommended levels of contaminants averaged over a work shift or shorter period of time. They also include work practices, labelling, medical surveillance, recordkeeping, respirator use, and notification requirements. The Federal Secretary of Labor is responsible for adopting the applicable regulations.

Recommended standards developed by NIOSH are reviewed by consultants with input from other Federal agencies, private industry, organized labor and trade associations. Most, however, have not been incorporated into regulations. The recommended standards used for the proposed Toxic and Hazardous Substance Table were published in *Morbidity and Mortality Weekly Report Supplement*, Vol. 32, No. 15, October 1983.

The American Conference of Governmental Industrial Hygienists has established and maintains the Chemical Substances Threshold Limit Value Committee. The Committee is charged with developing threshold limit values for worker health protection. Chemical substances covered by ACGIH threshold limit values are nominated by Committee members and consultants based upon their knowledge of occupational exposure and upon request by organizations or individuals.

The Threshold Limit Value Committee of the ACGIH is composed of practicing industrial hygienists, toxicologists, industrial physicians, engineers, and chemists from governmental agencies and universities. The Threshold Limit Value Committee publishes an annual booklet, under the sponsorship of the ACGIH, that lists two types of limits: a recommended limit that comprises the bulk of the list, and a tentative value assigned for a period of years (at least two) to all newly added substances. The list is reviewed and updated annually. The *ACGIH TLVs for Chemical Substances in the Work Environment (1984-1985)* lists approximately 700 substances with threshold limit value—time weighted averages, threshold limit value—short term exposure limits, and threshold limit value—ceilings.

The selection of chemicals and their threshold limit values is based on the best available information from the industrial experience, from experimental human and animal studies and, when possible, from a com-

bination of the three. The basis on which the values are established may differ from substance to substance. Protection against impairment of health may be a guiding factor for some, whereas reasonable freedom from irritation, narcosis, nuisance or other forms of chemical toxicity may form the basis for others.

The threshold limit values for chemical substances, as issued by the ACGIH, are recommendations. However, these values have been used or included by reference in the development of the Federal Occupational Safety and Health Administration's tables of permissible exposure limits and various State statutes and regulations. In these cases the threshold limit values have the force and effect of law. In addition, the American Conference of Governmental Industrial Hygienists threshold limit values list is widely used and cited by occupational health professionals throughout the United States and many foreign countries.

The proposed table was compiled by comparing exposure limits from OSHA, NIOSH and the ACGIH. The exposure limit which afforded the most protection was adopted for inclusion into the new proposed table.

The complete standards (which include medical surveillance, controls, recordkeeping, labelling, etc.) for 24 substances (29 CFR Parts 1910.1001 through 1910.1200) promulgated by OSHA have been adopted under the State program but the permissible exposure limits have been changed or added to five of these substances where the NIOSH or ACGIH maximum recommended exposure limit is more stringent than OSHA's or where no OSHA exposure limit is stated. N.J.A.C. 12:100-7.3(b) through (f) define the terms and abbreviations used in Table 7.3. N.J.A.C. 12:100-7.3(g) describes how permissible exposure limits are to be calculated. N.J.A.C. 12:100-7.3(h) describes how these limits are to be achieved.

The new table of permissible exposure limits will better insure worker safety and health. As stated in the general purpose section of the State rules, N.J.A.C. 12:100-1.3, "The purpose of this chapter is to protect employees in the public sector by providing standards which are at least as effective as the standards promulgated under Section 6 of the Federal Occupational Safety and Health Act of 1970, 29 USC 561 et seq." This new table updates the procedure OSHA used to promulgate its standards in 1972 and certainly is at least as effective as the OSHA standards.

Social Impact

These proposed amendments and new rules will protect the health, safety and welfare of public employees. As a result of employment in a variety of occupations, public employees are exposed to a large number of toxic and hazardous substances. There is documented scientific information that exposure to these substances at concentrations above the proposed permissible exposure limits is associated with occupational diseases and health symptoms.

It is estimated that approximately 17,000 Americans die each year from occupational cancer. According to authoritative estimates, 100,000 Americans die and 390,000 are disabled by occupational diseases each year. One recent estimate suggests that 1,800,000 Americans are now disabled by occupational diseases.

The public employees likely to be exposed to toxic and hazardous substances include laboratory personnel, plumbers, maintenance personnel, auto repair personnel, motor vehicle operators, utility authority personnel, construction personnel, buildings and grounds personnel, highway and maintenance personnel, painters, fire fighters, motor vehicle inspectors, asbestos control inspectors and hazardous waste site mitigation inspectors. These public employees are exposed to solvents, paints, combustion gases, asbestos, pesticides and other products which contain toxic substances.

Implementation of these amendments and new rules will reduce illness occurring among public employees, improve working conditions, enhance the welfare and morale of public employees, and reduce the risk of occupational disease.

Economic Impact

Compliance with these rules as proposed will impose some increased costs on public employers. For example, it may be necessary for public employers to install or improve engineering controls (for example, local ventilation) to reach the proposed permissible exposure limits.

The Legislature was aware that there would be increased costs associated with providing public employees with the benefits of an occupational and health program but found that the safety of public employees in the workplace is of primary public concern. The Legislature also acknowledged that personal injuries and illnesses arising out of work situations result not only in lost workdays and increased medical expenses for employees but also in decreased productivity and increased workers' compensation expenses for employers.

Although all State agencies will incur some added costs associated with the implementation of these amendments and rules, the Departments of Environmental Protection, Health, Human Services and Transportation will probably be most affected. In addition to these State departments, municipal and county agencies such as fire services, utility authorities and transportation services will be most affected at a local level.

The added costs of implementing a program of compliance with these amendments and rules will be offset with benefits these agencies and public employees will receive from reduction in workers compensation payments, and medical and social security rehabilitation expenses, as well as less lost work time.

Regulatory Flexibility Statement

These proposed amendments and new rules do not impose any reporting, recordkeeping or compliance requirements upon small businesses, as the rules address the allowable concentration of certain toxic and hazardous substances in the atmosphere at the workplace of public employees. Public employers will be directly affected since it will be their responsibility to provide a safe and healthy workplace. Therefore, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards with the amendments published in the Federal Register through December 31, 1987 with certain exceptions noted in (b) and (c) below, are adopted as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1.-18. (No change.)

[19. Subpart Z—Toxic and Hazardous Substances.]

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

12:100-5.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1926, Construction Industry Standards with the amendments published in the Federal Register through September 28, 1987, are adopted as occupational safety and health standards and shall include:

1. (No change.)

2. Subpart D—Occupational Health and Environmental Controls, other than 29 CFR Part 1926.55;

3.-22. (No change.)

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

12:100-6.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1928, Agriculture with the amendments published in the Federal Register through July 31, 1987, are adopted as occupational safety and health standards and shall include:

1. Subpart B—Applicability of Standards;

2. Subpart C—Roll-Over Protective Structures; and

3. Subpart D—Safety for Agricultural Equipment [; and] .

[4. Subpart I—Toxic and Hazardous Substances.]

(b) (No change.)

Full text of the proposed new rules follows.

SUBCHAPTER 7. STANDARDS ON TOXIC AND HAZARDOUS SUBSTANCES

12:100-7.1 Scope

(a) This subchapter addresses the permissible exposure limits of toxic and hazardous substances to which an employee may be exposed.

(b) This subchapter shall apply to public employees who are employed in general operations, construction and agriculture as covered by N.J.A.C. 12:100-4, 5 and 6 respectively.

12:100-7.2 Definitions

The following terms, when used in this subchapter, shall have the following meanings:

"Engineering control" means a method utilized to reduce the concentration of a toxic or hazardous substance by substitution, isolation, ventilation or modification of equipment.

"Work practice control" means a method by which the employer modifies the manner in which the employee performs assigned work, such as changing work habits, improving sanitation, or improving hygiene practices.

12:100-7.3 Adoption of standards

(a) The permissible exposure limits set forth in Table 7.3 below are adopted as occupational safety and health standards for the protection of public employees. An employee's exposure to any substance listed in Table 7.3 shall be limited in accordance with (b) through (h) below.

(b) This subsection defines terms and abbreviations pertaining to any material listed in Table 7.3 that makes reference to "OSHA" in the source column. These terms and abbreviations are used in the Occupational Safety and Health Administration in 29 CFR Part 1910, Subpart Z—Toxic and Hazardous Substances.

1. "TWA" means eight hour time weighted average. An employee's exposure to a material the name of which is not preceded by "C" in any eight hour work shift of a 40 hour work week shall not exceed the eight-hour time weighted average given for that material in the table.

2. "C" means ceiling value. An employee's exposure to a material with a "C" notation shall at no time exceed the ceiling value given for that material in the table.

3. "R" means complete standard. Materials with an "R" notation have been adopted as complete health standards (see N.J.A.C. 12:100-7.4, Specific health standards).

(c) This subsection defines terms and abbreviations pertaining to any material listed in Table 7.3 that makes reference to "ACIGH" in the source column. These terms and abbreviations are used in the American Conference of Governmental Industrial Hygienists, Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment and Biological Exposure Indices with Intended Changes for 1984-85.

1. "TWA" means time weighted average. An employee's exposure to a material in any eight hour work shift of a 40 hour week shall not exceed the eight hour time weighted average given for that material in the table.

2. "Excursion limits" means that short term exposures should exceed three times the TWA for no more than a total of 30 minutes during a work day and under no circumstances should they exceed five times the TWA, provided that the TWA is not exceeded.

3. "STEL" means short term exposure limit. Materials have a 15 minute time weighted average exposure which shall not be exceeded at any time during a work day even if the eight hour time weighted average is within the TWA. Employee exposures at the STEL shall not be longer than 15 minutes and shall not be repeated more than four times a day. There should be at least 60 minutes between excessive exposures at the STEL.

4. "C" means ceiling value. An employee's exposure to materials with a "C" notation shall at no time be exceeded even instantaneously.

5. "E" means simple asphyxiant, "inert" gases or vapors. Employers shall limit the concentration of these materials, taking the following into account:

i. A number of gases, when present in high concentrations in air, act primarily as simple asphyxiants without other significant physiologic effects. A permissible exposure limit may not be recommended for each simple asphyxiant because the limiting factor is the available oxygen. The minimum oxygen content shall be 19.5 percent in accordance with N.J.A.C. 12:100-4.2(a)5. Atmospheres deficient in oxygen do not provide adequate warning and most simple asphyxiants are odorless. Several simple asphyxiants present an explosion hazard.

6. "A1a" means human carcinogens. These are substances, or substances associated with industrial processes, recognized to have carcinogenic or cocarcinogenic potential. An employee's exposure shall not exceed the permissible exposure limit.

7. "A1b" means human carcinogen substances. For a material with an "A1b" notation, no employee exposure or contact by any route (respiratory, skin or oral as detected by the most sensitive methods) shall be permitted. The employee shall be properly equipped to insure virtually no contact with the carcinogen.

8. "A2" means industrial substances suspect of carcinogenic potential for humans. An employee's exposure by all routes to a material with an "A2" notation shall be carefully controlled to levels consistent with the animal and human experience data including those substances with a listed TWA.

9. "B1" means polytetrafluoroethylene decomposition products. Thermal decomposition of the fluorocarbon chain in air leads to the formation of oxidized products containing carbon, fluorine and oxygen. Because these products decompose in part by hydrolysis in alkaline solution, they can be quantitatively determined in air as fluoride to provide an index of exposure. No permissible exposure limit is recommended pending determination of the toxicity of the products, but air concentrations shall be kept as low as possible.

10. "B2" means welding fumes. The total particulates not otherwise classified shall not exceed a permissible exposure limit of five milligrams per cubic meter (mg/m³). The employer shall prevent over-exposure to other potentially hazardous compounds, taking the following into account:

i. Welding fumes cannot be classified simply. The composition and quantity of both are dependent on the alloy being welded and the process and electrodes used. Reliable analysis of fumes cannot be made without considering the nature of the welding process and system being examined. Reactive metals and alloys such as aluminum and titanium are arc-welded in a protective, inert atmosphere such as argon. These arcs create relatively little fume, but an intense radiation which can produce ozone. Similar processes are used to arc-weld steels, oxidizing environments which generate considerable fume, and can produce carbon monoxide instead of ozone. Such fumes generally are composed of discrete particles of amorphous slags containing iron, manganese, silicon and other metallic constituents depending on the alloy system involved. Chromium and nickel compounds are found in fumes when stainless steels are arc-welded. Some coated and flux-cored electrodes are formulated with fluorides and the fumes associated with them can contain significantly more fluorides than oxides. Because of the above factors, arc-welding fumes frequently must be tested for individual constituents which are likely to be present to determine whether specific permissible exposure limits are exceeded. Conclusions based on total fume concentration are generally adequate if no toxic elements are present in welding rod, metal or metal coating and conditions are not conducive to the formation of toxic gases.

11. "D" means nuisance particulates. An employee's exposure to a material with a "D" notation shall not exceed the TWA of 10 mg/m³ of total dust or five mg/m³ of respirable dust. However, if there is greater than one percent quartz in the total dust sample than the TWA for quartz shall be used.

12. "T" means the respirable quartz TWA value shall be used if the coal dust has greater than five percent quartz.

13. "U" means the TWA for cotton dust shall be lint free dust as measured by the vertical elutriator cotton dust sample method described in Transaction of the National Conference on Cotton Dust, p. 33, by J.R. Lynch (May 2, 1970).

14. "BB" means for exposed employees, biological monitoring shall be performed.

15. "DD" means an employee's exposure to a material with a "DD" notation shall not exceed the TWA given. However, if there is greater than one percent quartz in the total dust sample, then the TWA for quartz shall be used.

16. "FF" means the air samples shall be based on "high volume" (four to 12 liters per minute) sampling.

17. "VV" means the air samples shall be collected by a method that does not collect vapor.

(d) This subsection defines terms and abbreviations pertaining to any material listed in Table 7.3 that makes reference to "NIOSH" in the source column. These terms and abbreviations are used in the United States Department of Health and Human Services, National Institute for Occupational Safety and Health, Center for Disease Control, "NIOSH Recommendations for Occupational Health Standards". Morbidity and Mortality Weekly Report Supplement, Vol. 32, No. 15, October, 1983.

1. "TWA" means time weighted average. An employee's exposure to materials in any 10 hour shift of a 40 hour work week shall not exceed the 10 hour time weighted average given for that material in the table.

2. "Ceiling" means materials have a variable time weighted average (the time is specified in the table) exposure which shall not be exceeded at any time during a workday even if the 10 hour TWA is not exceeded.

3. "F" means materials with an "F" notation must have a TWA which represents the lowest reliably detectable level as determined by NIOSH.

4. "H" means an employee's exposure to halogenated anaesthetic agents shall not exceed two parts per million (ppm) ceiling (one hour). Employee exposure to nitrous oxide shall not exceed 25 ppm TWA during periods of use.

5. "J" means an employee's exposure to a substance shall never exceed the value cited in the column with an accompanying "J" notation.

6. "K" means stringent work practices and controls shall be enforced to reduce employee exposure. Where applicable, benzidine-based dyes shall be replaced by less toxic materials.

7. "L" means an employee's exposure to fibrous glass shall not exceed three million fibers/m³ TWA (fibers less than or equal to 3.5 micrometers in diameter and greater than or equal to 10 micrometers in length) or five mg/m³ TWA (total fibrous glass).

8. "M" means the entries with an "M" notation refer to a TWA value of respirable free silica. Respirable dust is defined as the portion of the dust small enough to penetrate to the pulmonary spaces.

9. "N" means the entries with an "N" notation refer to a TWA value of total dust. Total dust is defined as total weight of dust collected.

10. "P" means for tetrachloroethylene, a ceiling concentration determined by 15 minute samples twice daily.

11. "Q" means an employee's exposure to a material with a "Q" notation shall be the same as promulgated for vinyl chloride with the eventual goal of zero.

12. "V" means ethylene thiourea must be used in encapsulated form in industry and worker exposure shall be minimized.

13. "W" means the TWA for methylene chloride shall be lowered in the presence of exposure to carbon monoxide (CO) in the work environment at more than nine ppm determined as a TWA exposure for up to a 10-hour workday. Exposure limits of CO, or methylene chloride, or both shall be reduced to satisfy the following relationship:

$$\frac{C(\text{CO})}{L(\text{CO})} + \frac{C(\text{CH}_2\text{Cl}_2)}{L(\text{CH}_2\text{Cl}_2)} \text{ less than or equal to one}$$

where:

C(CO) = TWA exposure concentration of CO in ppm.

L(CO) = the recommended TWA exposure limit of CO = 50 ppm.

C(CH₂Cl₂) = TWA exposure concentration of methylene chloride in ppm.

L(CH₂Cl₂) = the recommended TWA exposure limit of methylene chloride = 75 ppm.

14. "X" means for dust of cemented tungsten carbide containing greater than two percent cobalt (Co) the TWA shall be

$$\frac{0.1 \text{ mg Co.}}{\text{m}^3}$$

15. "Y" means for dust of cemented tungsten carbide containing greater than 0.3 percent nickel (Ni) the TWA shall be

$$\frac{0.15 \text{ ug Ni.}}{\text{m}^3}$$

(e) This subsection defines other abbreviations found in Table 7.3.

1. "PPM" means parts of vapor or gas per million parts of contaminated air by volume at 25 degrees Centigrade and 760 millimeters of mercury pressure.

2. "Mg/m³" means approximate milligrams of particulate per cubic meter of air.

3. "NOC" means not otherwise classified.

4. "CAS" means Chemical Abstracts Service number.

(f) For substances cited in Table 7.3 with a skin notation, appropriate measures shall be taken for the prevention of employee's cutaneous absorption (including mucous membranes and eye either by airborne or, more particularly, by direct contact).

(g) This subsection applies to the computation of time weighted averages.

1. The cumulative exposure for an eight-hour work shift shall be computed as follows:

$$E = \frac{CaTa + CbTb + \dots + CnTn}{8}$$

Where:

E is the equivalent exposure for the working shift.

C is the concentration during any period of time "T" where the concentration remains constant.

T is the duration in hours of the exposure at the concentration "C".

i. The value of E shall not exceed the eight-hour time weighted average limit in Table 7.3 for the material involved. (For NIOSH values, substitute 10 hours for eight hours.)

ii. To illustrate the formula prescribed in this paragraph, the following example is provided. Note that isoamyl acetate has an eight-hour time weighted average limit of 100 ppm (Table 7.3). Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm

Two hours exposure at 75 ppm

Four hours exposure at 50 ppm

Substituting this information in the formula results in:

$$\frac{(2 \times 150 + 2 \times 75 + 4 \times 50)}{8} = 81.25 \text{ ppm}$$

Since 81.25 ppm is less than 100 ppm, the eight-hour time weighted average limit, the exposure is acceptable.

2. In the case of two or more air contaminants which act upon the same organ system, the employer shall compute the equivalent exposure as follows:

$$Em = \frac{C_1}{L_1} + \frac{C_2}{L_2} + \dots + \frac{C_n}{L_n}$$

Where:

Em is the equivalent exposure for the mixture.

C is the concentration of a particular contaminant.

L is the exposure limit for that contaminant from Table 7.3.

The value of Em shall not exceed unity (1).

i. To illustrate the formula prescribed in this paragraph, the following example is provided.

Material	Actual concentration of eight-hour exposure	Eight-hour time weighted average exposure limit
Ethyl Alcohol	500 ppm	1,000 ppm
Methyl Ethyl Ketone	45 ppm	200 ppm
Toluene	20 ppm	100 ppm

Substituting this information in the formula results in:

$$Em = \frac{500}{1000} + \frac{45}{200} = \frac{20}{100}$$

$$Em = 0.500 + 0.225 + 0.200$$

$$Em = 0.925$$

Since Em is less than unity (1), the exposure combination is within acceptable limits.

(h) To achieve compliance with (a) through (g) above, engineering controls or work practice controls shall be implemented and maintained to reduce environmental concentrations to the permissible exposure levels or lower. Personal protective equipment is not an acceptable substitute for proper engineering controls although such

equipment shall be available for use in emergencies and during maintenance and repair procedures.

(i) Where the permissible exposure level for bis(chloromethyl) ether; 1,2-dibromo-3-chloropropane; beta-propiolactone; and inorganic arsenic, set forth in (a) above, is more stringent than the permissible exposure level contained in the health standard listed in N.J.A.C. 12:100-7.4, the permissible exposure level set forth in Table 7.3 shall apply.

12:100-7.4 Specific health standards adopted by reference

(a) The health standards listed below and contained in Subpart Z of 29 CFR Part 1910 are adopted herein by reference as occupational safety and health standards for the protection of public employees, except as provided in N.J.A.C. 12:100-7.3(i).

1. (Reserved);
2. 29 CFR 1910.1002 Coal tar pitch volatiles;
3. 29 CFR 1910.1003 4-Nitrobiphenyl;
4. 29 CFR 1910.1004 alpha-Naphthylamine;
5. 29 CFR 1910.1005 (Reserved);
6. 29 CFR 1910.1006 Methyl chloromethyl ether;
7. 29 CFR 1910.1007 3,3'-Dichlorobenzidine (and its salts);

8. 29 CFR 1910.1008 bis-Chloromethyl ether;
9. 29 CFR 1910.1009 beta-Naphthylamine;
10. 29 CFR 1910.1010 Benzidine;
11. 29 CFR 1910.1011 4-Aminodiphenyl;
12. 29 CFR 1910.1012 Ethyleneimine;
13. 29 CFR 1910.1013 beta-Propiolactone;
14. 29 CFR 1910.1014 2-Acetylaminofluorene;
15. 29 CFR 1910.1015 4-Dimethylaminoazobenzene;
16. 29 CFR 1910.1016 N-Nitrosodimethylamine;
17. 29 CFR 1910.1017 Vinyl chloride;
18. 29 CFR 1910.1018 Inorganic arsenic;
19. 29 CFR 1910.1025 Lead;
20. 29 CFR 1910.1028 Benzene;
21. 29 CFR 1910.1029 Coke oven emissions;
22. 29 CFR 1910.1043 Cotton dust;
23. 29 CFR 1910.1044 1,2-dibromo-3-chloropropane;
24. 29 CFR 1910.1045 Acrylonitrile;
25. 29 CFR 1910.1047 Ethylene oxide;
26. 29 CFR 1910.1048 Formaldehyde;
27. 29 CFR 1910.1200 (Reserved).

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
75-07-0	ACETALDEHYDE	100.00	180.00	ACGIH	150.00	270.00		ACGIH
64-19-7	ACETIC ACID	10.00	25.00	OSHA	15.00	37.00		ACGIH
108-24-7	ACETIC ANHYDRIDE	C 5.00	C 20.00	ACGIH				
67-64-1	ACETONE	250.00	590.00	NIOSH	1000.00	2375.00		ACGIH
75-86-5	ACETONE CYANOHYDRIN				1.00	4.00	15	NIOSH
75-05-8	ACETONITRILE (SKIN)	20.00	34.00	NIOSH	60.00	105.00		ACGIH
53-96-3	2-ACETYLAMINOFLUORENE	R		OSHA				
74-86-2	ACETYLENE	2500.00	2662.00	OSHA				
		J	J	NIOSH				
79-27-6	ACETYLENE							
	TETRABROMIDE	1.00	14.00	OSHA				
50-78-2	ACETYLSALICYLIC ACID		5.00	ACGIH				
107-02-8	ACROLEIN	0.10	0.25	OSHA	0.30	0.80		ACGIH
79-06-1	ACRYLAMIDE (SKIN)		0.30	ACGIH		0.60		ACGIH
79-10-7	ACRYLIC ACID	10.00	30.00	ACGIH				
107-13-1	ACRYLONITRILE (SKIN)	2.00	R	OSHA				
		C 10.00		OSHA				
111-69-3	ADIPONITRILE	4.00	18.00	NIOSH				
309-00-2	ALDRIN (SKIN)		F 0.15	NIOSH				
NONE	ALKANE MIXTURES		350.00	NIOSH		1800.00	15	NIOSH
107-18-6	ALLYL ALCOHOL (SKIN)	2.00	5.00	OSHA	4.00	10.00		ACGIH
107-05-1	ALLYL CHLORIDE	1.00	3.00	OSHA	2.00	6.00		ACGIH
106-92-3	ALLYL GLYCIDYL ETHER (SKIN)	5.00	22.00	ACGIH	10.00	44.00		ACGIH
2179-59-1	ALLYL PROPYL DISULFIDE	2.00	12.00	OSHA	3.00	18.00		ACGIH
1344-28-1	ALUMINA		D 10.00	ACGIH				
7429-90-5	ALUMINUM, AS AL METAL & OXIDE		10.00	ACGIH				
	PYRO POWDERS		5.00	ACGIH				
	WELDING FUMES		5.00	ACGIH				
	SOLUBLE SALTS		2.00	ACGIH				
	ALKYLS (NOC)		2.00	ACGIH				
92-67-1	4-AMINODIPHENYL (SKIN)	R		OSHA				
504-29-0	2-AMINOPYRIDINE	0.50	2.00	OSHA				
61-82-5	AMITROLE		0.20	ACGIH				
7664-41-7	AMMONIA	25.00	18.00	ACGIH	35.00	27.00		ACGIH
12125-02-9	AMMONIUM CHLORIDE (FUME)		10.00	ACGIH		20.00		ACGIH
7773-06-0	AMMONIUM SULFAMATE		10.00	ACGIH				
628-63-7	N-AMYL ACETATE	100.00	525.00	OSHA	150.00	800.00		ACGIH

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
626-38-0	SEC-AMYL ACETATE	125.00	670.00	OSHA	150.00	800.00		ACGIH
NONE	ANESTHETIC GASES AND VAPORS, WASTE	H		NIOSH				
62-53-3	ANILINE & HOMOLOGUES (SKIN)	2.00	10.00	ACGIH				
29191-52-4	ANISIDINE (SKIN) (O-, P- ISOMERS)	0.10	0.50	ACGIH				
7440-36-0	ANTIMONY & COMPOUNDS, AS Sb		0.50	OSHA				
1309-64-4	ANTIMONY TRIOXIDE HANDLING & USE, AS Sb PRODUCTION		0.50	ACGIH				
86-88-4	ANTU (ALPHA NAPHTHYL THIOUREA)		A2	ACGIH				
7440-37-1	ARGON	E	0.30	OSHA				
NONE	ARSENIC INORGANIC, AS As	R		ACGIH		0.002	15	NIOSH
NONE	ARSENIC ORGANIC, AS As SOLUBLE COMPOUNDS		0.20	OSHA				
	INSOLUBLE COMPOUNDS		0.50	ACGIH				
7784-42-1	ARSINE	0.05	0.20	OSHA				
1332-21-4	ASBESTOS	See N.J.A.C. 12:100-12						
8052-42-4	ASPHALT FUMES (PETROLEUM DERIVED) (SKIN)					5.00	15	NIOSH
1912-24-9	ATRAZINE		5.00	ACGIH				
7440-39-3	BARIUM, SOLUBLE COMPOUNDS, AS Ba		0.50	OSHA				
7727-43-7	BARIUM SULFATE	DD	N 10.00	ACGIH				
17804-35-2	BENOMYL	0.80	10.00	ACGIH				
71-43-2	BENZENE	R		OSHA				
108-98-5	BENZENETHIOL	0.50	2.00	ACGIH	0.10	0.50	15	NIOSH
92-87-5	BENZIDINE (SKIN)	R		OSHA				
NONE	BENZIDINE BASED DYES	K		NIOSH				
50-32-8	BENZO(A)PYRENE	A2		ACGIH				
106-51-4	P-BENZOQUINONE	0.10	0.40	OSHA	0.30	1.00		ACGIH
94-36-0	BENZOYL PEROXIDE		5.00	OSHA				
100-44-7	BENZYL CHLORIDE	1.00	5.00	OSHA		5.00	15	NIOSH
7440-41-7	BERYLLIUM	J	0.0005	NIOSH				
1304-82-1	BISMUTH TELLURIDE		10.00	ACGIH				
	Se DOPED		5.00	ACGIH				
1303-96-4	BORATES, TETRA SODIUM SALTS							
	ANHYDROUS		1.00	ACGIH				
	DECAHYDRATE		5.00	ACGIH				
	PENTAHYDRATE		1.00	ACGIH				
1303-86-2	BORON OXIDE		10.00	ACGIH				
10294-33-4	BORON TRIBROMIDE	C 1.00	C 10.00	ACGIH				
7637-07-2	BORON TRIFLUORIDE	C 1.00	C 3.00	OSHA				
314-40-9	BROMACIL	1.00	10.00	ACGIH				
7726-95-6	BROMINE	0.10	0.70	OSHA	0.30	2.00		ACGIH
7789-30-2	BROMINE PENTAFLUORIDE	0.10	0.70	ACGIH				
75-25-2	BROMOFORM (SKIN)	0.50	5.00	OSHA				
106-99-0	1,3-BUTADIENE	A2 10.00	A2 22.00	ACGIH				
106-97-8	BUTANE	800.00	1900.00	ACGIH				
111-76-2	2-BUTOXY ETHANOL (SKIN)	25.00	120.00	ACGIH	75.00	360.00		ACGIH
123-86-4	N-BUTYL ACETATE	150.00	710.00	OSHA	200.00	950.00		ACGIH
105-46-4	SEC-BUTYL ACETATE	200.00	950.00	OSHA	250.00	1190.00		ACGIH
540-88-5	TERT-BUTYL ACETATE	200.00	950.00	OSHA	250.00	1190.00		ACGIH
141-32-2	BUTYL ACRYLATE	10.00	55.00	ACGIH				
71-36-3	N-BUTYL ALCOHOL (SKIN)	C 50.00	C 150.00	ACGIH				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
78-92-2	SEC-BUTYL ALCOHOL	100.00	305.00	ACGIH	150.00	455.00		ACGIH
75-65-0	TERT-BUTYL ALCOHOL	100.00	300.00	OSHA	150.00	450.00		ACGIH
109-73-9	BUTYLAMINE (SKIN)	C 5.00	C 15.00	OSHA				
1189-85-1	TERT-BUTYL CHROMATE, AS CrO3 (SKIN)		C 0.10	OSHA				
2426-08-6	N-BUTYL GLYCIDYL ETHER				4.40	30.00	15	NIOSH
138-22-7	N-BUTYL LACTATE	5.00	25.00	ACGIH				
109-79-5	BUTYL MERCAPTAN				0.50	1.80	15	NIOSH
89-72-5	O-SEC-BUTYLPHENOL (SKIN)	5.00	30.00	ACGIH				
98-51-1	P-TERT-BUTYLTOLUENE	10.00	60.00	OSHA	20.00	120.00		ACGIH
109-74-0	BUTYRONITRILE	8.00	22.00	NIOSH				
7440-43-9	CADMIUM DUST & SALTS, AS Cd		0.04	NIOSH		0.20	15	NIOSH
156-62-7	CALCIUM CYANAMIDE		0.50	ACGIH				
1305-62-0	CALCIUM HYDROXIDE		5.00	ACGIH				
1305-78-8	CALCIUM OXIDE		2.00	ACGIH				
1344-95-2	CALCIUM SILICATE		D 10.00	ACGIH				
76-22-2	CAMPHOR		2.00	OSHA	3.00	18.00		ACGIH
105-60-2	CAPROLACTAM DUST VAPOR	5.00	1.00	ACGIH		3.00		ACGIH
			20.00	ACGIH	10.00	40.00		ACGIH
2425-06-1	CAPTAFOL (SKIN)		0.10	ACGIH				
133-06-2	CAPTAN		5.00	ACGIH				
63-25-2	CARBARYL		5.00	OSHA				
1563-66-2	CARBOFURAN		0.10	ACGIH				
1333-86-4	CARBON BLACK IN THE PRESENCE OF POLYCYCLIC AROMATIC HYDROCARBONS		3.50	OSHA				
			.10	NIOSH				
124-38-9	CARBON DIOXIDE	5000.00	9000.00	OSHA	30000.00	54000.00	10	NIOSH
75-15-0	CARBON DISULFIDE (SKIN)	1.00	3.00	NIOSH	10.00	30.00	15	NIOSH
630-08-0	CARBON MONOXIDE	50.00	55.00	OSHA				
558-13-4	CARBON TETRABROMIDE	0.10	1.40	ACGIH	0.30	4.00		ACGIH
56-23-5	CARBON TETRACHLORIDE (SKIN)	A2	A2	ACGIH	2.00	12.60	60	NIOSH
353-50-4	CARBONYL FLUORIDE	2.00	5.00	ACGIH	5.00	15.00		ACGIH
9004-34-6	CELLULOSE		D 10.00	ACGIH				
21351-79-1	CESIUM HYDROXIDE		2.00	ACGIH				
57-74-9	CHLORDANE (SKIN)		0.50	OSHA		2.00		ACGIH
55720-99-5	CHLORINATED DIPHENYL OXIDE		0.50	OSHA		2.00		ACGIH
7782-50-5	CHLORINE				0.50	1.45	15	NIOSH
10049-04-4	CHLORINE DIOXIDE	0.10	0.30	OSHA	0.30	0.90		ACGIH
7790-91-2	CHLORINE TRIFLUORIDE	C 0.10	C 0.40	OSHA				
107-20-0	CHLOROACETALDEHYDE	C 1.00	C 3.00	OSHA				
532-27-4	alpha-CHLOROACETOPHENONE	0.05	0.30	OSHA				
79-04-9	CHLOROACETYL CHLORIDE	0.05	0.20	ACGIH				
108-90-7	CHLOROBENZENE	75.00	350.00	OSHA				
2698-41-1	O-CHLOROBENZYLIDENE MALONONITRILE (SKIN)	C 0.05	C 0.40	ACGIH				
74-97-5	CHLOROBROMOMETHANE	200.00	1050.00	OSHA	250.00	1300.00		ACGIH
75-45-6	CHLORODIFLUORO-METHANE	1000.00	3500.00	ACGIH	1250.00	4375.00		ACGIH
111-44-4	BIS (2-CHLOROETHYL) ETHER (DICHLOROETHYL ETHER)	5.00	30.00	ACGIH	10.00	60.00		ACGIH
67-66-3	CHLOROFORM	A2	A2	ACGIH	2.00	9.78	60	NIOSH
542-88-1	BIS (2-CHLOROMETHYL) ETHER	R	0.001	OSHA				
			0.005	ACGIH				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
107-30-2	CHLOROMETHYL METHYL ETHER	R		OSHA				
600-25-9	1-CHLORO-1-NITROPROPANE	2.00	10.00	ACGIH				
76-15-3	CHLOROPEN-TAFLUOROETHANE	1000.00	6320.00	ACGIH				
76-06-2	CHLOROPICRIN	0.10	0.70	OSHA	0.30	2.00		ACGIH
126-99-8	CHLOROPRENE (SKIN)				1.00	3.60	15	NIOSH
2039-87-4	O-CHLOROSTYRENE	50.00	285.00	ACGIH	75.00	430.00		ACGIH
95-49-8	O-CHLOROTOLUENE	50.00	250.00	ACGIH	75.00	375.00		ACGIH
NONE	CHROMITE ORE PROCESSING (CHROMATE), AS Cr		1A 0.05	ACGIH				
2921-88-2	CHLORPYRIFOS (SKIN)		0.20	ACGIH		0.60		ACGIH
13530-68-2	CHROMIC ACID		0.05	NIOSH		0.1	15	NIOSH
7440-47-3	CHROMIUM METAL		0.50	ACGIH				
22541-79-3	CHROMIUM (II) COMPOUNDS, AS Cr		0.50	ACGIH				
16065-83-1	CHROMIUM (III) COMPOUNDS, AS Cr		0.50	ACGIH				
18540-29-9	CHROMIUM (VI) CARCINOGENIC OTHER		0.001 .025	NIOSH NIOSH		0.05	15	NIOSH
218-01-9	CHRYSENE	A2	A2	ACGIH				
2971-90-6	CLOPIDOL		10.00	ACGIH		20.00		ACGIH
NONE	COAL DUST		T 2.00	ACGIH				
65996-79-4	COAL TAR NAPHTHA	100.00	400.00	OSHA				
NONE	COAL TAR PRODUCTS		0.10	NIOSH				
7440-48-4	COBALT METAL, DUST & FUME, AS COBALT		0.05	ACGIH		0.10		ACGIH
10210-68-1	COBALT CARBONYL		0.10	ACGIH				
16842-03-8	COBALT HYDROCARBONYL		0.10	ACGIH				
NONE	COKE OVEN EMISSIONS	R	0.15	OSHA				
7440-50-8	COPPER FUME	0.10		OSHA				
	DUST & MIST, AS Cu	1.00		OSHA				
NONE	COTTON FIBER AS RAW COTTON	R	U 0.20	OSHA ACGIH				
1319-77-3	CRESOL (ALL ISOMERS) (SKIN)	2.30	10.00	NIOSH				
123-73-9	CROTONALDEHYDE	2.00	6.00	OSHA	6.00	18.00		ACGIH
299-86-5	CRUFOMATE		5.00	ACGIH		20.00		ACGIH
98-82-8	CUMENE (SKIN)	50.00	245.00	OSHA	75.00	365.00		ACGIH
420-04-2	CYANAMIDE		2.00	ACGIH				
NONE	CYANIDE & CYANIDE SALTS, AS CN (SKIN)				4.70	5.00	10	NIOSH
460-19-5	CYANOGEN	10.00	20.00	ACGIH				
506-77-4	CYANOGEN CHLORIDE	C 0.30	C 0.60	ACGIH				
110-82-7	CYCLOHEXANE	300.00	1050.00	OSHA	375.00	1300.00		ACGIH
1569-69-3	CYCLOHEXANETHIOL				0.50	2.40	15	NIOSH
108-93-0	CYCLOHEXANOL	50.00	200.00	OSHA				
108-94-1	CYCLOHEXANONE	25.00	100.00	ACGIH	100.00	400.00		ACGIH
110-83-8	CYCLOHEXENE	300.00	1015.00	OSHA				
108-91-8	CYCLOHEXYLAMINE (SKIN)	10.00	40.00	ACGIH				
121-82-4	CYCLONITE (SKIN)		1.50	ACGIH		3.00		ACGIH
542-92-7	CYCLOPENTADIENE	75.00	200.00	OSHA	150.00	400.00		ACGIH
287-92-3	CYCLOPENTANE	600.00	1720.00	ACGIH	900.00	2580.00		ACGIH
13121-70-5	CYHEXATIN		5.00	ACGIH				
94-75-7	2,4-D		10.00	OSHA				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
96-12-8	DBCP (DIBROMOCHLORO- PROPANE)	R		OSHA				
50-29-3	DDT (DICHLORODIPHENYLTRI- CHLOROETHANE) (SKIN)	0.01	0.10	NIOSH				
17702-41-9	DECABORANE (SKIN)	0.05	0.30	OSHA	0.15	0.90		ACGIH
143-10-2	1-DECANETHIOL				0.50	3.60	15	NIOSH
8065-48-3	DEMETON (SKIN)	0.01	0.10	OSHA				
123-42-2	DIACETONE ALCOHOL	50.00	240.00	OSHA	75.00	360.00		ACGIH
333-41-5	DIAZINON (SKIN)		0.10	ACGIH				
334-88-3	DIAZOMETHANE	0.20	0.40	OSHA				
19287-45-7	DIBORANE	0.10	0.10	OSHA				
102-81-8	2-N-DIBUTYLAMINO- ETHANOL (SKIN)	2.00	14.00	ACGIH				
107-66-4	DIBUTYL PHOSPHATE	1.00	5.00	OSHA	2.00	10.00		ACGIH
84-74-2	DIBUTYL PHTHALATE		5.00	OSHA		10.00		ACGIH
7572-29-4	DICHLOROACETYLENE	C 0.10	C 0.40	ACGIH				
95-50-1	1,2-DICHLOROBENZENE	C 50.00	C 300.00	OSHA				
106-46-7	1,4-DICHLOROBENZENE	75.00	450.00	OSHA	110.00	675.00		ACGIH
91-94-1	3,3'-DICHLOROBENZIDINE (SKIN)	R		OSHA				
75-71-8	DICHLORODIFLUORO- METHANE	1000.00	4950.00	OSHA				
118-52-5	1,3-DICHLORO-5,5- DIMETHYL HYDANTOIN		0.20	OSHA		0.40		ACGIH
75-34-3	1,1-DICHLOROETHANE (ETHYLIDENE CHLORIDE)	100.00	400.00	OSHA	250.00	1010.00		ACGIH
107-06-2	1,2-DICHLOROETHANE (ETHYLENE DICHLORIDE)	1.00	4.00	NIOSH	2.00	8.00	15	NIOSH
75-43-4	DICHLOROFLURO- METHANE	10.00	40.00	ACGIH				
540-59-0	1,2-DICHLOROETHYLENE	200.00	790.00	OSHA	250.00	1000.00		ACGIH
594-72-9	1,1-DICHLORO-1-NITRO- ETHANE	C 10.00	C 60.00	OSHA				
78-87-5	1,2-DICHLOROPROPANE	2.00	10.00	ACGIH				
542-75-6	1,3-DICHLOROPROPENE (SKIN)	75.00	350.00	OSHA	110.00	510.00		ACGIH
75-99-0	2,2-DICHLOROPROPIONIC ACID	1.00	5.00	ACGIH				
1320-37-2	DICHLOROTETRA- FLUROETHANE	1.00	6.00	ACGIH				
62-73-7	DICHLORVOS (SKIN)	1000.00	7000.00	OSHA				
141-66-2	DICROTOPHOS (SKIN)	0.10	1.00	ACGIH				
77-73-6	DICYCLOPENTADIENE		0.25	ACGIH				
102-54-5	DICYCLOPENTADIENYL IRON	5.00	30.00	ACGIH				
60-57-1	DIELDRIN (SKIN)		10.00	ACGIH				
111-42-2	DIETHANOLAMINE		F 0.15	NIOSH				
109-89-7	DIETHYLAMINE	3.00	15.00	ACGIH				
100-37-8	DIETHYLAMINOETHANOL (SKIN)	10.00	30.00	ACGIH	25.00	75.00		ACGIH
111-40-0	DIETHYLENE TRIAMINE (SKIN)	10.00	50.00	OSHA				
60-29-7	DIETHYL ETHER	1.00	4.00	ACGIH				
96-22-0	DIETHYL KETONE	400.00	1200.00	OSHA	500.00	1500.00		ACGIH
84-66-2	DIETHYL PHTHALATE	200.00	705.00	ACGIH				
75-61-6	DIFLUORODIBROMO- METHANE		5.00	ACGIH		10.00		ACGIH
2238-07-5	DIGLYCIDYL ETHER	100.00	860.00	OSHA				
		0.10	0.50	ACGIH	0.20	1.00	15	NIOSH

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
120-80-9	1,2-DIHYDROXYBENZENE (CATECHOL)	5.00	20.00	ACGIH				
NONE	DIISOCYANATES OTHER THAN THOSE LISTED	0.005		NIOSH	0.02		10	NIOSH
108-18-9	DI-ISOPROPYLAMINE (SKIN)	5.00	20.00	OSHA				
127-19-5	DIMETHYL ACETAMIDE (SKIN)	10.00	35.00	OSHA				
124-40-3	DIMETHYLAMINE	10.00	18.00	OSHA				
60-11-7	4-DIMETHYLAMINO-AZOBENZENE	R		OSHA				
121-69-7	DIMETHYLANILINE (SKIN)	5.00	25.00	OSHA	10.00	50.00		ACGIH
79-44-7	DIMETHYLCARBAMOYL CHLORIDE	A2	A2	ACGIH				
300-76-5	DIMETHYL 1,2-DIBROMO-2,2-DICHLOROETHYL PHOSPHATE (NALED)		3.00	OSHA				
68-12-2	DIMETHYLFORMAMIDE (SKIN)	10.00	30.00	OSHA				
108-83-8	2,6-DIMETHYLHEPTANONE (DIISOBUTYL KETONE)		140.00	NIOSH				
57-14-7	1,1-DIMETHYLHYDRAZINE (SKIN)	A2	A2	ACGIH	0.06	0.15	120	NIOSH
131-11-3	DIMETHYL PHTHALATE		5.00	OSHA				
77-78-1	DIMETHYL SULFATE (SKIN)	A2 0.10	A2 0.50	ACGIH				
148-01-6	DINITOLMIDE		5.00	ACGIH		10.00		ACGIH
25154-54-5	DINITROBENZENE (SKIN) (ALL ISOMERS)		1.00	OSHA				
534-52-1	4,6-DINITRO-O-CRESOL (SKIN)		0.20	OSHA				
121-14-2	2,4-DINITROTOLUENE (SKIN)		1.50	OSHA				
123-91-1	1,4-DIOXANE (SKIN)				1.00	3.60	30	NIOSH
78-34-2	DIOXATHION (SKIN)		0.20	ACGIH				
92-52-4	DIPHENYL	0.20	1.00	OSHA	0.60	4.00		ACGIH
122-39-4	DIPHENYLAMINE		10.00	ACGIH				
34590-94-8	DIPROPYLENE GLYCOL METHYL ETHER (SKIN)	100.00	600.00	OSHA	150.00	900.00		ACGIH
123-19-3	DIPROPYL KETONE	50.00	235.00	ACGIH				
85-00-7	DIQUAT		0.50	ACGIH				
97-77-8	DISULFIRAM		2.00	ACGIH				
298-04-4	DISULFOTON		0.10	ACGIH				
128-37-0	2,6-DI-TERT-BUTYL-P-CRESOL		10.00	ACGIH		20.00		ACGIH
330-54-1	DIURON		10.00	ACGIH				
108-57-6	DIVINYL BENZENE	10.00	50.00	ACGIH				
112-55-0	DODECANETHIOL				0.50	4.10	15	NIOSH
112-62-9	EMERY		D 10.00	ACGIH				
115-29-7	ENDOSULFAN (SKIN)		0.10	ACGIH				
72-20-8	ENDRIN (SKIN)		0.10	OSHA				
106-89-8	EPICHLOROHYDRIN (SKIN)		2.00	NIOSH		19.00	15	NIOSH
2104-64-5	EPN (SKIN)		0.50	OSHA				
556-52-5	2,3-EPOXY 1-PROPANOL (GLYCIDOL)	25.00	75.00	ACGIH	100.00	300.00		ACGIH
74-84-0	ETHANE	E		ACGIH				
141-43-5	ETHANOLAMINE	3.00	6.00	OSHA	6.00	15.00		ACGIH
563-12-2	ETHION (SKIN)		0.40	ACGIH				
110-80-5	2-ETHOXYETHANOL (SKIN)	5.00	19.00	ACGIH				
111-15-9	2-ETHOXYETHYLACETATE (SKIN)	5.00	27.00	ACGIH				
141-78-6	ETHYL ACETATE	400.00	1400.00	OSHA				
140-88-5	ETHYL ACRYLATE (SKIN)	5.00	20.00	ACGIH	25.00	100.00		ACGIH

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
64-17-5	ETHYL ALCOHOL	1000.00	1900.00	OSHA				
75-04-7	ETHYLAMINE	10.00	18.00	OSHA				
541-85-5	ETHYL AMYL KETONE	25.00	130.00	OSHA				
100-41-4	ETHYL BENZENE	100.00	435.00	OSHA	125.00	545.00		ACGIH
74-96-4	ETHYL BROMIDE	200.00	890.00	OSHA	250.00	1110.00		ACGIH
106-35-4	ETHYL BUTYL KETONE	50.00	230.00	OSHA	75.00	345.00		ACGIH
75-00-3	ETHYL CHLORIDE	1000.00	2600.00	OSHA				
74-85-1	ETHYLENE	E		ACGIH				
107-07-3	ETHYLENE CHLOROXYDRIN (SKIN)	C 1.00	C 3.00	ACGIH				
107-15-3	ETHYLENEDIAMINE	10.00	25.00	OSHA				
106-93-4	ETHYLENE DIBROMIDE (SKIN) (1,2-DIBROMOETHANE)	A2 0.045	A2 0.38	ACGIH NIOSH	0.13	1.00	15	NIOSH
107-21-1	ETHYLENE GLYCOL (VAPOR)	C 50.00	C 125.00	ACGIH				
628-96-6	ETHYLENE GLYCOL DINITRATE (SKIN)					0.10	20	NIOSH
151-56-4	ETHYLENEIMINE (SKIN)	R 0.50	1.00	OSHA				
75-21-8	ETHYLENE OXIDE	A2 1.00	A2 2.00	ACGIH				
96-45-7	ETHYLENE THIOUREA	V		NIOSH				
109-94-4	ETHYL FORMATE	100.00	300.00	OSHA	150.00	450.00		ACGIH
117-81-7	BIS (2-ETHYLHEXYL) PHTHALATE (DI-SEC, OCTYL PHTHALATE)		5.00	OSHA		10.00		ACGIH
16219-75-3	ETHYLIDENE NORBORNENE	C 5.00	C 25.00	ACGIH				
75-08-1	ETHYL MERCAPTAN				0.50	1.30	15	NIOSH
100-74-3	N-ETHYLMORPHOLINE (SKIN)	5.00	23.00	ACGIH				
78-10-4	ETHYL SILICATE	10.00	85.00	ACGIH				
22224-92-6	FENAMIPHOS (SKIN)		0.10	ACGIH				
115-90-2	FENSULFOTHION		0.10	ACGIH				
55-38-9	FENTHION (SKIN)		0.20	ACGIH				
14484-64-1	FERBAM		10.00	ACGIH				
12604-58-9	FERROVANADIUM (DUST)					0.05	15	NIOSH
NONE	FIBROUS GLASS		L	NIOSH				
16984-48-8	FLUORIDES, AS F		2.50	OSHA				
7782-41-4	FLUORINE	0.10	0.20	OSHA	2.00	4.00		ACGIH
944-22-9	FONOFOS (SKIN)		0.10	ACGIH				
50-00-0	FORMALDEHYDE	R		OSHA				
75-12-7	FORMAMIDE	20.00	30.00	ACGIH				
64-18-6	FORMIC ACID	5.00	9.00	OSHA				
98-01-1	FURFURAL (SKIN)	2.00	8.00	ACGIH	10.00	40.00		ACGIH
98-00-0	FURFURYL ALCOHOL (SKIN)	10.00	40.00	ACGIH	15.00	60.00		ACGIH
8006-61-9	GASOLINE	300.00	900.00	ACGIH	500.00	1500.00		ACGIH
7782-65-2	GERMANIUM HYDRIDE	0.20	0.60	ACGIH				
111-30-8	GLUTARALDEHYDE	C 0.20	C 0.70	ACGIH				
56-81-5	GLYCERIN (MIST)		D 10.00	ACGIH				
107-16-4	GLYCOLONITRILE				2.00	5.00	15	NIOSH
NONE	GRAIN DUST		4.00	ACGIH				
86-50-0	GUTHION (SKIN)		0.20	OSHA				
10101-41-4	GYPNUM		D	ACGIH				
7440-58-6	HAFNIUM		0.50	OSHA				
7440-59-7	HELIUM	E		ACGIH				
680-31-9	HEMPA (SKIN) (HEXAMETHYL-PHOSPHORAMIDE)	A2	A2	ACGIH				
76-44-8	HEPTACHLOR (SKIN)		0.50	OSHA				
142-82-5	HEPTANE	400.00	1600.00	ACGIH	500.00	2000.00		ACGIH
1639-09-4	1-HEPTANETHIOL				0.50	2.70	15	NIOSH

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
87-68-3	HEXACHLOROBUTADIENE (SKIN)	A2 0.02	A2 0.24	ACGIH				
77-47-4	HEXACHLOROCYCLOPENTADIENE	0.01	0.10	ACGIH				
67-72-1	HEXACHLOROETHANE (SKIN)	1.00	10.00	OSHA				
1335-87-1	HEXACHLORONAPHTHALENE (SKIN)		0.20	OSHA				
2917-26-2	1-HEXADECANETHIOL				0.50	5.30	15	NIOSH
684-16-2	HEXAFLUOROACETONE (SKIN)	0.10	0.70	ACGIH				
822-06-0	HEXAMETHYLENE DIISOCYANATE	0.005	0.035	NIOSH	0.02	0.14	10	NIOSH
110-54-3	HEXANE							
	N-HEXANE	50.00	180.00	ACGIH				
	OTHER ISOMERS	500.00	1800.00	ACGIH	1000.00	3600.00		ACGIH
111-31-9	1-HEXANETHIOL				0.50	2.40	15	NIOSH
108-84-9	SEC-HEXYL ACETATE	50.00	300.00	OSHA				
107-41-5	HEXYLENE GLYCOL	C 25.00	C 125.00	ACGIH				
302-01-2	HYDRAZINE (SKIN)	A2 0.10	A2 0.10	ACGIH	0.03	0.04	120	NIOSH
1333-74-0	HYDROGEN	E		ACGIH				
92-94-4	HYDROGENATED TERPHENYLS	0.50	5.00	ACGIH				
10035-10-6	HYDROGEN BROMIDE	C 3.00	C 10.00	ACGIH				
7647-01-0	HYDROGEN CHLORIDE	C 5.00	C 7.00	OSHA				
74-90-8	HYDROGEN CYANIDE, AS CN (SKIN)				4.70	5.00	10	NIOSH
7664-39-3	HYDROGEN FLUORIDE, AS F	C 3.00	C 2.50	ACGIH				
7722-84-1	HYDROGEN PEROXIDE	1.00	1.40	OSHA				
7783-07-5	HYDROGEN SELENIDE	0.05	0.20	OSHA				
7783-06-4	HYDROGEN SULFIDE				10.00	15.00	10	NIOSH
123-31-9	HYDROQUINONE				0.44	2.00	15	NIOSH
999-61-1	HYDROXYPROPYLACRYLATE (SKIN)	0.50	3.00	ACGIH				
95-13-6	INDENE	10.00	45.00	ACGIH	15.00	70.00		ACGIH
7440-74-6	INDIUM & COMPOUNDS, AS In		0.10	ACGIH				
7553-56-2	IODINE	C 0.10	C 1.00	OSHA				
75-47-8	IODOFORM	0.60	10.00	ACGIH				
1309-37-1	IRON OXIDE FUME (Fe ₂ O ₃), AS Fe	B2	5.00	ACGIH				
13463-40-6	IRON PENTACARBONYL, AS Fe	0.10	0.80	ACGIH	0.20	1.60		ACGIH
NONE	IRON SALTS, SOLUBLE, AS Fe		1.00	ACGIH				
123-92-2	ISOAMYL ACETATE	100.00	525.00	OSHA	125.00	655.00		ACGIH
123-51-3	ISOAMYL ALCOHOL	100.00	360.00	OSHA	125.00	450.00		ACGIH
110-19-0	ISOBUTYL ACETATE	150.00	700.00	OSHA	187.00	875.00		ACGIH
78-83-1	ISOBUTYL ALCOHOL	50.00	150.00	ACGIH	75.00	225.00		ACGIH
78-82-0	ISOBUTYRONITRILE	8.00	22.00	NIOSH				
26952-21-6	ISOOCTYL ALCOHOL	50.00	270.00	ACGIH				
78-59-1	ISOPHORONE	C 5.00	C 25.00	ACGIH				
4098-71-9	ISOPHORONE DIISOCYANATE (SKIN)	0.005	0.045	NIOSH	0.02	0.18	10	NIOSH
98-83-9	ISOPROPENYL BENZENE (METHYL STYRENE)	50.00	240.00	ACGIH	100.00	485.00		ACGIH
109-59-1	ISOPROPOXYETHANOL	25.00	105.00	ACGIH	75.00	320.00		ACGIH
108-21-4	ISOPROPYL ACETATE	250.00	950.00	OSHA	310.00	1185.00		ACGIH
67-63-0	ISOPROPYL ALCOHOL	400.00	980.00	OSHA	500.00	1225.00		ACGIH
75-31-0	ISOPROPYLAMINE	5.00	12.00	OSHA	10.00	24.00		ACGIH
643-28-7	ISOPROPYLANILINE (SKIN)	2.00	10.00	ACGIH				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
108-20-3	ISOPROPYLETHER	250.00	1050.00	ACGIH	310.00	1320.00		ACGIH
4016-14-2	ISOPROPYL GLYCIDYL ETHER				50.00	240.00	15	NIOSH
NONE	KAOLIN		D 10.00	ACGIH				
143-50-0	KEPONE					0.001	15	NIOSH
8008-20-6	KEROSENE		100.00	NIOSH				
463-51-4	KETENE	0.50	0.90	OSHA	1.50	3.00		ACGIH
7439-92-1	LEAD	R	0.05	OSHA				
10102-48-4	LEAD ARSENATE, AS Pb ₃ (AsO ₄) ₂	R		OSHA				
7758-97-6	LEAD CHROMATE, AS Cr	R		OSHA				
			A2 0.05	ACGIH				
1317-65-3	LIMESTONE		D 10.00	ACGIH				
58-89-9	LINDANE (SKIN)		0.50	OSHA				
68476-85-7	LIQUIFIED PETROLEUM GAS	1000.00	1800.00	OSHA	1250.00	2250.00		ACGIH
7580-67-8	LITHIUM HYDRIDE		0.025	OSHA				
546-93-0	MAGNESITE		D 10.00	ACGIH				
1309-48-4	MAGNESIUM OXIDE (FUME)		10.00	ACGIH				
121-75-5	MALATHION (SKIN)		10.00	ACGIH				
108-31-6	MALEIC ANHYDRIDE	0.25	1.00	OSHA				
109-77-3	MALONONITRILE	3.00	8.00	NIOSH				
7439-96-5	MANGANESE, AS Mn (FUME) DUST & COMPOUNDS		1.00	ACGIH		3.00		ACGIH
			C 5.00	ACGIH				
12079-65-1	MANGANESE CYCLOPENTADIENYL CARBONYL (SKIN)		0.10	ACGIH				
NONE	MANGANESE TETROXIDE		1.00	ACGIH				
1317-65-3	MARBLE (CALCIUM CARBONATE)		D 10.00	ACGIH				
7439-97-6	MERCURY, AS Hg (SKIN) ALKYL COMPOUNDS ALL EXCEPT ALKYL VAPOR		0.01	ACGIH		0.03		ACGIH
			0.05	ACGIH				
			0.05	NIOSH				
141-79-7	MESITYL OXIDE	10.00	40.00	NIOSH	25.00	100.00		ACGIH
79-41-4	METHACRYLIC ACID	20.00	70.00	ACGIH				
74-82-8	METHANE	E		ACGIH				
16752-77-5	METHOMYL (SKIN)		2.50	ACGIH				
72-43-5	METHOXYCHLOR		10.00	ACGIH				
109-86-4	2-METHOXYETHANOL (SKIN)	5.00	16.00	ACGIH				
110-49-6	2-METHOXYETHYL ACETATE (SKIN)	5.00	24.00	ACGIH				
150-76-5	4-METHOXYPHENOL		5.00	ACGIH				
79-20-9	METHYL ACETATE	200.00	610.00	OSHA	250.00	760.00		ACGIH
74-99-7	METHYL ACETYLENE	1000.00	1650.00	OSHA	1250.00	2040.00		ACGIH
NONE	METHYL ACETYLENE PROPADIENE MIXTURE	1000.00	1800.00	OSHA	1250.00	2250.00		ACGIH
96-33-3	METHYL ACRYLATE (SKIN)	10.00	35.00	OSHA				
126-98-7	METHYLACRYLONITRILE (SKIN)	1.00	3.00	ACGIH				
109-87-5	METHYLAL	1000.00	3100.00	OSHA	1250.00	3875.00		ACGIH
67-56-1	METHYL ALCOHOL (SKIN)	200.00	260.00	OSHA	250.00	310.00		ACGIH
74-89-5	METHYLAMINE	10.00	12.00	OSHA				
108-11-2	METHYL AMYL ALCOHOL (SKIN)	25.00	100.00	OSHA	40.00	165.00		ACGIH
110-43-0	METHYL (N-AMYL) KETONE	50.00	235.00	ACGIH	100.00	465.00		ACGIH
100-61-8	METHYLANILINE (SKIN)	0.50	2.00	ACGIH				
74-83-9	METHYL BROMIDE (SKIN)	5.00	20.00	ACGIH				
591-78-6	METHYL N-BUTYL KETONE	1.00	4.00	NIOSH				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
74-87-3	METHYL CHLORIDE	50.00	105.00	ACGIH	100.00	205.00		ACGIH
71-55-6	METHYL CHLOROFORM	350.00	1900.00	OSHA	450.00	2450.00		ACGIH
137-05-3	METHYL 2-CYANOACRYLATE	2.00	8.00	ACGIH	4.00	16.00		ACGIH
108-87-2	METHYLCYCLOHEXANE	400.00	1600.00	ACGIH	500.00	2000.00		ACGIH
25639-42-3	METHYL CYCLOHEXANOL	50.00	235.00	ACGIH	75.00	350.00		ACGIH
583-60-8	O-METHYLCYCLOHEXANONE (SKIN)	50.00	230.00	ACGIH	75.00	345.00		ACGIH
12108-13-3	METHYLCYCLOPENTADIENYL MANGANESE TRICARBONYL, AS Mn (SKIN)		0.20	ACGIH				
8022-00-2	METHYL DEMETON (SKIN)		0.50	ACGIH				
101-68-8	METHYLENE BISPHENYL ISOCYANATE (MDI)	C 0.02 0.005	C 0.20 0.05	OSHA NIOSH				
75-09-2	METHYLENE CHLORIDE	W 75.00	W 261.00	NIOSH	W 500.00	W 1740.00	15	NIOSH
101-14-4	4,4'-METHYLENE BIS(2-CHLOROANILINE) (SKIN)	A2	A2 F 0.003	ACGIH NIOSH				
5124-30-1	METHYLENE BIS(4-CYCLOHEXYLISOCYANATE)	C 0.01	C 0.11	ACGIH				
101-77-9	4,4'-METHYLENE DIANILINE (SKIN)	A2 0.10	A2 0.80	ACGIH				
78-93-3	METHYL ETHYL KETONE (2-BUTANONE)	200.00	590.00	OSHA	300.00	885.00		ACGIH
1338-23-4	METHYL ETHYL KETONE PEROXIDE	C 0.20	C 1.50	ACGIH				
107-31-3	METHYL FORMATE	100.00	250.00	OSHA	150.00	375.00		ACGIH
541-85-5	5-METHYL-3-HEPTANONE	25.00	130.00	OSHA				
60-34-4	METHYL HYDRAZINE (SKIN)				0.04	0.08	120	NIOSH
74-88-4	METHYL IODIDE (SKIN)	A2 2.00	A2 10.00	ACGIH				
110-12-3	METHYL ISOAMYL KETONE	50.00	230.00	NIOSH				
108-10-1	METHYL ISOBUTYL KETONE	50.00	205.00	ACGIH	75.00	300.00		ACGIH
624-83-9	METHYL ISOCYANATE (SKIN)	0.02	0.05	OSHA				
563-80-4	METHYL ISOPROPYL KETONE	200.00	700.00	OSHA				
74-93-1	METHYL MERCAPTAN				0.50	1.00	15	NIOSH
80-62-6	METHYL METHACRYLATE	100.00	410.00	OSHA	125.00	510.00		ACGIH
681-84-5	METHYL ORTHOSILICATE	1.00	6.00	ACGIH				
298-00-0	METHYL PARATHION (SKIN)		0.20	ACGIH				
107-87-9	METHYL PROPYL KETONE	150.00	530.00	NIOSH	250.00	875.00		ACGIH
21087-64-9	METRIBUZIN		5.00	ACGIH				
NONE	MINERAL WOOL FIBER		D 10.00	ACGIH				
7439-98-7	MOLYBDENUM, AS Mo, SOLUBLE INSOLUBLE COMPOUNDS		5.00 10.00	OSHA ACGIH				
6923-22-4	MONOCROTOPHOS		0.25	ACGIH				
110-91-8	MORPHOLINE (SKIN)	20.00	70.00	OSHA	30.00	105.00		ACGIH
91-20-3	NAPHTHALENE	10.00	50.00	OSHA	15.00	75.00		ACGIH
3173-72-6	NAPHTHALENE DIISOCYANATE	0.005	0.04	NIOSH	0.02	0.17	10	NIOSH
134-32-7	1-NAPHTHYLAMINE	R		OSHA				
91-59-8	2-NAPHTHYLAMINE	R		OSHA				
7440-01-9	NEON	E		ACGIH				
7440-02-0	NICKEL & COMPOUNDS, AS Ni		0.015	NIOSH				
13463-39-3	NICKEL CARBONYL	F 0.001	F 0.007	NIOSH				
54-11-5	NICOTINE (SKIN)		0.50	OSHA				
1929-82-4	NITRAPYRIN		10.00	ACGIH		20.00		ACGIH
7697-37-2	NITRIC ACID	2.00	5.00	OSHA	4.00	10.00		ACGIH

