



NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 22 NUMBER 17

September 4, 1990 Indexed 22 N.J.R. 2623-2860

(Includes adopted rules filed through August 13, 1990)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 18, 1990

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JULY 16, 1990

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

Interested persons comment deadline	2624
AGRICULTURE	
Dairy industry rules	2625(a)
BANKING	
Consumer loan advertisements	2626(a)
Cemetery Board rules	2627(a)
PERSONNEL	
Overtime compensation	2627(b)
Promotional examinations	2628(a)
Working test period	2629(a)
Employee layoff rights	2629(b)
COMMUNITY AFFAIRS	
Uniform Construction Code: underground storage tank systems	2629(c)
EDUCATION	
Education of homeless children and youth	2630(a)
Attendance and pupil accounting	2633(a)
Controversies and disputes	2841(a)
ENVIRONMENTAL PROTECTION	
State Park Service rules	2652(a)
Waterfront development: extension of comment period	2669(a)
HEALTH	
Catastrophic illness in children relief fund program	2669(b)
HUMAN SERVICES	
Determination of need for a guardian	2671(a)
Recoveries involving county welfare agencies/boards of social services	2672(a)
General Assistance: emergency assistance: public hearing and extension of comment period	2674(a)
Manual of standards for adoption agencies	2674(b)
INSURANCE	
Custodial deposits	2640(a)

Benefit determination between automobile personal injury protection and health insurance	2642(a)
Appeals from denial of automobile insurance: comment period correction	2647(a)
LAW AND PUBLIC SAFETY	
Physical modalities to unlicensed dental assistants	2647(b)
PUBLIC UTILITIES	
Submission and handling of information	2649(a)
TRANSPORTATION	
Transportation of hazardous materials	2676(a)
CASINO CONTROL COMMISSION	
Applicant for a casino license	2651(a)

RULE ADOPTIONS

PERSONNEL	
Family leave: administrative correction	2682(a)
COMMUNITY AFFAIRS	
Planned real estate development full disclosure	2682(b)
EDUCATION	
School facility planning service: administrative correction	2683(a)
Special education	2683(b)
Vocational and technical programs and standards	2694(a)
ENVIRONMENTAL PROTECTION	
Freshwater wetlands protection: Statewide general permits	2753(a)
Sewer connection ban exemptions	2754(a)
Underground storage tank systems	2758(a)
Underground Storage Tank Improvement Fund loan program	2816(a)
Hazardous waste exports, imports: small quantity generators; farm pesticide waste	2826(a)

(Continued on Next Page)

0000002
000
9
SET01
STATE LIBRARY
LAW DIVISION
CN 520
TRENTON NJ 08625
INTER-OFFICE

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **October 4, 1990**. 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.

RULEMAKING IN THIS ISSUE—Continued

Ionizing radiation-producing machines: registration fees: administrative correction	2830(a)	TREASURY-TAXATION	
HEALTH		Tax maps	2751(b)
Adult day health care facilities: physical plant and functional requirements	2703(a)	Post tax amnesty: administrative correction	2752(a)
Hospital licensure: newborn care physical plant standards	2705(a)	CASINO CONTROL COMMISSION	
Acute renal dialysis services: physical plant requirements ..	2708(a)	Casino employees license display	2752(b)
Reportable communicable diseases and immunization requirements: administrative correction	2709(a)		
Intoxicated Driving Program	2710(a)	PUBLIC NOTICES	
HUMAN SERVICES		ENVIRONMENTAL PROTECTION	
State psychiatric facilities: transfers of involuntarily committed patients	2710(b)	Tri-county water quality management: Medford Lakes Borough	2831(a)
Community mental health services: fee collection	2712(a)	Hazardous waste recycling: agency response to petition to amend N.J.A.C. 7:26-8	2831(b)
Dental services HCPCS codes	2713(a)	HUMAN SERVICES	
Food Stamp Program: annual adjustments	2715(a)	Social Services Block Grant Program	2832(a)
Commission for the Blind and Visually Impaired: operations and procedures	2716(a)	TRANSPORTATION	
LABOR		Relocation of Office of Regulatory Affairs	2834(a)
Liquefied petroleum gas installations: standards of design and operations	2744(a)	EXECUTIVE ORDER NO. 66(1978)	
LAW AND PUBLIC SAFETY		EXPIRATION DATES	2835
Motor vehicle counterpart fees	2747(a)	INDEX OF RULE PROPOSALS	
Professional engineers and land surveyors	2747(b)	AND ADOPTIONS	2848
Kosher poultry identification	2747(c)		
Boxing, wrestling and sparring events	2748(a)	Filing Deadlines	
TRANSPORTATION		October 1 issue:	
Rural Secondary Road System Aid	2748(b)	Adoptions	September 10
State aid to counties and municipalities	2749(a)	October 15 issue:	
Restricted parking and stopping along U.S. 9 in Marlboro and Middle Township, Route 21 in Passaic, and Route 15 in Dover	2749(c)	Proposals	September 14
Restricted stopping along Route 47 in Dennis Township ..	2749(b)	Adoptions	September 21
Construction services: vendor ethical standards	2750(a)	November 5 issue:	
Air safety zone for Somerset Airport	2751(a)	Proposals	October 5
		Adoptions	October 15
		November 19 issue:	
		Proposals	October 18
		Adoptions	October 25

NEW JERSEY REGISTER

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

Material published in the New Jersey Register is the property of the State of New Jersey. However, it may be copied, reproduced or republished by any person for any purpose whatsoever without permission, providing that no such reproduction or republication shall bear the title "New Jersey Register" or "Official Rules Publication" without the written permission of the Director, Office of Administrative Law.

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, \$90 (\$180 by First Class Mail); back issues when available, \$10 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 45-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to six volumes depending on the Department coverage desired.

RULE PROPOSALS

AGRICULTURE (a)

DIVISION OF DAIRY INDUSTRY

General Provisions

Proposed Readoption with Amendments: N.J.A.C. 2:48

Authorized By: Woodson W. Moffett, Jr., Director, Division of Dairy Industry.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.
Proposal Number: PRN 1990-451.

Submit comments by October 4, 1990 to:
Woodson W. Moffett, Jr., Director
Division of Dairy Industry
New Jersey Department of Agriculture
CN 332
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 2:48, General Provisions, is scheduled to expire on November 27, 1990 pursuant to Executive Order No. 66 (1978). The Department of Agriculture proposes to readopt these rules which have been in effect since late 1969. The last major revisions of the rules were filed November 15, 1976, to become effective on January 1, 1977.

Subchapters 1 and 4 are being readopted without change as the rules in these subchapters have been found to be necessary, reasonable and proper for the purpose for which they were promulgated. Subchapter 2 has only a technical change to correct a cite to rules in it.

Subchapter 5, restrictions on the use of coupons in milk promotion, is being extensively amended.

A summary of the existing subchapters follows:

Subchapter 1, Marketing Areas, defines two milk marketing areas in New Jersey. The areas defined are the same as those included in State-Federal milk marketing areas designated as Number 2 and Number 4.

Subchapter 2, Prohibition of False, Misleading or Unfair Advertisements of Milk and Milk Products, prevents dealers and store licensees from publishing false and misleading advertisements of milk and prevents the licensee from misleading the consumer concerning the quality of milk and milk products being offered for sale.

Subchapter 3 is reserved. The remaining subchapters, 4 and 5 are being proposed for recodification as Subchapters 3 and 4 to appropriately use this subchapter space.

Subchapter 4, Reports, defines those reports and records of dealers, processors, subdealers and stores which are considered confidential and not subject to review or reproduction under the provisions of the Freedom of Information Act (P.L. 1963, c.73).

Subchapter 5 is entitled Restrictions on the Use of Coupons in Milk Promotion. N.J.A.C. 2:48-5.1 prevents the use of coupons on milk containers, except where certain conditions have been met. These conditions generally prevent licensees from offering cents off refunds unless there is no cost to the licensee for the redemption of the coupons. This restriction is being removed in its entirety to provide more flexibility in the use of coupons for the promotion of dairy products.

N.J.A.C. 2:48-5.2 restricts the use of newspaper coupons which may result in sale of milk below cost and requires licensees to permit the Director to review any proposed coupon promotion. This section is being recodified and amended. Only the portion of the rule which limits the use of coupons resulting in the sale of milk and milk products below cost as defined in Division rules is being retained.

N.J.A.C. 2:48-5.3 and 5.4 provide for unlimited use of coupons under certain conditions and no changes are proposed except to recodify.

Social Impact

The readoption of N.J.A.C. 2:48, with amendments to only one section, assures that the dairy industry and consumers will continue to receive the benefit of effective milk control. Failure to readopt rules defining marketing areas which are co-existent with joint Federal and State orders would lead to confusion on the part of regulated dealers. The remaining portions of the rules protect consumers from false and misleading

advertisements for milk and milk products, protect the confidential reports and records for licensees of the Division of Dairy Industry and provide more flexible rules for the use of coupons in milk promotion.

Economic Impact

The rules proposed for readoption with amendments beneficially affect New Jersey dairy farmers, milk dealers, retail stores and consumers.

New Jersey consumers purchase about 1.9 billion pounds of fluid milk and milk products (excluding cheeses, butter and nonfat dry milk) each year at an annual cost exceeding \$407 million. The proposed readoption benefits consumers by contributing to a market environment wherein adequate supplies of milk are available to meet consumer demands at reasonable prices. Such benefits are direct results of the market stability and competitiveness provided by enforcement of the Division's rules.

Approximately 350 New Jersey dairy farmers with average investments exceeding \$250,000 per farm receive direct benefits from the maintenance of stable market operations. Revenues of approximately \$50 million, generated by New Jersey dairy farmers each year, are important contributions to the State's economy, particularly for rural communities. The rules proposed for readoption are important tools in insuring a continued stable marketing environment.

Both dealers and consumers will benefit from more liberal use of coupons in milk marketing.

Regulatory Flexibility Analysis

Readoption of N.J.A.C. 2:48, General Provisions, will not add reporting, recordkeeping or compliance requirements greater than those which have been followed by licensees of the Division since 1977. The requirements relate to the prohibition of false, misleading or unfair advertising and the use of coupons. The proposed readoption applies to about 325 milk dealers and 10,000 retail stores, most of whom are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules pertaining to confidentiality are designed to protect the business interests of the regulated entities and impose no compliance requirements on them. Compliance with the rules regarding false, misleading and unfair advertising practice is necessary to protect the consumer public and is not overly burdensome to the small businesses involved. The proposed lifting of certain restrictions regarding use of coupons for milk promotion may be viewed as a benefit to the small businesses affected. Initial capital cost and annual cost of compliance are minimal for both large and small business.

For the above stated reasons, no differentiation in requirements has been made based on business size.

Full text of the proposed readoption is found in the New Jersey Administrative Code at N.J.A.C. 2:48.

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

2:48-2.1 Advertising of milk and milk products

(a) (No change.)

(b) Any licensee offering milk products for sale to consumers in this State shall not represent such products as being milk unless such product meets the standards for milk as defined in the laws governing the production, handling and distribution of milk, cream and milk products in the State of New Jersey (see N.J.S.A. 24:10-57 et seq., as amended, and N.J.A.C. 8:21-10[.1 et seq.]).

(c) (No change.)

(d) Milk products referred to in this regulation shall mean those milk products defined in N.J.S.A. 24:10-57.1 et seq. and N.J.A.C. 8:21-10[.1 et seq.].

[SUBCHAPTER 3. RESERVED]

Recodify existing Subchapter 4, Reports, as **Subchapter 3**. (No change in text.)

SUBCHAPTER [5].4. RESTRICTIONS ON THE USE OF COUPONS IN MILK PROMOTION

[2:48-5.1 Coupons on milk containers restricted]

(a) It shall be unlawful and a violation of these regulations for any licensee to sell or offer for sale milk and fluid milk products

within the State of New Jersey in a container on which is printed or attached thereto a "cents off" or "refund" coupon except if all of the following conditions are met:

1. Where the coupon is used as an advertising medium for a national brand non-dairy product generally available to consumers throughout the marketing area and where the cost of redemption is borne entirely by the national brand manufacturer; and for the purpose of this regulation, chain store brands shall not be considered national brands inasmuch as redemption would be limited and not available throughout the entire market; and

2. Where the coupon and its redemption has no cost to any licensee of the Division of Dairy Industry either directly or indirectly through an entity associated in any way with the licensee, but the licensee may be paid for the space on the milk container.]

2:48-[5.2] **4.1 [Newspaper coupons] Coupons** for milk restricted

(a) It shall be unlawful and a violation of these regulations for any licensee directly or indirectly through an entity associated in any way with the licensee to print or cause to be printed any "cents off" or "refund" coupon in any newspaper or other advertising [medium] **media (including the milk container)** which is redeemable either directly or indirectly through a third party by the consumer upon his purchase of any milk or fluid milk product, the result of which is to sell such product [at less than the minimum price (if fixed) or] below cost **as defined in rules of the Division, specifically N.J.A.C. 2:52-7 and N.J.A.C. 2:53-6.**

[(b) Before a licensee of the Division of Dairy Industry institutes a "cents off" or "refund" couponing program for milk or any fluid milk product, he shall notify the Director of the plan for such program and file proof that the coupon will not result in the sale of milk below the minimum price (if fixed) or below cost. The proof of cost shall be in such detail as to permit the Director to determine that all elements of cost have been appropriately considered. The Director may deny the use of the coupon pending verification of cost.]

Recodify existing N.J.A.C. 2:48-5.3 and 5.4 as **4.2 and 4.3.** (No change in text.)

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Consumer Loan Act, Advertisements

Proposed New Rule: N.J.A.C. 3:17-1.1

Proposed Amendment: N.J.A.C. 3:17-1.4

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

Authority: N.J.S.A. 17:10-13; N.J.S.A. 17:16H-2 and 3.

Proposal Number: PRN 1990-360.

Submit comments by October 4, 1990 to:

Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking has received complaints from consumers regarding an advertising practice by consumer loan licensees. These licensees send solicitations to consumers in the form of a check or draft. On the back of the check or contained with the solicitation are the necessary disclosures required by Truth in Lending, 15 U.S.C. §1601 et seq. and Regulation Z, 12 C.F.R. Part 226. The consumer merely signs the back of the check and deposits it to borrow money from the licensee. Secondary mortgage lenders are specifically prohibited from making this type of solicitation, N.J.A.C. 3:18-7.5(a), but there is no such specific prohibition in the rules governing consumer loan lenders.

The Department proposes to amend its rules regarding advertising by licensed consumer loan lenders to specifically prohibit this practice which the Department deems to be potentially deceptive and misleading and which reduces the public's confidence in licensees and financial institutions in general. The Department is concerned that a consumer will deposit the check without realizing that it is a loan product. Further, should the solicitation be misplaced or stolen, a stranger could cash the check thereby inconveniencing the consumer and causing expense to the person cashing the check.

Also, the Department proposes a definition for "advertisement" for purposes of the subchapter at N.J.A.C. 3:17-1.1, and subsequent sections are recodified.

Prohibiting these types of solicitations is consistent with the prohibition in Truth in Lending, 15 U.S.C. §1601 et seq. and Regulation Z against unsolicited credit cards (12 C.F.R. §226.12(a)). Prior to that restriction, creditors and retailers began distributing credit cards to consumers with little or no advance indication that the consumers even wanted the cards. A significant number of these cards fell into the wrong hands, or were abused by consumers. See Rohner, *The Law of Truth in Lending* (1984), §10.02. The Department is proposing this rule to prevent similar problems from occurring incident to unsolicited checks.

The Department has received no complaints or inquiries from consumers concerning check solicitations by depositories. Should depositories begin to offer these products, the Department may act to prohibit this type of solicitation by these institutions as well.

Social Impact

The proposed amendment and new rule will have the beneficial social impact of preventing confusion by consumers regarding check solicitations by licensed consumer loan lenders.

Economic Impact

The proposed amendment and new rule may have a marginal negative economic impact on licensees. Consumers when required to apply for a loan may choose on reflection not to borrow funds. Correspondingly, consumers are expected to receive an incidental economic benefit to the extent that they do not enter into consumer loan agreements which, upon reflection, may not be in their best interests. There are no costs anticipated to the Department attributable to this amendment.

Regulatory Flexibility Analysis

The financial institutions regulated by this new rule and amendment are predominantly small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance merely requires the licensee to refrain from sending a solicitation in the form of a check, and it is not anticipated that this will necessitate professional services or require capital costs. Since the benefits of this proposed new rule and amendment can only be obtained by imposing these requirements upon all consumer loan licensees, no differentiation is made for small businesses.

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

3:17-1.1 Definition of advertisement

For purposes of this subchapter, "advertisement" means any announcement, statement, assertion, or representation which is placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station or in any other way.

Recodify existing N.J.A.C. 3:17-1.1 through 3:17-1.3 as N.J.A.C. 3:17-1.2 through 3:17-1.4.

3:17-[1.4]1.5 Certain types of advertising prohibited

(a) The following types of advertisements are prohibited on the ground that they are deceptive or misleading, or negatively affect the public's confidence in the licensee or financial institutions in general:

1. The placing by licensee of tags or other advertising material on automobiles, in public or semipublic places, or the house-to-house issuance of circulars, handbills or any other similar types of advertising[, is prohibited]; and

2. The advertisement by use of a form which has the appearance of a check, money order, draft or other instrument which is normally used for the transfer of funds.

(a)**CEMETERY BOARD****Cemeteries****Proposed Readoption with Amendments: N.J.A.C. 3:41**

Authorized By: New Jersey Cemetery Board, William L. Ingling,
Executive Director.

Authority: N.J.S.A. 8A:2-2.

Proposal Number: PRN 1990-461.

Submit comments by October 4, 1990 to:

William L. Ingling
Executive Director
New Jersey Cemetery Board
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules at N.J.A.C. 3:41, concerning cemeteries and the Cemetery Board, will expire on October 16, 1990. The Cemetery Board and its Executive Director have reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order. Two minor corrective changes have been made to the rules in the proposal.

Subchapter 1 of the rules sets forth the scope of the rules, and subchapter 2 contains the applicable definitions for the chapter. Subchapter 3 provides that the Cemetery Board will charge for providing public records in accordance with the schedule of fees set forth in N.J.S.A. 47:1A-2. Pursuant to N.J.S.A. 8A:4-12(b), each cemetery company must annually pay to the cemetery board \$2.00 per interment in excess of 25 interments. Subchapter 3 exempts a religious corporation from paying this fee provided it submits substantial proof that it incorporated under Title 16.

Subchapter 4 defines the general duties of the executive director. In addition, the executive director is empowered to authorize the sale of interment spaces to a membership or religious corporation or like entity in accordance with N.J.S.A. 8A:9-7.

Subchapter 5 limits the services which cemetery companies may engage in, and defines which charges cemetery companies may impose. In addition, it regulates the manner in which cemetery companies may treat trust funds, and sets forth the required record keeping which must be maintained. Subchapter 6 regulates the memorialization of the remains, and allows for the removal of encumbrances. In addition, it restricts the period during which cemeteries may be closed and allows for transfer of unused interment spaces. N.J.A.C. 3:41-5.3 is being amended to include a corrected cite to N.J.S.A. 8A:4-5(b).

Subchapter 7 regulates multiple depth graves, additional interments and temporary storage. It also allows cemetery companies to prohibit the photographing of disinterments under specified circumstances. Subchapter 8 requires a crematory to properly label remains which are transported through the U.S. Postal Service.

Subchapter 9 sets standards for the licensing of cemetery salesmen. Investigation of applicants includes a New Jersey Criminal History Record Information check. The cemetery license is issued in the form of a pocket license with a photograph. N.J.A.C. 3:41-9.3 is being amended to correct the inadvertent omission of the word "salesman" from the text. A salesman selling for more than one cemetery company must obtain a separate license for each cemetery company he sells for.

Subchapter 10 sets forth the general standards for the interpretation and construction of this chapter of the rules.

Social Impact

These rules are designed to curtail abuses in the cemetery industry. This is done by requiring proper maintenance of trust funds, limiting the charges which may be imposed, and setting standards for the interment, disinterment and temporary storage of remains. By licensing salesmen and making background criminal checks on all applicants, unqualified persons will be excluded from the industry to the benefit of consumers.

Economic Impact

These rules do not impose any new fees or charges on cemetery companies; all such fees are required by statute. Any costs attributable to

these rules have been widely accepted by cemetery companies as standard costs of the conduct of this business. To the extent that the rules protect trust funds, consumers enjoy a beneficial economic impact.

Regulatory Flexibility Analysis

Most cemetery companies are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and these rules impose recordkeeping, reporting and other compliance requirements on these businesses.

In particular, the rules proposed for readoption require the cemetery company to maintain records of the trust accounts, to keep a map of the cemetery readily available for inspection at its main office, to maintain on file in the main office of the cemetery company an affidavit setting forth the sales price on resale of crypts or niches in a public mausoleum or columbarium, to properly label shipped cremated remains, and sets the required form of a cemetery salesman license.

In addition, the rules require reporting upon the removal of encumbrances, upon transfer from temporary storage and upon the sale of interment rights in certain multiple-depth graves. Other compliance requirements are as follows: (1) standards are set for the licensing of salesmen and the maintenance of trust funds; (2) cemetery companies are prohibited from closing for three consecutive days; (3) consent must be obtained before a disinterment is performed; (4) photographing disinterments is generally prohibited; and (5) cremated remains must be securely packaged and proper insurance must be provided.

It is unlikely that these requirements will necessitate professional services. Further, the Cemetery Board deems it imperative that these rules apply to all cemetery companies, including small businesses. That is because these rules serve to protect trust funds deposited by the public, to ensure that remains are treated in a dignified manner which is not offensive to relatives and friends and to keep unfit salesmen from the industry. In addition, these rules are intended to protect the public health from the improper treatment of remains.

Regardless of the size of the cemetery company, these protections must be imposed, and the Cemetery Board does not deem the requirements to be burdensome. Accordingly, no differentiation is made based on business size.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:41.

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

3:41-5.2 Trust funds

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

(e) In any case in which multiple interment of cremated remains are interred in one interment space, each individual remains shall be subject to the statutory requirements of N.J.S.A. 8A:4-5b.

(f)-(h) (No change.)

3:41-9.3 License form

A cemetery **salesman** license, when issued, is to be in the form of a pocket license with a one inch by one inch recent face photograph attached.

PERSONNEL**(b)****MERIT SYSTEM BOARD****Overtime Compensation****Proposed Amendments: N.J.A.C. 4A:3-5.2 and 5.5**

Authorized By: Merit System Board, Peter J. Calderone,

Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:6-24.

Proposal Number: PRN 1990-447.

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

Wednesday, September 26, 1990 at 5:30 P.M.

Office of Administrative Law

9 Quakerbridge Plaza, 1st Floor

Trenton, New Jersey

The agency proposal follows:

Please contact the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by October 4, 1990 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These amendments are being proposed to ensure that rules and procedures on overtime compensation are consistent with the Fair Labor Standards Act (29 U.S.C. §§201 et seq.). Such amendments are required pursuant to legal advice from the State Attorney General's Office.

The amendment to N.J.A.C. 4A:3-5.2 would change the definition of "regular rate" of pay to provide, for employees in covered titles, that the "regular rate" includes clothing allowances unless the allowance is for the purchase or maintenance of prescribed clothing.

The amendment to N.J.A.C. 4A:3-5.5 would provide, with respect to covered employees working more than 40 hours per week, that overtime work be credited in one-tenth hour units of continuous work beyond each regular work day.

Social Impact

Overtime compensation is calculated on the basis of an employee's "regular rate" of pay. Therefore, the amendment to N.J.A.C. 4A:3-5.2, by increasing the amount included in the "regular rate" for some employees, would lead to increasing the amount of overtime compensation for those employees.

With regard to the amendment to N.J.A.C. 4A:3-5.5, covered employees who work more than 40 hours per week, but in increments of less than one hour each workday, would be assured of receiving proper credit toward overtime compensation.

Economic Impact

Both amendments may result in a slight increase in overtime costs for State agencies. However, these changes are necessary to ensure compliance with the Fair Labor Standards Act. Failure to comply can result in severe penalties against public employers, including double the overtime compensation which was not paid to the employee.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposal will have no effect upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules regulate employment in the public sector.

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

4A:3-5.2 Definitions: State service

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

"Regular rate" means the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. **For employees in covered titles, the regular rate includes clothing allowances unless the allowance is for the purchase or maintenance of prescribed clothing required by the employer.** Employees in covered non-limited titles (NE) shall be deemed to have a 40-hour workweek for determining the hourly proration. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

4A:3-5.5 Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40 and NE titles: State service

(a) (No change.)

(b) Overtime compensation under this section shall be paid as follows:

1.-7. (No change.)

8. Work credited toward overtime compensation shall be in one-tenth hour units of continuous work beyond each regular work day.

(a)

MERIT SYSTEM BOARD

Promotional Examinations

Proposed Amendment: N.J.A.C. 4A:4-2.4

Authorized By: Merit System Board, Peter J. Calderone,
Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:4-14.

Proposal Number: PRN 1990-448.

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

Wednesday, September 26, 1990 at 5:30 P.M.

Office of Administrative Law

9 Quakerbridge Plaza, 1st Floor

Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by October 4, 1990 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 4A:4-2.4 would conform the requirements for certain local service promotions to those in State service, as provided in N.J.A.C. 4A:4-2.5. These promotions would be from the noncompetitive division of the career service to a related entry level title in the competitive division. The requirements for such promotions in State service include satisfaction of open competitive requirements and service in either the next lower or next two lower in-series noncompetitive titles or in all related noncompetitive titles.

Social Impact

The amendment would establish uniformity between State and local service in the requirements for promotions from the noncompetitive division to a related entry level title in the competitive division of the career service. This uniformity would minimize any confusion that may exist for merit system employees and appointing authorities about an employee's eligibility for such promotions.

Economic Impact

The proposed amendment would further consistency in the promotional process, enabling the Department of Personnel operations to function more efficiently.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:4-2.4 Promotional title scope: local service

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

(d) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the **complete** open competitive requirements and[, if appropriate, employees serving] **who are either:**

1. Serving in the next lower or next two lower in-series noncompetitive titles[.]; **or**

2. Serving in all related noncompetitive titles.

(e) (No change.)

(a)**MERIT SYSTEM BOARD****Working Test Period****Proposed Amendment: N.J.A.C. 4A:4-5.5**

Authorized By: Merit System Board, Peter J. Calderone,
Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:4-15.

Proposal Number: PRN 1990-449.

A **public hearing** concerning the proposed amendment will be held on:
Wednesday, September 26, 1990 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by October 4, 1990 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 4A:4-5.5 would provide that a permanent employee serving in a working test period in another title will accrue seniority in his or her permanent title during the working test period. This amendment would reflect current longstanding practice, whereby an employee continues to accrue seniority in his or her permanent title whether that permanent title is at the same, higher, or lower level as the title in which he or she is serving during a working test period.

Social Impact

The proposed amendment would have a beneficial impact on employees who wish to return to their former jobs during or at the conclusion of their working test periods.

Economic Impact

The proposed amendment would have no anticipated economic impact.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:4-5.5 Restoration to eligible list or former title

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

(c) [An employee with permanent status in a title with the same or lower class code/level] **A permanent employee serving a working test period in another title** shall continue to accrue seniority in his or her permanent title for the duration of the working test period. See N.J.A.C. 4A:4-1.9 for procedures on restoration to a former title.

(b)**MERIT SYSTEM BOARD****Employee Layoff Rights****Proposed Amendment: N.J.A.C. 4A:8-2.2**

Authorized By: Merit System Board, Peter J. Calderone,
Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:8-1.

Proposal Number: PRN 1990-450.

A **public hearing** concerning the proposed amendment will be held on:
Wednesday, September 26, 1990 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by October 4, 1990 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 4A:8-2.2 would reflect a long-standing practice in local service which permits an employee's demotional rights in a layoff situation to extend beyond related titles to include any title previously held on a permanent basis within current continuous service. As it reads now, the rule is limited to employees in State service. Language applying this right to local employees was inadvertently omitted from N.J.A.C. 4A:8 when it was recently adopted.

Social Impact

Although this proposed amendment does not present a substantive change to existing procedures, it would ensure that local government employees have rights equivalent to those of State employees in the event of a layoff.

Economic Impact

No economic impact should result from the proposed rule amendment which, as already noted, reflects longstanding practice in local service and therefore does not represent a substantive change to existing procedures.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:8-2.2 Exercise of lateral and demotional rights

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

(f) [In State service, demotional] **Demotional** rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. In such cases, displacement may be made only on the basis of greater permanent continuous service.

(g) (No change.)

COMMUNITY AFFAIRS**(c)****DIVISION OF HOUSING AND DEVELOPMENT****Uniform Construction Code****Underground Storage Tank Systems****Proposed Amendments: 5:23-1.1 and 3.1****Proposed New Rule: 5:23-3.11B**

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

Authority: N.J.S.A. 52:27D-124 and 58:10A-25.

Proposal Number: PRN 1990-54.

Submit comments by October 4, 1990 to:

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

The agency proposal follows:

Summary

In 1986, a State law authorizing the regulation of underground storage tank systems, N.J.S.A. 58:10A-21 et seq. (P.L. 1986, c.102), was enacted. Though this Act largely delegated responsibilities for enacting and enforcing

ing rules concerning underground storage tank systems to the Department of Environmental Protection (DEP), the Act specifically referenced the State Uniform Construction Code, N.J.S.A. 58:10A-24a and 25c, and further required the Department of Community Affairs to "adopt in the State Uniform Construction Code" the rules and regulations adopted by the Department of Environmental Protection pursuant to the Act.

The DEP proposed its rules on August 7, 1989 at 21 N.J.R. 2242(a) and has adopted them, effective September 4, 1990, in this issue of the New Jersey Register. These proposed amendments and new rules are intended to formally acknowledge and reference those DEP's Underground Storage Tank rules, which are codified at N.J.A.C. 7:14B. Those rules provide for the permitting of underground storage tank systems by DEP for technical sufficiency, with permits issued by the construction official for the installation and closure (also, variously termed "demolition," and removal) of tanks. Because construction code officials are present in each municipality, their permit function enables them to deter unauthorized field activity that the DEP's centralized staff might not observe. In accordance with the Act, the DEP's rules recognized the State Uniform Construction Code as a valid authority controlling tank installation and closure. The Department of Community Affairs has already adopted a rule making compliance with N.J.A.C. 7:14B a "prior approval" that must be satisfied before a construction permit or certificate of occupancy can be issued. (See N.J.A.C. 5:23-1.4.). Nonetheless, the Department considers it appropriate to cross reference the DEP rules for the sake of clarity.

Social Impact

Permits under the State Uniform Construction Code (UCC) for the installation, repair or closure (demolition) of underground storage tank systems or parts thereof, as defined in the DEP's rules at N.J.A.C. 7:14B-10.1, are required in order to protect public health and safety.

While the DEP's rules are drafted to ensure that tank systems are designed to function in a technically and environmentally-sound manner, the permitting process under the UCC ensures that illegal installations, repair work and closures undertaken without DEP review or permits will be prevented or detected and stopped. Because the construction code officials are present in the field, they may readily detect illegal tank work. Such work, done as it is outside the DEP's regulatory provisions, may compromise public health and safety by contaminating the air, the soil, and public and private groundwater supplies.

Economic Impact

Underground storage tank installers and owners have always been required to obtain permits under the UCC if the tanks they propose to install, repair or close are 660 gallons or more in capacity. This is specified in the UCC's Building Subcode in the BOCA National Building Code's Appendices' reference to the National Fire Protection Association's Standards for Underground Storage Tanks, NFIPA 30 or, as of November 1, 1989, for fuel oil tanks under the BOCA Mechanical Code's referenced Standard, NFIPA 31.

There is no additional economic impact, under the UCC, because of the DEP's prior adoption of N.J.A.C. 7:14B. The DEP has, however, forecast significant economic impacts from those rules (see 21 N.J.R. 2242(a)).

Regulatory Flexibility Analysis

There are no differential provisions in these rules or in the referenced DEP rules for large and small tank systems. The danger posed to the State's air, soil and water by inadequate underground storage tank systems is great. The DEP has forecast that one gallon of a hazardous substance released into ground water has the potential of rendering millions of gallons of water unfit for human consumption (see 21 N.J.R. 2242(a)). Inasmuch as even a small leak may cause great damage, there is no justification for differential treatment for small businesses. The DEP has, however, created a need-based program providing low interest loans to businesses which must make proportionately large capital investments in tank equipment to comply with current underground storage tank rules.

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

5:23-1.1 Title; division into subchapters

(a) (No change.)

(b) The regulations consist of the following subchapters:

1-2. (No change.)

3. "Subcodes" which may be cited throughout the regulations at N.J.A.C. 5:23-3 and when referred to in subchapter 3 of this chapter may be cited as this subchapter.

i. N.J.A.C. 5:23-3.11B contains references to the Department of Environmental Protection's rules concerning underground storage tanks, codified at N.J.A.C. 7:14B, which are jointly enforced by this Department and local enforcing agencies pursuant to this chapter.

5:23-3.1 Title; scope; intent

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

(e) Provisions concerning underground storage tanks, jointly enforced by the Department of Environmental Protection (DEP), are in N.J.A.C. 5:23-3.11B and in the DEP's rules at N.J.A.C. 7:14B.

5:23-3.11B Underground storage tank systems

(a) The installation, repair (other than "minor repair," as defined in N.J.A.C. 7:14B-10.5), and closure (or "demolition") of underground storage tank systems, as defined in N.J.A.C. 7:14B-10.1, shall be controlled by the State Uniform Construction Code and by N.J.A.C. 7:14B-1 through 10.

(b) A DEP permit for the installation, repair or closure of an underground storage tank system, or any part thereof, or the DEP's written determination that no DEP permit is required, or an emergency permit granted pursuant to N.J.A.C. 7:14B, shall be a prior approval for any permit application submitted pursuant to the State Uniform Construction Code Act and these rules. If an underground storage tank system or any part thereof is designated by DEP as an approved secondary containment device, no additional prior approval for compliance with N.J.A.C. 7:14B shall be required.

(c) Construction code officials shall retain all penalty powers, as set forth in these rules, with respect to the installation, usage or closure (demolition) of underground storage tank systems and parts thereof in violation of the State Uniform Construction Code Act or these rules.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Provisions for the Education of Homeless Children and Youth

Proposed New Rule: N.J.A.C. 6:3-7

Authorized By: John Ellis, Commissioner, Department of

Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:38-1 and N.J.S.A. 18A:7B-12.

Proposal Number: PRN 1990-458.

Submit written comments by October 4, 1990 to:

Irene Nigro, Rules Analyst

New Jersey Department of Education

225 West State Street, CN 500

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The fact that increasing numbers of families in New Jersey are becoming homeless has been well documented. Families with children now represent 60 percent of the State's estimated homeless population and they are the fastest growing segment of this population. A report submitted to Congress in March 1990 by the U.S. Department of Education ranks New Jersey's homeless school-age population as the fifth highest in the nation. Children below the age of 18 comprise a significant portion of homeless persons in the State. During a one year period from 1988 to 1989 a Department survey found that there were approximately 14,439 homeless children in New Jersey. Over half of these children lived in motels or hotels. Many had moved several times during the course of the year as their parents tried to find permanent housing. As a result, many homeless children were forced to enroll in several schools during the year. Some 10 to 15 percent of the school-age population did not attend school at all. The impact of homelessness on the education of all these children and youth is of critical concern.

The proposed new rules for the Education of Homeless Children and Youth, N.J.A.C. 6:3-7, outline provisions for the education of these

children in response to N.J.S.A. 18A:38-1 and 18A:7B-12 signed into law on January 12, 1990. This law was adopted to revise New Jersey's residency requirements to better address the unique circumstances of homeless students. The law specifically directs the State Board of Education to establish criteria regarding the educational placement of homeless children and an appeal process should parents object to a decision made by school personnel.

N.J.S.A. 18A:38-1 and 18A:7B-12 also comply with the Federal Stewart B. McKinney Homeless Assistance Act (P.L. 100-77). The McKinney Act charges state educational agencies with the establishment of regulations and policies to ensure that homeless children and youth have access to a free, appropriate public education. The act also directs states, whose compulsory attendance laws include residency requirements, to review and take steps to revise such laws to ensure educational access for homeless children and youth.

The proposed new rules were developed as a separate subchapter to provide school districts with clear and concise guidance in establishing policies which meet the provisions of the law. This subchapter clarifies all of the procedures needed to implement the law and ensure that homeless students have access to a free and appropriate public education. Specific rules define the responsibilities of the district of residence, establish criteria for educational placement decisions, and outline an appeals process when these decisions are disputed by parents or other parties.

In order to ensure that school districts meet the needs of homeless children and the requirements of the law, the new rules propose that each school district designate a liaison for the education of homeless children. This person would be responsible for coordinating all of the activities which lead to the timely entrance into school of any homeless student. This response network has already been initiated across the State. Liaisons have been identified in each county office of education and in each school district.

A review of the proposed new rules follows:

N.J.A.C. 6:3-7.1 Purpose

This section explains the purpose of the subchapter, which is to establish uniform statewide policies and procedures to ensure homeless children and youth have access to a free and appropriate education pursuant to N.J.S.A. 18A:38-1 and 18A:7B-12.

N.J.A.C. 6:3-7.2 Definitions

This section defines those words and terms necessary for implementation of the subchapter.

The term "district liaison for the education of homeless children" means the person identified in each school district who facilitates all of the activities needed to ensure the timely educational placement of homeless children and youth.

The term "district of residence" for a homeless child is defined as the district in which the parent(s) or guardian(s) last resided before becoming homeless.

The term "homeless" describes the target population as defined in State Law.

The term "parent" is defined to clarify who is legally responsible for the homeless child.

N.J.A.C. 6:3-7.3 Determination of homelessness

This section includes specific examples of the types of housing provided to families considered homeless. Examples of specific living arrangements which qualify a child or youth as homeless are also included.

N.J.A.C. 6:3-7.4 Responsibilities of the district of residence

This section describes the placement, transportation and tuition responsibilities of the district of residence. The new rule also empowers the county superintendent(s) to determine the district of residence when a dispute occurs. The section also describes the State's responsibility for tuition payments when a district of residence cannot be determined or if the district of residence is outside of the State.

N.J.A.C. 6:3-7.5 Responsibilities of the district liaison

This section reviews how the requirements of the rules result in the enrollment of the homeless child in school. School districts will be responsible for identifying a liaison to initiate and coordinate the activities between the involved school districts, parents and others.

N.J.A.C. 6:3-7.6 Educational placement

This section outlines the three educational choices to be considered by the district of residence and establishes criteria which must be considered when making placement decisions. The district of residence is responsible

for making the placement decision within three days of notification of the need to enroll the child. A specific provision for an educationally handicapped homeless child is included. This section also details the responsibility of the school the child last attended in forwarding school and health records.