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
10102-43-9	NITRIC OXIDE	25.00	30.00	OSHA				
100-01-6	P-NITROANILINE (SKIN)		3.00	ACGIH				
98-95-3	NITROBENZENE (SKIN)	1.00	5.00	OSHA				
100-00-5	P-NITROCHLOROBENZENE (SKIN)		1.00	OSHA				
92-93-3	4-NITRODIPHENYL	R		OSHA				
79-24-3	NITROETHANE	100.00	310.00	OSHA				
10102-44-0	NITROGEN DIOXIDE				1.00	1.80	15	NIOSH
7783-54-2	NITROGEN TRIFLUORIDE	10.00	29.00	OSHA				
55-63-0	NITROGLYCERIN (SKIN)					0.10	20	NIOSH
75-52-5	NITROMETHANE	100.00	250.00	OSHA				
108-03-2	1-NITROPROPANE	25.00	90.00	OSHA				
79-46-9	2-NITROPROPANE	A2 10.00	A2 35.00	ACGIH	A2 20.00	A2 70.00		ACGIH
62-75-9	N-NITROSODI-METHYLAMINE (SKIN)	R		OSHA				
1321-12-6	NITROTOLUENE (SKIN)	2.00	11.00	ACGIH				
111-84-2	NONANE	200.00	1050.00	ACGIH	250.00	1300.00		ACGIH
1455-21-6	1-NONANETHIOL				0.50	3.30	15	NIOSH
2234-13-1	OCTACHLORO-NAPHTHALENE (SKIN)		0.10	OSHA		0.30		ACGIH
2885-00-9	1-OCTADECANETHIOL				0.50	5.90	15	NIOSH
111-65-9	OCTANE	300.00	1450.00	ACGIH	375.00	1800.00		ACGIH
111-88-6	1-OCTANETHIOL				0.50	3.00	15	NIOSH
8012-95-1	OIL MIST, MINERAL		VV 5.00	ACGIH		10.00		ACGIH
20816-12-0	OSMIUM TETROXIDE, AS Os	0.0002	0.002	OSHA	0.0006	0.006		ACGIH
144-62-7	OXALIC ACID		1.00	OSHA		2.00		ACGIH
1120-71-4	1,2-OXATHIOLANE 2,2-DIOXIDE (PROPANE SULTONE)	A2	A2	ACGIH				
7783-41-7	OXYGEN DIFLUORIDE	0.05 C	0.10 C	OSHA ACGIH				
10028-15-6	OZONE	0.10	0.20	OSHA	0.30	0.60		ACGIH
8002-74-2	PARAFIN WAX (FUME)		2.00	ACGIH		6.00		ACGIH
1910-42-5	PARAQUAT (SKIN) (RESPIRABLE SIZE)		0.10	ACGIH				
56-38-2	PARATHION (SKIN)		0.05	NIOSH				
53469-21-9	PCB-1242 (CHLORODIPHENYL (42% Cl)) (SKIN)		0.001	NIOSH				
11097-69-1	PCB 1254 (CHLORODIPHENYL (54% Cl)) (SKIN)		0.001	NIOSH				
19624-22-7	PENTABORANE	0.005	0.01	OSHA	0.015	0.03		ACGIH
1321-64-8	PENTACHLORO-NAPHTHALENE (SKIN)		0.50	OSHA				
87-86-5	PENTACHLOROPHENOL (SKIN)		0.50	OSHA				
115-77-5	PENTAERYTHRITOL		D 10.00	ACGIH				
109-66-0	PENTANE	600.00	1800.00	ACGIH	750.00	2250.00		ACGIH
110-66-7	PENTANETHIOL				0.50	2.10	15	NIOSH
594-42-3	PERCHLOROMETHYL MERCAPTAN	0.10	0.80	OSHA				
7616-94-6	PERCHLORYL FLUORIDE	3.00	14.00	OSHA	6.00	28.00		ACGIH
NONE	PERLITE	DD	N 10.00	ACGIH				
108-95-2	PHENOL (SKIN)	5.00	19.00	OSHA	10.00	38.00		ACGIH
92-84-2	PHENOTHIAZINE (SKIN)		5.00	ACGIH				
106-50-3	P-PHENYLENE DIAMINE (SKIN)		0.10	OSHA				
101-84-8	PHENYL ETHER	1.00	7.00	OSHA	2.00	14.00		ACGIH
122-60-1	PHENYL GLYCIDYL ETHER	1.00	6.00	ACGIH	1.00	5.00	15	NIOSH

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
100-63-0	PHENYLHYDRAZINE (SKIN)	A2	A2	ACGIH	0.14	0.60	120	NIOSH
638-21-1	PHENYLPHOSPHINE	C 0.05	C 0.25	ACGIH				
298-02-2	PHORATE (SKIN)		0.05	ACGIH		0.20		ACGIH
7786-34-7	PHOSDRIN (SKIN)	0.01	0.10	OSHA	0.03	0.30		ACGIH
75-44-5	PHOSGENE	0.10	0.40	OSHA	0.20	0.80	15	NIOSH
7803-51-2	PHOSPHINE	0.30	0.40	OSHA	1.00	1.00		ACGIH
7664-38-2	PHOSPHORIC ACID		1.00	OSHA		3.00		ACGIH
10025-87-3	PHOSPHOROUS OXYCHLORIDE	0.10	0.60	ACGIH	0.50	3.00		ACGIH
10026-13-8	PHOSPHORUS PENTACHLORIDE	0.10	1.00	OSHA				
1314-80-3	PHOSPHORUS PENTASULFIDE		1.00	OSHA		3.00		ACGIH
7719-12-2	PHOSPHORUS TRICHLORIDE	0.20	1.50	ACGIH	0.50	3.00		ACGIH
7723-14-0	PHOSPHORUS (YELLOW)		0.10	OSHA				
85-44-9	PTHALIC ANHYDRIDE	1.00	6.00	ACGIH	4.00	24.00		ACGIH
626-17-5	M-PHTHALODINITRILE		5.00	ACGIH				
1918-02-1	PICLORAM		10.00	ACGIH			20.00	ACGIH
142-64-3	PIPERAZINE DIHYDROCHLORIDE		5.00	ACGIH				
83-26-1	PIVAL		0.10	OSHA		0.30		ACGIH
NONE	PLASTER OF PARIS		D 10.00	ACGIH				
7440-06-4	PLATINUM METAL SOLUBLE SALTS, AS Pt		1.00 0.002	ACGIH OSHA				
NONE	POLYTETRAFLUORO- ETHYLENE DECOMPOSITION PRODUCTS		B1	ACGIH				
1310-58-3	POTASSIUM HYDROXIDE		C 2.00	ACGIH				
74-98-6	PROPANE	1000.00	1800.00	OSHA				
107-03-9	PROPANETHIOL				0.50	1.60	15	NIOSH
107-19-7	PROPARGYL ALCOHOL (SKIN)	1.00	2.00	ACGIH	3.00	6.00		ACGIH
57-57-8	beta-PROPIOLACTONE	R 0.50	1.50	OSHA ACGIH	1.00	3.00		ACGIH
79-09-4	PROPIONIC ACID	10.00	30.00	ACGIH	15.00	45.00		ACGIH
107-12-0	PROPIONITRILE	6.00	14.00	NIOSH				
114-26-1	PROPOXUR (DDVP) (SKIN)		0.50	ACGIH		2.00		ACGIH
109-60-4	N-PROPYL ACETATE	200.00	840.00	OSHA	250.00	1050.00		ACGIH
71-23-8	PROPYL ALCOHOL (SKIN)	200.00	500.00	OSHA	250.00	625.00		ACGIH
115-07-1	PROPYLENE	E		ACGIH				
6423-43-4	PROPYLENE GLYCOL DINITRATE (SKIN)	0.05	0.30	ACGIH				
107-98-2	PROPYLENE GLYCOL MONOMETHYL ETHER	100.00	360.00	ACGIH	150.00	540.00		ACGIH
75-55-8	PROPYLENE IMINE (SKIN)	2.00 A2	5.00 A2	OSHA ACGIH				
75-56-9	PROPYLENE OXIDE	20.00	50.00	ACGIH				
627-13-4	N-PROPYL NITRATE	25.00	110.00	OSHA	40.00	170.00		ACGIH
8003-34-7	PYRETHRUM		5.00	OSHA		10.00		ACGIH
110-86-1	PYRIDINE	5.00	15.00	OSHA	10.00	30.00		ACGIH
NONE	REFINED PETROLEUM DISTILLATES (EXCEPT KEROSENE)		350.00	NIOSH		1800.00	15	NIOSH
108-46-3	RESORCINOL	10.00	45.00	ACGIH	20.00	90.00		ACGIH
7440-16-6	RHODIUM, METAL FUME AND DUSTS		0.10	OSHA				
	SOLUBLE COMPOUNDS		0.001	OSHA				
299-84-3	RONNEL		10.00	ACGIH				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
NONE	ROSIN CORE SOLDER PYROLYSIS PRODUCTS AS FORMALDEHYDE		0.10	ACGIH		0.30		ACGIH
83-79-4	ROTENONE (COMMERCIAL)		5.00	OSHA		10.00		ACGIH
NONE	ROUGE		D 10.00	ACGIH				
NONE	RUBBER SOLVENT (NAPHTHA)		350.00	NIOSH		1800.00	15	NIOSH
7782-49-2	SELENIUM COMPOUNDS, AS Se		0.20	OSHA				
7783-79-1	SELENIUM HEXAFLUORIDE, AS Se	0.05	0.20	ACGIH				
136-78-7	SESONE		10.00	ACGIH				
7631-86-9	SILICA, AMORPHOUS DIATOMACEOUS EARTH PRECIPITATED SILICA & SILICA GEL	DD	N 10.00	ACGIH				
		DD	N 10.00 M 5.00	ACGIH ACGIH				
60676-86-0	SILICA, FUSED	USE	QUARTZ VALUE	ACGIH				
14464-46-1	SILICA, CRISTOBALITE		M 0.05	ACGIH				
7782-42-5	SILICA, GRAPHITE SYNTHETIC NATURAL	DD	N 10.00	ACGIH				
		DD	M 2.50	ACGIH				
			N 5.00	ACGIH				
12001-26-2	SILICA, MICA	DD	M 3.00	ACGIH				
14808-60-7	SILICA, QUARTZ		M 0.05	NIOSH				
65997-15-1	SILICATE, PORTLAND CEMENT		D 10.00	ACGIH				
NONE	SILICATE, SOAPSTONE	DD	N 6.00	ACGIH				
		DD	M 3.00	ACGIH				
15468-32-3	SILICA, TRIDYMITE		M 0.05	ACGIH				
1317-95-9	SILICA, TRIPOLI		M 0.05	NIOSH				
7440-21-3	SILICON		D 10.00	ACGIH				
409-21-2	SILICON CARBIDE		D 10.00	ACGIH				
7803-62-5	SILICON TETRAHYDRIDE	5.00	7.00	ACGIH				
7440-22-4	SILVER, AS Ag, METAL & SOLUBLE COMPOUNDS		0.01	OSHA				
26628-22-8	SODIUM AZIDE	C 0.10	C 0.30	ACGIH				
7631-90-5	SODIUM BISULFITE		5.00	ACGIH				
62-74-8	SODIUM FLUOROACETATE (SKIN)		0.05	OSHA		0.15		ACGIH
1310-73-2	SODIUM HYDROXIDE		C 2.00	ACGIH				
7681-57-4	SODIUM METABISULFITE		5.00	ACGIH				
9005-25-8	STARCH		D 10.00	ACGIH				
7803-52-3	STIBINE	0.10	0.50	OSHA				
8052-41-3	STODDARD SOLVENT		350.00	NIOSH		1800.00	15	NIOSH
57-24-9	STRYCHNINE		0.15	OSHA				
100-42-5	STYRENE MONOMER	50.00	215.00	ACGIH	100.00	425.00		ACGIH
9014-01-1	SUBTILISINS (PROTEOLYTIC ENZ AS 100% PURE CRYST ENZ)		FF C .00006	ACGIH ACGIH				
57-50-1	SUCROSE		D 10.00	ACGIH		20.00		ACGIH
110-61-2	SUCCINONITRILE	6.00	20.00	NIOSH				
3689-24-5	SULFOTEP (SKIN) (TEDP)		0.20	OSHA				
7446-09-5	SULFUR DIOXIDE	0.50	1.30	NIOSH				
2551-62-4	SULFUR HEXAFLUORIDE	1000.00	6000.00	OSHA				
7664-93-9	SULFURIC ACID		1.00	OSHA				
10025-67-9	SULFUR MONOCHLORIDE	C 1.00	C 6.00	ACGIH				
5714-22-7	SULFUR PENTAFLUORIDE	C 0.01	C 0.10	ACGIH				
7783-60-0	SULFUR TETRAFLUORIDE	C 0.10	C 0.40	ACGIH				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
2699-79-8	SULFURYL FLUORIDE	5.00	20.00	OSHA	10.00	40.00		ACGIH
35400-43-2	SULPROFOS		1.00	ACGIH				
14807-96-6	TALC, FIBROUS	See N.J.A.C. 12:100-12						
		DD	M 2.00	ACGIH				
7440-25-7	TANTALUM		5.00	OSHA				
13494-80-9	TELLURIUM & COMPOUNDS, AS Te		0.10	OSHA				
7783-80-4	TELLURIUM HEXAFLUORIDE	0.02	0.20	OSHA				
3383-96-8	TEMEPHOS		10.00	ACGIH				
107-49-3	TEPP (SKIN)	0.004	0.05	OSHA				
92-94-4	TERPHENYLS	C 0.50	C 5.00	ACGIH				
76-11-9	1,1,1,2-TETRACHLORO-2,2- DIFLUOROETHANE	500.00	4170.00	OSHA				
76-12-0	1,1,2,2-TETRACHLORO-1,2- DIFLUOROETHANE	500.00	4170.00	OSHA				
79-34-5	1,1,2,2-TETRACHLORO- ETHANE (SKIN)	1.00	7.00	ACGIH				
127-18-4	TETRACHLOROETHYLENE	50.00	335.00	ACGIH	100.00	678.00	P 15	NIOSH
1335-88-2	TETRACHLORO- NAPHTHALENE (SKIN)		2.00	OSHA				
78-00-2	TETRAETHYL LEAD, AS Pb (SKIN)		0.075 BB	OSHA OSHA				
109-99-9	TETRAHYDROFURAN	200.00	590.00	OSHA	250.00	735.00		ACGIH
75-74-1	TETRAMETHYL LEAD, AS Pb (SKIN)		0.075 BB	OSHA OSHA				
3333-52-6	TETRAMETHYL SUCCINONITRILE (SKIN)	0.50	3.00	OSHA	1.00	6.00	15	NIOSH
509-14-8	TETRANITROMETHANE	1.00	8.00	OSHA				
7722-88-5	TETRASODIUM PYROPHOSPHATE		5.00	ACGIH				
479-45-8	TETRYL (SKIN)		1.50	OSHA				
7440-28-0	THALLIUM (SKIN) SOLUBLE COMPOUNDS, AS TI		0.10	OSHA				
96-69-5	4, 4'-THIOBIS (6-tert-BUTYL-m- CRESOL)		10.00	ACGIH				
68-11-1	THIOGLYCOLIC ACID	1.00	5.00	ACGIH				
7719-09-7	THIONYL CHLORIDE	C 1.00	C 5.00	ACGIH				
137-26-8	THIRAM		5.00	OSHA				
7440-31-5	TIN, AS Sn METAL ORGANIC COMPOUNDS (SKIN) INORGANIC COMPOUNDS (EXCEPT SnH4)		2.00 0.10 2.00	ACGIH ACGIH ACGIH				
13463-67-7	TITANIUM DIOXIDE		D 10.00	ACGIH				
119-93-7	O-TOLIDINE (SKIN)	A2	A2	ACGIH		0.02	60	NIOSH
108-88-3	TOLUENE	100.00	375.00	ACGIH	150.00	560.00		ACGIH
584-84-9	TOLUENE-2,4- DIISOCYANATE	C 0.02 0.005	C 0.14 0.04	OSHA NIOSH				
108-44-1	M-TOLUIDINE (SKIN)	2.00	9.00	ACGIH				
95-53-4	O-TOLUIDINE (SKIN)	A2 2.00	A2 9.00	ACGIH				
108-49-0	P-TOLUIDINE (SKIN)	A2 2.00	A2 9.00	ACGIH				
8001-35-2	TOXAPHENE (SKIN)		0.50	OSHA		1.00		ACGIH
126-73-8	TRIBUTYL PHOSPHATE	0.20	2.50	ACGIH				
76-03-9	TRICHLOROACETIC ACID	1.00	5.00	ACGIH				
120-82-1	1,2,4-TRICHLOROBENZENE	C 5.00	C 40.00	ACGIH				
79-00-5	1,1,2-TRICHLOROETHANE (SKIN)	10.00	45.00	OSHA				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
79-01-6	TRICHLOROETHYLENE	50.00	270.00	ACGIH	150.00		10	NIOSH
75-69-4	TRICHLOROFLUORO-METHANE	C 1000.00	C 5600.00	ACGIH				
1321-65-9	TRICHLORONAPHTHALENE (SKIN)		5.00	OSHA				
93-76-5	(2,4,5-TRICHLOROPHENOXY) ACETIC ACID		10.00	OSHA				
96-18-4	1,2,3-TRICHLOROPROPANE	50.00	300.00	OSHA	75.00	450.00		ACGIH
76-13-1	1,1,2-TRICHLORO 1,2,2-TRIFLUOROETHANE	1000.00	7600.00	OSHA	1250.00	9500.00		ACGIH
121-44-8	TRIETHYLAMINE	10.00	40.00	ACGIH	15.00	60.00		ACGIH
75-63-8	TRIFLUOROBROMO-METHANE	1000.00	6100.00	OSHA				
552-30-7	TRIMELLITIC ANHYDRIDE	0.005	0.04	ACGIH				
75-50-3	TRIMETHYLAMINE	10.00	24.00	ACGIH	15.00	36.00		ACGIH
25551-13-7	TRIMETHYL BENZENE	25.00	125.00	ACGIH	35.00	170.00		ACGIH
121-45-9	TRIMETHYL PHOSPHITE	2.00	10.00	ACGIH				
88-89-1	2,4,6-TRINITROPHENOL (SKIN)		0.10	OSHA		0.30		ACGIH
118-96-7	2,4,6-TRINITROTOLUENE (SKIN)		0.50	ACGIH				
78-30-8	TRIOORTHOCRESYL PHOSPHATE		0.10	OSHA				
603-34-9	TRIPHENYL AMINE		5.00	ACGIH				
115-86-6	TRIPHENYL PHOSPHATE (SKIN)		3.00	OSHA				
7440-33-7	TUNGSTEN, AS W							
	INSOLUBLE COMPOUNDS		5.00	ACGIH		10.00		ACGIH
	SOLUBLE COMPOUNDS (X)		1.00	ACGIH		3.00		ACGIH
	(Y)		0.10	NIOSH				
			0.015	NIOSH				
8006-64-2	TURPENTINE	100.00	560.00	OSHA	150.00	840.00		ACGIH
5332-52-5	1-UNDECANETHIOL				0.50	3.90	15	NIOSH
7440-61-1	URANIUM, AS U							
	INSOLUBLE COMPOUNDS		0.20	ACGIH		0.60		ACGIH
	SOLUBLE COMPOUNDS		0.05	OSHA				
110-62-3	VALERALDEHYDE	50.00	175.00	ACGIH				
7440-62-2	VANADIUM, AS V							
	COMPOUNDS					0.05	15	NIOSH
	METAL		1.00	NIOSH				
11130-21-5	VANADIUM CARBIDE		1.00	NIOSH				
NONE	VEGETABLE OIL MISTS (EXCEPT CASTOR, CASHEW NUT OR SIMILAR IRRITANT OILS)		D 10.00	ACGIH				
108-05-4	VINYL ACETATE				4.00	15.00	15	NIOSH
593-60-2	VINYL BROMIDE	Q		NIOSH				
75-01-4	VINYL CHLORIDE	R		OSHA				
106-87-6	VINYL CYCLOHEXENE DIOXIDE	A2 10.00	A2 60.00	ACGIH				
75-02-5	VINYL FLUORIDE	Q		NIOSH				
75-35-4	VINYLDENE CHLORIDE	Q		NIOSH				
75-38-7	VINYLDENE FLUORIDE	Q		NIOSH				
25013-15-4	VINYL TOLUENE	50.00	240.00	ACGIH	100.00	485.00		ACGIH
8030-30-6	VM&P NAPHTHA		350.00	NIOSH		1800.00	15	NIOSH
81-81-2	WARFARIN		0.10	OSHA		0.30		ACGIH
NONE	WELDING FUMES (NOC)		B2 5.00	ACGIH				
NONE	WOOD DUST							
	SOFT WOOD		5.00	ACGIH		10.00		ACGIH
	CERTAIN HARDWOODS SUCH AS BEECH & OAK		1.00	ACGIH				

TABLE 7.3
PERMISSIBLE EXPOSURE LIMITS FOR TOXIC AND HAZARDOUS SUBSTANCES

CAS #	SUBSTANCE	TWA			ACGIH-STEL OR NIOSH-CEILING			
		PPM	MG/M ³	SOURCE	PPM	MG/M ³	TIME (MIN)	SOURCE
1330-20-7	XYLENES	100.00	435.00	OSHA	150.00	655.00		ACGIH
1477-55-0	M-XYLENE alpha, alpha'-DIAMINE (SKIN)		C 0.10	ACGIH				
1300-73-8	XYLIDINE (SKIN)	2.00	10.00	ACGIH				
7440-65-5	YTTRIUM		1.00	OSHA		3.00		ACGIH
7646-85-7	ZINC CHLORIDE (FUME)		1.00	OSHA		2.00		ACGIH
13530-65-9	ZINC CHROMATE, AS Cr		A2 0.05	ACGIH				
1314-13-2	ZINC OXIDE DUST		5.00	NIOSH		15.00	15	NIOSH
	FUME		5.00	OSHA		10.00		ACGIH
557-05-1	ZINC STEARATE		D 10.00	ACGIH				
7440-67-7	ZIRCONIUM COMPOUNDS, AS Zr		5.00	OSHA		10.00		ACGIH

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Amusement Games Control Bureau Disciplinary Proceedings; Appeals

Proposed New Rules: N.J.A.C. 13:3-5 and 6

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control and Amusement Games Control Commissioner.

Authority: N.J.S.A. 5:8-7.9, 5:8-79.1, 5:8-85 and 5:8-107.

Proposal Number: PRN 1988-417.

Submit comments by September 14, 1988 to:

John F. Vassallo, Jr.
Amusement Games Control Commissioner
Division of Alcoholic Beverage Control
CN-087
Trenton, NJ 08625-0087

The agency proposal follows:

Summary

The Bureau of Amusement Games Control is responsible for the licensing and regulating of the amusement games, located at New Jersey's seashore resorts, amusement parks, and agricultural fairs.

N.J.A.C. 13:3-5 and 6 were originally adopted in 1966 and expired on August 1, 1988. The Bureau of Amusement Games Control is proposing the re-adoption of those subchapters as new rules with amendments to and the deletion of some sections presently in the New Jersey Administrative Code, and thereby seeks to establish a new five-year expiration date.

N.J.A.C. 13:3-5.1 through 5.9 deal with the disciplinary proceedings that may be brought against a licensee.

N.J.A.C. 13:3-6.1 through 6.6 deal with the licensee's right of appeal.

Social Impact

In the proposed re-adoption as new rules, changes to the expired rules' text reflect the current legal requirements imposed by the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Since the enactment of this statute and the adoption of these rules, all hearings and appeals have been held under their guidelines; thus, the effect of these changes is minimal.

Economic Impact

The proposed re-adoption as new rules will not have any economic impact on the State, industry or public.

Regulatory Flexibility Statement

When each license is looked at individually, all of the more than 1,200 licenses come within the Regulatory Flexibility Act's definition of small

business, as defined in N.J.S.A. 52:14B-17. However, the proposed re-adoption as new rules will not require any reporting or recordkeeping and, subsequently, no capital or annual costs are involved. Uniform compliance is necessitated by the proper administration of the disciplinary and appeals process.

Full text of the expired rules may be found in the New Jersey Administrative Code at N.J.A.C. 13:3-5 and 6.

Full text of the proposed new rules follows.

SUBCHAPTER 5. DISCIPLINARY PROCEEDINGS

13:3-5.1 Five-day notice prior to hearing: charges specified

(a) No license shall be suspended or revoked until a five-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by certified mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him.

(b) If brought by the State Commissioner of Amusement Games Control, such charges shall be signed in the name of the Commissioner or, if brought by a municipal governing body, such charges shall be signed in the name of such governing body and shall specify the section of the law or the rule and regulation alleged to have been violated and the time and place fixed for the hearing.

13:3-5.2 Uncontested disciplinary proceedings

(a) At any time prior to two days before the date fixed for hearing, the licensee may enter a written plea of guilty or non vult to said charges and, thereafter, no hearing shall be held therein.

(b) Where a written plea of guilty or non vult is received, written argument as to penalty may be submitted to the Commissioner or to the municipal governing body, as the case may be, five days after entry of the plea.

13:3-5.3 Conduct of hearing

Hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:3-5.4 Commissioner's decision changing penalty

The Commissioner may adopt, modify or reject the initial decision; provided however, that the Commissioner shall not increase any recommended penalty or change a recommended finding of not guilty without first affording the licensee an opportunity to present oral argument before the Commissioner.

13:3-5.5 Transmittal of charges and result to Commissioner

When charges have been preferred against a licensee by the governing body of any municipality, such governing body shall transmit to the Commissioner forthwith a copy of such charges and, when the charges have been finally adjudicated, a copy of the Resolution and Order shall be promptly transmitted to the Commissioner.

13:3-5.6 Proceeding not barred by license expiration
Disciplinary proceedings shall not be barred or abated by the expiration or extension of the license.

13:3-5.7 Results of proceeding affects subsequent license
Any license may be suspended or revoked for proper cause, notwithstanding that such cause arose prior to the extension of the license or during the term of a prior license held by the licensee.

13:3-5.8 Conditions for penalty carryover
(a) Where disciplinary proceedings are instituted and the license is extended or expires during the pendency thereof, such proceedings shall be carried through to completion and any order of suspension or revocation therein shall apply without further proceedings to the extended license or to any new license issued to:
1. The licensee; or
2. Any partnership of which he is a partner; or
3. Any corporation of which such individual licensee is an officer, director or stockholder; or
4. Any individual who was an officer, director or stockholder of a corporation against which such a proceeding is pending.

13:3-5.9 Hearings: Conclusions or Resolutions and Order
(a) After the hearing or upon receipt of a guilty or non vult plea upon charges by the governing body of the municipality, the governing body shall make a written determination of the licensee's guilt or innocence which shall be in the form of a Resolution and Order. The Resolution and Order shall set forth the final determination of guilt or innocence, designate the effective date of any suspension or revocation and, in the case of suspension, the term of the suspension and any conditions deemed appropriate. A copy of the Resolution and Order shall be served upon the licensee personally or by mailing by certified mail addressed to the licensee at the licensed premises.
(b) In contested cases, the Commissioner's decision shall be issued pursuant to the Administrative Procedure Act. A copy of the decision shall be served upon the licensee personally or by mailing by certified mail addressed to the licensee at the licensed premises.

SUBCHAPTER 6. APPEALS

13:3-6.1 Method of appeal to Commissioner
(a) All appeals to the State Commissioner of Amusement Games Control from any refusal to issue a license or any suspension or revocation of a license by a municipal governing body shall be taken by filing with said municipal governing body a written notice of appeal, accompanied by a petition of appeal, within 30 days after the determination or action appealed from.
(b) The notice of appeal and the petition of appeal shall be entitled in the name of the licensee as appellant and the name of the municipal governing body as respondent.
(c) The petition of appeal shall set forth the subject matter of the appeal, the action of the municipal governing body, the relief sought and the grounds therefor.
(d) The appellant shall file with the Commissioner forthwith a true copy of the notice of appeal and a true copy of the petition of appeal, together with an acknowledgment or affidavit of service of the originals thereof upon respondent.

13:3-6.2 Respondent's reply to appeal
(a) Within five days after service of the notice and petition of appeal, the respondent shall file an answer with the Commissioner and mail a copy of said answer to appellant or his attorney.
(b) The answer shall include a statement of the grounds for respondent's action.

13:3-6.3 Stay of penalty
An appeal from a suspension or revocation shall automatically act as a stay of said suspension or revocation pending final determination of the appeal, unless the Commissioner shall otherwise order in writing.

13:3-6.4 Appeals
(a) Hearings held on appeals shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) All appeals shall be heard de novo but the burden of establishing that the action of the respondent was erroneous and should be reversed shall rest with the appellant.

13:3-6.5 Commissioner's decision
(a) The decision of the Commissioner shall be issued pursuant to the Administrative Procedure Act.
(b) A copy of the opinion shall be mailed forthwith to the parties or their attorneys.

13:3-6.6 Stay or extension subject to outcome of appeal
When appeal is taken in any matter, any extension, pursuant to N.J.A.C. 13:3-1.17 (Devolution of license) of any license involved therein shall be subject to the ultimate outcome of such appeal, unless otherwise ordered by the Commissioner for proper cause.

(a)

**DIVISION OF MOTOR VEHICLES
Special Registration Plates for Non-Profit Organizations**

Proposed New Rules: N.J.A.C. 13:20-39

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.
Authority: P.L. 1987, c. 374, § 5 (N.J.S.A. 39:3-27.39).
Proposal Number: PRN 1988-422.

Submit comments by September 14, 1988 to:
Glenn R. Paulsen, Director
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The proposed new rules implement P.L. 1987, c.374 (N.J.S.A. 39:3-27.35 et seq.). The proposed new rules permit the Director of the Division of Motor Vehicles to issue special motor vehicle registration plates to members of non-profit community, alumni or service organizations in this State which have been approved by the Director.

The proposed new rules establish procedures to enable non-profit community, alumni and service organizations to seek approval from the Division to have special registration plates prepared for their members. The proposed new rules also establish procedures for approved non-profit organizations to order special plates, bearing the emblems and names of those organizations, on behalf of their members in good standing who apply for such plates. The proposed new rules also establish fees for such plates. The proposed new rules also set forth when the Division may refuse to issue such plates to an individual, as well as the circumstances under which the Division may suspend or revoke such special plates.

Social Impact

The proposed new rules are beneficial to the public in that they standardize the procedures which non-profit organizations must adhere to when seeking approval from the Division of Motor Vehicles to have special motor vehicle registration plates prepared on behalf of their members in good standing who wish to apply for same.

Economic Impact

The proposed new rules will have an economic impact on those individuals who wish to obtain special motor vehicle registration plates pursuant to P.L. 1987, c. 374, because they establish fees for such plates. The cost of such special plates is established by these rules as \$25.00 per each set of plates for members of an approved non-profit community organization; \$50.00 per each set of plates for members of an approved non-profit alumni organization; and \$15.00 per each set of plates for members of an approved non-profit service organization.

An individual applicant shall forward the applicable fee together with a completed special plate application to the organization liaison of an approved organization, who will certify organization membership and forward the applicable fee and application to the Division. The initial order for special motor vehicle registration plates by an approved organization on behalf of its members making application for same shall be for no less than 500 members of the organization in good standing

and shall be accompanied by the applicable fees established by these proposed rules for the total number of sets of plates being ordered (that is, \$25.00 per each set of plates for members of a community organization; \$50.00 per each set of plates for members of an alumni organization; and \$15.00 per each set of plates for members of a service organization).

The Division of Motor Vehicles will incur costs in connection with the production of the special motor vehicle registration plates and the administration of the program established by these proposed rules. However, it is anticipated that the special motor vehicle registration plate application fees which will be submitted pursuant to the proposed new rules will provide sufficient revenues for the Division to administer the program.

Regulatory Flexibility Statement

The proposed new rules have no effect, either positive or negative, on small businesses. The proposed new rules merely enable certain non-profit organizations to seek approval from the Division of Motor Vehicles to have special motor vehicle registration plates designed containing the organization's name and/or logo for its members who wish to apply for them, and establishes fees for such plates.

Full text of the proposed new rules follows.

SUBCHAPTER 39. SPECIAL REGISTRATION PLATES FOR NON-PROFIT ORGANIZATIONS

13:20-39.1 Purpose

(a) P.L. 1987, c.374 (N.J.S.A. 39:3-27.35 et seq.) provides for the issuance of special motor vehicle registration plates to members of non-profit community, alumni or service organizations in this State which have been approved by the Director. This subchapter establishes the following:

1. Standards and procedures by which an organization may request approval to have special motor vehicle registration plates prepared for its members who desire to apply for them;
2. Procedures regarding the certification of membership in good standing by an organization;
3. Standards and procedures by which an organization shall submit proof of its status as a non-profit organization to the Division;
4. Procedures by which an organization shall appoint an organization liaison who will act as a coordinator between the organization and the Division with regard to special motor vehicle registration plates;
5. Procedures by which an organization shall submit the organization's proposed special motor vehicle registration plate design to the Division for review and approval;
6. Standards and procedures which an approved organization must adhere to in order for its members in good standing to be able to apply for the organization's special motor vehicle registration plates;
7. Fees to be charged by the Division for special motor vehicle registration plates; and
8. Grounds upon which the Division may refuse to issue special motor vehicle registration plates to an individual, and the circumstances under which the Division may suspend or revoke such special plates.

13:20-39.2 Definitions

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

"Alumni organization" means a non-profit organization which requires its members to be either graduates, former students or benefactors of a specific post-secondary educational institution.

"Approved organization" means an organization in this State which has received a letter of approval from the Director indicating that its members are eligible to apply for special motor vehicle registration plates pursuant to this subchapter.

"Community organization" means a non-profit organization, other than an alumni or service organization as defined in this subchapter, which performs some type of philanthropic community service and which, in the Director's discretion, qualifies for the issuance of special motor vehicle registration plates to its members in good standing who apply for same pursuant to this subchapter.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Member" means any person who is a member in good standing of a non-profit community, alumni or service organization.

"Non-profit organization" means any community, alumni or service organization in this State that has been issued an approval letter by the United States Internal Revenue Service confirming its non-profit status.

"Organization" means any non-profit association, group or organization with a membership in good standing of at least 500 persons which qualifies as a non-profit organization.

"Organization liaison" means the representative appointed by an organization who will act as the organization's sole contact with the Division regarding special motor vehicle registration plates pursuant to this subchapter.

"Service organization" means a non-profit organization which the Director determines to have as its primary purpose the advancement of United States military veterans' causes and interests and/or the honoring of all or some veterans of any branch of the United States military service.

13:20-39.3 Qualifications for organization approval; final decision; right to suspend approval

(a) An organization seeking approval from the Division pursuant to this subchapter to have special motor vehicle registration plates prepared for its members in good standing who wish to apply for them shall:

1. Submit a written request to the Division seeking approval to have special plates prepared for its members who wish to apply for same;
2. Be composed of an active membership in good standing of at least 500 persons;
3. Be a non-profit organization; and
4. Receive written approval from the Director as qualifying for special motor vehicle registration plates for its members in good standing who apply for same.

(b) The Director shall render the final decision as to whether or not an organization is approved for the issuance of special motor vehicle registration plates for its members pursuant to this subchapter in accordance with N.J.S.A. 39:3-27.37.

(c) The Director, in his or her discretion, may suspend approval of any organization which had previously been granted permission to obtain special motor vehicle registration plates on behalf of its members pursuant to this subchapter in accordance with N.J.S.A. 39:3-27.38.

13:20-39.4 Appointment of organization liaison

(a) Each organization shall appoint an organization liaison to represent that organization in any and all communications with the Division regarding special motor vehicle registration plates.

(b) The position of organization liaison shall be established at the highest administrative level within the organization.

(c) The organization shall submit to the Director, at the time of requesting approval to have special motor vehicle registration plates prepared for its members who wish to apply for same, the name, title and address of the organization liaison.

13:20-39.5 Certification of membership

(a) Upon seeking approval to have special plates prepared for its members who wish to apply for same pursuant to this subchapter, an organization shall submit to the Division a list of the legal names, addresses and current New Jersey registration plate numbers of its 500 or more members in good standing, in alphabetical order by surname, who will be requesting the special motor vehicle registration plates if the Division approves the issuance of such plates.

(b) The certification of membership required pursuant to this section shall be provided at the organization's expense, shall be compiled and submitted on the organization's official letterhead, and shall be signed by the organization liaison.

(c) Certifications of membership submitted to the Division pursuant to this section are not public records and are not accessible

for public examination pursuant to the "Right to Know Law" (N.J.S.A. 47:1A-1 et seq.).

13:20-39.6 Non-profit status

(a) Upon seeking approval to have special plates prepared for its members who wish to apply for same pursuant to this subchapter, an organization shall submit to the Division proof that it is a non-profit organization and such other information as the Division may require.

(b) To prove its non-profit status, an organization shall submit to the Division a photocopy of the approval letter issued to the organization by the United States Internal Revenue Service which confirms the organization's status as non-profit, and shall certify by affidavit that the photocopy is of the authentic document issued by the United States Internal Revenue Service to that organization.

(c) An organization shall provide a copy of its charter to the Division upon seeking approval to have special plates prepared for its members who wish to apply for same. The charter shall indicate the organization's lawful purpose.

13:20-39.7 Notification of organization approval

The Director will notify each organization by letter as to whether or not it has been approved for the issuance of special motor vehicle registration plates to its members in good standing who wish to apply for same pursuant to this subchapter.

13:20-39.8 Plate design

(a) An organization, through its designated organization liaison, shall submit to the Division a special motor vehicle registration plate prototype design which indicates the name or initials that the organization wishes to appear at the bottom of the special motor vehicle registration plate and the logotype, if any, that the organization wishes to appear on the special motor vehicle registration plate.

(b) The Director shall make the final determination pursuant to this subchapter as to:

1. The use, arrangement and size of an approved organization's name on the special motor vehicle registration plates;
2. Any initials that are to appear at the bottom of the special motor vehicle registration plates; and
3. The use, arrangement and size of an approved organization's desired logotype on the special motor vehicle registration plates.

(c) An approved organization will be notified whether its plate design has been approved through a letter from the Director to the organization liaison.

13:20-39.9 Fees: plate ordering; authenticity of membership

(a) Fees for special motor vehicle registration plates pursuant to this subchapter shall be as follows:

1. For members of an approved non-profit community organization, \$25.00 per each set of plates;
2. For members of an approved non-profit alumni organization, \$50.00 per each set of plates; and
3. For members of an approved non-profit service organization, \$15.00 per each set of plates.

(b) The initial order for special motor vehicle registration plates submitted to the Division by an approved organization on behalf of its members applying for such plates pursuant to this subchapter shall be for no less than 500 members of the organization in good standing. The initial order shall be accompanied by a non-refundable fee representing the total cost of the initial order, which shall be determined by multiplying the number of sets of plates being ordered by the applicable fee for each set of such plates set forth in (a) above.

(c) Once an approved organization has an approved plate design, each organization member who wishes to apply for special motor vehicle registration plates shall be furnished an application by the organization liaison. The applicant shall complete the application in its entirety, and submit it, together with the applicable fee set forth in (a) above, to the organization liaison.

(d) The organization liaison shall authenticate each member's application for that organization's special motor vehicle registration plates by certifying on the application that the applicant is a member in good standing of the organization.

(e) The organization liaison shall thereafter submit the special plate applications to the Division together with the applicable fee for each set of such plates set forth in (a) above. The initial order of special motor vehicle registration plates pursuant to this subchapter shall be in accordance with (b) above.

(f) The Division, upon approval of an individual member's application, will mail the special motor vehicle registration plates and replacement certificate of registration bearing the new registration plate number to the applicable member.

(g) Upon receipt of the special motor vehicle registration plates and replacement certificate of registration by an organization member, that member must surrender his or her replaced license plates within 10 days to the Division at any motor vehicle agency or State operated motor vehicle inspection station or by mail to:

Division of Motor Vehicles
Bureau of Office Services
CN-016
Trenton, New Jersey 08666-0016

13:20-39.10 Denial, suspension or revocation

(a) Special motor vehicle registration plates shall not be issued pursuant to this subchapter to any person who:

1. Has been convicted of a violation of either N.J.S.A. 39:4-50 or N.J.S.A. 39:4-96;
2. Has been convicted of a violation of N.J.S.A. 2C:11-5;
3. Has had a suspension or revocation of driving privileges in effect in this State at any time within the two year period next preceding the date of application for such plates.

(b) Special motor vehicle registration plates shall not be issued pursuant to this subchapter for any motorcycle or commercially registered vehicle, nor for any vehicle which is not registered in the State of New Jersey.

(c) Any cause for which issuance of special motor vehicle registration plates pursuant to this subchapter may be denied which arises subsequent to the issuance of such plates shall also be cause for the suspension or revocation of such plates.

(d) A material misstatement of fact on an application for special motor vehicle registration plates submitted pursuant to this subchapter shall be cause for suspension or revocation of such plates.

(e) Any person who has been issued special motor vehicle registration plates pursuant to this subchapter which identify that person as a member of an approved organization shall surrender such plates to the Division together with the corresponding registration certificate within 30 days of that person's resignation, removal or termination from membership in such organization. The failure to so surrender such plates shall be cause for the suspension or revocation of such plates.

(f) The organization liaison shall notify the Division of Motor Vehicles in writing of any person who has been issued special motor vehicle registration plates pursuant to this subchapter and who subsequently resigns or is removed or terminated from membership in the approved organization. The notification required by this subsection shall be supplied to the Division within 30 days of the former organization member's resignation, removal or termination of membership in the approved organization, and shall specify the date of the former member's resignation, removal or termination.

(a)

DIVISION OF MOTOR VEHICLES
Transportation of Bulk Commodities
Proposed Readoption: N.J.A.C. 13:26

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:5E-5.

Proposal Number: PRN 1988-421.

Submit comments by September 14, 1988 to:

Glenn R. Paulsen, Director
Division of Motor Vehicles
25 South Montgomery Street
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 concerning the transportation of bulk commodities. These rules were filed and became effective on August 14, 1978, were readopted effective October 17, 1983, and are now to be readopted in accordance with Executive Order No. 66(1978), to avoid expiration on October 17, 1988.

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 Bureau of Motor Carriers 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 and to be able to transport bulk commodities within the territory or points they have been authorized to operate (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 be able to transport bulk commodities within the territory or points they have been authorized to operate (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 operation to another unless the 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 where two or more carriers merge or where 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 rules also establish 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. As private carriers and interstate carriers are not subject to the Act, there is no economic impact on them.

Regulatory Flexibility Statement

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".

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)

DIVISION OF CONSUMER AFFAIRS

Sellers of Health Club Services; Registration

Proposed New Rules: N.J.A.C. 13:45A-25.1 through 25.6

Proposed Repeal: N.J.A.C. 13:45A-25.1

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: P.L. 1987 c. 238 (N.J.S.A. 56:8-39 et seq., specifically 56:8-48).

Proposal Number: PRN 1988-418.

Submit comments by September 14, 1988 to:

James J. Barry, Jr., Director
Division of Consumer Affairs, Room 504
1100 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

In response to numerous public complaints resulting from the bankruptcies of many health clubs, the Act Regulating Sellers of Health Club Services (P.L. 1987, c. 238, effective December 10, 1987) was enacted by the New Jersey Legislature to supplement the Consumer Fraud Act (N.J.S.A. 56:8-1 et seq.). The proposed new rules seek to clarify the definition of a health club and to advise operators and the public of registration procedures, requirements, exemptions, fees and sanctions.

Specifically, N.J.A.C. 13:45A-25.1 sets forth an explicit description of health club facilities which will be included in or excluded from compliance requirements. N.J.A.C. 13:45A-25.2 relates to registration procedures and fees. The previously-adopted rule N.J.A.C. 13:45A-25.1 (Fee for Registration) will be repealed and its text consolidated into N.J.A.C. 13:45A-25.2(b). Language relating to a prorated fee of \$50.00 to be paid if registration originates during the second half of the biennial period has also been incorporated into N.J.A.C. 13:45A-25.2(b).

N.J.A.C. 13:45A-25.3 sets forth the documentation required for exemption from registration where less than 40 percent of a facility's square footage is devoted to health club services.

N.J.A.C. 13:45A-25.4 relates to a separate Declaration of Exemption from Security Requirement if a facility's membership contracts are for a period of no longer than three months. For those facilities that are required to post security because their contracts are for more than three months, N.J.A.C. 13:45A-25.5 describes the documentation which must be maintained and available for review.

N.J.A.C. 13:45A-25.6 is entitled "Violations: sanctions" and states that violations of the provisions will be subject to the sanctions of the Consumer Fraud Act.

Social Impact

The proposed new rules complement legislation designed to protect the consumer by ensuring that sellers of health club services provide relevant data of ownership and operations to the Division of Consumer Affairs.

Economic Impact

The proposed new rules create a \$100.00 biennial registration fee for each health facility, \$50.00 if paid during the second half of the biennial period. An estimated 400 establishments will be affected. This amount is expected to cover present administrative costs for the mandated registration program. Supplying and maintaining the documentation to confirm exemption from the registration and security requirements should entail only minimal expense for postage and clerical time. No economic effect on the public is anticipated.

Regulatory Flexibility Statement

The proposed new rules apply to sellers of health club services. The Division estimates that of approximately 400 health clubs, fitness centers, gym and tennis clubs, etc., in the State, some 250 are small businesses under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Any reporting, recordkeeping or compliance requirements are minimal, yet are necessary to assure equality of compliance and enforcement. An application or claim of exemption from registration is required to be filed by each facility. If the facility files an exemption, which means that less than 40 percent of the facility is devoted to health club services, certain documentation is required, but the information needed for documentation should be readily available from the club's lease, deed, or architectural plans.

With regard to the posting with the Division Director of a bond, letter of credit or acceptable alternate form of security, complete and accurate records are to be kept by each facility relating to the maintenance of the security that is posted and they must be available for review by the Director or his or her designee. These records, such as receipts for payments of premiums, would normally be in the possession of the club operator or are supplied by the bank or bonding company. Thus, neither expense nor effort is required to make them available for inspection by the Division.

The annual cost of compliance with the proposed new rules, as a business expense, is slight, and was specifically designed to minimize the financial impact on small firms.

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

SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES

[13:45A-25.1 Fee for registration

Any person who sells or offers for sale health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of \$100.00 every two years, for each health club facility operated.]

13:45A-25.1 "Health club" defined

(a) The term "health club" shall include any establishment which:

1. Devotes at least 40 percent of its facility to the preservation, maintenance, encouragement or basic development of physical fitness or physical well-being through physical exercise; and

2. Where patron use is predominantly at will (that is, usage is permitted whenever the establishment is open or during specified time periods, such as "weekends", "weekdays", "mornings", etc.)

(b) The term "health club" shall not include a single focus establishment/facility that is devoted to the development of one particular physical skill, or activity or enjoyment of one specific sport. The following facilities are not subject to the Act Regulating Sellers of Health Club Services, P.L. 1987, c. 238 ("Act"):

1. Basic aerobic and "dance exercise" centers operating on a scheduled lesson or hourly basis;

2. Children's gyms (commercial play-spaces with trampolines and other gymnastic equipment) operating on a scheduled lesson or hourly basis;

3. Martial arts schools (for example, karate institutes);

4. Dancing schools (for example, ballet and jazz);

5. Gymnastic schools operating on a scheduled lesson or hourly basis;

6. Tanning salons ("sun studios");

7. Weight control centers;

8. Metabolic and nutrition centers;

9. Other single sport centers (for example, swim clubs, tennis clubs and racquetball clubs).

c. Health club facilities located in hotels, motels, condominiums, cooperatives, corporate offices or other business facilities and which charge fees comparable to other for-profit health clubs are subject to the Act unless usage is limited to guests, residents or employees at no charge or at nominal cost, in which event the facilities are not within the scope of the Act.

13:45A-25.2 Registration; fees

(a) Applicant(s) shall request information from the Health Club Coordinator, Office of Consumer Protection, 1100 Raymond Boulevard, Room 405, Newark, New Jersey 07102 regarding the initial registration of a facility; thereafter an application shall be forwarded to the applicant, along with a copy of the Act and a copy of all current rules.

(b) Any person who offers for sale or sells health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of \$100.00 every two years for each health club facility operated, \$50.00 if paid during the second half of the biennial period.

(c) Upon verification of the information submitted in the application, payment of the registration fee and posting of a security, if not exempt from that requirement pursuant to N.J.A.C. 13:45A-25.4, a Certificate of Registration and the Notice described in (e) below shall be issued to the facility. The Certificate of Registration and Notice shall be displayed in a prominent place at the main entrance of each health club facility.

(d) Each contract for health club services shall contain, in the upper right-hand corner, the facility's Certificate of Registration number.

(e) The following shall be the text of the Notice to be provided by the Division to each registered facility:

NOTICE

This facility is registered as a seller of health club services by the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, 1100 Raymond Boulevard, Newark, New Jersey 07102. Such registration does not mean that this facility has been approved or endorsed by that agency. Patrons are advised that under New Jersey law, facilities offering contracts for health club services for longer than a three-month period must post with the Division

of Consumer Affairs security against failure to provide such services.

(f) A registrant may note in advertising that it is a registered health club; however, a registrant shall not state or imply that the facility has been approved or endorsed by the Division.

(g) All registrations shall expire every two years on the 10th day of February. The initial expiration date will be February 10, 1990.

13:45A-25.3 Exemption from registration

(a) Where a facility claims exemption from registration because less than 40 percent of its square footage is devoted to health club services, the facility shall calculate the 40 percent square footage on the basis of the total indoor square footage of the establishment including the exercise equipment area(s), sauna(s), swimming pool(s), locker facilities and shower areas. The facility shall return a completed application form to the Division of Consumer Affairs along with documentation of the "less than 40 percent" claim, which shall include:

1. A schematic drawing noting the dimensions and use of each area of the facility;

2. A list of the various rooms/spaces with the total square footage of each room/space;

3. A statement of the total square footage of the facility; and

4. Two sample advertisements or brochures if any have been published by the facility within a three month period prior to the date documentation is filed.

(b) If, after the filing of the claim of exemption from registration, a facility makes an internal or external change in space allocation which changes the relationship of the health club services area to the total premises, the facility shall file a revised schematic diagram with the Division. This filing shall be made no later than 90 days after the date when the change in space allocation is completed.

(c) A claim of exemption from registration because less than 40 percent of the facility's square footage is devoted to health club services shall be subject to on-site verification at the discretion of the Director of the Division.

13:45A-25.4 Exemption from security requirement

A separate Declaration of Exemption from Security Requirement shall be filed for each facility claiming exemption from the bond/letter of credit/security requirement of N.J.S.A. 56:8-41 because its membership contracts are for a period no longer than three months. When the Declaration of Exemption from Security Requirement is filed, it must be accompanied by a copy of a written contract as proof that the contract duration is for a period of no longer than three months. The Declaration of Exemption from Security Requirement shall be available upon request from the Health Club Coordinator, Office of Consumer Protection, Room 405, 1100 Raymond Boulevard, Newark, NJ 07102.

13:45A-25.5 Documentation of maintenance of security

Each establishment which has posted a bond as security shall maintain complete and accurate records relating to the bond and premium payments made thereon. Each establishment which has posted a letter of credit or provided other security acceptable to the Director of the Division shall maintain complete and accurate records relating to those items. These records shall be available on the premises of the establishment for review by the Director or his or her designated representative on any operating day.

13:45A-25.6 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

NEW JERSEY RACING COMMISSION

The following proposals are authorized by Charles K. Bradley, Deputy Director, New Jersey Racing Commission.

Submit comments by September 14, 1988 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Wolverton Street
CN 088
Trenton, New Jersey 08625

(a)

Thoroughbred Rules

Abusive Whipping by a Jockey

Proposed New Rule: N.J.A.C. 13:70-11.12

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1988-420.

The agency proposal follows:

Summary

The proposed new rule would permit the stewards at thoroughbred race meetings to take disciplinary action against jockeys for improper use of a whip during the running of a race. The rule further provides that the jockey may use a whip for the purpose of encouraging a horse to give forth its best efforts during the running of a race, but a whip should not be used in an abusive or reckless manner.

Social Impact

It is not anticipated that there would be many violations of this proposed new rule; however, the Racing Commission feels that the rule is necessary for the well-being of the horses and the participants in races conducted at New Jersey racetracks.

Economic Impact

There is a minimal economic effect from this proposed rule as jockeys may be fined if they violate the rule, and the fines would be paid to the State of New Jersey as revenue.

Regulatory Flexibility Statement

As this proposed new rule concerns disciplinary action against jockeys for improper use of a whip, no small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected. A regulatory flexibility analysis is, therefore, not necessary.

Full text of the proposed new rule follows.

13:70-11.12 Abusive whipping by a jockey

Every jockey shall be responsible for the proper use of his or her whip during the running of a race. Whips may be used for the purpose of encouraging a horse to give forth its best effort during the running of a race, but shall not be used in an abusive or reckless manner. The stewards shall take cognizance of the manner in which a whip is used during the riding of a race and at all times thereafter and shall make such determinations as they deem appropriate with respect to whether or not there has been an abusive use of a whip and/or reckless use of a whip. If, in the opinion of the stewards, an abuse of the whip or a reckless use of the whip has been committed, the offending jockey shall be fined and/or suspended by the stewards.

(b)

Thoroughbred Rules

Determining Finishing Place; Noses of Horse

Proposed Amendment: N.J.A.C. 13:70-19.22

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1988-419.

The agency proposal follows:

Summary

The proposed amendment would allow the placing judges to make a final decision based upon their observance of horses crossing the finish line of a race in the event there is an electrical or mechanical failure of

the photo finish camera, or if there is a problem in the distortions or inadequacies of a picture produced by the photo finish camera.

Social Impact

The social impact of the proposed amendment would be positive in the event there was an electrical or mechanical failure of the photo finish camera. The decision of the placing judges would be final based upon their physical observance of the horses crossing the finish line so that the interest of the betting public would be served.

Economic Impact

The proposed amendment would have an economic impact on the order of finish of a race in which the placing judges would have to determine the order of finish without the benefit of a photo finish camera in the event of electrical or mechanical failure of the photo finish camera were to take place or an inadequate picture was produced by the camera. The three placing judges would have to place the order of finish as to their order of personal observance and their decision would be final for the pay-offs of pari-mutuel prices for the order of finish posted.

Regulatory Flexibility Statement

There are no bookkeeping, recordkeeping or compliance requirements placed upon small businesses by this proposed amendment, as it deals with the placing judges making the final decision in a race in the event of an electrical or mechanical failure. Such judges are not a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

13:70-19.22 Determining finishing place; noses of horse

In determining the places of the horses at the finish of a race, the placing judges shall consider only the relative position of the respective noses of such horses. **In the event of an electrical or mechanical failure of the photo finish camera, or if a distorted, deceptive or otherwise inadequate picture is developed, the placing judges shall decide the order of finish and such decision shall be final.**

TRANSPORTATION

TRANSPORTATION OPERATIONS

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by September 14, 1988 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(a)

Speed Limits

Routes N.J. 35 in Monmouth County; N.J. 87 and 187 in Atlantic County

Proposed Amendments: N.J.A.C. 16:28-1.49 and 1.111

Proposed New Rule: N.J.A.C. 16:28-1.35

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

Proposal Number: PRN 1988-394.

The agency proposal follows:

Summary

The proposed amendments and new rule will establish speed limit zones along Route N.J. 87 in the cities of Atlantic City and Brigantine, Atlantic County; N.J. 35 in Wall Township and Belmar Borough, Monmouth County; and N.J. 187 in the City of Atlantic City, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of speed limit zones along Route N.J. 87 in Atlantic

County; N.J. 35 in Monmouth County; and N.J. 187 in Atlantic County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.49 and 1.111 and add new rule N.J.A.C. 16:28-1.35 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments and new rule will establish speed limit zones along Routes N.J. 87 in the Cities of Atlantic City and Brigantine, Atlantic County; N.J. 35 in Wall Township and Belmar Borough, Monmouth County; and N.J. 187 in the City of Atlantic City, Atlantic County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments and new rule do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments and new rule primarily affect the motoring public.

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

16:28-1.35 Route 187

(a) **The rate of speed designated for the certain parts of the State highway Route 187 described in this subsection shall be established and adopted as the maximum legal rate of speed:**

1. For both directions of traffic in the City of Atlantic City, Atlantic County:

i. 40 miles per hour between Route U.S. 30—South Carolina Avenue and Route N.J. 87 (Huron Avenue) (mileposts 0.0 to 0.47).

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35; and Route 35 and 71

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

(c) The rate of speed designated for the certain parts of State highway Route 35—Route 35 and 71—Route 35 described [herein below] in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. In Monmouth County:

Renumber existing 1. as i. (No change in text.)

(1) 40 mph in Wall Township and the Borough of Belmar, Monmouth County, between Route N.J. 35-70 and 34 traffic circle and Belmar Avenue—16th Avenue (mileposts 16.03 to 20.55); thence.

Renumber 2.-10. as ii.-x. (No change in text.)

(d) (No change.)

16:28-1.111 Route 87

(a) The rate of speed designated for the certain parts of State highway Route 87 [in the City of Atlantic City, Atlantic County] described in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic in the Cities of Atlantic City and Brigantine, Atlantic County:

i. Zone one: 45 mph [from Route U.S. 30 to the beginning of the center barrier approximately 1,250 feet north of Huron Avenue; thence] between Route U.S. 30—Illinois Avenue and 2,100 feet north of Huron Avenue—Brigantine Boulevard (Route N.J. 187) mileposts 0.0 to 1.02); thence

ii. Zone two: 50 mph [to the end of Route 87 at the northerly end of the bridge over Absecon Inlet] between 2,100 feet north of Huron Avenue—Brigantine Boulevard (Route N.J. 187) and the end of the New Jersey Department of Transportation jurisdiction (mileposts 1.02 to 1.72).

(a)

**Speed Limits
Route N.J. 27 in Middlesex and Somerset Counties
Proposed Amendment: N.J.A.C. 16:28-1.44**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Proposal Number: PRN 1988-395.
The agency proposal follows:

Summary

The proposed amendment will establish speed limit zones along Route N.J. 27 in the City of New Brunswick, Townships of South Brunswick and North Brunswick, Middlesex County, and Franklin Township, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of speed limit zones along Route N.J. 27 in Middlesex and Somerset Counties was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.44 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendments will establish speed limit zones along Route N.J. 27 in the City of New Brunswick, Townships of South Brunswick and North Brunswick, Middlesex County, and Franklin Township, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28-1.44 Route 27

(a) The rate of speed designated for certain parts of State highway Route 27 described in this subsection shall be designated and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:
 - i-vii. (No change.)
 - viii. 50 miles per hour [to a point 800 feet south of the centerline of Henderson Road] **between the Bunker Hill Road—New Road and Beekman Road**, South Brunswick Township, Middlesex County, and Franklin Township, Somerset County (mileposts 7.79 to 9.24); thence
 - ix. 40 miles per hour [to a point 50 feet south of the centerline of Finnegan Lane] **between Beekman Road and 200 feet north of Evelyn Avenue**, South Brunswick Township—**North Brunswick Township**, Middlesex County, and Franklin Township, Somerset County (mileposts 9.24 to 10.61); thence
 - x. [50 miles per hour to a point 300 feet north of the centerline of Industrial Drive, City of New Brunswick] **45 miles per hour between 200 feet north of Evelyn Avenue and 100 feet north of Skillman Lane**, North Brunswick Township, Middlesex County and Franklin Township, Somerset County (mileposts 10.61 to 12.29); thence
 - xi. 40 miles per hour [to a point 100 feet south of the centerline of Sandford Street.] **between 100 feet north of Skillman Lane and 100 feet south of Sandford Street**, North Brunswick Township—City of New Brunswick, Middlesex County and Franklin Township, Somerset County (mileposts 12.29 to 15.41); thence
 - xii-xxi. (No change.)

(b)

**Restricted Parking and Stopping
Route U.S. 9 in Atlantic County
Proposed Amendment: N.J.A.C. 16:28A-1.7**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.
Proposal Number: PRN 1988-396.
The agency proposal follows:

Summary

The proposed amendment will establish "no stopping or standing" zones along Route U.S. 9 in the City of Somers Point, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no stopping or standing" zones along Route U.S. 9 in the City of Somers Point, Atlantic County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no stopping or standing" zones along Route U.S. 9 in the City of Somers Point, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the motoring public.

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

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

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated as "no stopping or standing" zones where stopping or standing is prohibited at all times.

- 1.-19. (No change.)
20. **No stopping or standing in the City of Somers Point, Atlantic County:**
 - i. **Along both sides:**
 - (1) **For the entire length within the corporate limits of the City of Somers Point, including all ramps, and connections under the jurisdiction of the Commissioner of Transportation except at approved bus stops or time limit parking areas.**
 - (b) (No change.)

(c)

**Restricted Parking and Stopping
Routes N.J. 27 in Union County and U.S. 46 in Bergen County**

Proposed Amendments: N.J.A.C. 16:28A-1.18 and 1.32

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138(g), 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1988-399.
The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Route U.S. 46 in the Borough of Teterboro, Bergen County, and "time limit parking" zones along Route N.J. 27 in the City of Linden, Union County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace, and the safe on/off loading of passengers at established bus stops.

Based upon requests from local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Route U.S. 46 in the Borough of Teterboro, Bergen County, and "time limit parking" zones along Route N.J. 27 in the City of Linden, Union County, was warranted.

The Department therefore proposed to amend N.J.A.C. 16:28A-1.18 and 1.32 based upon the requests from local government officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Route U.S. 46 in the Borough of Teterboro, Bergen County, and "time limit parking" zones along Route N.J. 27 in the City of Linden, Union County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for "no parking bus stop" and "time limit parking" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily affect the motoring public.

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

16:28A-1.18 Route 27

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

(e) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit [P]parking [Z]zones:

1. (No change.)

2. [Along the east side on St. George Avenue in the City of Linden, Union County, two hour time limit parking from 8:00 A.M. to 6:00 P.M. Monday through Friday from Roselle Street to Lincoln Street.] **In the City of Linden, Union County:**

i. **St. George Avenue:**

(1) **Along the east side:**

(A) **Two hour time limit parking from 8:00 A.M. to 6:00 P.M. Monday through Friday from Roselle Street to Lincoln Street.**

(2) **Along the south side:**

(A) **Two hour time limit parking from 8:00 A.M. to 5:00 P.M. Monday through Friday from Summit Street to Laurita Street.**

(3) **Along the north side:**

(A) **Two hour time limit parking from 8:00 A.M. to 5:00 P.M. Monday through Friday from Wood Avenue to Summit Terrace.**

16:28A-1.32 Route U.S. 46

(a) (No change.)

(b) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A.39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-3. (No change.)

- 4. Within the Borough of Teterboro, County of Bergen:
 - i. (No change.)
 - ii. Along the northerly (westbound) side:
 - (1) Far side bus stops:
 - (A) (No change.)
 - (B) From the westerly curb line of Hollister Road and extending [110] **125** feet westerly therefrom.
 - (2) (No change.)
- 5.-14. (No change.)

(a)

**Restricted Parking and Stopping
Routes N.J. 27 in Union County and U.S. 30 in
Camden County**

**Proposed Amendments: N.J.A.C. 16:28A-1.18 and
1.21**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1988-400.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 27 in the City of Linden, Union County, and U.S. 30 in the Borough of Oaklyn, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stops" zones along the Routes N.J. 27 in the City of Linden, Union County, and U.S. 30 in the Borough of Oaklyn, Camden County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.18 and 1.21 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 27 in the City of Linden, Union County, and U.S. 30 in the Borough of Oaklyn, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violates the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily affect the motoring public.

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

16:28A-1.18 Route 27

(a) (No change.)

(b) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-21. (No change.)

22. Along the northbound (easterly) side in the City of Linden, Union County:

i. Far side bus stops:

(1) (No change.)

- (2) **Stuart Place**—Beginning at the prolongation of the northerly curb line of Stuart Place and extending 100 feet northerly therefrom;
- (3) **Laurita Street**—Beginning at the northerly curb line of Laurita Street and extending 100 feet southerly therefrom;
- (4) **Washington Avenue**—Beginning at the northerly curb line of Washington Avenue and extending 125 feet northerly therefrom;
- (5) **Roselle Street**—Beginning at the northerly curb line of Roselle Street and extending 100 feet northerly therefrom;
- (6) **Lincoln Street**—Beginning at the northerly curb line of Lincoln Street and extending 100 feet northerly therefrom;
- (7) **Chandler Avenue**—Beginning at the northerly curb line of Chandler Avenue and extending 100 feet northerly therefrom;
- (8) **Alexander Avenue**—Beginning 35 feet north of the northerly curb line of Alexander Avenue and extending 100 feet northerly therefrom;
- (9) **Hagel Avenue**—Beginning at the northerly curb line of Hagel Avenue and extending 110 feet northerly therefrom.

ii. Near side bus stops:

- (1) **North Stiles Street**—Beginning 95 feet south of southerly curb line of North Stiles Street and extending 105 feet southerly therefrom;
- (2) **Keep Street**—Beginning at the southerly curb line of Keep Street and extending 105 feet southerly therefrom;
- (3) **Erudo Street**—Beginning at the northerly curb line of Erudo Street and extending 105 feet southerly therefrom;
- (4) **DeWitt Street**—Beginning at the southerly curb line of DeWitt Street and extending 105 feet southerly therefrom;
- (5) **McCandless Street**—Beginning at the southerly curb line of McCandless Street and extending 100 feet southerly therefrom;
- (6) **Cranford Avenue**—Beginning 55 feet south of the southerly curb line of Cranford Avenue and extending 105 feet southerly therefrom;
- (7) **Nora Drive**—Beginning at the southerly curb line of Nora Drive and extending 105 feet southerly therefrom.

iii. Mid-block bus stops:

- (1) **Between Summit Street and Ainsworth Street**—Beginning at a point 85 feet north of the northerly curb line of Summit Street and extending 135 feet northerly therefrom;
- (2) **Between Grant Street and Nora Drive**—Beginning at a point 265 feet south of the southerly curb line of Grant Street and extending 100 feet southerly therefrom;
- (3) **Between Park Avenue and Adams Street**—Beginning at a point 150 feet south of the southerly curb line of Park Avenue and extending 135 feet southerly therefrom.

23. Along the southbound (westerly) side in the City of Linden, Union County:

i. Far side bus stops:

- (1) **North Wood Avenue**—Beginning at the southerly curb line of North Wood Avenue and extending 100 feet southerly therefrom;
- (2) **DeWitt Terrace**—Beginning at the southerly curb line of DeWitt Terrace and extending 115 feet northerly therefrom;
- (3) **Hollywood Road**—Beginning at the southerly curb line of Hollywood Road and extending 120 feet southerly therefrom;
- (4) **North Stiles Street**—Beginning at the southerly curb line of North Stiles Street and extending 100 feet southerly therefrom.

ii. Near side bus stop:

- (1) **Summit Terrace**—Beginning at the northerly curb line of Summit Terrace and extending 115 feet northerly therefrom.

Renumber existing 23. as 24. (No change in text.)

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

16:28A-1.21 Route U.S. 30

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-21. (No change.)

22. Along the (White Horse Pike) southbound (westerly) side in the Borough of Oaklyn, Camden County:

i. Near side bus stops:

- (1) **West Lakeview Avenue**—Beginning at the northerly curb line of West Lakeview Avenue and extending 115 feet northerly therefrom;

- (2) **West Oakland Avenue**—Beginning at the southerly curb line of West Oakland Avenue and extending 105 feet southerly therefrom;

- (3) **Capitol Avenue**—Beginning at the southerly curb line of Capitol Avenue and extending 105 feet southerly therefrom.

ii. Far side bus stops:

- (1) **West Beechwood Avenue**—Beginning at the southerly curb line of West Beechwood Avenue and extending 100 feet southerly therefrom;

- (2) **West Collingswood Avenue**—Beginning at the southerly curb line of West Collingswood Avenue and extending 100 feet southerly therefrom.

(a)

Restricted Parking and Stopping Routes N.J. 28 in Union County and U.S. 42 in Gloucester

Proposed Amendments: N.J.A.C. 16:28A-1.19 and 1.29

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

Proposal Number: PRN 1988-397.

The agency proposal follows:

Summary

The proposed amendments will establish "no stopping or standing" zone along Route N.J. 28 in the Borough of Garwood, Union County, and "no parking bus stop" zone along Route 42 in the Washington Township, Gloucester County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on or off loading of passengers at established bus stops.

Based upon requests from local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zone along Route N.J. 28 in the Borough of Garwood, Union County, and "no parking bus stop" zone along Route 42 in Washington Township, Gloucester County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.19 and 1.29 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no stopping or standing" zone along Route N.J. 28 in the Borough of Garwood, Union County, and "no parking bus stop" zone along Route 42 in Washington Township, Gloucester County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on or off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone signs and the local officials will bear the costs for "no parking bus stop" zone signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily affect the motoring public.

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

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as ["no parking"] "**no stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-3. (No change.)

4. No stopping or standing in the Borough of Garwood, Union County:

i-ii. (No change.)

iii. Along the south side (eastbound) from the westerly curb line of Cedar Street to the easterly curb line of Anchor Place.

5-13. (No change.)

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

16:28A-1.29 Route 42

(a) The certain parts of State highway Route 42 described in this subsection shall be [, and hereby are,] designated and established as ["no parking"] "no stopping or standing" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139:].

1. (No change.)

(b) The certain parts of State highway Route 42 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the northbound (easterly) side in Washington Township, Gloucester County:

[1. Along Route 42, northbound on the easterly side of Route 42 (milepost 6.2) south of Turnersville garage of the Transport of New Jersey in Washington Township at a point:]

[i. Beginning 2,280 feet north of the northerly curb line of Whitman Drive to 135 feet northerly thereof.]

i. (Milepost 6.2) south of the Turnersville garage of the Transport of New Jersey—Beginning 2,280 feet north of the northerly curb line of Whitman Drive to 135 feet northerly thereof.

[2. Along the northbound (easterly) side in Washington Township, Gloucester County:]

[i.]ii. Mid-block bus stop:

(1) Greentree Road—Beginning [410] 1700 feet north of the [prolongation of the] northerly curb line of Greentree Road (County Road 651), and extending [130] 170 feet northerly therefrom.

(a)

Restricted Parking and Stopping Routes U.S. 130 and U.S. 206 in Burlington County Proposed Amendments: N.J.A.C. 16:28A-1.46 and 1.57

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199. Proposal Number: PRN 1988-398.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 130 and U.S. 206 in Bordentown Township, Burlington County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along the Routes U.S. 130 and U.S. 206 in Bordentown Township, Burlington County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.46 and 1.57 based upon the requests from local government officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 130 and U.S. 206 in Bordentown Township, Burlington County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local gov-

ernment will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily affect the motoring public.

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

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-9. (No change.)

10. Along the northbound (easterly) side in Bordentown Township, Burlington County:

i. Near side bus stops:

(1) Dunns Mill Road—Beginning at the southerly curb line of Dunns Mill Road and extending 105 feet southerly therefrom.

(2) Farnsworth Avenue—Beginning at the southerly curb line of Farnsworth Avenue and extending 105 feet southerly therefrom.

(3) Highbridge Road—Beginning at the southerly curb line of Highbridge Road and extending 105 feet southerly therefrom.

11. Along the southbound (westerly) side in Bordentown Township, Burlington County:

i. Far side bus stop:

(1) Highbridge Road—Beginning at the prolongation of the southerly curb line of Highbridge Road and extending 100 feet southerly therefrom.

ii. Near side bus stops:

(1) Farnsworth Avenue—Beginning at the northerly curb line of Farnsworth Avenue and extending 105 feet northerly therefrom.

(2) Dunns Mill Road—Beginning at the northerly curb line of Dunns Mill Road and extending 105 feet northerly therefrom.

(c) (No change.)

16:28A-1.57 Route U.S. 206

(a) (No change.)

(b) The certain parts of State highway [r]Route U.S. 206 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-10. (No change.)

11. Along the northbound (easterly) side in Bordentown Township, Burlington County:

i. Far side bus stops:

(1) Dunns Mill Road—Beginning at the northerly curb line of Dunns Mill Road and extending 105 feet northerly therefrom.

(2) Cemetery Lane—Beginning at the northerly curb line of Cemetery Lane and extending 100 feet northerly therefrom.

ii. Mid-block bus stops:

(1) Georgetown Road—Beginning 870 feet north of the northerly curb line of Georgetown Road and extending 135 feet northerly therefrom.

(2) Stanton Avenue—Beginning 255 feet north of the northerly curb line of Stanton Avenue and extending 135 feet northerly therefrom.

iii. Near side bus stops:

(1) Cedar Avenue—Beginning at the southerly curb line of Cedar Avenue and extending 105 feet southerly therefrom.

(2) Oak Avenue—Beginning at the southerly curb line of Oak Avenue and extending 105 feet southerly therefrom.

(3) Martin Avenue—Beginning at the southerly curb line of Martin Avenue and extending 105 feet southerly therefrom.

(4) Heiser Avenue—Beginning at the southerly curb line of Heiser Avenue and extending 105 feet therefrom.

12. Along the southbound (westerly) side in Bordentown Township, Burlington County:

i. Far side bus stops:

- (1) Reichert Avenue—Beginning at the northerly curb line of Reichert Avenue and extending 105 feet southerly therefrom.
- (2) Sylvan Glen Road—Beginning at the southerly curb line of Sylvan Glen Road and extending 100 feet southerly therefrom.
- (3) Dunns Mill Road—Beginning at the southerly curb line of Dunns Mill Road and extending 100 feet southerly therefrom.
- (4) Maple Avenue—Beginning at the northerly curb line of Maple Avenue and extending 100 feet southerly therefrom.

ii. Mid-block bus stops:

- (1) Nissim Avenue—Beginning 800 feet south of the southerly curb line of Nissim Avenue and extending 135 feet southerly therefrom.
- (2) Dunns Mill Road—Beginning 1910 feet south of the southerly curb line of Dunns Mill Road and extending 200 feet southerly therefrom.

iii. Near side bus stops:

- (1) Elizabeth Street—Beginning at the northerly curb line of Elizabeth Street and extending 105 feet northerly therefrom.
- (2) Georgetown Road—Beginning at the northerly curb line of Georgetown Road and extending 105 feet northerly therefrom.

(a)

**Lane Usage
Route N.J. 35 in Ocean County
Proposed Amendment: N.J.A.C. 16:30-3.1**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-6.
Proposal Number: PRN 1988-423.

The agency proposal follows:

Summary

The proposed amendment will establish a new time limit for lane usage for buses along Route 35 in the Township of Brick and Mantoloking Borough, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the NJ Transit Corporation in the interest of safety and the extension of service for the late departure of buses from Seaside Heights en route to Point Pleasant Beach Rail Station, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the time extension requested by the NJ Transit Corporation was warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-3.1 based upon the request from the NJ Transit Corporation and the traffic investigation.

Social Impact

The proposed amendment will extend the time limit for lane usage for buses along Route 35 in the Township of Brick and Mantoloking Borough, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the extension of service for the late departure of buses from Seaside Heights en route to Point Pleasant Beach Rail Station. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the changing of the hour presently posted on the existing sign. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the motoring public.

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

16:30-3.1 Route 35
(a)-(b) (No change.)

(c) The northbound shoulder (right-hand lane or curb lane) of Route 35 may be used by buses and is reserved therefor on Saturdays, Sundays, and holidays from 3:00 P.M. to [10:00 P.M.] 11:30 P.M. from Faber Lane (milepost 7.9) in the Township of Brick, north to Herbert Street (milepost 10.0) in the Borough of Mantoloking, County of Ocean.

- l. (No change.)
- (d) (No change.)

(b)

**NEW JERSEY TRANSIT CORPORATION
Section 16(b)(2) Capital Assistance Program**

Proposed New Rules: N.J.A.C. 16:80

Authorized By: New Jersey Transit Corporation, Jerome C. Premo, Executive Director.

Authority: N.J.S.A. 27:25-5(e), (g) and (h).
Proposal Number: PRN 1988-388.

Submit comments by September 14, 1988 to:
Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation
Market Street and McCarter Highway
P.O. Box 10009
Newark, New Jersey 07101

The agency proposal follows:

Summary

In the State of New Jersey, the New Jersey Transit Corporation (NJ TRANSIT) is the designated State agency responsible for the receipt and administration of funds available through the Section 16(b)(2) Capital Assistance Program for Non-Profit Organizations of the Urban Mass Transportation Act of 1964, 49 U.S.C. §§1601 et seq., as amended. These funds are used to assist private non-profit corporations and associations in meeting the special transportation needs of the elderly and/or handicapped in all areas (urbanized, small urban, and rural) where public transportation services are unavailable, insufficient or inappropriate. NJ TRANSIT therefore proposes a new rule which shall govern the application and eligibility requirements for local recipients.

Social Impact

The continued administration of Section 16(b)(2) Capital Assistance Program funds supports the planning, design, and implementation of mass transportation facilities, equipment, and services for the specific purpose of providing elderly and/or handicapped persons with access to employment and post-secondary educational opportunities, non-emergency medical care, cultural and social activities, and commercial establishments.

Economic Impact

The continued administration of Section 16(b)(2) Capital Assistance Program has no adverse impact on the cost of fares for elderly or handicapped riders. A minor negative impact may be experienced by providers of insufficient or inappropriate public transportation through loss of fares caused by use of Program funds to provide transportation services. Commercial establishments should benefit economically due to increased patronage from the elderly and handicapped utilizing Program-funded services.

Regulatory Flexibility Statement

These rules do not apply to small businesses. However, NJ TRANSIT ensures that private, for-profit transportation operators are given a fair and timely opportunity to participate in the local planning of the project. If a private operator objects to the project, the operator may submit a formal protest as described in proposed N.J.A.C. 16:80-3.4.

Full text of the proposal follows:

CHAPTER 80
SECTION 16(b)(2) CAPITAL ASSISTANCE PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

16:80-1.1 Purpose

(a) Section 16(b)(2) of the Urban Mass Transportation Act of 1964, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to make grants and loans to private non-profit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and handicapped persons for whom mass transportation services are unavailable, insufficient, or inappropriate. Such grants and loans are subject to such terms, conditions, requirements, and provisions as the Secretary of Transportation may deem necessary or appropriate.

(b) The Section 16(b)(2) program is designed to supplement other capital assistance programs by funding transportation projects for the elderly and handicapped in all areas—urbanized, small urban, and rural. Although recipients are private non-profit organizations which usually have specific clientele, transportation services funded under this program may be open to all elderly and handicapped persons once the immediate transportation needs of the recipients are satisfied.

(c) The principal responsibility and authority for administering the program is with the Governor through the New Jersey Transit Corporation (NJ TRANSIT), the designated State agency which acts as grantee for all Section 16(b)(2) funds within the State of New Jersey. NJ TRANSIT is responsible for:

- i. Notifying private non-profit organizations of the availability of the program;
- ii. Applying to the Urban Mass Transportation Authority for these funds on behalf of private non-profit agencies within the State;
- iii. Developing project selection criteria;
- iv. Determining applicant eligibility;
- v. Selecting projects for funding;
- vi. Monitoring local projects; and
- vii. Overseeing project audit and closeout.

(d) Each eligible private non-profit organization shall apply directly to NJ TRANSIT for assistance under the program.

16:80-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

“Applicant” means any private non-profit organization which applies for financial assistance under the Section 16(b)(2) Capital Assistance Program.

“Elderly person” means any individual who is 60 years of age or older.

“Handicapped person” means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who uses a wheelchair or has semi-ambulatory capabilities, is unable without special facilities to utilize public transportation facilities and services effectively.

“Non-profit organization” means a corporation or association determined by the Secretary of the Treasury to be an organization described by 26 U.S.C. §501(c) which is exempt from taxation under 26 U.S.C. §501(2) or §101, or one which has been determined under State law to be non-profit, and for which NJ TRANSIT has received documentation certifying the status of the non-profit organization.

“Private” means non-public bodies which are not municipalities or other political subdivisions of the State; are not Indian tribes (except private non-profit corporations formed by Indian tribes); are not public corporations, boards, or commissions established under State law; or are not subject to control by public authority, State or municipal.

“Recipient” means an applicant which has been awarded financial assistance under the Section 16(b)(2) Capital Assistance Program.

SUBCHAPTER 2. ALLOCATION

16:80-2.1 General

Section 16(b)(2) funds are allocated among the states by an administrative formula which is based on the percentage of elderly and handicapped population in each state. The annual fiscal year funding level for each state is announced in a letter from the Administrator of the Urban Mass Transportation Administration to the governor. Notification of the fiscal year allocations are made on or about October 1.

16:80-2.2 Formula

(a) The Federal share of eligible capital and program administrative costs is not to exceed 80 percent of the net cost of the program. The local match of eligible capital and administrative costs shall be no less than 20 percent of the net cost of the program. NJ TRANSIT provides the 20 percent match requirement for New Jersey's Section 16(b)(2) Program.

(b) All of the local share must be provided from sources other than Federal funds. The only exceptions are Federal revenue sharing funds, Appalachian Regional Commission funds, and Housing and Urban Development (HUD), Community Development Block Grant funds, which may be treated as local funds.

(c) Up to \$25,000 or 10 percent of the State's total fiscal year 16(b)(2) allocation, whichever is greater, may be used as the Federal share of program administrative costs.

16:80-2.3 Fund availability

Section 16(b)(2) funds are available to the states only for the fiscal year in which they were allocated. Any funds remaining unobligated at the end of the fiscal year will be redistributed to the states by formula in the succeeding fiscal year.

SUBCHAPTER 3. ELIGIBILITY

16:80-3.1 Eligible applicants

Only private non-profit organizations are eligible to apply to NJ TRANSIT for funding under the Section 16(b)(2) program.

16:80-3.2 Eligible capital expenses

(a) Funds for the Section 16(b)(2) program are available for capital expenses to support the provision of transportation services to meet the special needs of elderly and handicapped persons. Examples of capital expenses include, but are not limited to the following:

1. Buses;
2. Vans or other paratransit vehicles;
3. Radios and communication equipment;
4. Vehicle shelters;
5. Wheelchair lifts and restraints;
6. Vehicle rehabilitation;
7. Microcomputer hardware and software;
8. Spare parts with a unit cost over \$300.00 and a useful life of more than one year;
9. Initial installation costs; and
10. Vehicle procurement, testing, inspection, and acceptance costs.

16:80-3.3 Eligible NJ TRANSIT administrative expenses

(a) Eligible program administration costs consist of those costs incurred in implementing and managing the entire Section 16(b)(2) program, including previously funded projects, if necessary.

(b) Eligible program administration costs included but are not limited to:

1. General, administrative, and overhead costs such as salaries of the program director, secretary and bookkeeper;
2. Office supplies; and
3. Development of specifications for vehicles and equipment.

16:80-3.4 Private enterprise coordination requirements

(a) To the maximum extent feasible, NJ TRANSIT shall ensure that private-for-profit mass transportation operators have been given a fair and timely opportunity to participate in the local planning for the project, and have been afforded every feasible opportunity to provide the proposed special service for elderly and handicapped persons. To ensure that all private-for-profit and public transit operators have been notified of the non-profit organization's intention

to provide special services, and that they have had adequate opportunity to comment, two options are available:

1. The private non-profit applicant should have a public notice describing the services it intends to offer to meet the special needs of elderly and handicapped persons within a stated service area. The notice should invite any interested public or private-for-profit transit or paratransit operators within the stated service area to comment on the proposed service by sending a written notice to NJ TRANSIT and/or the local applicant. A minimum of 15 days response time shall be provided; or

2. The non-profit applicant should request individual sign-offs from public or private-for-profit transit and paratransit operators in the service area stating that the services that the private-for-profit operator is providing or is prepared to provide are not designed to meet the special needs of elderly and handicapped persons within the service area.

SUBCHAPTER 4. APPLICATION PROCESS

16:80-4.1 Program advertisement

NJ TRANSIT shall advertise the program early enough to allow sufficient time for any interested, private, non-profit corporation to obtain, complete, and return the preliminary application before an established deadline. The program shall be advertised by means of a local notice in three or more newspapers of general circulation published in New Jersey.

16:80-4.2 Preliminary application

(a) The preliminary application must be obtained from and submitted to:

The Section 16(b)(2) Program
 NJ TRANSIT
 c/o Office of Special Services
 P.O. Box 10009
 Newark, NJ 07101

(b) The private non-profit corporation shall submit the following information in the completion of the preliminary application:

1. General information about the corporation or association;
2. Description of the transportation project;
3. Project justification;
4. Documentation of the corporation's or association's fiscal and managerial capability;
5. Vehicle inventory;
6. Project evaluation questionnaire; and
7. Operating plan.

16:80-4.3 County coordinating committee review

(a) NJ TRANSIT packages all completed preliminary applications by county and forwards them to the appropriate county coordinating committees for review and evaluation.

(b) To assist in the review, NJ TRANSIT provides each county coordinating committee with project evaluation criteria. Upon completion of the review, the applications are returned to NJ TRANSIT where a final review and selection is accomplished.

16:80-4.4 Final application

If a preliminary application has been selected for inclusion in the State application to the Federal government, a final application is mailed to the applicants for completion. The final application consists of information regarding procedural requirements, minimum eligibility requirements, provisions for the protection of private industry, and the use of vehicles leased under the Section 16(b)(2) program. Additionally, the final application consists of various certifications and notifications required under the Federal program guidelines.

16:80-4.5 Selection of final applications

(a) NJ TRANSIT evaluates and selects the final applications to be used based on the following criteria approved by the Urban Mass Transportation Administration:

1. The applicant's ability to provide designated service as determined by information from the applicant's operating statement;
2. The experience of the applicant organization in providing transportation to its clientele group;

3. The degree of coordination among applicant organizations submitting a proposal in attempting to provide transportation services to elderly and/or handicapped people; and

4. The compatibility and relevance of proposed service with other government programs and policies.

(b) NJ TRANSIT will then submit a final program of projects listing the names of agencies completing applications to the capital assistance branch of the Urban Mass Transportation Administration.

(c) NJ TRANSIT will notify each county of the agency or organization within that county whose application has been selected to be included in the grant application NJ TRANSIT submits to the Urban Mass Transportation Administration.

16:80-4.6 Notification of grant award

NJ TRANSIT will notify the governing body of each county once it receives notification the Urban Mass Transportation Administration of grant award. The county will then notify the local agencies or organization of the funding availability.

SUBCHAPTER 5. AGREEMENTS

16:80-5.1 Lease agreements

(a) After program approval, NJ TRANSIT will enter into a lease agreement with the selected private, non-profit corporations for the purposes of leasing vehicles.

(b) Each recipient will be required to enter into a contract with NJ TRANSIT which governs the leasing and use of the capital items during the useful life of the items. The contract will specify requirements for reporting, coordination, and other items regarding the use of the equipment.

(c) The vehicle will be owned and title retained by NJ TRANSIT and may not be sub-leased during its useful life without prior written approval of NJ TRANSIT.

(d) Disposal of the equipment during the project period will require NJ TRANSIT's approval.

16:80-5.2 Reporting requirements

The recipient will be required to submit quarterly reports regarding the utilization of the capital items. Such reports will include the number of people benefitting from transportation services, trip purposes for which service is used, and the cost of providing service. Reporting forms will be attached to the contract which the recipient and NJ TRANSIT will enter into prior to the delivery of any vehicle.

(a)

**NEW JERSEY TRANSIT CORPORATION
 Small Urban and Rural Area Public Transportation
 Program**

Proposed New Rules: N.J.A.C. 16:81.

Authorized By: New Jersey Transit Corporation,

Jerome C. Premo, Executive Director.

Authority: N.J.S.A. 27:25 (e), (g) and (h).

Proposal Number: PRN 1988-389.

Submit comments by September 14, 1988 to:

Albert R. Hasbrouck, III
 Assistant Executive Director
 New Jersey Transit Corporation
 Market Street and McCarter Highway
 P.O. Box 10009
 Newark, New Jersey 07101

The agency proposal follows:

Summary

In the State of New Jersey, the New Jersey Transit Corporation (hereinafter, NJ TRANSIT) is the designated State agency responsible for the receipt and administration of funds available through the Section 18 Small Urban and Rural Area Public Transportation Program of the Urban Mass Transportation Act of 1964, 49 U.S.C. §§ 1601 et seq., as amended. These funds are used for expenditures for public transportation projects in areas other than urbanized areas. NJ TRANSIT, therefore,

proposes new rules, N.J.A.C. 16:81, which shall govern the application and eligibility requirements for local residents.

Social Impact

The continued administration of funds available through the Section 18 Small Urban and Rural Area Public Transportation Program assists in the development, maintenance, improvement, coordination, and use of public transportation systems in rural and small urban areas, in order to enhance the access of people in such areas to health care, shopping, education, employment, public services and recreation.

Economic Impact

The administration of Section 18 funds has no discernible, direct economic impact upon users within the targeted areas. By providing public transportation in areas which otherwise could not or traditionally have not supported public transportation, it may indirectly be possible for increased support of local businesses and activities by providing better access to such businesses and activities. The establishment of local transportation systems in small urban and rural areas has created jobs and in some cases impacted positively on local transportation-related businesses such as gas stations, auto part stores and repair shops.

Regulatory Flexibility Statement

These rules do not require a small business regulatory analysis since the rules do not specifically apply to or impact on small businesses, beyond small business, private, for-profit operators of transit or paratransit services who elect to participate in the program through contracts with local government.

Full text of the proposal follows:

CHAPTER 81 SMALL URBAN AND RURAL AREA PUBLIC TRANSPORTATION PROGRAM

SUBCHAPTER 1. GENERAL OVERVIEW

16:81-1.1 Purpose

(a) Section 18 of the Urban Mass Transportation Act of 1964, 49 U.S.C. §§ 1601 et seq., as amended, authorizes the Secretary of Transportation to apportion funds to the governor of each state for public transportation projects in non-urbanized areas.

(b) The funds, appropriated annually, are made available on population-based formulas and may be used for all projects included in the Section 18 Statewide program of projects submitted annually for approval to the Urban Mass Transportation Administration by NJ TRANSIT.

(c) The program of projects shall provide for fair and equitable distribution of funds within the State, including Indian reservations, and shall provide for maximum feasible coordination with transportation services assisted by other Federal sources.

(d) Section 18 program funds may be used for planning, capital, operating, and administrative assistance to State agencies, local public bodies, non-profit organizations, Indian tribes and groups, and operators of public transit services.

(e) The principal responsibility and authority for administering the program is with NJ TRANSIT, the State agency designated as the grantee for all Section 18 funds within the State of New Jersey. NJ TRANSIT is responsible for:

1. Notifying eligible local applicants of the availability of the program;
2. Developing project selection criteria;
3. Soliciting and reviewing applications;
4. Certifying eligibility of applicants and project activities;
5. Submitting a Statewide program of projects to the Urban Mass Transportation Administration for approval;
6. Ensuring a fair and equitable distribution of program funds;
7. Ensuring the maximum feasible coordination of public transportation resources at both the State and local level;
8. Ensuring a process whereby private transit and paratransit operators are provided an opportunity to participate in the program to the maximum extent feasible;
9. Ensure compliance with Federal requirements and program guidelines;
10. Monitor local projects; and
11. Oversee project audit and closeout.

16:81-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

"Applicant" means any State agency, local public body, non-profit organization, Indian tribe and group, and operator of public transportation services that applies for financial assistance under the Section 18 Small Urban and Rural Area Public Transportation Program.

"Non-urbanized area" and "small urban and rural area" are used synonymously to mean any area outside an urbanized area, as designated by the Bureau of the Census. An urbanized area consists of a core area and the surrounding density populated area with a population of 50,000 or more, with boundaries fixed by the Census Bureau or extended by State and local officials.

"Recipient" means an applicant which has been awarded financial assistance under the Section 18 Small Urban and Rural Area Public Transportation Program.

SUBCHAPTER 2. APPORTIONMENT

16:81-2.1 General

Formal notification of the fiscal year apportionment to each state will be made through publication in the Federal Register after the enactment of the annual Department of Transportation Appropriation Act or a continuing resolution.

16:81-2.2 Formula

Section 18 funds are apportioned to the state by a legislatively mandated formula based on the ratio of the non-urbanized population of each state to the non-urbanized population of all the states, according to the latest U.S. Census.

16:81-2.3 Fund availability

Section 18 funds are available for obligation for two years after the fiscal year for which they were apportioned. Funds unobligated at the end of the two-year period will lapse to the State unless they are obligated for Section 18 projects or transferred to the Section 9 program to be obligated that year in areas having a population of between 50,000 and 200,000. Unobligated funds which have lapsed will be reapportioned among the states according to formula.

SUBCHAPTER 3. ELIGIBILITY

16:81-3.1 Local recipients

Eligible recipients include local public bodies and agencies thereof, private non-profit organizations, Indian tribes and groups, and operators of public transportation services. Private, for-profit operators of transit or paratransit services may participate in the program through contracts with NJ TRANSIT. NJ TRANSIT may further define recipient eligibility requirements in order to comply with State laws or to further program goals.

16:81-3.2 Eligible services and areas

(a) Section 18 funds are available for expenditures for public transportation projects in areas other than urbanized areas. Public transportation is defined to mean mass transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides service to the general public (not including charter or sight-seeing or exclusive school bus) on a regular and continuing basis.

(b) Section 18 projects may include the transportation of non-urbanized area residents to and from urbanized areas. If Section 18 funds are used in a joint urbanized/non-urbanized project, Section 18 funds should be used primarily to assist the non-urbanized portion. NJ TRANSIT establishes the criteria for such joint projects.

SUBCHAPTER 4. ELIGIBLE ASSISTANCE CATEGORIES

16:81-4.1 Administration and technical assistance

(a) NJ TRANSIT may apply for an amount not to exceed 15 percent of its apportioned funds to administer the program and to provide technical assistance to local recipients. Such technical assistance may include the following:

1. Project planning;
2. Program development;
3. Development of vehicle and equipment specifications;

- 4. Management development;
- 5. Coordination of public transportation programs (public and private); and
- 6. Such research as NJ TRANSIT deems appropriate to promote the effective means of delivering public transportation service in non-urbanized areas. These expenses are funded at a 100 percent Federal share. NJ TRANSIT may pass any portion of the funds on to local recipients for the same purpose, and may impose a local share requirement.

16:81-4.2 Capital expenses

(a) Capital expenses include the acquisition, construction and improvement of public transit facilities and equipment needed for an efficient and coordinated public transportation system. The Federal share of eligible facilities and equipment shall not exceed 80 percent of the net capital cost. Examples of eligible capital expenditures include, but are not limited to the following:

- 1. Buses;
- 2. Vans or other paratransit vehicles;
- 3. Radios and communications equipment;
- 4. Passenger shelters;
- 5. Wheelchair lifts and restraints;
- 6. Vehicle rehabilitation;
- 7. Operational support such as computer hardware/software;
- 8. Spare parts with a unit cost over \$300.00 and a useful life of more than one year;
- 9. Initial installation costs;
- 10. Vehicle procurement, testing, inspection, and acceptance costs; and
- 11. Construction or rehabilitation of transit facilities including design, engineering and land acquisition.

16:81-4.3 Operating expenses

(a) Operating expenses are considered those costs directly related to system operations. As defined for the Section 18 program, eligible expenses may be limited, at the option of NJ TRANSIT, to include only the following:

- 1. Fuel;
- 2. Oil;
- 3. Replacement tires;
- 4. Certain replacement parts;
- 5. Drivers' and mechanics' salaries;
- 6. Fringe benefits;
- 7. Dispatcher salaries; and
- 8. Licenses.

(b) Net operating expenses are those expenses that remain after operating revenues are subtracted from eligible operating expense. At a minimum, operating revenues include fare box revenues. Fare box revenues include fares paid by riders who are later reimbursed by a human service agency. The Federal share of net operating expenses may not exceed 50 percent.

(c) NJ TRANSIT provides one half the local match or 25 percent of the total operating expense. The local recipient provides the other 25 percent match for operating expenses.

16:81-4.4 Project administrative expenses

(a) Under the Section 18 program, project administrative expenses incurred by a local recipient can be viewed as a separate cost category from either capital or operating expenses.

(b) Eligible project administrative costs may include, but are not limited to, general, administrative and overhead costs such as:

- 1. Salaries;
- 2. Facilities and equipment rental;
- 3. Insurance; and
- 4. Marketing.

(c) Administrative costs for promoting and coordinating ridesharing may be eligible if the activity is part of a coordinated public transportation program.

(d) Interest on short-term loans for operating assistance may be an eligible administrative expense if approved by NJ TRANSIT.

(e) The Federal share of project administrative expenses may not exceed 80 percent. NJ TRANSIT provides the 10 percent match of

the administrative expenses, and the local recipient provides the remaining 10 percent match.

SUBCHAPTER 5. APPLICATION PROCESS

16:81-5.1 Application process

(a) The application package for Section 18 eligible recipients shall be obtained from, and returned to:

The Section 18 Program
 NJ TRANSIT
 c/o Office of Special Services
 P.O. Box 10009
 Newark, NJ 07101

(b) Each local recipient of Section 18 funds shall submit the application to NJ TRANSIT for funds apportioned to the State of New Jersey during the current fiscal year. The application shall be complete and have appropriate authorizing signatures where appropriate.

(c) The following information must be included in the application:

- 1. A project description;
- 2. A project coordination statement;
- 3. Public involvement verification;
- 4. Private enterprise involvement verification, including the information required under IV-1 Notifications, IV-2 Agreement Documentation, and IV-3 Grievance Procedures of the application;
- 5. A labor warranty;
- 6. Civil rights assurances, including the information required under application sections VI-1 Title VI, VI-2 Equal Employment Opportunity (EEO), VII-3 Disadvantaged Business Enterprises (DBE) and Women's Business Enterprises (WBE), and VI-4 Provisions for the Elderly and Handicapped;
- 7. Charter and school bus provisions;
- 8. A protection of the environment statement;
- 9. An opinion of counsel;
- 10. Application resolutions;
- 11. State assurances;
- 12. Standard assurances; and
- 13. An Appendix A, a list of statutes, regulations, executive orders, and administrative requirements applicable to the Section 18 program.

SUBCHAPTER 6. NOTIFICATION PROCESS

16:81-6.1 Notification process

(a) NJ TRANSIT will notify applicants of the selection of their projects to be included in the application to be submitted to the Urban Mass Transportation Administration once the NJ TRANSIT Board of Directors has reviewed and approved the Section 18 program of projects.

(b) NJ TRANSIT will also notify applicants of the Section 18 grant award.

TREASURY-GENERAL

(a)

STATE LOTTERY COMMISSION

Lottery Commission Rules

Proposed Readoption: N.J.A.C. 17:20

Authority: N.J.S.A. 5:9-7(a) and (b).

Proposal Number: PRN 1988-409.

Submit comments by September 14, 1988 to:

Robert C. Wilson
 Administrative Practice Officer
 New Jersey Lottery
 CN 041
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), N.J.A.C. 17:20 expires on November 7, 1988. The Department of Treasury has reviewed these rules

and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt these rules without change.

The State Lottery was authorized by Constitutional Amendment in November of 1969 and was signed into law on February 16, 1970 as Chapter 13 of the Laws of 1970.

The Lottery began its operation on December 16, 1970 and has raised over three billion dollars for its designated purposes of aid to education and State institutions.

Rules of the State Lottery Commission govern agencies and 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 Chapter 182 of the laws of 1981 (N.J.S.A. 5:9-7(a)).

The State Lottery Commission has engaged in an ongoing revision of its rules, and accordingly, no changes are proposed in conjunction with the present readoption.

A summary of each section in Chapter 20, subchapters 1 through 11 follows:

- 17:20-1.1 Describes the scope of the rules.
- 17:20-1.2 Specifies the erroneous and mutilated ticket provisions.
- 17:20-1.3 Specifies persons prohibited from purchasing tickets.
- 17:20-2.1 Provides definitions of the words and terms used throughout this chapter.
- 17:20-3.1 Describes the procedure for resolving disputes over the ownership or validity of winning Lottery tickets.
- 17:20-4.1 Describes the manner in which a person applies for a Lottery license.
- 17:20-4.2 States the eligibility of an applicant for licensure.
- 17:20-4.3 Describes the procedures involved in processing an application.
- 17:20-4.4 Specifies the conditions for issuing a license.
- 17:20-4.5 Requires that the Lottery license be displayed.
- 17:20-4.6 Specifies that Lottery agents submit a bonding fee.
- 17:20-4.7 Describes the conversion of a manual agent to a machine agent.
- 17:20-4.8 States that Lottery tickets can only be sold at specific locations.
- 17:20-4.9 Describes the rules for special or seasonal Lottery agents.
- 17:20-4.10 States the procedures for the transfer of ownership of licensed locations.
- 17:20-5.1 States the reasons for the denial, revocation and suspension of a license, and the imposition of civil penalties.
- 17:20-5.2 States the termination procedures for agents.
- 17:20-5.3 Describes the procedures for agents' hearings.
- 17:20-5.4 through 17:20-5.7 (Reserved)
- 17:20-6.1 Refers to the distribution of tickets.
- 17:20-6.2 States the requirements for the sale of tickets.
- 17:20-6.3 Describes the procedures for the deposit of Lottery monies.
- 17:20-6.4 States how agents are to deal with lost or stolen tickets.
- 17:20-7.1 Describes what information is required from a prize claimant.
- 17:20-7.2 Refers to the conditions that may be waived by the Director in the payment of prizes.
- 17:20-7.3 States the reasons for requesting additional information from the claimant.
- 17:20-7.4 Describes the time for the awarding of prizes.
- 17:20-7.5 Refers to the procedures for the payment of prizes.
- 17:20-7.6 Specifies the discharge of the State's liability upon the payment of an award.
- 17:20-7.7 States the disposition of unallocated prize money.
- 17:20-7.8 Refers to the information which must be disclosed about Lottery winners.
- 17:20-8.1 Requires that each Lottery vendor adhere to a code of ethics.
- 17:20-9.1 Describes imposition of civil penalties not exceeding \$2,500.
- 17:20-9.2 Covers civil penalties between \$2,500 and \$5,000.
- 17:20-9.3 Covers civil penalties in excess of \$5,000.
- 17:20-9.4 Describes the Director's restitution power and the enforcement of cease and desist orders.
- 17:20-9.5 States the procedures for conducting hearings involving civil penalties.
- 17:20-10 (Reserved)
- 17:20-11 (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 comprehensive. Once readopted, the rules will continue to provide thorough guidelines for the administration and operation of the State Lottery.

Economic Impact

This proposed readoption has no direct economic impact, in that it makes no changes. The Lottery rules themselves have no direct economic impact in that they merely 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 purposes of the Lottery: aid to education and State institutions.

Regulatory Flexibility Statement

This proposed readoption has no adverse impact on small businesses, since it effects no change. The existing rules affect small businesses, since such entities comprise a majority of Lottery agents. 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.

OTHER AGENCIES

(a)

NEW JERSEY TURNPIKE AUTHORITY

New Jersey Turnpike Authority Rules

Proposed Readoption: N.J.A.C. 19:9

Notice of Extension of Comment Period

Take notice that the New Jersey Turnpike Authority is extending until September 14, 1988 the period for the submission of written comments on the proposed readoption of its rules, N.J.A.C. 19:9. The proposed readoption was published on June 20, 1988 in the New Jersey Register at 20 N.J.R. 1338(a). Please refer to the proposal for further information.

Interested persons may submit comments by September 14, 1988 to:

Frank B. Holman, Executive Director
New Jersey Turnpike Authority
New Brunswick, New Jersey 08903

(b)

CASINO CONTROL COMMISSION

General Provisions

Access to Information Maintained by Casino Licensees

Proposed New Rules: N.J.A.C. 19:40-2

Notice of Public Hearing

Take notice that the Casino Control Commission will hold a public hearing concerning proposed new rules N.J.A.C. 19:40-2 (access to information maintained by casino licensees) as proposed in the May 16, 1988, New Jersey Register at 20 N.J.R. 1068(a). The comment period for this proposal ended on June 15, 1988, and is not extended by this notice.

The public hearing will begin on September 26, 1988, at 10:00 A.M., at the Commission's offices at 3131 Princeton Pike Office Park, Building No. 5, Lawrenceville, New Jersey.

OTHER AGENCIES

Interested persons are invited to participate through oral argument and are requested to notify the Commission by September 16, 1988, of their intent to do so by contacting:

Steven M. Ingis
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625
(609) 530-4992

(a)

CASINO CONTROL COMMISSION

Gaming Schools

Proposed Readoption: N.J.A.C. 19:44

Authorized By: Casino Control Commission, Walter N. Read,
Chairman.

Authority: N.J.S.A. 5:12-63(c), 69, 70(a) and (b) and 92.

Proposal Number: PRN 1988-408.

Submit comments by September 14, 1988 to:

Mark Neary
Assistant Counsel
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission (hereafter, the "Commission") proposes to readopt N.J.A.C. 19:44 concerning gaming schools. This chapter is scheduled to expire on October 13, 1988.

This chapter originally became effective on December 15, 1977, and was first readopted effective October 13, 1983. The rules contained in this chapter implement the provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) concerning the Commission's responsibility to ensure that persons employed by the casinos in gaming related positions receive adequate training and that the schools which provide this training are operated by qualified individuals in an appropriate manner. (N.J.S.A. 5:12-90(b) and 5:12-92(a)(1) and (b)).

The staffs of the Commission and the Division of Gaming Enforcement have continually reviewed and monitored the viability of these rules since their adoption and readoption. Numerous amendments were proposed at the time of the readoption in 1983. After evaluating the comments and publishing further changes, these extensive amendments became effective in 1984. Among other things, these amendments permitted a casino licensee to offer courses or programs of instruction without the need to have a separate gaming school license; required a gaming school or casino licensee to receive an operation certificate before offering any course of instruction; limited the applicability of certain licensing requirements for gaming school personnel to exclude clerical employees; and altered certain recordkeeping requirements regarding advertising and student files.

In addition, amendments were adopted in 1984 which increased the minimum hours of instruction for craps as a second game, required the maintenance of an inventory of certain gaming equipment and changed the required contents of the school bulletin. Further, amendments in 1987 abolished the requirement that a school's advertising be pre-approved and imposed minimum training hours for the game of minibaccarat.

By adopting these amendments, the Commission has been responsive to changing social and economic conditions, and has exercised its regulatory powers in a flexible manner. Because these rules are continually reviewed, they are presently proposed for readoption without any substantive or technical amendments.

These rules establish standards for the training of many gaming related casino employees and require that such training be conducted by qualified instructors. Without these rules, the conduct of gaming in Atlantic City may suffer due to a lack of adequately trained personnel. Moreover, failure to establish the qualifications of gaming schools and their key personnel would increase the danger that casino gaming in Atlantic City might be influenced by undesirable elements through their participation in the training of prospective casino employees.

PROPOSALS

Social Impact

The continuation of this chapter will have a positive effect on the public and the industry. In order for casino gaming to be conducted fairly and without disruption, casino personnel must be appropriately and professionally trained. These rules help to ensure that existing and prospective casino employees have access to such training. In addition, these rules help to ensure that those conducting the training will not influence existing or prospective casino employees to act unethically, improperly, or even criminally.

Professional and orderly control of casino gaming by properly trained casino personnel promotes public confidence and trust in the credibility of the regulatory process and casino operations. The Legislature has determined such public confidence and trust to be an integral and essential element of the regulation of casino gaming by the State (see N.J.S.A. 5:12-1(b)(6)).

Economic Impact

An ample supply of properly trained professional employees is critical to the economic future of casino gaming in the State. N.J.A.C. 19:44 attempts to ensure that those institutions which train these employees have the qualifications to do so successfully. Were this chapter not readopted, the ability of the industry to find qualified gaming employees might be seriously jeopardized.

In addition, this chapter is of assistance to those who seek to take advantage of employment opportunities in the casino industry by enrolling in gaming schools. The qualification standards established by these rules for gaming schools and their staffs assure students that licensed gaming schools can provide the training necessary for them to meet the relevant job responsibilities.

Regulatory Flexibility Statement

The readoption of this chapter will impose continuing reporting and compliance requirements upon casino gaming schools, many of which would qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Such schools must submit an application for licensure and provide any other information necessary for the regulatory authorities to review their qualifications for licensure; they must provide certain minimum facilities, supplies, and equipment to adequately serve their students; they must purchase insurance adequate to protect the institution and its students and purchase a surety bond adequate to cover the performance of its contractual obligations to its students and to pay all fees imposed by the regulatory authorities; and they must perform various other administrative functions necessary to comply with the rules.

Nevertheless, given the critical importance of well trained employees to the ultimate success of casino gaming in the State, a less extensive regulatory scheme could undermine the casino industry and the benefits which the State derives from that industry. Thus, the Commission has determined that these compliance and reporting requirements remain justified.

Full text of the rules proposed for readoption appear in the New Jersey Administrative Code at N.J.A.C. 19:44.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Jackpot Payouts of Cash

Procedure for Filling Payout Reserve Containers of Slot Machines

Proposed Amendments: N.J.A.C. 19:45-1.40 and 1.41

Authorized By: Casino Control Commission, James Fiandaca,

Acting Executive Secretary.

Authority: N.J.S.A. 5:12-63(c).

Proposal Number: PRN 1988-390.

PROPOSALS

Interested Persons see Inside Front Cover

OTHER AGENCIES

Submit comments by September 14, 1988 to:
Deno R. Marino
Deputy Director—Operations
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN-208
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:45-1.40(b) and 1.41(b) would permit casino licensees to utilize a combined Jackpot Payout/Hopper Fill Slip in order to simplify cashier and accounting procedures.

Social Impact

The proposed amendments would simplify cashier procedures since only one form would be utilized, and it will be utilized in the same fashion creating a more efficient system. There will be no social impact from these amendments.

Economic Impact

There may be a slight economic benefit for casinos from these amendments since one form may prove to be more efficient.

Regulatory Flexibility Statement

These proposed amendments will only affect the operations of casino licensees and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is required.

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

19:45-1.40 Jackpot payouts of cash

(a) (No change.)

(b) Payouts shall be serially prenumbered forms, each series of Payouts shall be used in sequential order, and the series of numbers of all Payouts received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All original and duplicate void Payouts shall be marked "VOID" and shall require the signature of the preparer. **Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.41(b), as approved by the Commission.**

(c)-(j) (No change.)

19:45-1.41 Procedures for filling payout reserve containers of slot machines

(a) (No change.)

(b) Hopper Fills shall be serially prenumbered forms, each series of Hopper Fills shall be used in sequential order, and the series numbers of all Hopper Fills received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All originals and duplicate void Hopper Fills shall be marked "VOID" and shall require the signature of the preparer. **Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.40(b), as approved by the Commission.**

(c)-(k) (No change.)

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Rules for Agency Rulemaking

Use of Appendices

Adopted Amendment: N.J.A.C. 1:30-1.2

Adopted New Rule: N.J.A.C. 1:30-2.8

Proposed: May 4, 1987 at 19 N.J.R. 675(a).

Re-Proposed: May 16, 1988 at 20 N.J.R. 1021(a).

Adopted: June 21, 1988 by Ronald I. Parker, Acting Director,
Office of Administrative Law.

Filed: July 14, 1988 as R.1988 d.383, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14F-5(f), (h), (i).

Effective Date: August 15, 1988.

Expiration Date: February 14, 1991.

Summary of Public Comments and Agency Responses:

The Office of Administrative Law (OAL) initially published a proposal on the use of appendices in the May 4, 1987 New Jersey Register at 19 N.J.R. 675(a). As a result of and in response to comments received on the initial proposal, the OAL amended and republished the appendix rule proposed in the May 16, 1988 Register at 20 N.J.R. 1021(a).

The OAL received one comment on the re-proposal from Sue Savoca at the Department of Environmental Protection. Ms. Savoca was concerned about the effect of the proposed rule on appendices currently found in the New Jersey Administrative Code, some of which would not comply with the new rule on appendices. It was the intention of the OAL to apply the rule only prospectively, so that the effectiveness of existing appendices would not be jeopardized. In order to make this intention more clear, and to avoid potential difficulties in the future, it was decided to add a provision to the rule explaining the impact on existing appendices. Those appendices may remain as they have been codified in the Code, but if the appendices or rules to which they refer are subsequently amended, the appendices and rules which do not comply with the new rule must be amended to do so. In this way, existing appendices can be brought into compliance with the new rule over time. Also, the added provision clarifies the validity of existing appendices and does not put an immediate burden on agencies to modify all existing appendices which do not comply with the new requirements.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*).

1:30-1.2 Definitions

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

... "Appendix" means any collateral material which serves to clarify, illustrate, or explain a rule.

1:30-2.8 Appendices

(a) Appendices shall include only material which clarifies, illustrates or explains a rule. An appendix may include, but is not limited to, the following:

1. Technical requirements or specifications;
2. Instructions;
3. Formulae;
4. Forms;
5. Examples of hypothetical cases;
6. Reprints of regulations, statutes, forms, etc., which originate elsewhere;
7. Lists of offices, their addresses and hours of business; and

8. Analyses or explanatory material regarding a rule, which may contain a rationale or derivation of the rule.

(b) Any material, such as but not limited to, that in (a)1 through 8 above which is non-regulatory may be included in an appendix and cross-referenced in the text of a rule.

(c) Any material, such as, but not limited to, that listed in (a)1 through 8 above which is regulatory may be included in an appendix as long as the appendix is incorporated by reference in the text of a rule. Any amendment to the appendix shall therefore be through rulemaking.

(d) The Office of Administrative Law shall, pursuant to N.J.S.A. 52:14F-5 and N.J.S.A. 52:14B-7(c) and (f), determine:

1. Whether any regulatory provisions found in an Appendix shall be integrated and/or codified into the text of a rule; and

2. The location of an Appendix to a rule in the New Jersey Register and the New Jersey Administrative Code; and

3. Whether an Appendix should be published in the New Jersey Register and the New Jersey Administrative Code.

(e) This section shall be applied prospectively; however, if existing appendices or rules to which they refer are subsequently amended after August 15, 1988, those appendices and rules shall then be conformed to comply with this section.

AGRICULTURE

(b)

DIVISION OF DAIRY INDUSTRY

Sale of Milk in New Container Sizes

Adopted Repeal: N.J.A.C. 2:48-3

Proposed: June 6, 1988 at 20 N.J.R. 1129(a).

Adopted: July 12, 1988 by Woodson W. Moffett, Director,
Division of Dairy Industry.

Filed: July 14, 1988 as R.1988 d.385, **without change**.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Effective Date: August 15, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted repeal can be found in the New Jersey Administrative Code at N.J.A.C. 2:48-3.

BANKING

(c)

DIVISION OF BANKING

Capital Stock Savings Bank; Change in Control Application; Notice; Hearing; Fees

Adopted New Rules: N.J.A.C. 3:6-9

Proposed: October 5, 1987 at 19 N.J.R. 1762(a).

Adopted: July 25, 1988 by Mary Little Parell, Commissioner,
Department of Banking.

Filed: July 25, 1988, as R.1988 d.404, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.5).

Authority: N.J.S.A. 17:1-8, 17:9A-377, 17:9A-383 and P.L. 1987, c.201, section 36.

Effective Date: August 15, 1988.

Expiration Date: March 3, 1991.

Summary of Public Comments and Agency Responses:

The Department of Banking received four public comments in response to the proposed new rules. One comment was received from a law firm conducting business in New Jersey. The other three comments were from a trade association representing savings institutions, a savings bank, and a bank holding company which has a savings bank for a subsidiary.

COMMENT: One commenter raised the question of whether the publication requirements of N.J.S.A. 17:9A-384(a) and N.J.A.C. 3:6-9.4(b) should be extended to include published announcements in certain other publications currently available through banking trade associations of the State.

RESPONSE: Pursuant to P.L. 1987, c.201 (the "Act") and the proposed rules, a person who has filed a notice of application for control of a capital stock savings bank is required to publish a notice of the application in a newspaper of general circulation in a county in which the capital stock savings bank has its principal office. The Department believes that this publication requirement is sufficient to elicit useful information from the community as to whether a proposed change of control should be approved. Therefore, the publication requirement has not been modified to include trade association publications.

COMMENT: The commenters also thought that the published announcement of a notice of application of control should inform the public of the procedures and deadline for objecting to the application.

RESPONSE: The Department agrees with this position as it would fully apprise the public of its rights to object to the application which is the intent of the statute. Therefore, the Department has modified the proposed rules to require the publication of notice to include a statement which informs the public of the procedures and deadlines for objecting to an application.

In addition to the above modification, the Department has also amended the proposed rules to require a copy of the newspaper announcement and a publisher's affidavit of publication to be filed promptly with the Commissioner of Banking. The Department believes this amendment is necessary and in the public's interest for the efficient administration of the Act and the proposed rules as it will provide confirmation that the publication requirements have been met.

These amendments, which constitute non-substantive changes to the proposed rules, are being adopted without opportunity for public comment inasmuch as the requirement found in N.J.A.C. 1:30-4.3 that substantive changes require reproposal is inapplicable. The reason for this is that these amendments neither substantially change what is being prescribed, proscribed or mandated; or enlarge the scope of the proposed rule in any significant way to alter the rights or obligations of the public or any applicant.

COMMENT: One commenter expressed concerns regarding the lack of confidential treatment to portions of the applications which would be considered sensitive by the applicant and cause competitive harm and disadvantage to the acquiring party, if disclosed.

RESPONSE: The Department is cognizant of the dynamics of the financial marketplace and recognizes the need to maintain the confidentiality of records that touch upon trade or business secrets. Therefore, the Commissioner will propose separate rules to meet this concern.

COMMENT: One commenter thought that the proposed new rules should clearly state that any objection should be restricted to the relevant statutory criteria.

RESPONSE: The Department believes that this is unnecessary since the Act clearly states the criteria the Commissioner must consider in determining whether to approve an application. When reviewing an objection or comprehensive objection, the Commissioner will determine if the objection concerns any of the statutory criteria. If the Commissioner finds that this is not the case, the proposed rules allow the objector to file supplementary data, information or material in support of his or her original objection or another objection based on one or more of the statutory criteria. Failing to comply with this request allows the Commissioner to dismiss the objection and/or comprehensive objection.

COMMENT: One commenter asked whether the hearings held on applications proposing to obtain or exercise control of a capital stock savings bank are to be conducted by the Commissioner or the Office of Administrative Law.

RESPONSE: The Commissioner, under the explicit authority of N.J.S.A. 17:9A-384(b) shall hold hearings on all the applications.

COMMENT: A commenter from a savings bank thought that the targeted capital stock savings bank to a proposed acquisition or change of control application should have an absolute right to participate in the hearing.

RESPONSE: Currently, N.J.A.C. 3:6-9.6(a) of the proposed rules provides that "only the applicant and any person who has filed comprehensive objections shall be permitted to participate in the hearing".

The Department believes that the proposed rules have not excluded a targeted savings bank from participating in the hearing. Should the applicant and the targeted savings bank agree to the proposed acquisition or change in control, the applicant may call on representatives of the targeted savings bank at the hearing to present data and material in support of the proposed transaction.

If the targeted savings bank objects to the proposed acquisition or change in control, it may participate in the hearing on the application if it so requests and, if the requirements and procedures set forth in N.J.A.C. 3:6-9.5 of the proposed rules are followed. Those requirements and procedures are designed to increase the amount of timely and useful information available to the public and increase the Department's sources of information with its statutory review of acquisitions and change in control. To allow a targeted savings bank to participate in a hearing without meeting the regulatory requirements would inhibit the Department's ability to carry out the purpose of the Act and would promote unequal treatment for the targeted savings bank as compared to the treatment afforded the public and the applicant.

COMMENT: One commenter recommended that, rather than holding a hearing where formal rules of evidence are followed, the Commissioner restrict the hearing to subject areas regarding which the Department or the parties involved (that is, the applicant and the objector(s) have additional questions). This was being recommended in an effort to save significant hearing time for the parties and the Department. The commenter also suggested that some provisions be made for a prehearing conference to clarify what issues remained to be explained, if any. In this regard, it was also suggested that procedures should be set which allow for a decision to be made on the record should the applicant and objector agree.

RESPONSE: N.J.A.C. 3:6-9.6 of the proposed rules sets forth the hearing procedures for an application. While the hearings will be formal to a degree, provisions have been made in N.J.A.C. 3:6-9.6(e) for the Commissioner to relax or dispense with such requirements or procedures in certain instances. Such instances would be where the Commissioner has determined that any of the requirements or procedures are unwarranted, inapplicable, unreasonable, unnecessary or not required.

The Department believes that the purpose of the hearing will be to try to get additional information to clarify issues that remain unresolved which are related to the application. Defining the purpose of such a hearing in this way and, noting the Commissioner's authority to relax and dispense with some or all of the more formal hearing procedures, if he or she so decides, should allow for any unresolved issues to be clarified in a timely way.

As to whether provision should be made for a prehearing meeting between the applicant and the objector, the Department thinks that the procedures of forwarding comments submitted by the applicant and the objector to each other will be sufficient to clarify any issues that remain to be explained. In addition, before the hearing, particularly when the Commissioner has predetermined to relax and dispense with certain established hearing requirements or procedures, the Department will take all necessary steps to identify all unresolved issues between the applicant, the objector(s) and the Department and, to ensure that the meeting is conducted in an orderly way.

With regard to the comment suggesting that cost saving provisions should be added to allow for a decision to be made on the record in situations where the applicant and the objector(s) agree, the Department responds that the statutes will not permit any such provisions. As previously stated, the Commissioner is required to hold a hearing on all applications. Further, in making a decision on the application, the Commissioner will consider the objector's position and facts, the applicant's position and facts, the record of the hearing, and the Department's own research and analysis.

COMMENT: One commenter suggested that the proposed rules provide an exemption from the approval process of the Act and the proposed rules for all purchases made by a broker-dealer in its capacity as a market maker with securities held by a broker-dealer in its proprietary investment account which exceed the five percent threshold continuing to be subject to the approval requirements of the proposed rules. The commenter observed that if such an exemption was not adopted, imposition of the advance notice and hearing requirements upon market-making purchases would hinder and, perhaps, prevent any broker-dealer from providing an orderly and liquid market for the stock of

a New Jersey savings bank. He felt that such a circumstance would have the likely consequence of defeating the legislative purpose, since an illiquid market may make a capital stock savings bank more susceptible to control by third parties, perhaps in ways which do not trigger the Commissioner's involvement under the Act.

Finally, the proponent for the exemption pointed out that other statutes which regulate changes in control of New Jersey chartered banks and savings and loan associations do not have the same impact on market-making activities because of higher voting control thresholds. Given those higher ownership levels, a broker-dealer would be less likely to become subject to the approval requirements by virtue of its market-making activities in the securities of a New Jersey bank or savings and loan association.

RESPONSE: After consideration of the comments submitted regarding an exemption for market makers, the Department has concluded that an exemption addressing this concern should be part of the proposed rules. Clearly it was not the intent of the legislature in adopting the Act to interfere with the normal business of a market maker and reduce the market liquidity for the securities of savings banks. To do so would adversely affect the public investors in their holding of such securities and, in turn, the savings banks themselves.

Therefore, the proposed rules, as amended, provide for an exemption from the approval process for purchases of less than 10 percent of the voting shares of a capital stock savings bank, if such purchases are made for the sole purpose of making a market in that stock. This explicit percentage limitation was purposely selected to closely parallel the Federal approval requirements for State-chartered banks.

Securities held by a broker-dealer for purposes other than making a market for such stock, the quality of which exceeds the five percent threshold, will continue to be subject to the rules' approval requirements. Any approval granted for the broker-dealer's proprietary investment account would reduce the amount available for its market maker activities to a level that, when combined with the approved amount, would not exceed the less than 10 percent exemption. Any subsequent purchases for the broker-dealer's proprietary investment account would require prior approval of the Commissioner and would further reduce the stock available for the broker-dealer's market maker activities. Further, in instances where the broker-dealer holds less than five percent of the savings bank stock in its proprietary investment account, the market maker exemption would be reduced to the extent of the proprietary investment account holdings. In no event, without prior approval of the Commissioner, could the combined proprietary investment account holdings and market maker holdings of a broker-dealer exceed the less than 10 percent exemption.

Notwithstanding this exemption, a broker-dealer would immediately become subject to the approval requirements of the Act and the proposed rules if the broker-dealer determines that he or she has beneficial ownership, control or power to vote five percent or more of the outstanding voting shares of the capital stock savings bank, and that he or she no longer holds such stock in the ordinary course of his or her business as a market maker for the sole purpose of making a market in that stock.

This exemption, which constitutes a non-substantive change to the proposed rule, is being adopted without opportunity for public comment inasmuch as the requirement found in N.J.A.C. 1:30-4.3 that substantive changes require reproposal is inapplicable. The reason for this is that when a broker-dealer acquires less than 10 percent of a capital stock savings bank for the reasonable business purpose of making a market in that stock, the likelihood is not great that the purposes of the Act or of the rules as originally proposed will be significantly altered or defeated by exempting the broker-dealer from coverage by the Act and the rules.

COMMENT: One comment suggested replacing the word "act" which appeared in the definition of "beneficial owner" with the word "rule".

RESPONSE: The Department agreed to make the change since it is minor in nature as it does not change the nature, scope or impact of the proposed rule, and because the change would clarify the proper authority. However, the term "subchapter" is being used as the replacement because "rule" would refer only to N.J.A.C. 3:6-9.1.

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

SUBCHAPTER 9. CAPITAL STOCK SAVINGS BANK: CHANGE IN CONTROL

3:6-9.1 Definitions

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

"Bank" means a bank as defined in subsection (1) of section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1), a national banking association having its principal office in this State and a bank holding company.

"Bank holding company" means a bank holding company subject to the "Bank Holding Company Act of 1956," 70 Stat.133 (12 U.S.C. §1841 et seq.).

"Beneficial owner":

1. Includes any person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, has or shares:

- i. Voting power which includes the power to vote, or to direct the voting of shares; or
- ii. Investment power which includes the power to dispose, or to direct the disposition of shares;

2. Includes any person who directly or indirectly creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting the person of beneficial ownership of shares or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the provisions of this ***[rule]* subchapter***.