N.J.A.C. 6:3-7.7 Disputes and appeals

This section outlines an appeal process should parents, guardians, involved school district officials, involved agencies, case managers or shelter providers object to an educational placement decision made by the district of residence. Mediation is available through the Department to assist parents and others to resolve concerns. An appeal at anytime during the process must not delay entrance of the homeless child into school. The new rule empowers the county superintendent to designate the school the child will attend during the time it takes to resolve the appeal.

N.J.A.C. 6:3-7.8 Tuition

This section clarifies that the district of residence is responsible for paying the costs of tuition when a homeless child attends school in a district other than the district of residence. That district continues to pay tuition for as long as the child is homeless and enrolled in another district. The district of residence also counts the students on the Application for State School Aid (ASSA).

N.J.A.C. 6:3-7.9 Transportation

This section clarifies the responsibilities of school districts in providing transportation services for a homeless child. The district of residence pays transportation costs if a homeless child attends school in another district or if the child attends school in the district of residence, while temporarily residing in another district.

N.J.A.C. 6:3-7.10 Evaluation procedures for compliance

This section outlines the areas which the Department of Education will monitor to ensure school districts are in compliance with the requirements of this subchapter and Federal and State laws.

Social Impact

The adoption of these proposed new rules will provide a much needed framework for the resolution of several critical issues that have often hampered the access of homeless children and youth to school. For the increasing number of homeless school-age children in the State, education may offer the only way out of a hopeless situation. Such obstacles as residency requirements, lack of transportation, and delays in the transfer of school and health records will no longer prevent homeless children from gaining immediate entrance to school. In addition, the creation of a network of county office of education and district contacts with social service agencies and providers will establish a safety net that ensures the education of these children is not left to chance.

New Jersey is one of the few states that has passed a state law to address the unique circumstances of homeless children. The proposed new rules represent the State's commitment to ensure that the educational rights of these children are met and that they receive the same education as all other students in the State. To date there has been wide acceptance by school districts of the change in residency requirements for homeless students. School personnel are especially aware of the need for a stable environment for these children during the school day.

Economic Impact

The proposed new rules will have little economic impact on school districts. Once a district of residence has been identified for a homeless child, the school district will continue to receive State aid for as long as the child is homeless. This aid will provide funds for the district of residence to carry out the requirements of the law. In addition, districts may also be reimbursed for transportation costs through pupil transportation aid, N.J.S.A. 18A:58-7.

The rules also provide assistance to those districts that are providing educational services to homeless children who are temporary residents of the district. These districts will be paid tuition by the district of residence or by the State, if a district of residence cannot be determined.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impact solely upon New Jersey school districts and on schools operated by the New Jersey Department of Education.

Full text of the proposed new rules follows:

SUBCHAPTER 7. PROVISIONS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH

6:3-7.1 Purpose

The purpose of this subchapter is to establish uniform Statewide policies and procedures for ensuring that homeless children and youth have access to a free and appropriate public education. Specific rules have been established to determine the educational placement of these students and to respond to appeals made by parents or other parties. These rules will implement N.J.S.A. 18A:38-1 and N.J.S.A. 18A:7B-12.

6:3-7.2 Definitions

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

"District liaison for the education of homeless children" means the person identified in each school district who facilitates all of the activities needed to ensure the timely educational placement of homeless children and youth.

"District of residence" for a homeless child whose parent(s) or guardian(s) temporarily move from one school district to another as the result of being homeless pursuant to N.J.S.A. 18A:38-1, N.J.A.C. 6:20-5.3(g) and N.J.S.A. 18A:7B-12 means the district in which the parent(s) or guardian(s) last resided prior to becoming homeless.

"Homeless" child or youth means one who lacks a fixed, regular, and adequate residence.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s), surrogate parent(s), person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil's welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

6:3-7.3 Determination of homelessness

(a) A child or youth shall be considered homeless for purposes of this program if he or she resides in any of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including:

- i. Welfare hotels;
- ii. Congregate shelters;
- iii. Transitional housing for families; and
- iv. Transitional housing for the mentally ill.

2. An institution that provides a temporary residence for individuals intended to be institutionalized; or

3. A public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(b) Additionally, a child or youth shall be considered homeless if he or she is:

1. Living with a parent in a domestic violence shelter;
2. A runaway living in a shelter;
3. A school-aged mother residing in a home for adolescent mothers;
4. Sick or abandoned and residing in a hospital and would otherwise be released if he or she had a permanent residence;
5. The child of a homeless family who is out of necessity living with relatives or friends; or
6. The child of a migrant family who lacks adequate housing.

6:3-7.4 Responsibilities of the district of residence

(a) The district of residence for a homeless child shall be responsible for the education of the child, shall determine the educational placement after consulting with the parent(s) or guardian(s) shall pay the costs of tuition and transportation when the child attends school in another district, and shall provide transportation when a child attends school in the district of residence while residing in another district.

(b) The determination of a homeless child's district of residence shall be made by the school districts involved as described in N.J.A.C. 6:3-7.5 based upon information received from the Department of Human Services, shelter providers, school districts, involved agencies, case managers or parents.

(c) The school district which has been determined to be the district of residence for a homeless child shall be the district of residence for as long as the parent(s) or guardian(s) remains homeless.

(d) When a dispute occurs regarding the determination of the district of residence, the involved districts shall immediately notify the county superintendent of schools, who will resolve the dispute. When the dispute involves districts in different counties, the county superintendent(s) will work collectively to resolve the dispute. If the county superintendent(s) is unable to resolve the dispute, an appeal may be made to the Assistant Commissioner, Division of Finance, pursuant to N.J.A.C. 6:20-5.3(d), (e), and (f).

(e) When the district of residence cannot be determined for a homeless child or if the district of residence is outside of the State, the State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12(d). The Department of Education shall pay the amount to the school district in which the child is currently enrolled for as long as the parent(s) or guardian(s) remains homeless.

6:3-7.5 Responsibilities of the district liaison

(a) The superintendent of each school district shall identify a district liaison for the education of homeless children.

1. The liaison shall facilitate communication and cooperation between the district of residence and the district where the homeless child is temporarily residing.

2. The liaison shall develop a system to ensure that any homeless child residing in the district is enrolled and attending school according to the placement options described in N.J.A.C. 6:3-7.6(a).

(b) When a child becomes homeless and is living temporarily in a school district, the liaison of that district, upon receiving notification from the Department of Human Services, shelter directors, involved agencies, case managers, or parent(s) or guardian(s), shall notify the liaison of the district of residence within 24 hours. This procedure shall also apply to those children identified as homeless pursuant to N.J.A.C. 6:3-7.3 and who may not be receiving services through a social service agency.

(c) When the liaison in the district of residence of a homeless child receives notification of the need for educational placement, that person shall coordinate placement procedures immediately based on the best interest of the child and criteria set forth in N.J.A.C. 6:3-7.6(c).

6:3-7.6 Educational placement

(a) The district of residence shall decide the educational placement of the homeless child according to criteria described in this section. The options for placement are:

1. To continue the child's education in the school district of last attendance;

2. To enroll the child in the district of residence if the district of residence is not the district of last attendance; or

3. To enroll the child in the school district where the child is temporarily living.

(b) When the district of residence for a homeless child cannot be determined, the district in which the child is temporarily residing shall enroll the child immediately.

(c) The decision regarding educational placement of a homeless child shall be based on what is in the best interest of the child. The district of residence shall consider the following in the placement decision process:

1. The preference of the parent(s) or guardian(s) as to where the child should attend school;

2. The continuity of the child's educational program with consideration given to the child continuing in the same school, the length of time the child attended a particular school, the time remaining in the school year, graduation requirements and district policies regarding the number of credits needed for graduation, and geographical location where the family plans to seek permanent housing;

3. The eligibility of the child for special instructional programs, such as bilingual, compensatory, gifted and talented, special education and vocational programs; and

4. The distance, travel time, and safety factors in coordinating transportation services from the temporary residence to the school.

(d) When a decision is made to enroll an educationally handicapped homeless child in a district other than the district of residence and an immediate review of the placement options available to implement the pupil's current individualized educational program cannot be conducted, the child shall be placed in a program consistent with the goals and objectives of the current individualized educational program for a period not to exceed 30 calendar days. Within this 30 day period the district of residence must assure that the individualized educational program is reviewed and revised pursuant to N.J.A.C. 6:28.

(e) The district of residence shall determine the educational placement in a timely manner and only after consultation with the parent(s) or guardian(s) as described below:

1. Placement decisions shall be made by the superintendent of the district of residence or his or her designee within three school days of notification of the need for educational placement. Once the decision is made, the child shall be placed immediately.

2. Consultation with the parent(s) or guardian(s) regarding the placement decision and their right to appeal that decision shall be documented by the superintendent or his or her designee in writing.

3. When there is a dispute regarding the placement decision, the child will be enrolled when the county superintendent determines the educational placement pursuant to N.J.A.C. 6:3-7.7.

(f) When a decision is made to enroll the child in a district other than the district of residence, the district where the child last attended school shall forward to the new district all relevant school and health records. When the parent(s) or guardian(s) is homeless due to conditions of domestic violence, the transfer of pupil records shall be subject to the provisions of N.J.A.C. 6:3-2.6.

6:3-7.7 Disputes and appeals

(a) If the parent(s) or guardian(s), involved school district officials, involved agencies, case managers, or shelter providers object to the educational placement decision made by the district of residence, the superintendent or designee of the district of residence shall immediately notify the county superintendent of schools. The county superintendent shall determine the placement of the child within 48 hours based on the child's best interest and the criteria set forth in N.J.A.C. 6:3-7.6(c).

(b) If the parent(s) or guardian(s) or any of the above parties object to the decision of the county superintendent, mediation shall be available through the Division of Compensatory/Bilingual Education's Office of Education for Homeless Children and Youth. Mediation shall be provided as follows:

1. A request for mediation shall be made to the Office of Education for Homeless Children and Youth either verbally or in written form. The mediation request shall cite the issue(s) in dispute and the relief sought;

2. A mediation conference with all parties present, including representation from the county superintendent's office, shall be conducted within five school days after the request is made at which time:

i. Issues shall be determined; and

ii. Options explored.

3. The role of the mediator is not judgmental;

4. The mediation conference shall be:

i. Informal; and

ii. Held at a time and place reasonably convenient to the parties in the dispute.

5. If the mediation results in agreement, conclusions shall be incorporated into a written agreement, signed by each party, and forwarded to the county superintendent for appropriate action. If the mediation does not result in agreement, the Office of Education for Homeless Children and Youth shall assist the parent(s) or guardian(s) in filing an appeal to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(c) Any dispute or appeal from any party at any stage of the process shall not delay the homeless child's immediate entrance into school. The homeless child shall be placed in the district designated by the county superintendent pending resolution of the dispute or appeal.

(d) Any disputes and appeals involving an educationally handicapped homeless child shall be pursuant to N.J.A.C. 6:28.

6:3-7.8 Tuition

(a) When the homeless child is enrolled in a district other than the district of residence, the district of residence shall pay the costs of tuition for the child to that district pursuant to N.J.S.A. 18A:38-19 and N.J.A.C. 6:20-3.1.

(b) The district of residence shall also include the child on its annual Application for State School Aid (ASSA) for as long as the parent(s) or guardian(s) remains homeless and the child is enrolled in another school district.

(c) When the State assumes fiscal responsibility for the tuition of a homeless child, the State shall pay the district in which the child is enrolled the State foundation amount plus the appropriate special education aid, if any.

6:3-7.9 Transportation

(a) When the homeless child is enrolled in a district other than the district of residence, the district in which the child is enrolled shall provide transportation services and the district of residence shall pay for any transportation costs incurred by that district pursuant to N.J.S.A. 18A:39-1 et seq. and N.J.A.C. 6:21.

(b) When the homeless child attends school in the district of residence while temporarily residing in another district, the district of residence shall provide for transportation to and from school pursuant to the provisions of N.J.A.C. 6:21.

(c) When a district of residence cannot be determined and the State has assumed fiscal responsibility for the payment of tuition, the district where the homeless child is enrolled shall provide transportation pursuant to N.J.A.C. 6:21.

(d) In implementing the transportation services required for a homeless child, school districts shall explore alternatives and provide the most economical and safest mode of transportation pursuant to N.J.A.C. 6:21.

6:3-7.10 Evaluation procedures for compliance

(a) The Department of Education shall monitor school districts responsible for implementing the requirements set forth in this subchapter, including:

1. Placement decisions made according to rules and within specified timelines; and

2. Provision of appropriate educational services and transportation.

(a)

STATE BOARD OF EDUCATION

Attendance and Pupil Accounting; Tuition for Private Schools for the Handicapped

Proposed Amendments: N.J.A.C. 6:20-1.1, 1.2, 4.1-4.4 and 4.7-4.10

Proposed New Rule: N.J.A.C. 6:20-4.11

Authorized By: John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:46-21.

Proposal Number: PRN 1990-463.

Submit comments by October 4, 1990 to:

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

The agency proposal follows:

Summary

In the 1987-88 school year, the State Board of Education pursuant to N.J.S.A. 18A:46-21 adopted N.J.A.C. 6:20-4 which governs the determination of tuition charged to New Jersey public schools by in-State and out-of-State private schools for the handicapped for educationally handicapped pupil placements. Since that time the Department has determined through fact finding and experience that the accounting requirements are onerous and that adequate safeguards though implied and intended are not expressly included in the rules as required in *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984). The proposed

amendments and new rule will correct these deficiencies and prohibit business practices by private schools for the handicapped which were never intended to be permissible and are inconsistent with the general intent of the existing rules.

At N.J.A.C. 6:20-4.1 an amendment is proposed to define direct and indirect costs in private schools for the handicapped and simplify procedures to allocate costs and to establish a standard procedure to allocate facility and operational costs when a private school facility is also used for unrelated activities and/or enterprises by related or unrelated parties. The amendments are in response to a contested case in the Office of Administrative Law (*Pineland Learning Center, Inc. v. New Jersey Department of Education, Division of Finance*, OAL Docket Number 0788-88, Decided February 3, 1990), in which an administrative law judge requested a specific rule citation which would require a private school to allocate costs under such circumstances. This section also provides the specific information needed to request a higher tentative tuition rate for an entire school and deletes the per pupil request for a higher tentative tuition rate. It also requires that the Commissioner be notified of a board agreement to pay for extraordinary services. Also, an amendment was added to illustrate the Department's procedure for determining maximum salaries for private school employees which are used in establishing tuition reimbursements.

N.J.A.C. 6:20-4.2 contains provisions for determining tentative tuition rates for new private schools for the handicapped. Minor technical changes are being proposed for this section.

At N.J.A.C. 6:20-4.3, an amendment is proposed to provide procedures for merit or contingent pay increases. The procedures prevent the arbitrary payment of unexpended tuition to certain employees at year-end in order to avoid the refunding of unspent tuition to the public schools. An amendment is also proposed to add a procedure to apply refunds of expenses or cancellations of accounts payable of a prior period, as a reduction of current audited tuition rates. In addition, regardless of the tax laws, the useful life of real property has been tied to the term of the original mortgage or 15 years, whichever is greater.

At N.J.A.C. 6:20-4.4, amendments are proposed to reflect various additions and revisions to non-allowable costs. These changes are proposed after an analysis of problem areas discovered through fiscal monitoring and fact finding, and as a result of contested cases in the Office of Administrative Law. Non-allowable cost areas were added to reflect similar restrictions which are contained in Education Department General Administrative Regulations (EDGAR) and currently enforced by the Federal Government in the administration of grants and cost-based contracts. The Department originally believed these EDGAR requirements were sufficient precedent and enforceable under existing rules; however, upon advice received from its assigned deputy attorney general, discovered these Federal rules are not enforceable unless contained in New Jersey Administrative Code.

N.J.A.C. 6:20-4.5 and 4.6 contain the areas of surcharge and working capital fund. No changes have been proposed to these sections.

N.J.A.C. 6:20-4.7 concerns the calculation of pupil attendance. Minor technical changes are being proposed for this section.

N.J.A.C. 6:20-4.8 contains the audit requirements for private schools for the handicapped. Amendments are proposed to define auditor independence, require documentation that the results of the year-end audit were discussed with school management, and to provide a sanction for a private school failing to comply with the audit requirements. The rules define the extent to which an auditor may be engaged to provide services to a private school and still be considered an independent auditor. The addition of a documented meeting between management and the auditor provides proof that both parties met and discussed the audit and the determination of the actual tuition rate charged was a management decision. The added sanction of conditional approval provides the Department with a method of enforcing the rules when private schools fail to comply or fail to respond to noncompliance notifications.

N.J.A.C. 6:20-4.9 contains appeal procedures for private schools for the handicapped. Minor technical changes are proposed and an additional appealable item was added.

At N.J.A.C. 6:20-4.10, amendments are proposed to indicate that the Department will abide by tuition rates for private schools for the handicapped adopted by the state in which an out-of-State school is located. The proposed amendments also include Department acceptance of out-of-State tuition rates in states which do not regulate tuition rates as long as there is a mutual agreement of the tuition rate between the private school and sending school district. If the child was placed by the Department of Human Services, there must be mutual agreement of a tuition

rate between three parties: the Department of Human Services, the sending school district and the private school. In both cases, if a mutual agreement cannot be reached, the rules provide for an audit to determine the tuition rate. This amendment will alleviate out-of-State schools from abiding by New Jersey's audit requirements as long as there is mutual agreement between the parties. Such audit requirements might impact on a child's placement and substantially increase the tuition rate charged because New Jersey audit requirements would be direct costs allocated over a limited New Jersey enrollment (in some cases one pupil).

N.J.A.C. 6:20-4.11 is an entirely new rule dealing with the inspection of records. This section was added in order to provide the Department with a specific means to gain access to financial records which might be denied to the Department. Based upon advice received from its assigned deputy attorney general, the Department is proposing such a rule in order to ensure access to such records.

At N.J.A.C. 6:20-1.1, an amendment is proposed to eliminate the requirement that the Department annually publish and distribute the New Jersey School Register. This document is used by school districts to record enrollment, but is not submitted to the Department of Education. The Department would continue to distribute the annual register summary, which is submitted. The elimination of costly annual publication of the register should have little or no impact on how records are kept. An undated register will be distributed to all districts, and this will be reproduced each year by the local districts.

At N.J.A.C. 6:20-1.2, amendments are proposed in order to track pupils from year to year and pupils who cease to attend school pursuant to P.L. 1990, c.214. Within 10 days of the start of the school year a determination, regarding absent reentering students, must be made.

Social Impact

The proposed amendments impact on local school districts, approximately 120 in-State approved private schools for the handicapped, approximately 85 out-of-State approved private schools for the handicapped and the Department of Human Services. At the time of the adoption of the actual cost tuition system approximately 7,850 pupils were enrolled in private schools for the handicapped; whereas, enrollment for the 1989-90 school year was approximately 9,653 pupils.

The proposed amendments and new rule will prohibit business practices which are inconsistent with the administration of public funds dedicated for special education. These amendments and new rule will ensure that all funds are directly related to and enhance the educational programs of pupils, thereby affording educationally handicapped pupils increased social opportunity.

The amendment at N.J.A.C. 6:20-4.10 replacing the audit and actual cost requirement for out-of-State placements with mutually agreed upon tuition will ensure that educationally handicapped pupils are placed in the most appropriate setting. A number of out-of-State schools indicated the current audit and accounting requirements were onerous and cost prohibitive in light of their limited New Jersey placements, in some cases one student, and indicated that they would be unable to continue to accept New Jersey placements under such conditions.

Economic Impact

The proposed amendments to N.J.A.C. 6:20-4.10 may impact economically on local school districts, in-State and out-of-State private schools for the handicapped and the Department of Human Services. The elimination of the audit and the actual cost requirements for out-of-State placements when mutual agreement on tuition is reached between the parties will eliminate the cost of such audit. The rule amendment will thereby reduce the tuition charged if, as anticipated, the mutually agreed upon tuition is less than the actual costs incurred plus the cost of the audit. However, the mutually agreed upon tuition may conceivably exceed such costs absent the current restrictions and requirements.

The additional non-allowable cost items at N.J.A.C. 6:20-4.4 which are inconsistent with publicly funded special education programs may reduce the tuition charged public schools. However, the Department's intention is to ensure that private school operators utilize public funds for bona fide special education expenses to improve or supplement special education programs.

An amendment at N.J.A.C. 6:20-4.3 is proposed to require private schools to apply refunds of expenses or cancellation of accounts payable of a prior period as a reduction of current audited tuition rates. This will minimally reduce private school for the handicapped tuition rates and therefore have a positive economic impact on local school districts.

As in prior years, the rules require in-state private schools for the handicapped to file a year-end audit report with the Department. The

cost of the audit may be included in the tuition rate, but due to the low cost which is allocated over the total number of pupils in each school, this will have a minimal negative economic impact on local school districts.

The economic impact of eliminating annual publication of the school registers will be minimal for school districts. The only cost will be that of reproducing the required copies of the register each year. The change will produce significant savings for the Department of Education.

Regulatory Flexibility Statement

The proposed amendments to N.J.A.C. 6:20-4 will impose reporting, recordkeeping and compliance requirements on approximately 120 private schools for the handicapped which includes both not-for-profit and profit making entities. Approximately 18 private schools for the handicapped are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16.

However, private schools for the handicapped were created by the State legislature to meet the educational needs of handicapped pupils which the public schools were unable to meet, and these schools are considered "quasi-public schools." The legislature empowered the State Board of Education to promulgate rules for their governance and the State Board of Education in adopting the current rules considered recommendations of the State of New Jersey Commission of Investigation on the misuse of public funds in the operation of nonpublic schools for handicapped children. The Superior Court of New Jersey in *The Council of Private Schools for Children with Special Needs, Inc. v. Saul Cooperman, Commissioner of Education* 205 N.J. Super. 544 (App. Div. 1985), in its decision of November 27, 1985 upheld the Department's right to impose such rules on all private schools for the handicapped. The intent of these rules was to ensure that public funds provided for special education were utilized for the ordinary and necessary costs of providing programs to educationally handicapped pupils. The amendments and new rule are consistent with that intent and such intent should apply to all private schools for the handicapped, even those regarded as "small businesses." Therefore, no attempt was made to differentiate rules for "small businesses."

The proposed amendments contain a simplified system of allocating costs across programs (10 month school year, extended school year or facility) which will alleviate the time consuming and cumbersome process required in prior years. This simplified method will reduce bookkeeping costs in programs which are required to allocate costs.

As in prior years, private schools for the handicapped will be required to maintain financial records on an accrual basis of accounting. Those records shall include but not be limited to (1) a cash receipts journal; (2) cash disbursements; (3) a general ledger; (4) a tuition ledger, (5) a payroll journal and (6) a fixed asset inventory. The rules also require that a private school file a year-end audit report which shall be prepared by a licensed public school accountant. The bookkeeping and year-end audit requirements necessitate the hiring of bookkeeping personnel and an independent licensed public school accountant. The costs of such services may be included in the tuition rate charged local school districts and therefore will not impose a financial burden on the regulated schools.

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

6:20-1.1 School register

(a) The [commissioner] **Commissioner** shall prepare and distribute [annually] a school register which shall be known as the New Jersey School Register, for recording pupil attendance in all public schools of the State operated by district boards of education, except adult high schools.

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

6:20-1.2 School enrollment

(a) The enrollment in a class, a school or a school district shall be the total number of original entries **plus the number of re-entries, less the number of transfers, withdrawals or dropouts** in any such unit during a school year. The total number of original entries **and re-entries, less the number of transfers, withdrawals or dropouts**, in all the classes and schools of a school district shall constitute the school enrollment for that district board of education during any school year.

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

(d) **Within 10 days of the start of the school year, a school district must determine whether any re-entering student who has not attended**

school that year has an excused absence or has transferred, withdrawn or dropped out of the school district.

Recodify existing (d)-(f) as (e)-(g). (No change in text.)

6:20-4.1 Tuition rate procedures

[(a) The term "actual cost per pupil" for determining the tuition rate(s) for a given year for a private school for the handicapped located in New Jersey, referred to in N.J.S.A. 18A:46-21, shall mean the cost per pupil in average daily enrollment certified by the commissioner, based upon the actual allowable costs for that year, as shown in the certified audit submitted pursuant to N.J.A.C. 6:20-4.8.]

(a) **The term "actual cost per pupil" referred to in N.J.S.A. 18A:46-21, for the purpose of this subchapter shall be defined as the certified actual cost per pupil. For determining the tuition rate(s) for a 10 month school year or an extended school year for approved private schools for the handicapped located in New Jersey, the certified actual cost(s) per pupil shall mean the actual allowable cost for the year plus the applicable maximum surcharge/working capital fund divided by the average daily enrollment for a 10 month school year or total per diem days for an extended school year. Based on the certified actual cost(s) per pupil, the school's management shall determine the actual tuition rate(s) charged which is an amount less than or equal to the certified actual cost(s) per pupil. The certified actual cost(s) per pupil and actual tuition rate(s) charged shall be identified in the certified audit submitted pursuant to N.J.A.C. 6:20-4.8.**

1. [Allowable] **Actual allowable costs [shall be based on a] for the 10 month school year program [and] shall be based on a minimum of 180 days of pupil instruction between September 1 and June 30 and for the extended school year program on the days of pupil instruction between July 1 and August 30. Such costs shall be [reasonable and provided in accordance] consistent with the individualized education program of a handicapped pupil[. A] and shall be reasonable [cost shall be a cost which is], that is, ordinary and necessary and [does] not [exceed] in excess of the cost which would be incurred by an ordinarily prudent person in the [conduct of business] administration of public funds.**

2. "Average daily enrollment" for the purpose of determining the actual cost per pupil shall be the sum of the days present and absent of all [public] school pupils enrolled in the register(s) of the school divided by the number of days the **approved** private school for the handicapped was actually in session rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days. A pupil enrolled in a preschool program (10 hours per week of pupil instruction), a half-day program or enrolled in a full day program on a shared time basis shall not have a maximum average daily enrollment in excess of 0.5.

[(b) Whenever possible, the actual amounts expended for each allowable cost item according to the prescribed bookkeeping and accounting system for each private school site, 10 month school year program or extended school year program shall be recorded and used in determining the actual cost per pupil.

(c) Whenever it is not possible to charge the actual amount expended for a particular allowable cost item for each private school site, 10 month school year program or extended school year program, the individual share of such expenditure for each site or program shall be determined on a pro rata basis in accordance with the following ratios or other acceptable method as approved by the commissioner:

1. Administration: Ratio of number of teachers, aides and assistants at each site or in each program to the total number of teachers, aides and assistants.

2. Instruction:

i. Salaries: Ratio of time spent at each site or in each program to the total time spent.

ii. Textbooks, school library and audio-visual materials, teaching supplies and other expenses for instruction: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

3. Attendance and health services: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

4. Pupil transportation services: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

5. Operation of plant: Ratio of square feet of floor space at each site or in each program to the total square feet of floor space used. Whenever floor space is shared by pupils in two or more sites or programs, the square footage for such floor space shall be prorated based upon the time such floor space is used by pupils at each site or in each program. Floor space used shall not include offices, boiler rooms, corridors or other rooms not used by pupils.

6. Maintenance of plant: Ratio of square feet of floor space at each site in each program to the total square feet of floor space used.

7. Fixed charges: Rates of average daily enrollment at each site or in each program to the total average daily enrollment.

8. Food services: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

9. Student-body activities: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

10. Non-pupil transportation vehicles: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.]

(b) Whenever possible, direct costs which can be identified specifically with an approved private school facility, 10 month school year program or extended school year program shall be recorded in the prescribed bookkeeping and accounting system and used in determining the respective actual cost per pupil.

(c) Indirect costs are costs which are incurred for a common or joint purpose and not readily assignable to an approved private school facility, 10 month school year program or extended school year program. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be included on a consistent basis in the respective actual cost per pupil in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:

1. Direct costs for each program determined pursuant to (b) above to total direct costs; or

2. Average daily enrollment for each program to total average daily enrollment.

(d) Whenever a facility used by an approved private school for the handicapped is also used for unrelated activities and/or enterprises by related or unrelated parties, all costs, direct or indirect, associated with such facilities and operations shall be charged accordingly to the associated activities and/or enterprises which they benefit. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be distributed in accordance with an equitable allocation plan approved by the Commissioner or as follows:

1. For joint activities and enterprises which have a common purpose of educating pupils, the indirect costs shall be allocated consistent with the methods contained in (c) above.

2. For joint activities and enterprises which do not have a common purpose of educating pupils, indirect costs for the approved private school for the handicapped shall be based on the ratio of the revenues for the approved private school to the total of all revenues for all purposes.

[(d)] (e) A tentative tuition rate shall be established by written contractual agreement between the approved private school for the handicapped and the sending district board of education. The tentative tuition rate shall be an amount not in excess of the approved private school's estimated actual cost per pupil for the ensuing school year. The written contract shall be on a form prepared by the [commissioner] Commissioner and shall be executed prior to the enrollment of a pupil.

1.-2. (No change.)

3. The contractual agreement shall require the sending district board of education to pay the approved private school for the handicapped the tentative tuition charge on a mutually agreed upon date but not later than 60 days after receipt of the monthly tuition bill and attendance report.

[(e)](f) The [Department of Education] Commissioner shall determine the estimated actual cost per pupil for each approved private school for the handicapped for the ensuing school year and its tentative tuition rate no later than January 1 preceding the beginning of the ensuing school year. Upon request, the approved private school

for the handicapped shall submit to the sending district board of education a copy of the [department's] Commissioner's calculation to determine the estimated actual cost per pupil for the ensuing school year.

1.-3. (No change.)

[(f)](g) The [Department of Education] Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for the handicapped can prove to the satisfaction of the [Department of Education] Commissioner that the tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship, the approved private school for the handicapped shall be required to submit its request for a higher tentative tuition rate for the entire school no later than January 31 preceding the beginning of the ensuing school year. The request shall be forwarded to the Assistant Commissioner, Division of Finance and include, but not be limited to, the following information:

i. A budget, by major account category, reflecting projected costs, working capital fund or surcharge, estimated enrollment and the requested tuition rate based on this information;

ii. A detailed explanation, by major account category, of the need for increases in excess of those already provided in the tentative tuition rate calculation (twice the increase in state average net current expense budget); and

iii. A financial report which is properly completed and in the format prescribed by the Commissioner for the six months of operations ended December 31 immediately preceding the school year for such request. This report format is available at the Division of Finance, 225 West State Street, CN 500, Trenton, New Jersey.

2. [The request for a particular pupil shall be submitted prior to the provision of the extraordinary services which causes the request and shall be filed jointly by the private school for the handicapped, the pupils' parent(s) or guardian(s) and the district board of education or State agency that determined the placement is necessary.] Whenever a district board of education agrees to pay for a pupil's extraordinary services, the board shall notify the Commissioner within 30 days of such agreement. The notification shall include the pupil's initials, the private school, the type of extraordinary service(s) and the cost of the additional service(s).

[3. The Department of Education shall respond to the higher tentative tuition rate request within 30 calendar days.]

[(g)] (h) The [commissioner] Commissioner shall certify the actual [cost per pupil and the per diem rate] tuition rate(s) charged according to these rules.

[(h)](i) [When] If the [commissioner] Commissioner determines that the tentative tuition rate(s) [or per diem rate] for a 10 month school year or an extended school year established by written contractual agreement is greater than the [certified] actual [cost per pupil or per diem rate] tuition rate(s) charged for the school year, the private school for the handicapped shall pay each sending district board of education the difference no later than June 30 of the school year in which the [certified] actual [cost per pupil or per diem rate] tuition rate(s) charged is received from the [commissioner] Commissioner or not more than 30 days after an appeal on a certified amount is finally resolved.

[(i)](j) [When] If the [commissioner] Commissioner determines that the tentative tuition rate(s) [or per diem rate] for a 10 month school year or an extended school year established by written contractual agreement is less than the actual [cost per pupil or per diem rate] tuition rate(s) charged for the school year, the approved private school for the handicapped may charge each sending district board of education all or part of the difference owed. The district board of education shall pay the difference on a mutually agreed upon date but not later than the end of the second school year following the year for which the actual cost per pupil is certified.

[(j)](k) The [commissioner] Commissioner shall prepare the contract and the form to establish the [estimated actual cost per pupil and per diem rate] tentative tuition rate for the ensuing school year.

(1) The Commissioner shall calculate and publish a list of maximum salaries by job title and county. Maximum salaries shall be based on the highest contracted salaries of certified staff in local public school districts for any prior year indexed by the Statewide average increase

in salary between the two preceding school years for each job title. Under no circumstances shall the maximum salary calculated be less than the corresponding salary in the prior year for the same job title and county. For the purpose of this list, the maximum salary of the private school director shall be based on the title, chief school administrator/district superintendent. Other unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities.

6:20-4.2 New private schools for the handicapped

(a) For the first two years of operation of [a] **an approved** private school for the handicapped which was first in operation after the 1985-86 school year, the estimated actual cost per pupil and per diem rate at each site or in each program shall be established annually and be based on budgeted allowable costs. These estimated cost(s) shall be submitted to the [Department of Education] **Commissioner** for approval or disapproval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the [commissioner] **Commissioner** which shall provide for, but not be limited to, the following:

1.-6. (No change.)

(b) If the [Department of Education] **Commissioner** approves the estimated actual cost(s) per pupil, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per pupil for the first two years of operation.

(c) If, after each year of operation, the [commissioner] **Commissioner** determines that the actual cost per pupil or per diem rate differs from the estimated cost per pupil or per diem rate, the tentative tuition charges shall be adjusted in accordance with the provisions of N.J.A.C. 6:20-4.1.

6:20-4.3 Bookkeeping and accounting

(a) An approved private school for the handicapped shall maintain accounting and bookkeeping systems as prescribed in a publication issued by the Department of Education in accordance with the following standards:

1.-2. (No change.)

3. Fixed asset expenditures of \$1,000 or more shall be capitalized and depreciated using the straight line method **and a useful life consistent with current Federal tax law except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.**

4.-5. (No change.)

6. A chart of accounts issued by the [Department of Education] **Commissioner** shall be maintained by each **approved** private school for the handicapped. Each expenditure or revenue account utilized shall be reflected on the **approved** private school's general ledger. The **approved** private school shall be restricted to those account categories listed in the chart of accounts.

7. If multiple [sites] **facilities** for a private school have been approved, financial information shall be segregated by [site] **facility** in the bookkeeping records. If both a 10 month school year program and extended school year program have been approved, financial information shall be segregated by program in the bookkeeping records. Bookkeeping records shall include, but not be limited to:

i.-vi. (No change.)

8. (No change.)

9. A payroll shall be prepared and supported by the employee time record in a format prescribed **or approved** by the [Department of Education] **Commissioner**, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at least semi-monthly.

10. A financial report prescribed by the [Department of Education] **Commissioner** shall be prepared at a minimum each quarter for the 10 month program and once at the end of the session for the extended school year program. This report shall be submitted to the school's governing body. Acceptance of the financial report shall be documented in the minutes of the meetings.

11. (No change.)

12. [A] **An approved** private school shall use the [Department of Education] contract **prescribed by the Commissioner** for each pupil received from a local school district.

13. An approved private school which incurs contingent pay increases shall have in place an employee contract which contains the criteria by which the increase shall be paid. The payment of such increase must be paid if the contractual contingencies are met. The contract shall contain at least the following items:

i. The date and signature of both the staff member and authorized school representative;

ii. The specific performance or contingency which shall be met to generate the increase;

iii. The specific dollar amount or percentage of original contracted salary to be paid.

14. An approved private school for the handicapped which incurs merit pay increases shall have adopted a formal board policy which outlines the criteria of the merit pay plan(s). The plan(s) shall be filed with the Commissioner who may exclude from tuition any merit award(s) if the sole purpose of the award(s) is to avoid returning unexpended tuition funds to public schools. The plan(s) shall include the following:

i. Eligibility for all employees;

ii. Basis by which the pay is earned;

iii. The amount of the awards by plan(s);

iv. The maximum number of awards to be given by plan(s) for each year;

v. The date of board approval and date of initiation of the plan(s).

[13.]15. [An imprest] A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed [\$500.00] **\$1,500** and, except in the case of an emergency, no disbursement shall exceed [\$50] **\$150.00**.

Recodify existing 14.-15. as 16.-17. (No change in text.)

[16.]18. A mileage record shall be maintained for each school-owned vehicle, [or] leased vehicle **or vehicle contained in a related party transaction involving the purchase of transportation services** in a format prescribed by the [Department of Education] **Commissioner**.

[17.]19. Upon request from the [Department of Education] **Commissioner**, a profit-making **approved** private school shall provide a copy of the Internal Revenue Service (I.R.S.) corporate tax return to the Department of Education. A non-profit **approved** private school shall provide a copy of I.R.S. form 990.

[18.]20. [A] **An approved** private school shall maintain all pertinent financial record(s) for a period of seven years.

[19.]21. A non-profit **approved** private school for the handicapped shall file a copy of its corporation dissolution papers with the [Department of Education] **Commissioner** within 90 days of dissolution. Such papers shall include the total dollar amount transfer of the working capital fund (public school placement restricted fund balance) and the name of the recipient non-profit corporation.

(b) **An approved private school for the handicapped which receives a refund(s) from a current or prior year expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged, which will reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.**

6:20-4.4 Non-allowable costs

(a) A cost which is not allowable in the calculation of the certified actual cost per pupil includes the following:

1.-2. (No change.)

3. **Costs other than those governed by (a)52 below associated with lobbying in an attempt to influence:**

i. **The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or**

ii. **The introduction of Federal legislation, State legislation or State rulemaking or the enactment or modification of any Federal legislation, State legislation or State rulemaking.**

[3.]4. The salary of a professional staff member who is not certified but is functioning in a position requiring certification **in accordance with N.J.A.C. 6:11;**

Recodify existing 4.-5. as 5.-6. (No change in text.)

[6.]7. A salary in excess of [the highest salary paid in any school year to] **the associated maximum salary determined in N.J.A.C.**

6:20-4.1(1) for a certified [or non-certified] employee [in a similar job title in a local school district in the same county that the private school for the handicapped is located]. Part-time or split-time positions [will] shall be prorated;

[7.]8. [A] The salary [for a] of the director of [a] an approved private school in excess of the [highest] maximum salary [paid in any school year to a chief school administrator in a local school district in the same county that the private school for the handicapped is located] determined in N.J.A.C. 6:20-4.1(1);

9. A salary of an employee not covered by (a)7 or 8 above, who does not hold a professional license or certificate or a bachelor's degree from an accredited institution commensurate with the job function, in excess of the lowest maximum salary in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1) when such employee is in a position which does not require certification or such employee, pursuant to a "save harmless" provision, is serving in a position requiring certification without such certification. The Bureau of Teacher Certification will determine if the individual meets the requirements;

10. A salary of an employee in a position covered by (a) 9 above, who holds a professional license, or certificate or bachelor's degree from an accredited institution commensurate with the job function, in excess of the maximum salary in the same or similar job title in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1). The Bureau of Teacher Certification will determine if the individual meets the requirements;

11. The cost of fringe benefits which are based on a non-allowable salary;

[8.]12. A legal, accounting or consultant fee resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The [commissioner] Commissioner shall determine whether the challenge is frivolous by considering at least the following factors:

- i. Overall merit of the claim; and
- ii. (No change.)

[9.]13. A consultant fee for professional services which does not include at least a detailed list of the nature of the professional services provided, the number of days worked, the charge per day and the product or outcome of the consultation. Professional services are services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which requires knowledge of an advanced type in a field of learning and is acquired by a prolonged, formalized course of specialized instruction and study. The consultant shall hold the appropriate school certification when such certification exists;

Recodify existing 10. as 14. (No change in text.)

[11.] 15. Depreciation unacceptable under [federal tax law and regulation] N.J.A.C. 6:20-4.3(a)3 and depreciation on:

- i.-ii. (No change.)
- iii. A single item costing below [\$500.00.] \$1,000; and
- iv. Autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F;

[12.]16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of handicapped children;

[13. Costs incurred for the entertainment of a school officer or employee for a non-school related activity or any related item such as meals, lodging, rentals, transportation and gratuities;]

17. Total annual costs in excess of \$500.00 incurred for the entertainment of school employees, school officers, consultants and/or individuals providing professional services;

Recodify existing 14. as 18. (No change in text.)

[15.]19. The cost of a fine or penalty which results from a violation of or failure by the school to comply with a Federal, State and/or [a] local law or rule;

Recodify existing 16. as 20. (No change in text.)

[17.]21. Fringe benefits when the benefits are determined in an arbitrary or capricious manner rather than on an existing written uniform [established] policy based on an equitable standard of distribution, such as years of service or education or when the benefits are not an initial inducement for employment;

Recodify existing 18.-19. as 22.-23. (No change in text.)

[20.] 24. Interest costs on loans when:

- i. (No change.)
- ii. The loan is a less-than-arm's length/related party transaction which has not been previously approved by the department;
- iii. (No change.)

Recodify existing 21.-28. as 25.-32. (No change in text.)

33. The cost associated with a professional conference and/or meeting for a non-employee or employee whose position would not warrant attendance at the event;

34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available which shall be documented by the airline or travel agent;

Recodify existing 29.-30. as 35.-36. (No change in text.)

[31.]37. The cost of staff salary, [a supply] supplies or printing and reproduction of a material for a research activity;

Recodify existing 32.-33. as 38.-39. (No change in text.)

[34.]40. Transportation costs for a pupil to and from school;

[35.]41. Any costs associated with a school-owned vehicle, [or] leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;

Recodify existing 36.-38. as 42.-44. (No change in text.)

[39.]45. [Certain costs] Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution of his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but not be limited to:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the [Department of Education] Commissioner, signed by the property owner and notarized;

ii.-iii. (No change.)

iv. Cost of personal services paid to a related party when such services are provided by [the salaried] an employee or consultant of the approved private school acting as an employee or agent of the related party[;]. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year including, but not limited to wages, salaries, management fees and fringe benefits;

v. Cost of the purchase of services in excess of the actual allocated costs of ownership (such as salaries, fringe benefits, insurance, operation, maintenance, straightline depreciation) incurred by the related party owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The purchase agreement shall include a list of anticipated costs to be incurred by the related party, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

46. Cost of a less-than-arm's length/related party transaction when the related party does not provide documentation to support the actual costs of ownership to the Commissioner when requested and does not allow the Commissioner access to such information for review and audit during normal business hours. Documentation shall include, but not be limited to:

- i. The related parties' tax returns; and
- ii. The related parties' paid bills and cancelled checks concerning the transaction.

47. Rental costs under sale and leaseback arrangements in excess of the amount that would be incurred had the organization continued to own the property;

48. Costs of a salary increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6:20-4.3(a)13 or 14 or the merit pay award(s) are not consistent with the plan(s) on file with the Commissioner;

49. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6:20-4.1(d);

50. Cost of the year-end certified audit prepared by an individual who does not meet the requirements contained in N.J.A.C. 6:20-4.8(a);

51. Costs charged to account categories other than those reflected in the chart of accounts issued by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)6;

52. Costs for membership in civic, business, technical and professional organizations when the cost is:

i. Not reasonably related to the value of the services or benefits received;

ii. For membership in an organization which devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of handicapped pupils and such activities are not subsidized by sources other than membership fees from private schools for the handicapped;

iii. Not an established annual rate charged to all members but one which is periodically adjusted during the year; or

iv. Not supported by an annual affidavit signed by the organization's board of directors indicating that all legal and lobbying costs not directly associated with the educational instruction programs for handicapped pupils were funded by sources other than dues from private schools for the handicapped.

53. Salary of a staff member which is not properly supported by the employee time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)9; and

[40.]54. A cost found to be patently unreasonable by the Commissioner or his or her representative(s) or the independent auditor/accountant.

6:20-4.7 Calculation of pupil attendance

(a) Each approved private school for the handicapped shall maintain a public school register for recording pupil attendance in accordance with N.J.A.C. 6:20-1.3.

(b) Each approved private school for the handicapped shall submit the school summary register [card (A-38)] annually to the [Department of Education] Commissioner by September 1 to verify the average daily enrollment for the previous school year.

6:20-4.8 Audit requirements

(a) [Each approved private school for the handicapped shall annually submit to the commissioner by November 1, regardless of the fiscal year of the school, a certified audit from an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who shall hold an uncanceled registration license as a public school accountant for New Jersey based on the July 1 to June 30 school year.] Regardless of the fiscal year of the school, each approved private school for the handicapped shall, by November 1 of each year, submit to the Commissioner a certified audit based on the July 1 to June 30 school year. The audit shall be prepared by an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey; the accountant shall hold an uncanceled registration license as a public school accountant of New Jersey. Independence will be determined in accordance with standards set forth in the Code of Professional Ethics issued by and available from the American Institute of Certified Public Accountants. Additionally, an accountant shall not be considered independent if such accountant or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the private school for the handicapped.

(b) The audit shall follow audit standards and a format established and published by the [Department of Education] Commissioner.

(c) The certified audit shall determine the certified actual cost(s) per pupil and actual tuition rate(s) charged at the end of the school year.

(d) The auditor and school management shall discuss the results of the auditor's determination of the certified actual cost per pupil in order for management to determine the actual tuition rate charged as a result

of the audit. The actual tuition rate charged shall be an amount equal to or less than the certified actual cost per pupil. The audit report shall contain a letter signed by both the school auditor and an authorized school representative indicating that both parties met and discussed the audit and that the determination of the actual tuition rate charged was a management decision.

(e) Within 60 days of receipt of the year-end audit, management shall develop a corrective action plan in response to recommendations contained in the year-end audit and file such corrective action plan with the Commissioner. When the corrective action is based on the requirements of this subchapter, the Commissioner shall determine if the corrective action is adequate and, when appropriate, require additional action.

(f) The approved private school for the handicapped is precluded from amending the actual tuition rate charged upon certification by the Commissioner.

[(d)](g) Any adjustments necessary as a result of the certified audit or a tuition audit performed by the [Department of Education] Commissioner which are in excess of \$10.00 per sending school district shall be made [as follows:] in accordance with N.J.A.C. 6:20-4.1(i) and (j).

1. In the event the actual tuition rate is less than the estimated tuition rate, the approved private school for the handicapped shall pay each district board of education for such differences no later than June 30 of the school year in which the audit is received or no later than 30 days after an appeal on an audit is finally resolved;

2. In the event the actual tuition rate is more than the estimated tuition rate, a district board of education shall pay the approved private school for the handicapped the difference no later than the end of the second fiscal year following the audit year.]

[(e) If audit adjustments in excess of \$10.00 are necessary, such adjustments shall be made in the manner described in N.J.A.C. 6:20-4.1.]

[(f)](h) Audits filed after the November 1 due date shall cause the estimated actual cost per pupil for the ensuing school year to be calculated based upon the audited actual cost per pupil for the school year two years prior to the current school year, and N.J.A.C. 6:20-4.1[(f)](g) shall not apply.

(i) Failure to comply with this section may result in the Commissioner placing the approved private school for the handicapped on conditional approval status which precludes the school from accepting new pupils.

6:20-4.9 Appeals

(a) The decision of the [Department of Education] Commissioner, regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6:20-4.1[(f)](g), [and] regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6:20-4.2(b) and regarding conditional approval status pursuant to N.J.A.C. 6:20-4.8(i), may be appealed in accordance with N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(b) The decision of the [commissioner's] Commissioner in regard to certification may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27.

6:20-4.10 Out-of-[state] State approved private schools for the handicapped

[(a) The commissioner shall accept a tuition rate for an approved out-of-state private school for the handicapped provided the tuition rate has been approved by the state in which the private school for the handicapped is located.

1. By July 1 of each year, the approved private school for the handicapped shall submit verification of the approval of the tuition rate by the state in which the private school is located to the commissioner on forms prescribed by the Department of Education.

2. An annual independent audit shall be submitted to the Department of Education each year to support the approved rate. Any adjustment necessary as a result of the certified audit shall be made in accordance with provisions of N.J.A.C. 6:20-4.1.

(b) Approved private schools for the handicapped located in states which do not approve a tuition rate shall comply with the provisions of N.J.A.C. 6:20-4.

(c) All approved private schools for the handicapped in which the actual New Jersey pupil enrollment exceeds or is expected to exceed 15 percent of the total school enrollment shall comply with the provisions of N.J.A.C. 6:20-4.

(d) A tuition rate(s) charged to a New Jersey district board of education shall not exceed the rate(s) charged to school districts of the state in which the private school for the handicapped is located.]

(a) Out-of-State private schools for the handicapped shall be approved to provide special education programs by the department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Division of Special Education, the New Jersey Department of Education in accordance with N.J.A.C. 6:28-7.1(f).

(b) The Commissioner shall abide by the tuition regulations for approved private schools for the handicapped adopted by the department of education or other regulatory agency in the state in which the private school for the handicapped is located. The approved private school for the handicapped shall submit verification of the approval of the tuition rate to the Commissioner either on prescribed forms or verification from the out-of-State department of education or other regulatory agency.

(c) If the out-of-State approved private school for the handicapped is located in a state in which the department of education or other regulatory agency does not approve or sanction tuition rates such tuition rates shall be determined in the following manner:

1. The approved private school for the handicapped and the sending school district or state agency that determined the placement shall mutually agree to the tuition rate. The tuition rate must be agreed upon prior to the child's placement and a letter indicating agreement of such rate shall be forwarded to the Commissioner.

2. An approved private school for the handicapped which is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the approved private school, the sending school district and the Department of Human Services, Office of Education. The tuition rate must be agreed upon prior to the child's placement and documentation of such rate shall be forwarded to the Commissioner.

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey school or agency. The cost of the audit contained in N.J.A.C. 6:20-4.8 may be charged to the sending school district(s) or agency which did not mutually agree to the tuition rate.

[(e)](d) An approved private school for the handicapped located in another state shall have bookkeeping and accounting records available for inspection upon request by the [Department of Education] Commissioner.

[(f)] Tuition rates for private schools located in other states shall be based on reasonable costs and shall only include the cost of educational services. Reasonable costs are costs which are ordinary and necessary and do not exceed the costs which would be incurred by an ordinarily prudent person in the conduct of business. Residential, medical costs and ordinary living expenses shall not be included in the tuition rate.]

6:20-4.11 Inspection of records

(a) All financial and accounting records maintained by the approved private school for the handicapped as required by this subchapter shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for the handicapped shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(c) All auditor's workpapers used in the preparation of the year-end audit shall be open for review during normal business hours by the Commissioner or his or her representative(s).

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Custodial Deposits

Proposed New Rules: N.J.A.C. 17:20-1 et seq.

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

Authority: N.J.S.A. 17:16A-1 et seq., 17:20-1 et seq., 17B:18-37 et seq., 17B:18-39.1, 17:46B-1 et seq. and 17:50-1 et seq.

Proposal Number: PRN 1990-465.

Submit comments by October 4, 1990 to:

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

The agency proposal follows:

Summary

P.L. 1989, c.264 (enacted January 4, 1990 and effective July 1, 1990) amended N.J.S.A. 17:20-1 et seq. and 17B:18-37 et seq. regarding the procedures for holding statutory deposits required of all insurers, investment companies and reciprocal insurance exchanges licensed to transact business in this State. Pursuant to these amendments, property and casualty insurers, life and health insurers, investment companies, title insurance companies and reciprocal insurance exchanges are now required to make any deposit with a custodian on behalf of the Commissioner of Insurance (Commissioner). The custodian is appointed by the Commissioner and is selected on the basis of bids submitted by banks to perform such fiduciary functions as the Commissioner deems necessary in the maintenance of deposits pursuant to N.J.S.A. 17:20-1 and 17B:18-37 as amended.

Additionally, P.L. 1989, c.264 amended N.J.S.A. 17:20-1, 17:16A-3 and 17:50-6 to increase the required amount of any statutory deposits for domestic property and casualty insurers, domestic investment companies and domestic reciprocal insurance exchanges, respectively, from \$50,000 to \$100,000. N.J.S.A. 17:20-1 et seq., 17B:18-37 et seq., 17:16A-3 and 17:46B-1 et seq. were also amended to provide that property and casualty insurers, life and health insurers, investment companies and title insurance companies are required to make any statutory deposit in securities. Securities is defined to include only bills, bonds and notes issued by the United States Treasury; debt obligations of the State of New Jersey, its authorities, counties and municipalities; and certificates of deposit of a State or Federally chartered bank, savings bank or savings and loan association, with its principal office in New Jersey.

Finally, sections 4 and 8 of P.L. 1989, c.264 (N.J.S.A. 17:20-3.1 and 17B:18-39.1) provide that the Commissioner shall establish, by regulation, the fees to be charged insurers for the services of the custodian.

In order to implement these statutory amendments and to ensure that insurers are fully apprised of these changes in the custodial procedures, the Department of Insurance (Department) proposes these rules. These proposed rules provide that the fees to be charged depositors and the manner by which such fees are to be paid will be established by contract between the Commissioner and the appointed custodian. The fees to be charged by the custodian are a major factor in the Commissioner's selection of the bank ultimately appointed as custodian.

Additionally, section 12 of P.L. 1989, c.264 (N.J.S.A. 17:20-1.1) provides that whenever the Commissioner is required or authorized by the laws of this or any other State or country to receive and hold a deposit, he or she may utilize the custodial procedures set forth in N.J.S.A. 17:20-1 as amended. Since the types of securities deposited are considered part of the "custodial procedures", these proposed rules provide that whenever an insurer or other entity is required to deposit securities with the Commissioner, the securities must conform with the classes of securities specified in N.J.S.A. 17:20-1 and this subchapter. In order to reduce the depletion of the assets of an insurer in liquidation through the payment of custodial fees, the rules do not apply to insurers in liquidation pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq., as applicable. The Department would maintain the deposits of any insurer in liquidation.

Proposed N.J.A.C. 11:2-32.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:2-32.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:2-32.3 provides for deposits with the custodian and the establishment of the fees to be charged depositors by the custodian.

Proposed N.J.A.C. 11:2-32.4 provides the compliance dates for this subchapter.

Proposed N.J.A.C. 11:2-32.5 sets forth the penalties for violation of this subchapter.

Social Impact

The primary impact on insurers and any other entities required to make a deposit with the Commissioner is that these depositors will be required to make such deposits in the classes of securities specified in N.J.S.A. 17:20-1 and this subchapter. The Department, however, believes this impact to be minimal since most depositors currently have deposits in the required classes of securities.

Additionally, deposits will now be maintained by the custodian rather than the Department, thus reducing any administrative burden imposed on Department personnel in the maintenance of deposits.

Economic Impact

Depositors will be required to pay any required fee to the custodian for its services in the maintenance of deposits pursuant to sections 4, 8 and 12 of P.L. 1989, c.264 (N.J.S.A. 17:20-3.1, 17B:18-39.1 and 17:20-1.1). The Department anticipates a substantial increase in the fees charged for custodial services by the custodian in relation to the fees charged by the Department for such services.

Domestic property and casualty insurers, domestic investment companies and domestic reciprocal insurance exchanges will also be required to increase the amount of their deposits from \$50,000 to \$100,000, to the extent such deposits are not currently \$100,000. Since most depositors currently have deposits in an amount of \$100,000 or more, the Department believes any impact imposed by the increase in the deposit amount to be minimal.

Depositors will further bear any costs associated with substituting the securities currently deposited with securities authorized by N.J.S.A. 17:20-1. However, as was stated in the social impact statement above, the Department believes any impact to be minimal since most depositors currently have deposits in the required classes of securities.

Finally, deposits will now be maintained by the custodian rather than the Department thus reducing the costs to the Department related to the maintenance of deposits.

Regulatory Flexibility Analysis

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

To the extent the new rules apply to "small businesses" they will be businesses transacting insurance in this State or otherwise required to make a deposit with the Commissioner before transacting business in this State. The initial and annual compliance costs would be the fees charged by the custodian for the maintenance of deposits, as established by the contract between the Commissioner and the custodian, and those costs associated with any required substitution of securities. To the extent the proposed new rules apply to "small businesses" they will impose a greater economic burden on "small businesses" in that they will be required to devote proportionately more financial resources to pay the custodial fees and any costs associated with any required substitution of securities.

The proposed new rules implement the intent of the Legislature as expressed in P.L. 1989, c.264. Since this statute provides no differentiation in compliance requirements based on business size and to ensure consistency and uniformity in the maintenance of custodial deposits, no differentiation in compliance requirements is provided based on business size.

Full text of the proposed new rules follows:

SUBCHAPTER 32. CUSTODIAL DEPOSITS

11:2-32.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures for the holding by the Commissioner of any required deposits and to establish the fees to be charged the depositor for the services of the custodian of such deposits pursuant to P.L. 1989, c.264.

(b) This subchapter applies to all insurers required by the laws of this State to make a security deposit to be held for the benefit and security of all the policyholders of the company making such deposit. This subchapter also applies to any other entity required to make a deposit with the Commissioner in order to transact business in this State. This subchapter does not apply to any insurer under liquidation pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq., as applicable.

11:2-32.2 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 State or Federally chartered bank, savings bank, or savings and loan association which has trust powers and which has its principal office in New Jersey.

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

"Custodian" means a bank which performs fiduciary functions in the maintenance of deposits.

"Deposit" means those deposits of securities required to be made by insurance companies prior to their authorization to transact business within any jurisdiction or required to be made by any other entity prior to being authorized by the Commissioner to transact business in this State.

"Federal Reserve book-entry system" means the computerized system sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System or which otherwise have access to this computerized system.

11:2-32.3 Deposits with custodian; establishment of fees

(a) Whenever the Commissioner is required or authorized by a law of this or any other State or country to receive and hold a deposit, such deposit shall be made with the custodian on behalf of the Commissioner. The custodian is appointed by the Commissioner on the basis of bids submitted by banks to perform such fiduciary functions as the Commissioner deems necessary in the maintenance of deposits, pursuant to N.J.S.A. 17:20-1b and 17B:18-37b.

(b) If securities are deposited, such securities must be:

1. Bills, bonds and notes issued by the United States Treasury;
2. Debt obligations of the State of New Jersey, its authorities, counties and municipalities; or
3. Certificates of deposit of a State or Federally chartered bank, savings bank or savings and loan association with its principal office in New Jersey.

(c) All securities deposited shall be held by the custodian in physical form or, in the case of bills, bonds and notes issued by the United States Treasury, purchased for the depositor's account in the Federal Reserve book-entry system.

(d) The fees to be charged the depositor for the services of the custodian shall be established by the contract between the Commissioner and the custodian.

(e) All depositors shall pay the applicable fee to the custodian when due. All depositors shall also pay any applicable fees or penalties charged by the custodian for nonpayment in addition to any penalties which may be imposed by the Commissioner pursuant to law for violation of this subchapter.

11:2-32.4 Compliance dates

(a) All deposits made on or after the effective date of this subchapter shall conform to the requirements contained in this subchapter.

(b) To the extent a depositor has on deposit securities that do not conform with the types of securities specified herein, such depositor shall, by June 30, 1991 or upon the maturity of such non-conforming securities, whichever is sooner, make any substitution of securities necessary so that the securities deposited conform with the types of securities specified in this subchapter.

11:2-32.5 Penalties

Failure to comply with this subchapter may result in the imposition of penalties as provided by law.

(a)

DIVISION OF ACTUARIAL SERVICES**Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance**

Proposed Amendments: N.J.A.C. 11:4-16.4, 16.5, 28.2 and 28.5

Proposed New Rules: N.J.A.C. 11:3-14.8 and 11:3-37

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

Authority: N.J.S.A. 17:1-8, 17:1C-6(e) and 39:6A-4.3.

Proposal Number: PRN 1990-466.

Submit comments by October 4, 1990 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 6 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 ("FAIR Act"), amends the personal injury protection option selections set forth at N.J.S.A. 39:6A-4.3. Section 6 requires that a new option be provided in automobile policies which would allow named insureds to choose the primary coverage provider for medical expenses incurred for the treatment of injuries resulting from an automobile-related accident ("medical expenses").

Currently, medical expenses are covered through an insured's personal injury protection benefits ("PIP") which are part of the required benefits for automobile insurance policies sold in New Jersey. Beginning January 1, 1991, New Jersey residents will be permitted to choose, on new or renewing automobile policies, whether primary coverage for medical expenses will be provided by the automobile insurer through the automobile policy's PIP provisions ("traditional coverage"), or by a health benefits provider through one or more health benefits plans ("alternative coverage"). When the alternative coverage selection is made, Section 6 requires that the automobile insurer reduce the PIP provision premiums in recognition of the reduced potential for exposure with respect to payment of medical expenses.

Section 6 also provides that if an insured who is subject to the alternative coverage option selection does not have health coverage at the time an accident occurs, then the automobile carrier will provide PIP benefits for that insured as if the alternative coverage selection had not been made. However, PIP benefits will be subject to a \$750.00 deductible in addition to the deductible selected on the policy and the statutory copayment requirement of 20 percent for amounts up to \$5,000.

The proposed new rules and rule amendments are designed to address: (1) the order of benefit determination under either the traditional or alternative coverage option selections; (2) the provision of benefits for the insured when a dispute exists on the issue of primacy of coverage; and (3) the calculation of benefits payable by the automobile insurer and health benefits provider under either the traditional or alternative coverage option selection. These new rules and amendments are also designed to make it clear that health benefits providers are prohibited from creating or perpetuating plans that deny benefits based on the existence of PIP benefits.

N.J.A.C. 11:3-37.1 establishes the purpose and scope of proposed new subchapter 37, which is to provide guidelines for the coordination and calculation of benefits between health benefits providers and automobile insurers. This proposed subchapter applies to all health benefits providers and automobile insurers providing coverage or offering to provide coverage to New Jersey residents through policies or contracts delivered or issued for delivery in this State.

N.J.A.C. 11:3-37.2 sets forth definitions of various terms.

N.J.A.C. 11:3-37.3 prohibits health benefits providers from incorporating any language in contracts or policies which would contravene the intent of the FAIR Act or this proposed subchapter. Proposed amendments to N.J.A.C. 11:4-16.4 and 16.5 and N.J.A.C. 11:4-28.2 and 28.5 are also intended to effectuate this prohibition.

N.J.A.C. 11:3-37.4 sets forth the guidelines for the scope of the application of the primary coverage option, that is, the named insured and resident family members of the named insured. It should be recognized that the scope of coverage of an automobile policy may frequently be broader than the scope of coverage of a health benefits plan. Thus, in extended family households, particularly those involving several generations, two or more health benefits plans may commonly be affected by the alternative coverage option selection. Given this fact, and the fact that health benefits plans and the automobile policy are not likely to be coterminous, incidences of (non-fraudulent) failure to have effective health coverage may occur with some frequency during the first years following implementation of the new option.

N.J.A.C. 11:3-37.5 provides automobile carriers with a limited opportunity to verify that a named insured choosing the alternative coverage option has a health benefits plan which indeed will provide primary coverage for the named insured. This proposed rule also provides guidelines for invalidating the option selection, without cancelling the automobile policy.

N.J.A.C. 11:3-37.6 sets forth standards for the order of benefit determination under the alternative coverage option. The main point of this proposed rule is that virtually all health benefits plans of any insured under the specific automobile policy will provide primary coverage when the alternative coverage option is selected. (As provided in proposed N.J.A.C. 11:3-14.8, the PIP plan becomes a secondary coverage vehicle. This is in accordance with the terms of Section 6 of the FAIR Act.)

A distinction is made in this new subchapter between providing primary coverage under the alternative coverage option selection, and providing primary or secondary coverage in accordance with the coordination of benefits rules set forth at N.J.A.C. 11:4-28. Specifically, automobile no-fault benefits plans will no longer be plans with which health benefits providers may coordinate their plans using the rules of N.J.A.C. 11:4-28.

Rather, under these proposed new rules, either the PIP plan is categorized as "primary" and all health benefits plans are categorized as "secondary", or all health benefits plans are categorized as "primary" and the PIP plan is categorized as "secondary". (There may be more than one health benefits plan providing primary coverage, or secondary coverage, to an insured. If that is the case, and if the health benefits plans are group plans, then coordination of benefits may be achieved between the group plans using the coordination rules at N.J.A.C. 11:4-28.)

Some exceptions to these new rules may exist. Health benefits provided through programs or plans funded or owned by the Federal or state governments may be exempt from providing primary coverage. This may also be true for other health plans not subject to regulation by New Jersey. However, an automatic presumption of exemption does not exist.

N.J.A.C. 11:3-37.7 provides the guidelines for calculation of the benefits payment by an automobile insurer when the alternative coverage option is selected (that is, the PIP plan is secondary coverage). The automobile insurer should calculate the benefits it would have paid if the PIP plan was primary coverage. In so doing, (1) calculations are made only for the automobile insurer's recognized eligible expenses, and (2) the calculation is reduced by the policy deductible and statutory copayment amounts. In paying actual benefits, the automobile insurer is not required to exceed the medical fee schedule amounts for expenses, but the automobile insurer must (1) consider all remaining uncovered allowable expenses, whether or not such items of expense would be eligible expenses from the automobile insurer's viewpoint, and (2) not require actual satisfaction of the PIP deductible or statutory copayment amounts by the insured.

For example, the billed charges for an insured's medical expenses are as follows:

$\$2,000 + \$2,000 + \$500 + \$250 + \$250 = \$5,000.$

The health benefits provider determines the reasonable charges for the eligible expenses are as follows:

$\$1,900 + \$1,600 + \$420 + \$240 + \$200 = \$4,360.$

After satisfaction of a \$200.00 policy deductible and 20 percent copayment requirement, the health benefits provider pays the insured \$3,328 in benefits:

$(\$4,360 - \$200) - [(\$4,360 - \$200) (.20)] = \$3,328.$

The automobile insurer has determined that the reasonable charges for eligible expenses, had PIP coverage been primary, would have been as follows:

$$\$1,800 + \$1,750 + \$450 + \$230 + \$200 = \$4,380.$$

The automobile insurer notes that after application of a PIP deductible of \$250.00 and the statutory copayment requirement, it would have paid the insured \$3,304 in benefits:

$$(\$4,380 - \$250) - [(\$4,380 - \$250) (.20)] = \$3,304.$$

However, in considering the charges for remaining uncovered allowable expenses—and not exceeding the fees listed in the medical fee schedules—which includes the \$200.00 deductible and \$832.00 copayment amounts under the insured's health benefits plan, the automobile insurer determines it owes \$1,192 in benefits:

$$(\$0 + \$150 + \$30 + \$0 + \$0) + (\$200 + \$832) = \$1,192.$$

The remaining charges of \$480.00 represent charges in excess of the medical fee schedules.

N.J.A.C. 11:3-37.8 restates the statute in establishing guidelines to be followed by the automobile insurer in the provision of PIP benefits when the alternative coverage option has been selected, but the specific insured has no health coverage in effect at the time the insured is injured in an automobile accident. This rule also provides that the automobile insurer may recoup the premium reductions provided on the policy during the contract period in which the automobile-related accident occurred.

N.J.A.C. 11:3-37.9 sets forth the standards for determining the order of benefits payable and calculating the benefits to be paid when the traditional coverage option is selected. Health benefit providers, in some circumstances, may choose not to consider (1) charges on remaining allowable expenses which exceed those charges already recognized by the automobile carrier (in accordance with the medical fee schedules), and (2) items of expense which were determined not to be eligible expenses by the automobile carrier. However, in no manner is this permissive provision to be construed as allowing or requiring the breach of any contract which may exist or be created between a health benefits provider and its insureds or health care providers.

For example, the billed charges for an insured's medical expenses are: $\$2,000 + \$2,000 + \$500 + \$250 + \$250 = \$5,000.$

The automobile insurer determines reasonable charges for the eligible expenses are:

$$\$1,800 + \$1,750 + \$450 + \$230 + \$200 = \$4,380.$$

After satisfaction of the \$250.00 PIP deductible and 20 percent copayment amounts, the automobile insurer pays the insured \$3,304 in benefits.

The health benefits provider determines that reasonable charges on eligible expenses would have been \$4,360 had the health benefits provider been providing primary coverage. After application of the plan deductible of \$200.00 and the plan's 20 percent copayment requirement, the insured would have received benefits from the health benefits provider totalling \$3,328. The maximum benefits the health benefits provider will provide in this case, however, is \$1,696, the total remaining on the uncovered allowable expenses.

Proposed N.J.A.C. 11:3-37.9 would allow the health benefits provider to pay benefits of only \$1,076, which is the equivalent of the PIP deductible (\$250.00) and statutory copayment amount (\$826.00). The remaining \$620.00 in billed charges is considered to be charges in excess of the medical fee schedules.

However, if the health benefits provider has an agreement to pay a health care provider amounts which may exceed the medical fee schedule amounts, that agreement is to be honored by its own terms. Likewise, if a health benefits provider has contracted to provide benefits of 80 percent on all eligible expenses on an indemnification basis, it cannot breach that contract with its covered members. Thus, if an item of expense appears as an eligible expense in the health benefits plan's schedule, it cannot be summarily excluded for coverage because the automobile carrier excluded it. Rather, the health benefits plan's terms of "necessary and reasonable" would apply. Moreover, if a covered member had already paid all of the remaining uncovered charges, the health benefits provider cannot withhold benefits in excess of the automobile insurer's recognized medical fee schedule amounts. The health benefits provider must indemnify the insured in accordance with the terms of the health benefits plan contract.

Additionally, health benefits providers may not make the provisions of benefits for remaining uncovered allowable expenses contingent upon the order of receipt of health care provider charges (see proposed N.J.A.C. 11:3-37.9(d) and (e)).

N.J.A.C. 11:3-37.10 sets forth standards for the information required to be disclosed by the automobile insurer on an explanation of benefit

form which is to be provided with the payment of benefits. This form should facilitate communication between the automobile insurer and health benefits provider. It should also alert insureds to the eligible expenses and charges determined to be reasonable by the automobile insurer and health benefits provider.

N.J.A.C. 11:3-37.11 establishes that when a dispute exists between a health benefits provider and an automobile insurer over the issue of primacy of coverage, the health benefits provider shall provide benefits as if no PIP benefits existed. Disputes may occur when a health benefits provider claims an exemption from compliance with these proposed rules, but there is a question as to the validity of the exemption. Disputes may arise when it is unclear that an individual is an insured under an automobile policy in which the alternative coverage option has been selected.

N.J.A.C. 11:3-37.12 is a penalty provision applicable to both automobile insurers and health benefits providers.

N.J.A.C. 11:3-37.13 provides that the rules of the subchapter are severable.

Social Impact

In enacting the FAIR Act, the Legislature intended to provide New Jersey residents with a means by which to obtain some relief from the automobile insurance premiums they have been paying. Selection of the Section 6 alternative coverage option will provide that relief for many residents.

Economic Impact

Consumers who choose the alternative coverage option should see a reduction in their premiums associated with PIP. Automobile insurers should also see an overall reduction in their costs related to PIP benefits. However, the lower PIP costs for automobile insurers will be partially offset in the early years of implementation of the Section 6 alternative coverage option because of added administrative costs associated with verification procedures and enhanced communications with insureds and health benefits providers. (Note, however, that verification of the validity of the alternative coverage option is voluntary at this time.)

Health benefits providers are expected to see an increase in costs. Virtually no health benefits plans previously provided first dollar coverage for medical expenses when PIP benefits were available. The increase in costs for these plans, therefore, will be noticeable almost immediately, and may be substantial. The actual cost increase will depend, of course, upon the number of covered members choosing the alternative coverage option and the total medical expenses incurred resulting from the option selection.

However, health benefits providers who provide secondary coverage may also see their costs increase as the automobile carriers begin to utilize the medical fee schedules. Additionally, health benefits providers whose plans do not comply with the FAIR Act and this new subchapter may still incur increased costs if they neglect to inform their covered members that they should not choose the alternative coverage option. These health benefits providers may have to provide coverage for the additional \$750.00 deductible. (It should be noted that the additional \$750.00 deductible is not a penalty, but rather is a cost containment measure for the automobile carrier which had not fully factored in the cost of providing PIP benefits as the primary provider for that insured.)

The increase in costs for health benefits providers will have a ripple effect. Premium increases will affect group and individual policies. Increases in the cost of providing group coverage will impact upon employers, union groups and trade associations. Changes in costs for health benefits providers and market competition may affect health care service provider contracts as well.

The full potential of the ripple effect is uncertain. Health benefits providers are considered to be more efficient than automobile insurers. Generally, health benefits providers are able to provide insureds a higher level of benefits while incurring a lower expense per dollar of benefits paid. Thus, while the initial impact of the alternative coverage selection may result in increased costs (and premiums) for health benefits coverage, the more efficient nature of the health benefits provider is expected to eventually contain and possibly drive down those costs. In the long-term, it is anticipated that costs (and premiums) will stabilize, resulting in a positive impact for health benefits providers, automobile insurers and consumers.

The Department of Insurance anticipates an increase in policy and rate filings as both automobile carriers and health benefits providers move to implement the Section 6 option. Costs associated with these increased filings are expected to be absorbed by current Department of Insurance resources.

Regulatory Flexibility Analysis

The Department of Insurance is uncertain whether any "small businesses" (as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.) will be impacted by the proposed amendments and new rules. There are no new reporting or recordkeeping requirements, but the new rules and amendments will require new standards of compliance for both insurers and health benefits providers with respect to policy forms and coverage. Additionally, unless an insurer currently is using an Explanation of Benefits ("EOB") form which meets the criteria of N.J.A.C. 11:3-37.10, insurers must develop and implement a new, complying EOB.

However, no measures are being proposed which would effectively minimize the adverse economic impact on small businesses, if any. DOI determined that it would be impractical in this instance to differentiate application of the amendments and rules between insurers and health benefits providers based on their size. There are too many variables involved, and it is probable that consumers would be the party most often injured by compliance (or noncompliance) errors. Regulatory flexibility measures would tend to defeat the intended purpose of Section 6 of the FAIR Act, which does not provide for a difference in application of the statute based on an insurer's or health benefits provider's size, or any other criteria.

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

11:3-14.8 Application of the option to choose health care insurance coverage as the primary insurer

When an insured or prospective insured elects to have a health insurer provide primary personal injury protection medical expenses benefits, the medical expense benefits available to the insured under his or her automobile policy's personal injury protection provisions shall become a secondary benefits provider. The order of benefit determination shall be in accordance with N.J.A.C. 11:3-37.

11:4-16.4 Policy definitions

(a) Except as provided hereafter, no health insurance policy delivered or issued for delivery in this State shall contain definitions respecting the matters set forth below unless such definitions comply with the requirements of this section.

1. "Accident", "accidental injury", "accidental means", shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characteristics.

i. "Injury" shall not be defined more restrictively than accidental bodily injury sustained by the insured person which is the direct cause of the loss, independent of disease, bodily infirmity or other cause, and which occurs while the insurance is in force.

(1) Such definition may provide that injuries shall not include injuries for which benefits are provided under workers' compensation, employer's liability or similar law, [compulsory motor vehicle no-fault plan, unless prohibited by law,] or injuries occurring while the insured person is engaged in any activity pertaining to any trade, business, employment or occupation for wage or profit.

2.-17. (No change.)

11:4-16.5 Prohibited policy provisions

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

(l) No policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

1.-7. (No change.)

8. Treatment provided in a government hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law [, or any mandatory motor vehicle no-fault law]; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

9.-12. (No change.)

(m)-(q) (No change.)

11:4-28.2 Definitions

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

...

"Plan" means coverage with which coordination is allowed. The definition of "plan" in the group contract must state the coverages which will be considered in applying the COB provision of that contract. The right to include a coverage shall be limited by 1 through 3 below.

1.-2. (No change.)

3. A "plan" may include:

i.-iii. (No change.)

iv. Group hospital indemnity benefit amounts exceeding \$150.00 per day; and

[v. The medical benefits coverage in automobile "no-fault" and traditional "fault" type contracts; and]

[vi.]v. Medicare or other governmental benefits, except those benefits as provided in 4vii below. This part of the definition of "plan" may be limited to the hospital, medical and surgical benefits of the governmental program.

4. (No change.)

...

11:4-28.5 Prohibited coordination; benefit design

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

(c) No contract delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver of endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the contract on the grounds that such expenses or services would be covered under an automobile no-fault medical benefits plan for which the covered member would be eligible.

SUBCHAPTER 37. ORDER OF BENEFIT DETERMINATION BETWEEN AUTOMOBILE PERSONAL INJURY PROTECTION AND HEALTH INSURANCE**11:3-37.1 Purpose and scope**

The purpose of this subchapter is to establish guidelines for the order of benefit determination between a plan of health insurance and personal injury protection provided through an automobile policy, when a named insured elects to have his or her personal injury protection become secondary coverage for the provision of benefits for medical expenses incurred due to injuries sustained in an automobile accident. The provisions of this subchapter shall apply to all automobile policies, as that term is defined at N.J.S.A. 39:6A-2a, issued to New Jersey residents, or renewed on or after January 1, 1991, and to all health plans which have been or will be delivered or issued for delivery in this State.

11:3-37.2 Definitions

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

"Actual benefits" means those benefits determined to be payable for allowable expenses.