3. Includes any person who has the right to acquire beneficial ownership of the shares as defined herein within 60 days, including, but not limited to, any right to acquire:

- i. Through the exercise of any option, warrant or right;
- ii. Through the conversion of a security;
- iii. Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

iv. Pursuant to the automatic termination of a trust, discretionary account or similar arrangement; except that, any person who acquires a security or power specified in 3i, ii or iii above, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participation in any transaction having such effect or purpose, immediately upon the acquisition shall be deemed to be the beneficial owner of the shares which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to these options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class ***owned*** by any other person;

4. Does not include:

i. Any member of a national securities exchange who holds shares directly or indirectly on behalf of another person solely because the member is the record holder of the securities and, pursuant to the rules of the exchange, may direct the vote of the shares without instruction on other than contested matters or matters that may affect substantially the rights or privileges of the holders of these shares to be voted, but is otherwise precluded by the rules of the exchange from voting without instruction; or

ii. Any person who in the ordinary course of business is a pledgee of securities under a written pledge agreement until the pledgee had taken all formal steps necessary which are required to declare a default and determines that the power to vote or direct a vote or to dispose or to direct the disposition of pledged shares will be exercised, provided that the pledge agreement is bona fide and was not entered into with the purpose or the effect of changing or influencing the control of the issuer, or in connection with any transaction having any such purpose or effect including any transaction subject to this ***[act]* subchapter***; and the pledge agreement prior to default does not grant to the pledgee the power to vote or to direct the vote of the pledged securities, or the power to dispose or to direct the disposition of the pledged securities other than the grant of this power pursuant to a pledged agreement under which credit is extended subject to Regulation T of the Federal Reserve Board, 12

C.F.R. 220, and in which the pledgee is a broker or dealer registered under section 15 of the "Securities and Exchange Act of 1934," 48 Stat. 896 (15 U.S.C. §780); or

iii. Any person engaged in business as an underwriter of securities who acquires shares through participation in good faith in a firm commitment underwriting of shares registered under the "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. §77a et seq.), or under the "Securities Exchange Act of 1934," 48 Stat. 881 (15 U.S.C. §78a et seq.), until the expiration of 40 days after the date of the acquisition:

5. All securities of the same class beneficially owned by a person, regardless of the forms the beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by the person.

"Capital stock savings bank" means any savings bank chartered pursuant to the provisions of P.L. 1982, c.9 (N.J.S.A. 17:9A-8.1 et seq.).

"Commissioner" means the Commissioner of the Department of Banking.

"Control of a capital stock savings bank" includes:

1. Owning, beneficially or otherwise, controlling, or having power to vote five percent or more of the outstanding shares of any class of voting securities of a capital stock savings bank, directly or indirectly, or acting through one or more persons;

2. Controlling in any manner the election of a majority of the directors of a capital stock savings bank;

3. Exercising or having the power to exercise directly or indirectly a controlling influence over the management or policies of a capital stock savings bank; or

4. Conditioning in any manner the transfer of five percent or more of any class of voting securities of a capital stock savings bank;

5. Does not include a director or officer of a capital stock savings bank acting in the capacity of performing his duties or responsibilities of office.

"Market maker" means any dealer acting in the capacity of a block positioner and any dealer who, with respect to the voting stock of a capital stock savings bank, holds him or herself out as being willing to buy and sell such stock for his or her own account on a regular and continuous basis.*

"Person" means an individual, bank, corporation, savings bank, savings and loan association, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any form of entity.

"Voting power" means that a person has or shares, directly or indirectly, through any option, contract, arrangement, understanding, conversion right or relationship, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of voting shares.

3:6-9.2 Filing of application

(a) An application for approval of the following transactions shall be filed with the Commissioner, on forms provided by the Commissioner, by any person:

1. Proposing to obtain or exercise control of a capital stock savings bank;

2. Offering to acquire beneficial ownership or control of any voting shares of a capital stock savings bank, if, after the acquisition, the person would beneficially own or control more than five percent of the then outstanding voting shares of the capital stock savings bank; or

3. Acquiring beneficial ownership or control of any voting shares of a capital stock savings bank, if, after the acquisition, the person would beneficially own or control more than five percent of the then outstanding voting shares of the capital stock savings bank.

***(b) A person who has acquired beneficial ownership, or control or power to vote five percent or more but less than 10 percent of the voting shares of a capital stock savings bank is not subject to the prior approval requirements of (a) above provided that:**

1. Such person is a broker or dealer registered under section 15 of the "Securities and Exchange Act of 1934," (15 U.S.C. §78a et seq.); and

2. Such person has acquired beneficial ownership, or control or power to vote five percent or more but less than 10 percent of such

stock in the ordinary course of his or her business as a market maker for the sole purpose of making a market in that stock. This exemption limitation is reduced by the person's beneficial ownership or control of outstanding voting shares of the capital stock savings bank which are held under the conditions of (a) above except that they represent less than five percent of the outstanding voting shares of the capital stock savings bank; or

3. Such person has acquired beneficial ownership or control or power to vote shares in excess of those percentage amounts approved under the conditions of (a) above but less than 10 percent of such stock in the ordinary course of his or her business as a market maker for the sole purpose of making a market in that stock. This exemption limitation is reduced by the person's beneficial ownership or control of outstanding voting shares of the capital stock savings bank which are held under the conditions of (a) above.

(c) Notwithstanding (b) above, a person shall immediately become subject to this subchapter and shall within 10 days file an application with the Commissioner for approval to retain beneficial ownership or control of the stock if:

1. Such person at the time has beneficial ownership, control or power to vote five percent or more of the outstanding shares of the capital stock savings bank; and

2. Such person has determined that he or she no longer has acquired or holds such stock in the ordinary course of his or her business as a market maker for the sole purpose of making a market in that stock.

(d) For the period beginning with the date on which a person becomes obligated to file an application pursuant to (c) above and ending on the date after the Commissioner's approval is obtained, such person shall not:

1. Vote or direct the voting of the securities which are no longer exempt under (b) above; or

2. Acquire an additional beneficial ownership interest in voting stock of the capital stock savings bank nor of any person controlling such capital stock savings bank.*

3:6-9.3 Notice of application

(a) The Commissioner shall give the following notices after receipt of a completed application:

1. Notification to the applicant of the date the completed application has been filed and the date of the hearing relative to the application. The hearing date shall be within 60 days of the filing date;

2. Notification to the capital stock savings bank that is the subject of the proposed change of control within five days of the filing date that an application has been filed and the date set for a hearing on the application; and

3. Within the same five day period set forth in (a)2 above, the Commissioner shall forward to the capital stock savings bank a copy of the completed application.

3:6-9.4 Public notice of hearing

(a) The applicant shall publish a notice of its filing of a change of control application relative to a stock savings bank within 10 days of the date on which the Commissioner indicates a completed application has been filed. ***Within 10 days thereafter, the applicant shall send a copy of the published notice and the publisher's affidavit of publication to the Commissioner of Banking.***

(b) The notice shall be published in a newspaper of general circulation in the county in which the capital stock savings bank has its principal office.

(c) The notice shall contain:

1. The name of the applicant;

2. The address of the applicant;

3. The name of the capital stock savings bank that is the subject of the change of control application;

4. The address of the principal office of the capital stock savings bank;

5. The date the completed application was filed in the Department;

6. The time, date and place of the scheduled hearing on the application; *[and]*

7. A statement as to the purpose of the application which shall reflect the form of change of control being proposed, as outlined in section 2 of *[Chapter 201,]* P.L. 1987*, c.201*. The notice shall reflect the percentage of the voting shares of the capital stock savings bank presently beneficially owned or controlled and the percentage that would be beneficially owned or controlled if the proposed transaction is approved*[*]**; and

8. This notice shall also include the following statement:

"Any person may object to this application and/or make a request for permission to make an oral presentation at the designated hearing by filing his or her comments in writing with the Commissioner of Banking at the Trenton office (address of the Department of Banking) within 17 days following the date on which the application was filed in the Department. Requests for oral presentation may only be perfected by complying with the provisions of N.J.A.C. 3:6-9.5.*"

3:6-9.5 Objections to the application

(a) Objections to the application must:

1. Be in writing;
2. Disclose the grounds therefor;
3. Be filed in the Department and with the applicant within 17 days of the date on which the application was filed in the Department; and
4. Disclose whether the objector intends to file a comprehensive objection detailing the factual and legal bases of objection.

(b) Each comprehensive objection must:

1. Be filed in the Department and served upon the applicant within 29 days of the date on which the application was filed in the Department;
2. Be on a completed current objection form which may be obtained from the Department;

3. Be supplemented with any and all other documentation the objector wishes the Department to consider; and

4. Be accompanied by the required objection fee and proof of service upon the applicant of a copy of the comprehensive objection.

(c) The applicant, upon receipt of a notice that an objection has been filed, shall within two days of such receipt, forward and deliver copies of the application and all supportive data submitted relative to the application to the objector. Proof of delivery to and receipt by an objector shall be filed immediately with the Department.

(d) The applicant may, within 36 days of the date the application was filed in the Department, file and serve upon the objector a reply to the comprehensive objection. The reply must be limited to the data set forth in the comprehensive objection.

(e) If the Commissioner shall find that the applicant or objector has not filed sufficient data, information or material in support of or in opposition to the application, the applicant or objector may be required to file supplementary data, information or material.

(f) If the objector fails to comply with any of the provisions of this section, the Commissioner may dismiss the objection and/or comprehensive objection.

(g) All papers required to be filed must be received in the Department by the close of business on the date due. If the due date falls on a weekend or holiday then the filing must be effected by the close of business on the next business day.

(h) Both applicant and objector may only raise issues and present information at the hearing if the same issues and information have been affirmatively raised in the application, the objection, or the comprehensive objection. All other matters will be excluded unless the Commissioner rules otherwise.

(i) In any instance where the Commissioner shall determine that the foregoing requirements or procedures of this subchapter shall be unwarranted, inapplicable, unreasonable, unnecessary or not required, the Commissioner may relax or dispense with the requirements or procedures established herein.

3:6-9.6 Hearing procedures

(a) A hearing shall be held on all change of control applications. Only the applicant and any persons who have filed comprehensive objections shall be permitted to participate in the hearing.

(b) Both applicant and objector(s) may raise issues and present information only if same have been affirmatively raised in the appli-

cation, objection or comprehensive objection. All other matters will be excluded unless the Commissioner rules otherwise, and then only for good cause shown.

(c) All studies, reports or the like may be offered only if previously submitted to the Department and other interested persons pursuant to the Commissioner's direction.

(d) The applicant and the objector(s) shall each be permitted to make an opening statement, and may then present witnesses, materials and data. Witnesses shall be sworn and may be cross-examined. Questions may be addressed to the applicant, objector(s) and witnesses by the Commissioner. The applicant and objector(s) may then concisely summarize their positions.

(e) In any instance where the Commissioner shall determine that any of the requirements or procedures of (b), (c) and (d) above are unwarranted, inapplicable, unreasonable, unnecessary or not required, the Commissioner may relax or dispense with such requirements or procedures.

3:6-9.7 Fees

(a) The following fees shall be paid to the Commissioner relative to the application called for in N.J.A.C. 3:6-9.2*[*]**:

1. Filing of application: \$2,500;
2. Filing fee with every comprehensive objection: \$750.00;
3. The applicant and objectors shall bear a pro rata share of the transcript costs relative to the hearing. In the event there are no comprehensive objections filed, the applicant shall bear the costs of the hearing transcript.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Facilities Planning; Approval of Land Acquisition Adopted Amendments: N.J.A.C. 6:22-1.2

Proposed: May 16, 1988 at 20 N.J.R. 1032(a).

Adopted: July 6, 1988 by Saul Cooperman, Commissioner,
Department of Education and Secretary, State Board of
Education.

Filed: July 13, 1988 as R.1988 d.382, **without change**.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:8A-16, 18A:18A-18,
18A:18A-39, 18A:20-36, 18A:33-1 et seq. and 52:27D-130.

Effective Date: August 15, 1988.

Expiration Date: September 3, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from two legal firms.

One firm made four comments about the level of specificity of the site requirements.

COMMENT: The first comment indicated that the deletion of the existing provisions made the site size requirements less objective and not specific enough.

RESPONSE: The new concept of site size requirements provides for sites which are based on educational facility need instead of permitting varying site sizes on the bases of population density.

COMMENT: The second comment stated that the amendments do not have site size requirements which are specific enough.

RESPONSE: The amended rule is very specific in that school sites must have enough actual acreage to provide for the site elements listed in the rule.

COMMENT: The third comment from the same firm stated that the amended rule is a retreat from the requirements of a "large" site as per *Board of Education of the City of South Amboy v. the Bureau of Facility Planning*, 1977 S.L.D. 777, 783.

RESPONSE: The amended rule requires sites to be large enough to provide for the required site elements of the code and to include actual acreage to accommodate the program needs of each school.

COMMENT: The final comment from this firm indicated that the amended site rule is not as objective with regard to site sizes as is N.J.A.C. 6:22-2.5 for instructional space size.

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RESPONSE: The concept of both sections is the same. Program needs dictate the size of the site and instructional spaces.

A second legal firm made two comments.

COMMENT: First, a definition of the maximum capacity of a school building was suggested since the amended rule requires enough site for the expansion of a school to its maximum capacity.

RESPONSE: The maximum capacity of a school building is not set by rule and is considered a policy matter for local boards of education.

COMMENT: The final comment suggested consolidation in written format, instead of repetition, of the required elements of a site in the rule.

RESPONSE: Repetition was used as a means of making clear what the size requirements are for each school type.

Full text of the adoption follows.

6:22-1.2 Approval of land acquisition

(a) No district board of education may conduct a referendum for land acquisition, secure board of school estimate approval, enter into a lease agreement or otherwise acquire land without prior school site approval from the Department of Education, Bureau of Facility Planning Services.

(b) Before any action is taken to purchase or otherwise acquire or lease land, approval of the adequacy of the land from the Department of Education, Bureau of Facility Planning Services is required. To consider the approval of such land, the manager of the Bureau of Facility Planning Services shall be provided with the following:

1. A written request for such approval, which includes a statement indicating the immediate and ultimate proposed uses of the land in terms of grade organization and potential maximum enrollment;

2. A statement from the State Department of Environmental Protection or a local or county water/sewerage agency that the land can be adequately provided with the necessary water and an acceptable sewerage disposal system for the proposed ultimate maximum enrollment and that the project has no potential for a substantially adverse environmental impact;

3. A statement from an architect or engineer indicating that the land to be acquired is suitable for the proposed use;

4. A complete plot plan of the land to be acquired, showing topographical and contour lines, all adjacent properties and access roads. The acreage and dimensions of the tract proposed for acquisition shall be included as per the application of the standards for minimum acceptable school site sizes in (c) below and on it shall be shown the intended location of the school and a layout of the locations of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set back zones, and parking areas;

5. A map of the school district showing the location of the land and the location of existing schools in the district;

6. Recommendations of the county superintendent of schools based on the requirements specified in this subchapter;

7. A map showing the attendance area to be served by the school and the number of pupils who reside therein;

8. If existing buildings are located on the land to be acquired, the intended use and/or disposition of these buildings shall be indicated. Any building to be acquired and used must comply with the State Uniform Construction Code and all procedures and rules of the State Board of Education which apply to the construction of a new building;

9. Data regarding the impact of such a facility upon racial balance within the district's public schools; and

10. Recommendations of the local planning board in the municipality which has an approved master plan or portion thereof as required by N.J.S.A. 40:55D-31, 18A:18-49 and 18A:18A-16.

(c) School site sizes shall be directly related to the acreage required for the structures and activities to be situated thereon. Except where specifically noted, the acres shall be considered for single use. Only where specifically noted can the acres be designated for multiple use, for example, using the same acres for sports which occur at different times of the year. School sites shall include the following:

1. An elementary school site shall have sufficient acreage for:

- i. The placement of the school building;
- ii. Expansion of the school building to its maximum capacity;

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iii. The placement of all other structures such as storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground, which is to be placed thereon;

iv. Basic all-purpose play and recreation field(s);

v. Walkways and roadways on which people and vehicles traverse the site;

vi. Public and service access roads onto the site including, where warranted, a one-way school bus road of 30 feet width or a two-way road of 36 feet width, a school bus drop-off area, and 18 feet wide lanes for fire apparatus;

vii. The provision for fire apparatus of a 30 feet wide access around the entire building; and

viii. The provision for the building to be set back and for buffer zones as required by local and State codes.

2. An elementary school site may include the following, for which sufficient acreage must be provided:

i. Parking for faculty, staff and the public;

ii. Landscaping and aesthetics;

iii. Community-use facilities such as tennis courts, "tot lots" and basketball courts;

iv. Other structures or activities required by the educational program; and

v. A separate kindergarten play area.

3. A junior high or middle school shall have sufficient acreage for the following:

i. The placement of the school building;

ii. Expansion of the building to its maximum capacity;

iii. The placement of all other structures such as storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground which is to be placed thereon;

iv. Basic multi-purpose physical education and recreation field(s);

v. Walkways and roadways on which people and vehicles traverse the site;

vi. Public and service access roads onto the site including, where warranted, a one-way school bus road of 30 feet width and a two-way road of 36 feet width, a school bus drop off area, and 18 feet wide lanes for fire apparatus;

vii. A 30 feet wide access around the entire building; and

viii. The provision for the building to be set back and for buffer zones as required by local and State codes.

4. A junior high or middle school site may include the following for which sufficient acreage must be provided:

i. Parking for faculty, staff and the public;

ii. Landscaping and aesthetics;

iii. Community-use facilities such as tennis courts and basketball courts;

iv. Athletic fields with proper geographical orientation for practice and competition in selected sports such as football, soccer, baseball, softball, field hockey. Multi-use of fields may be possible and are permitted here; and

v. Spectator facilities as related to the sports activities.

5. A senior high or junior-senior high school shall have sufficient acreage for the following:

i. The placement of the school building;

ii. Expansion of the building to its maximum capacity;

iii. The placement of all other structures such as greenhouses, storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground, which is to be placed thereon;

iv. Basic multi-purpose physical education and recreation field(s);

v. Walkways and roadways on which people and vehicles traverse the site;

vi. Public and service access roads onto the site including, where warranted, a one-way school bus road of 30 feet width and a two-way road of 36 feet width, a school bus dropoff area, and 18 feet wide lanes for fire apparatus;

vii. A 30 feet wide access around the entire school; and

viii. The provision for the building to be set back and for buffer zones as required by local and State codes.

6. A senior high or junior-senior high school site may include the following for which sufficient acreage must be provided:

i. Parking for faculty, staff, students and the public;

- ii. An area provided for landscaping and aesthetics;
 - iii. Community-use facilities such as tennis courts and basketball courts;
 - iv. Athletic fields and facilities for practice and competition in selected sports such as track and field, football, soccer, baseball, softball, and field hockey, and practice and competition related to march band activities. Multi-use fields may be possible and are permitted here; and
 - v. Spectator facilities as related to the sports activities.
- (d) If after 18 months from the date of approval of a school site by the Bureau, a district board of education does not have authority to acquire the site by bond referendum, an approved lease-purchase agreement or other statutory means, the district board of education shall re-submit the information required in (b) above for consideration and approval before any action is taken to conduct a bond referendum, or purchase, lease-purchase or otherwise acquire the site.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Organization of the Department of Environmental Protection

Adopted New Rule: N.J.A.C. 7:1-1.1

Proposed: Exempt pursuant to N.J.S.A. 52:14B-4(b).
 Adopted: July 21, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
 Filed: July 25, 1988 as R.1988 d.403.
 Authority: N.J.S.A. 13:1B-3, 13:1D-2, and 52:14B-4(b) (exempt organizational rule).
 DEP Docket Number: 032-88-07.
 Effective Date: July 25, 1988.
 Expiration Date: September 16, 1990.

Summary

This rule describes the organization of the Department of Environmental Protection. The rule is intended to inform the public of the existence and the organizational structure of the Department of Environmental Protection. This organizational rule is exempt from the notice and hearing requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and, therefore, there was no public comment regarding this rule. It becomes effective upon filing with the Office of Administrative Law pursuant to N.J.S.A. 52:14B-4(b).

The Department of Environmental Protection is a designated executive agency formed in 1970 out of the reorganization of the Department of Conservation and Economic Development, N.J.S.A. 13:1D-1. In 1970, five divisions within the Department of Conservation and Economic Development combined with one division from the Department of Health to form the new Department of Environmental Protection, N.J.S.A. 13:1D-18.

The five divisions which originated in the Department of Conservation and Economic Development were: the Division of Fish and Game; the Division of Shell Fisheries; the Division of Resource Development; the Division of Parks, Forestry and Recreation; and the Division of Water Policy and Supply. The Division of Fish and Game, the Division of Shell Fisheries, the Division of Resource Development and the Division of Parks, Forestry and Recreation have since been reorganized and renamed under the Assistant Commissioner for Natural Resources. The functions of the Division of Water Policy and Supply and the Department of Health's former Division of Clean Air and Water have been transferred to the current Division of Water Resources and Division of Environmental Quality under the Assistant Commissioner for Environmental Management and Control.

Full text of the adoption follows.

SUBCHAPTER 1. GENERAL PROVISIONS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

7:1-1.1 Organization of the Department of Environmental Protection

(a) The Department consists of a Commissioner of Environmental Protection and such divisions, offices and other organizational units as allowed by law and as necessary to carry out the Department's statutory mandates.

(b) The Deputy Commissioner serves as Acting Commissioner during the Commissioner's absence or a vacancy in the office.

(c) The following subunits exist under the Deputy Commissioner:

1. Division of Science and Research;
2. Office of Planning Group; and
3. Office of Public Participation.

(d) The Department has five Assistant Commissioners, as follows:

1. Hazardous Waste Management;
2. Regulatory and Governmental Affairs;
3. Environmental Management and Control;
4. Natural Resources; and
5. Management and Budget.

(e) The following subunits exist under the Assistant Commissioner for Hazardous Waste Management:

1. Division of Hazardous Waste Management; and
2. Division of Hazardous Site Mitigation.

(f) The following subunits exist under the Assistant Commissioner for Regulatory and Governmental Affairs:

1. Division of Regulatory Affairs;
2. Environmental Claims Administration; and
3. Legislation and Private Sector Liaison.

(g) The following subunits exist under the Assistant Commissioner for Environmental Management and Control:

1. Division of Water Resources;
2. Division of Environmental Quality; and
3. Division of Solid Waste Management.

(h) The following subunits exist under the Assistant Commissioner for Natural Resources:

1. Division of Parks and Forestry;
2. Division of Green Acres and Recreation;
3. Division of Fish, Game and Wildlife; and
4. Division of Coastal Resources.

(i) The following subunits exist under the Assistant Commissioner for Management and Budget:

1. Division of Personnel; and
2. Division of Financial Management, Planning and General Services.

(b)

DIVISION OF COASTAL RESOURCES

Coastal Resource and Development Hudson River Waterfront Development

Adopted Amendments: 7:7E-3.41, 7.14 and 8.11

Adopted New Rule: 7:7E-3.46

Proposed: January 19, 1988 at 20 N.J.R. 139(a).
 Adopted: June 23, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
 Filed: June 24, 1988 as R.1988 d.338, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 12:5-1 et seq., 13:1D-1 et seq.

DEP Docket Number: 070-87-12.

Effective Date: August 15, 1988.

Expiration Date: July 24, 1990.

Summary of Public Comments and Agency Responses:

The proposal was published on January 19, 1988. The New Jersey Department of Environmental Protection (hereinafter "the Department")

or "DEP") conducted public hearings concerning the proposal on February 10, 1988, in Jersey City, New Jersey at 10:00 A.M. and in Weehawken, New Jersey at 7:00 P.M. The hearings were attended by approximately 125 people. Oral and written comments were received from approximately 300 people. Commenters included Federal, State and local officials as well as private citizens. Comments were also received from representatives of government agencies, development and realty industry representatives, and environmental, recreational, and community groups.

All comments received are on file at the Office of Regulatory Services, NJDEP, 401 East State Street, 7th Floor, Trenton, New Jersey.

Summaries of the issues relevant to the proposal along with DEP's responses, are provided below. Additional comments not relevant to the proposal were also received during this comment period. Individual responses will be provided to these comments.

General Comments

COMMENT: Several commenters questioned the Department's legal authority to promulgate the proposed rules. Some commenters believed the rules "required the Department to perform illegal exactions of private property". One commenter stated that the proposed rules are vague and constitute a "taking" of private property. He further argued that DEP did not have the statutory authority to require developers to "develop, maintain and manage" their portion of the walkway as a condition of a permit and that the rules regarding upland development have no support in the administrative record.

RESPONSE: The Waterfront Development Law, N.J.S.A. 12:5-1 et seq., empowers and requires the Department to regulate development in the "waterfront, the waterways and the upland adjacent thereto." The right to physical and visual access to the waterfront and the waterways is a valid public resource as well as a property right that belongs to all the people of the State. The public trust doctrine, which has been enunciated both by the New Jersey and Federal Supreme Courts, requires that tidal water bodies be accessible to the general public for navigation, fishing and recreation. The rules are intended to provide the means of preserving such access over tidal lands and those adjacent uplands over which the Department has jurisdiction.

COMMENT: One commenter stated that the proposal did not constitute "Routine Program Implementation" under the Federal Coastal Zone Management Act as specified in 15 CFR §923.84 and therefore should be considered a program amendment. The commenter suggested that the Federal Office of Coastal Zone Management, within the National Oceanic and Atmospheric Administration (NOAA), be requested to review the document and provide an official determination as to the classification of the proposed rule change.

RESPONSE: The Department will submit the rule to NOAA's Office of Ocean and Coastal Resource Management for its review and take any action necessary to assure that these modifications will be included in the State's Coastal Zone Management program. NOAA generally reviews such changes after their adoption by a state.

COMMENT: Several commenters expressed concern that DEP would be circumventing local planning processes by adopting the proposal that establishes land controls within municipal boundaries. One commenter stated that townships are empowered to make their own land use decisions under the Municipal Land Use Law. Another commenter stated that the design, density and height of projects should be determined by the municipalities.

RESPONSE: The Department agrees that individual townships are empowered to make land use decisions under the Municipal Land Use Law (N.J.S.A. 10:55D-1 et seq.). It has long been established, however, that Statewide and regional policies are relevant to zoning decisions because municipalities exercising zoning power do so only through delegation of the State's authority. The welfare of all the State's citizens must be considered, not just the interests of the inhabitants in a particular locality.

Notwithstanding the authority given to municipalities by the Municipal Land Use Law, the Waterfront Development Law (N.J.S.A. 12:5-1 et seq.) authorizes and requires the Department of Environmental Protection to regulate development on uplands adjacent to navigable waters or streams as well as development which is intended waterward of the mean high water line.

In other similar land use regulatory programs, the Department's authority to oversee and plan land development in a specific region has been recognized along with its right "to utilize, in performing that statutory function, all relevant considerations of enlightened public policy". See the Assembly Housing Committee Statement Assembly Numbers 2203 and 720 (accompanying P.L. 1986, c.145.)

COMMENT: Several commenters recommended that an extensive economic analysis of the costs and benefits of this proposal be performed before the proposal is considered further. It was suggested that this analysis consider the costs of enacting the regulation, particularly in the areas of employment, affordable housing and the effect on local economies.

RESPONSE: Upon adoption, the Department has deleted from the proposed new rule at N.J.A.C. 7:7E-3.46(c), specific language that would address reviews and limit upland building heights, and will not undertake a detailed economic impact analysis of the deleted provisions at this time. The adoption has also been modified at N.J.A.C. 7:7E-7.14 to keep it consistent with N.J.A.C. 7:7E-3.46(c) as modified. The regionally important waterfront resources will instead be protected through the application of existing Coastal Resources and Development policies on a case-by-case basis. The Department will consider economic impacts as those issues arise with individual decisions.

The provision in the proposal addressing pier development (N.J.A.C. 7:7E-3.45(c)) would remove the 60 foot maximum height limit while imposing public access requirements that are linked, by formula, to average building height. The Department believes that the rule makes redevelopment of piers more economically viable for developers while also providing improved recreational opportunities.

COMMENT: One agency noted that the proposal would establish only two types of uses, industrial and non-industrial. A representative of this agency recommends that an additional category, water-dependent public transportation facilities, be included in the adoption. This agency was also concerned about constraints on emergency evacuation from piers and on height restrictions to industrial water-dependent structures, such as cranes.

RESPONSE: N.J.A.C. 7:7E-3.46(b) has been rewritten to state that strict compliance with the rules will not be required of transportation and cargo handling facilities. The adoption does not restrict emergency vehicles from entry onto the public access corridors of piers (N.J.A.C. 7:7E-3.46(e)3).

COMMENT: One individual suggested that the new rule include a "grandfather" clause to exempt projects with preliminary municipal approvals from having to comply with the regulation.

RESPONSE: Projects for which Waterfront Development Permit applications are complete for review as of the effective date of the adoption do not have to comply with the adopted rule. Preliminary municipal approval does not, by itself, give any project similar exempt status.

Definitions

COMMENT: A few commenters requested that the Department provide definitions for some of the terms used in the proposed rule. The terms and the Department's response are as follows:

(a) "Extraordinary views" and "Palisades"

RESPONSE: The terms have been deleted on adoption.

(b) "Mean High Tide Line"

RESPONSE: References to "Mean High Tide" have been replaced with "Mean High Water" which is used throughout the Rules on Coastal Resources and Development (N.J.A.C. 7:7E) and is in "the arithmetic average of the high water heights observed over a specific 18.6 year Metonic Cycle, at the end of which the phases of the moon recur in the same order and on the same days as in the preceding cycle," that is, the average height of high tide.

(c) "Bulk"

RESPONSE: The word "bulk," used at N.J.A.C. 7:7E-3.46(c)4, was not defined in the proposal as its plain meaning is generally defined as the volume of an object or its size in three dimensions.

(d) There was also a request for clarification of the definitions of the following terms: "average building height", "pier deck level", and "deck level".

RESPONSE: The definition of "average building height" at N.J.A.C. 7:7E-3.46(a)1 has been revised and "pier deck level" is now defined at N.J.A.C. 7:7E-3.46(a)5. Additionally a definition of the term "walkway" has been included in the adoption at N.J.A.C. 7:7E-3.46(a) so that its meaning is clear.

(e) The term, "Hudson River Waterfront Special Area" would more accurately describe the area if changed to "Hudson River Waterfront Area" (N.J.A.C. 7:7E-3.46(a)4).

RESPONSE: The definition has been rewritten upon adoption.

(f) One commenter requested that "mid-point of sloped roof" be changed to "highest point of construction".

RESPONSE: Developers are allowed to use the "midpoint of a sloped roof" rather than the "highest point of construction" as the standard for

calculations of Average Building Height to compensate for diminished usable space on the top floor of buildings with sloped roofs, and to encourage more visually interesting roof lines. For these reasons, the Department is not making the requested change.

(g) A commenter suggested that "where piers are less than 400 feet apart, the heights as required by this section" be changed to "the heights allowed by this section".

RESPONSE: The paragraph referred to has been rewritten (N.J.A.C. 7:7E-3.46(d)8).

Upland Construction

COMMENT: Over two hundred commenters submitted statements supporting the protection of the view planes afforded by the Lincoln Tunnel Helix, Kings Bluff, Castle Point and the Palisades.

On the other hand, several commenters were opposed to restriction on any development that would block the Lincoln Tunnel Helix view plane. They believed local zoning ordinances and the cooperation of developers would protect a significant portion of the view. They also stated that the view of commuters into Manhattan should not be a consideration over local waterfront development processes and needs. A number of people supported the concept of the proposal, but suggested specific changes in language.

RESPONSE: The Department acknowledges the comments in support of these provisions in the proposal. However, based on hearing testimony, and review of the existing local zoning ordinances, and current State policies, the Department has concluded that the proposed policy concerning view protection was too specific to be appropriate to the varied sites on the waterfront. In addition, the Department has determined that its existing policies on high rise structures (N.J.A.C. 7:7E-7.14) and scenic resources and design (N.J.A.C. 7:7E-8.12) provide the Department with adequate discretion to consider the potential impact of proposed development on significant views on a case by case basis. Accordingly, the Department is not adopting this part of the proposal (N.J.A.C. 7:7E-3.46(d)9).

COMMENT: Several commenters criticized the application of the 60 degree upland building height restriction. They believe that the restriction does not allow designers to adequately address the mix of variables that need to be considered in providing desirable development. They further state that current design plans would result in less shadowing on the waterfront than adherence to the rule would provide.

RESPONSE: The Department has determined that its existing policy on high-rise structures (N.J.A.C. 7:7E-7.14) is sufficient to regulate upland development that will ensure the availability of light and air (openness) resources on the waterfront. The Department has deleted the 60 degree restriction from the proposal (N.J.A.C. 7:7E-3.46(c)2).

Low-lying locations

COMMENT: Many commenters supported the concept of protecting views of the Hudson and the Manhattan skyline from low-lying locations and public parks along the New Jersey waterfront.

RESPONSE: The Department supports the concept of protecting view corridors from low-lying locations along the Hudson waterfront. Current State rules, such as the scenic resources and high rise structures rule at N.J.A.C. 7:7E-7.14, encourage developers to protect viewsheds. In addition, DEP has required public access on piers and along the Hudson waterfront to ensure numerous opportunities for low-lying views of the river and the Manhattan skyline. DEP will consider views from public parks in the review of specific proposed developments.

Development on Piers

COMMENT: Many individuals expressed support for maintaining building height restrictions on pier development, and further suggested that the rules explicitly state a maximum allowable height. These individuals were primarily concerned with protecting views of the Hudson, maintaining open space areas, and preventing increased air pollution and a significant strain on local support services.

RESPONSE: A primary objective of this proposal is to give developers flexibility in the massing and heights of buildings on piers by removing the 60 foot limit on building height imposed by the high rise structures policy (N.J.A.C. 7:7E-7.14). In exchange for this flexibility, developers are required to dedicate areas of pier deck to public open space, with more area required for taller buildings. Given the above, the Department believes that reinstating an explicit limit to building height would be counterproductive. Therefore, the provision, at N.J.A.C. 7:7E-7.14, remains unchanged upon adoption as to a height restriction.

COMMENT: One commenter recommended that the proposed new rule contain factors that would encourage taller buildings on piers to be concentrated around major mass transportation facilities. The following

factors were suggested to be used in permitting increased heights: proximity to mass transportation facilities, quantity and quality of associated public access, and enhanced views and/or view corridors created by development.

RESPONSE: The Department does not agree that taller buildings should be encouraged on piers around major mass transportation facilities, as no benefit would accrue to offset the diminished public access to the waterfront, either visual or actual.

COMMENT: One commenter recommended that the proposed rules include an incentive for developers to restore piers that otherwise would be removed, thereby providing additional public open space and maintaining the piers' historic significance. This respondent stated that a bonus of 10 to 15 feet would be enough of an economic incentive to insure that developers restore rather than demolish piers.

RESPONSE: The Department disagrees. The Department already allows the reuse of existing piers as an exception to the policy that discourages construction of decks and piers over water areas, and permits the use or reuse of existing structures regardless of their conformance with many of the policy considerations that attach to the approval process for new piers.

COMMENT: One commenter suggested that the rule include a provision requiring developers to provide "breaks" in building heights to reduce mass and provide a sense of openness.

RESPONSE: The Department agrees that "breaks" in building heights may provide a sense of openness; however, DEP believes that the proposed rule encourages developers to vary building heights without including a specific break requirement. The height restriction is based upon an average height and not a maximum height allowance. The average building height formula will allow developers to vary the profile of their building heights without a loss in density.

COMMENT: One commenter questioned whether the proposed pier height requirements applied to reconfigured piers.

RESPONSE: The adopted rule applies to all piers including reconfigured piers.

COMMENT: Two commenters stated that the proposal conflicts with DEP's harbor cleanup policy concerning platforms. The cleanup and drift removal program includes a policy allowing adjoining landowners to rebuild piers or create platforms on piles provided the area of same does not exceed the area of pier removed. These individuals recommend that the proposal be amended to provide that platform area be treated as land rather than pier, consistent with the harbor cleanup policy.

RESPONSE: The Special Urban Areas Policy (N.J.A.C. 7:7E-3.41) allows the replacement of piers removed under the harbor cleanup program with new structures provided that the water coverage is not increased and fisheries resources are not adversely impacted. The Department acknowledges that the criteria of the new rule, written with piers in mind, do not work as well with platforms and has added flexibility by considering these criteria, to be used as guidelines as applied to platforms. They will be used as guidance on an individual case basis for permit approval. See N.J.A.C. 7:7E-3.46(d).

COMMENT: Several commenters suggested that the Department prohibit residential structures on the piers.

RESPONSE: The Department disagrees. Such a prohibition would be contrary to the special urban areas policy, N.J.A.C. 7:7E-3.41, that fosters the restoration of the economic and social viability of these areas. This policy already permits residential structures on piers. The new policy effected by this adoption does not change this existing policy with regard to housing and building heights, and is not intended to determine allowable uses on a pier.

COMMENT: One organization requested that DEP specifically state in the rules that parking is prohibited at the pier deck level.

RESPONSE: The Department disagrees. Parking will be allowed at the pier deck level; however, pedestrians will have the right-of-way. Parking will not be allowed on the pier plaza or on the Hudson Waterfront Walkway as outlined in N.J.A.C. 7:7E-3.46(e)3.

COMMENT: A few commenters were concerned about the potential loss of recreational opportunities along the riverfront that would result with an increase in development.

RESPONSE: The Department believes there will be a net gain in recreational opportunities with development. The proposed policy mandates that a portion of each site be dedicated to usable public open space, thereby increasing significant recreational opportunities.

COMMENT: A few commenters believe that the proposed rules are too rigid, and do not provide designers and planners with an opportunity to use their expertise in creating open space. One of these respondents stressed that a public walkway is not always the most ideal use of public

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space, and suggested that the rules contain a requirement based on a minimum amount of square footage dedicated to open space, and associated standards, rather than prescribing an exact design.

RESPONSE: The Department agrees that some flexibility should be allowed in the shape of public open space areas on the ends of piers. The proposed new rule has been revised upon adoption to reflect this (See N.J.A.C. 7:7E-3.46(d)1v).

This change in the rule as proposed provides for a contiguous reconfiguration, at the developer's option, of a portion of the required space, while retaining the same area of open public space. The developer is also allowed discretion to elevate a portion of the open space at the pier ends, as long as easy access between the elevated and pier deck level open spaces is provided for both able bodied and disabled persons.

The Department declines at the present time, but will consider for future amendment, to alter the proposed walkway requirements in N.J.A.C. 7:7E-3.46(d)1vi. However, the Department has incorporated a requirement for the provision of access for the disabled between the walkways and open space areas at both ends of the pier, so that all segments of the State's populace may enjoy the waterfront area. In addition, the Department has deleted proposed Figure 3, which illustrated the walkway requirements as unnecessary, since it was merely and perhaps too simplistically illustrative.

COMMENT: One commenter asked how the open space rule applies to pier ends when the water end of the pier has a short building, and the land end has a tall structure.

RESPONSE: In this situation, the adopted amendments and new rule require a developer to take an average of the building heights to determine the open space setback requirement. A portion of both ends of the pier shall remain as open space.

Public Access and Open Space requirements

COMMENT: Many commenters supported the walkway and open space requirements. In general, they believe that the walkway, in conjunction with open space within a development, would provide an enjoyable recreational opportunity.

RESPONSE: The Department acknowledges these comments in support of the walkway and open space management.

COMMENT: Several developers and land owners expressed concern over the proposed requirement to maintain and manage their portion of the proposed walkway. One individual suggested that the maintenance costs be borne by the public since the walkway would be a public facility.

Another suggested that the requirement to "manage and maintain" the walkway was a tax on real property rather than a legitimate regulation.

RESPONSE: The Department disagrees with the suggestion that the Hudson Waterfront Walkway management and costs be borne by the public. The walkway is seen by the Department as a legitimate action to preserve the public's right of access to State tidelands as embodied in common law and the public trust doctrine, and is, therefore, a legitimate permit requirement. The right of private development of lands along the water's edge includes the responsibility to make available and maintain the public's right of access to and along the waterfront. The Department has met, however, with representatives of some developers, municipalities and citizen groups to begin to review alternate long range management and maintenance options for the walkway and will discuss these alternatives with representatives of the affected developers, municipalities and citizens' groups.

COMMENT: One individual recommended that the width of the walkway be increased to 30 feet, and adjusted accordingly for taller buildings, to provide a suitable amount of open space.

RESPONSE: The Department agrees that the width of the walkway should be a minimum of 30 feet as required by The Hudson Waterfront Walkway Plan and Design Guidelines, with exceptions as noted in that report. The adoption requires developers to conform with these guidelines. While the walkway provision contains no requirement that it be wider as the building height increases, the provisions of the adopted new rule, at N.J.A.C. 7:7E-3.46(d), require that the public areas at the pier ends be enlarged, according to the formula, as the building height increases.

COMMENT: Several commenters were concerned over the issue of liability raised by the walkway requirements. One individual commented that it was unclear whether the proposed rule includes provisions for security and insurance, or whether these expenses would be paid exclusively by the developer.

Another commenter stated that the costs associated with the construction, maintenance and liability of a walkway would be prohibitively

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expensive. This individual believes that developers would choose to destroy existing piers rather than building an extensive walkway.

RESPONSE: The adopted new rule contains no provision for security and insurance. While the provision of public access and public open space on piers will entail costs associated with construction, maintenance and liability, the Department believes that these costs will be borne across-the-board by all pier developers and represent typical costs associated with the provision of public access. The requirement for public access on redeveloped piers is consistent with the public trust doctrine in that these piers are constructed over riparian lands. The Department continues to support proposed legislation that would limit liability of land owners who open their land to public access as a result of a DEP permit.

In considering whether to demolish an existing pier or to renovate it and build a structure upon it, the developer will evaluate these factors as well as others.

COMMENT: A few commenters remarked that the 24-hour requirement for access to the walkway was too extensive, and could result in increased security costs at existing industrial facilities. One person suggested that the walkway be closed from midnight to 6:00 A.M.

RESPONSE: The Department has modified the proposed new rule, at N.J.A.C. 7:7E-3.46(e)1, to reflect these concerns. The walkway will be open 24 hours a day; however, public access to piers may be closed late at night.

COMMENT: One commenter requested clarification of how the public access, open space, and walkway requirements would apply to piers with existing structures.

RESPONSE: Redevelopment of existing structures on piers must comply with all requirements as feasible. For example, a developer would not be required to demolish portions of an existing structure to create pier end plazas that meet the specific requirements of the new rule (N.J.A.C. 7:7E-3.46(d)), but instead will be required to dedicate any open space available at pier ends, outside of existing structures, to public access.

COMMENT: One organization suggested that easements be purchased from developers prior to construction, in order to secure property for the walkway. They also recommend, along with other commenters, that a public or quasi-public authority manage the walkway, and that the State assist individuals with insurance and security costs of protecting their portion of a walkway.

RESPONSE: The Department is implementing the Hudson Waterfront Walkway through the waterfront development permit process. Easements or deed restrictions are placed on each privately developed section of the walkway as a condition of the waterfront development permit. At some future date, the Department may move to secure easements across waterfront properties not scheduled for redevelopment; however, such gap properties represent an exception to the rule. The establishment of a land trust to deal with long term management issues is being considered. It is conceivable that a land trust could hold Walkway easements as well as negotiate easements within gap sites.

COMMENT: One organization recommended that all public access corridors and open space set-back components be recorded with the deed to the property and filed with the County Clerk.

RESPONSE: The Department agrees. Such requirements are imposed on an individual case basis as part of the permit process.

Agency Initiated Changes: Editorial changes have been made to the proposed amendments and new rule for the purpose of clarity.

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

7:7E-3.41 Special urban areas

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

(c) Housing, hotels, motels, and mixed use development which is consistent with the Public Access Resource Policy (7:7E-8.11) and the Hudson River Waterfront Policy (7:7E-3.46) where applicable, including those provisions relating to fishing access as appropriate, are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1.-3. (No change.)

(d)-(e) (No change.)

7:7E-3.46 Hudson River Waterfront Area

(a) The following terms, when used in this section, shall have the following meanings:

1. "Average building height" is defined as the mean height of [a building's] the roof line of a building on a pier measured from the pier deck level to the top of the parapet or the midpoint of a sloped roof above pier deck level [, when viewed in profile along the longitudinal axis of the pier, above base flood elevation].*

*[2. "Base flood elevation" means the water surface elevation of a 100-year flood as defined by the Federal Emergency Management Agency.

3. "Distal end of the pier" means the end of the pier at its point of attachment to the upland.*

*[4.]**2.* "The Hudson River Waterfront [Special] Area" [means all lands along the Hudson River, the Kill Van Kull and the Upper New York Bay, subject to the Waterfront Development Law, N.J.S.A. 12:5-1 et seq. The Hudson River Special Area]* extends from the George Washington Bridge in Fort Lee, Bergen County to the Bayonne Bridge in Bayonne, Hudson County, inclusive of all land within* the municipalities of Bayonne, Jersey City, Hoboken, Weehawken, West New York, Guttenberg, North Bergen, Edgewater and Fort Lee *subject to the Waterfront Development Law*.

*3. "Landward end of pier" means the end of a pier at its point of attachment to the upland.

4. "Pier" means a pile supported, decked structure extending from upland over water. The longest axis of a pier is generally perpendicular to the shoreline. See "platform" below.*

[5. "Proximal end of the pier" means the end of the pier at its point of attachment to the upland].

*5. "Pier deck level" means the lowest deck surface that is at or above base flood elevation (the water surface elevation of a 100-year flood as defined by the Federal Emergency Management Agency).

6. "Platform" means a pile supported, decked structure extending from upland over water. The longest axis of a platform is generally parallel to the shoreline. See "pier" above.

7. "Walkway" means areas along the waterfront, including areas on piers, that are devoted to activities by the public such as but not limited to walking, jogging and bicycle riding.

8. "Waterward end of pier" means the end of a pier most distant from its point of attachment to the upland.*

(b) [Development]* Non-industrial development* within the Hudson River Waterfront Area shall conform with the criteria as set forth in [this section]* (d) below,* which govern allowable building height, massing and public access. [Hudson River Waterfront Area development shall also be consistent with all other applicable Coastal Resource and Development Policies.]* Industrial development, including water dependent transportation (passenger and vehicular) and cargo handling facilities, shall conform with the criteria to the extent practical consistent with public safety and the operational requirements of such facilities.*

*[(c) Standards relevant to building in the upland portions of this area are as follows:

1. Where upland development is proposed in front of the Palisades, Kings Bluff, Castle Point, the Lincoln Tunnel helix, and any other area determined to provide extraordinary views of the river, the Statue of Liberty and/or the New York skyline, no structure shall be permitted to block sight lines, measured from six feet above the area providing the view to the center of the Hudson River at mean high tide (Figure 1).

2. For locations other than these specified at (c)1 above, upland building height shall not pierce the surface determined by lines that intersect the Mean High Water Line, and extend away from the river and upward at an angle of 60 degrees from the horizontal along paths perpendicular to the general flow of the river. The general flow of the river is along a line parallel to the New Jersey-New York state boundary waterward of the development site.

3. The placement of upland structures over 60 feet in height, when measured from the pre-development ground plane to the top of parapet or the mid-point of a sloped roof, within 50 feet of the mean high tide line, is prohibited (Figure 2)

4. This subsection shall not apply to the redevelopment of existing upland structures, providing redevelopment does not increase the bulk or height of the existing structure.]*

*[(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal Resource and Development Policies with particular attention given to N.J.A.C. 7:7E-3.38 Public open space, N.J.A.C. 7:7E-3.39 Special hazards areas, N.J.A.C. 7:7E-3.41 Special urban area, N.J.A.C. 7:7E-7.14 High rise structures, N.J.A.C. 7:7E-8.11 Public Access to the Waterfront, N.J.A.C. 7:7E-8.12 Scenic Resources and Design, and N.J.A.C. 7:7E-8.4 Water Quality.

(d) The following standards apply to all developments proposed on piers and will be used by the Division as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under policies that regulate upland development. Developers proposing platform development that does not adhere to this section's requirements are encouraged to contact the Division for guidance when conceptual plans have been prepared.*

*[(d)]**1.* Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable land-scaped public open space [at pier deck level]* are incorporated into the project, [based on the following formulas]* as provided below*

*[1.]**i.* The *minimum* length of [proximal]* *public* open space *at the landward end of a pier* required for any building less than or equal to 40 feet in average height shall be [no less than]* 20 feet:

*[2.]**ii.* The *minimum* length of [proximal]* *public* open space *at the landward end of a pier* required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of [proximal]**landward*} = \frac{(ABH)^2}{40 \text{ feet}} - (2 \times ABH) + 60 \text{ feet}$$

where ABH = average building height in feet

Example: Average Height	Minimum [Proximal]**Landward* Open Space Length
80 feet	60 feet
70 feet	42.5 feet
60 feet	30 feet
50 feet	22.5 feet
40 feet	20 feet;

*[3.]**iii.* The *minimum* length of [distal]* *public* open space *at the waterward end of a pier* required for any building less than or equal to 40 feet in average height shall be [no less than]* 20 feet:

*[4.]**iv.* The *minimum* length of [distal]* *public* open space *at the waterward end of a pier* required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of [distal]**waterward*} = \frac{(ABH)^2}{16 \text{ feet}} - (5 \times ABH) + 120 \text{ feet}$$

where ABH = average building height in feet

Example: Average Height	Minimum [Distal]**Waterward* Open Space Length
80 feet	120 feet
70 feet	76 feet
60 feet	45 feet
50 feet	26 feet
40 feet	20 feet;

***v.** The area of public open space at the ends of piers required by this section shall be the minimum length times the width of the pier. The public open space areas do not have to occupy the entire width of the pier for the full minimum length required, and do not have to be entirely at pier deck level, provided the following criteria are satisfied:

(1) Public open space at each pier end, that covers the full width of the pier, shall be at least 20 feet in length or 70 percent of the minimum length, as determined above at (d)1i through iv above, whichever is greater;

(2) The remaining area of public open space (up to 30 per cent of the minimum length times the average width of the pier) must be contiguous with the public open space at the end of the pier; and

(3) Up to 50 per cent of the public open space at pier ends may be elevated up to 12 feet above pier deck level provided that easy access is provided between elevated and pier deck level public open space areas, for able bodied and disabled people;*

[5.]**vi. Except as provided in ***[(d)6]* *(d)1vi(1)*** below, 15 foot wide public access walkways shall be provided along the entire length of a pier, along both sides of the pier, ***[at pier deck level]* *from the landward to the waterward ends. All such walkways shall be at pier deck level or ramped so that disabled access is provided between the public open space areas at both ends of a pier;*** ***[(Figure 3)]***

[6.]**1) Where piers are less than 60 feet wide, the requirement for public access along the length of the pier shall be reduced to a single 15 foot wide walkway, on one side, at pier deck level (Figure 3);

***[7.]** Heights shall be measured from the Base Flood Evaluation to the top of the parapet or mid point of a sloped roof. All pier structures shall conform with applicable Federal flood hazard reduction standards as found in 44 CFR §60 and in the Uniform Construction Code, N.J.S.A. 52:270-1 et seq.]*

[8.]**vii. Where piers are less than 400 feet apart, the heights, as ***[required]* *allowed*** by this section, shall be further reduced by 20 percent for each pier. No reduction of open space will be allowed as a result of this height reduction; and

***[9.]** Where piers are along the Palisades, Kings Bluff, Castle Point, the Lincoln Tunnel Helix, and any other area determined to provide extraordinary views of the River, the Statue of Liberty and/or the New York Skyline, no structure shall be permitted to block sight lines, measured from six feet above the elevation of the top of the Palisades to the center of the Hudson River at mean high tide (Figure 1).]*

***viii.** Development that reuses existing structures on piers shall comply with the above criteria to the maximum practical extent; and **ix.** All pier structures shall conform with applicable Federal flood hazard reduction standards as found in 44 C.F.R. Part 60 and in the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.*

(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the ***[shorefront]* *shoreline*** of the development property. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines, subject to the following clarification:

1. With the exception of water dependent industrial ***[piers]* *uses***, all Hudson River pier development shall provide ***[an]*** unrestricted, landscaped public access ***[corridor at deck level, around the entire perimeter of the pier.]* *as required by (d) above.*** ***[Access]* *Public access*** on piers shall be on a 24-hour basis*, but the Division will consider requests to limit access late at night if the applicant submits an enforceable agreement to ensure that access will be maintained for the agreed upon hours. Public access to the main route of the Hudson Waterfront Walkway shall be on a 24-hour basis.*

2. Water dependent industrial piers shall provide linear public access and/or public access observation nodes as feasible, consistent with public safety.

3. ***[On piers the]* *Within all*** public access ***[corridor]* *corridors*** and ***public*** open space ***[set-backs]* *areas on piers, pedestrians*** shall have a declared right of way over ***[vehicular usage]***

vehicles*.** ***[The public]* *Public access ***[corridor]* *corridors*** may ***[serve a dual purpose]* *be used*** for emergency vehicular access, but shall not serve as ***[a]*** service or general vehicular ***[roadway]* *roadways***. All instances of vehicular/pedestrian crossing shall be ***[appropriately]*** designated to assure motorists are aware they are crossing a pedestrian right of way ***[zone]***. Stop signs, speed bumps and similar design techniques shall be ***[required]* *used*** as necessary.

***[f]** Applications which vary in detail from the standards of this policy are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict policy compliance.*

7:7E-7.14 High-rise structures

(a) All high-rise structures more than six stories or more than 60 feet from existing pre-construction ground level, are encouraged to locate in an area of existing high density, high-rise and/or intense settlements. High-rise housing and structures are acceptable subject to the following conditions:

1. High-rise structures within the view of coastal waters shall be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public except as provided by N.J.A.C. 7:7E-3.46;

2.-3. (No change.)

4. High-rise structures outside of the Hudson River Waterfront Special area as defined by N.J.A.C. 7:7E-3.46 shall not overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 20, and shall not overshadow waterfront parks year round;

5. (No change.)

6. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure;

7. The proposed structure must be architecturally designed so as to not cause deflation of the beach and dune system or other coastal environment waterward of the structure; and

***[8.]** High-rise structures in the Hudson River Waterfront Special Area shall comply with the provisions of 7:7E-3.46.]*

(b) (No change.)

7:7E-8.11 Public access to the waterfront

(a) (No change.)

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits access and the diversity of waterfront experiences is discouraged.

1.-6. (No change.)

7. Development within the Hudson River Waterfront Special Area shall conform with the additional requirements of 7:7E-3.46.

8.-9. (No change.)

(c) (No change.)

LABOR**DIVISION OF WORKPLACE STANDARDS****(a)****Prevailing Wages for Public Works
Inspection of Records****Adopted New Rule: N.J.A.C. 12:60-6.1**

Proposed: June 6, 1988 at 20 N.J.R. 1164(a).

Adopted: July 25, 1988 by Charles Serraino, Commissioner,
Department of Labor.

Filed: July 25, 1988 as R.1988 d.398, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-56.25 et seq.,
specifically 34:11-56.31 and 34:11-56.43 and P.L. 1987, c.451.

Effective Date: August 15, 1988.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 6. INSPECTION OF RECORDS**12:60-6.1 Inspections**

(a) The Commissioner, or an authorized designee, shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect wages, hours and other conditions of employment for public works employees;

2. Question public works workmen to determine whether they are aware of violations of the prevailing wage act; and

3. Require public works employers to submit written statements, including sworn statements, concerning wages, hours, names, addresses and any other employee information as may be determined necessary by the Commissioner.

(b) If, within 10 days of a request by the Commissioner, a public works employer fails to file the material listed in (a)1 or 3 above, sworn as to its accuracy, the Commissioner may, within 15 days:

1. Direct the officer responsible for disbursement of funds for the public body which contracted for the public works project to withhold from the employer 25 percent of the amount, not to exceed \$100,000, due the employer under the contract for the project.

2. When the employer complies with the request for records, the Commissioner shall notify the public body, who shall immediately release the withheld funds.

(b)**Establishment of Ratio of Apprentices to
Journeymen for Public Work Projects****Adopted New Rules: N.J.A.C. 12:60-7**

Proposed: June 6, 1988 at 20 N.J.R. 1164(a).

Adopted: July 25, 1988 by Charles Serraino, Commissioner,
Department of Labor.

Filed: July 25, 1988 as R.1988 d.399, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:11-56.25 et seq.

Effective Date: August 15, 1988.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

The Department received one comment on the proposed new rules. The commenter, the National Electrical Contractors Association, Northern New Jersey Chapter, Inc., supports the new rules.

Full text of the adoption follows.

**SUBCHAPTER 7. CRITERIA FOR DETERMINING
APPRENTICE TO JOURNEYMAN RATIO****12:60-7.1 Definitions**

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

"Apprentice" means an individual who, while performing work on a public work project, is registered, in good standing, in an apprenticeship program approved or certified by the Division of Vocational Education in the New Jersey Department of Education or by the Bureau of Apprenticeship and Training in the United States Department of Labor.

"Records" means all books, registers, payrolls, and any other documentation maintained by the employer that have a bearing upon the question of wages, hours and other conditions of employment of any workmen.

12:60-7.2 Responsibilities of contractors and subcontractors

(a) A contractor or subcontractor employing one or more apprentices on a public work project shall maintain with its records written evidence that the apprentice or apprentices are registered in an approved apprenticeship program while performing work on the project.

1. The contractor or subcontractor shall make all records available for inspection by the public body awarding the contract and by the Commissioner during normal business hours.

2. The awarding body and the Commissioner shall have unencumbered access to the employees who are employed on a public work project for the purpose of interviewing and determining compliance.

(b) A contractor or subcontractor shall not create job titles and worker classifications which are not consistent with prevailing practices and existing task ratios for a specific building trades craft for the purpose of circumventing the intent of this subchapter.

12:60-7.3 Ratio of apprentices to journeymen

(a) Upon determining the prevailing wage rate and establishing the prevailing wage in the locality for each craft, trade or class of workmen needed to perform public work contracts, the Commissioner shall also determine the ratio of apprentices to journeymen for the purpose of establishing the number of workmen who may be paid the apprentice rate.

(b) If no ratio of apprentices to journeymen is set forth in the collective bargaining agreement used by the Commissioner to make his or her prevailing wage determination, the maximum ratio of apprentices to journeymen shall be one apprentice to every four journeymen.

(c) If the prevailing collective bargaining agreement for a craft or trade does not provide for an apprentice rate, the employer shall pay the employees not less than the journeyman's rate even if an employee is registered in an apprentice program for that trade.

12:60-7.4 Correction of wage rate

(a) If the Department determines that a worker who has been paid an apprentice wage rate on a project is entitled to a journeyman's rate, the Department shall conduct an audit and require the contractor or subcontractor to pay the worker an additional amount equal to the difference between the rate of an apprentice and the rate of a journeyman plus any applicable benefits the worker is entitled to as a journeyman.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

THE COMMISSIONER

Grants and Financial Assistance

Local Development Financing Fund

Adopted Amendments: N.J.A.C. 12A:12-2.3 and 2.7

Proposed: June 6, 1988 at 20 N.J.R. 1171(a).

Adopted: July 12, 1988 by Borden R. Putnam, Commissioner,
Department of Commerce, Energy and Economic
Development.

Filed: July 14, 1988 as R.1988 d.386, **without change**.

Authority: N.J.S.A. 52:27H-6f, 34:1B-36 (P.L. 1983, c.190).

Effective Date: August 15, 1988.

Expiration Date: September 21, 1992.

Summary of Public Comments and Agency Responses:

One letter of public comment was received and is addressed as follows.

COMMENT: The Utility and Transportation Contractors Association of New Jersey submitted a letter of comment which addressed N.J.A.C. 12:12-2.7, which provides that seven and three percent of the aggregate project construction costs shall be set-aside for minority and women businesses. The Association believes that this requirement should be expanded to include "goods, equipment, construction and services", for purposes of the Local Development Financing Fund (LDFF) set-aside. The Association believes that this change is necessary to make the LDFF set-aside consistent with other State set-aside programs and to "provide even greater opportunity for . . . [minority and female] firms."

RESPONSE: Under the LDFF statute, the purpose of the set-aside program is to aid in the investing of new capital in certain urban areas of the State and help alleviate high unemployment. The focus of the statute relative to set-aside requirements is to focus those requirements in the area that the LDFF program operates, that being construction. Allowing the LDFF set-aside to be utilized in other areas outside of the construction phase of a particular project would be contrary to the LDFF statute. Additionally, a comparison of the LDFF set-aside is improper, in that the State set-aside program specifically requires that the State, when purchasing, should set-aside portions of goods and services. That program is designed for the purpose of providing those types of opportunities, where the LDFF is to provide opportunities in the construction area.

Full text of the adoption follows.

12A:12-2.3 Application for financial assistance

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

(f) Each application for financial assistance from the Fund shall be accompanied by a minority and women business set-aside plan. (See N.J.A.C. 12A:12-2.7)

12A:12-2.7 Minority and women business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Fund shall set aside not less than seven percent of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses, and not less than three percent of the aggregate project construction costs for the purpose of providing contracting opportunities for women businesses.

(b) The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.

(c) (No change.)

(b)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Cogeneration Planning and Reporting

Adopted New Rules: N.J.A.C. 12A:50

Proposed: December 21, 1987 at 19 N.J.R. 2383(a).

Adopted: June 28, 1988 by Borden R. Putnam, Commissioner,
Department of Commerce, Energy and Economic
Development.

Filed: July 20, 1988 as R.1988 d.390, **with technical changes not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).**

Authority: N.J.S.A. 52:27F-18, 11, and 15(b).

Effective Date: August 15, 1988.

Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Commerce, Energy and Economic Development, Division of Energy Planning and Conservation, proposed cogeneration planning and reporting rules, which were published in the December 21, 1987, New Jersey Register at 19 N.J.R. 2383(a). Subsequent to their publication, the agency received four written comments on the proposed rules.

Comments were submitted by:

1. Elizabethtown Gas Company—Paul J. Chymiy, Sr. Attorney
2. Jersey Central Power and Light Company—David C. Shadle, Manager, Cogeneration
3. New Jersey Department of Community Affairs—Division of Housing and Development—Charles M. Decker, Asst. Director
4. N.J. Board of Public Utilities—Division of Electric—Steve Gabel, Director

The following summarizes the comments received and provides the Department's responses to these comments. All comments are on file at the Office of the Division of Energy Planning and Conservation.

COMMENT: Elizabethtown Gas Company (Elizabethtown) requested that the scope of information collected under the rules be reasonably circumscribed and that the use of and access to such information be strictly monitored. Elizabethtown believes that, as far as reporting requirements that would be placed on all the State's gas utilities under N.J.A.C. 12A:50-1.4(d), the documentation should be specifically limited to items set forth at paragraphs 1 and 2. The company further submits that the information reported be submitted annually, but contain a month by month breakdown. Elizabethtown would be amenable to identifying the rate schedule pursuant to which cogeneration sales and transportation had been accomplished but vehemently opposes a reporting of revenues by class or by customer. Such a requirement would provide specific unregulated sellers of gas with an undue or unfair competitive advantage. Accessibility to such reports could facilitate approximation of the utility's per unit cost. Such a situation would not be in the distributor's best interest as it would greatly reduce the gas utility's ability to compete effectively in the market.

RESPONSE: The Division believes that the information requested is the minimum amount of information needed to carry out the Division's mandates. Special attention was taken with respect to the drafting of the reporting rules to minimize the data required. Individual named customers/customer specific information has not been requested. The identities of individual customers can be made through a numbering system selected by Elizabethtown (see also the response to the third comment below). As far as the company's submittal of information, all gas utilities presently provide the data requested for the New Jersey Energy Data System (NJEDS) on a form entitled NG SALES that is provided to the Division on a monthly basis. This submission satisfies the Division's information request.