"Allowable expense" means a medically necessary, reasonable and customary item of expense covered by an insured's health benefit plan(s) or PIP plan as an eligible expense, at least in part. When a plan provides benefits in the form of services, the reasonable monetary value of each such service shall be considered as both an allowable expense and a paid benefit.

"Benefits" means the provision of the following in consideration of payment of premiums or fees on a prepaid or postpaid basis:

1. Services, including supplies;
2. Payment of expenses incurred;
3. A combination of 1 and 2 above; or
4. An indemnification.

"Eligible expense" means:

1. In the case of health benefits plans, that portion of the medical expenses incurred for treatment of an injury which is covered under the

terms and conditions of the plan, without application of the deductible(s) and copayment(s), if any.

2. In the case of PIP plans, that portion of the medical expenses incurred for treatment of an injury which, without considering any deductible and copayment, shall not exceed:

- i. The percent or dollar amounts specified on the medical fee schedules, or the actual billed expense, whichever is less; or
- ii. The reasonable amount, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an incurred medical expense is not included on the medical fee schedules.

"Health benefits provider" means any person, whether subject to the regulation of the New Jersey Department of Insurance, Department of Health, or both, or not otherwise subject to such regulation, who contracts to provide health services, provide reimbursement for the cost of health services in whole or in part, or to provide for indemnity in the event health services are used, in return for a prepaid or postpaid premium or fee or other consideration, including but not limited to:

1. Insurers, as defined at N.J.S.A. 17B:17-2;
2. Hospital service corporations, as defined at N.J.S.A. 17:48-1;
3. Medical service corporations, as defined at N.J.S.A. 17:48A-1;
4. Health service corporations, as defined at N.J.S.A. 17:48E-1;
5. Health maintenance organizations, as defined at N.J.S.A. 26:2J-2;
6. Dental service corporations, as defined at N.J.S.A. 17:48C-2;
7. Dental plan organizations, as defined at N.J.S.A. 17:48D-2;
8. Medicare;
9. Medicaid;
10. State Employees Health Benefits Plan;
11. CHAMPUS;
12. Self-insured programs; and
13. Certificates delivered to New Jersey residents on a policy or contract issued and delivered in a state other than New Jersey.

"Hospital expenses" means at least those expenses defined at N.J.S.A. 39:6A-2f.

"Injury" means bodily injury sustained by an insured as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile.

"Insured" means a person eligible for coverage, at least in part, for medical expenses incurred for treatment of injuries, under an automobile policy PIP medical expense provision, and who meets the definition of a named insured or family member.

1. Named insured means the person identified as the insured in the automobile policy and that person's spouse, if the spouse is a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage for that spouse shall continue until the full term of any policy period in effect at the time of the cessation of residency has expired. The term includes only natural persons under individual policies.

2. Family member means any relative of the named insured or the named insured's spouse who:

- i. Is related to the named insured or named insured's spouse by blood, marriage, adoption or guardianship;
- ii. Resides in the household of the named insured or spouse of the named insured; and
- iii. Is not a named insured under another automobile policy.

"Medical expenses" means expenses for medical, surgical and dental treatment, professional nursing services, hospital expenses, rehabilitation services, diagnostic services, ambulance services, prosthetic devices, medications and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery, dentistry, psychology or chiropractic in accordance with this State's laws, or by persons similarly licensed in other states or nations, or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

"Medical fee schedule" means that list of services, procedures and supplies to which has been assigned a maximum fee or percentage of a fee payable by an automobile insurer for expenses incurred as a result of the rendering to an insured any of those specific services, procedures or supplies for injuries, which list is promulgated in accordance with N.J.S.A. 39:6A-4.6.

"PIP" means personal injury protection coverage provided as part of an automobile insurance policy, specifically those provisions for medical expenses coverage.

"Plan" means any policy, contract, certificate, booklet, evidence of enrollment, program, or other such term which evidences the existence of a relationship between a health benefits provider or PIP carrier and an insured with respect to the provisions of hospital, medical, surgical, dental and/or other health care related benefits, at least in part.

"Primary coverage" means coverage by any plan which determines its actual benefits payable on allowable expenses incurred by an insured for treatment of injuries without taking into consideration the existence of any coverage for which the insured may be eligible provided secondary in accordance with this subchapter. There may be more than one plan providing the insured primary coverage.

"Secondary coverage" means coverage by any plan which determines its actual benefits payable on all allowable expenses incurred by an insured for treatment of injuries after all plans providing primary coverage have considered expenses incurred and paid actual benefits.

11:3-37.3 Health benefits providers

(a) Nothing in this subchapter shall be construed as requiring any health benefits provider to offer, provide, or continue coverage to or for any individual or group, except as may be set forth by other laws of this State, or of the Federal government.

(b) Nothing in this subchapter shall be construed as requiring any health benefits provider to provide coverage for any treatment or service not otherwise covered under the terms of the applicable health benefits plan.

(c) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991 shall contain any provision, rider, waiver of endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that such expenses or services would be covered under an automobile policy PIP provision for which the insured would be eligible had the named insured on the automobile policy not selected the PIP-as-secondary coverage option.

11:3-37.4 Application of the PIP-as-secondary coverage option

(a) When a named insured elects the PIP option, whereby the named insured intends that medical expenses incurred for treatment of an injury are to be covered by a health benefits provider or providers, as evidenced on the Coverage Selection Form, then the medical expense provisions of the PIP coverage shall be considered to be secondary coverage for the purposes of the order of benefit determination, and all health benefits plans of an insured subject to the PIP option elected shall be considered to be primary coverage.

(b) The election by the named insured to make PIP medical expense provisions secondary coverage shall apply to only the named insured and family members of the named insured who reside in the named insured's household and are not named insureds under other automobile policies.

(c) The election by the named insured to make PIP medical expense provisions secondary coverage shall continue in force as to subsequent renewal or replacement policies until the automobile policy insurer or its authorized representative receives a properly executed written request revoking the selection of this option.

(d) In the event that an insured is ineligible for health plan coverage of medical expenses when an injury occurs, despite the selection of the PIP-as-secondary coverage option by the named insured, benefits shall be provided to the insured through PIP coverage in accordance with N.J.A.C. 11:3-37.8.

11:3-37.5 Health benefit plan standards and the PIP premium reduction

(a) An automobile insurer may eliminate the premium reduction on the base rate applicable to the amount of medical expense benefit chosen in conjunction with the PIP-as-secondary coverage option election if the automobile insurer verifies that the coverage specified by the named insured excludes payment of expenses incurred by an eligible insured for injuries when expenses are eligible expenses under an automobile policy's PIP provisions, or an insured's health benefit plan provides that

it is always secondary, or otherwise will not be a primary provider of benefits.

(b) An automobile insurer shall notify a named insured no later than 35 days after the first premium due date on the policy if the automobile insurer determines that the health benefits plan(s) specified by the named insured contain exclusionary or restrictive coverage provisions as set forth in (a) above, and, therefore, the named insured's premium reduction for PIP medical expense benefits will be eliminated. The notice shall be in writing and shall specify the reasons why the automobile insurer believes the named insured's health plan coverage is not in compliance with this subchapter.

1. The automobile insurer may demand payment of the premium reduction difference, but the automobile insurer shall not terminate the policy for nonpayment of the premiums before the 60th day after the named insured was notified of the automobile insurer's belief in the error in the reduction and intent to recover the premium due.

2. The automobile insurer shall permit the insureds under the automobile policy at least 45 days following notification of the elimination of the premium reduction to provide proof of coverage which satisfies the standards of (a) above.

3. If the insured provides payment of the full premium amount and subsequently provides proof that coverage is not restricted in the manner set forth in accordance with (a) above, the automobile insurer shall refund the monies paid in excess of the full reduction, or shall credit any excess paid on the reduced premium to the extent any premium payment for the PIP medical expense coverage is still unpaid on the policy.

11:3-37.6 Order of benefits determination when PIP is secondary coverage

(a) When the named insured of an automobile policy has selected the PIP-as-secondary coverage option, all health benefit plans for which the insured is eligible shall provide coverage for the allowable expenses incurred by the insured due to an automobile-related injury prior to any benefits for medical expenses being paid by a PIP plan.

(b) If the insured is eligible for coverage under more than one group health benefits plan, the group health benefits plans may coordinate benefits with one another in accordance with the rules set forth for such plans at N.J.A.C. 11:4-28.

(c) The PIP plan shall provide benefits for allowable expenses remaining uncovered after all health benefit plans for which the insured is eligible have paid benefits towards those allowable expenses.

(d) The PIP plan shall continue to be liable for expenses related to the same occurrence as the expenses are incurred, whether or not the health benefit plan(s) in force at the time of the accident terminate(s) coverage, or benefits provided under the health benefit plan(s) are exhausted subsequent to the occurrence of the accident, up to the maximum PIP benefits available to the insured under the terms of the automobile policy.

(e) Total benefits paid by an insured's health benefit and PIP plans shall not exceed the amount of total allowable expenses.

11:3-37.7 Determination of PIP medical benefits payable when PIP is secondary coverage

(a) In calculating the actual benefits to be paid by the automobile insurer when the PIP-as-secondary coverage option has been selected, the automobile insurer shall first determine the amount of eligible expenses which would have been paid after application of the deductible and copayment limitations had the PIP-as-secondary-coverage option not been selected.

1. In the event the remaining allowable expenses are less than the benefits calculated pursuant to (a) above, the automobile insurer shall pay actual benefits equal to the remaining allowable expenses, without reducing the remaining allowable expenses by its deductible or copayments.

2. In the event the remaining allowable expenses are greater than the benefits calculated pursuant to (a) above, the actual benefits paid by the automobile insurer shall be the benefits calculated pursuant to (a) above, without reducing the remaining allowable expenses by its deductible or copayments.

(b) In paying actual benefits, the automobile insurer shall not:

1. Reduce its actual benefits payable on account of any deductibles or copayments of the health benefit plans which have provided benefits

ahead of the PIP plan due to the selection of the PIP-as-secondary coverage option; or

2. Reduce its actual benefits payable for any allowable expense remaining uncovered which item of expense otherwise would not be an eligible expense under the PIP plan, except as set forth by (c) below.

(c) In determining remaining uncovered allowable expenses, the automobile insurer shall not consider any amount for items of expense which exceed the dollar or percent amounts recognized by the medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6.

(d) The total amount of benefits to be provided through the PIP medical expense provisions for each insured per accident or occurrence shall not exceed the maximum PIP benefits as provided for by the terms of the policy.

11:3-37.8 Health benefits plan coverage ineligibility

(a) When, subsequent to the selection of the PIP-as-secondary coverage option by a named insured, it is determined that an insured did not have health coverage in effect at the time of an injury, then the insured shall be provided benefits for incurred medical expenses through the PIP medical expense provision.

1. Benefits payable shall be subject to a per accident deductible equalling the total of \$750.00 plus the PIP deductible selected by the named insured of the policy.

2. Benefits payable shall be subject to a 20 percent copayment for amounts less than \$5,000 after the deductible has been satisfied.

3. Determination of the amount of benefits payable shall be made in accordance with medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6, or on a reasonable basis, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an item of expense is not included on the medical fee schedules.

4. Total benefits paid for each insured eligible for benefits in any one accident shall not exceed the maximum PIP benefits provided for by the terms of the policy.

(b) All items of medical expense incurred by the insured for treatment of an injury shall be eligible expense to the extent the treatment or procedure from which the expenses arose is recognized on the medical fee schedules, or are reasonable medical expenses in accordance with N.J.S.A. 39:6A-4.

(c) The automobile insurer shall be entitled to recover, for the contract period in which the automobile-related injury occurred, the difference between the reduced premiums paid on the policy and the amount of premium which would have been due on the policy had the named insured not selected the PIP-as-secondary coverage option, and no premium reduction shall be provided on that policy for the PIP-as-secondary coverage option during the remainder of that current contract period.

11:3-37.9 Determination of benefits when PIP is primary coverage

(a) When no election has been made by a named insured to make his or her health benefits plan(s) primary coverage provider(s), so that the PIP plan will provide primary coverage for medical expenses incurred for treatment of injuries, the PIP plan shall provide benefits to the insured without consideration of any benefits for which the insured may be eligible under any health benefits plan.

(b) Actual benefits paid by the PIP plan shall be for all medical expenses which are eligible expenses incurred for treatment of injuries, subject to application of the deductible provided for by the terms of the automobile policy, and a 20 percent copayment requirement for amounts incurred after the deductible and up to \$5,000.

(c) Actual benefits payable by a health benefits plan, when the PIP plan is providing primary coverage for medical expenses incurred for treatment of injuries, shall be the lesser of the remaining uncovered allowable expenses or the actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

1. Actual benefits payable may be reduced by the deductible(s) and copayment requirements applicable by the terms of the health benefits plan, and shall not exceed the amount of actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

2. Allowable expenses remaining uncovered, which the health benefit plan(s) shall consider when the PIP plan is providing primary coverage, include:

- i. Any PIP deductible(s);
- ii. Any PIP copayment amounts;
- iii. Any expenses which exceed the medical expense coverage limits of the PIP plan per person per accident, as set forth by the terms of the automobile policy; and
- iv. Any expenses not covered by the PIP plan when such expense was determined to be in excess of the reasonable charge for an item of expense not listed on the medical fee schedules, but for which the automobile insurer determined a reasonable charge based on the medical fee schedule for a similar item of expense in the region where the service or equipment was provided.

3. Allowable expenses remaining uncovered, which the health benefits plan(s) may not consider when the PIP plan is providing primary coverage, include:

- i. Any amounts of expenses which exceed the dollar or percent amounts recognized in the medical fee schedules; and
- ii. Any items of expense determined by the PIP plan not to satisfy the reasonable medical expense requirements of N.J.S.A. 39:6A-4.

(d) When a health benefits plan provides hospital expense or service benefits only, or medical expense or service benefits only, and is not otherwise a part of a basic health benefits package, all allowable expenses remaining uncovered shall be considered by that health benefits plan for the provision of benefits, without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by that health benefits plan for the allowable expenses remaining uncovered shall not exceed the total actual benefits which would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

(e) When there is one health benefits plan providing insureds hospital expense or service benefits and another health benefits plan providing insureds medical expense or service benefits as two separate parts of one basic health benefits plan package, the hospital benefits plan and the medical benefits plan shall both consider all allowable expenses remaining uncovered and shall apportion such allowable expenses between the two plans in equal amounts without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by each plan of the health benefits plan package shall not exceed the total actual benefits which would have been payable had the health benefits plan package been providing primary coverage.

(f) No insured shall be liable to a health care provider for any fees for services or supplies which exceed the dollar or percentage amounts recognized for those services or supplies on the medical fee schedules.

(g) No health care benefit plan shall seek repayment from or withhold payment to an insured for amounts paid to the insured in consideration of charges which were in excess of the amounts set forth in the medical fee schedules.

(h) If there is more than one group health benefits plan providing secondary coverage to an insured, these plans may coordinate their benefits with one another in accordance with N.J.A.C. 11:4-28.

11:3-37.10 Explanation of benefits

(a) Automobile insurers shall develop and utilize an explanation of benefits form to be provided with the payment of benefits for expenses incurred for treatment of injuries which clearly identifies and explains the following:

1. Each procedure for which a claim has been made;
2. Eligible expenses related to each procedure with an indication of whether the eligible expense is based on the medical fee schedules or is the reasonable charge as determined by the automobile insurer;
3. Actual benefits paid;
4. The deductible applied; and
5. A concise explanation why any item of expense is considered an ineligible expense, when this occurs.

11:3-37.11 Dispute as to primacy of coverage

If, subsequent to the selection of the PIP-as-secondary coverage option by the named insured, injuries are sustained by an insured eligible for health benefits plan coverage, but a dispute exists between the health benefits provider and the automobile insurer, then the health benefits

provider shall provide benefit as if it were the primary coverage provider and no PIP benefits were available to the insured. In no event shall the provision of benefits be unreasonably delayed by either a health benefits provider or an automobile insurer.

11:3-37.12 Penalties

Each automobile policy or health benefits plan subject to the terms of this subchapter which fails to comply with the terms herein shall be in violation of this subchapter. Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties in accordance with the laws of this State.

11:3-37.13 Severability

If any provision of this subchapter or application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Notice of Comment Period Correction

Automobile Insurance

Appeals from Denial of Automobile Insurance and Insurance Producer Solicitation Under the "Fair Automobile Insurance Reform Act of 1990"

Proposed Amendment: N.J.A.C. 11:17A-1.2

Proposed New Rules: N.J.A.C. 11:17A-1.7 and 11:3-33

Take notice that the comment period deadline set forth in the notice of proposal for the proposed amendment to N.J.A.C. 11:17A-1.2 and proposed new rules N.J.A.C. 11:17A-1.7 and 11:3-33, published in the August 20, 1990 New Jersey Register at 22 N.J.R. 2457(a), is in error. The correct deadline for comments on the proposal is September 19, 1990.

Submit comments by September 19, 1990 to:

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

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF DENTISTRY

Delegation of Physical Modalities to Unlicensed Dental Assistants

Proposed New Rule: N.J.A.C. 13:30-8.17

Authorized By: New Jersey Board of Dentistry, Samuel Furman, D.D.S., President.

Authority: N.J.S.A. 45:6-3 and 45:6-50(h).

Proposal Number: PRN 1990-454.

Submit comments by October 4, 1990 to:
William Gutman, Executive Director
Board of Dentistry, Room 510
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Dentistry is proposing a new rule at N.J.A.C. 13:30-8.17 which would allow unlicensed assistants to administer certain physical modalities in limited circumstances. This new rule is the result of a Petition for Declaratory Ruling filed with the Board on February 23, 1988

by a Board licensee. The petitioner requested a ruling on the permissibility of delegating certain physical modalities in connection with the dental treatment of head and facial pain and temporomandibular joint disorders. Following a public hearing held on November 30, 1988, at which petitioner and various experts addressed the Board concerning the appropriateness of delegating these modalities, a Board committee recommended that a rule be promulgated permitting such delegation to unlicensed assistants.

The proposed new rule limits the physical modalities which may be delegated to heat, cold, ultrasound and electrogalvanic stimulation. The Board has specifically prohibited the application of transcutaneous electrical nerve stimulation ("T.E.N.S.") and phonophoresis by unlicensed individuals because these modalities must be performed by a dentist, a physical therapist or another appropriate health care provider in the dental office. The proposed rule requires licensees to determine when and how to use the delegated modalities; it sets forth conditions under which the modalities may be delegated and enumerates standards for licensees in regard to examining the patient, assessing the risks of treatment, determining all components of treatment and instructing and supervising the unlicensed assistant. The proposed new rule also makes clear that patients with injuries or diseases requiring prolonged treatment, if not treated personally by the dentist, must be referred to a licensed physical therapist or other appropriate health care provider.

Social Impact

With the adoption of this new rule, the Board will eliminate any uncertainty existing among its licensees as to which physical modalities may be properly delegated to unlicensed employees and will provide precise standards for licensees in regard to their responsibilities in delegating these modalities. Furthermore, this new rule will aid the Board in carrying out its statutory duty of promoting the public health, safety, and welfare by establishing guidelines for the delegation of certain duties to unlicensed personnel. The social impact of the proposed new rule will be beneficial in that clear delineation of modalities that may be administered by unlicensed personnel will protect the consumer of dental services.

Economic Impact

The proposed new rule may result in a decrease in the fees charged for the application of the four specified modalities because the dentist's fees for his or her own time may be reduced.

The dentist who delegates these modalities may realize the economic benefits associated with having more time in which to render other professional services.

Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable.

The Board of Dentistry currently licenses approximately 19,500 individuals. The proposed new rule will affect all dentists who choose to delegate to their unlicensed assistants the administration of four specified physical modalities. The proposed new rule does establish reporting and recordkeeping requirements designed to assure that the public's health and safety will be protected. Prior to each patient's treatment, the licensee is required to provide the unlicensed assistants with complete written instructions concerning all components of the treatment to be performed at the present visit. In addition, each licensee who employs unlicensed assistants to perform physical modalities must submit written notice to the Board and must maintain a written document, to be submitted to the Board upon request, listing the names of all such unlicensed assistants and outlining the instructions given to each. Compliance requirements include providing instruction to and ascertaining a satisfactory level of education, competence and comprehension of each unlicensed assistant in regard to all modalities used prior to the use of any modality by an unlicensed assistant. The Board does not anticipate that licensees will require professional services beyond those normally utilized in a dental practice in order to comply with these requirements.

There are no initial capital costs or need for professional services. It is impossible to estimate the annual cost of compliance since the instruction required to be given to unlicensed assistants will vary greatly depending on individual ability, staff turnover, etc. Because these requirements are designed to protect the public's health and safety, no exemption is possible regardless of the size of the practice.

Full text of the proposed new rule follows:

13:30-8.17 Delegation of physical modalities to unlicensed dental assistants

(a) A dentist may direct an unlicensed assistant to administer to the dentist's patients certain physical modalities in the limited circumstances set forth in this section.

(b) Physical modalities, for the purpose of this section, shall be limited to heat, cold, ultrasound, and electrogalvanic stimulation. An unlicensed assistant shall not be permitted to perform any rehabilitative exercise programs. No other modalities including, but not limited to, transcutaneous electrical nerve stimulation ("T.E.N.S.") and phonophoresis, shall be performed by an unlicensed assistant.

(c) A dentist may direct the administration of the physical modalities by the unlicensed assistant provided all of the following conditions are satisfied:

1. The dentist shall examine the patient to ascertain the nature of the dental condition or disease; to determine whether the application of a physical modality will encourage the alleviation of dentally related pain and the promotion of healing; to assess the risks of the modality for a given patient and the diagnosed condition, injury or disease, and to decide that the anticipated benefits are likely to outweigh those risks.

2. The dentist shall examine the patient prior to each visit and shall determine all components of the treatment to be performed at the present patient visit. This determination shall include all types of modalities to be employed, a delineation of the precise area to which the application of each modality shall be limited, the dosage, wattage, or other applicable setting, the length of the treatment, and any and all other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body or static placement of the applicator. This information shall be written on the patient's chart prior to each patient's treatment after the dentist has examined the patient, and it shall be made available at all times to the unlicensed assistant carrying out the instructions. Each dentist who employs such assistants shall submit written notice to the Board of such employment prior to permitting an unlicensed assistant to perform physical modalities as provided in this section.

3. The dentist shall provide instruction to and shall ascertain a satisfactory level of education, competence and comprehension of each unlicensed assistant in regard to all modalities used in that office prior to the use of any modality by an unlicensed assistant. The dentist shall prepare and maintain a written document listing the names of all such unlicensed assistants and outlining the instructions given to each unlicensed assistant. The dentist shall submit such document to the Board upon request.

4. The dentist shall evaluate the patient prior to any subsequent scheduled application of the modality to ascertain that continued treatment is appropriate and that no contraindications to treatment have become apparent.

5. The dentist shall be physically present in the dental office at all times that treatment orders are being carried out by the unlicensed assistant and shall be within reasonable proximity to the treatment room.

(d) A dentist shall have due regard for the specialized training and experience of registered physical therapists. The application of these physical modalities in cases of injuries, diseases or conditions requiring prolonged treatment, if not administered personally by the dentist, shall normally be referred to a licensed physical therapist or other appropriate health care provider.

(e) On a health insurance claim form pertaining to such service and requiring certification by the dentist, the dentist shall identify the specific modality applied and shall not generically identify the treatment as physical therapy.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Submission and Handling of Information Which May be Entitled to Confidential Treatment Pursuant to N.J.A.C. 52:27F-18(d)

Proposed Readoption with Amendments: N.J.A.C. 14A:7

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 52:27F-18(d).

BPU Docket Number: AX90080776.

Proposal Number: PRN 1990-467.

A public hearing concerning this proposal will be held:
Monday, September 24, 1990, at 10:00 A.M.
Board's Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by October 4, 1990 to:
Eugene J. Byrne, Esq.
Regulatory Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

On June 15, 1989, then-Governor Thomas A. Kean issued a Reorganization Plan (No. 002-1989) published in the New Jersey Register at 21 N.J.R. 1937 (July 17, 1989), to provide for the increased coordination and integration of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation (Division) from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities (Board).

Pursuant to the plan, the Division, together with all its existing functions, powers and duties, was continued and transferred to the Board. Among the functions, powers and duties transferred was the responsibility and authority requiring the periodic reporting by energy industries of energy information, set forth in P.L. 1977, c. 146, §16 (N.J.S.A. 52:27F-18) and the responsibility and authority for energy emergency planning and preparedness.

The Board will receive significant amounts of information pursuant to its authority to require the periodic reporting by energy industries of energy information which includes, but is not limited to, the following: gasoline prices; petroleum refining capacity; petroleum storage capacity; and such other information as the Board may determine necessary for carrying out the purposes of the Act (N.J.S.A. 52:27F-18).

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 14A:7, Submission and Handling of Information Which May be Entitled to Confidential Treatment, is due to expire on September 16, 1990.

The purpose of the proposed readoption of the rules at N.J.A.C. 14A:7 is to continue the procedures governing the submission and handling of information required to be submitted to the Board which may be entitled to confidential treatment because such information constitutes a "trade secret" and is thus exempt from N.J.S.A. 47:1A-1 et seq. (Right to Know Law). The procedure outlined in the rules provides a presumption of confidentiality when the provider of information claims that it is confidential. The rules require notice and a summary proceeding prior to a final Board determination on the issues of whether the information provided to the Board is entitled to confidential treatment and whether information entitled to confidential treatment may be released to other governmental agencies.

The proposed amendments are language changes which simply reflect the change of the Department of Energy to the Board of Public Utilities.

Social Impact

The proposed readoption of these rules will assist the Board in fulfilling its duty to require the periodic reporting by energy industries of energy information (see N.J.S.A. 52:27F-18(a)). The rules will continue to have a positive social impact because energy industries which are required to

submit information to the Board will be able to provide it with confidence that the submission of such information will not have a negative economic impact on them. Procedures are provided which allow the energy industries to respond to requests that such information be made available to the public under relevant State or Federal law.

Economic Impact

The availability of procedures to protect the disclosure of information entitled to confidential treatment has had positive economic impacts in several respects. First, there is a reduction in the potential economic burden on the provider of information by protecting information which would be likely to cause substantial harm to the provider's competitive position. Second, the Board benefits to the extent that it will receive information necessary for the development of strategies to insure the efficient production, distribution, use and conservation of energy. Third, in times of emergency, the Board has access to information that can ameliorate shortages in energy supplies.

Regulatory Flexibility Analysis

The proposed readoption would continue rules adopted by the former Department of Energy (see 17 N.J.R. 2284(a)). The rules would insure confidentiality of information containing trade secrets which the Board requires to be submitted to it by energy industries. These rules enable such industries to submit such information and at the same time assert a confidentiality claim in respect to all or a part of the information. The readoption imposes no new reporting, recordkeeping or other compliance requirements upon such industries. It does, however, impose minimal procedural requirements which continue opportunities for maintenance of confidentiality.

The procedures set forth in the rules are reasonably designed for asserting and maintaining a claim of confidentiality by businesses whether small or large. No differentiation is therefore provided in the rules based upon the size of the business required to submit energy information required by the Board.

Energy industries are required to submit periodic reports of energy information to the Board. (N.J.S.A. 52:27F-18; Reorganization Plan, (No. 002-1989) published at 21 N.J.R. 1937 (July 17, 1989)). The rules do not distinguish between energy industries, as defined in N.J.S.A. 52:27F-3h and in the proposed readoption, N.J.A.C. 14A:7-1.1, that are "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and those that are not. To the extent that small businesses are affected by the readoption they will benefit from the rules to the same if not a greater extent than large businesses. Small businesses may be less able to protect themselves from the adverse result of disclosures of trade secrets, which may be contained in such reports, than are large businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:7.

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

14A:7-1.1 Scope

The rules in this chapter are promulgated pursuant to N.J.S.A. 52:27F-19(d). They shall govern the submission and handling of information which may be entitled to confidential treatment because such information constitutes a trade secret.

14A:7-1.2 Definitions

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

"Authorized agent" means any person who is duly authorized by the [department] Board to perform work in connection with the conduct of the [department's] Board's business.

"Board" means the New Jersey Board of Public Utilities.

["Commissioner" means Commissioner of the New Jersey Department of Energy.]

"Confidentiality claim" means a claim that information is entitled to confidential treatment because such information constitutes a trade secret.

["Department" means the New Jersey Department of Energy.]

["Trade secret" means the whole or any portion or phase of any scientific, technical, or otherwise proprietary information, design, process, procedure, formula, or improvement which is used in one's business and is secret and of value; and a trade secret shall be

presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.]

"Energy industry" means any person, company, corporation, business, institution, establishment, or other organization of any nature engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy.

"Trade secret" means the whole or any portion or phase of any scientific, technical, or otherwise proprietary information, design, process, procedure, formula, or improvement which is used in one's business and is secret and of value; and a trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

14A:7-1.3 Confidential information

(a) Any energy industry requested by the [department] Board to submit information pursuant to N.J.S.A. 52:27F-18 may assert a confidentiality claim covering part or all of the information by following the procedures set forth in [subsections] (b) and (g) below.

(b) Any energy industry submitting information pursuant to N.J.S.A. 52:27F-18 to the [department] Board and asserting a confidentiality claim covering such information shall submit two documents to the [department] Board. The first document shall contain all the information requested by the [department] Board, including any information which the energy industry claims to be entitled to confidential treatment. The second document shall be identical to the first report except that it shall contain no information which the energy industry claims to be entitled to confidential treatment. If all submitted information is claimed to be confidential, no second document is required.

(c) (No change.)

(d) All parts of the text of the first document which the energy industry claims to be entitled to confidential treatment shall be underscored. Parts already determined by the [department] Board to be entitled to confidential treatment shall be so labeled.

(e) (No change.)

(f) If all the information has been already determined by the [department] Board to be entitled to confidential treatment, only one document is required to be submitted and the top of each page shall display the heading "CONFIDENTIALITY DETERMINED."

(g) The energy industry submitting the documents shall send them to the [department] Board official who requested the information by certified mail return receipt requested, by personal delivery, or by other means which allows verification of the fact of receipt and the date of receipt.

14A:7-1.4 Confidentiality determinations

(a) Information claimed to be entitled to confidential treatment will be treated as confidential until the [department] Board receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information.

(b) After receiving such request, the [department] Board shall make a confidentiality determination. The [department] Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state that a request for the information has been made and that the energy industry that submitted the information may, within [thirty] 30 days of notification, submit a request to the [department] Board for a summary proceeding. The request should include evidence to support a claim that the information is entitled to confidential treatment. The evidence may include, but is not limited to, affidavits, records, other documents, and a statement, which shall be as detailed as possible without disclosing any information which the energy industry claims to be entitled to confidential treatment, indicating:

1.-3. (No change.)

(c) The [department] Board shall review the evidence. If after such review, the [department] Board determines that the information is not entitled to confidential treatment, the [department] Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. Such determination shall be made after consideration of the applicable criteria in N.J.A.C.

14A:7-1.5. The notice shall state the basis for the determination, that a party may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1[-1 et seq.] and 1:21[-1 et seq.], within 10 days of the determination and that, if the request for confidentiality was not granted and a hearing is not requested the [department] Board will make the information available to the public on the tenth working day after the date of the energy industry's receipt of the written notice.

(d) If the [department] Board determines that the information is entitled to confidential treatment, the information shall not be deemed to be public records and shall be exempt from the requirements of N.J.S.A. 47:1A-1 et seq., pursuant to N.J.S.A. 52:27F-18(d). The [department] Board shall so inform the affected person who made the request for release of the information under N.J.S.A. 47:1A-1 et seq. The notice shall state the basis for the determination and that it constitutes final agency action.

14A:7-1.5 Criteria for confidential determination

(a) Determinations [are] made under N.J.A.C. 14A:7-1.4(d) shall hold that information is entitled to confidential treatment if:

1.-5. (No change.)

6. Disclosure of the information is likely to impair the [department's] Board's ability to obtain similar information in the future.

14A:7-1.6 Access to confidential information

Unless specifically provided for by Federal or State law, no person shall have access to information which has been determined to be entitled to confidential treatment, other than: [department] Board personnel with the express written permission of the [Commissioner or his or her] Board or its designate, Federal agencies, State agencies, or other governmental entities, subject to the provisions of N.J.A.C. 14A:7-1.7 or authorized agents of the [department] Board subject to the provisions of N.J.A.C. 14A:7-1.8.

14A:7-1.7 Disclosure of confidential information to Federal agencies, other State agencies, and municipal agencies

(a) The [department] Board may disclose information entitled to confidential treatment to federal agencies, other State agencies, and municipal agencies if:

1. The [department] Board receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency. The request must set forth the official purpose for which the information is needed;

2. The [department] Board notifies the other agency of its determination that the information is entitled to confidential treatment;

3. The other agency has first furnished to the [department] Board a written opinion from that agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the energy industry that submitted the information to the [department] Board to disclose such information to the other agency; and

4. (No change.)

(b) After determining that it will release the confidential information, the [department] Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis of the determination. If within 14 days of notification of proposed disclosure, the provider of such information requests in writing that the [department] Board reconsider its decision to release the information, the [department] Board shall conduct a summary proceeding. The request should include evidence to support a claim that the [department's] Board's determination was incorrect. The evidence may include, but is not limited to, affidavits, records, and other documents.

(c) If a timely request for reconsideration has been made by the provider of such information, the [department] Board shall review the evidence and its prior determination. If after such review, the [department] Board determines that it will release the confidential information, the [department] Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the release of the confidential information, and that the [department] Board will make the

information available to the requesting governmental agency on the tenth working day after the date of the energy industry's receipt of the written notice. If the [department] **Board** determines that it will not release the confidential information, the [department] **Board** shall so inform the requesting governmental agency. The notice shall so state the basis for the determination and that it constitutes final agency action.

14A:7-1.8 Disclosure of confidential information to authorized agents

(a) The [department] **Board** may disclose information which has been determined to be entitled to confidential treatment to an authorized agent of the [department] **Board** if the [department] **Board** determines that such disclosure is necessary in order for the authorized agent to perform the work in connection with the conduct of the [department's] **Board's** business.

(b) No information shall be disclosed under (a) above, unless there is a written agreement entered into between the [department] **Board** and the authorized agent which provides that the authorized agent and the authorized agent's employees shall use the information only for the purpose of performing the work in connection with the conduct of the [department's] **Board's** business, shall refrain from disclosing the information to anyone other than the [department] **Board** and shall return to the [department] **Board** all copies of the information (and any abstracts or extracts therefrom) upon request by the [department] **Board** or whenever the information is no longer required by the authorized agent for the performance of the work.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications

Disposition of Property of a Casino Licensee or Applicant for a Casino License

Proposed Repeal: N.J.A.C. 19:41-7.2A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-1b(4), 1b(10), 69a and 84e.

Proposal Number: PRN 1990-445.

Submit comments by October 4, 1990 to:

Barbara P. Lampen, P.P., Chief
Bureau of Policy, Planning and Development
Casino Control Commission
3131 Princeton Pike, Building 5
CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Casino Control Act (Act), at N.J.S.A. 5:12-84e, requires that each casino license applicant produce information and documentation to establish the suitability of the casino and related facilities, and that such facilities will not adversely affect overall environmental conditions. In accordance with subsection 84e, N.J.A.C. 19:41-7.2A requires that each casino licensee or applicant submit to the Casino Control Commission (Commission), within two days of execution, a copy of any agreement relating to the lease or purchase of, or option to lease or purchase, any residential, commercial or industrial structure in Atlantic City. The rule further requires that a casino applicant or licensee notify the Commission at least five days in advance of the anticipated demolition of an existing structure in Atlantic City, or of any change in the use or occupancy of a casino applicant's or licensee's real property located in Atlantic City.

At the time of its adoption (see 18 N.J.R. 96(a)), N.J.A.C. 19:41-7.2A was designed to facilitate Commission oversight of a large volume of casino industry real estate transactions, particularly property acquisition, change of use, demolition and relocation of tenants. This period of rapid growth appears to have subsided, however, and casino industry real estate activity has declined substantially in recent years. While 20 filings pursuant to N.J.A.C. 19:41-7.2A were made by casino licensees in 1986,

only five such filings were submitted in 1987, four in both 1988 and 1989 and, to date, three in 1990. Further, the Commission has broad general authority under the Act to obtain, at any time, any information which it deems necessary to ensure that a casino licensee's or applicant's real estate activities are consistent with the Act's redevelopment goals and do not otherwise adversely impact upon Atlantic City or its residents (see N.J.S.A. 5:12-75, 80d, 84e). The Commission has therefore determined that the specific disclosure procedures established by N.J.A.C. 19:41-7.2A are no longer essential to its ability to monitor the effect of the casino industry on the overall development of Atlantic City, and proposes the repeal of that section.

Social Impact

The proposed repeal should not have any adverse impact on Atlantic City, its residents or the casino industry. The Commission retains the authority, under the Act generally and N.J.S.A. 5:12-84e in particular, to direct a casino licensee or applicant to supply information as to real estate holdings and activities, and to respond to property transactions which violate the requirements of section 84e or otherwise adversely impact on the development of Atlantic City or the well-being of its residents.

Economic Impact

The proposed repeal of the informational requirements at N.J.A.C. 19:41-7.2A should not have any adverse economic impact. Pursuant to N.J.S.A. 5:12-84e, the Commission will continue to assess the casino industry's activities in the Atlantic City real estate market, and to ensure that such activities do not adversely impact on Atlantic City or its residents. The proposed repeal will eliminate any administrative costs incurred by the casino industry in providing the routine disclosures required under the present rule.

Regulatory Flexibility Statement

The proposed repeal affects only the reporting requirements of casino licensees and applicants, none of which qualify as a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:41-7.2A [Disposition of property of a casino licensee or applicant for a casino license] (**Reserved**)

[(a) It shall be an affirmative responsibility of each casino licensee or applicant for a casino license, as this term is defined in (b) below, to:

1. Submit to the Commission a copy of all agreements regarding the lease or purchase of, or the option to lease or purchase, any residential, commercial or industrial structure in Atlantic City entered into by the licensee or applicant, or any affiliate of the licensee or applicant. Such submission shall be provided within two days of the execution of the agreement;

2. Notify the Commission of any anticipated demolition by the licensee or applicant, or any affiliate of the licensee or applicant, of any existing structure in Atlantic City within two days of execution of the contract for demolition or at the time of application for a permit to demolish such structure, whichever occurs earlier, but in no event less than five business days prior to demolition. Such notification shall include a description of the property and its use, and the intended use of the site following demolition. The licensee or applicant shall also provide such other information as may be indicated from the materials submitted and requested by the Commission;

3. Notify the Commission of any anticipated change of use or occupancy of any real property of the licensee or applicant, or its affiliate, located in Atlantic City, as soon as the licensee or applicant, or its affiliate, determines to effect such change of use or occupancy, but in no event less than five business days prior to such change. Such notification shall include the full terms and conditions of relocation and a schedule of any tenants who are to be relocated. The licensee or applicant shall also provide such other information as may be indicated from the terms of the agreement and requested by the Commissioner;

4. Be responsible for compliance with the conditions imposed by this section regardless of whether the licensee or applicant, or its affiliate, undertakes any of the enumerated transactions directly or through an agent or intermediary, or through a contract which re-

quires a seller, lessor or other third party, as a condition of sale, lease, option to transfer, to institute relocation proceedings against the tenants, or to demolish or otherwise to alter the present use of any residential, commercial or industrial structure in Atlantic City.