COMMENT: Information disclosed among the parties involved, of necessity, contains proprietary and confidential information. Elizabethtown acknowledges that the Division has in the remarks prefatory to the text of the proposed rules, at 19 N.J.R. 2383, stated that it is prepared to protect information which it receives pursuant to the rule in accordance with reference to N.J.A.C. 14A:7.1 et seq. However, Elizabethtown notes that any reference to N.J.A.C. 14A:7.1 et seq. is conspicuously absent from the text of the proposed rules. Elizabethtown

therefore requests that the proposed rules be amended to expressly afford the information reported the protection of N.J.A.C. 14A:7.1 et seq. Jersey Central Power and Light Company (JCP&L) states it would be desirable if the proposed rules define a procedure, including provisions for the protection of confidential information, for the utilities to obtain reasonable information concerning all non-utility generation projects.

RESPONSE: The Division recognizes Elizabethtown's concerns with respect to the treatment of confidential information. The request by the company for confidentiality would be done under N.J.A.C. 14A:7.1 et seq., just as other data requested by the Department is handled.

COMMENT: Elizabethtown has suggested that prior to enactment, N.J.A.C. 12A:50-1.4(a) be modified to allow the owner/operator the option of providing certain contract information in lieu of specific contract documents.

RESPONSE: The information requested under N.J.A.C. 12A:50-1.4(a) is already filed with the Board of Public Utilities (BPU) for approval. The Division is simply requesting that it receive a copy of the same filing so as to allow the Division to pursue its statutory mandates.

COMMENT: Jersey Central Power and Light Company has expressed its concern that the information being requested is a duplication of effort. The information which the utilities would be required to file under the proposed rules at N.J.A.C. 12A:50-1.4(c)1 and 2 is already being filed with the Board of Public Utilities, Division of Electric. For this reason and the contention that the proposed filing would be unnecessary duplication or inconsistent filings, JCP&L recommends that N.J.A.C. 12A:50-1.4(c)1 and (c)2 be deleted from the requirements. The proposed electric utility filing would also occur at a time when the required information is not available or only partially available. The information filed in accordance with the BPU Order is developed as part of JCP&L's normal planning cycle. Many of the forecasts requested by the Division are not completed in time for the proposed January filing deadline and would consequently lead to a re-filing of the previous July's filing information or filing of partially updated information.

RESPONSE: The filing of the prior year's data the subsequent July is not sufficiently timely to be useful for planning purposes. The Division believes the report should be submitted to the Department as specified in the rules. The company is free to submit the report to the BPU at a later date if it wishes. The utilities submit similar data to the Mid Atlantic Area Council for inclusion in a system-wide report issued on April 1 each year so the individual company data are available much earlier. Therefore, no change in the schedule is warranted.

COMMENT: The only difference in the information required of electric utilities to be filed with the BPU is that the proposed rules specify a 15 year forecast while the BPU submissions reflect 20 year forecasts of costs and escalation factors.

RESPONSE: A change to a 20 year format would be acceptable since it exceeds the requirement listed by the Department and therefore will be allowed.

COMMENT: JCP&L states that the information required in N.J.A.C. 12A:50-1.4(c)2 is already being filed with the BPU on a monthly basis. JCP&L also states that the projected rates for the next three months are filed with the Department of Commerce.

RESPONSE: The Division of Energy Planning and Conservation within the Department of Commerce, Energy and Economic Development currently receives such information. The Division recognizes that this information is filed with the BPU and that it receives a copy of this information.

COMMENT: The requirement for the owner/operators of a non-utility generation facility to file a copy of all permits appears to be unnecessary. JCP&L suggests that the agency issuing the permit, as part of their normal procedure, send the Division a copy of the permit.

RESPONSE: The Division is only requesting a copy of the air quality permit, and is not asking for, as JCP&L asserts, a copy of all other permits. The Division is only requesting a summary sheet of all other permits applied for and obtained.

COMMENT: JCP&L has stated its belief that all the information from the non-utility generators should be made available to the utility which is purchasing the power at the time it is submitted to the Division of Energy Planning and Conservation.

RESPONSE: Any information that is not protected by the proprietary provisions of the reporting rules is available to anyone requesting such information. The Division will not send out this information except upon request.

COMMENT: The Department of Community Affairs, Division of Housing and Development, has stated it is the responsibility of the

construction code and electrical subcode officials to enforce the State Uniform Construction Code with respect to the issuance of permits for apparatus in residences. The Division of Housing and Development has suggested that the proposed rules recognize this requirement by changing N.J.A.C. 12A:50-1.4(a)4 to read "... including, for residential units, a permit from the official enforcing the State Uniform Construction Code, based on the approval of the unit by a recognized testing laboratory."

RESPONSE: The Division does not specify the reporting requirements and what an applicant must do or comply with, which are already specified in the Uniform Construction Code. For the Division to do so would be inappropriate. Any change in the Uniform Construction Code would subsequently require a change in the Division's reporting rules.

COMMENT: The Division of Housing and Development also suggested that the Division of Energy Planning and Conservation maintain a list of approved devices as well as help residential owners document approval as a way of reducing the burden of owners of residential devices.

RESPONSE: The Division disagrees that a listing requirement such as the Division of Housing and Development envisions is appropriate for inclusion in the reporting rules. The Division is not specifying what equipment can or cannot be used.

The Division has deleted the term "non-utility generation" and its derivatives from the text of the rules and replaced it with "alternative power production" and its derivatives.

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

CHAPTER 50
COGENERATION

SUBCHAPTER 1. *[NON-UTILITY GENERATION]*
ALTERNATIVE POWER PRODUCTION
REPORTING

12A:50-1.1 Purpose and scope

(a) The purpose of the rules in this *sub*chapter is to assist the Division in promoting cogeneration and other alternative electricity generation, collectively known as *[non-utility generation]* ***alternative power producers***. Further, the Division can represent the public's interest in having available to it reliable, affordable, and environmentally-sound energy sources. The rules have been written to impose only minimal reporting requirements on the *[non-utility generation]* ***alternative power production*** industry.

(b) The rules will also enable the Division to determine appropriate action to facilitate the maximum feasible use of *[non-utility generation]* ***alternative power production***, calculate its potential development and its impact on meeting current and prospective demands for energy, devise plans for meeting State electric energy needs in the most cost-effective and environmentally sound manner, and generally assist the Division, the Department and the public in assessing New Jersey's energy future.

12A:50-1.2 Applicability

The reporting requirements of this subchapter shall apply to owners/operators of *[non-utility generation]* ***alternative power production*** facilities. There are complementary reporting requirements for gas distribution companies and electric utilities operating within the State.

12A:50-1.3 Definitions

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

***"Alternative power producers"** means and includes all cogeneration, small power production and any other electric generating equipment of which 50 percent or less is owned by an electric utility.*

"Cogeneration" means and includes all forms of simultaneous or sequential production of electricity and useful thermal energy from a single fuel and as further defined in the Public Utilities Regulatory Policy Act, 16 U.S.C.A. Sec. 796 (18)(A) (West Supp. *[1892]* ***1982***) and regulations promulgated by the Federal Energy Regulatory Commission (FERC), 18 C.F.R. 292.101.

["Non-utility generation" means and includes all cogeneration, small power production and any other electric generating equipment of which 50 percent or less is owned by an electric utility.]

ADOPTIONS

"Qualifying facility (QF)" means a cogeneration facility or a small power production facility which is a qualifying facility under Subpart B of the regulations promulgated by the Federal Energy Regulatory Commission, 18 C.F.R. 292.101.

12A:50-1.4 Duty to file *[non-utility generation]* ***alternative power producer*** reports with the Division

(a) Each owner/operator of *[a non-utility generation]* ***an alternative power production*** facility located within the State of New Jersey shall file with the Division within 30 days: after the effective date of this subchapter; after filing with the appropriate agency(ies); and after updates, as necessary:

1. A copy of FERC QF Application or Self-Certification;
2. A copy of New Jersey Department of Environmental Protection Air Quality Permit Application;
3. A copy of contract(s) ***filed*** with the New Jersey Board of Public Utilities (BPU);
4. A list of other *[agency(ies) contacted and]* permits required;
5. A schedule of key dates for financing and permitting as well as for start and completion of construction and start of operation.

(b) Each *[non-utility generation]* ***alternative power production*** facility shall file with the Division within 30 days after the end of each calendar year, or more often if so requested, a report setting forth information in a format to be prescribed by the Division, including but not limited to:

1. Heat rate;
2. Fuel use;
3. Installed electrical capacity and thermal output(s);
4. Efficiency(ies);
5. Hours of operation;
6. Capacity factor;
7. Forced and planned outages;
8. Total electrical energy produced, used on site, sold to a utility or to any other customer or wheeled to another user; and
9. Cost of back-up power and revenues received.

(c) Each electric utility shall file with the Division:

1. Annually, within 30 days of the end of the calendar year, a report setting forth information in a form and/or format to be prescribed by the Division, including but not limited to:

- i. Description of energy cost estimation methodology;
- ii. Fifteen-year fuel cost summary;
- iii. Current load forecast;
- iv. NJDOE OTA/EF*[L]**1*;
- v. ***[Twenty]**Minimum 15*-year capacity forecast;**
- vi. Cost of capacity additions;
- vii. Company discount rate;
- viii. Fifteen-year forecast of avoided energy costs;
- ix. Fifteen-year forecast of production costs by fuel source;
- x. Fifteen-year forecast of fuel escalation factors; and
- xi. Fifteen-year forecast of avoided capacity costs.

2. Monthly, by the end of the month following the reporting month, reports setting forth information in a form and/or format to be prescribed by the Division, including but not limited to:

- i. Actual payments to *[non-utility generation]* ***alternative power producer*** facilities; and
- ii. Prior month's rate and projected rates for the next three months.

(d) Each gas distribution company shall file with the Division by the end of the month following the reporting month, a report setting forth information in a form and/or format to be prescribed by the Division, including but not limited to:

1. Sales,
2. Transportation volumes and revenues by rate schedule to *[non-utility generation]* ***alternative power production*** facilities.

(e) The filing shall be made to the Cogeneration Center, New Jersey Division of Energy Planning and Conservation, State Department of Commerce*, **Energy*** and Economic Development, 101 Commerce Street, Newark, New Jersey 07102.

COMMERCE AND ECONOMIC DEVELOPMENT

12A:50-1.5 Notification of intent to cease *[non-utility generation]* ***alternative power production***

The owner/operator shall notify the Division as soon as practicable of its date to cease operation of its *[non-utility generation]* ***alternative power production***.

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Technical Sufficiency Standards for Cogeneration Equipment Qualifying for a Sales and Use Tax Exemption

Adopted New Rules: N.J.A.C. 12A:54

Proposed: May 16, 1988 at 20 N.J.R. 1073(a).

Adopted: June 28, 1988 by Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.

Filed: July 20, 1988 as R.1988 d.391, **without change.**

Authority: N.J.S.A. 54:32B-8.13d and 52:27F-11q.

Effective Date: August 15, 1988.

Expiration Date: August 15, 1993.

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

Full text of the adoption follows.

CHAPTER 54

TECHNICAL SUFFICIENCY STANDARDS FOR COGENERATION EQUIPMENT FOR THE PURPOSES OF QUALIFYING FOR A SALES AND USE TAX EXEMPTION

SUBCHAPTER 1. GENERAL PROVISIONS

12A:54-1.1 Scope

The technical eligibility standards for cogeneration equipment contained in this chapter are designed to establish minimum criteria for the purpose of obtaining a sales and use tax exemption pursuant to P.L. 1985 c.266 (N.J.S.A. 54:32B-8.13d).

12A:54-1.2 Construction and amendment

(a) The rules in this chapter shall be liberally construed to permit the Commissioner to effectively carry out his or her statutory functions and to insure the maximum conservation of energy sources within the State; and

(b) The rules contained in this chapter may be amended by the Director of the Division of Energy Planning and Conservation, pursuant to authority of P.L. 1985, c.266 (N.J.S.A. 54:32B-8.13d).

12A:54-1.3 Definitions

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

"Administrator" means the Commissioner of the Department of Commerce, Energy and Economic Development, or his or her designee.

"Building" means any commercial and/or industrial structure.

"Cogeneration" means and includes all forms of simultaneous or sequential production of electricity and useful thermal energy from a single fuel and as further defined in the Public Utilities Regulatory Policy Act, 16 U.S.C.A. Sec. 796(18)(A)(West Supp. 1892) and regulations promulgated by the Federal Energy Regulatory Commission (FERC), 18 C.F.R. 292.101.

"Control system" means lights, buttons, switches, alarms, computer control systems, start up and remote control capability, programmable logic controller, relays, timers, counters, solenoid coils, function devices, electrical barriers, valve actuator, valves, air lines, air compressor, air dryer storage tank, instrumentation, indicators, controllers, recorders, multi-point scanning systems and computerized system with telephone connection for remote control system for start up and trouble shooting.

"Electrical equipment" means an electric generator, excitor, motor, solenoid, grounding, emergency lighting start up generator, battery, cabling, electrical safety trip device, synchronization equipment and utility-required interconnection equipment.

"Eligible" means a system or component thereof qualifying for an exemption pursuant to N.J.A.C. 12A:54-2.1.

"Exhaust system" means a chimney or stack, forced draft or induced draft fan, and controls.

"Fire and safety equipment" means water storage tanks, pipes, pumps, hydrants, sprinklers, hoses, accessories, extinguishers (types A, B and C) and first aid kit and stretcher.

"Foundation and enclosure" means a partial or complete building foundation, enclosure and freight elevator.

"Fuel systems" means oil, gas, coal and/or other fuel storage tanks, or bin, solid fuel conveyor, grinder, mill, pump, oil or gas supply control and piping system.

"Ineligible" means that a system or component thereof which does not qualify for an exemption pursuant to N.J.A.C. 12A:54-2.3.

"Instrumentation" means equipment to measure and monitor flow, level, pressure, temperature and system operation and may include the following: orifices, nozzles, venturis, pitot tube, turbine metering, sight glass, differential pressure transmitter, thermocouple, thermowell, capillary-filled thermometer.

"Insulation (thermal, safety and noise)" means insulation for pipes, valves, vessels, boilers and turbines.

"Partial eligibility" means a system or component thereof qualifying for a partial exemption pursuant to N.J.A.C. 12A:54-2.2

"Rotating equipment and accessories" means a steam turbine, governor, gearing, gas turbine, ignition chamber, compressor, air extractor, boiler feed pumps, lubrication system and oil purifier.

"Stationary equipment" means a boiler, super-reheater, evaporator, economizer, accumulator, deaerator, boiler feedwater heater, condenser, flash vessel, cooling tower, piping, valve and steam trap.

"Supply lines" means fuel, water, oil and process piping.

"Waste removal and treatment equipment" means fly ash, bottom ash, slag removal and waste water effluent treatment equipment.

"Water treatment equipment" means boiler water treatment ionization system pumps and storage tank.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

12A:54-2.1 Eligible cogeneration equipment

(a) When necessary and used for cogeneration, the following items shall be eligible for an exemption from the Sales and Use Tax. The exemption shall be for 100 percent of the taxes due on the cost, unless stated otherwise.

1. A building;
2. A control system;
3. Electrical equipment;
4. An exhaust system;
5. Fire and safety equipment;
6. A foundation and enclosure;
7. Fuel systems;
8. Instrumentation;
9. Insulation (thermal, safety and noise);
10. Rotating equipment and accessories;
11. Stationary equipment;
12. Supply lines;
13. Waste removal and treatment equipment; and
14. Water treatment equipment.

12A:54-2.2 Partial eligibility

When not fully exempt, certain items may be partially exempt from the Sales and Use Tax. Where a question of partial eligibility exists, a determination by the administrator will be made.

12A:54-2.3 Ineligible equipment

(a) The following shall not be considered eligible for an exemption from sales and use taxes:

1. Motor vehicles;
2. Items which are not fully and/or partially eligible.

12A:54-2.4 Determination by administrator

(a) If the tax exempt status of any cogeneration item(s) is in dispute, the purchaser may apply to the administrator for a determination of eligibility and submit supplemental documents with the request. The administrator shall determine whether the item(s) is eligible or ineligible.

(b) The administrator shall issue a ruling as to the equipment's eligibility within 60 working days of receipt of the request for a determination and shall communicate the ruling to the applicant and to the Department of Treasury, Division of Taxation.

(c) Rulings of the administrator are prospective and shall apply to all future exemption applications for systems of that type.

(d) If a determination is not issued by the administrator within 60 days of receipt of the request, the purchaser's system shall be deemed eligible for a full exemption. This determination will not affect the eligibility of future equipment of the same type.

(e) The determination of the administrator shall constitute final agency action concerning the equipment's eligibility.

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

(a)

BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Enumeration of Prohibited Acts

Adopted Amendments: N.J.A.C. 13:40-3.1

Proposed: April 4, 1988 at 20 N.J.R. 736(a).

Adopted: July 7, 1988 by the Board of Professional Engineers and Land Surveyors, Joseph Wiseman, P.E., President.

Filed: July 22, 1988 as R.1988 d.394, with a portion of the proposal not adopted, a change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:8-27 et seq., specifically 45:8-28(e).

Effective Date: August 15, 1988.

Expiration Date: September 3, 1990.

Summary of Public Comments and Agency Responses:

Twenty-one letters were received during the official comment period and the one-month extension thereof.

COMMENT: A number of comments related to the conflict of interest provisions of proposed N.J.A.C. 13:40-3.1(a)4v. These comments generally express concerns related to working for municipalities and suggest that revisions include voluntary disclosure and that they be more definitive.

RESPONSE: The Board will not adopt this section at this time, since it is not as precise as was intended.

COMMENT: Two comments were received concerning proposed N.J.A.C. 13:40-3.1(a)6 regarding compliance with Federal, State or local laws, rules or regulations. One commenter felt that the amendment would enhance the role of the profession and afford additional protection to the consumer. The other commenter suggested that the words "reasonable interpretation" be added to clarify the scope of the prohibition.

RESPONSE: In response, the Board notes that reasonableness is implicit in all of its interpretations. Also, the Board notes that this rule was adopted from a similar rule of another professional board, which has not experienced problems with its application.

COMMENT: Two comments were also received concerning proposed amendment N.J.A.C. 13:40-3.1(a)11, which relates to a licensee's response time to an investigative inquiry. One comment was in favor of the amendment and the other comment suggested that 45 days be substituted for 30 days or, in the alternative, that the 30 days refer to the period after the green card is returned.

RESPONSE: The Board does not feel that the 30 day response time is unreasonable. Mitigating circumstances will be reviewed by the Board on a case-by-case basis.

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

13:40-3.1 Enumeration of prohibited acts

(a) Misconduct in the practice of professional engineering or land surveying shall include, without limitation:

1. Acting for his client or employer in professional matters other than as a faithful agent or trustee; accepting any remuneration other than his stated recompense for services rendered.

2. Disregarding the safety, health and welfare of the public in the performance of his professional duties; preparing or signing and sealing plans, surveys or specifications which are not of a safe design and in conformity with accepted standards. If the client or employer insists on such conducts, the licensee shall notify the proper authorities and withdraw from further service on the project.

3. Advertising his work or merit using claims of superiority which cannot be substantiated.

4. Engaging in any activity which involves him in a conflict of interest, including without limitation:

i.-iii. (No change.)

iv. A licensee shall not accept compensation or remuneration, financial or otherwise, from more than one interested party for the same service or for services pertaining to the same work, unless there has been full disclosure to and consent by all interested parties.

[v. A licensee shall not participate in the review, approval or recommendation for approval of plans, specifications, reports or other work prepared by him or any business entity or associate with which he may have any financial, business or professional relationship.]

*[vi.]***v.* A licensee shall not accept compensation or remuneration, financial or otherwise, from material or equipment suppliers for specifying their product.

*[vii.]***vi.* A licensee shall not accept commissions or allowances, directly or indirectly, from contractors or other persons dealing with his client or employer in connection with work for which he is responsible to the client or employer.

5. (No change.)

6. Failure to comply with federal, state or local laws, rules or regulations governing the practice of the profession.

7.-10. (No change.)

11. Failure of a licensee to respond in writing within 30 days to a written communication from the Board of Professional Engineers and Land Surveyors with respect to any investigative inquiry relating to the possible violation of any statute or regulation administered by the Board, and to make available any relevant records with respect to such an inquiry. The 30 day period shall begin on the day when such communication was sent from the Board by certified mail with return receipt requested to the address appearing on the last registration.

(a)

BOARD OF VETERINARY MEDICAL EXAMINERS

Examination Requirements

Prescriptions

Adopted Amendments: N.J.A.C. 13:44-1.2 and 2.1

Proposed: June 6, 1988 at 20 N.J.R. 1171(b).

Adopted: July 11, 1988 by Michael Hennessy, D.V.M., President,

New Jersey State Board of Veterinary Medical Examiners.

Filed: July 22, 1988 as R.1988 d.395, **without change.**

Authority: N.J.S.A. 45:16-9.9.

Effective Date: August 15, 1988.

Expiration Date: August 20, 1989.

Summary of Public Comments and Agency Responses:

During the comment period, only one comment was received. The New Jersey Veterinary Medical Association announced its full support of the proposed amendments.

Full text of the adoption follows.

13:44-1.2 Examinations

(a) (No change.)

(b) As a prerequisite to taking the New Jersey Practical Examination, an applicant shall have attained a grade of 70.0 on the National Board Examination and the Clinical Competency Test, calculated according to New Jersey criteria, within five years preceding application for the New Jersey Practical Examination and shall not have scored less than 70.0 on more than one section of each test. A score of 69.5 to 69.9 shall not be rounded off to 70.0 in computing a passing score.

(c)-(h) (No change.)

13:44-2.1 Prescriptions

(a) A licensee shall not prescribe, sell, dispense or distribute any prescription item, including medications and supplies in an indiscriminate manner or without good cause or where the licensee reasonably knows or should know that the item or items prescribed are to be used for unauthorized or illicit consumption or distribution. A licensee shall not issue a prescription for, or dispense an item where he knows or has reason to know that an item or items previously prescribed or dispensed were used by the recipient for unauthorized or illicit consumption or distribution.

(b) A licensee shall not prescribe, sell, dispense or distribute any prescription item unless a bona fide client/patient relationship exists. For the purpose of this subsection, a bona fide client/patient relationship shall exist when:

1. The licensee has assumed or agreed to assume the responsibility for making veterinary medical judgments regarding the client's (owner or caretaker) animal; and

2. The licensee possesses sufficient knowledge of the animal to formulate at least a general, preliminary diagnosis of its medical condition. Said knowledge shall be based upon the licensee's personal knowledge of the keeping and care of the animal, or by virtue of a recent examination, or by medically appropriate and timely visits to the premises where the animal is kept; and

3. The licensee or a covering designee is readily available for follow-up in case of adverse reactions or failure of the regimen or therapy.

Recodify existing (b)-(c) as (c)-(d) (No change in text.)

(b)

**AUDIOLOGY AND SPEECH-LANGUAGE
PATHOLOGY ADVISORY COMMITTEE**

**Practice of Audiology and Speech-Language
Pathology**

Notice of Correction: N.J.A.C. 13:44C-8.1

Take notice that an error appears in the adoption notice in the July 18, 1988 issue of the New Jersey Register at 20 N.J.R. 1727 concerning Business practices, N.J.A.C. 13:44C-8.1(a)2. The adopted text of N.J.A.C. 13:44C-8.1(a)2 should read as follows:

13:44C-8.1 Business practices

(a) The following acts or business practices shall be deemed to be unprofessional conduct:

1. (No change in text.)

2. Recordkeeping—calibration log: Failure to document that all audiometric test equipment is calibrated on a timely basis and meets nationally recognized standards (ANSI, 1969 and all subsequent revisions).

3.-15. (No change in text.)

NEW JERSEY RACING COMMISSION**(a)****Thoroughbred Rules
Horsemen Associations****Adopted Amendment: N.J.A.C. 13:70-1.30**

Proposed: June 6, 1988 at 20 N.J.R. 1172(a).

Adopted: July 22, 1988 by New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: July 25, 1988 as R.1988 d.400, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: August 15, 1988.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.**13:70-1.30 Horsemen associations**

(a) It shall be the intent of this rule to establish guidelines that ensure that funds allocated to the horsemen's organizations by statute (N.J.S.A. 5:5-66) are used to finance programs to benefit all New Jersey horsemen and that administrative and overhead costs are reasonably related to such programs.

(b) Funds allocated to the horsemen's organizations by statute must be used to benefit all New Jersey horsemen. Membership in the horsemen's organizations shall not be a condition for receiving benefits.

(c) Amounts collected as voluntary dues from members are excluded from this rule. However, funds acquired from sources other than the statutory allocation must be kept separate and apart from funds obtained from the statutory allocation.

(d) The horsemen's organizations shall maintain adequate records concerning receipt of and distribution of funds allocated to them by statute. The New Jersey Racing Commission shall have access to all records maintained by the horsemen's organizations which relate directly or indirectly to funds allocated by statute.

(e) The horsemen's organizations shall submit detailed budgets to the Racing Commission by December 15 of each year, identifying the source and use of funds, as well as any surplus or deficit that may result. The budget must also include the actual prior year's expenses in each category for comparison purposes. In addition, quarterly budget reports must be filed with the Commission 45 days after the close of each quarter. These reports must reflect actual income and expenses to date, as well as projected income and expenses for the remainder of the year. Prior approval must be obtained from the Commission for all expenditures that exceed the approved budget levels.

(f) Audited financial statements, including balance sheet, income statement and source and use of funds, prepared by a certified public accountant of New Jersey, must be filed with the Commission by February 28 for the preceding calendar year.

(g) Funding for benevolent programs, including but not limited to pension plans, health and life insurance plans, etc. will be considered reasonable if such program funding on an annual basis is at least 70 percent of the total statutory allocation. Whether or not a program will be considered a "benevolent program" will be decided upon application to the Racing Commission. Annual benevolence program funding below 70 percent of the total statutory allocation requires justification satisfactory to the Commission. The administrative costs and overhead expenses of administering the horsemen's organizations including benevolent programs may not exceed 30 percent of the total allocated by statute unless and to the extent specifically authorized in advance by the Racing Commission.

(h) General administration and overhead expenses are considered reasonable if they are less than 30 percent of the statutory allocation. Funding above 30 percent of the total statutory allocation requires justification satisfactory to the Commission. Within this category, expenses for travel, entertainment, meals and lodging are considered

reasonable if they conform to the horsemen's organizations' travel and expense reimbursement guidelines on file and approved by the Commission. For expenses in excess of amounts allowed under these guidelines, the Racing Commission may require special justification and/or prior approval.

(i) Payments to national programs are allowed only to the extent that the horsemen's organizations can clearly show that the payments benefit all New Jersey horsemen, not just members of these organizations.

(j) If a surplus results at the end of a calendar year, the entire surplus must be applied to funds dedicated to benevolent programs in following years, or as may be approved by the Commission.

(k) Violation of this rule may subject the organization to a fine not to exceed \$1,000 per violation.

(b)**Thoroughbred Rules
Daily Triple****Adopted New Rule: N.J.A.C. 13:70-29.50**

Proposed: June 6, 1988 at 20 N.J.R. 1173(a).

Adopted: July 13, 1988 by New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: July 22, 1988 as R.1988 d.396, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: August 15, 1988.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.**13:70-29.50 Daily Triple**

(a) The Daily Triple pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator board, nor to the rules governing the distribution of such other pools.

(b) A valid Daily Triple ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and said ticket shall constitute an acceptance of Daily Triple provisions and N.J.A.C. 13:70-29.

(c) A Daily Triple may be given a distinctive name to be selected by the association conducting such races, such as Win 3, subject to the prior approval of the Commission.

(d) The Daily Triple pari-mutuel pool shall consist of amounts contributed for a selection for win only in each of the three consecutive races designated by the association with the prior approval of the Commission. Each person purchasing a Daily Triple ticket shall designate the winning horse in each of the three races comprising the Daily Triple.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Daily Triple shall race as a single wagering interest for the purpose of the Daily Triple pari-mutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Daily Triple calculation, and the selection shall not be deemed a scratch.

(f) The net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all three races comprising the Daily Triple.

(g) If no ticket is sold combining the three winners of the Daily Triple, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winners of at least two of the three races comprising the Daily Triple.

(h) If no ticket is sold combining at least two winners of the Daily Triple, the net amount in the pari-mutuel pool shall be distributed

among holders of tickets which include the winner of any one race comprising the Daily Triple.

(i) If no ticket is sold that would require distribution of the Daily Triple pool to a winner pursuant to (f) through (h) above, the association shall make a complete and full refund of the Daily Triple pool.

(j) If for any reason one of the races comprising the Daily Triple is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided in (g), (h), and (i) above.

(k) If for any reason two or more of the races comprising the Daily Triple are cancelled, a full and complete refund will be made of the Daily Triple pool.

(l) In the event a Daily Triple ticket designates a selection in any one or more of the races comprising the Daily Triple and that selection is scratched, excused or determined by the stewards to be a non-starter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs.

(m) In the event of a dead heat for win between two or more horses in any Daily Triple race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(n) No pari-mutuel ticket for the Daily Triple pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the three races comprising the Daily Triple, except for such refunds on Daily Triple tickets as required by this rule, and no persons shall disclose the number of tickets sold in the Daily Triple pool or the number or amount of tickets selecting winners of Daily Triple races until such time as the Stewards have determined the last race comprising the Daily Triple to be official. At the conclusion of the second of the three races comprising the Daily Triple, an association may, with the prior approval of the Commission, display potential distributions to ticket holders depending upon the outcome of the third race of the Daily Triple.

(a)

Harness Rules

Horsemen Associations

Adopted Amendment: N.J.A.C. 13:71-1.25

Proposed: June 6, 1988 at 20 N.J.R. 1174(a).

Adopted: July 22, 1988 by New Jersey Racing Commission,

Bruce H. Garland, Executive Director.

Filed: July 25, 1988 as R.1988 d.401, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: August 15, 1988.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-1.25 Horsemen associations

(a) It shall be the intent of this section to establish guidelines that ensure that funds allocated to the horsemen's organizations by statute (N.J.S.A. 5:5-66) are used to finance programs to benefit all New Jersey horsemen and that administrative and overhead costs are reasonably related to such programs.

(b) Funds allocated to the horsemen's organizations by statute must be used to benefit all New Jersey horsemen. Membership in the horsemen's organizations shall not be a condition for receiving benefits.

(c) Amounts collected as voluntary dues from members are excluded from this rule. However, funds acquired from sources other than the statutory allocation to these associations must be kept separate and apart from funds obtained from the statutory allocation.

(d) The horsemen's organizations shall maintain adequate records concerning receipt of and distribution of funds allocated to them by

statute. The New Jersey Racing Commission shall have access to all records maintained by the horsemen's organizations which relate directly or indirectly to funds allocated by statute.

(e) The horsemen's organizations shall submit detailed budgets to the Racing Commission by December 15 of each year, for the following calendar year, identifying the source and use of funds and any surplus or deficit that may result. The budget must include the actual prior year's expenses in each category for comparison purposes. In addition, quarterly budget reports must be filed with the Commission 45 days after the close of each quarter. These reports must reflect actual income and expenses to date, as well as projected income and expenses for the remainder of that year. Prior approval must be obtained from the Commission for all expenditures that exceed the approved budget levels.

(f) Audited financial statements, including balance sheet, income statement and source and use of funds, prepared by a certified public accountant of New Jersey, must be filed with the Commission by February 28 of each year for the preceding calendar year.

(g) Funding for benevolent programs, including but not limited to pension plans, health and life insurance plans, etc. will be considered reasonable if such program funding on an annual basis is at least 70 percent of the total statutory allocation. Whether or not a program will be considered a "benevolent program" will be decided upon application to the Racing Commission. Annual benevolence program funding below 70 percent of the total statutory allocation requires justification satisfactory to the Commission. The administrative costs and overhead expenses of administering the horsemen's organizations' including benevolent programs may not exceed 30 percent of the total allocated by statute unless and to the extent specifically authorized in advance by the Racing Commission.

(h) General administration and overhead expenses are considered reasonable if they are less than 30 percent of the statutory allocation. Funding above 30 percent of the total statutory allocation requires justification satisfactory to the Commission. Within this category, expenses for travel, entertainment, meals and lodging are considered reasonable if they conform to the horsemen's organizations' travel and expense reimbursement guidelines on file and approved by the Commission. For expenses in excess of amounts allowed under these guidelines, the Racing Commission may require special justification and/or prior approval.

(i) Payments to national programs are allowed only to the extent that the horsemen's organizations can clearly show that the payments benefit all New Jersey horsemen, not just members of these organizations.

(j) If a surplus results at the end of a calendar year, the entire surplus must be applied to funds dedicated to benevolent programs in following years, or as may be approved by the Commission.

(k) Violation of this section may subject the organization to a fine not to exceed \$1,000 per violation.

(b)

Harness Rules

Leaving of Paddock

Adopted Amendment: N.J.A.C. 13:71-6.14

Proposed: June 6, 1988 at 20 N.J.R. 1175(a).

Adopted: July 22, 1988 by New Jersey Racing Commission, Bruce

H. Garland, Executive Director.

Filed: July 25, 1988 as R.1988 d.402, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: August 15, 1988.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-6.14 Leaving of paddock

No driver, groom or caretaker, once admitted to the paddock or receiving barn, shall leave the same other than to warm up said horse until such race, or races, for which he was admitted is contested; provided however, that in the event of an emergency, trainers or grooms may leave the paddock but only with the permission of the paddock judge in which case the paddock judge shall maintain a written record thereof. Such record shall be delivered to the presiding judge. A trainer may leave the paddock before his horse completes its engagement, but may not return to the paddock unless approval by the presiding judge has been given.

(a)**Harness Rules****Daily Triple****Adopted New Rule: N.J.A.C. 13:71-27.54**

Proposed: June 6, 1988 at 20 N.J.R. 1175(b).

Adopted: July 13, 1988 by New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: July 22, 1988 as R.1988 d.397, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: August 15, 1988.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-27.54 Daily Triple

(a) The Daily Triple pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalisator board, nor to the rules governing the distribution of such other pools.

(b) A valid Daily Triple ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and said ticket shall constitute an acceptance of Daily Triple provisions and N.J.A.C. 13:71-27.

(c) A Daily Triple may be given a distinctive name to be selected by the association conducting such races, such as Win 3, subject to the prior approval of the Commission.

(d) The Daily Triple pari-mutuel pool shall consist of amounts contributed for a selection for win only in each of the three consecutive races designated by the association with the prior approval of the Commission. Each person purchasing a Daily Triple ticket shall designate the winning horse in each of the three races comprising the Daily Triple.

(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Daily Triple shall race as a single wagering interest for the purpose of the Daily Triple pari-mutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selected to win in that race for the Daily Triple calculation, and the selection shall not be deemed a scratch.

(f) The net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all three races comprising the Daily Triple.

(g) If no ticket is sold combining the three winners of the Daily Triple, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winners of at least two of the three races comprising the Daily Triple.

(h) If no ticket is sold combining at least two winners of the Daily Triple, the net amount in the pari-mutuel pool shall be distributed among holders of tickets which include the winner of any one race comprising the Daily Triple.

(i) If no ticket is sold that would require distribution of the Daily Triple pool to a winner pursuant to (f) through (h) above the association shall make a complete and full refund of the Daily Triple pool.

(j) If for any reason one of the races comprising the Daily Triple is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided in (g), (h), and (i) above.

(k) If for any reason two or more of the races comprising the Daily Triple are cancelled, a full and complete refund will be made of the Daily Triple pool.

(l) In the event a Daily Triple ticket designates a selection in any one or more of the races comprising the Daily Triple and that selection is scratched, excused or determined by the stewards to be a non-starter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the non-starting selection for all purposes, including pool calculations and payoffs.

(m) In the event of a dead heat for win between two or more horses in any Daily Triple race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(n) No pari-mutuel ticket for the Daily Triple pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the three races comprising the Daily Triple, except for such refunds on Daily Triple tickets as required by this rule, and no persons shall disclose the number of tickets sold in the Daily Triple pool or the number or amount of tickets selecting winners of Daily Triple races until such time as the Stewards have determined the last race comprising the Daily Triple to be official. At the conclusion of the second of the three races comprising the Daily Triple, an association may, with the prior approval of the Commission, display potential distributions to ticket holders depending upon the outcome of the third race of the Daily Triple.

TREASURY-GENERAL**(b)****DIVISION OF PENSIONS****Teachers' Pension and Annuity Fund****Adopted New Rules: N.J.A.C. 17:3**

Proposed: June 6, 1988 at 20 N.J.R. 1181(b).

Adopted: July 7, 1988 by the Board of Trustees, Teachers'

Pension and Annuity Fund, Anthony Ferrazza, Secretary.

Filed: July 12, 1988 as R.1988 d.381, **without change**.

Authority: N.J.S.A. 18A:66-56.

Effective Date: August 15, 1988.

Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:3.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(a)

**Uniform Construction Code
Increases in Size**

Adopted Amendment: N.J.A.C. 5:23-2.5

Proposed: May 16, 1988 at 20 N.J.R. 1026(a).
Adopted: July 13, 1988 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.
Filed: July 15, 1988 as R.1988 d.389, **with a substantive change**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.
Effective Date: August 15, 1988.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Several letters were received from fire and building officials opposing the proposed amendment on the grounds that it would eliminate the one tool that they have available to get smoke detection systems into existing buildings and thereby help save lives.

RESPONSE: Investigation by the Department indicated that this is indeed a valid concern, inasmuch as the greatest number of fire fatalities occur in single family homes. Consequently, the proposed amendment has been changed to retain the code compliance requirement for smoke detection systems only.

This change upon adoption is not so substantive as to require reproposal, as the smoke detection requirements of the current rule are not being altered and the proposed considerable reduction in the regulatory burden on the owners of detached owner-occupied single family residences of Use Group R-3 is, with the one exception, retained on adoption.

COMMENT: Another comment from a building inspectors' group was that the codes do not otherwise distinguish between owner-occupied and non-owner occupied dwellings and this rule should not be amended to make such a distinction, because to do so would result in nonuniformity of the Code and be burdensome to enforcing officials.

RESPONSE: In the Department's judgment, a distinction between dwellings that are owner-occupied and those that are not is reasonable and non-burdensome in this case because it should be possible to determine whether or not a property is owner-occupied by talking to the people there at the time the work is inspected, or by checking tax or utility records if there is any doubt.

COMMENT: The New Jersey Society of Architects, on the other hand, expressed its support of the proposed amendment and recommended prompt adoption.

This amendment was proposed in response to complaints that the existing retrofit requirement was excessive and was very difficult to comply with except at a cost wholly disproportionate to the work being done. Retention of the smoke detection aspect of the retrofit requirement, on the other hand, does not impose a cost that is clearly disproportionate to the benefit received.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*).

5:23-2.5 Concerning increase in size

(a) If the structure is increased in floor area or height, the entire structure shall be made to conform with the regulations in respect to means of egress, fire safety, light and ventilation.

1. This requirement shall not apply to increases of less than five percent of floor area unless the construction official and appropriate subcode officials determine in writing that the application of this requirement to such increase is necessary in the public interest.

2. This requirement shall not apply to increases of less than 25 percent of floor area in any detached owner-occupied single family residence of Use Group R-3*; **provided, however, that all structures exempted under this paragraph shall comply with all code requirements**

for automatic fire detection systems applicable to detached single family residences of Use Group R-3*.
(b) (No change.)

DIVISION OF HOUSING AND DEVELOPMENT

(b)

**Uniform Construction Code
One and Two Family Dwelling Subcode**

Adopted Amendment: N.J.A.C. 5:23-3.21

Proposed: June 6, 1988 at 20 N.J.R. 1130(a).
Adopted: July 15, 1988 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.
Filed: July 15, 1988 as R.1988 d.388, **without change**.
Authority: N.J.S.A. 52:27D-124.
Effective Date: August 15, 1988.
Expiration Date: March 1, 1993.

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

Full text of the adoption follows.

5:23-3.21 One and two family dwelling subcode

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

(c) The 1987 and 1988 amendments to "The CABO One and Two Family Dwelling Code/1986" are adopted with the following modifications:

- 1. Section R-109.3 is deleted.
- 2. The amendments to chapters 20, 22, 23 and 24 are deleted.

(c)

**Administrative Rules
Lease Termination Because of Disabling Illness or
Accident**

Adopted New Rules: N.J.A.C. 5:29-2.1 and 2.2

Proposed: June 6, 1988 at 20 N.J.R. 1139(a).
Adopted: July 12, 1988 by William M. Connolly, Director,
Division of Housing and Development, Department of
Community Affairs.
Filed: July 14, 1988 as R.1988 d.384, **without change**.
Authority: N.J.S.A. 46:8-9.3.
Effective Date: August 15, 1988.
Expiration Date: June 18, 1991.

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

Full text of the adoption follows.

**SUBCHAPTER 2. LEASE TERMINATION BECAUSE OF
DISABLING ILLNESS OR ACCIDENT**

5:29-2.1 Right to terminate a lease because of disabling illness or
accident

(a) Pursuant to N.J.S.A. 46:8-9.2, a lease for a term of one or more years of a property that has been leased and used by the lessee solely for the purpose of providing a dwelling place for him or herself, or the lessee and his or her family, may be terminated prior to the expiration date thereof if the lessee or his or her spouse, or both, suffer a disabling illness or accident, unless the terms of the lease explicitly provide otherwise.

(b) Notice of termination shall be given by the lessee (tenant) to the lessor (landlord) on the form prescribed in N.J.A.C. 5:29-2.2.

(c) Termination shall take effect on the 40th day following receipt by the lessor of the notice and rent shall be paid up to that date.

COMMUNITY AFFAIRS

ADOPTIONS

(d) The property shall be vacated and possession shall be given to the lessor at least five working days prior to the 40th day following receipt by the lessor of the notice.

5:29-2.2 Form of notice

(a) A notice of lease termination given by a tenant pursuant to N.J.S.A. 46:8-9.2 shall be in the following form:

NOTICE OF LEASE TERMINATION

Name of Tenant _____

Property Address _____

Apartment Number (if applicable) _____

To the Landlord of the above dwelling unit:

This is to notify you that, in accordance with N.J.S.A. 46:8-9.2, I am terminating my tenancy as of the 40th day following your receipt of this notice by reason of:

- ___ a disabling illness
___ a disabling accident

suffered by:

- ___ me
___ my spouse
___ both me and my spouse.

Date: _____ Signature _____

CERTIFICATION OF TREATING PHYSICIAN

I hereby certify that I am a physician who is currently treating _____, whom I find to be unable to continue to engage in gainful employment.

Date: _____ Signature _____

PROOF OF LOSS OF INCOME AND INSUFFICIENCY OF CURRENT INCOME

STATE OF NEW JERSEY

COUNTY OF _____

_____, of full age, being duly sworn, upon his/her oath, deposes and says:

1. As of _____, 19____, my income (including any spouse's income) was reduced from \$ _____ per _____ to \$ _____ per _____ as a result of:

- ___ a disabling illness
___ a disabling accident

suffered by:

- ___ me
___ my spouse
___ both me and my spouse.

2. The total amount of all pensions, insurance and other subsidies to which I and/or my spouse am/are entitled is \$ _____. This amount is insufficient to supplement my/our income, which is necessary for the payment of the rent on our dwelling unit, so that this rent can be paid.

Signature _____

Sworn and subscribed before me on _____, 19 ____.

Notary Public of NJ

(b) Copies of this form may be obtained from:

Office of Landlord-Tenant Information
Division of Housing and Development
Department of Community Affairs
CN 809
Trenton, NJ 08625

TRANSPORTATION

(a)

DIVISION OF DESIGN

Utility Accommodation

Adopted New Rules: N.J.A.C. 16:25

Proposed: June 15, 1987 at 19 N.J.R. 1064(a).

Adopted: April 8, 1988 by Kenneth C. Afferton, Acting Assistant Commissioner for Engineering and Operations (State Highway Engineer).

Filed: April 25, 1988 as R.1988 d.216, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 7-19, 7A:7, 40:62-35, 62-65, 62-134, 178-40, 48:7-1, 7-2, 9-17, 9-25.4, 13-10, 17-8, 17-10, 17-16, 19-17.

Effective Date: August 15, 1988.

Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

On June 15, 1987, the Department proposed new rules at N.J.A.C. 16:25, "Utility Accommodation", which elicited four letters of comments.

These comments were received from Donald W. Smith Associates, P.A., Consulting Engineers, Planners—Surveyors Landscape Architects, 40 Airport Road, Lakewood, New Jersey, 08701; Atlantic Electric, Chamber Building, 315 West State Street, Trenton, New Jersey 08618; American Water Works Service Company, Inc., 506 Grove Street, Haddon Heights, New Jersey, 08035; and Public Service Electric and Gas Company, 80 Park Plaza, Newark, New Jersey 07101.

COMMENT: Donald W. Smith Associates, P.A., felt that "consideration should be given to modifying the current permit application process to provide a maximum time period within which the Department must take action on a permit application and incorporate specific requirements with respect to filing of complete applications and allowable lengths of time to review and take action on any questions."

RESPONSE: A maximum time period within which the Department must take action on a completed permit application cannot be established, because the utility permits are being processed in the most expeditious manner based upon manpower constraints. Permits, for the most part, are from major utility companies which usually do business with the Department. The listing of the requirements for an application is declared complete is outlined in N.J.A.C. 16:25-10 and 11. If an application is complete, the Department will continue its review process and only return the application to the applicant should it be incomplete.

Public Service Electric and Gas Company (PSE&G) had the following comments:

COMMENT: N.J.A.C. 16:25-2.2(c)3 requires compliance with ANSI B31.8. PSE&G suggests that the minimum requirement in this regard be Title 49, Code of Federal Regulations, Part 192 (49 C.F.R. Part 192), Minimum Federal Safety Standards for Gas Lines. These standards are now the accepted industry guidelines in general and are recognized as such at proposed N.J.A.C. 16:25-3.3(b).

RESPONSE: This is a valid comment, and N.J.A.C. 16:25-2.2(c)3 has been amended on adoption to reflect current industry and AASHTO policy.

COMMENT: N.J.A.C. 16:25-3.8(a)2 would require DOT notification and approval before increasing the design pressure or upgrading any line

crossing a highway or bridge. Again, the proper standards for such pipeline installations are those set forth at 49 C.F.R. Part 192 and are followed in the subject instance. PSE&G submits that the responsibility for the need, adequacy of design and maintenance lies with PSE&G, subject to the Federal standards, and the decision to upgrade a system rightfully belongs with the utility rather than the DOT. It is suggested that the following language be added to the end of the first sentence of the proposed subsection: "... unless the procedure to increase pressure follows the approved guidelines set forth at 16:25-2.2(c)3 hereof."

RESPONSE: The suggested language has not been added, since it does not address the concerns or requirements of the agency having jurisdiction over the roadway or structure involved, the Department of Transportation. The Department of Transportation needs to be informed of any actions covered by N.J.A.C. 16:25-3.8(a)2. The DOT has added clarification regarding the routing of the required advance notice. Any pipeline installed within the highway right-of-way must be accomplished by permit. The Department must be advised of any changes in a permit.

COMMENT: N.J.A.C. 16:25-3.10(c)3 would require backfill to be done in six-inch layers and to a density of 95 percent as determined by AASHTO Method T-99. PSE&G has found that there is no readily available method to determine density of soils and submits that there is inadequate data that is available to determine if the 95 percent figure is either reasonable or attainable. For this reason, it is suggested that the 95 percent density proposal be eliminated for less than twelve-inch diameter pipe. This suggestion is further supported by the fact that any settlement from such a narrow trench as would be involved would be neither excessive nor dangerous where the backfill operation is performed in the lifts as proposed. In addition, the subsection would require a cutback of all trenches on a highway, but there are no standards to define distances deemed as adequate cutback. It is, therefore, suggested that in those instances where a cutback is determined to be required, then a maximum limit for cutback of six inches be established.

RESPONSE: AASHTO (1981) has made some changes in their policy in this matter as follows: Backfill under the roadway should be placed in two stages: first, fill to the level of the top of pipe, and second, fill to former surface grade. Fill should consist of suitable material laid in six-inch layers, each consolidated by compaction according to current applicable specifications. Consolidation by flooding or jetting will be permitted only in specific warranted conditions. For backfill of entrenched pavement, materials and methods of compaction should be adapted to achieve prompt restoration of traffic service. There should be additional cutback of base and surfacing and transitioning of trench to minimize later development of sag in the grade of pavement over the trench. These requirements, and further requirements as outlined in N.J.A.C. 16:25-3.10(c)3.1, are deemed necessary by the Department to retain the structural integrity of the roadway; therefore, no changes have been made.

COMMENT: N.J.A.C. 16:25-3.13(a)2ii would require replacement of an existing pipeline that is within six inches of subgrade. Where there is a steel pipeline within six inches of the bottom of a 24-inch deep highway box, PSE&G would not propose replacement but would request the contractor involved to protect such facilities and avoid running equipment over the pipeline. It is, therefore, suggested that the following language be added to the end of N.J.A.C. 16:25-3.13(a)2ii: "... except where there are no vertical protrusions that would intrude into the subgrade and the pipeline can be protected during construction:

RESPONSE: This rule reflects NJDOT policy. The policy is flexible and has been waived under certain conditions in the past, upon application to the Department. As long as the Department has the ability to modify this policy, when in its judgment conditions warrant, N.J.A.C. 16:25-3.13 should not be modified to reflect a singular situation. Therefore, the rule remains as proposed.

COMMENT: N.J.A.C. 16:25-3.7(a)4

State highways also serve as the major commercial streets in many established cities and towns. Sewer lines traditionally have occupied the center of the roadway in these locations. For the most part, these streets are heavily travelled and are expected to exceed the 750 ADT limit placed in this section. Provisions should be made to allow for manhole and sewer line installations under these circumstances.

RESPONSE: The wording of this paragraph is liberal enough to allow the installation of underground facilities in any street or highway in the State if the need and conditions warrant and, therefore, no change in the wording of the rule has been made.

COMMENT: N.J.A.C. 16:25-3.10(c)2

If the trench bottom is suitable, bedding material should not be required.

RESPONSE: The DOT rule states that proper bedding shall be provided. AASHTO policy states that bedding should be provided. DOT standard specifications allow for pipes to be laid directly on material at trench bottom, if the material assures proper bedding of the pipes. Many times, this bedding is a utility company requirement.

The rule has not been rewritten. To further clarify this requirement, NJDOT Specifications are as follows: 207.05 Bedding for Pipes and Culverts. If the class of bedding is not designated, pipes and culverts shall be placed directly on the material at the bottom of the excavation.

COMMENT: N.J.A.C. 16:25-10.1(c)

In accordance with N.J.A.C., water utilities are only required to get the consent of the entity responsible for the repair and maintenance of the right-of-way. Assuming that other utilities are the same, the statement that the utility should receive the approval of the franchising municipality should be deleted.

RESPONSE: N.J.A.C. 16:25-10.1(c) states that information regarding appropriate approvals, if required, should accompany all permit applications. The requirements for approval vary with each granting entity. The Department, in this instance, is seeking information.

COMMENT: 16:25-10.3(a)

For most installations, a corporate bond should be acceptable to the Department. The rules should reflect this as the normal requirement. Checks shall only be requested under special circumstances. If checks are required, a time limit should be specified to insure prompt return of the check following successful completion of the project.

RESPONSE: The rule will remain as written. To ensure proper restoration of work performed by permit, a guarantee may be requested and required as a condition of any permit. This restoration guarantee is not specifically intended for use with Utility Type Permits, but may be required of any permittee. Department guidelines at N.J.A.C. 16:41 state that the Regional Maintenance Office shall return these escrowed monies upon satisfactory completion of the project.

COMMENT: N.J.A.C. 16:25-5.2(a)

Limiting longitudinal installation of overhead lines on highway right-of-way to single pole type construction has the potential to create problems, should a special condition require other means of construction. The commenter requested the rule be modified to allow for exceptions where required.

RESPONSE: Exceptions will be considered by the Department in specific cases, upon application to the Department, Chief, Bureau of Utility and Railroad Engineering, 1035 Parkway Avenue, Trenton, New Jersey 08625.

COMMENT: N.J.A.C. 16:25-5.5(a)

A request was made to expand the exceptions to include other uncontrollable incidents such as right-of-way refusal and/or other conditions where obstructions or special conditions would prevent access by construction or maintenance equipment.

RESPONSE: Unusual conditions can be addressed by application to the Chief of the Bureau of Utility and Railroad Engineering.

COMMENT: N.J.A.C. 16:25-5.6(e)

The requirement for utility pole replacements (scheduled) on existing highway to be located outside of the clear zone area creates unnecessary offsets in the linear construction of pole lines when a single or low number of poles are replaced. The offsets caused by these new locations on a few number of poles will require additional guying (the procedure whereby poles are held in place or reinforced by wires attached to the ground) of a pole along roadways, where such guying is undesirable and would degrade the integrity of the facilities.

The commenter requested that the rule be modified to require the new location only where a substantial number of continuous poles (10 or greater) are being replaced and there is sufficient right-of-way to accomplish the relocation.

RESPONSE: The rule has not been changed. This subsection was not intended to cover unscheduled single pole replacement. Where scheduled line replacement is to be undertaken, it must be conducted in accordance with this rule. If exceptions are necessary, a request can be made to the Department, Chief, Bureau of Utility and Railroad Engineering.

COMMENT: N.J.A.C. 16:25-9.1(c)

Requiring a company to obtain written permission of the Department prior to spraying, cutting or trimming trees will create a burdensome amount of paperwork for both the Department and utility, due to the extent of exposure utilities have along State highways. It was suggested that a blanket approval from the Department be issued for all tree trimming after proper procedures are adopted by the utility.

RESPONSE: The purpose of all Highway Permits is to protect the Department's interest with regard to construction, re-construction, main-

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tenance and repairs within the Department's right-of-way, and safety for the travelling public. In order for municipalities and utility companies to install, maintain and service their installations, located within the State's highway system, the Department issues an annual permit (within each Regional Boundary) for such tree trimming activities (see N.J.A.C. 16:41-13).

COMMENT: N.J.A.C. 16:25-10.4(a)

A specific application review period allowed by the Department should be specified in the rules. In addition, if the current system of pre-application followed by application will continue to be required, it should be reflected in the rules. If not, it should be abandoned.

RESPONSE: A maximum time period within which the Department must take action on a completed permit application cannot be established, because the utility permits are being processed in the most expeditious manner, based upon Department manpower constraints. Permit requests, for the most part, are from major utility companies which usually do business with the Department. The Department holds pre-application conferences at the request of the applicant. Pre-application conferences are not a requirement of the Department. In view of approximately 1200 to 1400 applications received each year, it becomes infeasible to make this a requirement.

COMMENT: N.J.A.C. 16:25-12.1

Reimbursement criteria should be the same for both investor-owned and public utilities.

RESPONSE: Reimbursement is the same for all utilities even though N.J.S.A. 27:7-44.9 only deals with investor-owned.

COMMENT: N.J.A.C. 16:25-11.3

The term "private utilities" should be defined in subchapter 1, as not to avoid confusion with investor-owned utilities.

RESPONSE: Definitions for "Private utilities" and "Utilities" have been added in view of the comment, even though the definition should be apparent from the commonly understood meanings of the terms.

COMMENT: N.J.A.C. 16:25-1.1

The definition of "right-of-way" should be changed to say "... land, property, or interest therein . . . acquired for or devoted to transportation and/or utility purposes."

RESPONSE: The Department does not consider it appropriate to change the definition of "right-of-way", as suggested by the commenter, because the definition is the same as that originated by the American Association of State Highway Transportation Officials and is used industry-wide.

The following comments were from Atlantic Electric:

COMMENT: N.J.A.C. 16:25-5.1(b)2

The proposed rule limiting aerial crossings to 26 KV and above has the potential of creating hardship on both Atlantic Electric and its customers. Atlantic Electric's primary method of distributing electricity in its service territory is via overhead aerial lines at voltages under 26KV, specifically four and 12 KV.

To ban the installation of facilities under 26 KV at access highway right-of-way has the potential of greatly increasing the cost of service and creating delays in providing that service to its customers. A mechanism for exemption should be included.

RESPONSE: Exceptions may be granted by application to the Department, Chief, Bureau of Utility and Railroad Engineering, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.

COMMENT: N.J.A.C. 16:25-5.2(a)

Limiting longitudinal installation of overhead lines on highway right-of-way to single pole type construction has the potential to create problems should a special condition require other means of construction. I would request you modify to allow for exceptions where required.

RESPONSE: Exceptions will be considered, in specific cases, upon application to the Department.

COMMENT: N.J.A.C. 16:25-5.5(a)

A request was made to expand the exceptions to include other uncontrollable incidents such as Right-of-way Refusal and/or other conditions where obstructions or special conditions would prevent access by construction or maintenance equipment.

RESPONSE: Exceptions will be considered, in specific cases, upon application to the Department.

COMMENT: N.J.A.C. 16:25-5.6(e)

The requirement for utility pole replacements (scheduled) on existing highway to be located outside of the clear zone area creates unnecessary offsets in the linear construction of pole lines when a single or low number of poles are replaced. The offsets caused by these new locations on a few number of poles will require additional guying (the procedure whereby

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poles are held in place or reinforced by wires attached to the ground) of pole along roadways where such guying is undesirable and would degrade the integrity of the facilities.

We would request that the rule be modified to require the new location only where a substantial number of continuous poles (10 or greater) are being replaced and there is sufficient right-of-way to accomplish the relocation.

RESPONSE: The rule has not been changed. This paragraph was not intended to cover unscheduled single pole replacement. Where scheduled line replacement is to be undertaken, it will be in accordance with this policy. If exceptions are required, this paragraph covers that situation as well.

COMMENT: N.J.A.C. 16:25-9.1(c)

Requiring the company to obtain written permission of the Department prior to spraying, cutting or trimming trees will create a burdensome amount of paperwork for both the Department and utility due to the extent of exposure utilities have along state highways.

It was suggested that a blanket approval be obtained from the Department for all tree trimming after proper procedures are adopted by the utility.

RESPONSE: The purpose of all Highway Permits is to protect the Department's interest with regard to construction, re-construction, maintenance and repairs within the Department's right-of-way, and safety for the travelling public. In order for municipalities and utility companies to install, maintain and service their installations, located within the State's Highway System, the Department issues an annual permit (within each Regional Boundary) for such tree trimming activities (see N.J.A.C. 16:41-13).

COMMENT: N.J.A.C. 16:25-10.1(c)

Requiring applications to the DOT to include approvals by municipal, State and Federal agencies will delay construction and is deemed necessary since NJDOT is the controlling agency.

RESPONSE: Any approvals required by municipal, State and/or Federal agencies are mandated by those agencies, not by the Department. However, the Department requires that the applicant advise the Department whether approvals from municipal, State and Federal agencies are required, and, if so, whether they have been received.

COMMENT: N.J.A.C. 16:25-10.3(a)

The requirement of a bond or certified check guaranteeing compliance with the permit is truly unnecessary for New Jersey public utilities. This will increase the cost of individual projects.

RESPONSE: To ensure proper restoration of work performed by permit, a guarantee may be requested and required as a condition of any permit. This restoration guarantee is not specifically intended for use with Utility Type Permits but may be required of any permit. Department rules state that the Regional Maintenance Office return these escrowed monies upon satisfactory completion of the project (see N.J.A.C. 16:41).

COMMENT: Presently, the permitting process requires an affirmation of compliance with restoration procedures, with which the utility has always complied. The commenter requests a regulated utility exemption from this requirement. The rules as proposed are comprehensive and serve to codify many of the procedures presently in use at Atlantic Electric under existing rules. The commenter supports DOT's efforts and asks that it take into consideration the commenter's comments and suggestions for revising both the proposed and existing rules.

RESPONSE: Rules of practice vary from company to company. N.J.A.C. 16:25 is intended to provide for uniformity and cover all appropriate situations; therefore, the Department has not made any changes to the rules in the area of restoration procedure.

In view of the comments received and meetings of Department and Federal Highway Administration Staff to consider these comments, further technical and substantive changes have been made which do not require additional public notice and comment (see N.J.A.C. 1:30-4.3). Some references to the Department have been changed to the Regional Maintenance Offices, to more accurately reflect the current administrative structure of the Department.

The Department, N.J.A.C. 16:25-2.1, added text upon adoption setting forth permit/agreement requirements found at N.J.A.C. 16:41-3 and 4.

N.J.A.C. 16:25-11.1 was deleted and reserved, as a result of consultation with the Federal Highway Administration. Rules covering this subject will be included, in a chapter regulating railroads, which is currently being developed. Additionally, N.J.A.C. 16:25-3.11 has been changed to allow wet-boring on major highways, with authorization by

the Department, thus providing for those situations in which both the pipe layer's project and the Department's concerns can be thus served.

The Department is aware of the United States Department of Transportation's (USDOT) final rule which permits states to decide whether they will allow certain utilities to be installed longitudinally along free-ways and the Interstate system. The Department will publish necessary rules in the future to comply with the Federal regulations.

OFFICE OF ADMINISTRATIVE LAW NOTE: A change has been made to the chart of posted speeds/design speeds at N.J.A.C. 16:25-5.4 to correct a typographical error, properly reflecting provisions long a part of Department specifications.

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

CHAPTER 25 UTILITY ACCOMMODATION

SUBCHAPTER 1. GENERAL PROVISIONS

16:25-1.1 Definitions

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

"Arterial Highway" means a highway primarily for through traffic, usually on a continuous route.

"Average Daily Traffic" means average 24-hour volume, being the total volume during a stated period divided by the number of days in that period. Unless otherwise stated, the period is a year. The term is commonly abbreviated as ADT.

"Backfill" means replacement of suitable material around and over a pipe or conduit system.

"Bedding" means organization of soil or other suitable material to support a pipe or conduit system.

"Bury or Cover" means depth of top of pipe or conduit system below grade of roadway or ditch.

"Cap" means rigid structural element surrounding a pipe or conduit system.

"Carrier" means pipe directly enclosing a transmitted fluid (liquid or gas).

"Casing" means a larger pipe enclosing a carrier.

"Chief, Bureau of Utilities, Railroad Safety and Engineering" means individual authorized by the Commissioner of the Department of Transportation to prepare Utility Orders and/or Agreements covering rearrangement and/or occupancy of State Highways or Freeways by Utilities in connection with all roadway construction and/or improvement projects.

"Clear Roadside Policy" means the policy by the New Jersey Department of Transportation to provide a clear roadside area in order to increase safety, improve traffic operation, and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat, and rounded as practical and free as practical from physical obstructions above the ground such as trees, drainage structures, massive sign supports, utility poles, and other groundmounted obstructions. CRA is also referred to as clear zone area.

"Clear Zone Area" means that roadside border area, starting at the edge of the traveled way, available for use by errant vehicles.

"Coating" means material applied to, or wrapped around a pipe.

"Conventional Highway" means an arterial highway without access control.

"Conduit or Duct" means an enclosed tubular runway for projecting wires or cables.

"Control of Access" means the condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by State.

"Control of Access—Full" means the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only by prohibiting crossings at grade or direct private driveway connections.

"Control of Access—Partial" means the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

"Cradle" means rigid structural element below and supporting a pipe.

"Department" means New Jersey Department of Transportation.

"Direct Burial" means installing a utility underground without encasement.

"Drain" means appurtenance to discharge liquid contaminants from casings.

"Encasement" means structural element surrounding a pipe.

"Encroachment" means unauthorized use of highway right-of-way or easements as for signs, fences, buildings, etc.

["Engineer of Permits" means individual authorized by the Commissioner of the Department of Transportation to establish policies, procedures, rules and regulations relating to issuance of permits for occupancy of State Highways and/or lands owned by the Department where such occupancy is not covered by either Utility Orders or Agreements.]

"Expressway" means a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

"Flexible Pipe" means a plastic fiberglass, or metallic pipe having large ratio of diameter to wall thickness which can be deformed without undue stress.

"Freeway" means an expressway with full control of access.

"Frontage Road" means a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

"Gallery" means an underpass for two or more utility facilities.

"Grounded" means connected to earth or to some extended conducting body which serves instead of the earth whether the connection is intentional or accidental.

"Grout" means a cement mortar or a slurry of fine sand or clay.

"Highway, Street or Road" means a general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Investor Owned Utility" means utility type facility that is owned by stockholders.

"Jacket" means encasement by concrete poured around a pipe.

"Major Highway" means an arterial highway with intersections at grade and direct access to abutting property, and on which geometric design and traffic control measures are used to expedite the safe movement of through traffic.

"Manhole Includes Chambers or Vaults" means an opening in an underground system which workmen or others may enter for the purpose of making installations, inspections, repairs, connections, and tests.

"Median" means the portion of a divided highway separating the traveled ways for traffic moving in opposite directions.

"Normal" means crossing at a right angle.

"Oblique" means crossing at an acute angle.

"Parkway" means an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of parklike developments.

"Pavement Structure" means the combination of subbase, base course, and the surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

"Permit" means the document by which the Commissioner of the Department of Transportation approves the use and occupancy of highway rights-of-way or property by any utility facility. Permits are not required where Utility Orders or Agreements are to be issued in connection with highway improvements.

"Pipe" means a tubular product made as a production item for sale as such. Cylinders formed from plate in the course of fabrication of auxiliary equipment are not pipe as defined herein.

"Pressure" means relative internal pressure in psig (pounds per square inch gauge).

"Private utilities" means utilities owned and operated by private citizens or concerns.

"Public Owned Utility" means utility type facility owned and operated by the State or any political subdivision thereof.

"Public Utility Agreement (P.U.A.)" means the document by which the Commissioner of the Department of Transportation, in connection with Freeways or Parkways (as defined by N.J.S.A. 27:7A-1) enters into an agreement with a public utility owned or operated by the State or any political subdivision thereof, a public utility not covered by N.J.S.A. Title 48, or a public utility having compensable property rights as to the removal and/or relocation of its facilities. Also the document by which the Commission of the Department of Transportation, in connection with State Highways (non-Freeways or Parkways) enters into an agreement with the owner of any utility type facility occupying State Highway rights-of-way as to the removal and/or relocation thereof. The Agreement further serves as the permit to occupy highway rights-of-way and specifies the requirements for, and the conditions of said occupancy.

"Public Utility Order (P.U.O.)" means the document by which the Commissioner of the Department of Transportation, in connection with Freeways or Parkways (as defined by N.J.S.A. 27:7A-1) orders a public utility (as defined by N.J.S.A. Title 48) to remove and/or relocate its facilities. The Order also serves as the utility's permit to occupy highway rights-of-way and specifies the requirements for, and conditions of said occupancy.

"Regional Maintenance Office" means an office within the Division of Construction and Maintenance, Department of Transportation.*

"Right-of-Way" means a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

"Rigid Pipe" means a welded or bolted metallic pipe or reinforced, prestressed or pretensioned concrete pressure pipe designed for diametric deflection of less than 1 percent.

"Roadside" means a general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Safety Rest Areas" means a roadside area with parking facilities separated from the roadway provided for motorists to stop and rest for short periods. It may include drinking water, toilets, tables and benches, telephone, information, and other facilities for travelers.

"Scenic Overlook" means a roadside area provided for motorists to stop their vehicle beyond the shoulder, primarily for viewing the scenery in safety.

"Semi-rigid Pipe" means a large diameter concrete or metallic pipe designed to tolerate diametric deflection from 1.0 percent to 3.0 percent.

"Sidefill" means backfill around and to a level of one foot over a pipe or conduit system.

"Slab, Floating" means slab between, but not contacting pipe or pavement.

"Sleeve" means short casing through pier or abutment of a highway structure.

"Traveled Way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Trenched" means installed in a narrow open excavation.

"Untrenched" means installed without breaking ground or pavement surface, such as by jacking or boring.

"Utilities" means all public and private utilities including, but not limited to, communication, electric power, water, gas, oil, petroleum products, steam, sewer, drainage, irrigation, and similar facilities. Such utilities may involve construction and maintenance of underground, surface, or overhead facilities, either singly or in combination.*

"Vent" means appurtenance to discharge gaseous contaminants from a casing.

"Walled" means partially encased by concrete poured alongside the pipe.

16:25-1.2 Rights-of-way

(a) In the State of New Jersey utilities have the right, by franchise, to occupy highway rights-of-way. The Commissioner of Transportation has the right, by law, to regulate and control the manner in which such occupancy shall be accomplished.

(b) The rules contained in this chapter formally establish the criteria used by the Commissioner of Transportation in controlling the use of rights-of-way of State Highways, Parkways and freeways.

16:25-1.3 Applicability

The rules contained in this chapter apply to all public and private and cooperatively owned utilities, including electric power, telephone, telegraph, cable television, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigations, and similar facilities that are to be located, adjusted, or relocated within the rights-of-way under the auspices of the New Jersey Department of Transportation. Such utilities may involve underground, surface, or overhead facilities, either singularly or in combination.

16:25-1.4 Scope

(a) The rules in this chapter are provided for use in regulating the location, design, and methods for installing, adjusting, accommodating, and maintaining utilities on highway rights-of-way. The rules do not alter current rules, regulations or authority for installing utilities nor for determining financial responsibility for replacing or adjusting utilities. The rules are limited to matters which are the responsibility of highway authorities for preserving the integrity of the highway and its safe operation.

(b) Where laws or orders of public authority, industry or governmental codes, or highway authorities prescribe a higher degree of protection than provided by these rules, then the higher degree of protection shall prevail.

16:25-1.5 Standards and references

(a) Utility facility design and construction are normally subject to minimum safety standards and construction requirements prescribed by the respective National or Industry Standard Codes. Reference in these rules to such Codes are to the current or amended issue of the respective Code, and may vary from time to time as such Codes are amended, revised, or superseded by later rules or regulations.

(b) In the absence of applicable National, State or Local Regulatory Agency Standard Codes (such as the National Electrical Safety Code of the National Bureau of Standards and the New Jersey Department of Health Code in their respective industries), the Industry Standard Code shall apply to all utility type facilities located on, over, under, or across highway right-of-way, except that the minimum applicable standards as set out in the current Standard Specifications of the New Jersey Department of Transportation,¹ The American Association of State Highway and Transportation Officials' Guide for Accommodating Utilities within Highway-Right-of-Way² and currently applicable Federal Highway Regulations, shall apply in all instances where any such applicable highway specifications are more restrictive or require greater safety factors or require higher standards of construction, materials, or workmanship that the applicable National or Industry Standard Code.

¹Standard Specifications for Road and Bridge Construction. New Jersey Department of Transportation, 1983.

²A Guide for Accommodating Utilities within Highway Right-of-Way, American Association of State Highway and Transportation Officials, 444 N. Capitol Street, N.W., Suite 225, Washington, D.C. 20001, 1981.

16:25-1.6 Authority of utilities to use and occupy the rights-of-way of State highways (land service roads)

(a) The rights of investor owned utilities are as follows:

1. The rights investor-owned utilities have in State highways are established by N.J.S.A. 48.

2. Where usage is permitted, the statutes typically provide that the public utility involved "may use the public highways, streets and alleys", subject to the consents for approvals as the statute may require. Included in this category are:

- i. Electric companies—N.J.S.A. 48:7-1.2;
- ii. Telephone companies—N.J.S.A. 48:17-8, 10;
- iii. Telegraph poles—N.J.S.A. 48:17-16;
- iv. Sewer lines—N.J.S.A. 48:13-10,11;
- v. Water lines—N.J.S.A. 48:19-17;
- vi. Gas lines—N.J.S.A. 48:9-17, 25.4.

(b) The rights of municipally owned utilities are as follows:

1. The rights of municipal utilities with respect to State Right-of-Way are defined by Statutes within N.J.S.A. Title 40. Included are:
 - i. Electric poles—N.J.S.A. 40:62-35;
 - ii. Water lines—N.J.S.A. 40:62-65, 134 and 40:178-40.

16:25-1.7 Freeways and parkways

(a) The usage granting statutes discussed in N.J.A.C. 16:25-1.6 apply only to conventional highways, and any usage of freeway and parkway right-of-way is subject to the discretion of the Commissioner of Transportation.

(b) The Department has excluded longitudinal facilities from freeway and parkway rights-of-way, unless extreme cases of need can be demonstrated to the satisfaction of the Department and can further be shown to be in the best public interest, and the Department has established regulations for crossings of such roads by utility facilities.

(c) The Commissioner is also authorized to order the removal and relocation of utility facilities from freeway or parkway right-of-way at State expense.

SUBCHAPTER 2. GENERAL CONSIDERATIONS

16:25-2.1 Location of utility lines

(a) ***Utility lines installed within a highway right-of-way require a permit issued by the Regional Maintenance Office, or an agreement with the Bureau of Utilities.*** Utility lines must be located to permit servicing such lines with minimum interference to highway traffic and to minimize need for later adjustments to accommodate future highway improvements.

(b) Longitudinal installations must be located on uniform alignment as near as practicable to the right-of-way line so as to provide a safe environment for traffic operation and preserve space for future highway improvements or other utility installations.

(c) To the extent feasible and practicable, utility line crossing of the highway should cross on a line generally normal to the highway alignment.

(d) The horizontal and vertical location of utility lines within the highway right-of-way limits must conform with the clear roadside policies applicable for the system, type of highway, and specific conditions for the particular highway section involved. The location of above ground utility facilities must be consistent with the clearances applicable to all roadside obstacles for the type of highway involved. With pole type facilities, where a guide rail is present, poles should always be located behind the guide rail allowing sufficient clear distance behind the guide rail for the guide rail's design deflection.

(e) In all cases, full consideration must be given to the measures, reflecting sound engineering principles and economic factors necessary to preserve and protect the integrity and visual quality of the highway, its maintenance, efficiency and the safety of highway traffic.

(f) Utility crossings of freeways are to be held to a practical minimum and where permitted will meet all applicable provisions of these rules.

16:25-2.2 Design of utility facilities

(a) The utility shall be responsible for the design of the utility facility to be installed within the highway rights-of-way or attached to a highway structure.

(b) The Department shall be responsible for review and approval of the utility's proposal with respect to the location of the utility facilities to be installed and the manner of attachment. This includes the measures to be taken to preserve the safe and free flow of traffic, structural integrity of the roadway, maintenance, appearance of the highway, and the integrity of the utility facility.

(c) Utility installations on, over, or under the rights-of-way of State highways and utility attachments to highway structures must meet the following minimum requirements:

1. Electric power and communication facilities shall conform with the currently applicable National Electrical Safety Code¹.
2. Water lines shall conform with the currently applicable specifications of the American Water Works Association².

3. Pressure pipelines shall conform with the currently applicable sections of ***[ANSI]* **the** Standard Code **[for]** **of** Pressure Piping of the American National Standards Institute³; Title 49 CFR, Parts 192, 193, and 195;** and applicable industry codes⁴. ***[including:]***

***[i. Power piping, ANSI B31.1.0**

ii. Petroleum refinery piping, ANSI B31.3

iii. Liquid petroleum transportation piping systems, ANSI B31.4

iv. Gas transmission and distribution piping, ANSI B31.8]*

4. Liquid petroleum pipelines shall conform with the currently applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways⁵.

(d) Ground-mounted utility facilities shall be of a design compatible with the visual quality of the specific highway section being traversed.

(e) All utility installation on, over, or under highway rights-of-way and attachments to highway structures shall be of durable materials designed for long service life expectancy and relatively free from routine servicing and maintenance.

(f) On new installations or adjustments of existing utility lines, provision should be made for known or planned expansion of the utility facilities, particularly those located underground or attached to bridges. The utility lines shall be planned so as to minimize hazards and interference with highway traffic when additional overhead or underground lines are installed at some future date.

¹National Electrical Safety Code, current issue, Bureau of Standards, U.S. Department of Commerce. (For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

²American Water Works Association Standards and Specifications, current issue, AWWA, 2 Park Avenue, New York, New York 10016.

³ANSI Standard Code for Pressure Piping of the American National Standards Institute, 1430 Broadway, New York, New York 10018

⁴API RP 1102, Recommended Practice for Liquid Petroleum Pipelines Crossing Railroads and Highways, current issue, American Petroleum Institute, 1271 Avenue of the Americans, New York, New York 10020

SUBCHAPTER 3. PIPELINES

16:25-3.1 Location and alignment

(a) For all crossings, the angle of crossing should be based on economic considerations of practical alternates. The crossing shall be located as near normal to the highway alignment as practical.

(b) Conditions which are generally unsuitable or undesirable for pipeline crossing should be avoided. These include locations such as:

1. In deep cuts;

2. Near footings of bridges and retaining walls;

3. Across intersections at grade or ramp terminals;

4. At cross drains where flow of water, drift, or stream bedload may be obstructed;

5. Within basins of an underpass drained by a pump if pipeline carries a liquid or a liquified gas;

6. In wet or rocky terrain where it would be difficult to attain minimum bury.

(c) On longitudinal installations, utility locations parallel to the pavement at or adjacent to the right-of-way line are preferable so as to minimize interference with highway drainage, the structural integrity of the traveled way, shoulders, and embankment; and the safe operation of the highway. As a minimum, their lateral location shall be offset a suitable distance beyond the slope, ditch, or curb line, as the Department may stipulate.

(d) Vertical and horizontal clearance between a pipeline and a structure or other highway or utility facilities should be sufficient to permit maintenance of the pipeline and the other facilities.

(e) The locations of all pipelines will be reviewed by the Department to ensure that the proposed utility installation will not interfere with existing or planned highway facilities or with highway maintenance and operation processes.

16:25-3.2 Bury

(a) The critical controls for bury over a pipeline crossing are the low points in the highway cross-section. Usually these are the bottoms of the longitudinal ditches.

(b) In establishing the bury below an unpaved ditch, consideration should be given to potential increases in ditch depth resulting from scour, ditch maintenance operations, or the need to increase the capacity of the ditch.

(c) On longitudinal installations, the critical controls for bury are the depths of lateral drainage facilities, landscaping, buried utility lines, bridge structures, and likely highway maintenance operations.

(d) The depth of frost penetration should be taken into consideration in determining the bury. The bury shall be sufficient so that the liquid transmitted will not freeze. In addition, the depth shall be sufficient to withstand the greatly increased impact loads transmitted through the frozen soil.

16:25-3.3 Controls for the bury of pipelines

(a) The bury over pipelines will be at a minimum of 36 inches; however, special consideration shall be given on the basis of engineering and safety factors for the area, the product carried, and maximum working or test pressures for the pipelines before varying from minimum depth.

(b) Pipelines will be designed, installed and tested in accordance with the Minimum Federal Safety Standards of the U.S. Department of Transportation as published in Part 192 of Title 49, Code of Federal Regulations, and any amendments thereof.

(c) Where less than minimum bury is made necessary because of other utilities, water table, ordinances, or similar reasons, the pipe should be rerouted or else protected in a suitable manner.

(d) Cover for pipelines carrying transmittants which are flammable, corrosive, expansive, energized, or unstable particularly if carried at high pressure or potential, must not be reduced below acceptable safety limits.

16:25-3.4 Encasement and allied mechanical protection generally

(a) Definite guides for the encasement of pipelines cannot be fully resolved from present experience and knowledge. An arbitrary policy of requiring encasement for all highway crossings is too expensive, not only to the utility consumer but also to the highway user; however, considering past experience and current appraisal of future hazard, it would not be prudent to waive all encasement requirements. Consequently, the Department shall evaluate all factors concerning each highway crossing and determine the need for encasement to protect the roadway.

(b) The acceptable methods available to provide such protection include, but are not limited to:

1. Tunnels and galleries;
2. Casing pipe;
3. Grouting by mortar filling;
4. Bore-hole annulus;
5. Cradling;
6. Capping;
7. Walling;
8. Boxing or jacketing;
9. Provisions of thickened wall carrier pipe;
10. Joints of mechanical or welded leakproof type of construction;
11. Coasting and wrapping;
12. Cathodic protection;
13. Electrical bonding;

(c) Of these methods, only the casing and tunnel or gallery provide complete independence of the carrier from the surrounding earth. Grouting restores the continuity and integrity of the earth supporting the pavement. Cradling enhances the supporting capacity of rigid pipes. Walling does the same for semi-rigid and flexible pipes. Capping strengthens both rigid and flexible pipes, and protects them from highway operations penetrating the fill. When applied to weak or brittle pipes, boxing or jacketing provides protection from earth loads, leakage, corrosion, or abrasion. On uncased carrier pipes thickened wall sections and leakproof type joints enhance the potential for a trouble free installation of long service life expectancy. Coating or wrapping prevents contact with corrosive water, soil, or vapor.

16:25-3.5 Encasement

(a) Casings may be required for the following conditions:

1. As an expediency in the insertion, removal, replacement or maintenance of carrier pipe crossings or freeways, expressways, and other controlled access highways and at other locations where it is necessary in order to avoid open trenched construction;

2. As protection for carrier pipe from external loads or shock, either during or after construction of the highway;

3. As a means of conveying leaking fluids or gases away from the area directly beneath the traveled way to a point of venting at or near the right-of-way line or to a point of drainage in the highway ditch or a natural drainage way.

(b) Jacked or bored installations of coated carrier pipes must normally be encased. Exceptions may be made where assurance can be provided against damage to the protective coating.

(c) Consideration shall be given to encasement or other suitable protection for any pipeline:

1. With less than minimum bury;

2. Near footings or bridges or other highway structures or across unstable or subsiding ground;

3. Near other locations where there may be a hazard.

(d) Rigid encasement or suitable bridging shall be used where support of pavement would be impaired by depression of flexible carrier pipe.

(e) Casings when utilized shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall equal the structural requirements for highway drainage facilities. Casings shall be composed of materials of satisfactory durability under conditions to which they may be exposed.

(f) Where pipelines are encased, the encasement shall extend a suitable distance beyond the slope or ditch lines. Where appropriate, the encasement shall extend to the access control lines, to the outside of frontage roads, or to an indicated line that allows for future widening of the highway.

(g) Casing pipe when utilized shall be sealed at the ends with a flexible material to prevent flowing water and debris from entering the annular space between the casing and the carrier. The installations should include necessary appurtenances, such as vents and markers.

16:25-3.6 Allied mechanical protection

(a) For some conditions, a pipeline crossing a highway may be installed without encasement. Normally, such an installation will be limited to open trenched construction. The following controls shall be applied for providing allied mechanical protection to an uncased pipeline crossing a highway.

1. On uncased construction, the carrier pipe shall conform to the material and design requirements of utility industry and governmental codes and specifications. In addition, the carrier pipe shall be designed to support the load of the highway plus superimposed loads thereon when the pipe is operated under all ranges of pressure from maximum internal to zero pressure. Such installations shall employ a higher factor of safety in the design, construction and testing than would normally be required for cased construction.

2. Suitable bridging, concrete slabs or other appropriate measures shall be used to protect existing uncased pipelines which by reason of shallow bury or location make them vulnerable to damage from highway construction or maintenance operations. Such existing lines may remain in place without further protective measures if they are of adequate depth and do not conflict with the highway construction or maintenance operations, provided both highway and utility officials are satisfied that the lines are, and will remain, structurally sound and operationally safe.

3. Uncased crossings of welded steel pipelines carrying transmittants which are flammable, corrosive, expansive, energized, or unstable, particularly if carried at high pressure or potential, may be permitted, provided additional protective measures are taken in lieu of encasement. Such measures would employ a higher factor of safety in the design, construction and testing of the uncased carrier pipe, including such features as thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping and cathodic protection.

16:25-3.7 Appurtenances

(a) Vents, drains, markers, manholes, and shut-offs are appurtenances to pipeline installations. Required controls for such appurtenances are as follows:

1. Vents are appurtenances by which fluids or gases between carrier and casing may be inspected, samples exhausted, or evacuated. These fluids or gases may be leakage from the carrier within or the soil without, or atmospheric vapor and condensate, or decomposition products of pipes and coatings. Light gases are exhausted through risers or standpipes projecting above the ground surface. Vent standpipes shall be located and constructed so as not to interfere with maintenance of the highway nor to be concealed by vegetation; normally they should stand on a fence or right-of-way line.

2. Drains are appurtenances by which liquids or heavy gases may be evacuated or exhausted. They shall be provided for casings, tunnels, or galleries enclosing carriers of liquid, liquified gas, or heavy gas. Drains will not outfall into roadside ditches or natural water courses.

3. The utility shall place readily identifiable and suitable markers ***[at]* *on*** the right-of-way line where it is crossed by pipelines carrying transmittants which are flammable, corrosive, expansive, energized or unstable, particularly if carried at high pressure or potential, except where a vent will serve as a marker. Markers are also desirable for other pipelines.

4. New manholes shall normally not be located in the pavement of major highways, including urban highways. Exception may be made at those locations where manholes are essential parts of existing lines that are permitted to remain in place under existing and proposed roadways. Manholes may be retained or installed under paving on low traffic roadways, less than 750 ADT, within municipalities. Effort should be made to minimize such installations and to avoid their location at street intersections, insofar as practicable. Manholes shall be designed and located in such a manner that will cause the least interference to other utilities and future highway expansion.

5. Shut-off valves, preferably automatic, shall be installed in lines at or near ends of structures and near unusual hazards, unless hazardous segments can be isolated by other sectionalizing devices within a reasonable distance.

16:25-3.8 Restriction against varied use

(a) The following precautionary measures are required for pipeline installations:

1. Pipeline installation permits shall specify the class of transmittant, the maximum working, test, or design pressures, and the design standards for the carrier.

2. When it is anticipated that there will be a change in the class of transmittant or an increase in the maximum design pressure specified in the permit, the utility will be required to give the Department *** , through the Regional Maintenance Office,*** advance notice and obtain approval for such changes. The notice should specify the applicable codes to be used.

16:25-3.9 Installation

(a) Installation or replacement of pipelines along or crossing existing highways ***[for the most part]*** may be controlled by end-product specifications.

(b) However, safety of traffic and preservation of the earth structure supporting the pavement requires some restricting of methods used in the operation.

(c) Several acceptable methods of installation are detailed in N.J.A.C. 16:25-3.10, 3.11 and 3.12.

16:25-3.10 Trenched construction and backfill

(a) The essential features for trench and backfill are as follows:

1. Restoration of the structural integrity of entrenched roadbed;
2. Security of the pipe against deformation likely to cause leakage;
3. Assurance against the trench becoming a drainage channel;
4. Assurance against drainage being blocked by the backfill.

(b) The integrity of the pavement structure, shoulders, and embankment slopes are of primary concern. Details of specifications should recognize differences in climate and soil.

(c) Trenched construction, bedding and backfill are required to conform to the Department's standard specifications for earthwork and culverts. The use and occupancy agreement should include the following:

1. Trenches shall be cut to have vertical faces, where soil and depth conditions permit, with a maximum width of outside diameter of pipe, plus two feet. They shall be shored where required.

2. Bedding shall be provided to a depth of six inches or half the diameter of the pipe, whichever is the least. Bedding shall consist of granular material, free of lumps, clods, stones, and frozen materials and should be graded to a firm but yielding surface without abrupt change in bearing value. Unstable soils and rock ledges shall be subexcavated from the bedding zone and replaced by suitable material. The bottom of the trench shall be prepared to provide the pipe with uniform bedding throughout the length of the installation.

3. Backfill under the roadway shall be placed in two stages: first, sidefill to a level of one foot above the top of pipe or conduit system, and second, to former surface grade. Sidefill should consist of granular material laid in six-inch layers, each consolidated by mechanical tamping controlled addition of moisture, to a density of 95 percent as determined by AASHTO Method T-99. Backfill should be layered and consolidated to match the entrenched material in cohesion and compaction. Consolidation by saturation or ponding will not be permitted. For backfill of entrenched pavement, materials and methods of compaction shall be adapted to achieve prompt restoration of traffic service. There shall be additional cutback of base and surfacing and transitioning of trench to minimize later development of sag in the grade of pavement over the trench.

4. The Department shall require that backfill and repaving be performed under its direction utilizing specifications acceptable to the Department.

16:25-3.11 Untrenched construction and grouting

(a) Several techniques for installing pipelines under a highway without disturbing the surface are as follows:

1. Driving: A small pipe with a pilot shoe can be driven through compressible soils by a steady thrust, hammering, or vibrating. A casing or corrosion resistant carrier must be used. Long drives may wander far from the desired line and grade.

2. Coring: A small casing without pilot shoe can be drilled into more difficult soil, which enters the pipe as it advances. The core is removed by sluicing, during or after the drilling. Line and grade are fairly easy to control.

3. Boring: Large pipes can be jacked through oversize bores carved progressively ahead of the leading edge of the advancing pipe as spoil is mucked back through the pipe. Control is excellent. Annular void and overbreaks may be minimized when cutterhead is sized closely to pipe diameter and pipe is advanced with cutterhead in close proximity.

4. Wet-boring: A hole is sluiced by a jet of slurry and kept full of pressured slurry to prevent collapse. The pipe is pushed through the slurry, evacuating the excess. Coated pipes may be installed without damage, but some soils may soften, expand, or disintegrate from transfer of moisture from the slurry. This method ***[will not be authorized]* *shall be prohibited*** on major highways ***unless authorized by the Department***. Special care and permission of the Department will be required when using this method elsewhere.

(b) The required controls for untrenched construction and grouting are as follows:

1. Untrenched construction will be required for all new or replacement pipeline crossings of controlled access and other major highways. On controlled access highways, as a minimum, the untrenched construction shall extend under and across the entire roadway prism. On the other major highways, the untrenched construction shall extend under and across the surfaced area of the highway.

2. Portal limits of pipeline crossings shall be beyond the surface areas of the highway so as to avoid impairing the roadway during installation of the pipeline. Where bulkheaded, the portal should be suitably offset from the surfaced area of the highway: where not bulkheaded, it should be offset not less than the vertical difference in elevation between the surfaced area of the highway and the pipeline.

3. The oversize of the boring excavation shall be restricted and the Department shall establish, case by case, the conditions specified under which the void outside the carrier must be back-filled with grout. Where the soils are favorable and the carrier is four feet or more deep, the boring hole may be five percent oversize in diameter. The Department may require grout backfill for pipes more than 12 inches in diameter for overbreaks, unused holes, or abandoned pipes.

16:25-3.12 Utility tunnels and bridges

(a) A utility tunnel or a bridge occasionally is provided for a pipeline crossing a freeway at a strategic location. Where it can be foreseen that several utility crossings will be needed the cost of the tunnel (either a large casing or a box culvert) or of the bridge may be less than that for the alternate of several untrenched or separately encased pipelines. Where these conditions exist the Department will take steps as necessary to insure that adequate study is made by the utilities to anticipate their needs for future crossings and to converge their facilities to a joint use single crossing.

(b) In a combined tunnel or bridge, provision shall be made to isolate mutually hazardous transmittants, such as fuels and electric energy, by compartmentizing or by auxiliary encasement of incompatible carriers. The utility-tunnel or utility-bridge structure shall conform in appearance, location, bury, earthwork, and markers to culvert and bridge practice of the Department.

16:25-3.13 Adjustment

(a) The following are required controls for adjusting existing pipelines that fall in the path of highway construction projects:

1. An existing or relocated pipeline shall be protected in such a manner as normally would be required for a new pipeline at the site.
2. An existing pipeline shall be relocated in plan and/or grade where:
 - i. The pipe bedding will be depressed by highway loads; or
 - ii. The top of the pipe is within six inches of subgrade.
3. An existing pipeline too weak to support highway loads shall be replaced by stronger pipe or protected in such a manner acceptable to both the Department and the utility.
4. An existing pipeline which would lack adequate cover for protection against vehicular live loads or highway construction operations may be protected by a floating slab.
5. Notwithstanding reinforcement or protection otherwise provided, the highway construction contractor will be responsible for the security of each existing pipeline within the construction zone. Where there are unusual utility hazards and where heavy construction equipment will be needed, the contractor will provide a temporary protective cover of earth or bridge the utility.

SUBCHAPTER 4. INSTALLATION ON HIGHWAY STRUCTURES

16:25-4.1 General considerations

(a) In most cases, attachment of utility facilities to highway structures, such as bridges, is a practical arrangement and considered to be in the public interest. However, attaching utility lines to a highway structure can materially affect the structure, the safe operation of traffic, the efficiency of maintenance as well as the appearance and therefore should be provided for during the design stage.

(b) Since highway structure designs and site conditions vary, the adoption of a standard method to accommodate utility facilities is not feasible; however, the method employed should conform to logical engineering considerations for preserving the highway, its safe operation, maintenance and appearance. Generally, acceptable utility installations are those which will occupy a position beneath the structure's floor, between the outer girders or beams or within a cell, and at an elevation above low point of super-structure steel or masonry.

(c) The general controls for providing encasement, allied mechanical protection and shut-off valves to pipeline crossings of highways and for restriction against varied use shall be followed for pipeline attachments to bridge structures, except that sleeves are required only through the abutment backwalls. Where a pipeline attachment to a bridge is encased, the casing should be effectively opened or vented

at each end to prevent possible buildup of pressure and to detect leakage of gases or fluids.

(d) Since an encasement is not normally provided for a pipeline attachment to a bridge, additional protective measures shall be taken. Such measures shall employ a higher factor of safety in the design, construction, and testing of the pipeline that would normally be required for cased construction.

(e) Communication and electric power line attachments shall be suitably insulated, grounded, and carried in protective conduit or pipe from the point of exit from the ground to re-entry. The cable shall be carried to a manhole located beyond the backwall of the structure. Carrier pipe and casing pipe should be suitably insulated from electric power line attachments.

(f) Guy wires in support of any utility shall not be attached to a bridge structure.

SUBCHAPTER 5. OVERHEAD POWER AND COMMUNICATION LINES

16:25-5.1 General

(a) The type of construction, vertical clearance above pavement, and location of poles, guys, and related groundmounted utility appurtenances along the roadside are factors of major importance to preserve a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway maintenance. A critical requirement for locating poles, guys and related facilities along the roadside is the width of the border area, that is, the space between the edge of shoulder or curb line and the right-of-way line, and its availability and suitability for accommodating such facilities. The safety, maintenance efficiency, and appearance of highways are enhanced by keeping this space as free as practical from obstacles above the ground. Where groundmounted utility facilities are to occupy this space, they should be placed as far as practical from the traveled way and beyond the clear roadside area. The nature and extent of roadside development and the ruggedness of the terrain being traversed are controlling factors for locating poles, guys and related facilities at the right-of-way line.

(b) In an effort to provide a safer environment for the traveling public and to improve the aesthetic qualities of newly designed freeways and land service roadways, above ground utilities are restricted in certain locations as follows:

1. No above ground facilities will be located within grade separated interchange areas designed to freeway standards.
2. No aerial crossing of control of access highway rights-of-way are permitted with the exception of electrical facilities operating at a potential of 26 KV or above.

16:25-5.2 Type of Construction

(a) Any longitudinal installation of overhead lines on the highway rights-of-way shall be limited to single pole type of construction.

(b) Joint-use single pole construction shall be encouraged, as indicated by Rule 222 of Part 2 of the National Electrical Safety Code¹, at locations where more than one utility or type of facility is involved. This is of particular significance at locations where the right-of-way widths approach the minimum needed for safe operations or maintenance requirements or where separate installations may require extensive removal or alterations of trees.

16:25-5.3 Vertical clearance

(a) The minimum vertical clearance for overhead power and communication lines above the highway and the lateral and vertical clearance from bridges shall in no case be less than the standards prescribed by the National Electrical Safety Code.

(b) Greater clearances are allowed, to conform to Company Standards.

¹Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines, current issue, National Bureau of Standards, U.S. Department of Commerce (for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

16:25-5.4 Location

(a) It is desirable that utility poles be located or relocated beyond the clear zone area for the highway section involved. Minimum offsets from the edge of traveled way shall be determined by the following table and as noted in this section.

Minimum Pole Offsets for Rural and Urban Highways ¹ :	
Posted Speed/ Design Speed	Posted Speed/ Design Speed
25 mph—9 feet	50 mph—20 feet
30 mph—11 feet	55 mph—25 feet
35 mph—13 feet	60 mph—*[25]**30* feet
40 mph—15 feet	70 mph—36 feet
45 mph—17 feet	

(b) The posted speed is for application on resurfacing, restoration and rehabilitation (3R) type projects which involve existing highways; the design speed is for application on reconstruction projects or projects on new alignment. A design exception will be required if minimum pole offsets cannot be met.

(c) On new alignments, the design speed shall be applied and the New Jersey Department of Transportation clear roadside policy used to determine the pole offsets.

(d) For existing urban arterials, collectors and local streets where there are curbed sections, utilities may be located in the border areas between the curb and sidewalk, at least 1.5 feet behind the face of curb, and where feasible, behind the sidewalk and as close to the right-of-way line as possible. For non-curbed urban sections, utility poles should be located or relocated beyond the clear zone for the highway section involved.

(e) Offsets are based on cut slopes of 3:1 or flatter and fill slopes 10:1 or flatter. For fill slopes, steeper than 10:1, the offset should be increased to at least the next higher speed category.

(f) Consideration should be given to increasing the minimum pole offsets on the outside of horizontal curves, particularly on those curves with a sharper degree of curvature than what are normal for the section of highway involved.

(g) For both rural and urban highways with or without curb and where posted speeds are 25 mph or less, poles should be placed as close to the right-of-way line as possible. If the locations of the poles, as stated herein, are infeasible and other mitigating conditions, such as parking or excess lane width lessen the exposure or potential accident severity, then placement of poles at least 1.5 feet behind the face of curb, edge of through pavement or edge of shoulder, based on engineering judgement can be considered.

¹Based on the New Jersey Department of Transportation Clear Zone policy, Section 8-02.4 of the New Jersey Department of Transportation Design Manual—Roadway.

16:25-5.5 Design exceptions

(a) When the minimum offset, as identified under N.J.A.C. 16:25-5.4 cannot be provided, a design exception can be made where:

1. The documented cost estimates to relocate the utility poles, including any additional right-of-way, in relationship to the construction project are considered excessive, and

2. An accident analysis for the preceding three years for the highway section involved does not reveal a significant history of accidents involving the utility poles.

(b) The exceptions in (a) above shall be submitted to the Department for approval.

16:25-5.6 General considerations

(a) The desirable offset behind a guide rail is four feet. See the New Jersey Department of Transportation Design Manual—Roadway for further information.

(b) Poles shall always be located behind a guide rail wherever same exists and be at least 50 feet longitudinally from a Breakaway Cable Terminal (BCT). See New Jersey Department of Transportation Design Manual—Roadway, Section 8, Figure 8K.

(c) Poles are prohibited from occupying small island areas except where other locations are unusually difficult and unreasonably costly.

(d) Poles being constructed in proximity to bridge structures will maintain a minimum of 40 feet offset from the main portion of the bridge structure.

(e) For new utility pole replacements (scheduled) on existing highways, the poles should be located outside of the clear zone area. Where this is not practical, they should be located as close to the right-of-way line as feasible.

(f) Guy wires to ground anchors and stub poles should not be placed between a pole and the traveled way where they encroach upon the clear roadside area.

(g) Where irregular shaped portions of the right-of-way extend beyond the normal right-of-way limits, variances in the location from the right-of-way line may be allowed, as necessary, to maintain a reasonably uniform alignment for longitudinal overhead installations.

(h) Longitudinal installations of poles, guys, or other related facilities shall not be located in a highway median. Poles and other appurtenances for highway lighting may be located in the median if other alternatives are determined to be impractical and where suitable protection is provided to the highway user.

SUBCHAPTER 6. SCENIC ENHANCEMENT

16:25-6.1 General provisions

(a) The type and size of utility facilities and the manner and extent to which they are permitted along or within highway rights-of-way can materially alter the scenic quality, appearance, and view of highway roadsides and adjacent areas. For these reasons additional controls are applicable in certain areas that have been acquired or set aside for their scenic quality. Such areas include scenic strips, overlooks, rest areas, recreation areas, the rights-of-way of highways adjacent thereto, and the rights-of-way of sections of highways which pass through public parks, recreation areas, wildlife and waterfowl refuges and historic sites.

(b) Additional required controls are discussed in N.J.A.C. 16:25-6.2 through 6.4.

(c) The Department shall make a final decision on each request for variance from such controls.

16:25-6.2 Underground utility installations

New underground utility installations may be permitted where they do not require extensive removal or alterations of trees or other natural features visible to the highway user and do not impair the visual quality of the lands being traversed.

16:25-6.3 Aerial installations

(a) New aerial installations shall be avoided at such locations where there is a feasible and prudent alternative to the occupation of such lands by the aerial facility. Where this is not the case, the aerial installations should be considered only where:

1. Other locations are unusually difficult and unreasonably costly or are more undesirable from the standpoint of visual quality;
2. Undergrounding is not technically feasible or is unreasonably costly; and
3. The proposed installation can be made at a location and will employ suitable designs and material which give adequate attention to the visual qualities of the area being traversed.

16:25-6.4 Utility installations for highway purposes

These scenic enhancement controls shall also be followed in the location and design of utility installations that are needed for a highway purpose, such as for continuous highway lighting, or to serve a weigh station, rest, or recreational area.

SUBCHAPTER 7. UNDERGROUND ELECTRIC POWER AND COMMUNICATION LINES

16:25-7.1 General provisions

(a) There is wide variation in the techniques and practices for undergrounding electric power and communication lines due to differences in such factors as water conditions, type of subsoil, facility congestion and the like. Accepted methods for undergrounding such lines include trenching for conduit, duct construction or uncased

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buried cable; and direct burial for plowing of buried cable and jacking or pushing of pipe as conduit, especially for crossing of existing highways.

16:25-7.2 Required controls for underground electric power and communication lines

(a) General rules concerning required controls for underground electric power and communication are as follows:

1. Underground utility construction shall conform to all applicable codes, standards, and specifications.

2. The Department has established a minimum depth of bury of 36 inches.

3. Pedestals or other above ground utility appurtenances installed as part of buried cable plant shall be located at or near the right-of-way lines.

4. All proposed locations and utility designs shall be reviewed by the Department to ensure that the proposed construction will not cause avoidable interference with existing or planned highway facilities or with highway operation or maintenance.

5. On both cased or uncased installations, particularly on crossings of the highway, consideration should be given for placing spare conduit or duct to accommodate known or planned expansion of underground lines.

6. The controls outlined in N.J.A.C. 16:25-4.1 for electric power and communication line attachments to highway bridge structures shall be followed.

7. The general controls outlined in N.J.A.C. 16:25-4.1 for pipelines as relate to markers, installations, trenched and untrenched construction, and adjustment shall be followed, as applicable, on underground installations of electric power and communication lines.

(b) Location and alignment of underground utilities will be as follows:

1. On longitudinal installations, locations parallel to the pavement at or adjacent to the right-of-way line are preferable so as to minimize interference with highway drainage, the structural integrity of the traveled way, shoulders and embankment, and the safe operation of the highway. As a minimum, their lateral location will be offset a suitable distance beyond the slope, ditch, or curb line, as the Department may stipulate.

2. Crossings should be located as near normal to the highway alignment as practical.

3. Conditions which are generally unsuitable or undesirable for underground crossings should be avoided. These include locations such as in deep cuts, near footings of bridges and retaining walls; across intersections at grade or ramp terminals; at cross drains where flow of water, drift or stream bedload may be obstructed; within basins of an underpass drained by a pump; and in wet or rocky terrain where it will be difficult to attain minimum bury.

(c) Cased and uncased construction shall be as follows:

1. Crossings of underground lines shall always be encased in protective conduit or duct, and the encasement shall extend a suitable distance beyond the slope or ditch lines. On curbed sections, the encasement should extend outside the outer curbs. On freeways, the encasement shall extend to the access control lines, to the outside of frontage roads, or to an indicated line that allows for future widening of the highway.

2. Consideration shall be given to encasement or other suitable protection for any wire or cable facilities:

- i. With less than minimum bury;
- ii. Near the footings of bridges or other highway structures;
- iii. Near other locations where there may be a hazard.

3. Where encased bored installations are proposed by the utility, the utility shall be required to furnish information as to the controls and construction methods to be employed, before the proposed installations are considered by the Department. This is to insure the necessary protection of the utility facility and the integrity and operation of the highway facility.

4. Underground construction within grade separated interchange areas designed to freeway standards, shall, at a minimum, extend between the interchanges outermost ramps.

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SUBCHAPTER 8. IRRIGATION AND DRAINAGE PIPES, DITCHES, AND CANALS

16:25-8.1 General considerations

(a) Irrigation and drainage facilities installed across highway rights-of-way generally should be designed and constructed in accordance with the Department's specifications for highway culverts. Ditches and canals that closely parallel the highway should be discouraged. Appurtenances which would constitute a hazard to traffic shall not be permitted within the clear zone area and preferably should be located outside of the right-of-way.

(b) Where ditch rider roads are adjacent to ditches or canals that cross the highway, consideration shall be given to safety, traffic operations, and economic features when providing for the continuity of such roads. For example, the enlargement of drainage structures to accommodate the crossing of ditch rider roads would rarely be economically justified.

SUBCHAPTER 9. SAFETY AND RESTORATION PROVISIONS

16:25-9.1 Preservation, restoration and cleanup

(a) The area disturbed by utility installations or relocations shall be kept to a minimum. Restoration methods shall be in accordance with the Department's specifications and/or special provisions in utility use and occupancy agreements.

(b) Care should be taken in utility installation to avoid disturbing existing drainage facilities. Underground utility facilities shall be backfilled with previous material and outlets provided for entrapped water. Underdrains shall be provided for entrapped water. Underdrains shall be provided where necessary. No jetting or puddling will be permitted under the roadway.

(c) The utility shall be prohibited from spraying, cutting and trimming of trees without written permission by the Department.

16:25-9.2 Control of traffic

(a) Traffic controls for utility construction and maintenance operations shall conform with the Manual on Uniform Traffic Control Devices for Streets and Highways¹ and the Department's Rules and Regulations for the Maintenance and Protection of Traffic Permit Operations². All construction and maintenance operations must be planned with full regard to safety and to keep traffic interference to an absolute minimum.

(b) On heavily traveled highways, construction operations interfering with traffic will not be allowed during periods of peak traffic flow. Any such work shall be planned so that closure of intersecting streets, road approaches, or other access points is held to a minimum.

16:25-9.3 Servicing, maintenance and repairs

(a) All utility facilities shall be kept in good state of repair both structurally and from the standpoint of appearance.

(b) The utility use and occupancy agreement may identify the maintenance operations which are permitted and indicate situations where prior notification to the Department is required.

16:25-9.4 Multiple use of freeway rights-of-way

(a) In some instances and under certain conditions, it may be in the public interest for utilities to use and occupy the rights-of-way of freeways for parallel (longitudinal) utility installations.

(b) When such extreme case need is demonstrated to the satisfaction of the Department as being in the best public interest, and the design, location, and measures for protecting the integrity, operational characteristics, and safety of freeway traffic meet all of the conditions set forth in the Federal-Aid Highway Program Manual, Volume 7, Chapter 7, Section 8 (FHPM 7-7-8), formerly Policy and Procedure Memorandum (PPM) 90-5, Dated March 27, 1973, "Joint Development of Highway Corridors and Multiple Use of Roadway Properties", on the Application of Joint Development and Multiple Use Concepts to Freeways and Utilities, and the installation is approved by the Federal Highway Administration, then a joint use and occupancy agreement or permit may be entered into with the utility by the New Jersey Department of Transportation to allow such installations.

¹Manual on Uniform Traffic Control Devices for Streets and Highways, current issue (for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

²Maintenance and Protection of Traffic During Permit Operations. Rules and Regulations, The New Jersey State Department of Transportation.

SUBCHAPTER 10. PERMITS AND AGREEMENTS

16:25-10.1 Application for permit

(a) For a permit to be issued to provide for any utility construction, major maintenance or related work on State Highway right-of-way or property, a written application shall be filed with the *[Department]* ***Regional Maintenance Office*** on the standard *[Department]* form which clearly describes the proposed facility installation, construction, or work, and establishes its location with reference to work, *[and establishes its location with reference to]* highway stationing, land section tie, some well known permanent landmark, road or street intersection, highway bridge, or other fixed reference point.

(b) Such written application shall consist of a complete description of the facility to be installed or constructed, or the work to be performed on an existing facility, and a sketch or plans which show the existing and/or proposed location of the facilities within the highway right-of-way in relation to the existing and/or planned highway improvement, the traveled way, the right-of-way lines, and control of access lines and approved access points where applicable. Profile view plans and cross sections shall also be furnished when required for clarity.

(c) All applications shall be signed by an official having contractual authority for the utility, or by the owner of the facility. Applications should also contain statements as to whether the proposed installation or construction is required to have, and if it has, the approval of the franchising municipality, or other applicable Federal, State or Local Government Agencies having jurisdiction thereover: and, if such agency approval is required, the name of the agency having such jurisdiction.

(d) All applications shall be made a part of the permit issued by the *[Department]* ***Regional Maintenance Office*** and shall be submitted in the number of copies, including plans or sketches, required by the Department for distributing the appropriate copies of the respective permit.

(e) All permits shall constitute a binding contract; therefore, proxy applications on behalf of the intended permittee, or verbal or unsigned requests for utility permits, will not be valid, and a permit will be withheld until a proper application is received and approved.

16:25-10.2 Opening permits

(a) Requests for opening permits, by any utility, that will involve the construction of underground facilities beneath paved roadway surfaces shall always be of special consideration.

(b) Normally no open-cuts of pavement will be allowed within freeway rights-of-ways. Any additional facilities required after completed construction of freeways will, where paving is encountered, normally be by the bore and jack methods and shall further be accomplished from outside the no access limits of the freeway.

(c) Under normal, non-emergency situations, major highway paving, whether new or improved, will carry a minimum "no open-cut" period of five years. This basic five-year period will be used only as a minimal guide, and in most cases where high traffic volume is encountered the "no open-cut" period will be extended indefinitely.

(d) Applications for open-cut permits, if approved, will be closely supervised by the *[Department's Regional Engineer]* ***Regional Maintenance Office*** to assure satisfactory replacement of base course and roadway paving.

16:25-10.3 Deposit or bond

(a) Pursuant to authority of the applicable New Jersey Statutes, a certified check or bond as a guarantee or compliance with the provisions of the permit to guarantee restoration of highway right-of-way or property shall be required if deemed necessary, in an amount sufficient to cover costs that may be incurred by the Depart-

ment of Transportation in making repairs or restoration of its right-of-way or property if such satisfactory repair or restoration is not made by the permittee.

(b) The amount of the certified check or bond shall represent the best judgement and estimate of the *[Department's Regional Engineer]* ***Regional Maintenance Office*** of the actual cost to the Department as might be incurred to restore the highway to its original condition if such work were not properly performed by the permittee.

16:25-10.4 Approval and issuance

(a) The Department shall review all permit applications for conformance with the provisions of this chapter, especially where above ground facilities are involved.

(b) Permits for utility installations or work on any Interstate right-of-way shall have prior approval of the Federal Highway Administration. All permits for utility installations or work shall be issued under the authority of applicable New Jersey Statutes, and shall be so referenced therein.

(c) All utility permits shall be issued only to the permanent owner and operator of the utility facility, and not to the party, company, or contractor performing the installation or construction work, nor to the temporary agent or engineer handling preparation of the permit application for the permanent owner.

16:25-10.5 Acceptance of license or permit

The start or performance of any work under a permit shall constitute full understanding and acceptance of, agreement with, and shall represent the express intention and obligation of the utility to comply with, the terms and provisions hereof and of the permit.

16:25-10.6 Notice of starting work

The permittee shall notify the designated *[Department Regional Engineer]* ***Regional Maintenance Officer*** in writing not less than three days prior to starting work in order that observation and inspection of the work may be provided, except that notification may be given on the day work is started on approved above ground construction or maintenance work which can be inspected after the work is completed, and on emergency maintenance and repair work.

16:25-10.7 Permit to be kept on job

(a) The approved permit, or a copy of same, shall be kept at the location of the work at all times work is in progress, and it shall be shown to Department Representatives upon request as proof of having received authorization to perform the work on highway right-of-way or property.

(b) Failure to furnish such proof of possession of, or to have approval for the issuance of, a valid permit may result in a Department directed stoppage of work.

(c) The burden of such proof shall be on the party, company, or contractor performing the work, or on the utility owner responsible for the work.

16:25-10.8 Occupancy by unwritten consent

(a) All utility lines, systems and facilities that have been, and that may be located on or across highway rights-of-way by operation of law and without the issuance by the Department of a written permit covering the installations, shall be considered, as occupying, crossing or otherwise using said right-of-way subject to the provisions of the applicable New Jersey statutes, the prior property rights, rules and regulations of the Department and the principles and requirements set forth herein.

(b) Any new rules, regulations, and specifications of the Department, and any new requirements in this chapter, are not to be applied retroactively against existing utility occupancies except that any such new rules, regulations, specifications, and new requirements shall apply to new or replacement facilities constructed as relocations whether required by the Department due to the existing facility obstructing or interfering with the present or proposed use of the highway right-of-way for highway purposes, or when such existing facilities are being replaced, relocated, or otherwise substantially changed by the utility owner for owner's purposes or convenience.

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16:25-10.9 Right to revoke or annul permit

The Commissioner of the Department is authorized, subject to giving reasonable notice (and hearing if requested) to revoke or annul a permit if the utility fails to comply with the provisions of this chapter and terms and conditions of the permit, or if the utility occupancy of the right-of-way becomes an interference to the use of the right-of-way for highway purposes. Any hearings conducted shall be subject to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

16:25-10.10 Responsibility for costs

(a) The utility, by applying for, accepting, and performing work under any permit, or by occupying highway right-of-way by unwritten consent, assumes the obligation by law and gives implied assurance of financial responsibility for all costs of the initial installation, subsequent operation, maintenance and servicing of the facility.

(b) The utility shall bear, or when applicable shall require its contractor or subcontractor to bear, all costs of any restoration and/or repairs to the utility facility and any highway property disturbed or damaged in the initial installation and/or subsequent maintenance or servicing operations associated with, or resulting from, permittee's normal operations and requirements in the occupancy of highway rights-of-way or property.

(c) The utility shall be responsible for, or require its contractor or subcontractor to be responsible for, all costs of any restoration or repair work as may be necessary due to failure or break in such utility facility which results in damage to either or both the utility facility or highway property.

(d) The utility shall be responsible for such other work as may be required by the Department if the utility's facilities are not maintained in a good state of repair; and the utility shall make any such emergency repairs of breaks or line failure which cause any hazard to the public, interference to traffic, or damage to highway property as promptly as reasonably possible after learning or being advised of such break or failure.

(e) The utility shall begin any normal repairs required by the Department to restore its facility to a good state of repair within 90 days of receipt of written request thereof from the Department, and shall exercise due diligence to prosecute such repair work to an early and orderly conclusion.

(f) If any subsequent change in the highway facility necessitates the moving or adjusting of utility facilities located by a permit, or operation of law on, over, under, or across highway right-of-way or other highway property, then the Department shall bear all costs and expense of such required move or adjustment.

(g) The utility shall begin such move or adjustment following written notice and request to do so by the Department, and shall exercise due diligence to prosecute the work of such move or adjustment to an early and orderly conclusion, and without causing undue delay to, or interference with, highway construction, betterment or maintenance operations.

SUBCHAPTER 11. SPECIAL PERMITS AND AGREEMENTS

16:25-11.1 *[Railroad crossings]**(**Reserved**)*

*[(a) The establishment of new railroad grade crossings or the modification of existing crossings, requires the prior approval of the Commissioner of Transportation. To obtain such approval, applicants must petition the Department pursuant to Title 48 of the New Jersey Statutes and the New Jersey Administrative Code.

(b) Current information concerning the petition content and the filing procedure may be obtained from the Chief, Bureau of Utilities, Railroad Safety and Engineering, Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.]*

16:25-11.2 Local-Federal Aid Agreements

(a) Pursuant to the provisions of Paragraph 6.d, Federal-Aid Highway Program Manual 6-6-3-2' (Formerly PPM 30-4.1), the Department shall enter into agreements with appropriate county and municipal officials to provide for regulating the use and occupancy of Federal Aid Roads, and to assist local officials in establishing

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utility accommodation policies conforming, as appropriate for the type of highway involved, to the provisions of this chapter.

(b) Such agreements may be entered into on a project-by-project basis handled by the Bureau of Local Federal Aid Programs. Until a county or municipality adopts a utility accommodation policy approved by the Department conforming to Federal requirements, the Bureau of Utilities Railroad Safety and Engineering shall review for conformance with the State requirements in effect at the time all utility rearrangement schemes on Federal Aid Roads that are subject to the provisions of Federal-Aid Highway Program Manual 6-6-3-2 (Formerly PPM 30-4.1).

'Title 23, Code of Federal Regulations, Part 645B.

16:25-11.3 Private utilities

(a) Requests for permits by private persons or concerns to cross, occupy, or use Interstate freeways, State highways, or Federal Aid Road rights-of-way shall be treated as special cases; and the review, approval, and issuance of any such permits for the accommodation of such privately owned facilities shall be on the merits of the individual requests as to its necessity and legal basis consistent with New Jersey Law.

(b) Where the requested use and occupancy involves more than a road crossing or a relatively short segment of parallel line (for example, up to 1/8 mile), or where equivalent utility service is available without the private line installation, then the request shall be referred to the Department's Chief Counsel for an opinion as to whether the proposed private use of the highway right-of-way is in violation of State law. All such private lines must also meet all other applicable provisions of this chapter.

16:25-11.4 Highway lighting

Requests for permits to install or revamp highway lighting systems by electric utilities or municipalities shall be treated as special cases; and each such request shall be referred to the Department for review and recommendations as to acceptability of design, adequacy of lighting, and safety factors in addition to the normal review and processing for permit approval of an above-ground utility installation.

SUBCHAPTER 12. UTILITY RELOCATIONS AND ADJUSTMENTS

16:25-12.1 Reimbursement basis

(a) Reimbursement to utility owners for required relocations and adjustments of existing utility lines, systems and facilities required by highway construction or improvements shall be made in accordance with the detailed procedures of Federal Highway Administration, Federal-Aid Highway Program Manual 6-6-3-1' (Formerly FHPM 1-4-4 & PPM 30-4). As provided in such Federal regulations, the determination of eligibility for reimbursement shall be made pursuant to applicable State law, both statutory and case, and the Constitution; and such basis for determination of eligibility (compensable property interest) under New Jersey law is generally interpreted by legal counsel for the Department and should be administered, as follows:

1. Existing utilities located on private property on which the Department does not have any prior right, title, or interest therein shall be considered eligible for reimbursement.

2. Existing publicly owned utilities located on the street right-of-way of any incorporated town or city, and which right-of-way was not a part of, or on the State highway system at the time of the installation or construction of the utilities, shall be considered eligible for reimbursement.

3. Existing publicly owned utilities located on county road, dedicated urban development road, and/or private road rights-of-way which were not a part of, or on, the State highway system at the time of the installation or construction of the utilities, shall be considered eligible for reimbursement.

4. The installation or construction of extra utility properties (such as, but not limited to, encasement pipes and taller poles) and other extra costs of installing or constructing new utility facilities that will meet highway construction requirements and/or standards, (and

when such construction is on approved highway location or alignment and the extra work will effect lower cost utility adjustments by being performed at the time such new utilities are being installed or constructed on private property or non-highway right-of-way on a Commissioner approved and programmed project) shall be considered eligible for reimbursement. Such "preventive" adjustments shall be handled according to the applicable policies and procedures of FHPM 6-6-3-1, and any amendments and supplements thereto.

5. Existing investor owned utilities located on existing State highway right-of-way by statutory grant and/or written consent of the Department shall be considered as eligible for reimbursement.

6. All utilities whether public or investor owned, when effected by freeway construction, shall be considered as eligible for reimbursement.

(b) The general criteria outlined in (a) above for determining eligibility for reimbursement for relocation costs shall be applied on the basis of the actual location of the existing utility facility in relation to existing highway right-of-way, except that in some cases, a determination of whether the Department or the utility possesses the prior property interest in the same location on existing highway right-of-way may be necessary to decide the Department's legal obligation.

(c) The general criteria outlined in (a) above shall apply in determining eligibility for reimbursement for the relocation of utilities on any construction or improvement project administered (constructed) by the Department, except on projects on which determinations of eligibility are unnecessary due to the Department contracting with other agencies or political subdivisions of the State government to make arrangements for utility relocation to be provided at no cost to the Department.

(d) The Department shall make the contractual arrangements and reimburse for eligible adjustments on all Interstate and Federal aid primary projects and shall reimburse for eligible adjustments on all Federal aid secondary, and urban projects except those where the Commissioner stipulates or contracts with other agencies that eligible utility adjustments are to be provided either at no cost to the Department or that the Department shall participate with others in reimbursement for such eligible adjustment costs.

¹Title 23, Code of Federal Regulations, Part 645A (23 CFR 645A).

(a)

CONSTRUCTION AND MAINTENANCE UNIT

News Dispensers on State Highway Right-of-Way

Adopted Amendments: N.J.A.C 16:41B-1 and 2

Adopted Repeals and New Rules: N.J.A.C. 16:41B-3 through 10

Adopted New Rules: N.J.A.C. 16:41B-3, 4, 5 and 6

Proposed: June 6, 1988 at 20 N.J.R. 1178(a).

Adopted: July 12, 1988 by Kenneth C. Afferton, Assistant Commissioner for Right-of-Way.

Filed: July 22, 1988 as R.1988 d.393, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5 and 6.

Effective Date: August 15, 1988.

Expiration Date: March 4, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

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

CHAPTER 41B
NEWSPAPER BOXES ON
STATE HIGHWAY RIGHT-OF-WAY

SUBCHAPTER 1. DEFINITIONS

16:41B-1.1 Definitions

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

"Clear zone" means that roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. For the purpose of this chapter, the clear zone shall be as follows:

Posted Speed Limit	Clear Zone
45 mph	17.5 feet
50 mph	20 feet
55 mph	25 feet

"Department" means the Department of Transportation of the State of New Jersey.

"Person" means corporation, company, association, society, firm, partnership, or individual.

"Permittee" means the owner of the news dispenser.

"Right-of-way" means the entire width of State highway property. This includes the traveled way and all land on both sides of the traveled way extending to the abutting owner's property lines.

"Traveled way" means that portion of the highway provided for the movement of vehicles, exclusive of shoulders, acceleration or deceleration lanes.

SUBCHAPTER 2. PERMIT PROVISIONS

16:41B-2.1 General provisions

(a) It shall be unlawful for any person to operate, erect, place or maintain, on any State highway right-of-way, any news dispenser without obtaining a permit from the Department of Transportation, as set forth *[below]* ***in this section***.

(b) With regard to news dispensers in place as of *[the effective date of these amended regulations]* ***August 15, 1988***, the permitting procedure shall be as follows:

1. The Department shall initiate a State-wide survey of news dispensers located on the right-of-way within 30 days of the enactment of these amendments. This survey shall be conducted on a regional basis with one county per region being surveyed every 30 days until completion. The survey shall identify the locations of news dispensers within the State highway right-of-way and shall develop the information, if available, required *[hereunder]* ***by this section***. The publisher of the newspaper or periodical being displayed and sold in the news dispenser or the owner of the news dispenser, if different from the publisher and known to the Department, shall be notified within 30 days thereof, as to which news dispensers are found to be in violation of the provisions of *[these regulations]* ***this chapter***. Notices of non-compliance shall conform with the requirements set forth in *[subchapter 5 hereunder]* ***N.J.A.C. 16:41B-5***.

2. All other news dispensers identified during the initial State-wide survey of news dispensers shall be deemed in compliance with *[these regulations]* ***this chapter***. The Department shall prepare and provide to the publisher of the newspaper or periodical being displayed and sold in the news dispenser or the owner of the news dispenser, if different from the publisher and known to the Department, a list of those news dispensers deemed in compliance with *[these regulations]* ***this chapter*** within 30 days. Said list shall be incorporated into the format of a single application per publisher, or owner if different from the publisher and known to the Department. A permit shall be issued by the Department immediately upon the return of the application, provided that it bears the owner's signature; includes the information required *[hereunder]* ***by this section*** that was not available to the Department during the State-wide survey; and is accompanied by payment of the appropriate fee(s) established *[hereunder]* ***in (e) below***. In the event the *[aforesaid]* application, accompanied by the requisite information

and fee(s)*, is not returned to the Department within 30 days, the news dispensers listed thereon shall be deemed in violation of *[these regulations]* ***this chapter***.

(c) With regard to news dispensers placed on the State right-of-way after *[the effective date of these amendments]* ***August 15, 1988***, the owner shall, on the day of the placement of a news dispenser, submit an application for a permit. The application shall include the owner's name, address, telephone number and location of the news dispenser and a certification that such location is in conformity with *[these regulations]* ***this chapter***. The Department shall issue a permit or a notice of non-compliance within 30 days of receipt of the application. Notices of non-compliance shall conform with the requirements set forth in *[subchapter 5 hereunder]* ***N.J.A.C. 16:41B-5***. In the event no action is taken within the aforesaid 30 day period, the continued use and maintenance of the news dispenser in question shall be permissible until such time as a notice of non-compliance, if any, is issued.

(d) Application forms may be obtained from the regional maintenance offices or from the Department's principal office, Bureau of Maintenance, Construction and Maintenance Unit, 1035 Parkway Avenue, Trenton, New Jersey 08625. Completed forms shall be forwarded to the regional office having jurisdiction over the area in which the news dispenser is located. The regional offices and their jurisdiction are set forth in N.J.A.C. 16:41-1.1(b).

(e) The owner shall include with the application a fee in the amount of \$25.00 per news dispenser. Fees must be in the form of a check or money order made payable to the New Jersey Department of Transportation. Cash will not be accepted.

(f) Permits shall be valid for as long as all of the conditions of *[these regulations]* ***this chapter*** have been observed. In the event of change of ownership of a news dispenser(s), the permit(s) shall remain valid as long as the location(s) remain the same and the Department is notified, in writing, of such change and the new owner accepts the terms and conditions of the permit(s).

SUBCHAPTER 3. INDEMNIFICATION

16:41B-3.1 General requirements

(a) The owner of the news dispenser, upon the placement of a news dispenser within the State highway right-of-way, assumes the unconditional obligation and thereby agrees to defend, indemnify and save harmless the State, its agents, servants and employees from all suits, actions or claims of any character brought because of death or any injury received or sustained by any person or persons or because of any damage received or sustained by any property, irrespective of fault, arising out of the installation, use or maintenance of any news dispenser located on State highway right-of-way, or where such suit, action or claims arise out of such installation, use of maintenance of any news dispenser being a contributing factor to any such injury or damage, or on account of any act, omission, neglect or misconduct by the permittee, its employees, agents, distributors or servants relating to the installation, use or maintenance of any news dispenser within the State highway right-of-way.

(b) The aforesaid indemnification provision shall be contained in each permit issued by the Department pursuant to *[these regulations]* ***this chapter***.

SUBCHAPTER 4. LOCATION, INSTALLATION AND MAINTENANCE OF NEWS DISPENSERS

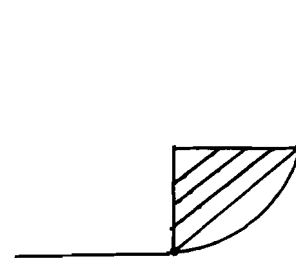
16:41B-4.1 General requirements

(a) News dispensers may be placed adjacent to the wall of a building but shall not be separated from such wall by more than six inches. Unless otherwise prohibited *[herein]* ***in this section***, news dispensers may be placed within one and one-half feet of a gutterline or within one foot thereof in areas where the distance from the gutterline to the far edge of the sidewalk is less than six and one-half feet wide.