(b) For the purposes of this section an "applicant for a casino license" or an "applicant" means an entity which has submitted the \$100,000 nonrefundable deposit required by N.J.S.A. 5:12-139(c).

(c) Nothing in this section shall be construed to relieve a casino licensee or applicant of its obligation to demonstrate its initial and continued compliance with the requirements of N.J.S.A. 5:12-84(e) in order to obtain or maintain its casino license.]

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

State Park Service

Proposed Repeals: N.J.A.C. 7:2-1 through 10 and 13 through 16

Proposed New Rules: N.J.A.C. 7:2

Proposed Recodification: N.J.A.C. 7:2-11 and 12 to 7:5A and 7:5B

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1B-15.100 et seq., and 13:1L-1 et seq.

DEP Docket Number: 026-90-08.

Proposal Number: PRN 1990-459.

Submit comments by November 5, 1990 to:

Donald J. Stout
Regulatory Officer
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department proposes to repeal the existing State Park Service Code, N.J.A.C. 7:2, and proposes new rules governing the administration, management and use of State parks, forests, recreational areas, historic sites, natural areas, marinas, golf courses, botanical gardens, and other lands, waters and facilities under the jurisdiction of the Department and assigned to the State Park Service in the Division of Parks and Forestry.

The proposed new rules contain extensive substantive revisions and a reorganization of N.J.A.C. 7:2. Existing N.J.A.C. 7:2-11, Natural Areas and the Natural Areas System, has been proposed to be recodified as N.J.A.C. 7:5A with no change in text, and existing N.J.A.C. 7:2-12, Open Lands Management, has been proposed to be recodified as N.J.A.C. 7:5B with no change in text. The proposed new rules at N.J.A.C. 7:2 contain the following new subchapters: subchapter 6, Camping; subchapter 10, Golf Courses; subchapter 12, Hiking Trails; and subchapter 17, Fees for Services and Facilities Provided by the State Park Service.

The proposed new rules provide as follows:

N.J.A.C. 7:2-1 establishes the scope of the chapter and sets forth the definition of various words and phrases as used in the proposed new rules.

N.J.A.C. 7:2-2 sets forth the restrictions pertaining to various uses and activities on State Parks, forests, recreational areas, natural areas, historic sites, marinas, golf courses, botanical gardens and other lands, waters and facilities under the jurisdiction of the State Park Service.

N.J.A.C. 7:2-3 sets forth the restrictions on the use of motorized vehicles, snowmobiles and motorized bicycles on lands and frozen waters under the jurisdiction of the State Park Service.

N.J.A.C. 7:2-4 is reserved.

N.J.A.C. 7:2-5 sets forth restrictions pertaining to specific uses and activities on ocean parks and inland park beaches under the jurisdiction of the State Park Service.

N.J.A.C. 7:2-6 sets forth the restrictions pertaining to camping on land under the jurisdiction of the State Park Service and establishes the procedure for obtaining a camping permit.

N.J.A.C. 7:2-7 sets forth the restrictions and reservation procedures pertaining to the use of any permanent cabin, shelter, lean-to, lodge or other State Park Service building or structure designated by the State Park Service for overnight use by the public.

N.J.A.C. 7:2-8 establishes the restrictions on the use of ramps, docks, boats, canoes, power boats, motorized jet skis, sailboats and ice boating on waters under the jurisdiction of the State Park Service. The subchapter also sets forth restrictions on scuba and skin diving and establishes procedures for boat storage at the Spruce Run Recreation Area.

N.J.A.C. 7:2-9 sets forth the restrictions pertaining to groups of 20 or more persons using or visiting for any purpose any lands or waters under the jurisdiction of the State Park Service and establishes the group reservation procedure.

N.J.A.C. 7:2-10 sets forth the rules pertaining to the use of golf courses under the jurisdiction of the State Park Service.

N.J.A.C. 7:2-11 is reserved.

N.J.A.C. 7:2-12 establishes the restrictions pertaining to the use of hiking trails and sets forth specific restrictions on open fires and camping on hiking trails under the jurisdiction of the State Park Service.

N.J.A.C. 7:2-13 sets forth the general provisions governing the use of marinas under the jurisdiction of the State Park Service and establishes specific procedures pertaining to the application for berth permits, issuance of permits, and the assignment and reassignment of berths.

N.J.A.C. 7:2-14 and 15 are reserved.

N.J.A.C. 7:2-16 establishes restrictions on surf fishing and the use of mobile sport fishing vehicles at Island Beach State Park and sets forth the requirements and procedures for obtaining a surf fishing permit and a mobile sport fishing vehicle permit.

N.J.A.C. 7:2-17 establishes the fees charged for services such as, but not limited to, parking, boat launching, campsites and cabins provided by the State Park Service as specifically allowed at N.J.S.A. 13:1L-19. Although the proposed fee schedule is the first codification of fees for services provided by the State Park Service, the fee schedule for such services is presently implemented in accordance with the policy of the Division of Parks and Forestry.

Social Impact

The proposed rules provide a positive social impact by the regulation of the use of lands and waters under the jurisdiction of the Department and assigned to the State Park Service in the Division of Parks and Forestry for the protection of the natural and historical resources and improvements thereon and for the safety, protection and general welfare of the public. The proposed rules ensure that public use of the natural and historic resources under the jurisdiction of the State Park Service occurs in areas managed for such purposes and under conditions intended to protect such resources and the public.

Economic Impact

The primary economic impact of the proposed rules is the administrative and management costs required by the Department to supervise, manage and administer the natural and historic resources under the jurisdiction of the State Park Service. In addition, the proposed rules include a schedule of fees charged for services such as, but not limited to, parking, boat launching, campsites and cabins provided by the State Park Service as specifically allowed at N.J.S.A. 13:1L-19. The Department recognizes that the fees represent an economic impact on the public; however, the proposed fee schedule has been established to offset the cost of providing the specified services.

Environmental Impact

The proposed rules will provide a positive environmental impact by ensuring proper administration, management and regulation of State parks, forests, recreational areas, natural areas, historic sites, marinas, golf courses, botanical gardens, and other lands, waters and facilities under the jurisdiction of the State Park Service and will permit only those uses, in accordance with the proposed rules, that will be in the best interest of the conservation and preservation of the natural and historic resources and the best interest of the health, safety and general welfare of the public.

Regulatory Flexibility Statement

The purpose of the proposed rules is to regulate the general public's use of all State parks, forests, recreational areas, natural areas, historic sites, marinas, golf courses, botanical gardens and other lands, waters and facilities under the jurisdiction of the Department and assigned to the State Park Service in the Division of Parks and Forestry. Accordingly, the Department has determined, pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that the proposed rules will impose no

reporting, recordkeeping or other compliance requirements upon small businesses. Therefore, no regulatory flexibility analysis is required.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 7:2-1 through 10 and 13 through 16.

Full text of the proposed new rules follows:

CHAPTER 2 STATE PARK SERVICE CODE

SUBCHAPTER 1. GENERAL PROVISIONS

7:2-1.1 Short title

The title of this chapter shall be known as the "State Park Service Code."

7:2-1.2 Scope

This chapter shall constitute the rules of the State Park Service and shall govern the use of all State parks, forests, recreation areas, historic sites, natural areas, marinas, golf courses, botanical gardens, and other lands, waters and facilities under the jurisdiction of the Department of Environmental Protection and assigned to the State Park Service in the Division of Parks and Forestry.

7:2-1.3 Construction

(a) These rules shall be liberally construed to permit the Department, the Division of Parks and Forestry, the State Park Service and its various agencies to discharge its statutory functions.

(b) The Commissioner, the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service may, in the public interest, or in an emergency, relax the application of these rules.

7:2-1.4 Practice where rules do not govern

(a) The Commissioner may rescind, amend or expand these rules from time to time, as in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) The Commissioner, the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service shall exercise their authority in respect to any other matters not governed by these rules.

7:2-1.5 Relationship to Federal and State law

The provisions of this chapter are not intended to and do not relieve any person of the duty to comply with all other valid governmental regulations governing activities regulated under this chapter, including rules of the Department of Environmental Protection, and other appropriate State and Federal agencies.

7:2-1.6 Severability

If any section, subsection, provision, clause or portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter or the application of such section, subsection, provision, clause or portion of this chapter to persons or circumstances, other than those which is held invalid or unenforceable, shall not be affected thereby.

7:2-1.7 Definitions

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

"ATV" means a motor vehicle, designed to travel over any terrain, which is of a type possessing between three to six rubber tires, and powered by a gasoline with a piston displacement engine not exceeding 400 cubic centimeters, but shall not include golf carts.

"Bicycle" means a device upon which any person may ride propelled by human power through a belt, chain or gears, and having either two or three wheels in a tandem or tricycle arrangement.

"Boat" means a small open vessel or water craft propelled by human power by oars, rowing, paddling or pedaling.

"Camping" means the temporary placing of a tent, shelter, lean-to, sleeping bag, bedding material, or recreational mobile camping

units of any type, on State Park Service property for sleeping overnight in an outdoor setting.

"Closed" means a complete prohibition of access except by authorized personnel.

"Closed season" means the time during the year when fish, game, birds, or other animals, may not be captured, taken, killed or had in possession.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Designated bathing area" means any swimming pool, wading pool or the area of a natural or artificially constructed pond, lake, stream, river, bay, tidal waters, ocean or other body of fresh or salt water, which is designated, developed, maintained and operated by the State Park Service for bathing and swimming purposes together with buildings, equipment, and appurtenances, if any, and the land area used in connection therewith.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Parks and Forestry.

"Facilities" means the combination of all State Park Service resources designed or utilized for conservation, recreation, and environmental purposes.

"Family" means a husband, wife and their children.

"Fire" means the phenomenon of combustion manifested in light, flame and heat.

"Mobile sport fishing vehicle" means a four-wheel drive motor vehicle designed to be licensed and operated on the public roadways and highways of the State and capable of four-wheel drive operation when off the public roads on the beach. ATV's, golf carts and specialty vehicles are specifically excepted from this definition.

"Motor vehicle" means any vehicle propelled other than by muscular power, except motorized bicycles and vehicles that run only upon rails or tracks.

"Motorized bicycles" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cubic centimeters or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of no more than 25 miles per hour on a flat surface.

"Officer-in-Charge" means the area Park Superintendent, designated Chief Ranger or other designee of the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service.

"Open fire" means any fire built for cooking or recreational purposes on State Park Service property, outside the confines of a structure, or vehicle, which cannot be immediately shut off.

"Open season" means the time during the year when fish, game, birds, or other animals may be captured, taken, killed or had in possession.

"Overnight facilities" means any permanent cabin, shelter, lean-to, lodge or other State Park Service building or structure designated by the State Park Service for overnight use by the general public.

"Permission" means the written or verbal authority to engage in a use given by a person lawfully designated by the Director to grant such authority.

"Permit" means a formal request on forms supplied by the State Park Service, supported by all necessary data requested by reference on the form, for approval of a use, properly executed and signed by personnel of the State Park Service lawfully designated by the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service to approve such a use.

"Person" means any corporation, company, club, firm, association, society, partnership, joint stock company, governmental agency as well as an individual.

"Power boats" means a vessel or water craft of any type temporarily or permanently equipped with a motor.

"Public use" means a use or right of use available to the general public or some portion thereof for conservation and recreation purposes.

"Sailboat" means any boat whose sole source of propulsion is the natural elements (wind).

"Signs" means any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, instruct, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images.

"Snowmobile" means any motor vehicle designed primarily to travel over ice or snow, or a motor vehicle which uses sled-type runners, skis, an endless belt, treads, cleats, or any combination of those or other similar means of contact with the surface upon which it is operated, but does not include any farm tractor, highway or other construction equipment or any military vehicle.

"Special event (motor vehicle)" means an organized race, exhibition or demonstration of limited duration which is conducted according to an approved prearranged schedule.

"State" means the State of New Jersey.

"State Park" means all State owned or leased lands, waters and facilities administered by the State Park Service including but not limited to, parks, forests, recreational areas, natural areas, marinas, golf courses, botanical gardens, and historic sites, but not including wildlife management areas or reservoir lands.

"State Park Service" means the agency within the Division of Parks and Forestry responsible for planning, designing, developing, operating, and managing State Parks for public recreation, conservation and interpretation.

"Vessel" means a boat or watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water.

"Waters" means all waters within the jurisdiction of the State Park Service, both tidal and non-tidal, and the marginal sea adjacent to State Park Service property.

SUBCHAPTER 2. GENERAL USE

7:2-2.1 Purpose/powers

(a) The rules of the State Park Service are essential for the protection of the natural and historical resources and improvements thereon and for the safety, protection and general welfare of visitors and personnel on properties under the jurisdiction of the State Park Service.

(b) Failure or refusal by any visitor to obey the provisions of this chapter or any other applicable State law shall be sufficient cause for removal and/or prosecution by duly authorized personnel of the State Park Service.

(c) The Director of the Division of Parks and Forestry shall designate by Division Administrative Order those State Park Service personnel to whom law enforcement authority is vested and who are empowered to warn, cite and/or arrest.

7:2-2.2 Designation of land use

The State Park Service shall designate or direct any and all recreational or other use on its lands and waters and within its facilities to such specific areas or locations within or upon said land, waters, and facilities as will be in the best interest of conservation, recreation, preservation and management of the natural and historic resources and the health, safety, and welfare of all persons concerned.

7:2-2.3 Limitation or closing of land and water use

The Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service may limit or close to the public use, specific areas, lands, waters and facilities under its jurisdiction and control as part of a State Park whenever such action is deemed necessary for proper management and operation and/or in the best interest of health, safety and the general welfare of the public.

7:2-2.4 Posting, selling and soliciting

A person shall not post signs or notices, distribute advertisements, beg, solicit, sell or attempt to commit such acts on State Park Service property without the written permission of the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service or their designee.

7:2-2.5 Commercial use

A person shall not engage in commercial enterprise and activities on lands and waters under the jurisdiction of the State Park Service without a permit issued by the State Park Service or pursuant to a contract or lease entered into with the Department.

7:2-2.6 Alcoholic beverages prohibited

A person shall not possess and/or consume alcoholic beverages on lands and waters under the jurisdiction of the State Park Service except where the sale, use or possession is specifically approved by the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service.

7:2-2.7 Dumping, littering and garbage

(a) A person shall not dump or cause to be dumped any litter, trash, refuse, garbage, bottles, pollutants, or any other substances or liquids on the lands or waters under the jurisdiction or control of the State Park Service.

(b) Every person shall place litter in the proper refuse or recycle containers provided.

(c) Garbage, sewage, refuse or waste, including fish or animal parts, shall be left only in the approved containers provided or removed from the area.

(d) Authorized State Park Service waste containers provided are solely for the benefit of the park user, and shall not be used for the deposit of waste or refuse generated in the home, business, or by commercial activities.

(e) A person shall not dump refuse in water fountains, or the plumbing fixtures or vaults of a toilet facility.

(f) A person shall not drain fluids or dump sewage waste or refuse from a trailer or other vehicle except in facilities provided for such purpose and then in accordance with posted instructions.

7:2-2.8 Furred animals and pets

(a) Except as provided in N.J.A.C. 7:2-2.9, all furred animals or other pets are prohibited from buildings, bathing beaches, bathing waters, all camping and overnight facilities, golf courses, and botanical gardens.

(b) Where allowed in areas not listed in (a) above, except as provided in N.J.A.C. 7:2-2.9, the owner of any furred animal or pet shall keep the furred animal or pet caged or held on a leash (maximum length—six feet) and under the immediate control of the owner at all times.

(c) The owner shall be responsible for the animal's or pet's behavior. The owner shall be strictly liable for any nuisance, noise, damage or injury caused by furred animals or pets.

(d) The owner shall be responsible for the prompt and sanitary disposal of the animal's or pet's waste.

(e) The term "owner" as used in this section refers to the person that is responsible for the care of the animal or pet or that physically has control of the animal or pet on or within the State Park Service jurisdiction.

7:2-2.9 Seeing eye, companion and hunting dogs

(a) Seeing eye dogs and companion dogs for the hearing impaired are permitted in any location where their presence is necessary to perform the duty for which they are trained.

(b) Dogs used while hunting during open season, or while used in field trials in accordance with New Jersey fish, game and wildlife regulations, are exempt from the leashing requirement in N.J.A.C. 7:2-2.8(b).

7:2-2.10 Damage to property/tampering

(a) A person shall not abuse, mutilate, injure, destroy, move or remove any plant or animal or natural resource on lands and water under the jurisdiction or control of the State Park Service without having first obtained the permission of the area Officer-in-Charge. Authorized fish, game and wildlife activities excepted.

(b) A person shall not deface, damage, move or remove any furniture, equipment, structure, or physical feature of any kind on lands and waters under the jurisdiction or control of the State Park Service without the permission of the Officer-in-Charge.

(c) A person shall not dig up, deface, or remove any soil, rock, historic or fossil materials or artifacts without written permission of

the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service.

(d) A person shall not disturb, remove, damage, destroy or interfere with the pumps, pipes, gates, wires, dams, works and equipment of the State Park Service incident to the flow of water.

(e) An unauthorized person shall not open or enter any manhole or confined space without the specific approval of the area Officer-in-Charge.

7:2-2.11 Conduct

(a) A person shall not engage in conduct or use language which disrupts, interferes with, is unduly annoying to or prevents the enjoyment or maintenance of State Park Service lands or waters by other visitors or State Park Service personnel.

(b) A person shall not harass livestock, wildlife, or animals lawfully allowed on State Park Service property.

(c) A person shall not use or operate any noise producing machine, vehicle, device, or instrument in a manner that in the judgment of the Officer-in-Charge, or designated law enforcement personnel, is disturbing to other park visitors or employees. In overnight facilities and campsites, the hours of 10:00 P.M. to 6:00 A.M. are designated "quiet hours."

(d) A person shall not block, obstruct or interfere with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway, or common area.

(e) A person shall not occupy or interfere with access to any structure, office, lavatory, or other facility in a manner which interferes with the intended use or maintenance of such structure or facility by visitors or employees.

(f) A person shall not use a public address system on State Park Service property without the permission of the Officer-in-Charge.

(g) A person shall not smoke in areas where smoking is prohibited by posted regulations.

(h) A person shall not use threatening, abusive, boisterous, or insulting language or use indecent gestures towards another person on State Park Service property.

(i) A person shall not play a radio, television, stereophonic systems, musical instrument or other noise producing device in areas posted as "quiet zones."

(j) A person shall not play any audio device including radios, televisions, stereophonic systems or musical instruments when audible beyond their immediate vicinity to the annoyance of others. Consideration shall be given to the nature and purpose of the actor's conduct, impact on others, location and any other factor which would govern the actions of a reasonably prudent person under the circumstances.

(k) A person shall not throw stones, breakable articles or other missiles which might endanger others.

(l) A person shall not spit on walks, sidewalks, paths and structures of any type.

(m) A person shall not loiter in or about any comfort station or other public structure.

(n) A person shall not engage in fighting or other violent conduct which would threaten the well-being and tranquility of the public or State Park Service employees.

(o) A person shall not enter or remain in any State Park Service area between the daily closing and opening time as posted, authorized use excepted.

7:2-2.12 Fires, stoves and lanterns

(a) A person shall not start or maintain any open fire on any lands or frozen waters under the jurisdiction of the State Park Service unless specific approval is given by the Officer-in-Charge or his or her designee. Such approval may include conditions limiting the hours, location, and types of fuel to be used.

(b) All types of fire may be prohibited during periods of high forest fire danger, as determined by the State Forest Fire Warden or by Executive Order of the Governor.

(c) Lighting, tending or using a fire, stove or lantern in a manner that threatens, causes damage to or results in the burning of property, park resources or creates a public safety hazard is prohibited.

(d) On campsites, in overnight facilities and in picnic areas, wood fires shall be lighted only in an established place constructed for the

convenience of the visitors, except when otherwise authorized by the area Officer-in-Charge or posted sign.

(e) Campers and visitors may use dead fallen timber for fuel when authorized by the Officer-in-Charge.

(f) For cooking purposes, portable charcoal grills, gasoline, kerosene, or propane gas stoves may be used in camping overnight facilities and picnic areas, unless otherwise posted or directed by the Officer-in-Charge.

(g) Live charcoal fires shall not be left unattended. All charcoal shall be extinguished and cool to the touch before being left unattended.

(h) A person shall not burn litter, trash, refuse, garbage, pollutants or, except as provided at (d), (e) and (f) above, any other substance or liquids on the lands and waters of the State Park Service without specific approval of the area Officer-in-Charge.

7:2-2.13 Posted signs; issued permits; verbal instructions

(a) A person shall not make use of the lands, waters, conveniences and facilities under the jurisdiction of the State Park Service contrary to posted signs, issued permits, leases or contracts, and written or verbal instructions.

(b) A person shall not enter designated restricted areas declared or posted "closed," "keep-out," "restricted area" or other verbal or posted warning.

7:2-2.14 Changing clothes; nudity

(a) All persons on State Park Service property shall be clothed sufficiently to conform with current commonly accepted standards of dress or recreational wearing apparel.

(b) A person shall not change clothes or disrobe except in the privacy of authorized changing areas, bathhouses, dressing rooms or such other facilities or private areas specifically designated for such purpose.

(c) A person shall not be nude in public on State Park Service property except in the privacy of designated changing areas, bathhouses, dressing rooms or such other private facilities and personal areas specifically designed or designated to allow this activity incidental to washing, showering, changing clothing or personal care.

7:2-2.15 Military use

(a) All use of lands and waters, under the jurisdiction of the State Park Service, for military maneuvers is prohibited except by specifically written authorization of the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service.

(b) Specific written authorization may include designated types of use permitted and may prohibit the use of all live or blank ammunition and pyrotechnics of any type.

7:2-2.16 Metal detectors

A person shall not use metal detectors or similar devices without a permit issued by the Officer-in-Charge. The permit may limit the location, hours, and days of use. Permits will not be issued for use in areas of significant historical or other value, or where such use would be incompatible with protection of the resource and/or interfere with public use of the facility.

7:2-2.17 Target practice; firearms; fireworks

(a) A person shall not engage in target practice with any type firearm or bow and arrow on State Park Service property, except with written permission of the Director of the Division of Parks and Forestry or Assistant Director of the Division for the State Park Service.

(b) A person shall not possess or discharge any firearm, pellet gun, bow and arrow, slingshot or other weapon capable of injuring persons or wildlife while on State Park Service property without the specific approval of the area Officer-in-Charge. Hunters in compliance with the rules of the Division of Fish, Game and Wildlife and this chapter are excepted.

(c) A person shall not possess, or discharge or cause to be discharged any fireworks, firecrackers, explosives, torpedoes, rockets, or other substances which could be harmful to persons without the specific approval of the Director of the Division of Parks and For-

estry or the Assistant Director of the Division for the State Park Service.

7:2-2.18 Restrictions on hunting, fishing, and trapping

(a) A person shall not hunt, fish and/or trap, except on specifically designated lands and waters of the State Park Service. All such use shall comply with the Game Code, N.J.A.C. 7:25-5, and the Fish Code, N.J.A.C. 7:25-6, now in effect or as may subsequently be amended or changed.

(b) A person shall not hunt with a rifle. Hunting with a muzzle loading rifle shall be limited to the prescribed firearm deer season only or any additional special firearm deer season. Area Officers-in-Charge are authorized to allow squirrel and woodchuck hunting with muzzle loaders as conditions of safety warrant in accordance with the Game Code, N.J.A.C. 7:25-5, now in effect or as may subsequently be amended or changed.

(c) The building, erecting, use of or hunting from a permanent type tree stand or hunting blind is prohibited.

(d) Hunting from portable, temporary hunting tree stands or hunting blinds is permitted. However, the hunter using the portable temporary hunting tree stand or hunting blind shall remove it immediately after use.

(e) A person shall not ice fish except in areas specifically approved by the area Officer-in-Charge.

(f) Approved ice fishing shall be in compliance with the provisions of the Fish Code, N.J.A.C. 7:25-6, now in effect or as may subsequently be amended or changed.

(g) Spear fishing is prohibited in all waters under the jurisdiction or control of the State Park Service.

7:2-2.19 Indecency; immorality; profanity

(a) Indecent exposure by any male or female of their genitals, pubic regions, buttocks or the female breast(s) where they may be seen by others is prohibited.

(b) Urinating or defecating in any area other than places designated for such purposes is prohibited.

(c) Addressing, soliciting or attempting to make the acquaintance of another person for immoral or indecent purposes is prohibited.

(d) The use of profanity and indecent language within hearing of another person or persons is prohibited.

7:2-2.20 Swimming/bathing areas

(a) A person shall not swim or bathe in waters under the jurisdiction of the State Park Service except in designated bathing areas open and staffed to allow this activity.

(b) Designated bathing areas shall have posted hours of operation and a person shall not use a designated bathing area contrary to posted regulations.

(c) A person under the age of 12 years shall not be admitted to the swimming pool at Liberty State Park unless the person is accompanied by a person 12 years of age or older.

(d) A person shall not dive head first into any of the waters or pools under the jurisdiction or control of the State Park Service except in designated diving areas posted for this purpose.

(e) A person shall not intentionally give or transmit a false signal or false alarm of drowning in any water area or pool under the jurisdiction or control of the State Park Service.

(f) No motorized vehicles except emergency, maintenance, or law enforcement vehicles, shall be permitted in designated bathing areas during the hours of operation posted under (b) above.

(g) A person shall not use, operate or bring into a designated bathing area any inflatables or floating devices such as rubber innertubes, rubber crafts, surfboards, surfmats, buoys, kites, experimental crafts or any other floating device without the approval of the area Officer-in-Charge or his or her lifeguard designees. United States Coast Guard approved Personal Floatation Devices (PFDs) are excepted.

(h) The area Officer-in-Charge may authorize the temporary use of certain floatation devices on occasion where the use is deemed safe, or during special events, games, tests, experiments or to accommodate the handicapped.

7:2-2.21 Horseback riding

(a) A person shall not ride horseback on property under the jurisdiction of the State Park Service except on designated trails and in areas where horseback riding is allowed.

(b) A horse shall not be hitched or confined in a manner that may cause damage to any tree, shrub, improvement or structure.

7:2-2.22 Restricted recreational activities

(a) A person shall not engage in the following recreational activities on State Park Service lands and waters without specific approval of the Assistant Director of the State Park Service, or the Regional Superintendent or their designee:

1. Parachuting;
2. Hot air ballooning;
3. Hang gliding;
4. Musketry, flint-lock or black powder shooting;
5. Spelunking;
6. Rapelling;
7. Operating remote controlled model planes, boats, cars, or other mechanical devices;
8. Ice sailing/ice boating;
9. Rocketry; or
10. Archeological, geological, botanical, zoological, or paleontological expeditions.

(b) All individuals and groups involved in recreational activities on State Park Service property are subject to the rules and regulations of the State Park Service, N.J.A.C. 7:2, and may be further restricted by the applicable rules and regulations of the Natural Areas System, N.J.A.C. 7:5A, the New Jersey Water Supply Authority, N.J.A.C. 7:11, and the Division of Fish, Game and Wildlife, N.J.A.C. 7:25.

(c) Activities listed in (a) above are not all inclusive. The Assistant Director of the Division for the State Park Service or the Regional Superintendent or their designee must approve any other activity not specifically regulated.

7:2-2.23 Lost articles

All articles found must be turned over to the area Officer-in-Charge or his or her designee. Receipts shall be issued and the article shall be returned to the finder at the end of 90 days if the owner has not claimed the article. Articles not claimed shall be disposed of in accordance with established State Park Service policy.

7:2-2.24 Winter activities restrictions

(a) Skiing, snowshoeing, ice skating, sledding, innertubing, tobogganing, dog sledding and similar winter sports are prohibited on park roads, and in parking areas open to motor vehicle traffic.

(b) Activities listed in (a) above may be approved in areas specifically designated by the Officer-in-Charge.

(c) The towing of persons on skis, sleds or other sliding devices by motor vehicle or snowmobile is prohibited.

7:2-2.25 Bicycles, roller skates, and skateboards

(a) Bicycle riding is allowed and encouraged on all established State Park Service roads, and routes or paths designated for such use, unless restricted by posted signs.

(b) Bicycles and riders shall comply with all applicable New Jersey motor vehicle and traffic laws.

(c) Bicycle riders shall ride as near to the right side of the roadway as practicable.

(d) Persons riding bicycles on a State Park Service road may travel no more than two abreast when traffic is not impeded, but otherwise shall ride in single file except on paths set aside for exclusive bicycle use.

(e) A person riding upon any bicycle shall not attach the bicycle or himself to a motor vehicle or motorized bicycle.

(f) A person shall not practice any tricks or fancy riding on a State Park Service roadway.

(g) Bicycle riders shall not ride other than upon or astride a permanent and regular seat attached to the bike.

(h) A bicycle shall not be used to carry more persons at one time than the number for which it is designed and equipped.

(i) Bicycles shall be equipped with brake and horn or bell.

(j) When used at night or during periods of low visibility, a bicycle shall emit lights front and rear in accordance with motor vehicle and traffic laws.

(k) Roller skates and skateboards are restricted to areas specifically designated by the Officer-in-Charge. The use of roller skates and skateboards on State Park Service roads and parking lots is prohibited.

(l) Bicycles are prohibited on historic sites, walkways, natural trails and hiking trails.

SUBCHAPTER 3. MOTORIZED VEHICLES

7:2-3.1 Identification and license

(a) A person shall not operate any motor vehicle on lands under the jurisdiction of the State Park Service or on established roads under the control of the State Park Service unless the vehicle is properly licensed and registered before it is operated.

(b) A person shall not operate any motor vehicle on lands under the jurisdiction of the State Park Service unless the operator of the motor vehicle shall have in his or her possession a valid operator's license and other documentation required by the New Jersey Division of Motor Vehicles.

7:2-3.2 Unauthorized motor vehicle use

(a) A person shall not operate any motorized vehicle which does not require licensing and registration by the New Jersey Division of Motor Vehicles, on lands and waters under the jurisdiction of the State Park Service unless a permit for operation of said motorized vehicle is issued by the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service.

(b) Any permit granted pursuant to (a) above shall include designated hours and specific locations for operation.

(c) A person shall not operate a motor vehicle upon the ice-covered waters under the jurisdiction of the State Park Service at any time except for the operation of snowmobiles on routes designated by the State Park Service.

(d) A person shall not operate a motor vehicle upon State Park Service property while knowingly allowing any person riding upon any bicycle, coaster, skates, sled, skis, sliding device or toy vehicle to attach the same or himself to the motor vehicle.

7:2-3.3 Conformance to State laws

All motor vehicles operated on lands under the jurisdiction of the State Park Service shall be subject to Motor Vehicle Laws of the State of New Jersey, N.J.S.A. 39-1 et seq., all rules promulgated pursuant thereto, and this chapter.

7:2-3.4 Restriction on operation of motor vehicles

(a) A person shall not operate any motor vehicle on or over any lands under the jurisdiction of the State Park Service except on established public roads or in designated parking areas unless allowed otherwise by posted signs or this subchapter.

(b) A person shall not operate a motor vehicle at anytime on or over any road designated closed by signs or barriers.

(c) A person shall not operate a motor vehicle on or over any cultivated or planted area, transmission line, survey line or in the woods, swamps, bogs, wetlands or fields unless a permit for said specific activity and location is issued by the area Officer-in-Charge.

(d) A person shall not operate an all-terrain vehicle, dirt bike, trail bike, or "off-road" motor vehicle on or over the lands and waters under the jurisdiction of the State Park Service at anytime except that, when an area is so designated by the State Park Service, permits may be granted for organized "special events" to operate on a pre-established course under prescribed conditions.

(e) A person or organization shall not conduct a motor vehicle race, rally, exhibition or demonstration of any type on State Park Service lands and waters without a permit issued by the Officer-in-Charge.

7:2-3.5 Snowmobiles

(a) All use of snowmobiles on lands and frozen waters under the jurisdiction of the State Park Service shall be in conformance with N.J.S.A. 39:3C-1 et seq., the Motor Vehicle laws of the State of New Jersey, the rules promulgated pursuant thereto, and this chapter.

(b) Snowmobiling is only allowed on areas and trails specifically designated for that purpose.

(c) Snowmobiles shall not be operated in a reckless or careless manner or at speeds which are dangerous to persons and/or property.

(d) A person shall not operate a snowmobile while under the influence of intoxicating liquors, narcotics, or hallucinogenic or habit forming drugs.

(e) All accidents involving personal injury or damage to property shall be reported to the Officer-in-Charge of the State park on which the accident occurred as soon as possible after the occurrence.

(f) Any race, rally or organized snowmobile activity shall require application for a use permit and/or scheduling at least five days in advance with the area Officer-in-Charge having jurisdiction over the property to be utilized. The application or request may be denied for reasonable cause.

(g) A person shall not fail or refuse to stop when ordered to do so by authorized enforcement personnel.

(h) On Lake Hopatcong, no snowmobiles shall be operated in excess of 15 miles per hour before 12:00 noon on Sunday.

7:2-3.6 Motor vehicle speed limits

(a) A person shall not travel by motor vehicle on improved roadways under the jurisdiction of the State Park Service at a speed greater than 35 miles per hour unless otherwise posted.

(b) A person shall not travel by motor vehicle on improved (dirt, gravel or sand) roadways at a speed greater than 20 miles per hour unless otherwise posted higher or lower.

7:2-3.7 Parking

(a) A person shall not park any motor vehicle, conveyance or other equipment except in areas designated for parking.

(b) A person shall not park any motor vehicle, conveyance or other equipment so as to block or impede traffic on roadways or paths.

(c) Parking shall be strictly confined to areas designated for that purpose. Temporary parking areas designated by the area Officer-in-Charge may be used to accommodate special functions.

7:2-3.8 Traffic direction

Operators of all motor vehicles, bicycles, equestrians, and pedestrians shall comply with all traffic signs and signals and direction by voice, hand or whistle by duly authorized personnel.

7:2-3.9 Motorized bicycle restrictions

(a) Motorized bicycles which meet the provisions of this subchapter are permitted on State Park Service roadways unless otherwise posted.

(b) In the interest of safety, the Officer-in-Charge is authorized to temporarily prohibit or limit the operation of motorized bicycles.

(c) A person shall not operate a motorized bicycle on any right-of-way of any operating railroad.

(d) A person under the age of 15 years shall not operate a motorized bicycle on State Park Service property.

(e) A person shall not operate a motorized bicycle unless the operator is in possession of a valid drivers license or a motorized bicycle license, a valid registration, a valid insurance identification card and displays a valid license plate. Non-resident motorized bicycle owners shall be required to have complied with registration and licensing laws of the operator's state and shall obey all other State Park Service and New Jersey motor vehicle and traffic laws.

(f) State Park Service rules applicable to bicycles shall apply whenever a motorized bicycle is operated on State Park Service property.

(g) A motorized bicycle shall carry only the operator.

(h) A person shall not operate a motorized bicycle unless the operator wears a protective helmet of a type approved by the New Jersey Division of Motor Vehicles.

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. OCEAN PARKS AND INLAND PARKS
BEACH RESTRICTIONS

7:2-5.1 Trespassing

(a) A person shall not be in, walk on, or travel over any ocean park sand dune, vegetation, or restricted or protected area without specific authorization of the Officer-in-Charge.

(b) A person shall not use areas other than designated trails or posted access paths when going from parking areas or roadways to the beaches.

(c) A person shall not trespass in designated restricted areas posted with "Keep Out," "No Trespassing," "Closed" or "Restricted Area" signs.

7:2-5.2 Entry by boat or other watercraft

(a) A person shall not enter a beach by boat or any other watercraft except in areas specifically designated by the State Park Service for such use.

(b) A person shall not launch or land a boat or any other watercraft except in areas specifically designated by the State Park Service for such use.

7:2-5.3 Fires (open)

(a) A person shall not build or start an open fire on a beach without the approval of the Officer-in-Charge.

(b) A person shall not have a permitted open fire closer than 50 feet to a sand dune or a protected area.

(c) An open fire shall not be left unattended or permitted to cause damage to State Park Service facilities or areas. Every open fire shall be extinguished before users leave the area.

7:2-5.4 Camping/erection of tents and shelters

(a) A person shall not camp on any beach under the jurisdiction of the State Park Service.

(b) A person shall not erect, maintain, use or occupy any temporary tent or shelter or any beach under the jurisdiction of the State Park Service unless there is an unobstructed view through such tent or shelter from at least two sides. Nothing herein contained shall be construed to authorize camping on any beach under the jurisdiction of the State Park Service.

7:2-5.5 Restricted activities

(a) A person shall not jet ski, surfboard, wind sail, windsurf, scuba dive, skin dive, or spear goggles dive, in ocean parks or inland waters under the jurisdiction of the State Park Service without the approval of the Officer-in-Charge.

(b) All underwater diving activities approved under (a) above shall be conducted in accordance with rules promulgated by the New Jersey Boat Regulation Commission, N.J.A.C. 7:6.

SUBCHAPTER 6. CAMPING

7:2-6.1 Camping

(a) A person shall not camp on any State Park Service property, except in areas designated or marked for that purpose by the State Park Service.

(b) A person shall not camp without first having obtained a camping permit and/or site number assignment unless otherwise posted or directed by the Officer-in-Charge. The camping permit fee pursuant to N.J.A.C. 7:2-17.2(a) shall be paid in full and positive identification of the permittee shall be provided prior to issuance of the permit.

(c) A person under the age of 18 years shall not camp on State Park Service property except when accompanied by a parent, guardian or other responsible adult.

(d) A person shall not set up camping outside the designated campsite area.

(e) Digging or leveling the ground at campsites is prohibited unless specifically authorized by the Officer-in-Charge.

(f) Campers shall keep their camping area clean and free of safety or fire hazards.

7:2-6.2 Campsite occupancy limits

(a) Not more than six people shall occupy a campsite unless they are all members of one family. The area Officer-in-Charge may

temporarily authorize a greater or lesser number as conditions may warrant.

(b) Not more than two vehicles of any type shall be parked at a campsite. The area Officer-in-Charge may temporarily authorize a greater or lesser number as conditions may warrant.

(c) Vehicles in excess of the number permitted in (b) above shall be parked at parking areas designated by the Officer-in-Charge. The camper assumes liability for all such parking.

7:2-6.3 Occupancy of campsites

(a) A campsite is considered occupied when it is being used or has been reserved for purposes of camping by a person or persons who have paid the camping permit fee pursuant to N.J.A.C. 7:2-17.2(a) within the applicable time limits. A person shall not take possession or maintain possession of a campsite when informed by a State Park Service sign or employee that such site is occupied or reserved for occupancy.

(b) All camping facilities shall be occupied by the permittee as of the starting time and date indicated on the permit and shall remain occupied by the permittee during the entire period of stay specified on the permit. Occupancy constitutes the payment of the camping permit fee pursuant to N.J.A.C. 7:2-17.2(a), assignment of a site and the posting at the site of the issued campsite identification card. Wilderness campsites are exempt from the campsite identification card requirement (see N.J.A.C. 7:2-6.9).

7:2-6.4 Time limits; overnight camping

(a) In order to afford the public the greatest possible use of the State Park Service camping system, continuous occupancy by the same persons or equipment of any camping site is limited as follows:

1. A person or persons shall not occupy a campsite for more than 14 consecutive days.

2. A person or persons who have occupied a campsite for an initial 14 day limit shall not re-register until seven calendar days have elapsed.

3. Additional camping shall be permitted in intervals up to, but no more than, seven days at a time with a minimum of seven calendar days out-time required between each occupancy.

4. The total maximum camping days in any calendar year shall not exceed 40 days.

7:2-6.5 Removal of equipment and personal property

(a) Occupants shall vacate the campsite by removing all their equipment and personal property prior to noon on the last day of assigned occupancy.

(b) The Officer-in-Charge is authorized to inventory, remove and store for a period of 90 days or until the owner is found, whichever is shorter, any and all equipment and personal property on a camp site which has not been occupied by the owner of the equipment and personal property for any consecutive 24 hour period or which is being used in violation of this chapter or other State law. Payment of a removal fee and storage fee pursuant to N.J.A.C. 7:2-17.2(d) shall be required from the owner before the equipment and personal property is returned. Items not claimed within 90 days after they are removed from the campsite shall be disposed of in accordance with established State Park Service policy.

7:2-6.6 Visitors in campsite

(a) Visitors are allowed in the campsites between the hours of 8:00 A.M. and 8:00 P.M. All visitors shall pay the day user parking fee when applicable pursuant to N.J.A.C. 7:2-17.1.

(b) A visitor shall not be allowed in a campsite between the hours of 8:00 P.M. and 8:00 A.M.

(c) The area Officer-in-Charge may temporarily extend or limit the visitation hours as conditions warrant.

7:2-6.7 Campsite, lean-to's, group campsite reservation procedures

(a) Applications for reservations of designated reserved campsites, lean-to's and group campsites shall be submitted on forms available from the State Park Service. Applications shall not be accepted if received or postmarked prior to November 1 of the year immediately preceding that in which the facility will be used. All applications for designated reserved campsites, lean-tos, and group campsites shall be acted upon on or about November 15 or the first working weekday

thereafter. Reservations are not effective until confirmed in writing by the State Park Service. Reservations shall be confirmed on a first come first served basis subject to the availability of designated reserved campsites, lean-to's and group campsites on the dates for which reservations are requested.

(b) Reservations for a reserved campsite or a lean-to for the period of June 15 through and including Labor Day shall be for exactly a one week (seven nights) or a two week (14 nights) period. No partial weeks permitted.

(c) For the period from the day after Labor Day to June 14, reserved campsites, or lean-to's may be reserved for a minimum of two consecutive nights to a maximum of 14 nights.

(d) Group campsites may be reserved for a maximum period of 14 nights, with no minimum.

(e) All applications for reserved campsites, lean-to's and group campsites, shall include full payment for the reserved period plus the required non-returnable reservation fee. The fees are set forth in N.J.A.C. 7:2-17.2.

(f) More than two non-consecutive reservations for camping shall not be in effect for any group or person.

7:2-6.8 Cancellations and refunds

(a) Reserved campsites, lean-to's and group campsites may be cancelled. A cancellation fee and the non-refundable reservation fee as set forth in N.J.A.C. 7:1-17.2(d) shall be deducted from any refund due.

(b) Refunds shall not be made to persons evicted as a result of violations of this chapter or other State law.

7:2-6.9 Wilderness campsites

(a) A person shall not have a motorized vehicle at designated wilderness campsites.

(b) Everything carried into the wilderness campsite shall be carried out or placed in authorized garbage containers, if provided.

7:2-6.10 Group campsites

(a) Group camping is restricted to areas specifically provided for this purpose.

(b) A camping group is designated as a minimum of seven persons with the maximum limit determined by the area Officer-in-Charge.

(c) If group campsites are not available during the period November 1 to March 31, groups may use up to 50 percent of the available campsites at a State Park, provided there is at least one adult per site, individual campsite rates are paid and the limitation of six persons per site is not exceeded.

7:2-6.11 Group camper supervisor requirements

(a) All groups of campers under 18 years of age shall have a minimum of one adult supervisor 18 years of age or older for each nine campers under 18 years of age in the group.

(b) Adult supervisors of group campers under 18 years of age shall be required to supply a roster of campers under 18 years of age under their supervision to the Officer-in-Charge upon request. The roster shall include each camper's name, address, age and the home phone number of the camper's parent or legal guardian.

7:2-6.12 Emergency transportation

Adult supervisors of group campers under 18 years of age shall have an automobile or other transportation readily available to transport children in the event of an emergency.

7:2-6.13 Emergency camping

The area Officer-in-Charge may permit emergency camping overnight for one night only in a day use area or a portion thereof when extreme conditions warrant. Persons permitted emergency camping shall leave by 8:00 A.M. the following morning and shall be charged the campsite fee pursuant to N.J.A.C. 7:2-17.2(a).

7:2-6.14 Abuse of the camping system

(a) The State Park Service camping system was designed and developed to provide the maximum number of people possible a quality outdoor recreational experience for their appreciation of our natural resources and for their personal relaxation. It is not for the use of persons or groups as a primary or secondary dwelling or as a mailing address.

(b) Camping by persons unable to prove their legal residence elsewhere is prohibited.

(c) Area Officers-in-Charge are authorized to limit or prohibit all camping or any other overnight use which, in their judgment, is contrary to the intended use stated in (a) above.

SUBCHAPTER 7. OVERNIGHT FACILITIES USE

7:2-7.1 Overnight facilities

(a) A person shall not occupy any overnight facility without a permit or the approval of the area Officer-in-Charge.

(b) A person under the age of 18 years shall not occupy any overnight facility except when accompanied by a parent, guardian or other responsible adult.

(c) All overnight facilities shall be occupied on the starting time and date indicated on the permit. The area Officer-in-Charge may reassign any overnight facility not occupied for 24 hours after the prescribed starting time.

(d) The Officer-in-Charge is authorized to inventory, remove and store for a period of 90 days or until the owner is found, whichever is shorter, any and all equipment and personal property in an overnight facility which has not been occupied by the owner of the equipment and personal property for any consecutive 24 hour period or which is being used in violation of this chapter or any other State law. Payment of a removal fee and a storage fee pursuant to N.J.A.C. 7:2-17.2(d) shall be required from the owner before the equipment and personal property is returned. Items not claimed within 90 days after they are removed from the overnight facility shall be disposed of in accordance with established State Park Service policy.

7:2-7.2 Overnight facilities reservation procedures

(a) All applications for reservations of cabins and camp shelters shall be submitted on forms available from the State Park Service. Applications shall be accepted if postmarked or received after January 2nd of the year in which the facilities are to be used. Residents of New Jersey shall have their applications acted upon on a first-come first-served basis or a lottery system of selection, if the demand dictates. Reservations shall not be made by telephone.

(b) After the applications by New Jersey residents have been satisfied, out-of-state residents' applications shall be acted upon on a first-come first-serve basis or a lottery system of selection, if the demand dictates. All applications received after this process is completed shall be acted upon as received.

(c) Reservations for cabins and camp shelters for the use period from June 15 through and including Labor Day shall be only granted for seven consecutive nights or 14 consecutive nights.

(d) From April 1st to June 14th and from the day after Labor Day to October 31st, reservations for cabins and camp shelters shall be accepted for a minimum of two consecutive nights to a maximum of 14 consecutive nights.

(e) When overnight facilities become available for any reason, they may be made available to the general public up to a maximum of 14 nights as directed by the Officer-in-Charge.

(f) Reservations are not in effect until confirmed.

(g) A separate application shall be filed for each facility and period desired.

(h) More than two non-consecutive reservations for overnight facilities shall not be in effect for any person or group.

(i) A non-refundable reservation fee as provided in N.J.A.C. 7:2-17.2(d) shall be charged for each reservation.

(j) Full payment for the reserved period requested, in addition to the reservation fee, shall accompany the reservation application.

(k) Reservations for East Creek Lodge at Belleplain State Forest shall be made for a minimum of two nights to a maximum of 14 nights year round.

7:2-7.3 Cancellation and refunds

(a) Reservations for cabins, shelters, lodges, and other designated State Park Service overnight facilities may be cancelled. A cancellation fee and the non-refundable reservation fee as set forth in N.J.A.C. 7:2-17.2(d) shall be deducted from any refund due.

(b) Refunds shall not be made to persons evicted for violation of this chapter or other State law.

7:2-7.4 Visitors

(a) Visitors are allowed in overnight facilities between the hours of 8:00 A.M. and 8:00 P.M. All visitors shall pay the normal day user parking fee when applicable pursuant to N.J.A.C. 7:2-17.1.

(b) A visitor shall not be allowed in overnight facilities between the hours of 8:00 P.M. and 8:00 A.M. The area Officer-in-Charge may temporarily extend or limit the visitation hours as conditions warrant.

SUBCHAPTER 8. BOATING/WATERCRAFT

7:2-8.1 Launching of boats

(a) The launching of boats, canoes and other watercraft is allowed at designated areas subject to posted regulations and the payment of a launching fee where required pursuant to N.J.A.C. 7:2-17.1(f).

(b) A person shall not launch or beach a boat, canoe or other watercraft or weigh anchor or cast off when the area Officer-in-Charge has, by posting or verbal direction, prohibited the same.

7:2-8.2 Power boats and motorized jet skis use restrictions

(a) A person shall not operate a power boat or a motorized jet ski on non-tidal waters under the jurisdiction of the State Park Service, except:

1. Electric powered boats are allowed on non-tidal waters under the jurisdiction of the State Park Service.

2. Power boats and motorized jet skis are allowed on Cranberry Lake, Greenwood Lake, Lake Hopatcong and Lake Musconetcong.

(b) A person shall not operate a motorized jet ski on the Spruce Run, Round Valley or Monksville Reservoirs.

(c) Power boats are allowed on Spruce Run, Round Valley and Monksville Reservoirs subject to size restrictions in N.J.A.C. 7:2-8.3(b).

7:2-8.3 Powerboat size restrictions

(a) Powerboats, where permitted on non-tidal waters, may temporarily be further restricted as to maximum horsepower and minimum and maximum boat length, such restrictions being determined by the Officer-in-Charge based on use and safety factors.

(b) A person shall not operate a power boat which has a motor size greater than 10 horsepower on the Spruce Run, Round Valley, or Monksville Reservoirs.

7:2-8.4 Sailboats and ice sailboat masts height on the Round Valley and Spruce Run Recreation Reservoirs

A person shall not operate a sailboat or ice sailboat with a mast height of greater than 30 feet on the Round Valley or Spruce Run Reservoirs.

7:2-8.5 Use of boat ramps

A person shall not use boat ramps in such a manner as to impede use of the ramp by others.

7:2-8.6 Boating near bathing areas

(a) A person shall not operate a power boat, sailboat or sail board within 200 feet of a designated bathing area.

(b) A person shall not operate human powered slow moving watercraft such as rowboats, pedal boats, canoes, wind surfboard, or any other water borne mechanisms meeting this definition within 50 feet of a designated bathing area.

7:2-8.7 Swimming and diving from objects, scuba diving, and skin diving

(a) A person shall not swim or dive from a pier, catwalk, boat, bridge, tower or any watercraft on waters under the jurisdiction of the State Park Service without written approval by the area Officer-in-Charge.

(b) A person shall not scuba or skin dive in the waters under the jurisdiction or control of the State Park Service except in areas designated and posted for that purpose.

7:2-8.8 Round Valley and Spruce Run wind speed notification systems

(a) A person shall not continue boating activities on the Round Valley or Spruce Run Reservoirs when the wind velocity reaches or exceeds 25 miles per hour.

(b) A person shall not continue boating activities on the Round Valley or Spruce Run Reservoirs when the flashing white warning lights are activated to warn boaters to discontinue boating.

(c) A person shall not continue boating activities on the Round Valley or Spruce Run Reservoirs when verbally directed to discontinue boating activities by the Officer-in-Charge or any employee authorized by the Officer-in-Charge to issue such warnings.

7:2-8.9 Boat storage at the Spruce Run Recreation Area

(a) A limited number of boat storage spaces are available at Spruce Run Recreation Area during the season from April 1 through October 31. Fees shall be charged pursuant to N.J.A.C. 7:2-17.1(g) and non-transferable decals shall be assigned for this use. Decals shall be permanently affixed to the boat registered for storage as directed by the area Officer-in-Charge.

(b) Double-capacity trailers occupying a single storage space shall pay one and one-half times the normal season storage fee as provided in N.J.A.C. 7:2-17.1(g).

(c) Boats shall be removed from the water each night and placed in their assigned storage spaces.

(d) Possession of a boat storage permit does not guarantee entry to the launching area if it is filled to capacity.

7:2-8.10 Ice boating

(a) Ice boating and ice yachting shall be allowed only on those waters specifically designated and posted by the State Park Service for ice boating and ice yachting.

(b) Ice boating or ice yachting shall be allowed on those waters designated and posted under (a) above provided individual use complies with the following:

1. A minimum of two craft shall be in use at all times;

2. Protective helmets shall be worn;

3. Life jackets or life belt shall be worn; and

4. Masts or riggings and any attachments thereto, may be restricted by the Officer-in-Charge or by any employee authorized by the Officer-in-Charge to issue such restrictions as determined by use or public safety.

7:2-8.11 Towing behind boats

A person shall not water ski, aquaplane or tow surf boards in non-tidal waters under the jurisdiction of the State Park Service except on Lake Hopatcong, Lake Musconetcong, Greenwood Lake and Cranberry Lake without the written approval of the area Officer-in-Charge.

7:2-8.12 Conformance with State boating laws

All boating use on waters under the jurisdiction or control of the State Park Service shall be subject to rules promulgated by the New Jersey Boat Regulation Commission, N.J.A.C. 7:6.

7:2-8.13 Lifejackets

(a) A person shall not operate or allow any person to operate any vessel in or on the waters under the jurisdiction or control of the State Park Service unless such vessel has a serviceable United States Coast Guard approved personal floatation device (PFD) for each person on board.

1. Such PFDs shall be of the type(s) required by the United States Coast Guard for a vessel of that class operating on navigable waters.

2. Such PFDs shall be readily accessible when the vessel is underway.

(b) The requirements of (a) above apply to all vessels except surfboards, racing shells, rowing sculls and racing kayaks.

7:2-8.14 Careless and negligent operations

(a) A person shall not operate a boat in such a manner as to cause alarm, personal injury or property damage.

(b) Boaters shall comply with all posted regulatory signs.

(c) Boaters shall secure their boats in a manner that will not cause personal injury or damage to private or State Park Service property.

7:2-8.15 Rules of the road

All vessels navigating the waters under the jurisdiction or control of the State Park Service shall comply with the inland rules of the road promulgated by the United States Coast Guard now in effect and as may hereafter be amended, supplemented, modified or

changed, except where the international rules of the road are applicable. Copies of the current inland rules of the road may be obtained at any office of the United States Coast Guard or the New Jersey State Police Marine Bureau.

7:2-8.16 Speed

Power vessels shall at all times be operated at a speed to avoid danger of injury to life and all manner of craft whether floating, moored, anchored or underway, or to piers, wharves, bulkheads, draw spans or other waterfront construction, either directly or by the effect of the wash or wave raised by such power vessel through its speed or otherwise.

7:2-8.17 Obeying orders

A boat shall not fail to stop when ordered to do so by any State Park Service law enforcement officer or other State Park Service employee authorized by the area Officer-in-Charge.

7:2-8.18 Exclusion of racing events

This subchapter shall not apply to boat racing activities which have been approved by the Director of the Division of Parks and Forestry or the Assistant Director of the Division for the State Park Service.

7:2-8.19 Boating use restrictions

The use of boats, canoes and watercraft of all types on the waters under the jurisdiction or control of the State Park Service shall be prohibited by the Officer-in-Charge whenever the safety, health or welfare of the public so dictates.

7:2-8.20 Operating boats during nighttime

Where night boating is authorized, no person shall operate a boat at speeds in excess of five nautical miles per hour.

7:2-8.21 Disposal of waste from boats

(a) A person shall not dump waste from a boat into the waters under the jurisdiction or control of the State Park Service.

(b) Any boat equipped with a toilet, sink and/or shower shall not be operated on waters under the jurisdiction or control of the State Park Service unless the toilet, sink and/or shower systems are completely shut off and kept inoperative the entire time the boat is in the State Park Service waters or unless the vessel is equipped with an operable holding tank.

(c) A person shall not discharge holding tank waste except in disposal facilities designed and provided for such waste.

7:2-8.22 Low water levels Round Valley, Spruce Run and Monksville Reservoirs

During periods of low water levels at the Round Valley, Spruce Run and Monksville Reservoirs as evidenced by increased exposure of mud flats, all restricted area fence lines shall be deemed to be extended to the waters' edge. This extension shall then be included in the restricted area limits and shall constitute the restricted area limits.

7:2-8.23 Scuba and skin diving at Round Valley and Spruce Run Recreation Areas

(a) Scuba and skin diving is permitted at Spruce Run and Round Valley Recreation Areas provided the diver notifies the park office by phone in advance of the dive, giving name, location and anticipated hours of diving. Before diving, the diver shall complete a registration form at the park office and notify the park office when the dive is complete.

(b) All provisions of the New Jersey Boat Regulation Commission, N.J.A.C. 7:6, shall be followed and a certification card is required.

7:2-8.24 Lake Hopatcong Dock Restrictions

(a) The construction of a new dock or the replacement, expansion, or extension of any existing dock in the waters of Lake Hopatcong shall, in addition to the requirement set forth in (b) below, be designed and constructed in accordance with the requirements of all Federal, State and local agencies having jurisdiction over the design and construction of the proposed new dock, replacement, expansion, or extension.

(b) New docks and the construction of a new replacement or the expansion or extension of any dock in existence in the waters of Lake Hopatcong on the effective date of this new rule shall not exceed

more than 50 feet in length into the waters of Lake Hopatcong from the mean high water line. Any dock in existence on the effective date of this new rule that exceeds 50 feet in length from the mean high water line may be improved, maintained and repaired but shall not be replaced, expanded or extended beyond the length of the dock from the mean high water line. The mean high water line shall be determined at the time of the proposal of the new dock or replacement, expansion or extension of any dock in the waters of Lake Hopatcong.

(c) Prior to the construction of any new dock or the replacement, expansion or extension of any dock in the waters of Lake Hopatcong, the owner of the dock shall submit to the Officer-in-Charge at Lake Hopatcong State Park a written notification of intent to construct. The notification of intent to construct shall include the following:

1. Transmittal letter signed by the owner of the dock;

2. Plans and specifications showing:

i. The location, size and design of the proposed new dock, replacement, expansion or extension; and

ii. The mean high water line and the length of the proposed new dock, replacement or extension from the mean high water line into Lake Hopatcong; and

3. Copies of all permits, licenses, approvals, certifications and any other document issued by the appropriate Federal, State and local authorities having jurisdiction over the proposed new dock, replacement, expansion or extension.

(d) Upon receipt by the Officer-in-Charge of a complete notification of intent to construct under (c) above, the Officer-in-Charge shall have a period of 45 days to review the notification and approve the construction of any new dock or the replacement, expansion or extension of any dock in the waters of Lake Hopatcong based upon a determination that:

1. The owner of the dock has obtained all permits, licenses, approvals, certifications and any other document issued by the appropriate Federal, State and local authorities having jurisdiction over the proposed new dock, replacement, expansion or extension; and

2. The proposed new dock, replacement, expansion or extension is in compliance with (b) above.

SUBCHAPTER 9. DAY USE GROUP

7:2-9.1 Day use group reservation

(a) Groups of 20 or more persons using or visiting any lands or waters under the jurisdiction of the State Park Service for any purpose whatsoever shall make a reservation for such use or visitation.

(b) Reservations shall be made at the area office for the specific State Park, at least five days in advance of the use or visit.

7:2-9.2 Failure to make a reservation

(a) The State Park Service shall refuse admittance to groups of 20 or more persons without reservations.

(b) The area Officer-in-Charge may temporarily waive day use group reservation requirements when field conditions dictate.

(c) Not more than three non-consecutive reservations for day use group facilities shall be in effect for any one person or group at an individual State park at one time.

7:2-9.3 Adult supervision

Each day use group shall have a minimum ratio of one adult supervisor, 18 years of age or older, for each nine children under 18 years of age in the group.

7:2-9.4 Group leader

Each day use group making reservations for visitation shall designate one responsible adult, 18 years of age or older, as group leader and his or her name and address shall be furnished to the Officer-in-Charge upon arrival.

7:2-9.5 Day use group roster

(a) All day groups shall have available during the use or visit, and may, prior to the commencement of the use or visit, be required to supply a roster to the Officer-in-Charge. The roster shall contain the following information:

1. The name, address and phone number of the organization;

2. The name and address of the designated group leader; and
3. The names of all other persons in the group.

(b) Failure to supply the roster required in (a) above upon request by the Officer-in-Charge may be cause for refusing the group's admittance to, or removal of the group from, the park, forest, recreation area, historic site, marina, or natural area.

7:2-9.6 Buses transporting day use groups

(a) All buses transporting day use groups shall remain at a parking location designated by the Officer-in-Charge for the entire period the group is present at the facility.

(b) Drivers of buses transporting day use groups shall remain in the immediate day use area at all times and are not to leave the area without specific approval of the Officer-in-Charge.

7:2-9.7 Group picnicking and reservation procedures

(a) Group picnicking is restricted to areas specifically provided for this purpose.

(b) The number of people in any group using a group picnicking facility shall not exceed the capacity of the facility without first obtaining the approval of the area Officer-in-Charge and upon such conditions that the Officer-in-Charge may reasonably require to assure public safety and protection of State-owned property.

(c) Applications for reservation of group picnicking facilities shall:

1. Be submitted by mail to or in person at the area office for the specific State park in which the facility is located;
2. Be accompanied by payment of the non-refundable reservation fee pursuant to N.J.A.C. 7:2-17.3(a);
3. Include the following information:
 - i. The name of the group;
 - ii. The name, telephone number and address of the designated group leader; and
 - iii. The date for which reservation is requested;
4. Be received in the area office after January 2 of the year in which the facility is to be used; and
5. Not be effective until confirmed in writing by the State Park Service.

(d) The Officer-in-Charge shall post a sign at each group picnicking facility indicating that the facility has been reserved and the name of the group.

(e) If the group picnicking facility is not reserved, the facility may be used on a first-come, first-served basis.

7:2-9.8 Group use of facilities on weekends and holidays

(a) Day group use of facilities on weekends or holidays is not permitted except as provided in (b) below.

(b) The Officer-in-Charge may temporarily authorize weekend or holiday day group use only when facility and staffing requirements allow.

SUBCHAPTER 10. GOLF COURSES

7:2-10.1 Local rules

(a) The use of caddies is not permitted except by specific approval of the golf course manager.

(b) Privately owned golf carts are prohibited.

(c) Everyone on the course shall play golf and have a paid receipt in his or her possession.

(d) Spectators are not permitted on the golf course. The golf course manager may temporarily waive this rule for tournament play or for unusual circumstances.

(e) All players shall have and use a golf bag with sufficient clubs to play the game including at least a driver or 3 wood, a 3, 5 and 7 iron, and a putter.

(f) Golf cart operators shall have a drivers license and be at least 17 years of age.

(g) Beverage or food coolers of any type are prohibited on the course. Upon request by tournament organizers, the golf course manager may waive this prohibition.

(h) Alcoholic beverages are prohibited on the course or driving range.

(i) Players shall be no less than 10 years old to play on the golf course.

(j) Players age 10 to 13 shall be accompanied by an adult.

(k) Proper attire shall be worn at all times while on the golf course. This includes a minimum of pants, shorts, skirts, or tops, tee-shirts and sneakers or golf shoes.

(l) The playing or use of radios, tape recorders, electronic or any other noise producing device is prohibited on the golf course without specific approval of the golf course manager.

(m) The following recreational activities are prohibited on the tees, fairways and greens of the golf course and adjacent State Park Service property without the written permission of the golf course manager.

1. Ice skating;
2. Skiing;
3. Sledding;
4. Snowmobiling;
5. Fishing;
6. Picnicking;
7. Horseback riding;
8. ATVs/bicycles;
9. Operating model or remote control planes, boats, cars, or other mechanical devices; and
10. Stopping of canoes for any reason except an emergency.

7:2-10.2 Reservations—golf course

(a) Golf course reservations shall be accepted by telephone only and are on a first-come, first-serve basis.

(b) Starting time reservations shall be accepted on Thursdays after 12:00 noon for weekend and holiday play.

(c) Tournament reservations shall be made 30 days in advance and are not effective until confirmed in writing by issuance of a special use permit by the State Park Service.

1. Approved tournaments are restricted to Tuesday or Thursday play only unless specifically approved by the golf course manager.

2. Tournament starting times shall be 11:00 A.M. unless specifically waived by the golf course manager.

3. Tournaments shall reserve for a minimum of 40 players up to a maximum of 80 players unless specifically waived by the golf course manager.

7:2-10.3 Fees

All fees for services provided and use of the golf course and driving range, in accordance with the fee schedule set forth in N.J.A.C. 7:2-17.1(j), shall be paid in full prior to the commencement of play.

7:2-10.4 United States Golf Association and local rules

Local rules at N.J.A.C. 7:2-10.1 and United States Golf Association rules shall govern all play. Local rules are printed on the score card and posted in the office.

7:2-10.5 Tournament restrictions

(a) Tournaments shall be conducted in accordance with the accepted standards of golf. Local restrictions are as follows:

1. No shot gun starts shall be allowed. Shot gun starts require that the golf course be shut down to allow one team of golfers on each tee to be started by a loud noise.

2. All tournaments shall start at the first tee.

7:2-10.6 School team practice

A golf team or member of a school team shall be allowed to practice on the golf course on weekdays only.

7:2-10.7 Driving range rules

(a) A person shall not use the driving range except during posted hours of operation.

(b) All persons using the driving range shall purchase a bucket of balls and produce the sales receipt upon request.

(c) Golfers are not permitted beyond the driving tee.

7:2-10.8 Golf etiquette

(a) The player who has the honor shall be allowed to play before his or her opponent or fellow competitor tees his or her ball.

(b) A person shall not move, talk or stand close to or directly behind the ball or the hole when a player is addressing the ball or making a stroke.

(c) Players searching for a ball shall signal the players behind them to pass as soon as it becomes apparent that the ball will not easily

be found. They shall not continue play until the players following them have passed and are out of range.

(d) When the play of a hole has been completed, players shall immediately leave the putting green.

7:2-10.9 Priority on the course

(a) In the absence of special rules, two-ball matches shall have precedence over and be entitled to pass any three or four-ball match.

(b) A single player has no standing and shall give way to a match of any kind.

(c) Any match playing a whole round is entitled to pass a match playing a shorter round.

(d) If a match fails to keep in place on the course and loses more than one clear hole on the players in front, it shall allow the match following to pass.

7:2-10.10 Care of the course

(a) Before leaving a bunker, a player shall carefully fill up and smooth over all holes and footprints made by the player.

(b) Through the green, a player shall ensure that any turf cut or displaced by the player is replaced at once and depressed down so that any damage to the putting green made by a ball is carefully repaired. Damage to the putting green caused by golf shoe spikes shall be repaired on completion of the hole.

(c) Players shall ensure that, when laying down bags or the flagstick, no damage is done to the putting green and that neither they nor their caddies damage the hole by standing close to it, in handling the flagstick or in removing the ball from the hole. The flagstick shall be properly replaced in the hole before the players leave the putting green. Players shall not damage the putting green by leaning on their putters, particularly when removing the ball from the hole.

(d) Local notices regulating the movement of golf carts shall be strictly observed.

(e) In taking practice swings, players shall avoid causing damage to the course, particularly the tees, by removing divots.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. HIKING TRAILS

7:2-12.1 Scope

In addition to the applicable provisions of N.J.A.C. 7:2 and the applicable Federal regulations for that portion of the National Scenic Appalachian Trail which passes through land under the jurisdiction of the State Park Service, the following shall constitute the rules of the State Park Service hiking trails.

7:2-12.2 Hiking trail use

(a) The use of all designated hiking trails except for posted multi-use trails is restricted solely to foot travel and the legitimate activities associated with the pursuit of hiking.

(b) The Appalachian Trail shall not be used for special events or group activities that degrade the Trail's natural or cultural resources or social values. These activities include publicized spectator events, commercial or competitive activities or large group programs. Groups spending one or more nights on the Trail shall not exceed 10 persons in the same organization and day-use groups shall not exceed 25 persons in the same organization, unless otherwise designated in the New Jersey Appalachian Trail Management Plan.

7:2-12.3 Hiking trail restrictions

(a) Hiking trail use is limited to the routes marked or designated by the State Park Service for such use.

(b) A person shall not leave a marked trail and enter upon adjacent property without permission of the owner.

(c) The use of bicycles and any motor vehicles except emergency vehicles on hiking trails is prohibited.

(d) The use of horse or pack animals on hiking trails is prohibited.

(e) Everything carried into a hiking trail or area shall be carried out by the hiker or placed in the proper trash receptacle, where provided.

(f) A person shall not molest or harass wildlife, livestock, pets or other domestic animals encountered along or adjacent to a trail.

(g) All furred animals or pets shall be caged or held on a leash and under the immediate control of the owner at all times.

(h) The possession and use of alcoholic beverages is prohibited.

(i) The cutting, digging, defacing and/or removal of any vegetation or physical features is prohibited.

7:2-12.4 Fires on hiking trails

(a) No open fires shall be started on any hiking trail under the jurisdiction or control of the State Park Service except at campsites designated and approved by the State Park Service for hiking trail users.

(b) No open fires shall be started at any campsite designated and approved by the State Park Service for hiking trail users under (a) above without first obtaining a permit for such purpose from the State Park Service. The open fire shall be started and maintained in accordance with the permit which shall designate the campsite location, hours that an open fire may be started and maintained, and type of fuel.

(c) No open fires shall be started on the Appalachian Hiking Trail. Self-contained stoves may be used without a permit.

(d) Every person using a hiking trail under the jurisdiction or control of the State Park Service shall promptly report any uncontrolled fire thereon or any uncontrolled fire insight from the hiking trail to the nearest law enforcement or fire agency.

7:2-12.5 Hiker camping

(a) Hiker camping shall mean the erection of a tent or shelter of natural or synthetic material and/or preparing a sleeping bag or other bedding material for the purpose of overnight stay.

(b) Hiker camping is permitted only as part of the hiking experience on a hiking trail under the jurisdiction or control of the State Park Service.

(c) Hiker camping is permitted in hiker camping areas or other established campsite areas designated and approved by the State Park Service for overnight camping.

(d) On the Appalachian Trail hiker camping is limited to one overnight stay at each designated hiker camping area.

(e) Maximum occupancy for each hiker campsite may be limited or expanded by the area Officer-in-Charge as conditions warrant.

SUBCHAPTER 13. STATE MARINAS

7:2-13.1 Scope

In addition to the applicable provisions of N.J.A.C. 7:2 and unless otherwise provided, this subchapter constitutes the rules for State marinas under the jurisdiction of the State Park Service.

7:2-13.2 Application for vessel berth permits at State marinas

(a) Applications for a vessel berth permit at State marinas shall be categorized by the size of the berth for which a permit application is submitted and, except for the Senator Frank S. Farley State Marina, whether the applicant is a resident of New Jersey or a non-resident. The New Jersey resident category shall have complete priority over the non-resident category listing of applicants for the same berth size category at each State marina except for the Senator Frank S. Farley State Marina.

(b) Applications for a berth permit shall be submitted on forms available from the State Park Service and shall be accepted year-round at the marina office at the specific State marina in which a berth permit is requested. All berth permit applications shall be:

1. Completed and signed by the person(s) in whose name(s) the permit will be issued;

2. Accepted in the name of an individual(s) only. No application shall be accepted in the name of a corporation;

3. Completed, signed and not removed from the marina office at the specific State marina in which a berth permit is requested; and

4. Except for the Senator Frank S. Farley State Marina, accompanied by a New Jersey drivers license as proof of residency when the applicant claims to be a New Jersey resident.

i. If an applicant claiming to be a New Jersey resident demonstrates to the satisfaction of the Officer-in-Charge that the applicant does not have a New Jersey drivers license for good and sufficient reason, the State Park Service reserves the right to require other proofs that the applicant is a resident of New Jersey.

(c) Berth permits shall be issued in the name(s) of the persons that signed the original berth permit application and assignments shall be made from priority waiting lists based on the chronological order of the date on which each berth permit application is completed and received at the marina office at the specific State marina in which a berth permit is requested. A priority waiting list shall be maintained for and prominently posted for public review at each State marina. Except for the Senator Frank S. Farley State Marina, waiting lists shall be maintained in two categories: New Jersey resident and non-resident for each berth size. Waiting lists shall be maintained at the Senator Frank S. Farley State Marina for each berth size without regard to residency.

(d) Each applicant must annually confirm that the applicant wants to remain on the applicant waiting list. Confirmation shall be made at the marina office no later than the second Saturday of January either by telephone from 8:00 A.M. to 4:00 P.M. Monday through Friday or by letter post marked not later than the second Saturday of January. Failure to notify the marina office as above provided shall result in cancellation of the application and removal of the applicant from the waiting list.

(e) Applicants purchasing a vessel of a different size category than that for which application was made who desire a berth for the new vessel shall submit an application for a berth in the category of the new vessel and shall be placed as a new applicant on the list of that category.

(f) If, for any reason, an applicant refuses or fails to accept two offered berth permits in accordance with the procedure in N.J.A.C. 7:2-13.3(b)6, the applicant's permit application shall be cancelled and the applicant's name shall be removed from the waiting list.

7:2-13.3 Berth permits

(a) Seasonal or annual berth permits shall be issued at the Forked River State Marina, Leonardo State Marina, Fortescue State Marina, and Senator Frank S. Farley State Marina as follows:

1. Forked River State Marina, Senator Frank S. Farley State Marina, and Leonardo State Marina:
 - i. April 1 to October 31 (Summer);
 - ii. November 1 to March 31 of the subsequent year (Winter);
2. Fortescue State Marina:
 - i. April 1 to March 31 of the subsequent year (Annual);
 - ii. November 1 to March 31 of the subsequent year (Winter).

(b) Berth permits for the summer season from April 1 to October 31 shall be issued in accordance with the following procedure.

1. All summer berth permittees of record on October 31 shall be given an opportunity to renew their berth permit for the same size berth for the next summer season. A summer berth permit renewal form shall be forwarded to each permittee of record during the first week of December of the year preceding the permit period year or as soon thereafter as possible.

2. On or before February 1 of the permit year, the permittee of record shall return the following to the marina office:

- i. A permit renewal form signed by the permittee of record;
- ii. Payment in full for the berth offered;
- iii. A valid New Jersey vessel registration solely in the name of the permittee of record for the vessel owned by the permittee of record which will occupy the offered berth; and
- iv. A copy of the Certificate of Title to the vessel solely in the name of the permittee of record.

3. If the permittee of record does not return the documents and payment in full on or before February 1 as required in (b)2 above, the State Park Service shall on the first business day after the due date or as soon as possible thereafter give the permittee of record written notice by certified mail return receipt requested, to return the documents and payment to the marina office within 10 working days after the date of the notice.

4. If the documents and payment are not received in the marina office within 10 working days after the date of the written notice as provided in (b)3 above, the offer to renew the permit as provided in (b)1 above shall become void immediately upon expiration of the 10 day period and the subject berth permit immediately reassigned.

(c) Berth permits for the annual period from April 1 to March 31 shall be issued in accordance with the following procedure.

1. All annual berth permittees of record on October 31 shall be given an opportunity to renew their berth permit for the same size berth for the next annual season. An annual berth permit renewal form shall be forwarded to each permittee of record during the first week of December of the year preceding the permit period year or as soon thereafter as possible.

2. On or before February 1 of the permit year, the permittee of record shall return the following to the marina office:

- i. A permit renewal form signed by the permittee of record;
- ii. Payment in full for the berth offered;
- iii. A valid New Jersey vessel registration in the name of the permittee of record only for the vessel owned by the permittee of record which will occupy the offered berth; and
- iv. A copy of the Certificate of Title to the vessel solely in the name of the permittee of record.

3. If the permittee of record does not return the documents and payment in full on or before February 1 as required in (c)2 above, the marina operator shall on the first business day after the due date or as soon as possible thereafter give the permittee of record written notice by certified mail return receipt requested, to return the documents and payment to the marina office within 10 working days after the date of the notice.

4. If the documents and payment are not received in the marina office within 10 working days after the date of the written notice as provided in (c)3 above, the offer to renew the permit as provided in (c)1 above shall become void immediately upon expiration of the 10 day period and the subject berth permit immediately reassigned.

(d) Annual and summer berth permits shall be issued for all vacated berths in accordance with the following:

1. Permittees of record in the marina who have submitted a written request to transfer to another berth in the marina shall be given an opportunity to transfer to a vacated berth. Requests for transfer shall be prioritized based on the date the request is received in the marina office.

2. Except for the Senator Frank S. Farley State Marina, remaining vacant berths shall be offered to New Jersey resident applicants that are number one on the posted list of permit applicants for the size berths available. At the Senator Frank S. Farley State Marina, remaining vacant berths shall be offered to the applicants that are number one on the waiting lists for each berth size available.

3. When the New Jersey resident list is exhausted in any category, applicants on the non-resident list in that category shall be offered available berth(s).

4. In the event both resident and non-resident lists are exhausted in a given category, berths in that category shall be offered to applicants on the resident and then the non-resident berth application list for the next smaller berth size category.

5. In the event that the next smaller berth size category waiting lists described in (d)4 above are exhausted, the availability of the vacant berths shall be publicly posted at the marina. Permits for the vacant berths shall be issued upon receipt of a berth permit application in accordance with N.J.A.C. 7:2-13.2.