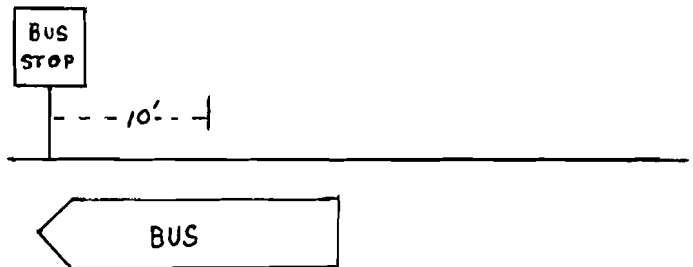
(b) Placement of news dispensers within ***the*** State highway right-of-way is prohibited in the following locations:

1. Within the traveled way, shoulders, acceleration or deceleration lanes of any State highway;

2. Within medians, jug handles, channelizing islands and along ramps;
3. Within three feet of any marked crosswalk;
4. Within the curved portion of a curb return (from point of tangency to point of tangency)*, **as illustrated in the diagram below***, except that news dispensers may be placed adjacent to the wall of a building as set forth in (a) above notwithstanding ***[the foregoing]* *this paragraph***;



5. Within five feet of any fire hydrant, fire call box, police call box, or other emergency facility;
6. Within three feet of any driveway;
7. Within 10 feet to the rear of any sign or other demarcation marking the beginning of a designated bus stop **as illustrated in the diagram below***;



8. Within three feet of any bus bench, except where such bench is within a bus shelter, in which event this restriction shall not apply provided that the news dispenser is not placed within such bus shelter; ***and***
9. Where the speed limit is 45 mph or above, placement of news dispensers is prohibited within the clear zone, subject to the following exceptions:
 - i. News dispensers shall be permitted within the clear zone in close proximity to fixed objects which might operate to impede the safe recovery of errant vehicles to the traveled way, or bus shelters, but shall be no closer to the traveled way than said fixed object or bus shelter. For the limited purpose of this ***[(b)9]*** ***exception***, clusters or rows of a maximum of three news dispensers positioned adjacent to one another are permissible, provided that at least one of the aforesaid news dispensers in each row or cluster be at least partially within five feet of the aforesaid object. As to bus shelters only, there shall be no restrictions placed upon the number of news dispensers permitted within close proximity thereto, provided they be positioned adjacent to one another and provided that at least one of the aforesaid news dispensers be within five feet of the bus shelter.
 - ii. Even where there are no fixed objects which might operate to impede the safe recovery of errant vehicles, news dispensers shall be permitted within the clear zone where there are sidewalks or walkways, but shall be placed on the far side thereof.
 - iii. News dispensers shall be permitted within the clear zone on the near side of a sidewalk or walkway, or in the grassy area, as close to the sidewalk or walkway as practicable, but only where it is not practicable to be on the far side of the sidewalk or walkway or in close proximity to a fixed object.
 - iv. News dispensers shall be permitted in areas within the clear zone where there are no fixed objects which might operate to impede the safe recovery of an errant vehicle to the traveled way, sidewalks or walkways but only in areas where pedestrians gather for other purposes. These areas include bus stops and park and ride facilities.

Placement of a news dispenser pursuant to this exception shall be at least seven and one half $*(7\frac{1}{2})*$ feet away from the gutterline where practicable and shall be placed to service only the area where pedestrians gather.

v. Circumstances referred to in (b)9iii and iv above which will render placement of news dispensers not "practicable" include, for example, where news dispensers would encroach upon private property, block display windows, or where there are unacceptable ground conditions, such as a ditch, which prevent the placement of or access to a news dispenser.

(c) Any news dispenser which in whole or in part rests upon, in, or over ***[any]* *the State highway*** right-of-way shall comply with the following standards:

1. Unless otherwise agreed to by the Department, news dispensers shall not exceed five feet in height, 36 inches in width, or 30 inches in depth;

2. News dispensers may be chained or otherwise attached to one another; however, no more than three news dispensers may be joined together in this manner, and a space of no less than 18 inches shall separate each group of three news dispensers so attached.

3. No news dispenser shall be used for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of a newspaper or periodical sold therein.

4. Every news dispenser placed on the State highway right-of-way shall have affixed thereto in a place where such information may be easily seen, the name, address, and telephone number of the owner and person (if different from the owner) responsible for maintaining the news dispenser.

5. Any news dispenser maintained on any State right-of-way which creates an imminent, unreasonable hazard to pedestrians or traffic or interferes with the response to an emergency situation by a public officer, fire fighter, ambulance corp or medic, may be summarily relocated to the nearest location not presenting said hazard. Any such relocation shall be reported as soon as reasonably possible to the permittee who shall relocate the news dispenser to any location which is in compliance with the terms of ***[these regulations]* *this chapter***.

6. Unless otherwise approved by the Department, no news dispenser shall be chained, bolted or otherwise attached to any public fixture located within the State highway right-of-way, including, but not limited to, official signs, sign supports, guide rails, traffic signal supports, highway lighting supports, controller boxes, fire hydrants or bus shelters.

7. News dispensers shall be securely placed so as to reasonably prevent personal injury or property damage due to tilting, tipping or overturning.

8. Every news dispenser shall be maintained so that:

- i. It is reasonably free of dirt and grease;
- ii. It is reasonably free of chipped, faded, peeling and cracked paint;
- iii. It is reasonably free of rust and corrosion; ***and***
- iv. The structural parts thereof are intact.

SUBCHAPTER 5. CONDITIONS, NOTICE OF VIOLATIONS AND APPEALS

16:41B-5.1 General requirements

(a) The continued placement, use and maintenance of news dispensers is conditioned upon compliance with all of the provisions of this chapter. If any of the provisions of this chapter are alleged to have been violated or if the location, installation, or condition of the news dispenser no longer meets with the specifications of this chapter and any amendments thereto, the permittee shall be notified of the non-compliance by registered mail.

(b) The notice shall state the specific provision(s) of this chapter which ***[it is]* *are*** alleged ***to*** have been violated.

(c) The notice shall further state ***that***, upon request***, [if made]*** by the permittee within ***[fifteen (15)]* *15*** days of the receipt of said notice, the official issuing the notice of violation shall meet with the permittee to discuss the basis for the determination that a violation exists and any proposed means of eliminating any violations. That meeting shall take place within ***[thirty (30)]* *30*** days of said

request. A request for such a meeting shall stay the further enforcement of this chapter, except in emergency situations as set forth in ***[section]* *N.J.A.C. 16:41B-4.1(c)5***. Following any such meeting, the official issuing the notice of violation may rescind the notice if it is determined that there was no violation or in the event the alleged violation is otherwise eliminated. The official may also grant time for the correction of any violation upon request.

(d) If, within 30 days after mailing the notice of non-compliance, or within 30 days after the ***[aforesaid]*** meeting ***referred to in (c) above***, in the event a meeting is requested and does not resolve the dispute in a mutually acceptable manner, ***or*** the permittee has failed to remove the news dispenser or otherwise correct the violation or reason for non-compliance, the permit shall be revoked and the permittee shall be notified by registered mail that the permit has been revoked.

(e) A permittee or applicant may appeal from a decision to revoke a permit or a decision not to grant a permit within 15 days of the date of receipt of a revocation notice or a notice that a permit has not been granted. The permittee or applicant shall file a letter of appeal from the decision and request either a hearing in accordance with Department procedures or that the letter of appeal be forwarded by the Department to the Office of Administrative Law as a contested case ***to be heard in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1***. In the event an informal Department hearing is requested, any decision therefrom may be referred to the Office of Administrative Law for a de novo hearing. Any appeal shall stay enforcement of this chapter except in emergency situations as set forth in ***[section]* *N.J.A.C. 16:41B-4.1(c)5***.

(f) If the permittee (or applicant where no permit has been issued) fails to appeal from the revocation of a permit or a decision not to grant a permit, and does not remove or have removed the news dispenser in question within 30 days from the receipt of a revocation notice or a notice that a permit has not been granted, the news dispenser shall be removed by ***[the]*** Department of Transportation maintenance ***[forces]* *personnel*** and stored at a Department of Transportation maintenance yard. The permittee or applicant shall be notified by registered mail of the location of the news dispenser and the hours when it may be obtained. The Department of Transportation shall not be liable for any damage to the news dispenser, to any material contained therein, or for any lost sales caused by the removal, transportation or storage of the news dispenser. A charge of \$50.00 shall be levied by the Department. If a permittee (or applicant where no permit has been issued) is unsuccessful on appeal, the permittee or applicant shall have 30 days within which to remove the news dispenser. If the news dispenser is not removed within 30 days, the Department of Transportation shall remove it in accordance with the procedures set forth ***[above]* *in this subsection***.

SUBCHAPTER 6. SEVERABILITY

16:41B-6.1 General requirements

If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected thereby, and shall remain in full force and effect.

OTHER AGENCIES

CASINO CONTROL COMMISSION

(a)

Accounting and Internal Controls and Gaming
Equipment

Slot Machine Bill Changer System

Adopted Amendments: N.J.A.C. 19:45-1.1, 1.10, 1.11, 1.12, 1.16, 1.17, 1.32, 1.33, 1.36, 1.37, 1.38, 1.42, 1.44; 19:46-1.25 and 1.26

Proposed: April 4, 1988 at 20 N.J.R. 765(a).

Adopted: July 14, 1988 by the Casino Control Commission,
Walter N. Read, Chairman.

Filed: July 14, 1988 as R.1988 d.387, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 5:12-70(l) and 5:12-99(a).

Effective Date: August 15, 1988.

Expiration Date: N.J.A.C. 19:45, March 24, 1993, N.J.A.C. 19:46, April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Assistant Counsel of Resorts International favors the adoption of the amendments with one modification. Specifically, Resorts requests that a slot supervisor rather than a count room supervisor be responsible for transporting slot cash storage boxes to the count room. Resorts contends that the proposed amendments treat slot cash storage boxes in the same fashion as drop boxes, and, therefore, since slot operations is responsible for the bill changers, it should be responsible for transporting the slot cash storage boxes to the count room.

RESPONSE: Rejected. Although the slot cash storage boxes have the characteristics of drop boxes, since they are attached to the slot machine, they are also similar to drop buckets. Since the count room supervisor must be present during the collection of drop buckets, it is more efficient for the count room supervisor to ensure that all slot cash storage boxes are also transported to and secured in the count room. It should be noted that the amendments have been changed to permit a cage supervisor, in the presence of a Commission inspector and security department member, authorization to transport to the count room, slot cash storage boxes removed for emergency purposes during the gaming day.

COMMENT: The Division of Gaming Enforcement favors the adoption of the amendments with four modifications. The Division's first recommendation involves eliminating the requirement that each slot cash storage box have an identifying feature which distinguishes the gaming day the slot cash storage box was utilized. The second recommendation involves eliminating the reference to "or any device connected thereto" which is found in N.J.A.C. 19:45-1.36(g). Specifically, to reiterate the Division's position (see the Division's comment on the slot token regulatory amendments at 20 N.J.R. 1099(c) in the May 19, 1988 New Jersey Register, such broad phraseology includes devices which the Division asserts do not require special heightened scrutiny and monitoring. It is the Division's position that, as proposed, the amendment treats all of these devices equally and therefore decreases the effectiveness of any regulation requiring heightened scrutiny. The Division's third recommendation involves eliminating the requirement that a separate Entry Authorization Log be maintained inside of the bill changer unit. As represented by the Division, these entries would not compromise the integrity of the slot machine, and, therefore, do not warrant the creation of an additional log. The Division's final recommendation involves revising the amendments to limit the denomination accepted by a bill changer system to 20 dollars.

RESPONSE: Accepted in part. It is agreed that the requirement that each slot cash storage box have an identifying feature which distinguishes the gaming day should be eliminated and appropriate revisions have been made. Secondly, the amendments adopted at 20 N.J.R. 1099(c) for non-cash redeemable slot tokens have been incorporated into the amendments. Specifically, the reference to "or any device connected thereto" was further clarified to state "or any device connected thereto which may affect the operation of a slot machine." Therefore, the Division's request that "or any device connected thereto" be eliminated is rejected. Thirdly, in order to maintain a record of entries so that malfunctions and other

reasons for opening the bill changer can be evaluated, the requirement that a separate bill changer log be maintained has not been eliminated. Finally, the Division's recommendation that the denomination of currency accepted by a bill changer be limited to 20 dollars would be a substantive change which would require republication, and, therefore, was not incorporated in this adoption action. The Commission will consider the proposal if the Division files a petition for rulemaking.

COMMENT: The Associate and Labor Relations Manager for Trump Plaza Hotel and Casino favors the adoption of the amendments with one modification. Specifically, Trump Plaza requests that the requirement that a casino number be affixed to the outside of the bill changer cabinet be eliminated. It is Trump Plaza's position that the casino number will not be visible to the surveillance camera once the bill changer is attached to a slot machine.

RESPONSE: Rejected. In order to identify to which slot machine a bill changer is attached, a corresponding casino number must be affixed to the bill changer.

COMMENT: The Vice President and Corporate Counsel for the Sands Hotel, Casino and Country Club favors the adoption of the amendments with several modifications. Specifically, Sands suggests that the amendments be revised to include free-standing change machines and other types of bill changer machines which are contained within a slot machine. Furthermore, Sands proposes various changes to the key controls for the bill changer system and requests that the amendments be changed to permit the removal of the slot cash storage box independently from the drop bucket with the provision that both the slot cash storage box and drop bucket will be removed at least once a week. Sands indicates that an independent removal of the slot cash storage box and drop box will allow for greater drop scheduling flexibility while still maintaining the integrity of the weekly accounting period for reporting and analysis purposes.

RESPONSE: Accepted in part. The recommendation to include free-standing change machines and other types of change machines in the amendments was rejected. More specifically, should the need arise to develop rules for free-standing change machines, they will be developed and proposed at a later date. Furthermore, Sands' recommendation to revise the key controls for the bill changer system was rejected. In order to maintain integrity over the assets, a dual key control system is required. Specifically, Sands indicates that slot cash storage boxes should be treated the same as drop boxes, and, therefore, should only have one key to remove the slot cash storage box from the bill changer. However, slot cash storage boxes differ from drop boxes in that drop boxes are contained within a secured, non-accessible area within the pit which provides heightened security, whereas, slot cash storage boxes will be contained within a compartment which will be accessible to all casino personnel and patrons. Finally, Sands' recommendation to permit the removal of the slot cash storage box independently from the drop bucket, as long as both are removed at least once a week, was accepted. The removal of the slot cash storage box will not impact on the slot machine's financial statistics provided the slot cash storage box and drop bucket are removed at least once a week.

In the interest of consistency, the Commission has added to the "Bill Changer Log" provisions of N.J.A.C. 19:45-1.33(g) the same entry specifications as required for the "Machine Entry Authorization Log" under N.J.A.C. 19:45-1.33(g).

The Commission further wishes to note that the provisions of these rules as proposed for amendment were, pursuant to N.J.S.A. 5:12-69(e), in effect for a limited number of slot machines at Bally's Park Place Casino for a 90 day experimental period commencing on April 11, 1988 and ending July 10, 1988. Notice of this experiment was published in the April 4, 1988 New Jersey Register at 20 N.J.R. 769(a), in conjunction with the Notice of Proposal for the amendments adopted herein.

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

AGENCY NOTE: The amendments regarding the use of slot tokens which are not redeemable for cash were adopted on March 22, 1988 (see 20 N.J.R. 1099(c)) and are incorporated into the text of these amended rules, appearing, where appropriate, in italics *thus*.

ADOPTIONS

19:45-1.1 Definitions

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

...
"Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrical-ly or electronically with a slot machine for the purpose of dispensing an amount of coins or slot tokens from the slot machine hopper equal to the amount of currency inserted into the bill changer system.

...
"Slot cash storage box" is defined in N.J.A.C. 19:45-1.16.

"Slot machine drop" means the amount of coins and slot tokens in a drop bucket and cash in a slot cash storage box, if applicable.

19:45-1.10 Closed circuit television system

(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.-v. (No change.)

vi. The movement of cash, gaming chips and plaques, drop boxes, slot cash storage boxes, and drop buckets in the establishment;

vii-viii. (No change.)

2.-5. (No change.)

(c)-(h) (No change.)

19:45-1.11 Casino licensee's organization

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

(c) Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

1. A surveillance department supervised by a director of surveillance who shall cooperate with, yet perform independently of all other departments and shall report directly to the Board of Directors, or its audit committee, or equivalent regarding matters of policy, purpose, responsibilities and authority and indirectly to the Chief Executive Officer or his or her equivalent, for daily operations. The director of surveillance shall be responsible for, but not limited to, the following:

i. (No change.)

ii. The clandestine surveillance of the operation of the slot machines and bill changers;

iii.-viii. (No change.)

2.-4. (No change.)

5. A slot department supervised by a slot department manager who shall perform independently of all other departments and shall report directly to the Vice President of Casino Operations, or his or her equivalent, or the Chief Executive Officer. The slot department manager shall be responsible for the operation of the slot machines and bill changers.

6.-9. (No change.)

(d)-(g) (No change.)

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to conduct and operate a slot department in an establishment:

1. Slot mechanics shall be the persons assigned the responsibility for repairing and maintaining slot machines and bill changers in proper operating condition and participating in the filling of payout reserve containers.

2. Slot attendants shall be the persons assigned the responsibility for the operation of slot machines and bill changers including but not limited to, participating in manual jackpot payouts and filling of payout reserve containers.

3. Slot supervisors shall be the first level supervisors assigned the responsibility for directly supervising the operation of slot machines and bill changers.

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4. Slot shift manager shall be the second level supervisor with the responsibility for the overall supervision of the slot machine and bill changer operation for each shift. In the absence of the slot department manager, the slot shift manager shall have the authority of the slot department manager.

5. Slot department manager shall be the executive assigned the overall responsibility and authority for the slot machine and bill changer operation including, but not limited to, the hiring and terminating of all slot department personnel and the creation of high employee morale and good customer relations, all within the policies and practices established by the licensee's board of directors or equivalent.

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

19:45-1.16 Drop boxes and slot cash storage boxes

(a) Each gaming table in a casino shall have attached to it a metal container known as a "drop box" in which shall be deposited all cash, issuance copies of Counter Checks exchanged at the gaming table for gaming chips and plaques, duplicate Fill and Credit Slips, Requests for Credit forms, Requests for Fill forms, and Table Inventory forms. Each drop box shall have:

1.-5. (No change.)

(b) Each bill changer in a casino shall have contained in it a 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 have:

1. Two separate locks securing the contents placed into the slot cash storage box, the keys to which shall be different from each other and one of which shall be different from the keys securing the compartment housing the slot cash storage box;

2. A slot opening through which currency can be inserted into the slot cash storage box;

3. A mechanical arrangement or device that prohibits removal of currency from the slot opening at any time that the slot cash storage box is removed from the bill changer; and

4. *[An identifying feature, as approved by the Commission, which distinguishes the gaming day the slot cash storage box was utilized and a]**A casino* 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 casino number of the slot machine to which the bill changer has been attached, except that emergency slot cash storage boxes may be maintained without such number, provided the word "emergency" is permanently imprinted, affixed or impressed thereon, and when put into use, are temporarily marked with the number of the slot machine to which the bill changer is attached, and provided further, that the casino obtains the express written approval of a Commission inspector before placing an emergency slot cash storage box into use.

(c) The key utilized to unlock the drop boxes from the gaming tables shall be maintained and controlled by the security department. The keys to the compartment securing the slot cash storage box shall be maintained and controlled in accordance with N.J.A.C. 19:45-1.36.

(d) The key to one lock securing the contents of the drop boxes and to the lock securing the contents of the slot cash storage boxes, which is different from the keys to the compartment securing the slot cash storage box, shall be maintained and controlled by the accounting department. The key to the second lock securing the contents of the drop boxes and slot cash storage boxes shall be maintained and controlled by Commission inspectors.

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage in count room

(a) Each casino licensee shall place on file with the Commission and the Division a schedule setting forth the specific times at which the drop boxes will be brought to or removed from the gaming tables and slot cash storage boxes will be brought to or removed from the bill changers. No drop box shall be brought to or removed from any gaming table and no slot cash storage box shall be brought to or removed from any bill changer at other than the time specified in

such schedule except with the express written approval of a Commission inspector.

(b) (No change.)

(c) All slot cash storage boxes removed from the bill changer shall be transported by a ***Commission inspector,*** security department member and count room supervisor, at a minimum, directly to and secured in the count room*, **except that slot cash storage boxes removed on an emergency basis shall be transported by a Commission inspector, security department member and cage supervisor or count room supervisor, at a minimum, directly to and secured in the count room*.**

(d) All drop boxes, not attached to a gaming table, and all slot cash storage boxes not contained in a bill changer, except emergency drop boxes and emergency slot cash storage boxes which are not actively in use, shall be stored in the count room in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector. Emergency drop boxes and emergency slot cash storage boxes, when not in use, may be stored in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system in a secured area outside the count room as approved by the Commission. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector.

(e) Drop boxes, when not in use during a shift, may be stored on the gaming tables provided that there is adequate security, as approved by the Commission. If adequate security is not provided during this time, the drop boxes shall be stored in the count room in an enclosed storage cabinet or trolley except that emergency drop boxes and emergency slot cash storage boxes not actively in use may be stored in a secured area outside of the count room as approved by the Commission, as required in (d) above.

19:45-1.32 Count room; characteristics

(a) Each casino shall have immediately adjacent to the cashiers' cage a room specifically designated for counting the contents of drop boxes and slot cash storage boxes which shall be known as the "count room".

(b) The count room shall be designed and constructed to provide maximum security for the materials housed therein and for the activities conducted therein, to include, at a minimum, the following:

1. A metal door equipped with two separate locks securing the interior of the count room, the keys to which shall be different from each other and from the keys to the locks securing the contents of the drop box and slot cash storage box, and one key shall be maintained and controlled by the security department in a secure area within the security department, access to which may be gained only by a security supervisor, and the other key maintained and controlled by a Commission inspector;

2.-3. (No change.)

(c) Located within the count room shall be:

1. A table constructed of clear glass or similar material for the emptying, counting and recording of the contents of drop boxes and slot cash storage boxes which shall be known as the "count table";

2. Closed circuit television cameras and microphone wired to monitoring rooms capable of, but not limited to, the following:

i. (No change.)

ii. Effective, detailed video-monitoring of the interior of the count room, including storage cabinets or trolleys used to store drop boxes and slot cash storage boxes; and

iii. (No change.)

(d) The count room designated for counting contents of slot machine drop buckets, 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.

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

(a) The contents of the drop boxes and slot cash storage boxes shall be counted and recorded in the count room in conformity with this section.

(b) Each casino licensee shall place on file with the Commission and the Division the specific times during which the contents of drop boxes removed from gaming tables and contents of slot cash storage boxes are to be counted and recorded, which, at a minimum, shall be once each gaming day for drop boxes. Slot cash storage boxes shall be removed from bill changers in accordance with N.J.A.C. 19:45-1.42(a) and shall be counted and recorded, at a minimum, once a week.

(c) The opening, counting and recording of the contents of drop boxes and slot cash storage boxes shall be performed in the presence of a Commission inspector by at least three employees with no incompatible functions ("count team"). To gain entrance to the count room, the Commission inspector shall present an official identification card containing his or her photograph issued by the Commission.

(d)-(e) (No change.)

(f) Immediately prior to opening the drop boxes or slot cash storage boxes, the doors to the count room shall be securely locked and, except as required by (i) below, no person shall be permitted to enter or leave the count room, except during normal work break or in an emergency, until the entire counting, recording, and verification process is completed. During a work break or in the event of an emergency, or to permit slot cash storage boxes to be secured in the count room for the count of the contents, the counting and recording process shall be discontinued unless the appropriate number of personnel as described in (c) above is present.

(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 casino number marked thereon for slot cash storage boxes;

2. The contents of each drop box or slot cash storage box shall be emptied on the count table and either manually counted separately on the count table or counted on an approved currency counting machine located in a conspicuous location on, near or adjacent to the count table, which procedures shall at all times be conducted in full view of the closed circuit television cameras located in the count room;

3. Immediately after the contents of a drop box or slot cash storage box are emptied onto the count table, the inside of the drop box or slot cash storage box shall be held up to the full view of a closed circuit television camera and shall be shown to at least one other count team member and the Commission inspector to assure all contents of the drop box or slot cash storage box have been removed, after which the drop box or slot cash storage box shall be locked and placed in the storage area for drop boxes or slot cash storage boxes;

4. The contents of each drop box or slot cash storage box shall be segregated by a count team member into separate stacks on the count table by denominations of coin and currency and by type of form, record, or document except that the Commission may permit the utilization of a machine to automatically sort currency by denomination;

5. Each denomination of coin and currency shall be counted separately by one count team member who shall place individual bills and coins of the same denomination on the count table in full view of a closed circuit television camera after which the coin and currency shall be counted by a second count team member who is unaware of the result of the original count and who, after completing this count, shall confirm the accuracy of his or her total, either orally or in writing, with that reached by the first count team member, except that the Commission may permit a casino licensee to perform an aggregate count by denomination of all currency collected in

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substitution of the second count by drop box or slot cash storage box if the Commission is satisfied that the original count is being performed automatically by a machine that counts and automatically records the amount of currency and that the accuracy of the machine has been suitably tested and proven. The Commission will permit the utilization of currency counting machines if prior to the start of the count, in the presence of a Commission inspector, the count room supervisor shall:

i.-ii. (No change.)

iii. Supervise a count team member who shall randomly select a drop box or slot ***cash*** storage box and place the entire currency contents of the drop box or slot cash storage box into the first currency counting machine, which shall sort the currency by denomination and produce a print out of the total amount of currency by denomination. Any soiled or off-sorted bills shall be re-fed into the machine and manual adjustments made to the total. Coins or tokens shall also cause manual adjustments to be made to the total. The total as recorded on the currency counting machine and any adjustments thereto shall not be shown to anyone until completion of the final verification process.

iv. Supervise a second count team member, independent of the team member performing the initial count by machine, who shall manually count and summarize the currency of the drop box or slot cash storage box counted in (h)5iii above. The total shall be posted and maintained separately from the total posted in (h)5iii above. This total shall not be shown to anyone until completion of the final verification process.

v. Supervise the second count team member passing the currency to a count team member, who is unaware of the results of the manual count. The count team member shall count the contents of the drop box or slot cash storage box counted in (h)5iii above using the second currency counting machine. Such machine shall produce a printout of the total amount of currency as contained in the drop box or slot cash storage box. Any soiled or off-sorted bills shall be re-fed into the machine and manual adjustments made to the total. Coins or tokens shall also cause manual adjustments to be made to the total. The total as recorded on the currency counting machine and any adjustments thereto shall not be shown to anyone until the completion of the final verification process.

vi.-vii. (No change.)

6.-8. (No change.)

9. 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 casino number of the bill changer to which the slot cash storage box contents correspond;

ii. The amount of each denomination of currency counted;

iii. The amount of all denominations of currency counted;

iv. The total amount of currency counted for each slot machine denomination; and

v. Any additional information as may be required on the Slot Cash Storage Box Report by the Commission.

10. (No change in text.)

11. After preparation of the Master Game Report and/or Slot Cash Storage Box Report, each count team member shall sign the reports attesting to the accuracy of the information recorded thereon.

(i) Procedures and requirements at the conclusion of the count for each gaming shift shall be the following:

1. All cash removed from the drop boxes or slot cash storage boxes shall be immediately presented in the count room by a count team member to a reserve cash cashier who, prior to having access to the information recorded on the Master Game Report or the Slot Cash Storage Box Report and in the presence of a count team member and the Commission inspector, shall recount, either manually or mechanically, the cash received and attest by signature on the Master Game Report and Slot Cash Storage Box Report, if applicable, the amount of cash received; after which the Commission inspector shall sign the reports evidencing his or her presence during the count and the fact that both the cashier and count team have agreed on the total amount of cash counted.

2. (No change.)

3. The Slot Cash Storage Box Report, after signing, shall be transported directly to the accounting department and shall not be available to any cashiers cage personnel. The Accounting Department shall record the figures from the Slot Cash Storage Box Report on the Slot Win Report and calculate the total drop for that day.

4. (No change in text.)

(j) The originals and copies of the Master Game Report, the Slot Cash Storage Box Report, Counter Checks, Requests for Fills, Fills, Request for Credits, Credits, Table Inventory Slips and the test receipts from the currency counting equipment shall, on a daily basis, in the accounting department be:

1.-6. (No change.)

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage box compartments; keys

(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, *provided, however, that the hopper shall not retain slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2*; ***[and]***

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 jackpot payouts. Each drop bucket shall be identified by a number, corresponding to the casino number of the slot machine, which shall be at least two inches in height, and permanently imprinted, affixed or impressed on the outside of the bucket; 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)-(c) (No change.)

(d) The slot cash storage box of each bill changer shall be housed in a separate locked compartment. The slot cash storage box compartment shall have two locks, the keys to which shall be different from each other and one of which shall be different from the keys securing the contents of the slot cash storage box as required by N.J.A.C. 19:45-1.16.

(e) One key to the compartment securing the slot cash storage box shall be maintained and controlled by a Commission inspector and the second key to such compartment, which is different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the security department in a secure area within the security department, access to which may be gained only by a security supervisor. The security department shall establish a sign-out procedure for all keys removed from the security department in accordance with N.J.A.C. 19:46-1.25.

(f) Keys to each slot machine~~, other than the~~ 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 drop bucket and the slot cash storage box, shall be maintained in a secure place and controlled by the slot department.

(g) 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,*** an entry shall be made on a form to be entitled "Machine Entry Authorization Log." The entry shall include, at a minimum, the date, time, purpose of opening the machine or device, and signature of authorized employee opening the machine or device. The Machine Entry Authorization Log shall be maintained in the slot machine.

1. Whenever it is required that a bill changer, other than the 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 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 serial number or casino number.

2. If a computer is connected to slot machines in the casino which automatically records the information required in this subsection, it

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is not necessary to maintain the Machine Entry Authorization
[and] *or* Bill Changer Logs.

(h) (No change in text.)

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

19:45-1.37 Slot machines and bill changers; identification; signs,
meters

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

(e) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as a "change meter", that continuously and automatically counts the number of coins or slot tokens vended from the slot machine's hopper to make change;

2. A mechanical, electrical or electronic device, to be known as a "cash box meter" that continuously and automatically counts the total number of bills accepted and stored in the slot cash storage box at any given time; and

3. A number of mechanical, electrical or electronic devices, to be known as "bill meters", that continuously, automatically and separately count the number of bills for each denomination of currency accepted into the bill changer.

Renumber (e) through (h) as (f) through (i) (No change in text.)

19:45-1.38 Slot machines and bill changers; location; movements

(a) Each casino licensee shall file with the Commission a floor plan of the casino which designates the location and casino number of each slot machine and bill changer in the casino. Any alterations to such floor plan shall not become effective until approved in writing by a Commission inspector. A revised floor plan containing such alterations shall be filed with the Commission within 24 hours of the alteration.

(b) No slot machine or bill changer shall be removed from or returned to a location in the casino without the prior written approval of a Commission inspector.

(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. The manufacturer's serial number and the casino number of the moved slot machine and/or bill changer;

2. The date and time of movement of the slot machine and/or bill changer;

3. The location from which the slot machine and/or bill changer was moved;

4. The location to which the slot machine and/or bill changer was moved;

5. (No change in text.)

6. The signatures of the persons moving the slot machine and/or bill changer.

(d) (No change.)

(e) Prior to removing a bill changer from the gaming floor, the slot cash storage box shall be removed and transported to the count room and all meters except the cash box meter shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42.

(f) (No change in text.)

19:45-1.42 Removal of slot drop buckets and slot *cash* storage boxes; meter readings

(a) The drop bucket and the slot cash storage box for each slot machine and attached bill changer on the gaming floor shall be removed *[concurrently]* once a week, at a minimum, 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 drop bucket 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 written approval of a Commission inspector.

(b) Procedures and requirements for removing a drop bucket or slot cash storage box from its compartment shall be the following:

1. If the 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. The removal of a drop bucket or slot cash storage box shall be, at a minimum, performed by three employees;

ii.-iii. (No change.)

2. If the drop bucket meets the requirements of N.J.A.C. 19:45-1.36(g):

i.-ii. (No change.)

(c) Procedures and requirements for removing drop buckets and slot cash storage boxes from the gaming floor shall be the following:

1. If the drop buckets and slot cash storage boxes are removed in conformity with (b)1 above:

i. The drop bucket shall be removed from its compartment and an empty 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 after which the compartment shall be closed and locked;

ii. All drop buckets removed from the compartments shall be transported by employees described in (b)1 above and a Commission inspector, at a minimum, directly to and secured in the count room for the counting of their contents; and

iii. All persons participating in the drop bucket and the slot cash storage box removal procedure except for 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 drop buckets are removed in conformity with (b)2 above:

i. (No change.)

ii. All drop buckets removed from compartments shall be transported by, at a minimum, a *Commission inspector,* security department member and 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 a Commission inspector, a security department member and a cage supervisor or count room supervisor, at a minimum, directly to and secured in the count room*.**

(d) Accounting department employees with no incompatible functions shall, once a week, at a minimum, read and record on a Slot Meter Sheet the number on the in-meter, drop meter, jackpot meter, manual jackpot meter, change meter and bill meters. These procedures shall be performed in conjunction with the removal and replacement of the drop buckets or slot cash storage boxes prior to opening the slot machines for patron play.

(e) (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

1.-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; *[and]*

5. (No change.)

*[5]**6.* Record the number and total value of coins or slot tokens vended from the slot machine hopper to make change; and

*[6]**7.* Record the number and total value of each denomination of currency accepted and stored in the slot cash storage box.

(c) (No change.)

19:46-1.25 Slot machines and bill changers; coin and slot token containers; slot cash storage box compartments; keys

(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;*

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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)-(c) (No change.)

(d) The slot cash storage box of each bill changer shall be housed in a separate locked compartment. The slot cash storage box compartment shall have two locks, the keys to which shall be different from each other and one of which shall be different from the keys securing the contents of the slot cash storage box as required by N.J.A.C. 19:45-1.16.

(e) One key to the compartment securing the slot cash storage box shall be maintained and controlled by a Commission inspector and the second key to such compartment, which is different from the keys securing the contents of the slot cash storage box, 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; 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 compartments housing the drop bucket or the slot cash storage box, shall be maintained in a secure place and controlled by the slot department.

(g) (No change in text.)

*[(f)]***(h)* (No change.)

19:46-1.26 Slot machines and bill changers; identification; signs, meters, other devices

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each bill changer shall have the following identifying features:

1. A casino number, at least two inches in height, permanently imprinted, affixed or impressed on the outside cabinet of the bill changer which corresponds to the casino number affixed on the outside cabinet of the slot machine to which it is attached;

2. A display on the front of the bill changer that clearly represents the denomination of the currency inserted therein;

3. A display on the front of the bill changer that clearly represents the amount of coins dispensed by the slot machine hopper; and

4. A display on the front of the bill changer that indicates a malfunction or which informs the patron that the bill changer is out of service.

(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 drop bucket, 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 required by N.J.A.C. 19:45-1.36*[(f)]***(i)* and 19:46-1.25*[(f)]***(h)*;

3.-6. (No change.)

(d) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as a "change meter", that continuously and automatically counts the number of coins or slot tokens vended from the slot machine's hopper to make change;

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2. A mechanical, electrical or electronic device, to be known as a "cash box meter", that continuously and automatically counts the total number of bills accepted and stored in the slot cash storage box at any given time; and

3. A number of mechanical, electrical or electronic devices, to be known as "bill meters", that continuously, automatically and separately count the number of bills for each denomination of currency accepted into the bill changer.

(e) Unless otherwise authorized by the Commission, each slot machine that accepts currency shall have meters that accomplish the objectives set forth in (d) above.

Renumber (d) through (g) as (f) through (i) (No change in text.)

(a)

Equal Employment Opportunity Designation, Authority and Responsibility of Equal Employment Officer

Adopted Repeal and New Rule: N.J.A.C. 19:53-1.13.

Adopted Amendment: N.J.A.C. 19:53-1.3.

Proposed: September 8, 1987 at 19 N.J.R. 1638(b).

Reproposed: May 2, 1988 at 20 N.J.R. 970(b).

Adopted: July 21, 1988, by Casino Control Commission, Walter N. Read, Chairman.

Filed: July 21, 1988, as R.1988, d.392, with substantive and technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-135(f).

Effective Date: August 15, 1988.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

The adopted repeal and new rule, N.J.A.C. 19:53-1.13, and adopted amendment, N.J.A.C. 19:53-1.3, were originally proposed by the Commission on September 8, 1987, at 19 N.J.R. 1638(b). The comments which were submitted as a result of that proposal and the Commission's responses thereto are summarized at 20 N.J.R. 970(b). The Commission's review of those comments, as well as its own internal review of the original proposed new rule and amendment, resulted in the publication of the repropoed new rule and amendment currently being adopted by the Commission.

Comments on the repropoed new rule and amendment were received from eight organizations: The Casino Association of New Jersey (Casino Association); the Division of Gaming Enforcement (Division); the Equal Employment Opportunity and Affirmative Action (EEO/AA) Division of the New Jersey Department of Personnel; Atlantic City's Affirmative Action Office; Atlantic City's Minority Business Development Office; the Atlantic County Improvement Authority's (ACIA) Affirmative Action Office; the American Association for Affirmative Action; and the Atlantic City Branch of the National Association for the Advancement of Colored People (N.A.A.C.P.). A summary of the comments received on the repropoed new rule and amendment and the Commission's responses to those comments follows.

COMMENT: The Division, the EEO/AA Division of the New Jersey Department of Personnel, Atlantic City's Minority Business Development Office, the ACIA's Affirmative Action Office and the Atlantic City Branch of the N.A.A.C.P. all expressed general support for the repropoed new rule and amendment. It is the Division's position that the rule and amendment serve to clarify, focus and establish the definitive responsibilities of equal employment officers in the industry. The EEO/AA Division of the New Jersey Department of Personnel concluded that the rule and amendment would give equal employment officers the authority needed to be more effective and that this would contribute to the ultimate success of EEO/AA programs. Atlantic City's Minority Business Development Office stated that the rule and amendment would help to place the proper emphasis on EEO/AA compliance in the casino industry. The ACIA's Affirmative Action Office supports the rule and amendment because they would strengthen the impact and role of equal employment officers. Finally, the Atlantic City Branch of the N.A.A.C.P. indicated that the rule and amendment would assure that chief executive

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officers will be made aware of their EEO/AA responsibilities and of any EEO/AA problems in a timely manner.

RESPONSE: The Commission agrees with these comments as evidenced by its adoption of the repropoed new rule and amendment.

COMMENT: The Division did express some reservations about repropoed the new rule and amendment. First, it stated that the rule should make provision for small casino service industry enterprises which may not be able to effectively and meaningfully implement EEO/AA programs.

RESPONSE: The rule does not impose any additional compliance requirements upon casino service industry enterprises. It merely delineates the authority which the person who is designated as the equal employment officer must possess and the responsibilities of that officer in fulfilling the Commission's existing informational requirements. The Commission therefore believes that no changes to the rule are necessary in this area.

COMMENT: The Division also recommends that the repropoed new rule be amended to use the phrase "chief executive officer or his equivalent" rather than "chief executive officer" to clarify the acceptable reporting lines.

RESPONSE: The repropoed new rule includes a definition of "chief executive officer" at N.J.A.C. 19:53-1.13(a)1 and 2 which adequately advises applicants for or holders of casino as well as casino service industry licenses of the meaning of this term under the repropoed rule. Therefore, the Commission does not believe that any further qualification is necessary.

COMMENT: Finally, the Division notes that repropoed N.J.A.C. 19:53-1.13(c)3 should not be interpreted to mean that the Commission or Division cannot conduct on-site inspections without the equal employment officer.

RESPONSE: The Commission did not intend for the repropoed new rule to impose a limitation upon the Commission's or Division's authority to conduct independent inspections. It was the Commission's intent to impose upon each casino's equal employment officer the responsibility to accompany Commission or Division personnel on inspections conducted under N.J.A.C. 19:53-1.4. To clarify it's intent, and to reduce the administrative burden imposed upon casino equal employment officers by these rules, the Commission has changed the accompaniment requirement to be only "if requested" by the inspectors.

COMMENT: Atlantic City's Minority Business Development Office commented that it was pleased by the Commission's initial action, as represented by the repropoed new rule and amendment, to place the proper emphasis on EEO/AA compliance in the casino industry. Nevertheless, it also expressed its concern that the rule and amendment had diminished the authority of the equal employment officer in the area of contractor and subcontractor compliance.

RESPONSE: The original proposed rule gave the equal employment officer of a casino licensee the authority to unilaterally suspend the execution or payment of contracts with contractors or subcontractors. However, in response to what the Commission deemed to be valid objections by some casinos and the Casino Association, it is now mandated that the authority of the equal employment officer in this area include the ability to recommend the suspension of such contracts to the chief executive officer. The Commission agrees with the objections to the original proposed rule which argued that a determination to suspend contracts with contractors and subcontractors required the evaluation of numerous elements, many of which may not be within the province or expertise of the equal employment officer. Thus, the Commission has adopted the repropoed new rule which does not demand such extensive discretion be reposed in the equal employment officer in this area.

COMMENT: Atlantic City's Affirmative Action Office asserted that the repropoed new rule and amendment represented a step toward achieving a higher level of EEO/AA compliance. However, it also stated that the role of the chief executive officer in EEO/AA matters should be increased. To this end, the office recommended that the chief executive officer should be required to have EEO/AA experience, and that he or she be expressly mentioned as the natural person responsible for designating an equal employment officer and delegating authority to that officer.

RESPONSE: The Commission believes that establishing the equal employment officer at a high level management position and requiring that he or she report directly to the chief executive officer are sufficient to ensure that the chief executive officer is kept informed of and involved in EEO/AA matters. As the comment itself points out, EEO/AA issues are a major concern of any employer in business today, and it is unlikely that a chief executive officer would be without some experience in this area. Nevertheless, the Commission does not believe that it is necessary

to impose EEO/AA experiential requirements upon the chief executive officer when an experienced equal employment officer is in a position to advise quickly and effectively the chief executive officer on such matters.

COMMENT: Atlantic City's Affirmative Action Office also suggested that the repropoed new rule be more specific as to the type of EEO/AA experience required of the equal employment officer, and recommends that that experience include grievance and discipline management, development and application of affirmative action plans, expertise in group dynamics, equal employment opportunity employee training, contractual compliance, minority business programs, and demonstrated managerial qualifications.

RESPONSE: The Commission agrees that a person who possesses the experience and qualifications listed by Atlantic City's Affirmative Action Office would be an ideal candidate for an equal employment officer position. However, the experience requirements established by the repropoed new rule are merely minimum requirements. Several entities objected to the original proposed rule's requirement that the equal employment officer have five years of experience in EEO/AA matters, and the Commission responded by permitting the substitution of two years related work experience or an undergraduate degree. The Commission believes that the repropoed new rule establishes reasonable minimum requirements, and that a stricter provision requiring experience in very specific areas as recommended by Atlantic City's Affirmative Action Office is not necessary to fulfill the purposes of the repropoal.

COMMENT: Atlantic City's Affirmative Action Office also asserted that the repropoed new rule should be altered to give managerial flexibility and control to an applicant for or holder of a casino license by making EEO/AA matters the primary rather than sole area of responsibility of the equal employment officer and by deleting the minimum staffing requirements.

RESPONSE: The Commission continues to believe that limiting the equal employment officer's responsibilities solely to EEO/AA matters is necessary to ensure that the resources of his or her office are not exhausted performing duties not related to EEO/AA, and that the equal employment officer not be responsible for matters which may be inconsistent with EEO/AA goals. The minimum staff requirements are reasonably necessary to ensure that the EEO/AA office be adequate to serve an organization which typically employs over 3,000 persons and to interact with the regulatory authorities.

COMMENT: The American Association for Affirmation Action viewed as appropriate the manner in which the repropoed new rule outlines the areas of the equal employment officer's responsibilities and elevates his or her position within the organization of a casino license applicant or holder. However, it did not express an official position in support of the repropoed rule on the ground that it might not be realistic to codify such elements as mandatory staffing and reporting requirements.

RESPONSE: The Commission does not believe that merely providing the equal employment officer with an executive title will be sufficient to enable that officer to operate effectively within the corporate structure. Requiring that the equal employment officer report directly to the chief executive officer provides the equal employment officer with direct access to the highest authority of the organization. Requiring a minimum staff for the EEO/AA office ensures that the equal employment officer is not left without the necessary resources to fulfill his or her responsibilities. The Commission considers both to be necessary components of the repropoed rule.

COMMENT: The Casino Association objects to the repropoed new rule and amendment, as it did to the original rule and amendment, contending that they ignore substantive issues while imposing a fixed management structure upon casino applicants and licensees without any evidence that such restructuring will result in more opportunities for women or minorities. The Casino Association would prefer what it terms substantive cooperative efforts, and provides numerous examples of the industry's success with such efforts.

RESPONSE: The Commission does not intend to minimize the importance of the efforts referenced by the Casino Association and commends the industry for these efforts. Nevertheless, the Commission also recognizes that the ultimate success of any substantive EEO/AA program depends upon equal employment officers receiving the assistance and cooperation of the entire casino organization and having the resources necessary to implement such programs. To this end, the repropoed new rule mandates that the equal employment officer be positioned at a level in the organization so that all personnel will appreciate the need to cooperate with the EEO/AA office. In addition, the repropoed new rule

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mandates a minimum staff for the EEO/AA office to ensure that it has the resources necessary to initiate and carry out the substantive programs advocated by the Casino Association.

COMMENT: The Casino Association also argues that the repropoed new rule makes the equal employment officer the State's policing entity rather than permitting him or her to allocate time to creating new ways to enhance opportunities for minorities and women. It supports this argument by citing repropoed N.J.A.C. 19:53-1.13(d)2, which limits the responsibility of the equal employment officer to the "monitoring and enforcement" of EEO/AA requirements.

RESPONSE: The repropoed new rule is not intended to prohibit the equal employment officer from performing functions other than what the Casino Association terms policing functions. The rule does emphatically require that the equal employment officer be responsible for assisting the Commission and Division by providing information and documentation of EEO/AA compliance. However, it also provides examples of other responsibilities functions which may be included within the equal employment officer's duties, and these are not limited to enforcement and policing activities. Some of these functions, cited in N.J.A.C. 19:53-1.13(d)2, are awareness training, grievance counselling, career advancement counselling and developing a casino's involvement in the community to support EEO/AA programs.

The Commission acknowledges that the language of N.J.A.C. 19:53-1.13(d)2 which describes the equal employment officer's responsibilities as the "monitoring and enforcement" of EEO/AA requirements is, perhaps, misleading given the broad range of functions which then follow that language. The Commission has therefore made a change in the repropoed new rule to clarify that the equal employment officer's responsibilities can and should include creative activity relating to EEO/AA matters. This change involves the addition of the word "implementation" prior to the words "monitoring and enforcement" in paragraph (d)2 of the new rule. Since this change merely serves to clarify what was already evident in the repropoal, it is adopted without further notice.

COMMENT: The Casino Association further claims that the repropoed new rule will have an adverse effect upon small businesses that contract with casino licensees.

RESPONSE: As already indicated in response to the Division's comment, the repropoed new rule does not impose any additional substantive requirements upon casino service industry enterprises. The Casino Association's comment also acknowledges that under the repropoed new rule it is the applicant for or holder of a casino license that is responsible for providing compliance information about its contractors and subcontractors. The Commission therefore believes that the Casino Association has exaggerated the impact of the rule on casino service industry enterprises.

COMMENT: The Casino Association also objects to the repropoed new rule because it imposes onerous measures upon casino licensees regarding minority and female representation within the construction industry, and argues that the Commission should instead interact directly with contractors and trade unions.

RESPONSE: The Casino Association made a similar comment to the original proposed rule (see 20 N.J.R. 970(b)). As the Commission stated in its response to that comment, it is appropriate for applicants for or holders of casino licenses, with their considerable economic power, to bear some responsibility for the EEO/AA practices of their contracting parties. In any event, the repropoed new rule merely permits the equal employment officer of a casino licensee to recommend the suspension of contracts with such entities, and requires casino licensees to submit compliance information on these entities. The Commission does and will continue to interact with casino service industries and trade unions independently.

COMMENT: The Casino Association further asserts that limiting the scope of the equal employment officer's responsibility to EEO/AA matters will have a detrimental effect upon his or her career because he or she will be unable to gain experience in other management areas.

RESPONSE: A similar comment was also addressed by the Commission at the time the repropoed rule was published. The Commission believes that this limitation is necessary to ensure that the resources of the equal employment officer are not exhausted performing functions unrelated to EEO/AA matters, and that the equal employment officer not have responsibilities inconsistent with EEO/AA goals. Moreover, if the equal employment officer is performing his or her functions properly, he or she should be working with all other areas of management on a regular basis, and will be less isolated than many other managers in the

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casino hotel. The Commission is not convinced that limiting the equal employment officer's area of responsibility to EEO/AA matters will handicap his or her career, since many other managers in the organization will also have their own specific areas of responsibility and expertise.

COMMENT: The Casino Association objected to the failure of the repropoed new rule to provide parameters on the nature of the reports which the Commission may require under N.J.A.C. 19:53-1.13(c)4, and contends that this failure makes it impossible to address adequately the potential cost of the rule to casino licensees and casino service industry enterprises.

RESPONSE: The repropoed new rule does not impose any new reporting requirements upon casino licensees or casino service industry enterprises. However, additional reporting requirements may be proposed in the future, at which time the Commission will address the impact of such reports.

COMMENT: Finally, the Casino Association objects to the repropoed new rule because it will result in increased costs to applicants for or holders of casino licenses, and further argues that the Commission has failed to meet its obligation to define precisely those costs.

RESPONSE: The Economic Impact statement which was published as part of the notice of the repropoal (20 N.J.R. 970(b)) acknowledges and adequately addresses the cost aspects of the repropoed new rule. As the Commission pointed out in that statement, the financial impact of the rule will vary among casinos depending upon their present level of EEO/AA compliance, the difference between the salary which they pay existing equal employment officers and managers of other major departments, and the size of their existing EEO/AA staffs. Nevertheless, these costs are not anticipated to result in any substantial financial harm to the applicants for or holders of casino licenses, given that a casino typically employs more than 3,000 people and the repropoed new rule will, at most, require the addition of two staff people and an increase in the salary of the equal employment officer. The Commission is convinced that the increased effectiveness of EEO/AA offices which the repropoal can bring about more than justifies such costs.

Full text of the adoption follows (additions to the repropoal shown in boldface with asterisks *thus*; deletions from the repropoal shown in brackets with asterisks *[thus]*).

19:53-1.3 Affirmative action requirement

(a) Rules concerning construction contracts and written guaranty are:

1.-3. (No change.)

4. An applicant for a casino license shall be required to designate an equal employment officer in accordance with the provisions of N.J.A.C. 19:53-1.13 prior to the start of actual construction by the applicant or any affiliated entity of any structure or facility to be used as an approved hotel or casino.

(b) (No change.)

19:53-1.13 Designation, authority and responsibility of equal employment officer; responsibility of applicant or licensee and chief executive officer

(a) Each applicant for or holder of a casino license or casino service industry licensee shall designate a principal member of the applicant's or licensee's organization to serve as an equal employment officer. An applicant for a casino license shall designate its equal employment officer prior to the start of actual construction by the applicant or any affiliated entity of any structure or facility to be used as an approved hotel or casino, or the recruitment and employment of personnel necessary to undertake the business of the casino or the hotel, whichever occurs first. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees and for implementation of any affirmative action program required of the applicant or licensee. The equal employment officer shall be directly responsible for the organization and effective and continuing implementation of any affirmative action program established pursuant to the Act and this chapter. As used in this Section, the term "chief executive officer" means the following:

1. With regard to a casino license applicant or licensee, that natural person who bears ultimate responsibility for the applicant's or casino licensee's New Jersey casino hotel facility and operations;

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2. With regard to a casino service industry, that natural person who bears ultimate responsibility for the casino service industry's organization and business activities.

(b) The authority and responsibilities of the equal employment officer required pursuant to (a) above shall include, without limitation, the following:

1. The authority to monitor and review all aspects of the applicant's or licensee's personnel procedures and decisions;

2. The authority to review, prior to implementation, all personnel procedures, decisions or transactions to assure their compliance with any affirmative action program approved by the Commission or with any Federal or State law regarding equal employment opportunity or affirmative action, and to recommend to the chief executive officer, or, in his or her absence, to the chief legal officer, whether those procedures, decisions or transactions should be implemented; ***and***

3. The responsibility to act as a liaison and to provide assistance to the Commission and the Division in the enforcement of the requirements imposed by section 134 of the Act and this chapter, which responsibility shall include, but not be limited to, the obligation to prepare and submit such reports, documentation and statistical information as the Commission shall require concerning the applicant's or licensee's:

- i. Workforce composition;
- ii. Good faith efforts to meet the affirmative action employment goals established by the Act and this chapter;
- iii. Employment, upgrading, demotion or transfer decisions;
- iv. Recruitment and recruitment advertising efforts;
- v. Layoff, recall or termination decisions;
- vi. Rates of pay or other forms of compensation;
- vii. Training programs and selection procedures; and
- viii. Grievance procedures for, and disposition of, equal employment opportunity related complaints*[, and]**.*

(c) In addition to the authority and responsibilities required pursuant to (b) above, the equal employment officer of a casino license applicant or licensee shall have the following authority and responsibilities:

1. The authority to monitor and review the employment and recruitment practices of all contractors and subcontractors used in connection with the actual construction, renovation or reconstruction of any structure or facility to be used as an approved hotel or casino or related facility;

2. The authority to recommend to the chief executive officer or, in his or her absence, to the chief legal officer, suspension of the execution or payment of any contract or subcontract where the contractor or subcontractor is engaging in any employment or recruitment practice which is not consonant with an applicable affirmative action program approved by the Commission or with any federal or State law regarding equal employment opportunity or affirmative action;

3. The responsibility to accompany the Commission and the Division*, if requested,* during on site inspections authorized pursuant to N.J.A.C. 19:53-1.4; and

4. The responsibility to prepare and submit to the Commission and Division such reports, documentation and statistical information as the Commission shall require concerning any contractor or subcontractor used by the applicant or licensee in connection with the

ADOPTIONS

construction, renovation or reconstruction of any structure or facility to be used as an approved hotel or casino or related facility including, but not limited to, information concerning:

- i. Workforce composition;
- ii. Good faith ***[and]*** efforts to meet the affirmative action employment goals established by the Act and this chapter;
- iii. Employment, upgrading, demotion or transfer of skilled construction workers;
- iv. Recruitment or recruitment advertising;
- v. Layoff, recall or termination of construction workers;
- vi. Rates of pay or other forms of compensation;
- vii. Selection for training programs; and
- viii. Grievance procedures for, and disposition of, equal employment opportunity related complaints.

(d) In addition to any other requirements imposed by this ***[S]* *s***ection, a casino license applicant or licensee shall comply with the following requirements:

1. The equal employment officer designated by the applicant or licensee shall have a minimum of three years experience in equal employment opportunity and affirmative action program implementation and enforcement, which experience may not be waived, and either:

i. Two years of related experience drawn from any of the following areas: employment, recruitment, training, labor relations, employee relations, employee development, compensation and benefits administration, law, and statistics; or

ii. A Bachelor's degree from an accredited institution***[.]****;
2. The sole area of responsibility of the equal employment officer shall be the ***implementation,*** monitoring and enforcement of the equal employment opportunity and affirmative action requirements established by the Act and this ***[Chapter]* *chapter*** which may include, without limitation, the following functions: recruitment; equal employment opportunity awareness training; legal and statistical analysis of workforce composition and utilization; grievance counselling and fact-finding; career advancement counselling; assessment and adaptation of all personnel and compensation policies and procedures for conformity with the equal employment opportunity program approved by the Commission and with any Federal or State equal employment opportunity laws; monitoring and coordinating purchasing and construction activities; and developing and maintaining the applicant's or casino licensee's involvement in the community in support of equal employment opportunity and affirmative action goals;

3. The equal employment officer's title, rank and level of compensation shall be comparable to that of a manager of a major department within the applicant's or licensee's organization;

4. The equal employment officer shall be provided with a staff sufficient to achieve full and timely implementation and enforcement of the affirmative action program approved by the Commission and the monitoring of construction workforce compliance with the affirmative action program established by the Act and this chapter, which staff shall include, at a minimum, one full-time professional and one full-time secretarial employee; and

5. The equal employment officer shall report directly to the applicant's or licensee's chief executive officer or, in his or her absence, to the applicant's or licensee's chief legal officer.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

BOARD OF PUBLIC UTILITIES

Petition for Control of Acid Rain

Petitioners: Environmental Defense Fund, N.J. Conservation Foundation, N.J. Chapter of the Sierra Club, and Pennsylvanians for Acid Rain Control.

Take notice that on June 7, 1988, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) received a petition for rulemaking concerning the control of acid rain.

The petitioners request that DEP and BPU (1) adopt a State acid deposition standard; (2) hold a joint administrative proceeding to determine the source of pollutants contributing to acid rain and to evaluate actions that New Jersey and other states could undertake to limit source emissions; and (3) adopt rules for compliance with an acid deposition standard.

In accordance with the provisions of N.J.A.C. 1:30-3.6, DEP and BPU shall mail to the petitioners, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition.

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

Body-gripping Restraining Snare Rule, N.J.A.C. 7:25-5.12(f)

Record Inspection and Public Comment

Take notice that in response to the decision in *Furbearer Defense Council v. The New Jersey Fish and Game Council*, Docket No. A-5976-86T1, rendered by the Superior Court of New Jersey, Appellate Division on June 7, 1988, the New Jersey Fish and Game Council (Council) is initiating proceedings to reconsider and redetermine the rule governing the use of body-gripping restraining snares.

In order to correct and clarify the public record, the Council will make available for public inspection and written comment, the public documents relied upon in its decision to adopt N.J.A.C. 7:25-5.12(f) which allowed for the continued use of body-gripping restraining snares as part of the 1986-87 Game Code. The documents will be available for **public inspection** from the date of publication of this notice until September 20, 1988 at the Trenton office of the Division of Fish, Game and Wildlife, 501 East State Street, 5 Station Plaza, Floor 3, during normal working hours. Contact Fred Carlson, Chief of Bureau of Wildlife Management at (609) 292-2965 for further information.

Written comments concerning the public documents available for inspection and written comments directed to the use of body-gripping restraining snares in general, may be submitted by September 20, 1988 to:

Fred Carlson, Chief
Bureau of Wildlife Management
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
CN 400
5 Station Plaza
501 East State Street
Trenton, New Jersey 08625

In addition to accepting written public comment, the Council will accept **oral comment** on the public documents made available for inspection and on the use of body-gripping restraining snares during the second segment of the Council's regularly scheduled monthly meeting on September 13, 1988. The first segment of the September 13, 1988 meeting which will be devoted to routine Council business will be held at 1:00 P.M. at the Assunpink Conservation Center, Assunpink Wildlife Management Area, Robbinsville, New Jersey. The meeting will then reconvene in the evening at the location described below in order to better accommodate members

of the public who wish to participate by presenting oral or written comments on body-gripping restraining snares:

Mercer County Community College
West Windsor Campus
1200 Old Trenton Road
Audio Visual Building, Room 110
West Windsor, New Jersey
September 13, 1988 at 7:30 P.M.

At the conclusion of the comment period, the Council will review all comments, both written and oral in order to prepare a summary of the comments and written responses, which will be published in the New Jersey Register.

COMMISSION TO STUDY SERVICES AND PROGRAMS AVAILABLE TO HEARING IMPAIRED CHILDREN

(c)

Notice of Public Hearings

Take notice that the Commission to Study Services and Programs Available to Hearing Impaired Children, created by Joint Resolution No. 2, effective February 19, 1987, will hold public hearings on October 5, 12, 19 and 26, 1988. The hearings will be held at the following places:

October 5, 1988	Ocean County College (To Be Confirmed) 5:00 P.M. to 9:00 P.M. College Drive Toms River, New Jersey
October 12, 1988	Rider State College 5:00 P.M. to 9:00 P.M. Route 206 Lawrenceville, New Jersey
October 19, 1988	Camden County College 5:00 P.M. to 9:00 P.M. Peter Cheeseman and Little Gloucester Roads Blackwood, New Jersey
October 26, 1988	Bergen County College (To Be Confirmed) 5:00 P.M. to 9:00 P.M. Adult Basic Education Building Main Street Hackensack, New Jersey

To help the Commission respond to and evaluate service and programs, the Commission is seeking public comment to the following questions.

The Commission is organizing advance registration if anyone wishes to testify. On-site registration will also be held.

Please call or write the Commission at:

David Fleming, Chairman
6323 Browning Road
Pennsauken, NJ 08109-1548
(609) 488-2309 (voice)
(call after 7:00 P.M.)

Interpreters will be present at all Commission hearings.

QUESTIONS FOR PUBLIC HEARINGS

Topic #1: What is the availability and quality of evaluation services for hearing impaired children in New Jersey?

(a) What is the availability, quality, timeliness and effectiveness of the diagnostic procedures used to identify your infant's hearing loss? Was infant hearing screening available to you?

(b) What is the quality of audiological services you received for diagnosis, prescription of hearing aids and referral for additional services?

(c) What is the availability and effectiveness of service delivery by the school psychologists for hearing impaired students? Knowledge of appropriate assessment/evaluation materials, procedures and interpretations for hearing impaired students? Communication skills?

STUDY COMMISSION

(d) Is at least one specialist in deafness available on Teams evaluating a child with hearing loss? If not, is a qualified outside evaluator made available?

(e) Is the Specialized Child Study Team for the Deaf in your region utilized by your school district?

(f) How satisfactory are the goals and objectives set for hearing impaired children?

(g) What are the criteria used for educational placement of hearing impaired children?

(h) Are parents informed of the range of placement options for hearing impaired children?

Topic #2: How available and effective are parent guidance and parent education for families of deaf and hearing impaired children?

(a) How accessible are early intervention programs? To deaf families?

(b) How appropriate was the information you were given at the time your child was diagnosed as hearing impaired regarding: hearing aids? education? speech/language development? community support services?

(c) To what extent do school programs encourage parents to improve communication and educational involvement with their deaf children?

(d) To what extent do educational programs incorporate parent education, training, and follow-up procedures into their service models?

Topic #3: What is the availability and appropriateness of educational programs for deaf and hearing impaired students in New Jersey?

(a) How accessible to you was information about the availability of specialized early intervention for your hearing impaired child from: your doctor? a local agency? (ex.: Child Find)?

(b) What is the appropriateness and quality of early intervention services? Are specially trained staff in the area of hearing impairment available?

(c) What is the availability, quality and effectiveness of early intervention services to multiply handicapped hearing impaired children?

(d) How available is the certified Teacher of the Deaf or Hard of Hearing to the hearing impaired child's educational program? To the home-bound hearing impaired child?

(e) Are appropriate educational programs available to deaf and hard of hearing children in all regions of the State? If not, what are the shortcomings?

(f) What is the quality of supervision, evaluation and monitoring of the academic progress of hearing impaired children? Are children with permanent and temporary loss of hearing identified, assisted and monitored?

(g) How available are personnel, knowledgeable in deafness, to deaf children placed in classes for other handicapping conditions?

(h) What is the extent of school transfers needed to create a continuation of school programming for hearing impaired children?