6. Permits for vacated berths shall be offered under (d)1 through 5 above to applicants by category and in numerical order within that category. A minimum of three documented attempts shall be made to notify the applicant of the availability of a berth by telephone during normal business hours. If the marina office is not able to contact the applicant, the berth shall be offered to the next applicant on the waiting list. Within 10 days after the offering, the applicant shall return the following to the marina office:

- i. A permit form signed by the permittee of record;
- ii. Payment in full for the berth offered; and
- iii. A valid New Jersey vessel registration and title for the vessel owned solely by the permittee of record and which is in the same size category as the berth offered.

(e) Berth permits for the winter season from November 1 to March 31 shall be issued in accordance with the following procedure:

1. On a first come first served basis to:
 - i. Permittees of record in the marina; and
 - ii. Other interested boaters.
2. Winter berth permits shall be effective:

i. Upon payment of the winter berth fee by permittee of record; or

ii. Upon payment of the winter berth fee and execution of the non-renewable winter berth permit, by other interested boaters.

(f) At the Leonardo and the Forked River State Marinas, berth permits for the winter season from November 1 to March 31 shall, in addition to the applicable provisions of N.J.A.C. 7:2, be issued subject to the following conditions:

1. Vessels occupying a winter berth shall have electricity available each weekend during the winter season from 4:00 P.M. Friday to 8:00 A.M. Monday. The use of electricity during any other period during the winter season shall be by the prior approval of the Officer-in-Charge.

2. The use of a thermostatically controlled de-icing system is subject to the prior approval of the Officer-in-Charge. Permittees shall place the de-icing unit in a location on the vessel that is in full view by marina personnel. The period of operation of de-icing units shall be determined by the Officer-in-Charge based on weather conditions.

(g) Berth permits shall not be issued for the following purposes:

1. Berthing of domicile type units including, but not limited to, powered and unpowered house type craft specifically designed for dockside living on other than a transient basis;

2. Condominium type berth leasing;

3. Use as a watersport activity center such as water skiing or parasailing;

4. Berthing of vessels to be utilized in time sharing ventures; or

5. Use of a vessel as a domicile, residence or habitat.

(h) Signature by the permittee on the permit constitutes agreement to abide by this chapter and any other pertinent State and Federal statutes, rules and regulations. Failure to comply with this chapter and pertinent State and Federal statutes, rules and regulations shall be cause for immediate cancellation of the permit, forfeiture of all fees paid and removal of the vessel from the Marina.

7:2-13.4 Berth assignment

(a) The State Park Service reserves the right to limit the number and category of use of berths whether seasonal or transient available for assignment within any State marina.

(b) A berth shall not be assigned for the summer or winter season unless a berth permit has first been issued for the season. The size of the berth assigned shall be based on the size category described in the permit and application.

(c) Berth assignments are made by the Officer-in-Charge.

(d) Transient berth assignments shall be available on a first come first served basis and shall be available on a monthly or daily basis at the discretion of the Officer-in-Charge subject to the following conditions:

1. Transient berth assignments shall become effective upon berth occupancy, payment of the applicable fee and execution of the transient registration card;

2. The daily transient period shall be from the time of occupancy to 12:00 noon of the following day; and

3. The monthly transient period shall be from the time of occupancy to 12:00 noon of the 30th day of occupancy.

(e) Any vessel occupying a berth without a valid seasonal permit shall be charged at the daily or appropriate transient rate for the duration of berth occupancy.

7:2-13.5 Berth reassignment

(a) The reassignment of berths within a State marina shall be made in accordance with the following procedures:

1. Reassignment shall be made only by the Officer-in-Charge.

2. In the event of the death of the permittee of record, the berth which is the subject of the permit, may be assigned by the Officer-in-Charge to the spouse of the deceased permittee of record.

3. A permittee of record shall be allowed to assign the rights granted under the permit subject to the following conditions:

i. The permittee of record shall submit a written request for assignment to the Officer-in-Charge;

ii. The assignment shall be limited to a period not to exceed the annual, summer or winter berthing season for which the assigned permit was issued;

iii. The assignment shall be administered solely by the Officer-in-Charge of the marina containing the affected berth;

iv. Assignments shall be obtained by the Officer-in-Charge from the application list for the berth category involved, beginning at the top of the list and continuing numerically, until the berth is re-assigned;

v. The permittee of record shall be liable for all fees to the end of the month in which berth reassignment is finalized;

vi. A cancellation fee as provided in N.J.A.C. 7:2-17.4(d)2 shall be assessed to the permittee of record;

vii. No berth reassignment shall be considered unless payment, for the affected period, in full has been provided by the permittee of record;

viii. A berth shall not be reassigned if the permittee of record is in his first year of occupancy;

ix. Berth reassignment requests for an annual or summer berth permit shall not be honored if received after June 30th; and

x. Berth reassignment requests for a winter berth permit shall not be honored.

7:12-13.6 Multiple ownership of a vessel

(a) A berth permit shall be issued in the names of multiple owners only if the vessel is owned by the multiple owners and they are named on the original berth application.

(b) In the event that subsequent to berth assignment, a multiple ownership is formed or a person not identified on the original berth application acquires an ownership interest in the vessel identified in a berth permit, the new owner shall have no rights to the berth which is the subject of the permit. Rights to the subject berth must be acquired through the regular application procedure.

7:2-13.7 Marina regulations

(a) Walkways and piers shall be kept clean at all times. Permittees are responsible for the cleanliness of their immediate berth areas.

(b) Fuel tanks shall be filled only at the marina fuel station. Draining, cleaning and/or removal of fuel tanks and/or the use of gasoline or other flammable solvent as a cleaning agent is prohibited within the marina boundaries.

(c) Boat toilets shall not be used while the boat is in the marina.

(d) The State Park Service, through its representative, may arrange for the relocation or removal and hauling out of any boat which it determines to be in an unsafe or sinking condition, provided the owner is unavailable or fails to respond to notification of said unsafe conditions. All charges for said relocation or removal and hauling out shall be paid by the owner.

(e) Major boat alterations or repairs shall not be undertaken while a boat is on marina property. Work shall not be undertaken by an outside contractor without specific permission from the Officer-in-Charge.

(f) Additions or alterations shall not be made to piers, walkways or other marina property without the written consent of the Officer-in-Charge.

(g) Any and all refund(s) for a berth fee shall be subject to a cancellation charge. Refunds shall not be paid prior to reassignment of the berth and collection of the berth fee. Refunds shall not be granted for transient berth assignments.

(h) Berths are not transferable and shall be occupied only by the boat owned by the permittee of record as described on the permit.

(i) The State Park Service reserves the right of reassigning a boat to a comparable berth other than the one originally assigned.

(j) Dinghies stored in permittees' berths shall not exceed 10 feet in length and shall not encroach on adjacent berth space. Dinghies shall not be stored on or under piers, walkways or on land.

(k) Boat berths shall be vacated immediately upon expiration of permit period.

(l) All personal property, lines and gear shall be removed from marina piers and property at the expiration of the permit period. The Officer-in-Charge is authorized to inventory, remove and store for a period of 90 days or until the owner is found, whichever is shorter, any and all equipment and personal property from marina piers and property at the expiration of the permit period or which is being used in violation of this Chapter or any other applicable law. Payment

of a removal fee and storage fee pursuant to N.J.A.C. 7:2-17.2(d) shall be required from the owner before the equipment and personal property is returned. Items not claimed within 90 days after they are removed from the pier shall be disposed of in accordance with established State Park Service policy.

(m) Commercial boats are allowed only in designated areas.

(n) Use of marina parking lots by camper, recreation or any other type of vehicle for the purpose of camping or storage is prohibited.

(o) The parking of disabled vehicles on marina lands for a period in excess of 24 hours is prohibited.

(p) Any condition on a vessel or any premises used by the permittee and comprising part of the marina declared to be a fire or safety hazard by the Officer-in-Charge shall be corrected immediately by the permittee.

(q) Only berth permittees and their guests are permitted pier access between the hours of 10:00 P.M. and 8:00 A.M.

(r) The State Park Service reserves the right to utilize, assign or reassign any berth.

(s) A berth permittee shall advise the Officer-in-Charge whenever a vessel will be out of the marina for a period of 48 hours or more. When a berth will be vacant for 48 hours or more, the State Park Service may utilize the berth for any purpose it deems appropriate without reimbursement to the permittee of record.

(t) The storage of flammable liquids or materials within dock boxes or other storage areas by permittee is prohibited.

(u) A vessel shall not be removed from the marina prior to payment of all outstanding fees and charges.

(v) A person shall not make noise that is unreasonable considering the nature and purpose of the actors conduct, locations, time of day and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(w) Unattended property that interferes with public safety, orderly management of the marina or presents a threat to the resources may be impounded and stored by the Officer-in-Charge. After 90 days unclaimed articles may be disposed of in accordance with established State Park Service policy.

(x) Dock boxes shall be installed only with the prior approval of the Officer-in-Charge.

SUBCHAPTER 14. (RESERVED)

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. ISLAND BEACH STATE PARK RULES

7:2-16.1 Scope

In addition to other applicable provisions of this chapter, this subchapter constitutes the rules of Island Beach State Park.

7:2-16.2 Mobile sport fishing vehicles/permits/restrictions

(a) Four-wheel drive mobile sport fishing vehicles (MSFV) are permitted on specifically designated areas of Island Beach State Park for the purpose of surf fishing from the open beach provided:

1. An application for a MSFV permit is completed and approved through the Island Beach State Park office; and

2. An approved permit, decal or placard for which the proper fee has been fully paid as provided in N.J.A.C. 7:2-17.3(d) is displayed on or from the MSFV as directed by the Officer-in-Charge when on Island Beach State Park.

(b) The following minimum basic items of equipment or supplies shall be carried by the MSFV operator while on the open beach of Island Beach State Park:

1. A spare tire;
2. A tire gauge;
3. A workable jack and board or other material for supporting the jack (3/4 inch by 12 inch by 12 inch plywood minimum);
4. A tow chain or snatch line;
5. A shovel;
6. A flashlight—mandatory during hours of darkness;
7. A fire extinguisher;
8. An auto first aid kit;
9. A litter bag; and
10. At least a quarter tank of fuel.

(c) MSFV permits are available for a calendar year or a three-day period. The permit grants entry to Island Beach State Park free of charge to the vehicle and operator complying with N.J.A.C. 7:2-16.3(b) and (c). All other occupants shall adhere to the current admission fee policy as provided in N.J.A.C. 7:2-17.1.

(d) MSFV permits are non-refundable and non-transferable.

(e) MSFV permits for a three-day period are available at the Island Beach Gate House. Annual MSFV permits are available through the Island Beach State Park office by mail or in person.

(f) The area Officer-in-Charge may limit the number of three-day MSFV permits which may be in effect at any one time. Three-day permits expire at midnight on the third full day after the day of issue. Three-day permits may be renewed only after a 24-hour waiting period.

(g) The number of MSFVs on the open beach at any one time, whether three-day or annual, may be limited by the area Officer-in-Charge in the interest of safety or responsible management of the resource.

7:2-16.3 Surf fishing

(a) Surf fishing is permitted only on the ocean side of Island Beach State Park in specifically designated areas approved by the area Officer-in-Charge. An annual surf fishing permit shall be issued upon:

1. Completion and approval of a surf fishing permit application at the Gate House at Island Beach State Park; and

2. Payment of the annual surf fishing permit fee as provided in N.J.A.C. 7:2-17.3(d)1.

(b) All persons over the age of 12 years on the beach under the authority of a MSFV or surf fishing permit shall have fishing gear or tackle (rod, reel, line, hooks, any bait or lures).

(c) All persons over the age of 12 years on the beach under the authority of a MSFV or surf fishing permit are restricted in their activities to the act of catching fish or trying to catch fish and those activities reasonably incidental thereto including: travel to and from a fishing location, setting up, time to stow gear, use of sanitary facilities and the like.

(d) The annual surf fishing permit allows fishermen to park their automobiles and walk to the designated surf fishing areas. The permit grants entry for the licensed vehicle and listed permit holder free of charge. All other occupants of the vehicle shall adhere to the admission fee policy as provided in N.J.A.C. 7:2-17.1.

7:2-16.4 Mobile sport fishing vehicle regulations

(a) The maximum speed limit for MSFVs is 10 miles per hour while on the open beach or sand access roads.

(b) Drivers shall yield to the right.

(c) Vehicles shall be parked facing away from the ocean to avoid moisture and salt spray on the windshield and ignition system.

(d) MSFV operators shall park so as to avoid obstructing access to other MSFV and administrative and operational vehicles.

(e) The MSFV shall be parked far enough from the water to avoid the incoming tide.

(f) MSFV operators shall use extreme caution when operating on the beach to avoid other beach users, fishing equipment, and any other paraphernalia lying in or about the sand.

(g) MSFV operators shall not drive on grasses or dunes.

(h) MSFV's shall be in good repair and shall not leak vehicle fluids.

7:2-16.5 Island Beach State Park

(a) Island Beach State Park shall be closed to all persons, excepting MSFV permit holders and persons surf fishing, between 8:00 P.M. and 8:00 A.M. from April 1 through October 31 and between 8:00 P.M. and 5:00 A.M. from November 1 through March 31 annually.

(b) Residents, leaseholders, and persons on official business are exempt from the closure specified in (a) above. Leaseholders are restricted to their leased premises between 12:00 midnight and 4:00 A.M., except as provided in (c) below.

(c) During the hours from 12:00 midnight to 4:00 A.M., all persons on the beach shall be actively engaged in surf fishing. MSFV permit holders not fishing may park and remain in designated MSFV park-

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

ing locations posted or directed by the Officer-in-Charge. All others shall leave the park as soon as they stop surf fishing.

7:2-16.6 MSFV suspension

(a) The area Officer-in-Charge may suspend for up to 90 days the MSFV permit of any person found in violation of any law including this chapter.

(b) No refunds will be made when suspension occurs.

SUBCHAPTER 17. FEES FOR SERVICES AND FACILITIES PROVIDED BY THE STATE PARK SERVICE

7:2-17.1 Day use fees for services and facilities provided by the State Park Service

(a) Except as provided in (i) below, daily parking fees for automobiles at designated State parks, for the period beginning with Memorial Day weekend and ending on Labor Day inclusive, are as follows:

AREA	WEEKDAYS	WEEKENDS AND HOLIDAYS
1. Allaire	\$4.00	\$5.00
2. Atsion	\$5.00	\$7.00
3. Barnegat Lighthouse	\$5.00	\$7.00
4. Bass River	\$5.00	\$7.00
5. Batsto	\$5.00	\$5.00
6. Belleplain	\$5.00	\$7.00
7. Cheesequake	\$5.00	\$7.00
8. Hacklebarney		\$4.00
9. High Point	\$5.00	\$7.00
10. Hopatcong	\$5.00	\$7.00
11. Island Beach	\$6.00	\$7.00
12. Lebanon		\$5.00
13. Ringwood Manor	\$4.00	\$5.00
14. Skylands		\$4.00
15. Shepard Lake	\$5.00	\$7.00
16. Round Valley	\$5.00	\$7.00
17. Spruce Run	\$5.00	\$7.00
18. Stokes (Stony Lake)	\$5.00	\$7.00
19. Swartswood	\$5.00	\$7.00
20. Washington Crossing		\$4.00
21. Wawayanda	\$5.00	\$7.00

(b) Except as provided in (i) below, a daily day use parking fee of \$4.00 for automobiles shall be in effect at Island Beach State Park for the period commencing on the day after Labor Day and ending on the day before Memorial Day Weekend.

(c) Except as provided in (i) below, daily parking fees for motorcycles, mopeds and buses at State parks, forests and recreational areas are as follows:

VEHICLE	DAILY FEE
1. Motorcycle	\$ 2.00
2. Moped	\$ 1.00
3. Bus (out-of-State groups)	\$80.00/Bus
4. Bus (in-State groups)	\$40.00/Bus

(d) The fee for an annual parking pass for automobiles, motorcycles, and mopeds at all State parks, forests and recreation areas is \$35.00.

(e) The daily or annual walk-in and bicycle fee for persons 12 years old and above at designated State parks, forests and recreation areas is as follows:

AREA	DAILY FEE	ANNUAL WALK-IN AND BICYCLE PASS
i. Atsion	\$1.00	\$35.00
ii. Barnegat Lighthouse	\$1.00	\$35.00
iii. Bass River	\$1.00	\$35.00
iv. Hopatcong	\$1.00	\$35.00
v. Parvin	\$1.00	\$35.00
vi. Round Valley	\$1.00	\$35.00
vii. Spruce Run	\$1.00	\$35.00

2. An annual walk-in and bicycle pass purchased at one of the State parks, forests and recreation areas listed in (e)1 above shall be

honored for walk-in and bicycle admittance at any of the designated State parks, forests and recreation areas.

(f) The daily or annual fee for boat launching at designated State parks and marinas is as follows:

AREA	DAILY FEE	ANNUAL FEE
1. Leonardo State Marina	\$8.00/launch	\$90.00
2. Liberty State Park	\$8.00/launch	\$90.00

(g) The fee for dry boat storage permits at designated State parks and recreational areas for the period from April 1 to October 31, issued pursuant to N.J.A.C. 7:2-8.9, is as follows:

AREA	TYPE	SEASONAL FEE
Spruce Run	Single Boat	
	Trailer	\$125.00
Spruce Run	Double Deck	
	Boat Trailer	\$187.50
Corson's Inlet	Catamaran	\$150.00
(Half Rate After August 1)		

(h) No parking fee for automobiles, motorcycles and mopeds pursuant to (a), (b) and (c) above and no daily walk-in fee pursuant to (e) above shall be charged for New Jersey residents age 62 and over or who are totally disabled.

(i) No daily parking fee for automobiles, motorcycles and mopeds pursuant to (a), (b) and (c) above and no daily walk-in fee pursuant to (e) above shall be charged on Tuesday, except when a State designated holiday falls on a Tuesday.

(j) Fees for the Spring Meadow Golf Course are as follows:

TYPE	FEE
1. Green fees:	
i. Weekdays	\$13.00;
ii. Saturdays, Sundays, & State designated Holidays	\$16.00
iii. Senior citizens (weekdays only before 10:00 A.M.)	\$ 7.00
iv. Twilight, weekdays (three hours before closing)	\$10.00
v. Twilight, weekends & holidays (three hours before closing)	\$12.00
2. Tournament fee	\$13.00/person
3. School team member practice	\$ 4.00/student
4. Golf Carts:	
i. Power (daily)	\$20.00
ii. Power (twilight—three hours before closing)	\$16.00
iii. Hand	\$ 3.00
5. Club Rental	\$11.00
6. Driving Range includes one club and one basket of balls	
i. Small Basket	\$ 3.00
ii. Large Basket	\$ 5.00

(k) Fees for the Batsto Historic Tour are as follows:

AGE	FEE
1. 6-11	\$1.00/person; and
2. 12 and above	\$2.00/person.

(l) Except when parking fees are in effect pursuant to (a) and (c) above, a fee of \$1.00 for each person age 12 and over shall be charged for admission to the Barnegat Lighthouse and High Point Monument.

(m) Daily fee per person for admission to the swimming pool at Liberty State Park for the period beginning on Memorial Day Weekend and ending on Labor Day inclusive is as follows:

ENVIRONMENTAL PROTECTION

PROPOSALS

	AGES	WEEKDAY	WEEKEND & HOLIDAYS
1.	Adults (age 12 and over)	\$3.00	\$4.00;
2.	Children (age 6-11)	\$2.00	\$3.00;
3.	Children (age 5 and under)	No Fee	No Fee;
4.	Senior citizens (New Jersey residents age 62 & over)	No Fee	No Fee; and
5.	Totally disabled	No Fee	No Fee.

7:2-17.2 Overnight use fees for services provided by the State Park Service

(a) Campsite permit fees shall be as follows:

	TYPE	FEE
1.	Group campsites:	
i.	With flush toilets	\$1.00/person/night; and
ii.	Without flush toilets	\$.75/person/night;
2.	Family campsites:	
i.	With flush toilets	\$10.00/night; and
ii.	Without flush toilets	\$ 8.00/night;
3.	Wilderness campsites	\$ 8.00/night;
4.	Open lean-tos	\$12.00/night;
5.	Closed lean-tos	\$15.00/night;
6.	Camp shelter	\$20.00/night.

(b) Campsite permits issued to any New Jersey resident who is 62 or more years of age or is totally disabled shall receive a \$2.00 per night reduction from the family campsite rates in (a)2 above.

(c) Cabin permit fees shall be as follows:

	SIZE AND TYPE	FEE
1.	Four bunks	\$ 28.00/night;
2.	Six bunks	\$ 42.00/night;
3.	Eight bunks	\$ 56.00/night;
4.	12 bunks (group cabin)	\$ 70.00/night; and
5.	24 bunks (lodge)	\$100.00/night.

(d) Miscellaneous campsite and cabin fees.

	TYPE	FEE
1.	Reservation fee	\$ 7.00/reservation;
2.	Cancellation fee	\$20.00 or two night's stay whichever is less;
3.	Equipment removal fee	\$25.00; and
4.	Equipment storage fee	\$10.00/night.

7:2-17.3 Miscellaneous fees for services when and where provided by the State Park Service

(a) Miscellaneous fees for services when and where provided by the State Park Service shall be as follows:

	SERVICE	FEE
1.	Bait platforms	\$100.00 each;
2.	Bathhouse clothes locker	\$ 0.25 person;
3.	Campwood	\$ 4.00/bundle (equals 1/24 cord);
4.	Commercial photography	\$250.00/day plus staff costs;
5.	Cordwood	\$ 15.00/cord;
6.	Clothes dryer	\$ 0.75;
7.	Clothes washer	\$ 0.75;
8.	Organized group picnic:	
i.	Operational toll booth	\$ 25.00/day reservation fee plus applicable vehicle parking fee (reservation fee under 9 below included)
ii.	No toll booth	\$ 50.00/day (reservation fee under 9 below included)
iii.	During period from day after Labor Day to day before Memorial Day Weekend	\$ 50.00/day (reservation fee under 9 below included)
9.	Reservation fee	\$ 7.00/reservation;
10.	Special use permit	\$ 50.00;
11.	Transient R/V trailer dumping fee	\$ 5.00/dump;
12.	Yarded cordwood	\$ 35.00/cord; and
13.	Employee rate charges for special permit uses	\$ 40.00/hour for each employee assigned.

(b) Miscellaneous fees for services provided by the State Park Service at Ringwood State Park are as follows:

	SERVICE	FEE
1.	Wedding and one rehearsal at Shepard Lake Chapel	\$100.00;
2.	Functions at Skylands Manor House:	
i.	Lunch	\$ 75.00; and
ii.	Dinner	\$150.00.

(c) Miscellaneous fees for services provided by the State Park Service at Wharton State Forest are as follows:

	SERVICE	FEE
	Batsto stagecoach ride (age 6 and over)	\$1.00 person.

(d) Miscellaneous fees for services provided by the State Park Service at Island Beach State Park are as follows:

	SERVICE	FEE
1.	Annual surf fishing permit	\$ 35.00
2.	Annual mobile sportfishing vehicle permit	\$125.00;
3.	Three-day mobile sportfishing vehicle permit	\$ 25.00; and
4.	Second gate fee (Memorial Day to Labor Day)	\$ 1.00/car.

(e) Miscellaneous fees for services provided by the State Park Service at Liberty State Park are as follows:

	SERVICE	FEE
1.	Fee for use of Interpretive Center	\$ 40.00/hour for each State Park Service employee assigned
2.	Fee for use of Terminal Building	\$1,000/day for each event
3.	Boat Docking Fee for one arrival and one departure	\$250.00
4.	Fee for use of North or South Field	\$250.00/event

7:2-17.4 Fees for services provided by the State Park Service at State marinas

(a) Fees for services provided by the State Park Service at the Forked River State Marina are as follows:

1. Pleasure seasonal berthholder permit fee \$40.00/foot:

	BERTH SIZE	SUMMER (April 1 to October 31)	WINTER (November 1 to March 31 Occasional Electricity)
i.	Thirty feet	\$1,200.00 minimum	\$18.00/foot length overall;
ii.	Thirty-five feet	\$1,400.00 minimum	\$18.00/foot length overall;
iii.	Forty feet	\$1,600.00 minimum	\$18.00/foot length overall;
iv.	Forty-five feet	\$1,800.00 minimum	\$18.00/foot length overall;
v.	Fifty feet	\$2,000.00 minimum	\$18.00/foot length overall;
vi.	Over 50 feet	\$40.00/foot length overall	\$18.00/foot length overall;
vii.	T-Head	Fee equal to corresponding berth size rate;	Fee equal to corresponding berth size rate; and
viii.	Dockside	Fee equal to corresponding berth size rate;	

2. Transient berthholder fee:

	BERTH SIZE	DAILY	MONTHLY
i.	Thirty feet through 40 feet	\$0.75/foot length overall	\$15.00/foot length overall;
ii.	Forty-five feet through over 50 feet	\$1.00/foot length overall	\$20.00/foot length overall; and
iii.	T-Head and dockside	fee equal to corresponding berth size rate; and	

3. Commercial berthholder fee:

BERTH SIZE	CHARTER (6 passengers and under)	OTHER
	(April 1 to October 31)	(April 1 to October 31)
Thirty feet through over 50 feet	140 percent of seasonal rate for berth size	125 percent of seasonal rate for berth size

(b) Fees for services provided by the State Park Service at the Leonardo State Marina shall be as follows:

1. Pleasure seasonal berthholder permit fee \$40.00/foot.

BERTH SIZE	SUMMER (April 1 to October 31)	WINTER (November 1 to March 31 Occasional Electricity)
i. Thirty feet	\$1,200.00 minimum	\$18.00/foot length overall;
ii. Forty feet	\$1,600.00 minimum	\$18.00/foot length overall; and
iii. Fifty feet	\$2,000.00 minimum	\$18.00/foot length overall;

2. Transient berthholder fee:

BERTH SIZE	DAILY	MONTHLY
i. Thirty feet through 40 feet	\$ 0.75/foot length overall	\$15.00/foot length overall;
ii. Fifty feet	\$ 1.00/foot length overall	\$20.00/foot length overall; and

3. Commercial berthholder fee:

BERTH SIZE	CHARTER (6 Passengers and Under)	OTHER
	(April 1 to October 31)	(April 1 to October 31)
Thirty through over 50 feet	140 percent of seasonal rate for berth size	125 percent of seasonal rate for berth size.

(c) Miscellaneous fees for services provided by the State Park Service at State marinas shall be as follows:

1. Vessels exceeding the berth category size shall be charged a fee of \$40.00 per foot length overall;

2. A fee of \$50.00 shall be charged for each berth reassignment or cancellation; and

3. Organized events consisting of 20 vessels or more shall be charged a fee of \$100.00 a day for each event and the applicable daily transient fee for each vessel.

7:2-17.5 Adjustment of fees for services and facilities provided by the State Park Service

(a) Effective on January 1, 1991 and on each January 1 thereafter, the Department may increase the fees set forth in N.J.A.C. 7:2-17.1, 17.2, 17.3 and 17.4 above for services and facilities provided by the State Park Service if the inflation factor for the previous 12 month period ending on September 30 increases. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly Consumer Price Index Report. The data shall be taken from the most recent report available on October 1 each year and the actual percentage used shall be the past year percent change for the United States city average, all items, all urban consumers.

(b) In the event that the Department increases the fees for services and facilities provided by the State Park Service as allowed in (a) above, the amount of the increase shall be determined by multiplying the annual inflation factor times the base fee set forth in N.J.A.C. 17.1, 17.2, 17.3 and 17.4 above for the type of service or facility provided.

(c) In the event that the Department does increase the fees for services and facilities provided by the State Park Service as allowed

in (a) above, each adjusted fee shall be rounded off to the next quarter of a dollar.

(d) On or before December 1 of each year, the Department shall provide a public notice which shall set forth the increased fees, if any, established under (a) above and to be effective on the following January 1 for services and facilities provided by the State Park Service. The public notice shall be provided by the Department by publication of the notice in the New Jersey Register.

(e) In the event that the Department does not annually increase the fees for services and facilities provided by the State Park Service as allowed in (a) above, the annual percentage increase in the inflation factor, if any, shall be cumulative from year to year for a period not to exceed three years.

(f) The Department shall not use the procedure set forth in (a), (b), (c), (d) and (e) above to increase any fee for services and facilities provided by the State Park Service that has not been increased for a period exceeding three years.

Recodify existing N.J.A.C. 7:2-11 as 7:5A (No change in text.)

Recodify existing N.J.A.C. 7:2-12 as 7:5B (No change in text.)

(a)

DIVISION OF COASTAL RESOURCES

Notice of Comment Period Extension

Coastal Permit Program Rules

Waterfront Development

Concurrent Proposed Amendment: N.J.A.C. 7:7-2.3

Take notice that the Department of Environmental Protection is extending the deadline for the receipt of public comments on the concurrent proposed amendment to N.J.A.C. 7:7-2.3, published in the August 6, 1990 New Jersey Register at 22 N.J.R. 2361(a), to September 10, 1990.

Submit comments by September 10, 1990 to:

Sue Kleinberg, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

HEALTH

(b)

DIVISION OF COMMUNITY HEALTH SERVICES

Catastrophic Illness in Children Relief Fund Program

Proposed Amendments: N.J.A.C. 8:18-1.2, 1.5, 1.6, 1.8, 1.18 and Appendix I

Authorized By: The Catastrophic Illness in Children Relief Fund Commission, with the approval of Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-154i.

Proposal Number: PRN 1990-462.

Submit comments by October 4, 1990 to:

Mary Ann Whiteman, Executive Director
Catastrophic Illness in Children Relief Fund Commission
New Jersey Department of Health
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 8:18 clarify the rules governing the eligibility and reimbursement provisions of the Catastrophic Illness in Children Relief Fund Program. The Department and the Commission are interested in clarifying program eligibility and the reimbursement component for the children of New Jersey residents, for whom the program is intended. Under the existing rules, eligibility is referred to as a deductible, or the out-of-pocket expenses exceeding 30 percent of a family's income if income is \$100,000 or less, or 40 percent if family income is greater than \$100,000. The proposed amendments would require families to satisfy an eligibility standard, rather than a deductible. Currently,

the program does not reimburse for these expenses; using 30 percent as an eligibility standard, families may receive reimbursement for these expenses, provided that eligibility requirements are met.

These proposed changes are based on the Commission's experience reviewing applications since December 1989. The Commission determined that these amendments are necessary to carry out the intent of the program, which is to offset economic hardship which results from the expenses of medical treatment. The change enables the program to reimburse out-of-pocket expenses beyond the first dollar over the 30 percent. Moreover, the proposed amendments would enable families to receive greater awards from the fund, leaving them responsible for 10 percent of their economic hardship, not 30 or 40 percent, and would encourage more families to apply for relief. The requirement to expend the first 30 or 40 percent of the family income on a child's medical expenses is seen as a financial hardship for families.

Social Impact

The proposed amendments would have a positive social impact on all eligible New Jersey residents with children aged 17 or younger. Families satisfying the eligibility requirements would receive more substantive assistance from the Fund, which would assist families in coping with the responsibilities which accompany significant health problems in children.

Economic Impact

The proposed amendments do not have a negative impact on the regulated public. The amendments serve to further benefit families applying to the Fund. Families satisfying the Program's eligibility criteria would be responsible for the first 10 percent of their financial hardship rather than 30 percent to 40 percent. There is expected to be little fiscal impact upon the Fund.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact on the amount of assistance a family may receive pursuant to N.J.A.C. 8:18.

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

8:18-1.2 Definitions

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

...
 ["Deductible" means that dollar amount represented by 30 percent or 40 percent of family income. The standard practice of the Fund shall be to consider disbursements for child's out-of-pocket medical expenses only after the deductible, which will vary by each family based on family income, is met.]

"Eligibility standard" means that dollar amount equal to 30 percent or 40 percent of family income.

...
 "Family responsibility" means the amount equal to 10 percent of a family's income.

8:18-1.5 State Office and Commission review process

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

(d) In a cycle of batch reviews, the Commission shall review the applications and the State Office's disbursement schedule for each application based on the [deductible,] annual cap[,] and the sliding payment schedule and make a decision on the Fund's level of assistance for each case. The calendar for the batch reviews shall be made available to the public by the State Office in advance of each year.

8:18-1.6 [Deductible] Eligibility standard

Incurred, out-of-pocket medical expenses [below] up to the 30 percent or 40 percent threshold shall be [considered the family's deductible and shall not be reimbursed by the Fund. Expenses in excess of the deductible shall be considered for payment by the Fund] required for eligibility consideration. Those expenses above the family responsibility and below the 30 percent or 40 percent threshold shall be considered for reimbursement after the eligibility standard is determined and met (see examples in Appendix I).

8:18-1.8 Sliding payment schedule

If adequate funds do not exist in the Fund at the point in time when a particular batch is being considered by the Commission to pay all applicants the amount of their expenses [above their deductible and] below the annual cap, a sliding payment schedule shall be used in an effort to distribute the available monies to applicants in an equitable way that considers a family's income, assets and other factors which impact the ability to pay for care.

8:18-1.18 Special cases

(a) Special cases shall be referred to the Commission for its review and consideration. Special cases shall include, but are not limited to, the following:

1. In special cases in which a family has more than one child, with a catastrophic illness (as defined by expenses in excess of the 30 or 40 percent threshold for each child), consideration shall be given to waiving the [standard deductible] family responsibility as outlined in N.J.A.C. 8:18-[1.3] 1.2 for the other child/children given that the family would have already met the [deductible] family responsibility for the first child.

2. (No change.)

3. For special hardship cases that come before the Commission during a batch cycle, after the standard disbursement guidelines have been applied to each case in the batch and sufficient monies remain in the Fund, consideration shall be given to waiving the standard disbursement guidelines (that is, the [deductible] family responsibility and the cap as outlined in N.J.A.C. 8:18-[1.6 and 1.7] 1.2 and 1.7).

APPENDIX I

EXAMPLES OF CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND PROGRAM

The examples below illustrate the extent which the Fund would assist two families with different income levels [(that is, \$30,000 and \$80,000) under three graduated levels of eligible medical expenses (that is, \$15,000, \$30,000 and \$60,000)].[*]

AGENCY NOTE: The following examples of the current rule are proposed for deletion from the New Jersey Administrative Code.

[ELIGIBLE MEDICAL EXPENSES: \$15,000]

FAMILY #1 (with income of \$30,000)

Amount of Eligible Medical Expenses Not Covered by Insurance:	\$15,000
Family Income:	\$30,000
Front-end Deductible (30% of Family Income):	\$ 9,000
Amount of Fund's Financial Assistance to Family:†	\$ 6,000
Total Amount for which Family remains responsible:	\$ 9,000

FAMILY #2 (with income of \$80,000)

Amount of Eligible Medical Expenses Not Covered by Insurance:	\$15,000
Family Income:	\$80,000
Front-end Deductible (30% of Family Income):	\$24,000
Amount of Fund's Financial Assistance to Family:†	\$ 0
Total Amount for which Family remains responsible:	\$15,000

ELIGIBLE MEDICAL EXPENSES: \$30,000

FAMILY #1 (with income of \$30,000)

Amount of Eligible Medical Expenses Not Covered by Insurance:	\$30,000
Family Income:	\$30,000
Front-end Deductible (30% of Family Income):	\$ 9,000
Amount of Fund's Financial Assistance to Family:†	\$21,000
Total Amount for which Family remains responsible:	\$ 9,000

FAMILY #2 (with income of \$80,000)

Amount of Eligible Medical Expenses Not Covered by Insurance:	\$30,000
Family Income:	\$80,000
Front-end Deductible (30% of Family Income):	\$24,000
Amount of Fund's Financial Assistance to Family:†	\$ 6,000
Total Amount for which Family remains responsible:	\$24,000

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

ELIGIBLE MEDICAL EXPENSES: \$60,000

FAMILY #1 (with income of \$30,000)

Amount of Eligible Medical Expenses Not

Covered by Insurance: \$60,000

Family Income: \$30,000

Front-end Deductible (30% of Family Income): \$ 9,000

Amount of Fund's Financial Assistance to Family:† \$25,000

Total Amount for which Family remains responsible: \$35,000

FAMILY #2 (with income of \$80,000)

Amount of Eligible Medical Expenses Not

Covered by Insurance: \$60,000

Family Income: \$80,000

Front-end Deductible (30% of Family Income): \$24,000

Amount of Fund's Financial Assistance to Family:† \$25,000

Total Amount for which Family remains responsible: \$35,000]

AGENCY NOTE: The following examples of the proposed rule are proposed to be added to the New Jersey Administrative Code.

FAMILY #1 (with income of \$30,000)

Family Income: \$30,000

Eligibility Standard (30% of Family

Income): \$ 9,000

Amount of Eligible Medical Expenses Not Covered by Insurance: \$15,000

Family Responsibility (10% of

Family Income): \$ 3,000

Amount of Fund's Financial Assistance to Family: \$12,000

Amount for which Family remains responsible: \$ 3,000

FAMILY #2 (with income of \$80,000)

Family Income: \$80,000

Eligibility Standard (30% of Family

Income): \$24,000

Amount of Eligible Medical Expenses Not Covered by Insurance: \$15,000

Family Responsibility (10% of Family

Income): \$ 8,000

Amount of Fund's Financial Assistance to Family:†† \$ 0

Amount for which Family remains responsible: \$15,000

†Assuming: an annual \$25,000 cap; adequate monies available in fund obviating need for additional restrictions and cost-sharing; all expenses are reasonable and customary; and none of the cases are in the "special" category.

††None: The eligibility standard is not met; expenses were not in excess of 30 percent of income; therefore, expenses cannot be considered for reimbursement.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Need for a Guardian

Proposed Amendment: N.J.A.C. 10:43-7.1

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

Authority: N.J.S.A. 30:1-12, 30:1-15, 3:1-15.1 and 30:4-165.4 et seq.

Proposal Number: PRN 1990-460.

Submit comments by October 4, 1990 to:

James M. Evanochko

Administrative Practice Officer

Division of Developmental Disabilities

CN 726

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is amending this rule to clarify that, when a family member or other interested party initiates the appointment of a guardian, the affidavit provided by the administrative head of the functional service unit may indicate that the functional service unit does or does not support the appointment of the proposed guardian. If the functional service unit does not agree that a guardian is required, no affidavit from the functional service unit shall be provided. If a family member or other interested party files a complaint in Superior Court for the appointment of a guardian, a copy of the moving papers shall be provided to the administrative head of the functional service unit. Finally, if a guardianship action is pursued despite the disagreement of the functional service unit, the Chief, Bureau of Guardianship Services, shall be notified to determine if legal action on the part of the Division of Developmental Disabilities will be initiated.