(i) What is the availability of educational technology to the hearing impaired schoolchild? Are amplification devices, computer software for speech and language development, telecommunication devices, warning systems and closed captioning available?

(j) What is the availability of extra-curricular activities to the hearing impaired child?

(k) Are current vocational educational programs readily accessible to deaf or hard of hearing students who require them?

(l) Are current vocational transition programs sufficient to meet the needs of deaf students when they graduate from secondary school?

(m) Are postsecondary vocational training and community-based training programs available to hearing impaired students?

(n) Are appropriate postsecondary, adult, and continuing educational opportunities available to deaf and hearing impaired youth?

Topic #4: How available and effective are educational programs for multi-handicapped and minority group hearing impaired students?

(a) How adequately are deaf-blind children served? Are personnel appropriately trained and/or certified to work with vision and hearing impaired students?

(b) How adequately are severely impaired multi-handicapped children with hearing loss served? Are personnel appropriately trained and/or certified to work with severe-profoundly impaired children and hearing loss as well?

(c) How adequately are deaf children with mild-moderate secondary impairments served? Are personnel trained and/or certified in education of the hearing impaired, and in special education as well?

(d) How adequately are minority group hearing impaired children served? Are personnel appropriately prepared to meet their unique cul-

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tural needs? Is a teacher of the deaf and/or interpreter fluent in the family's native language available to deaf children and their families?

Topic #5: What is the availability and quality of support services to deaf and hearing impaired children in New Jersey schools?

(a) Are adequate support services available to deaf and hearing impaired school children?

(b) What is the extent of the school district's hearing aid maintenance program?

(c) Are classroom interpreters and notetakers available to meet the needs of students who require them? Is sufficient time scheduled to meet students' needs?

(d) What is the availability and effectiveness of service delivery by the speech and language specialists for hearing impaired students? Is sufficient time scheduled to address individual students' needs?

(e) Are counselors knowledgeable in deafness available for hearing impaired children and their families? Knowledge of postsecondary resources for hearing impaired students?

(f) What is the availability and effectiveness of service delivery by the social worker for hearing impaired students?

(g) What is the availability and effectiveness of service delivery by the learning disabilities teacher-consultants for hearing impaired students?

(h) What is the availability and accessibility of Learning Resource Centers to parents and professionals serving hearing impaired students? Are materials and equipment current, relevant, and adequate for enhancing instruction of deaf and hearing impaired students?

(i) What is the availability and effectiveness of service delivery by paraprofessionals, i.e., dorm supervisors, teachers' assistants, for hearing impaired students?

Topic #6: What are the training and technical assistance needs of professionals and staff serving hearing impaired students at all levels of educational programs?

(a) To what extent is the hearing impaired child's mainstreamed classroom teacher prepared to deal with the child's hearing loss, learning style, communication, and social needs? Are support and advisement available from a case manager trained in education of the hearing impaired? Is technical assistance available from a specialist in education of the hearing impaired?

(b) Are sufficient professional development opportunities being offered to administrators and other professionals providing programs and services for deaf and hearing impaired students?

(c) To what extent are all levels of education and government agencies coordinating their training and technical assistance activities for deaf and hearing impaired children and youth?

(d) To what extent are all levels of education and government agencies providing technical assistance activities for deaf and hearing impaired children and youth?

(e) Are New Jersey certification requirements for Teachers of the Deaf or Hard of Hearing sufficient to ensure quality instruction? Are the standards current and in line with national certification standards? Are there appropriate training programs where teachers can obtain certification?

(f) Are evaluation and certification standards and procedures for professionals, e.g., speech/language specialists, education audiologists, educational interpreters, sufficient to ensure quality services? Are there appropriate training programs where professionals can obtain certification?

(g) What are training and technical assistance needs for infant and early childhood education programs? Are there appropriate training programs available?

Topic #7: What is the availability and accessibility of community services for hearing impaired children and youth in New Jersey? Background: Community services being investigated are: childcare, transportation, medical services, police, libraries, recreation programs, welfare, Medicaid, food stamps, SSI, juvenile shelters, criminal system, human service agencies, and group homes.

(a) What has been your experience in trying to obtain community services for your hearing impaired child? Has the lack of services negatively affected your child?

(b) To what extent have you experienced difficulty in using community services? Re: communication, awareness, etc.?

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Topic #8: What is the availability and quality of mental health services for hearing impaired children and youth in New Jersey?

- (a) When a hearing impaired family member needed professional mental health services, were adequate services found? How? Where?
 - (b) Did the mental health services satisfy the original referral, and were they satisfactory? Was the mode of communication appropriate?
 - (c) Was the cost of services more because of a hearing impaired family member? And, why?
 - (d) Did people consulted have training or experience with the hearing impaired?
 - (e) Were you denied adequate services because your family member was hearing impaired?
 - (f) If hospitalization was recommended, was it available, was communication facilitated, and was there adequate discharge planning?
- d quality of assistance to mental health professionals serving hearing impaired children and youth in New Jersey?
- (a) Are mental health professionals aware of sources of assistance and referral services when working with hearing impaired children and youth?
 - (b) As a professional in the mental health area, were you able to find an interpreter knowledgeable and experienced in therapeutic settings?
 - (c) Were you able to find an interpreter skilled in facilitating communication in a therapeutic setting?

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Fee Increase; Administration Manual, Transportation Services Manual, Manual for Physicians Services, Manual for Dental Services, Podiatry Services Manual, Nurse-Midwifery Services Manual, Independent Laboratory Services Manual, Vision Care Manual, Independent Clinic Services Manual.

HCPCS Codes Mod	Procedure description	Maximum Fee Allowance			Effective Date					
		S	NS	WM	S	10/1/88 NS	WM	S	4/1/89 NS	WM
W9025	HealthStart Initial antepartum maternity medical care visit	\$72.00	69.00							
W9025WM	HealthStart Initial antepartum maternity medical care visit by certified nurse midwife			67.00						
	History, including system review									
	Complete physical examination									
	Risk assessment									
	Initial care plan									
	Patient counseling and treatment									
	Routine and special laboratory tests on site, or by referral, as appropriate									
	Referral for other medical consultations, as appropriate (including dental)									
	Coordination with the HealthStart Health Support Services provider, as applicable									
	Case conference with HealthStart case coordinator									
W9026	HealthStart subsequent antepartum maternity medical care visit	\$15.00	14.00		\$18.00	\$17.00		\$22.00	\$21.00	
W9026WM	HealthStart subsequent antepartum maternity medical care visit by certified nurse midwife			[13.00]			\$16.00			\$19.00
	Interim history									
	Physical examination									
	Risk assessment									
	Review of plan of care									
	Patient counseling and treatment									
	Laboratory services on site or by referral, as appropriate									

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N.J.A.C. 10:49-3.19, 3.20; 10:50-3.2; 10:54-4; 10:56-3.4, 3.7, 3.10, 3.12; 10:57-3; 10:58-3; 10:61-3; 10:62-4; 10:66-3.

Public Notice

Authority: N.J.S.A. 30:4D-2; 30:4D-3; 30:4D-5,6,7; 30:4D-6a (3), (5), b(3), (6), (7), (8), (15); 30:4D-7, 7a, b, c, P.L. 1988, c.47; 1920(a) of the Social Security Act; 42 CFR 447.200, Subpart B.

Take notice that Drew Altman, Commissioner, Department of Human Services, has been authorized, pursuant to the provisions of N.J.S.A. 30:4D-7, to adopt Medicaid provider fee schedules and increases thereto. The increases are authorized and governed by the New Jersey Appropriations Act, (P.L. 1988, c. 47) which contains the following language: "Notwithstanding the provisions of the 'Administrative Procedure Act,' P.L. 1968, c. 410 (C. 52:14B-1 et seq.) and any other law to the contrary, the Commissioner is authorized to pay from the Provider fee increase accounts hereinabove and in the Casino Revenue Fund, Medicaid provider fee increases pursuant to a provider fee schedule as may be appropriate within the limit of appropriations made therein, which schedule shall be provided to the Senate Revenue, Finance and Appropriations Committee and the Assembly Appropriations Committee, or the successor committees thereto."

The affected providers, covered services, and corresponding fee schedules are listed in the text below. Some fee increases will be granted incrementally. Providers will be reimbursed on the basis of the fee that was in effect on the date the service was rendered. For example, the procedure codes for routine visits (beginning with 90030) that are listed in the Physicians Services Manual, N.J.A.C. 10:54-4, will be reimbursed at \$12.00 for a specialist and \$10.00 for a non-specialist for services rendered on or after August 1, 1988. The fees will increase to \$16.00 and \$14.00 respectively for services rendered on or after May 1, 1989.

Full text of the fee changes follows (deletions shown in brackets [thus]; additions shown in boldface thus).

10:49-3.19 HealthStart Maternity Care Code requirements

- (a) (No change.)
- (b) HealthStart Maternity Care Services Codes are as follows:

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Referrals for other medical consultations, as appropriate
 Coordination with HealthStart case coordinator

NOTE: This code may be billed only for the 2nd through 15th antepartum visit.

NOTE: If medical necessity dictates, corroborated by the record, additional visits above the initial and fourteen subsequent visits may be reimbursed under procedure code 90040, 90050, 90060 and 90070, (routine or follow-up clinic visit); 90050 WM, 90060 WM, 90150 WM, 90160 WM, (routine or follow-up visit—midwife). The claim form should clearly indicate the reason for the medical necessity and date for each additional visit.

W9027	HealthStart REGULAR DELIVERY	[\$305.00	\$290.00]	\$347.00	\$317.00	\$465.00	\$418.00
W9027WM	HealthStart REGULAR DELIVERY BY CERTIFIED NURSE MIDWIFE		[\$259.00]		\$288.00		\$371.00
	Admission History						
	Complete physical examination						
	Vaginal delivery with or without episiotomy						
	Inpatient postpartum care						
	Referral to postpartum follow-up care provider including:						
	1. Mother's hospital discharge summary						
	2. Infant's discharge summary, as appropriate						

NOTE: Obstetrical delivery applies to a vaginal delivery at full term or premature and includes care in the home, birthing center or in the hospital (inpatient setting). Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form 1500 N.J.

W9028	HealthStart POSTPARTUM CARE VISIT	[\$15.00	\$14.00]	\$18.00	\$17.00	\$22.00	\$21.00
W9028WM	HealthStart POSTPARTUM CARE VISIT BY CERTIFIED NURSE MIDWIFE		[\$13.00]		\$16.00		\$19.00
	Outpatient postpartum care by the 60th day after the vaginal or Cesarean section delivery						
	Review of prenatal, labor and delivery course						
	Interim history, including information on feeding and care of the newborn						
	Physical examination						
	Referral for laboratory services as appropriate						
	Referral for ongoing medical care when appropriate						
	Patient counseling and treatment						

NOTE: The postpartum visit shall be made by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form 1500 N.J.

W9029	HealthStart REGULAR DELIVERY AND POSTPARTUM	[\$320.00	304.00]	\$365.00	\$334.70	\$487.00	\$439.00
W9029WM	HealthStart REGULAR DELIVERY AND POSTPARTUM BY CERTIFIED NURSE MIDWIFE		[272.00]		\$304.00		\$390.00
	Admission History						
	Complete physical examination						
	Vaginal delivery with or without episiotomy						
	Inpatient postpartum care						
	Referral to postpartum follow-up care provider including:						
	1. Mother's hospital discharge summary						
	2. Infant's discharge summary, as appropriate						
	Outpatient postpartum care by the 60th day after the delivery						
	Review of prenatal, labor and delivery course						
	Interim history, including information on feeding and care of the newborn						
	Physical examination						
	Referral for laboratory services as appropriate						

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Referral for ongoing medical care
when appropriate
Patient counseling and treatment

NOTE: This code applies to a vaginal delivery at full term or premature and includes care in the home, birthing center or in the hospital (inpatient setting). This shall also include one post hospital discharge visit by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14) and on the Health Care Insurance Claim Form 1500 N.J.

W9030	HealthStart TOTAL OBSTETRICAL CARE	[\$602.00	569.00]	\$689.00	\$641.70	\$867.00	\$802.00
W9030WM	HealthStart TOTAL OBSTETRICAL CARE BY CERTIFIED NURSE MIDWIFE		[521.00]			\$595.00	\$723.00

Total obstetrical care consists of:

1. Initial antepartum visit and fourteen subsequent antepartum visits. Specific dates are to be listed on the Independent Outpatient Health Facility Care Form (MC-14) and on the Health Care Insurance Claim Form 1500 NJ.

NOTE: Reimbursement will be decreased by the fee for the maternity medical care initial antepartum visit if the patient is not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent maternity medical care antepartum visit less than fourteen visits.

2. Obstetrical delivery per vagina with or without episiotomy including care when provided in the home, birthing center or in the hospital (inpatient setting).

This applies to a vaginal delivery at full term or premature. This shall also include one post hospital discharge visit by the 60th postpartum day. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-19) and on the Health Care Insurance Claim Form 1500 N.J.

W9031	HealthStart CAESAREAN SECTION DELIVERY	[\$435.00	\$403.00]	\$477.00	\$430.70	\$595.00	\$531.00
	Admission History						
	Complete physical examination						
	Caesarean section delivery						
	Inpatient postpartum care						
	Referral to postpartum follow-up care provider including:						
	1. Mother's hospital discharge summary						
	2. Infant's discharge summary, as appropriate						

NOTE: Include the delivery date on the Health Care Insurance Claim Form 1500 N.J. or on the Independent Outpatient Health Facility Claim Form (MC-14) (c) (No change.)

10:49-3.20 HealthStart Pediatric Care Codes

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

(e) (HCFA) Health Care Financing Administration Common Procedure Coding System (HCPCS) for HealthStart Pediatric Care Services is as follows:

HCPCS CODES	MOD	PROGRAM DESCRIPTION	MAXIMUM FEE ALLOWANCE		EFFECTIVE DATE			
			S	NS	10/1/88	NS	S	4/1/89
		HealthStart PEDIATRIC PREVENTIVE CARE VISIT	[\$22.00	\$17.00]	\$25.00	\$20.00	\$29.00	\$24.00
		These codes are for pediatric preventive care visits during the following dates of the infant's age.						
W9060		under 6 weeks						
W9061		6 weeks-3 months						
W9062		3 months-5 months						
W9063		5 months-8 months						
W9064		8 months-11 months						
W9065		11 months-14 months						
W9066		14 months-17 months						
W9067		17 months-20 months						
W9068		20 months-24 months						

CHAPTER 50
TRANSPORTATION SERVICES MANUAL

10:50-3.2 HCPCS CODE NUMBERS AND MAXIMUM FEE SCHEDULE

HCPCS CODE	DESCRIPTION	MAXIMUM FEE ALLOWANCE	
		8/1/88	5/1/89
(c) MILEAGE			
A0020 22	Ambulance Service, (BLS) Per Mile Transport, One Way	\$1.20	\$1.50
	NOTE: For trips in excess of 15 miles one way, loaded mileage is reimbursable beginning with the first mile, at a higher rate as indicated under Maximum Fee Allowance, using HCPCS Code A0020 22. This applies to both ambulance and invalid coach services and is applicable to both the one way trip and to the return trip.		

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NOTE: In a multiple-load situation, the charge for loaded mileage is applicable to "one" patient only. Reimbursement is limited to the distance traveled by the patient whose point of origin and point of destination represent the greatest distance. No mileage charge is permitted for additional patients whose distance traveled lies between these two points.

CHAPTER 54
MANUAL FOR PHYSICIAN SERVICES

10:54-4 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS CODE	CURRENT FEES		MAXIMUM FEE ALLOWANCE			
			EFFECTIVE DATE		EFFECTIVE DATE	
			8/1/88	8/1/88	5/1/89	5/1/89
Routine Visit:						
90030	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90040	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90050	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90060	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90070	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90080	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90130	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90140	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90150	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90240	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90250	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90260	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90270	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90280	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90340	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90350	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90360	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90370	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90430	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90440	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90450	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90460	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90470	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90764	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90030 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90040 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90050 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90060 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90070 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90080 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90130 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90140 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90150 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90160 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90170 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
Cytopathology, smears, cervical or vaginal (e.g., Papanicolaou):						
88150		[\$3.00]		\$4.50		\$6.00
88155		[\$4.20]		\$4.50		\$6.00

10:54-4 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS CODE	CURRENT FEES		MAXIMUM FEE ALLOWANCE			
			EFFECTIVE DATE		EFFECTIVE DATE	
	S	S	NS	S	8/1/88	NS
					S	
House Call:						
90160	[\$25.00		\$25.00		\$35.00	\$35.00
90170	\$25.00		\$25.00]		\$35.00	\$35.00
Prolonged Detention:						
99150	[\$37.00		\$32.00		\$45.00	\$40.00
99151	\$37.00		\$32.00		\$45.00	\$40.00
99160	\$37.00		\$32.00]		\$45.00	\$40.00
Newborn Care (Routine Newborn Care):						
90225	[\$22.00		\$17.00		\$27.00	\$23.00
Newborn Care (High Risk Vaginal Delivery):						
W9050	[\$22.00		N/A]		\$27.00	N/A
Newborn Care (Caesarean Section):						
W9055	[\$22.00		\$17.00]		\$27.00	\$23.00

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10:54-4 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS CODE	CURRENT FEES						MAXIMUM FEE ALLOWANCE EFFECTIVE DATE					
	10/1/88		1/1/89		4/1/89		1/1/89		4/1/89			
Obstetrical Services:												
	S	S	NS	S	S	NS	S	S	NS	S	S	NS
59400	[236.00		210.00	308.00		259.00	—		—	468.00		403.00
59400 WM	N/A		165.20	N/A		207.00	—		—	N/A		328.00
59410	160.00		144.00	202.00		171.70	—		—	320.00		272.00
59410 WM	N/A		112.00	N/A		141.00	—		—	N/A		224.00
59420	8.00		7.00	12.00		10.00	—		—	16.00		14.00
59420 WM	N/A		5.60	N/A		8.40	—		—	N/A		11.20
59430	13.00		11.00	16.00		14.00	—		—	20.00		18.00
59430 WM	N/A		9.10	N/A		11.20	—		—	N/A		14.00
59500	290.00		257.00	332.00		284.70	—		—	450.00		385.00
59501	369.00		326.00	438.00		372.00	—		—	598.00		516.00
59520	290.00		257.00	332.00		284.00	—		—	450.00		385.00
59521	369.00		326.00	438.00		372.00	—		—	598.00		516.00
59541	369.00		326.00	438.00		372.00	—		—	598.00		516.00
59561	446.00		394.00	518.00		443.00	—		—	678.00		587.00
59581	446.00		394.00]	518.00		443.00	—		—	678.00		587.00

Consultation (Limited):

90600	[22.00		N/A	24.00		N/A	26.00		N/A	44.00		N/A
90605	22.00		N/A	24.00		N/A	26.00		N/A	44.00		N/A
90610	22.00		N/A]	24.00		N/A	26.00		N/A	44.00		N/A

Consultation (Comprehensive):

90620	[37.00		N/A	39.00		N/A	40.00		N/A	62.00		N/A
90630	37.00		N/A]	39.00		N/A	40.00		N/A	62.00		N/A

10:56-3.4 02000-02999 III. RESTORATIVE

(a) (No change.)

(b) Amalgam restorations (including polishing)

1. through 5. (No change.)

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE EFFECTIVE DATE		
				8/1/88	1/1/89	4/1/89
	02110		Amalgam—One Surface, Primary	[9.00]	17.00	[7.50] 15.00
	02120		Amalgam—Two Surfaces, Primary	[14.50]	23.00	[13.00] 20.50
	02130		Amalgam—Three Surfaces, Primary	[20.00]	29.00	[18.50] 26.00
	02131		Amalgam—Four Surfaces, Primary	[25.50]	36.00	[24.00] 31.50

NOTE: Code to be utilized for four or more surfaces

	02140		Amalgam—One Surface, Permanent	[9.00]	17.00	[7.50] 15.00
	02150		Amalgam—Two Surfaces, Permanent	[14.50]	23.00	[13.00] 20.50
	02160		Amalgam— Three Surfaces, Permanent	[20.00]	29.00	[18.50] 26.00
	02161		Amalgam—Four or More Surfaces, Permanent	[25.50]	36.00	[24.00] 31.50

(c) (No change.)

(d) Filled or unfilled resin restorations:

1.-7. (No change.)

8. Reimbursement will include acid etch where appropriate.

	02330		Resin—One Surface	[11.00]	20.50	[10.00] 18.00
	02331		Resin—Two Surfaces	[18.00]	27.50	[16.00] 24.00
	02332		Resin—Three Surfaces	[25.00]	34.50	[22.00] 30.00
	02335		Resin—Four or More Surfaces or Involving Incisal Angle	[31.50]	41.50	[28.00] 36.00

(e) through (h) (No change.)

10:56-3.7 05000-05899 VI. PROSTHODONTICS (REMOVAL)

(a)-(h) (No change.)

(i) Complete dentures (including routine post delivery care):

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE 10/1/88					
				S	S	NS	S	S	NS
*	05110		Complete Upper	[197.00		171.00]	231.00		201.00

NOTE: Maxillary.

HUMAN SERVICES

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*	05120	Complete Lower	[202.00	176.00]	238.00	207.00
		NOTE: Mandibular.				

(j) Immediate complete dentures (including six months post delivery care):

1. (No change.)

2. In order to qualify for immediate denture reimbursement, the denture must involve the immediate replacement of anterior teeth which may include first bicuspid (teeth nos. 5 through 12 and 21 through 28 only). Second bicuspid and molars must not be included among the qualifying teeth. The date of insertion of a denture and the extractions must carry an identical date of service. List tooth code(s) of teeth involved.

*	05130	Immediate Upper	[215.00	186.00]	253.00	220.00
		NOTE 1: Maxillary.				
		NOTE 2: 1 through 4 teeth.				

*	05130	22	Immediate Upper	[239.00	206.00]	280.00	243.00
			NOTE 1: Maxillary.				
			NOTE 2: 5 through 8 teeth.				

*	05140	Immediate Lower	[220.00	191.00]	258.00	224.00
		NOTE 1: Mandibular.				
		NOTE 2: 1 through 4 teeth.				

*	05140	22	Immediate Lower	[244.00	211.00]	286.00	249.00
			NOTE 1: Mandibular.				
			NOTE 2: 5 through 8 teeth.				

(k) Partial dentures (including routine post delivery care):

1. For additional clasp(s), see Code Y2510.

*	05211	Upper Partial—Acrylic Base (Including Any Conventional Clasps and Rests)	[161.00	140.00]	190.00	165.00
		NOTE: Includes two (2) cast chrome clasps with rests.				

*	05211	52	Upper Partial—Acrylic Base—Without Clasps (Flipper)	[86.00	75.00]	101.00	88.00
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*	05212	Lower Partial—Acrylic Base (Including Any Conventional Clasps and Rests)	[161.00	140.00]	190.00	140.00
		NOTE: Includes two (2) cast chrome clasps with rests				

*	05212	52	Lower Partial—Acrylic Base—Without Clasps (Flipper)	[86.00	75.00]	101.00	88.00
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*	05213	Upper Partial—Predominantly Base Cast Base with Acrylic Saddles (Including any Conventional Clasps and Rests)	[213.00	185.00]	250.00	217.00
		NOTE: Includes two (2) cast chrome clasps with rests.				

*	05214	Lower Partial—Predominantly Base Cast Base with Acrylic Saddles (Including any Conventional Clasps and Rests)	[201.00	175.00]	237.00	206.00
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(l)-(r) (No change.)

10:56-3.10 07000-07999 IX. ORAL SURGERY

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

(c) Extractions—includes local anesthesia and routine postoperative care:

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE					
				\$	\$	NS	\$	\$	NS
	07110		Single Tooth	[10.50		9.00]	17.00		15.00
**	07130		Root Removal—Exposed Roots	15.00		13.00			
			NOTE 1: Per tooth.						
			NOTE 2: Root partially imbedded in bone.						

PUBLIC NOTICES

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07130 Root Removal—Exposed Roots 10.50 9.00
 NOTE 1: Per tooth.
 NOTE 2: Root completely located in soft tissue.

(d) Surgical extractions—includes local anesthesia and routine postoperative care:
 1-2. (No change).
 3. In order to qualify for a surgical removal of a tooth with partial or complete bone impaction, the following is required:
 i. Incision of overlying soft tissue;
 ii. Removal of bone; and/or
 iii. Sectioning of tooth.

[**]	07210	Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of Tooth	[15.00	13.00]	17.00	15.00
**	07220	Removal of Impacted Tooth—Soft Tissue	21.00		18.00	
**	07230	Removal of Impacted Tooth—Partially Bony	61.00		53.00	
**	07240	Removal of Impacted Tooth—Completely Bony	61.00		53.00	
**	07250	Surgical Removal of Residual Tooth Roots (Cutting Procedure)	30.00		26.00	

NOTE: Completely covered by bone.

(e)-(q) (No change.)

10:56-3.11 08000-08999 X. ORTHODONTICS

(a)-(b) (No change.)
 (c) Comprehensive orthodontic treatment—permanent dentition:
 1. (No change.)

2. Reimbursement for the monthly fee is based on one or more visits to the practitioner during any calendar month. Reimbursement must not be requested for any month in which there is no monthly visit.

IND	HCPCS CODE	MOD	PROCEDURE DESCRIPTION	MAXIMUM FEE ALLOWANCE EFFECTIVE DATE 8/1/88				
				S	\$	NS	\$	NS
*	Y2910		Appliances	[162.00		140.00]	178.00	155.00
*	Y2920		1st Through 12th Month of Treatment (To Start On Day Insertion of Appliances Is Completed), Per Month	[30.00		26.00]	40.00	35.00
*	Y2930		13th Through 24th Month of Treatment, Per Month	[28.00		24.00]	40.00	35.00
*	Y2940		25th Through 30th Month of Treatment, Per Month	[11.00		9.00]	14.00	12.00
*	Y2950		31st Through 36th Month (Maximum Reimbursable Period of Treatment), Per Month	[11.00		9.00]	14.00	12.00

(d) (No change.)

10:56-3.12 09000-09999 XI. ADJUNCTIVE GENERAL SERVICES

(a) (No change.)

(b) Anesthesia:

d**	09210	Local Anesthesia Not in Conjunction with Operative or Surgical Procedures	13.00		11.00		
	09220	General Anesthesia	[12.50		12.50]	25.00	25.00

NOTE: Infiltration and/or nerve block for diagnostic purposes or purposes other than anesthesia.

NOTE 1: This code applies when the dentist performing the services (attending dentist) also administers the general anesthesia or in conjunction with oral surgery services only.

NOTE 2: Reimbursement will be made for the administration of only one general anesthesia per visit.

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

CHAPTER 57
PODIATRY SERVICES MANUAL

10:57-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS CODE	CURRENT FEES			MAXIMUM FEE ALLOWANCE EFFECTIVE DATE					
	S	S	NS	S	8/1/88		5/1/89		NS
					S	NS	S	S	
Routine Visit:									
90030	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90040	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90050	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90060	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90070	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90080	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90130	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90140	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90150	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90240	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90250	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90260	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90270	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90280	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90340	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90350	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90360	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90370	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90430	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90440	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90450	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90460	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90470	\$9.00		\$7.00]	\$12.00		\$10.00	\$16.00		\$14.00

HCPCS CODE	CURRENT FEES				MAXIMUM FEE ALLOWANCE EFFECTIVE DATE							
	S	S	NS	S	10/1/88		1/1/89		4/1/89		NS	
					S	NS	S	S	NS	S	S	
Consultation (Limited):												
90600	[22.00		N/A	24.00		N/A	26.00		N/A	44.00		N/A
90605	22.00		N/A	24.00		N/A	26.00		N/A	44.00		N/A
90610	22.00		N/A]	24.00		N/A	26.00		N/A	44.00		N/A
Consultation (Comprehensive):												
90620	[37.00		N/A	39.00		N/A	40.00		N/A	62.00		N/A
90630	37.00		N/A]	39.00		N/A	40.00		N/A	62.00		N/A

HCPCS CODE	CURRENT FEES			MAXIMUM FEE ALLOWANCE EFFECTIVE DATE			
	S	S	NS	S	8/1/88		NS
					S	S	
House Call:							
90160	[\$25.00			\$25.00		\$35.00	\$35.00
90170	\$25.00			\$25.00]		\$35.00	\$35.00

CHAPTER 58
NURSE MIDWIFERY SERVICES

10:58-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS CODE	CURRENT FEES			MAXIMUM FEE ALLOWANCE EFFECTIVE DATE					
	S	S	NS	S	8/1/88		5/1/89		NS
					S	NS	S	S	
Routine Visit:									
90030 WM	[N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90040 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90050 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90060 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90070 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90080 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90130 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90140 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90150 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90160 WM	N/A		\$6.30	N/A		\$8.40	N/A		\$11.20
90170 WM	N/A		\$6.30]	N/A		\$8.40	N/A		\$11.20

PUBLIC NOTICES

HUMAN SERVICES

HCPCS CODE	CURRENT FEES				MAXIMUM FEE ALLOWANCE EFFECTIVE DATE				
	S	S	NS	S	10/1/88 S	NS	S	4/1/89 S	NS
Obstetrical Services:									
59400 WM	[N/A		165.20	N/A		207.00	N/A		328.00
59410 WM	N/A		112.00	N/A		141.00	N/A		224.00
59420 WM	N/A		5.60	N/A		8.40	N/A		11.20
59430 WM	N/A		9.10]	N/A		11.20	N/A		14.00

**CHAPTER 61
INDEPENDENT LABORATORY SERVICES**

10:61-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS CODE	CURRENT FEES	MAXIMUM FEE ALLOWANCE EFFECTIVE DATE		
		8/1/88		5/1/89
Cytopathology, smears, cervical or vaginal (eg, Papanicolaou):				
88150	[\$3.00]	\$4.50		\$6.00
88155	[\$4.00]	\$4.50		\$6.00

**CHAPTER 62
VISION CARE MANUAL**

10:62-4.3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)
(PROFESSIONAL VISION CARE SERVICES)

HCPCS CODE	CURRENT FEES				MAXIMUM FEE ALLOWANCE EFFECTIVE DATE				
	S	S	NS	S	8/1/88 S	NS	S	5/1/89 S	NS
Routine Visit:									
90030	[\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90040	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90050	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90060	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90070	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90080	\$9.00		\$7.00]	\$12.00		\$10.00	\$16.00		\$14.00

10:62-4.4 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)
(VISION CARE APPLIANCES)

HCPCS CODE	DESCRIPTION	CURRENT FEES	MAXIMUM FEE ALLOWANCE EFFECTIVE DATE	
			8/1/88	5/1/89
Y5110	Lens Service (Single vision lens)	[\$ 8.00	\$ 9.00	\$12.00
Y5112	Lens Service (Bifocal lens)	\$10.00	\$11.00	\$15.00
V2020	Frames, purchases	\$ 5.00	\$ 6.00	\$ 8.00
V2035	Frames (dispensing fee)	\$ 5.00	\$ 6.00	\$ 8.00
V2035 YF	Frames (dispensing fee)	\$ 5.00]	\$ 6.00	\$ 8.00

NOTE: YF-Patient supplied his/her own Medicaid Plastic Frame.

**CHAPTER 66
INDEPENDENT CLINICS SERVICES MANUAL**

10:66-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

HCPCS CODE	CURRENT FEES				MAXIMUM FEE ALLOWANCE EFFECTIVE DATE				
	S	S	NS	S	8/1/88 S	NS	S	5/1/89 S	NS
Routine Visit:									
90030	[\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90040	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90050	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90060	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90070	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90080	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90030 YR	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90040 YR	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90050 YR	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90060 YR	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00
90070 YR	\$9.00		\$7.00	\$12.00		\$10.00	\$16.00		\$14.00

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90080 YR	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90240	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90250	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90260	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90270	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90280	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90764	\$9.00	\$7.00	\$12.00	\$10.00	\$16.00	\$14.00
90030 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90040 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90050 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90060 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90070 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
90080 WM	N/A	\$6.30	N/A	\$ 8.40	N/A	\$11.20
Cytopathology, smears, cervical or vaginal (eg, Papanicolaou):						
88150	\$3.00			\$4.50		\$6.00
88155	\$4.20			\$4.50		\$6.00

**MAXIMUM FEE ALLOWANCE
EFFECTIVE DATE**

HCPCS CODE	CURRENT FEES			MAXIMUM FEE ALLOWANCE	
	S	S	NS	8/1/88	NS
Prolonged Detention:					
99150	[\$37.00		\$32.00	\$45.00	\$40.00
99151	\$37.00		\$32.00	\$45.00	\$40.00
99160	\$37.00		\$32.00	\$45.00	\$40.00

**MAXIMUM FEE ALLOWANCE
EFFECTIVE DATE**

HCPCS CODE	CURRENT FEES				MAXIMUM FEE ALLOWANCE							
	S	S	NS	S	10/1/88	NS	S	S	NS	S	4/1/89	NS
Obstetrical Services:												
59400	[236.00		210.00	308.00	259.00	—	—	468.00		403.00		
59400 WM	N/A		165.20	N/A	207.00	—	—	N/A		328.00		
59410	160.00		144.00	202.00	171.70	—	—	320.00		272.00		
59410 WM	N/A		112.00	N/A	141.00	—	—	N/A		224.00		
59420	8.00		7.00	12.00	10.00	—	—	16.00		14.00		
59420 WM	N/A		5.60	N/A	8.40	—	—	N/A		11.20		
59430	13.00		11.00	16.00	14.00	—	—	20.00		18.00		
59430 WM	N/A		9.10	N/A	11.20	—	—	N/A		14.00		
59500	—		—	332.00	284.70	—	—	450.00		385.00		
59501	—		—	438.00	372.00	—	—	598.00		516.00		
59520	290.00		257.00	332.00	284.70	—	—	450.00		385.00		
59521	369.00		326.00	438.00	372.00	—	—	598.00		516.00		
59541	—		—	438.00	372.00	—	—	598.00		516.00		
59561	—		—	518.00	443.00	—	—	678.00		587.00		
59581	—		—	518.00	443.00	—	—	678.00		587.00		

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmacy Fee Increase: Pharmacy Manual N.J.A.C. 10:51-1.17 and 3.15

Public Notice

Authority: N.J.S.A. 30:4D-6b(6), 30:4D-7, 7a,b,c, 30:4D-20, 22; P.L. 1988, c.47; 42 CFR 447.331-334.

Take notice that Drew Altman, Commissioner, Department of Human Services, has been authorized, pursuant to the provisions of N.J.S.A. 30:4D-7, to pay Medicaid pharmacy provider fee schedules and increases thereto. The Commissioner has also been authorized, pursuant to N.J.S.A. 30:4D-22(2)b, to pay "reasonable cost", including a dispensing fee, to pharmaceutical providers that participate in the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program. The increase in the dispensing fee for Medicaid and/or PAAD pharmaceutical providers is authorized and governed by the New Jersey Appropriations Act (P.L. 1988, c.47).

The Appropriations Act contains the following language with respect to the Medicaid fee increase:

"Notwithstanding the provisions of the 'Administrative Procedure Act,' P.L. 1968, c.410 (C. 52:14B-1 et seq.) and any other law to the contrary, the Commissioner is authorized to pay from the prescription drug dispensing fee increase account hereinabove (men-

tioned) to eligible pharmacies, pursuant to P.L. 1968, c.413 (C. 30:4D-1 et seq.) an increase of \$0.10 per prescription dispensing fee."

The prescription drug dispensing fee cited above includes the capitation of the dispensing fee for legend drugs provided to long term care patients. The amount of monies appropriated in the Medicaid program was based on the total number of prescriptions reimbursed which included the capitated program. The capitated program is used to reimburse pharmacies that service patients in long term care facilities (LTCFs).

The Appropriations Act contains the following language with respect to the PAAD fee increase:

"Notwithstanding the provisions of the 'Administrative Procedure Act,' P.L. 1968, c.410 (C. 52:14B-1 et seq.) and any other law to the contrary, the Commissioner is authorized to pay from the PAAD dispensing fee increase account hereinabove (mentioned) and from the PAAD dispensing fee increase account in the Casino Revenue Fund, to eligible pharmacies pursuant to P.L. 1975, c.194 (C. 30:4D-20 et seq.) an increase of \$0.10 per prescription dispensing fee."

In order to accomplish the purposes of the Appropriations Act, it is necessary to amend N.J.A.C. 10:51-1.17 to raise the legend drug dispensing fee from the current fee of \$3.63 to \$3.73. This dollar figure applies to both Medicaid and PAAD prescriptions. Reference is also made to N.J.A.C. 10:51-5.18(c), which indicates that the dispensing fee for PAAD for legend drugs will be the same as the dispensing fee for the New Jersey Medicaid program.

The text of N.J.A.C. 10:51-3.15 is being amended to increase the capitation (by 2.75 percent per patient day) of the dispensing fee for

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pharmacies that provide legend drugs to patients in LTCFs. Pharmacies that provide this service are reimbursed in accordance with the total number of Medicaid patient days in the facility(ies) serviced by the pharmacy. The rates vary depending on the service(s) provided.

Therefore, the fee increases contained in this notice are being made for the reason(s) indicated above.

Full text of the changes to the New Jersey Administrative Code appear below (additions indicated in boldface thus; deletions indicated by brackets [thus]).

10:51-1.17 Legend drug dispensing fee

(a) The dispensing fee for legend drugs, dispensed by providers having Retail Permits to patients other than those in long-term care facilities, shall be [~~\$3.63~~] **\$3.73**. Additional increments shall be given to pharmacy providers who provide the following:

- 1.-3. (No change.)
- (b) (No change.)

10:51-3.15 Capitation of dispensing fee for legend drugs provided to long-term care patients

(a) The New Jersey Medicaid program capitates the dispensing fee for legend drugs for patients in Medicaid approved long-term care facilities in accordance with the total number of Medicaid patient days in the facility(ies) served by the pharmacy.

1. Pharmacies with retail permits dispensing medication in a dispensing system in which a 24-hour supply of unit dose oral medication, both solid (i.e. tablets, capsules) and liquid formulations, is

delivered for each patient daily, shall be reimbursed to the cost of all reimbursable legend medication plus a fee of [~~\$.638~~] **\$0.656** per patient day.

i. (No change.)

2. Pharmacies with a retail permit dispensing medication in a dispensing system in which up to a one month supply of oral unit dose solid medication is delivered for each patient (i.e., unit dose solids, "bingo" card), shall be reimbursed the cost of all reimbursable legend medication plus a fee of [~~\$.529~~] **\$0.544** per patient day.

3. Pharmacies with a retail permit dispensing medication in a dispensing system in which a maximum one month supply of medication is delivered for each patient monthly shall be reimbursed the cost of all reimbursable legend medication plus a fee of [~~\$.474~~] **\$0.487** per patient day.

4. Pharmacies which provide ancillary computerized services, such as, but not limited to, continuously updated computerized patient profiles, clinical records (med sheets and physicians' orders on at least a monthly basis), etc., [will] receive an added increment of [~~\$0.5~~] **\$0.05** per patient day, thereby making the total fee [~~\$.688~~] **\$0.706**, [~~\$.579~~] **\$0.594** or [~~\$.524~~] **\$0.537** depending upon the dispensing system used.

OAL NOTE: The added increment of \$.05 per patient day was submitted by DMAHS and adopted as R.1981 d.465, but was printed incorrectly in the New Jersey Administrative Code. The printing error is being corrected at this time.

5. (No change.)

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 July 5, 1988 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

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 JUNE 20, 1988

NEXT UPDATE: SUPPLEMENT JULY 18, 1988

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
19 N.J.R. 1475 and 1588	August 17, 1987	20 N.J.R. 435 and 570	March 7, 1988
19 N.J.R. 1589 and 1676	September 8, 1987	20 N.J.R. 571 and 692	March 21, 1988
19 N.J.R. 1677 and 1758	September 21, 1987	20 N.J.R. 693 and 842	April 4, 1988
19 N.J.R. 1759 and 1858	October 5, 1987	20 N.J.R. 843 and 950	April 18, 1988
19 N.J.R. 1859 and 1926	October 19, 1987	20 N.J.R. 951 and 1018	May 2, 1988
19 N.J.R. 1927 and 2086	November 2, 1987	20 N.J.R. 1019 and 1126	May 16, 1988
19 N.J.R. 2087 and 2224	November 16, 1987	20 N.J.R. 1127 and 1316	June 6, 1988
19 N.J.R. 2225 and 2324	December 7, 1987	20 N.J.R. 1317 and 1500	June 20, 1988
19 N.J.R. 2325 and 2510	December 21, 1987	20 N.J.R. 1501 and 1594	July 5, 1988
20 N.J.R. 1 and 124	January 4, 1988	20 N.J.R. 1595 and 1758	July 18, 1988
20 N.J.R. 125 and 220	January 19, 1988	20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 221 and 320	February 1, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 321 and 434	February 16, 1988		

**N.J.A.C.
CITATION**

**PROPOSAL NOTICE
(N.J.R. CITATION)**

**DOCUMENT
NUMBER**

**ADOPTION NOTICE
(N.J.R. CITATION)**

ADMINISTRATIVE LAW—TITLE 1

1:30-1.2, 2.8	Agency rulemaking: use of appendices	20 N.J.R. 1021(a)	R.1988 d.383	20 N.J.R. 2052(a)
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		

Most recent update to Title 1: TRANSMITTAL 1988-2 (supplement March 21, 1988)

AGRICULTURE—TITLE 2

2:5-2	Equine infectious anemia control	20 N.J.R. 695(a)	R.1988 d.369	20 N.J.R. 1870(a)
2:23	Gypsy moth control: voluntary suppression program	20 N.J.R. 845(a)	R.1988 d.323	20 N.J.R. 1688(a)
2:48-3	Sale of milk in new container sizes	20 N.J.R. 1129(a)	R.1988 d.385	20 N.J.R. 2052(b)
2:68-1	Association standards for commercial feeds	20 N.J.R. 1671(c)		
2:69	Commercial fertilizers and soil conditioners	20 N.J.R. 1673(a)		
2:71	Grades and standards	20 N.J.R. 953(a)	R.1988 d.370	20 N.J.R. 1871(a)
2:71-2.4, 2.5	Jersey Fresh Logo program	20 N.J.R. 1129(b)		
2:72	Licensing and bonding of buyers of perishable commodities	20 N.J.R. 955(a)	R.1988 d.371	20 N.J.R. 1872(a)
2:73-2	Eggs: Seal of Quality program	20 N.J.R. 956(a)	R.1988 d.372	20 N.J.R. 1872(b)
2:74-1	Controlled atmosphere storage for apples	20 N.J.R. 956(b)	R.1988 d.368	20 N.J.R. 1873(a)
2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16	Farmland preservation: acquisition of development easements	20 N.J.R. 1503(a)		
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)		
2:76-6.9, 6.11, 6.14	Farmland preservation: acquisition of development easements	20 N.J.R. 1319(a)		

Most recent update to Title 2: TRANSMITTAL 1988-3 (supplement June 20, 1988)

BANKING—TITLE 3

3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)		
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)		
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	20 N.J.R. 1025(a)		
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)	R.1988 d.404	20 N.J.R. 2052(c)
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		

Most recent update to Title 3: TRANSMITTAL 1988-4 (supplement June 20, 1988)

CIVIL SERVICE—TITLE 4

4:1-6, 7, 10.1, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	Withdrawn	
4:2-6.4-6.10, 7, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	Withdrawn	
4:3-2	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	Withdrawn	

Most recent update to Title 4: TRANSMITTAL 1988-1 (supplement January 19, 1988)

PERSONNEL—TITLE 4A

4A:1-1.3	State and local departments defined	20 N.J.R. 845(b)		
4A:3	Classification, services, and compensation	20 N.J.R. 846(a)		
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		
4A:8	Layoffs	19 N.J.R. 1363(a)	Withdrawn	

Most recent update to Title 4A: TRANSMITTAL 1988-2 (supplement June 20, 1988)

COMMUNITY AFFAIRS—TITLE 5

5:3-2	Nonpublic records	20 N.J.R. 1763(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:22-2.1	Definition of multiple dwelling: correction			20 N.J.R. 1574(b)
5:23-2.5	Uniform Construction Code: increase in structure size	20 N.J.R. 1026(a)	R.1988 d.389	20 N.J.R. 2073(a)
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)	R.1988 d.352	20 N.J.R. 1872(b)
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)		
5:23-3.21	Uniform Construction Code: one and two-family dwelling subcode	20 N.J.R. 1130(a)	R.1988 d.388	20 N.J.R. 2073(b)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-7.104, 7.116	Barrier Free Subcode: recreation standards	20 N.J.R. 1764(b)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:24-2.5	Senior citizen and disabled protected tenancy: review of determination documents	20 N.J.R. 1026(b)	R.1988 d.362	20 N.J.R. 1877(a)
5:24-2.7	Senior citizen and disabled protected tenancy: appeal procedure	20 N.J.R. 437(a)	R.1988 d.361	20 N.J.R. 1878(a)
5:29-2.1, 2.2	Termination of lease by tenant because of disabling illness or accident	20 N.J.R. 1139(a)	R.1988 d.384	20 N.J.R. 2073(c)
5:30	Local Finance Board rules	20 N.J.R. 1027(a)	R.1988 d.350	20 N.J.R. 1879(a)
5:30	Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision	20 N.J.R. 1320(a)		
5:51	Handicapped Persons' Recreational Opportunities grant program	20 N.J.R. 1765(a)		
5:80-26.1, 26.2, 26.3, 26.11, 26.16, 26.21	Housing affordability controls	20 N.J.R. 862(a)	R.1988 d.331	20 N.J.R. 1688(b)
5:91-13.4	Council on Affordable Housing: motion procedure	20 N.J.R. 864(a)	R.1988 d.296	20 N.J.R. 1539(a)
5:92-1.3, 1.7	Council on Affordable Housing: rehabilitation of indigenous need	20 N.J.R. 864(b)	R.1988 d.295	20 N.J.R. 1539(b)
5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F	Affordable housing council rules	20 N.J.R. 1673(b)		
5:92-8.4	Council on Affordable Housing: developer agreements	20 N.J.R. 865(a)	R.1988 d.335	20 N.J.R. 1689(a)
5:92-11.2	Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units	20 N.J.R. 1140(a)		
5:92-12.4	Council on Affordable Housing: initial pricing of rental units	20 N.J.R. 1320(b)		
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		

Most recent update to Title 5: TRANSMITTAL 1988-6 (supplement June 20, 1988)

VETERANS' AFFAIRS AND DEFENSE—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:2-1.21	Issuance of administrative order creating State-operated school district	20 N.J.R. 1505(a)		
6:3	School districts	20 N.J.R. 1027(b)	R.1988 d.367	20 N.J.R. 1879(b)
6:3-1.23, 1.24	Principal certification	20 N.J.R. 1320(c)		
6:11-3.3	Certification fees	20 N.J.R. 865(b)	R.1988 d.307	20 N.J.R. 1539(c)
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 1320(c)		
6:22-1.2	School site approval	20 N.J.R. 1032(a)	R.1988 d.382	20 N.J.R. 2056(a)
6:27-1.14	Repeal (see 6:30)	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:28-1.12	Special Education Pilot Project: moderate behavior handicap class types	20 N.J.R. 1141(a)		
6:30	Adult education programs	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:31-1.10	Bilingual education and English as a second language programs: exit testing and reentry process	20 N.J.R. 1034(a)		
6:44-2, 3, 4	Repeal (see 6:30)	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:78-1.1, 1.2, 1.3	Marie H. Katzenbach School for the Deaf	20 N.J.R. 1678(a)		

Most recent update to Title 6: TRANSMITTAL 1988-4 (supplement June 20, 1988)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1	Departmental organization	Exempt	R.1988 d.403	20 N.J.R. 2058(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:11	Sanitary Landfill Facility Contingency Fund	20 N.J.R. 443(a)	R.1988 d.337	20 N.J.R. 1732(b)
7:2	State Park Service	20 N.J.R. 714(a)	R.1988 d.340	20 N.J.R. 1743(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:2	State Park Service: extension of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7A-15, 16	Freshwater Wetlands Protection Act rules: fees, penalties and hearings	20 N.J.R. 576(a)	R.1988 d.312	20 N.J.R. 1553(a)
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)	R.1988 d.338	20 N.J.R. 2058(b)
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:14-8	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)	R.1988 d.380	20 N.J.R. 1884(a)
7:14A-3.1	NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters	20 N.J.R. 1328(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:19-6.14	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)	R.1988 d.380	20 N.J.R. 1884(a)
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)	R.1988 d.339	20 N.J.R. 1743(b)
7:25-5	1988-89 Game Code	20 N.J.R. 1035(b)	R.1988 d.376	20 N.J.R. 1895(a)
7:25-6	1989-90 Fish Code	20 N.J.R. 1627(a)		
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)	R.1988 d.377	20 N.J.R. 1908(a)
7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-2.13	Dry industrial waste: correction to text	_____	_____	20 N.J.R. 1958(b)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)	R.1988 d.357	20 N.J.R. 1910(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26-12.12	Hazardous waste facilities and public participation in permit process	20 N.J.R. 715(b)	R.1988 d.375	20 N.J.R. 1913(a)
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)		
7:30	Pesticide Control Code	20 N.J.R. 579(a)		
7:31	Toxic Catastrophe Prevention Act rules: correction	_____	_____	20 N.J.R. 1743(c)
7:31-2.12, 2.15, 5	Toxic Catastrophe Prevention Act program: confidentiality and trade secrets	20 N.J.R. 350(a)	R.1988 d.378	20 N.J.R. 1913(b)
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 869(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22-5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133	Pinelands Comprehensive Management Plan	20 N.J.R. 716(a)		

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8:31B-3.45	Hospital reimbursement: submission of uniform bill-patient summaries	20 N.J.R. 1143(a)		
8:31B-4.37, 4.39	Uncompensated Care Trust Fund: charity care eligibility	20 N.J.R. 595(a)		
8:33B-1.3	Demonstration of extracorporeal shock wave lithotripsy services	20 N.J.R. 869(b)	R.1988 d.322	20 N.J.R. 1690(a)
8:33E-1.1, 1.2	Cardiac diagnostic facilities: complex electrophysiology studies	20 N.J.R. 467(a)	R.1988 d.321	20 N.J.R. 1690(b)
8:33E-2.2, 2.3, 2.4	Cardiac surgery centers: complex electrophysiology studies	20 N.J.R. 468(a)	R.1988 d.320	20 N.J.R. 1690(b)
8:39-20.1, 29.1, 30.5, 31.2	Long-term care licensing standards: corrections to text	_____	_____	20 N.J.R. 1944(a)
8:42B	Drug treatment facilities: standards for licensure	20 N.J.R. 598(a)	R.1988 d.319	20 N.J.R. 1692(a)
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:60-5.3 (12:120-5.3)	Asbestos worker and supervisor permits: correction	_____	_____	20 N.J.R. 1562(a)
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)		
8:65-10.5	Schedule V, Controlled Dangerous Substances	20 N.J.R. 1506(a)		
8:70	Evaluation criteria for interchangeable drug products	20 N.J.R. 1507(a)		
8:70-1.4	Drug Utilization Review Council: notice of action on a drug product	20 N.J.R. 870(a)	R.1988 d.328	20 N.J.R. 1710(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a), 655(a), 899(b), 1462(a))	19 N.J.R. 1488(a)	R.1988 d.325	20 N.J.R. 1711(a)
8:71	Interchangeable drug products (20 N.J.R. 191(b), 654(b), 899(a), 1462(b))	19 N.J.R. 1878(a)	R.1988 d.327	20 N.J.R. 1711(c)
8:71	Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a))	20 N.J.R. 146(a)	R.1988 d.326	20 N.J.R. 1711(b)
8:71	Interchangeable drug products	20 N.J.R. 871(a)	R.1988 d.329	20 N.J.R. 1710(b)
8:71	Interchangeable drug products	20 N.J.R. 1766(a)		

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9:3	Facilities planning for public colleges and universities	20 N.J.R. 1768(a)		
9:4-1.5	Chargeback for disability-specific programs at county colleges	20 N.J.R. 1330(a)		
9:7-3.1	Correction to text	_____	_____	20 N.J.R. 1576(b)
9:7-4	Garden State Scholarship Program	20 N.J.R. 720(a)	R.1988 d.303	20 N.J.R. 1558(a)
9:7-4.2, 4.3, 4.4	Garden State Scholarships	20 N.J.R. 1635(a)		
9:9	Student loan programs: policies and procedures	20 N.J.R. 1636(a)		
9:9-11	Guaranteed Student Loan Program: compliance evaluation of participating institutions	20 N.J.R. 872(a)	R.1988 d.334	20 N.J.R. 1712(a)
9:9-11.2	Guaranteed Student Loan Program: institution compliance	20 N.J.R. 1641(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.5	Educational Opportunity Fund: maximum income levels for undergraduate eligibility	20 N.J.R. 722(a)	R.1988 d.353	20 N.J.R. 1944(b)
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

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10:1-2	Public comment procedure and petitions for rulemaking	20 N.J.R. 1050(a)		
10:3	Contract administration	20 N.J.R. 1771(a)		
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:13	Legal Assistance for Medicare Patients (LAMP)	20 N.J.R. 873(a)	R.1988 d.330	20 N.J.R. 1713(a)
10:14-1.4, 4.1, 6.3	Statewide Respite Care Program	20 N.J.R. 1051(a)		

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10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)	R.1988 d.349	20 N.J.R. 1945(a)
10:49-1.12	Timely claim submittal—pharmaceutical services	20 N.J.R. 1642(a)		
10:49-3.19, 3.20	HealthStart provider reimbursement			20 N.J.R. 2101(a)
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)		
10:50-3.2	Ambulance services: provider reimbursement			20 N.J.R. 2101(a)
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: covered products	20 N.J.R. 875(a)	R.1988 d.363	20 N.J.R. 1945(b)
10:51-1.17, 3.15	Pharmaceutical services: provider reimbursement			20 N.J.R. 2101(a)
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)	R.1988 d.349	20 N.J.R. 1945(a)
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)	R.1988 d.349	20 N.J.R. 1945(a)
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4	Physicians' services: provider reimbursement			20 N.J.R. 2101(a)
10:56-3.4, 3.7, 3.10, 3.12	Dental services: provider reimbursement			20 N.J.R. 2101(a)
10:57-3	Podiatry services: provider reimbursement			20 N.J.R. 2101(a)
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:58-3	Nurse-midwifery services: provider reimbursement			20 N.J.R. 2101(a)
10:60-2.2	Personal care assistant services: provider reimbursement	20 N.J.R. 1143(b)	R.1988 d.379	20 N.J.R. 1949(a)
10:61-3	Independent laboratory services: provider reimbursement			20 N.J.R. 2101(a)
10:62-1, 2, 3	Vision Care Manual	20 N.J.R. 956(c)		
10:62-4	Vision care services: provider reimbursement			20 N.J.R. 2101(a)
10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)		
10:66-1.3, 3	Mental health services: partial care	20 N.J.R. 1054(a)		
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:66-3	Independent clinic services: provider reimbursement			20 N.J.R. 2101(a)
10:81-3.38-3.42, 3.46	PAM: client resources in AFDC program	20 N.J.R. 1056(a)		
10:81-7.40	AFDC program: fraudulent receipt of assistance	20 N.J.R. 722(b)	R.1988 d.310	20 N.J.R. 1559(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	Child support guidelines: spousal support obligation	20 N.J.R. 1058(a)		
10:82-3.2, 3.6, 3.7	ASH: client resources in AFDC program	20 N.J.R. 1059(a)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:82-5.10	AFDC: extension of Emergency Assistance benefits	Emergency (expires 9-5-88)	R.1988 d.358	20 N.J.R. 1956(a)
10:85-3.2, 3.3	GAM: travel costs for job seeking or training	20 N.J.R. 879(a)		
10:85-4.6	General Assistance: extension of EA benefits	Emergency (expires 7-31-88)	R.1988 d.359	20 N.J.R. 1957(a)
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:89-2.1, 2.3, 3.4, 4.1	Home energy assistance	20 N.J.R. 1643(a)		
10:89-3.5, 3.6, 5.3	Home Energy Assistance program	20 N.J.R. 1060(a)		
10:126	Registration of family day care providers	20 N.J.R. 1508(a)		
10:127	Residential child care facilities	20 N.J.R. 1149(a)		

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CORRECTIONS—TITLE 10A

10A:1-11	Personal property of inmates	20 N.J.R. 494(a)	R.1988 d.306	20 N.J.R. 1559(b)
10A:3-5.6, 5.7	Pat and strip searches	20 N.J.R. 1331(a)		
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:9-1.3, 5.6	Work credits for I.S.P. violators housed in county facilities	20 N.J.R. 879(b)	R.1988 d.332	20 N.J.R. 1716(a)
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:9-11.4	Classification process	20 N.J.R. 1645(a)		
10A:16-4.4	Inmate/therapist confidentiality	20 N.J.R. 1772(a)		
10A:16-11.4, 11.5, 11.14	Special Medical Unit	20 N.J.R. 1773(a)		
10A:17-5.3, 5.8	Religious services	20 N.J.R. 1332(a)		
10A:18-7	Bedside and funeral visits	20 N.J.R. 1332(a)		
10A:22-2	Inmate and parolee records	20 N.J.R. 723(a)	R.1988 d.305	20 N.J.R. 1561(a)
10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)	R.1988 d.336	20 N.J.R. 1716(b)

Most recent update to Title 10A: TRANSMITTAL 1988-5 (supplement June 20, 1988)

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11:1-20, 22	Cancellation and nonrenewal requirements and practices	20 N.J.R. 1061(a)	R.1988 d.341	20 N.J.R. 1720(a)
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-17.3, 17.10	Replacement parts for damaged automobiles	20 N.J.R. 1159(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
11:4-28	Group coordination of health benefits	20 N.J.R. 1773(b)		
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:5-1.13	Control of real estate brokerage files	20 N.J.R. 883(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.23	Real estate services to handicapped	20 N.J.R. 725(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Educational requirements for real estate licensure	20 N.J.R. 725(b)		
11:5-1.28	Certification as real estate instructor; classroom procedure	20 N.J.R. 1161(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:16-1	Fraud prevention: verification and claim form statements	20 N.J.R. 1062(a)	R.1988 d.342	20 N.J.R. 1720(b)
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		
11:18	New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge: pre-proposed new rules	20 N.J.R. 242(a)		

Most recent update to Title 11: TRANSMITTAL 1988-4 (supplement June 20, 1988)

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12:5-1	Audit resolution procedures concerning awards of Federal money	20 N.J.R. 1520(a)		
12:16-7	Use of surplus unemployment funds by contributing local governments	20 N.J.R. 1521(a)		
12:16A-11	Unemployment and Disability Insurance group accounts	20 N.J.R. 1071(b)	R.1988 d.374	20 N.J.R. 1949(b)
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:17-2.6	Noncompliance with quality control reviews of unemployment insurance claims	20 N.J.R. 884(a)	R.1988 d.373	20 N.J.R. 1949(c)
12:60-6.1	Recordkeeping by public work project employers	20 N.J.R. 1164(a)	R.1988 d.398	20 N.J.R. 2064(a)
12:60-7	Apprentice to journeymen ratios for public work projects	20 N.J.R. 1164(b)	R.1988 d.399	20 N.J.R. 2064(b)
12:100-4.2	Public employee safety and health: exposure to ethylene oxide	20 N.J.R. 1334(a)		
12:100-9	Public employee safety and health: work in confined spaces	20 N.J.R. 1523(a)		
12:112	Public Employees' Occupational Safety and Health Review Commission	20 N.J.R. 1165(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
12:120-5.3 (8:60-5.3)	Asbestos worker and supervisor permits: correction			20 N.J.R. 1562(a)
12:195	Carnival-amusement rides	20 N.J.R. 1072(a)	R.1988 d.333	20 N.J.R. 1721(a)
12:210-1	Apparel industry registration system	20 N.J.R. 1334(b)		

Most recent update to Title 12: TRANSMITTAL 1988-4 (supplement June 20, 1988)

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12A:12-2.3, 2.7	Local Development Financing Fund: project set-asides	20 N.J.R. 1171(a)	R.1988 d.386	20 N.J.R. 2065(a)
12A:50-1	Cogeneration: reporting by non-utility generators	19 N.J.R. 2383(a)	R.1988 d.390	20 N.J.R. 2065(b)
12A:54	Cogeneration equipment and use tax exemption: technical sufficiency standards	20 N.J.R. 1073(a)	R.1988 d.391	20 N.J.R. 2067(a)
12A:120-1	Urban Enterprise Zone Program	20 N.J.R. 1336(a)		

Most recent update to Title 12A: TRANSMITTAL 1988-3 (supplement May 16, 1988)

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13:1	Police Training Commission rules	20 N.J.R. 622(a)	R.1988 d.309	20 N.J.R. 1563(a)
13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)		
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)		
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-3, 4	Architectural practice: definitions	19 N.J.R. 1783(b)		
13:27-5.4	Licensure of out-of-state architects	20 N.J.R. 884(b)	R.1988 d.308	20 N.J.R. 1567(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:27-5.8, 8.7, 8.8, 8.15	Certification of landscape architects	20 N.J.R. 885(a)		
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	20 N.J.R. 886(a)	R.1988 d.343	20 N.J.R. 1723(a)
13:29-5	Board of Accountancy: Quality Enhancement Program	19 N.J.R. 2240(a)	R.1988 d.294	20 N.J.R. 1567(b)
13:30-8.6	Advertising of dental services: correction to text			20 N.J.R. 1959(a)
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
13:37-1.1, 1.2	Accreditation of nursing programs	20 N.J.R. 1645(b)		
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
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13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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Most recent update to Title 18: TRANSMITTAL 1988-2 (supplement March 21, 1988)

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Most recent update to Title 19: TRANSMITTAL 1988-2 (supplement June 20, 1988)

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Most recent update to Title 19K: TRANSMITTAL 1988-4 (supplement June 20, 1988)

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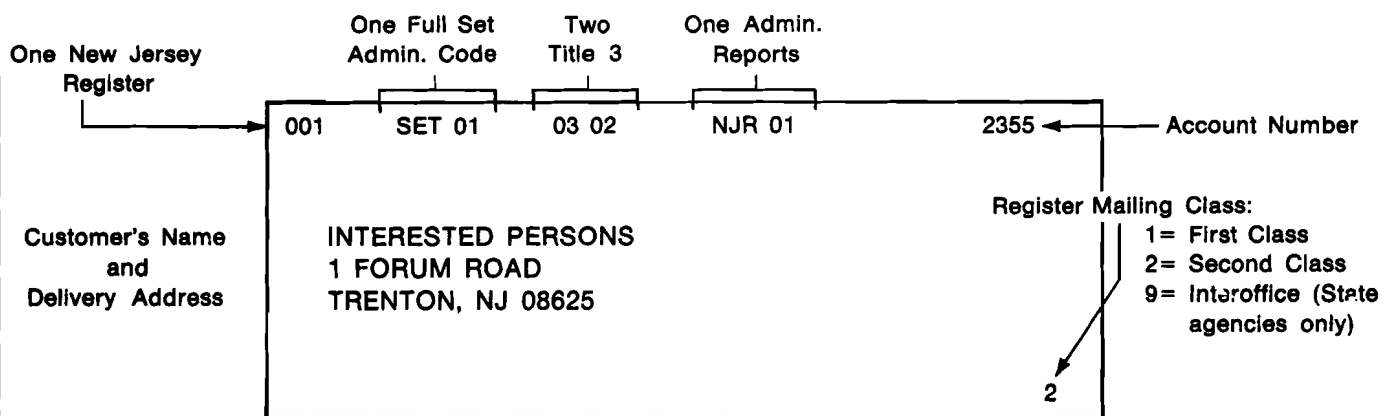
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