Social Impact

The proposed amendment clarifies the role of the Division when it does not support the appointment of a guardian as proposed by a party outside the Division. The purpose of the amendment is to protect the rights of the individual whose competence is in question.

By clearly indicating what actions the Division may consider when it does not agree that an individual is incompetent, the parties bringing the action will be aware of possible opposition on the part of the Division.

Economic Impact

The proposed amendment will have no additional economic impact on the public in general or the Division. The family member or other interested party initiating the legal action for appointment of a guardian will bear the cost of providing a copy of the complaint in Superior Court to the administrative head of the functional service unit. The Division, when initiating legal action for appointment of a guardian, has notified, and will continue to notify, the administrative head of the functional service unit.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rule amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment affects the administrative head of a functional service unit, which is a component of the Division, and persons initiating legal action for appointment of a guardian.

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

10:43-7.1 Procedures

(a) As provided in N.J.S.A. 30:4-165.7, if a family member or other interested party initiates legal action for the appointment of a guardian, and if the functional service unit agrees that the individual is in need of a guardian:

1. The administrative head of the functional service unit shall provide upon request within 10 working days an affidavit attesting to the individual's need for a guardian. **The affidavit may also contain content addressing whether or not the functional service unit supports appointment of the proposed guardian.**

2. (No change.)

(b) If a family member or other interested party [shall have filed] **initiates** legal action for the appointment of a guardian, and if the functional service unit does not agree that the individual is in need of a guardian:

1. **No affidavits relative to the issue of guardianship shall be completed by the functional service unit. Instead, the [The]** administrative head of the functional service unit shall complete and forward to the applicant for guardianship a copy of the statement signed by the administrative head of the functional service unit that the individual is not considered to be in need of a guardian.

2. The applicant for guardianship shall be informed of his or her opportunity to discuss the guardianship application with appropriate staff of the functional service unit.

(c) **If a complaint has been filed in Superior Court by a family member or other interested party for a judgment designating a guardian, a copy of the moving papers shall be provided by the filer to the**

administrative head of the functional service unit within 10 days of filing.

[3.] (d) If the administrative head of the functional service unit ascertains that [the] a guardianship action is [nevertheless] being pursued even though the functional service unit disagrees that the individual is in need of a guardian or if the functional service unit does not support the appointment of the proposed guardian, he or she shall notify the Chief, Bureau of Guardianship Services. The Chief, Bureau of Guardianship Services, shall determine whether legal action should be initiated.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual

Recoveries Involving County Welfare Agencies/ Boards of Social Services

Proposed New Rule: N.J.A.C. 10:49-6.6

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

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

Agency Control Number: 90-P-9.

Proposal Number: PRN 1990-455.

Submit comments by October 4, 1990 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services
CN 712

Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The proposed new rule concerns recoveries which involve the Division of Economic Assistance (DEA), formerly referred to as the Division of Public Welfare (DPW), the County Welfare Agencies/Boards of Social Services (CWA/BSS), and the Division of Medical Assistance and Health Services (DMAHS).

The proposed new rule is, in some instances, really a codification of existing recovery practices being used by the State and county governmental agencies listed below. In fact, the non-IEVS (Income and Eligibility Verification System) portion of this rule is a revision and update of a 1978 collection agreement between DMAHS, DPW and the CWA's/BSS's which was published in the December 7, 1978 issue of the New Jersey Register at 10 N.J.R. 543(b). The proposed new rule clarifies the roles and responsibilities of the respective agencies.

There are several types of recoveries corresponding to the several subsections contained in the proposed new rule. A brief discussion of each subsection, beginning with subsection (b), follows:

Subsection (b): This subsection concerns those instances where cash assistance and/or medical assistance was incorrectly granted. The New Jersey Medicaid statute (N.J.S.A. 30:4D-7i) allows the Medicaid program the right to recover, or to attempt to recover, the cost of benefits incorrectly or illegally paid from the persons listed in the statute including, but not limited to, a recipient, legally responsible relative, representative payee, or other party.

If the incorrect payment was the result of the alleged fault of either the recipient or their representative, then recovery proceedings can be instituted. If the incorrect payment was allegedly due to the fraudulent activity of the recipient or their representative, then both criminal prosecution and recovery can be instituted. In non-IEVS incorrect payment cases, the CWA/BSS is authorized to institute recovery proceedings after securing DMAHS approval. If the CWA/BSS does not institute recovery proceedings, the case shall be referred to DMAHS for possible recovery action.

When in any incorrect payment case the CWA/BSS is able to collect the overpayment from the recipient and/or their representative, and the case involves both cash and medical assistance, the CWA/BSS shall, in the absence of court instruction to the contrary, apply the net proceeds to the repayment of cash assistance and remit the balance to DMAHS.

In those instances involving non-IEVS cases where the CWA/BSS recovers only medical assistance improperly granted, the CWA/BSS shall

reimburse itself for expenses related to the recovery such as filing fees and advertising costs but not including costs such as CWA/BSS staff time, supplies, counsel fees or overhead, and can retain 10 percent of the gross amount of the recovery up to \$250.00. The CWA/BSS shall remit the balance to DMAHS.

In those special instances where action by the CWA/BSS, either alone or in conjunction with DMAHS, results in a recovery from a case generated by the unearned income portion of the IEVS (Income Eligibility Verification System) match, the entire amount shall be remitted to DMAHS, which shall then reimburse the CWA/BSS in the amount of 25 percent of the gross recovery.

All remittances to DMAHS shall be in the form of a check made payable to "Treasurer, State of New Jersey."

It should be emphasized that the 25 percent reimbursement to the counties pertains only to cases generated by the Internal Revenue Service (IRS) unearned income component of the IEVS match. The IRS unearned income portion of the IEVS match includes, but is not limited to, interest and dividends as reported on IRS Form 1099.

Subsection (c): This subsection pertains to third party liability involving tort actions. The precipitating element occurs when a Medicaid patient files an action for recovery against a defendant who allegedly committed a tortious act against the recipient.

The purpose of this subsection is to codify a long-standing policy of distribution of proceeds from such actions.

Regardless of which governmental agency learns of a situation where there may be a claim against a tortfeasor, each agency is required to notify the other.

DMAHS' claim for recovery of its payments from any settlement or judgment has priority over any claim the CWA/BSS may assert with respect to cash assistance.

Subsection (d): This subsection refers to liquidation of potential resources, and establishes a distribution procedure once the resource is in fact liquidated. However, this subsection on distribution applies only to those resources which, by action of law, regulation, or agreement with the owner, fall under the jurisdiction of either the CWA/BSS or DMAHS. Proceeds will be applied to the costs of liquidation, to any claims superior to those of the CWA/BSS, and in turn to the CWA/BSS itself in the order specified.

If there is any residue remaining, it would belong to the client and should be remitted to the client as promptly as possible. The client may make a voluntary repayment to DMAHS. The CWA/BSS will promptly reevaluate eligibility following distribution, taking into consideration any voluntary repayment to DMAHS.

Subsection (e): This subsection pertains to recovery of correctly paid benefits from the estates of deceased clients. Generally speaking, the CWA/BSS undertakes recovery as agent for DMAHS. However, DMAHS may initiate recovery activity and notify the CWA/BSS in those instances where the entire CWA/BSS claim is for burial expenses only and DMAHS made, or will make payments for medical Assistance for which there is potential recovery.

With respect to recovery and distribution from the estate of a deceased recipient, the CWA/BSS shall recover, from the proceeds of liquidation, the amount necessary to satisfy its own claim, and the claims of other CWA's/BSS's in New Jersey.

If there is a surplus, then these surplus funds should be paid to the legally designated representative of the client's estate.

If there is no representative or no known next of kin, then the CWA/BSS shall contact the Chief, Bureau of Administrative Control, DMAHS and ascertain the amount of medical assistance expended by DMAHS. The CWA/BSS shall forward a check not to exceed that amount to DMAHS. Any remaining funds will escheat to the State of New Jersey.

In those situations where there is a known next of kin, the CWA/BSS will request that the next of kin be appointed administrator if the amount of the estate is greater than the claim of DMAHS. If the claim of DMAHS exceeds the value of the estate, then the CWA/BSS shall request that the next of kin consent to transfer his/her rights to DMAHS. If the consent is obtained, the CWA/BSS shall forward the funds to DMAHS.

If the next of kin does not consent, the CWA/BSS has the option of arranging for someone to become administrator or referring the information to DMAHS for action.

If there is a dispute amongst the claimants regarding surplus funds, the CWA/BSS shall withhold payment until the matter is resolved, either by mutual consent or by court order.

DMAHS shall undertake recovery in medical assistance payment cases in which no CWA/BSS shall be submitting a claim. The CWA/BSS shall

supply any necessary information from its files to DMAHS. A claim for burial expenses takes priority over DMAHS recovery.

Subsection (f): Voluntary payments—This subsection allows the CWA/BSS to accept voluntary repayments from recipients either on its own behalf or on behalf of DMAHS up to the amount of assistance granted.

Subsection (g): Compromise settlements—This subsection indicates that compromise settlements of cash assistance are subject to DEA approval. Compromise settlements of medical assistance are subject to DMAHS approval.

Subsection (h): Effective date—The provisions of this proposed new rule, N.J.A.C. 10:49-6.6, apply to all pending and future recovery cases, except that subsection (b)6 applies to all IEVS-related recoveries received on or after July 1, 1989 by either the CWA/BSS or DMAHS, whichever agency is handling the recovery. The different effective dates reflect the fact that IEVS recoveries have been initiated within the last few years, while all other recoveries have been ongoing since the earliest years of the Medicaid program.

Social Impact

The proposed new rule potentially impacts on all Medicaid patients who receive medical assistance because medical assistance is subject to recovery in certain situations. The types of actions which can precipitate recovery activity are alleged incorrect or illegal payments, tort actions initiated by Medicaid patients, and liquidation of recipient's property, including estates.

The proposed new rule impacts on the CWA's/BSS's that determine eligibility and initiate recovery actions, either on their own behalf or as agents for DMAHS. The rights and responsibilities of the State and county governmental agencies are set forth in this proposed new rule.

The IEVS portion of the rule is designed to coordinate the recovery of benefits that were paid improperly due to the existence of resources that were not known by the agency conducting the eligibility determination at the time of application. Recipients and/or family members must complete applications carefully and list all available income and/or resources. Failure to do so may subject the recipient, or those persons completing the application on behalf of the recipient, to recovery proceedings.

Economic Impact

During calendar year 1989, DMAHS recovered over \$1,138,000 as a result of IEVS-related investigations. Fifty percent of this money was shared with the Federal government. By way of example, the CWA/BSS share of recoveries of this magnitude would be \$285,000.

The proposed new rule indicates the payments to be made to a CWA/BSS for IEVS recoveries, which is 25 percent of the amount recovered. Other recoveries are subject to lesser payments or no payments.

There is no cost to the Medicaid patient. However, there are situations in which either the CWA/BSS and/or DMAHS may seek recovery from a Medicaid patient.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the parties affected by this proposed new rule are governmental agencies or Medicaid patients, neither of whom would be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows:

10:49-6.6 Recoveries involving county welfare agencies/boards of social services

(a) The purpose of this section is to define areas of responsibility and establish basic principles and procedures in those collection activities in which the Division of Medical Assistance and Health Services (DMAHS), the Division of Economic Assistance (DEA) and/or a county welfare agency/board of social services (CWA/BSS) may be involved. It is intended that maximum conservation of public funds be effected without duplication of effort. It is recognized that certain situations may fall into more than one of the following categories. Any such matter will be processed in accordance with the provisions of the first occurring applicable category.

(b) The following requirements pertain to incorrectly granted assistance (cash and/or medical assistance):

i. In instances involving incorrect eligibility for medical assistance, whether or not in combination with cash assistance, the CWA/BSS shall determine the period(s) of ineligibility and ascertain from DMAHS the amount of medical assistance incorrectly granted. The CWA/BSS shall then attempt recovery of medical assistance incor-

rectly granted either by administrative collection, or by way of restitution in a criminal or disorderly persons proceeding.

i. Recoveries or attempts at recoveries can be made from those persons specified in N.J.S.A. 30:4D-7i.

2. When recovery cannot be obtained by these methods in a case generated by the Internal Revenue Service (IRS) unearned income component of the Income and Eligibility Verification System (IEVS), the case shall be referred by the CWA/BSS to DMAHS for possible initiation of recovery proceedings.

3. When in any other case not generated by IEVS, recovery cannot be obtained by these methods, the CWA/BSS is authorized after securing DMAHS approval to initiate recovery proceedings as DMAHS' agent. If the CWA/BSS does not initiate such recovery proceedings, it shall refer the case to DMAHS for possible initiation of recovery proceedings.

4. When collection occurs in a case involving both cash assistance and medical assistance, the CWA/BSS shall, in the absence of court instruction to the contrary, apply the net proceeds, after deducting identifiable costs of collection, such as filing fees and advertising costs but not including such costs as CWA/BSS staff time, supplies, counsel fees or overhead, to the repayment of cash assistance and the reimbursement of DMAHS.

5. When in any other case a CWA/BSS recovers only medical assistance improperly granted, the CWA/BSS shall reimburse itself for those cash expenses directly related to the recovery such as filing fees and advertising costs but not including costs such as CWA/BSS staff time, supplies, counsel fees or overhead. In addition, the CWA/BSS shall retain 10 percent of the gross amount of the recovery up to \$250.00. The CWA/BSS shall remit the remaining proceeds to DMAHS. The reimbursement shall be payable to the Treasurer, State of New Jersey.

6. When any CWA/BSS action, whether alone or in combination with DMAHS, results in a recovery of improperly granted medical assistance from a case generated by the IRS unearned income component of the IEVS match, all funds recovered shall be remitted to DMAHS, payable to the Treasurer, State of New Jersey, which shall then reimburse the CWA/BSS in the amount of 25 percent of the gross recovery on a periodic basis to be determined by DMAHS.

(c) The following requirements pertain to third party liability claims in tort actions:

1. Whenever either a CWA/BSS or DMAHS learns of a situation in any case in which the other may have a claim it will notify the other.

2. Unless the individual case circumstances intervene, the first claim after settlement or judgment is for any payments by DMAHS arising from the occurrence notwithstanding any CWA/BSS claim for recovery of cash assistance. The next claim is that which the CWA/BSS may assert in accordance with an agreement to repay or similar document. The DMAHS and the CWA/BSS will, insofar as their controls allow, maintain priority of payment in the above order.

(d) The following requirements pertain to liquidation of potential resources:

1. The CWA/BSS will participate in the liquidation of potential resources according to the program requirements under which eligibility has been established, regardless of whether cash assistance is being granted. Notification of the potential resource to be liquidated shall be forwarded to DMAHS, enabling it to seek a voluntary contribution. Sale of real property to which title is held by a CWA/BSS is subject to DEA approval in all instances regardless of the proposed distribution of the proceeds.

2. All funds arising from the liquidation of resources and which, by action of law, regulation, or agreement with the owner, fall under the jurisdiction of either a CWA/BSS or DMAHS for distribution will, insofar as possible, be allocated as follows:

i. Proceeds will be first applied to the cash costs of liquidation, such as advertising costs and filing fees but not including costs such as CWA/BSS staff time, supplies, counsel fees or overhead.

ii. Proceeds will be next applied to any claims superior to that of the CWA/BSS (for example, taxes).

iii. Proceeds will be next applied to any funds owing to and collectible by the CWA/BSS.

iv. Any residue remaining after the above payments are allocated would, in the absence of circumstances to the contrary, be the property of the client and thereby subject to (d)3 below.

3. All funds properly belonging to a client free of any agency claim are to be remitted to the client as promptly as possible or otherwise disbursed at the client's instruction. The CWA/BSS will promptly reevaluate eligibility following such distribution, taking into consideration any voluntary repayment to DMAHS.

(e) The following requirements pertain to recovery from estates of deceased clients:

1. The CWA/BSS shall normally undertake recovery activity as agent for DMAHS in any case in which the CWA is or will be undertaking activities on its own account. However, in those cases where the recovery of medical assistance is possible and where the entire CWA/BSS claim is for burial expenses only, DMAHS shall initiate recovery activity inclusive of CWA/BSS burial costs. DMAHS may, in certain cases, assume direct jurisdiction in recovery of its claim concurrent with CWA/BSS activity. DMAHS shall make the CWA/BSS aware of its activity in such cases.

2. CWA/BSS recoveries and distribution shall be in accordance with the following procedures:

i. From the proceeds of liquidation, the CWA/BSS shall first recover the amount necessary to satisfy its own claim, including costs of liquidation and the claims of other New Jersey CWA's/BSS's. The CWA/BSS shall recover funds from the clearing account in the order in which the funds were received in the clearing account. If any part of any remaining surplus has been received from the proceeds of assigned life insurance for which there was a named beneficiary other than the client's estate, that surplus or the policy benefit, whichever is less, is the property of the beneficiary and should be so directed.

ii. All other surplus funds are a part of (or the entire) client's estate and are payable to the legally designated representative of the estate. If the representative of the estate is unknown or if no representative has been appointed and there are no known next of kin, the CWA/BSS shall forward to the DMAHS an amount not to exceed the amount of the proper medical assistance claim as determined by communication with the Chief, Bureau of Administrative Control, DMAHS. Any remaining funds will escheat to the State of New Jersey.

iii. When there are known next of kin, the CWA/BSS shall request the next of kin to file to be the appointed administrator if the amount to be disbursed is greater than the claim of DMAHS. If the claim of DMAHS will equal or exceed the estate, the CWA/BSS shall request the next of kin to sign a consent to transfer his or her rights to DMAHS and, upon receipt of such signed consent, the CWA/BSS shall forward the funds to DMAHS.

iv. When the next of kin will not sign a consent to transfer his or her right to DMAHS and will not file to become the administrator, the CWA/BSS may, at its option, arrange for someone to file to become administrator or the CWA/BSS may refer the information to DMAHS for action.

v. In any question or dispute among two or more claimants on surplus funds, the CWA/BSS shall withhold payment pending resolution by mutual consent of all claimants or by court order.

3. DMAHS recoveries and distribution shall be in accordance with the following procedures:

i. DMAHS shall undertake recovery activity in medical assistance payment cases in which no CWA/BSS shall be submitting a claim. However, should information from the CWA/BSS be necessary to such DMAHS activity, the CWA/BSS shall communicate with DMAHS, supplying such material as may be required.

ii. In cases in which DMAHS is acting for a CWA/BSS in collection of burial expenses, DMAHS shall accord payment of the burial claim priority over its own recovery.

(f) The CWA/BSS may at any time accept an offer of voluntary repayment, either on its own behalf or on behalf of DMAHS, up to but not in excess of the amount of assistance granted. To any inquiry as to amount granted, the CWA/BSS shall supply the appropriate information, identifying the respective amounts granted by the CWA/BSS and DMAHS. In the absence of instruction from the payer, the CWA/BSS will reimburse cash assistance first and then remit any balance to DMAHS.

(g) Compromise settlements of cash assistance are subject to DEA approval. Compromise settlements of medical assistance are subject to DMAHS approval.

(h) This section shall apply to all pending and future recovery cases, except that (b)6 above shall apply to all IEVS-related recoveries received on or after July 1, 1989 by either DMAHS or the CWA/BSS, whichever agency is handling the recovery.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Public Hearings and Extension of Comment Period

General Assistance Manual

Emergency Assistance

Proposed Amendment: N.J.A.C. 10:85-4.6

Take notice that the Department of Human Services, at the request of the Department of the Public Advocate, will conduct public hearings concerning a proposed amendment to N.J.A.C. 10:85-4.6 which was published in the New Jersey Register on July 16, 1990 at 22 N.J.R. 2078(a). The proposed amendment addresses three major areas: prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance.

Public hearings concerning the proposed amendment to N.J.A.C. 10:85-4.6 will be held on Wednesday, September 12, 1990, at the following locations and times:

East Orange City Council Chambers
44 City Hall Plaza
City Hall
East Orange, New Jersey
10:00 A.M.-4:00 P.M.

Camden City Council Chambers
Sixth and Market Streets
Camden, New Jersey
10:00 A.M.-4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey, by telephone at (609) 588-2297 no later than noon, September 10, 1990, and provide their name(s), organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until September 27, 1990. Those comments should be addressed to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Standards for Adoption Agencies

Adoption Complaint Investigation; Out-of-State Field Visits

Proposed Amendments: N.J.A.C. 10:121A-1.3, 1.5, 2.2, and 5.8

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

Authority: N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq. and 30:4c-4(b).
Proposal Number: PRN 1990-456.

Submit comments by October 4, 1990 to:

Richard Crane, Acting Chief
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Youth and Family Services' Bureau of Licensing has experienced some confusion on the part of adoption agencies that it

regulates regarding certain requirements in N.J.A.C. 10:121A, the Manual of Standards for Adoption Agencies, which became effective December 7, 1987. In order to remedy this situation, amendments are being proposed to clarify these requirements.

The first proposed amendment at N.J.A.C. 10:121A-1.3 corrects the Division of Youth and Family Services Bureau of Licensing's address, which has changed due to the Bureau's relocation to another building.

The second proposed amendment at N.J.A.C. 10:121A-1.5 defines the term Adoption Complaint Investigation.

The third proposed amendment at N.J.A.C. 10:121A-2.2(a) clarifies the Division's role in conducting field visits to adoption agencies that are located in other states. It has been the Bureau's usual practice to conduct field visits to adoption agencies located in this State. However, on occasion, it has been necessary to conduct field visits to out-of-State adoption agencies. This amendment clearly states the Bureau's authority to conduct field visits to any out-of-State adoption agency that is regulated by the Bureau.

The final proposed amendment at N.J.A.C. 10:121A-5.8(c) clarifies and expands the requirements that an adoption agency must follow when conducting an Adoption Complaint Investigation. Specifically, the amendment requires the adoption agency to schedule a home visit within certain time frames; to contact the adoptive family by making repeated telephone calls or sending a certified letter if it has had difficulty scheduling a home visit; to notify the court if it continues to be unsuccessful in scheduling the home visit; to document its attempts to contact the family; to include in the court-requested preliminary report documentation of an agency's efforts to contact the adoptive parents and birth parents (once the court receives the written report from the agency, the agency's responsibility for the preliminary hearing is completed); to provide adoptive parents with copies of reports that contain materials adverse to the adoption; and to conduct home visits until the adoption is finalized unless otherwise specified.

Social Impact

The proposed amendments seek to clarify existing requirements and information. These amendments would enable the 63 adoption agencies that are regulated by the Division to more clearly understand the expectations of these requirements and will provide the new mailing address for the Division's Bureau of Licensing. These amendments have been reviewed by the Inter-Agency Adoption Council and the Council has given positive comments on the amendments.

Economic Impact

The Division does not anticipate any negative economic impact of the proposed amendments on the 63 adoption agencies that are regulated by the Division. These amendments only clarify existing requirements that agencies currently must meet and do not require any additional capital improvements, or expenditures for staff or equipment on the part of the adoption agencies.

Regulatory Flexibility Analysis

The 63 adoption agencies regulated by the Division are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. Only one of the three proposed amendments, N.J.A.C. 10:121A-5.8(c), has a direct impact on these adoption agencies. N.J.A.C. 10:121A-5.8(c) expands and clarifies the reporting, recordkeeping and other compliance requirements that adoption agencies must meet. These adoption agencies will be required to conduct home visits as part of an Adoption Complaint Investigation, make phone calls to the adoptive family's home, send certified letters to an adoptive family's home, document visits, attempted visits and phone calls, submit written reports to the court and supervise the child until the final adoption hearing. While this particular amendment does require some additional reporting, recordkeeping and other compliance requirements, such as documenting attempts to contact the adoptive family and sending certified letters, the existing requirements essentially required the same things. No increased capital costs or need for professional services are, therefore, anticipated.

These amendments are simply to clarify existing requirements and to note the change of address for the Bureau of Licensing.

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

10:121A-1.3 Implementation and enforcement responsibility; information

The Bureau of Licensing of the New Jersey Division of Youth and Family Services (DYFS), Department of Human Services, shall be

responsible for implementing and enforcing this chapter. For further information or technical assistance in understanding and/or complying with this chapter, please contact:

Bureau of Licensing
Division of Youth and Family Services
[One South Montgomery Street]
CN 717
Trenton, New Jersey 08625
(609) 292-8255

10:121A-1.5 Definitions

The following words and terms, when used in this chapter, shall have the indicated meanings:

... "Adoption Complaint Investigation" means an investigation ordered by the court to determine the circumstances of a non-agency placement and to assess the suitability of the prospective adoptive parents. The investigation is conducted by a court appointed State-approved adoption agency in response to the filing of an adoption petition on behalf of the prospective adoptive parents.

10:121A-2.2 Issuance of a certificate of approval

(a) The Bureau shall review the application for a certificate and shall conduct one or more field visits to in-State agencies and, at its discretion, conduct one or more field visits to out-of-State agencies to ensure that the agency is in compliance with all requirements of the State Adoption Law, N.J.S.A. 9:3-37 et seq., and of this chapter.

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

10:121A-5.8 Post-placement services

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

(c) [An agency that provides] In providing services as part of an Adoption Complaint Investigation [shall]:

1. [Conduct] The agency shall schedule a home visit [within] no later than two weeks [of] after receiving written notification from the court[.]:

i. If the agency is unsuccessful in contacting the adoptive family in order to schedule a home visit within 14 days of receipt of the court's notification, the agency shall implement the following actions to schedule the home visit during the next 14-day period:

(1) Repeated telephone calls to the family's home and to the adult family members' place(s) of employment; and

(2) Transmittal of a certified letter to the family's home or to the adult family members' place(s) of employment.

ii. If the agency is unsuccessful in contacting the family during the second 14-day period, the agency shall send a letter or other written transmittal to the court that had directed the home study, explaining the agency's repeated attempts to contact the family to schedule the home visit and asking the court for direction on how to proceed.

iii. The agency shall document and maintain on file in the child's record each attempt that it made to contact the family, as specified in i and ii above.

[2. Conduct bi-monthly visits thereafter until the adoption is finalized;

3. Submit written reports as ordered by the court; and

4. Provide the adoptive parents with a copy of any report that contains material or recommendations adverse to the adoption.]

2. The agency shall conduct a home visit no later than 14 days after scheduling it with the adoptive parents; if the visit cannot take place within 14 days of being scheduled, the agency shall document the reason for not meeting this time frame.

3. The agency shall include in the court-requested preliminary report documentation of the agency's efforts in contacting the adoptive parents and birth parents in order to assure a complete understanding regarding the circumstances of the placement of the child in the adoptive parent's home.

4. The agency's responsibility for the preliminary hearing is completed when the court receives the written report from such agency. The agency may elect to provide additional services to the adoptive family, if specified in the report.

5. The agency shall provide the adoptive parents with a copy of any report that contains material or recommendations adverse to the adoption.

6. After the agency is appointed by the court to oversee the welfare of the child prior to the final hearing to recommend whether or not the adoption should be finalized, the agency shall:

i. Schedule and conduct a home visit as specified in (c)1 and 2 above; and

ii. Submit its final written report to the court.

7. The agency shall conduct bi-monthly visits thereafter until the adoption is finalized.

8. As an exception to (c)7 above, the agency may discontinue these bi-monthly visits after the final report has been submitted to the court, when:

i. The adoption is delayed due to a custody dispute; or

ii. The court has a backlog of cases resulting in a delay in the adoption being finalized.

(d)-(i) (No change.)

TRANSPORTATION

(a)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF FREIGHT SERVICES

Transportation of Hazardous Materials Qualification and Disqualification of Drivers

Proposed Amendments: N.J.A.C. 16:49-1.1, 1.3, 1.5, 1.6, 2.1 and Appendix

Authorized By: Robert A. Innocenzi, Deputy Commissioner
(State Transportation Engineer), Department of
Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-25, Hazardous
Materials Transportation Act, P.L. 93-633 and 49 CFR 391
et seq.

Proposal Number: PRN 1990-457.

Submit comments by October 4, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy & Legislative Analysis
1035 Parkway Avenue, CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Transportation (Department) is hereby proposing to amend N.J.A.C. 16:49, Transportation of Hazardous Materials, consistent with the most currently available Federal publication of 49 Code of Federal Regulations (CFR), dated October 1, 1989.

49 CFR 391.71, as referenced herein, is proposed for adoption with an operative date of January 1, 1991. Drivers of intrastate shipments of combustible liquids hired after January 1, 1991 would be subject to the New Jersey adoption of the Federal Motor Carrier Safety Regulations relating to minimum age, applications for employment, investigations and inquiries, road tests, and written examinations. Drivers hired before January 1, 1991 would not be subject to these requirements.

The incorporation of 49 CFR 391.49(a) has been proposed for amendment, which would make it legal for those drivers who were regularly employed prior to January 1, 1991 to drive, even though not physically qualified under 49 CFR 391.41(b), provided they are otherwise qualified under N.J.S.A. 39:3-10 and possess a valid New Jersey driver's license issued before January 1, 1991, or have been granted a waiver pursuant to 49 CFR 391.49.

The incorporation of 49 CFR 171.15 has been amended to reflect current Federal requirements, which include the additional requirement to report events wherein, as a direct result of hazardous materials, an evacuation of the general public lasting one or more hours occurs, one or more major transportation arteries or facilities are shut down or closed, for one or more hours, or the flight pattern or routine of an aircraft is altered.

The incorporation of 49 CFR 171.16(a) has been amended to reflect current Federal requirements, which include the requirement that records of a report be maintained by the carrier for two years and that the USDOT must be notified within 30 days of an event, rather than within 15 days.

The exceptions previously granted for combustible liquids in containers of 110 gallons or less are being deleted. These exceptions were granted to allow small businesses sufficient time to conform to the requirements. Approximately five years have elapsed, and it is now necessary for State requirements in this area to conform to 49 CFR.

Additional changes were made to conform the text of the N.J.A.C. to 49 CFR, and to correct typographical errors.

Social Impact

The proposed amendments will promote uniform enforcement by making the State codification of the Federal Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations consistent with their current Federal counterparts. These proposed amendments will achieve this goal by imposing the same minimum age requirements on inter and intrastate drivers of combustible liquids. Uniformity between State and Federal guidelines will also be promoted by imposing upon interstate and intrastate drivers of vehicles transporting combustible liquids who are hired after the effective date of these amendments, the same requirements concerning minimum age, application for employment, investigations and inquiries, road tests and written examinations.

Economic Impact

The proposed amendments which will require all new intrastate drivers to be 21 years of age as of January 1, 1991, may have an economic impact on a hiring carrier. Such economic impact may reduce the pool of qualified drivers, for example, a driver who meets all other qualifications except age will not be able to drive a vehicle containing a combustible liquid. In addition, drivers with certain physical defects, as specified in the CFR, may not be hired after the effective date. The economic inconvenience of age requirement will be mitigated by the fact that many insurance carriers are demanding compliance with this age requirement of the Federal Motor Carrier Safety Regulations as a condition for obtaining insurance coverage. It is the position of the New Jersey Department of Transportation that greater uniformity between Federal and State regulation outweighs any economic inconvenience of compliance.

Regulatory Flexibility Analysis

The proposed amendments will impose additional recordkeeping, reporting and other requirements on intrastate drivers of combustible liquids hired after January 1, 1991. Although small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq., will be subject to greater recordkeeping, reporting and other requirements, it is the position of the New Jersey Department of Transportation that these requirements are necessary to promote the desired uniformity with Federal law. The proposed amendments to the waiver procedure for certain types of physical defects will not impose any additional reporting or recordkeeping procedures. The requirements related to reporting should not create additional costs for small businesses. While consultants can be retained to assist businesses in the implementation of these requirements, the Department is also available to assist, without charge.

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

CHAPTER 49

TRANSPORTATION OF HAZARDOUS MATERIALS

SUBCHAPTER 1. GENERAL REQUIREMENTS

16:49-1.1 Purpose

This chapter prescribes the requirements of the New Jersey Department of [Transportation] **Transportation** ("Department") governing the transportation of hazardous materials in the State of New Jersey. This chapter is adopted to establish comprehensive regulation of the shipping, packaging, marking, labelling, placarding, handling, and transportation of hazardous materials, and is established consistent with the regulations issued by the United States Department of Transportation.

16:49-1.3 General [Requirements] requirements

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

(g) The modes of transportation by air, water, or pipeline are governed by other agencies and other Federal regulations and are not under the jurisdiction of the Department. Thus, [Any] any portion of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline within Parts 107, 171, 172, 173, 174, 177, 178 [and], 179 and 180 are hereby excluded and not adopted by the Department.

(h) (No change.)

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation. The Federal "Hazardous Materials Regulations" referenced herein, are adopted as of October 1, [1987] 1989. The "Federal Motor Carrier Safety Regulations" as referenced in 49 CFR 177.804 are adopted as of October 1, [1987] 1989. The New Jersey Department of Transportation intends to amend these rules as new Federal publications become available.

(j)-(k) (No change.)

(l) The provisions and requirements of these regulations as well as the Federal regulations adopted by reference and made a part hereof are applicable to interstate as well as intrastate transporters of hazardous materials unless specifically stated otherwise. However, transporters of combustible liquids excluded under 49 CFR 173.118a(a) as modified (see Appendix) and 49 CFR 173.118a(b) as modified (see Appendix) are subject only to the requirements specified therein.

1. A transporter carrying combustible liquids, not categorized under 49 CFR 171.8 or 49 CFR 172.101 (see Appendix) as a hazardous substance or hazardous waste, in packaging having a rated capacity of 110 gallons or less and in compliance with the standard packaging requirements found in 49 CFR 173.24 (see Appendix) is not subject to these provisions including the Federal regulations adopted and incorporated herein; however, a transporter carrying such combustible liquids, not categorized as a hazardous substance or waste, in a cargo tank, tank car, portable tank or packaging having a rated capacity greater than 110 gallons is subject only to the requirements specified within 49 CFR 173.118a(b)(1) through (b)(7) as modified in the appendix where applicable; it is not subject to any other provision of the adopted Federal regulations.

2. A transporter carrying a combustible liquid categorized as a hazardous substance or waste under 49 CFR 171.8 or 49 CFR 172.10 (see Appendix) in packaging having a rated capacity of 110 gallons or less is subject only to the requirements specified within 49 CFR 173.118a(b)(1) through (7) as modified in the appendix; it is not subject to any other provision of the adopted Federal regulations. A transporter carrying combustible liquids categorized as a hazardous substance or waste in packaging having a rated capacity greater than 110 gallons, a portable tank, cargo tank or tank car is subject to all applicable provisions of this regulation including the adopted Federal regulations.]

16:49-1.5 Document availability

(a) Copies of the Federal "Hazardous Materials Regulations," Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, [and] 179, and 180 revised as of October 1, [1987] 1989, and referenced herein, may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations", Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, [1987] 1989, and adopted by reference in Section 177.804 of the Appendix to the Regulations Regarding the Transportation of Hazardous Materials may also be purchased at the places listed below.

1.-3. (No change.)

(b) (No change.)

(c) Copies of the Title 49 CFR volumes [are also] noted above[,] are further available for review at the New Jersey Department of Transportation, [Office] Bureau of Freight Services, 1035 Parkway Avenue, Trenton, New Jersey 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) [292-8367 or 292-4187] 530-8026.

16:49-1.6 Assistance

(a) For general assistance and procedural questions in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

[Office] Bureau of Freight Services
New Jersey Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) [292-8367 or 292-4187] 530-8026

(b) For assistance in matters related to enforcement or interpretation of the Hazardous Materials [Rules] Regulations, contact:
Hazardous Materials Transportation Unit
New Jersey Division of State Police
P.O. Box 7068
West Trenton, New Jersey 08625
(609) 882-2000, extensions 2581 or 2582

16:49-2.1 Parts adopted by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the following portions of Title 49—Transportation, Code of Federal Regulations, revised as of October 1, [1987] 1989. The parts adopted by reference are found in Chapter I, referred to as "Research and Special Programs Administration, U.S. Department of Transportation". These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS. The portions adopted are summarized below.

1.-7. (No change.)

8. Part 180, Continuing Qualification and Maintenance of Packagings.

APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS

This Appendix to the Regulations Regarding the Transportation of Hazardous Materials details the adopted portions of Title 49, CFR, by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER I RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

([Entire] Subchapter B is not being incorporated upon adoption)

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

Section 171.2 General Requirements.
Section 171.3 Hazardous Waste.
Section 171.7 Matter incorporated by reference.

These materials incorporated by reference are technical documents referred to, on occasion, in Title 49, Code of Federal Regulations. Specific technical document names, associations, and addresses where they may be found are contained in Section 171.7 of Title 49, Code of Federal Regulations.

Section 171.8 Definitions and abbreviations.
Section 171.9 Rules of construction.
Section 171.11 Use of ICAO Technical Instructions.
Section 171.12 Import and export shipments.
Section 171.12a Canadian shipments and packagings.
Section 171.13 Emergency regulations.
Section 171.14 Specification markings.
Section 171.15 Immediate notice of certain hazardous materials incidents. (New Jersey Revisions as noted below.)

Section 171.15 is revised to state the following. (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, [such] each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transport-

tation (including loading, unloading and temporary storage) in which [as a direct result of hazardous materials.

- (1) A person is killed;
- (2) A person receives injuries requiring his hospitalization;
- (3) Estimated carrier or other property damage exceeds \$50,000;
- (4) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. (See also Sections 174.45, 175.45, 176.48 and 177.807 of this subchapter); or
- (5) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or
- (6) A situation exists of such a nature that, in the judgement of the carrier, it should be reported in accordance with paragraph (b) of this section even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section; e.g., a continuing danger of life exists at the scene of the incident.]

- (1) As a direct result of hazardous materials:
 - i. A person is killed; or
 - ii. A person receives injuries requiring his or her hospitalization; or
 - iii. Estimated carrier or other property damage exceeds \$50,000; or
 - iv. An evacuation of the general public occurs lasting one or more hours; or
 - v. One or more major transportation arteries or facilities are closed or shut down for one hour or more; or
 - vi. The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgement of the carrier, it should be reported in accordance with (b) and (d) of this section.

(b) Each notice required by paragraph (a) of this section shall be given to the U.S. Department of Transportation by telephone (toll free) on 800-424-8802. Notice involving etiologic agents may be given to the Director, Center for Disease Control, U.S. Public Health Service, Atlanta, Georgia, Area Code (404) 633-5313, in place of the notice to the U.S. [Department] Department of Transportation or (toll call) on [202-426-2675] **202-267-2675**. Each notice must include the following information:

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

Section 171.16 Detailed hazardous materials incident reports. (New Jersey Revision as noted below.)

Section 171.16 is revised to state the following: (Note: (a) and (b) [has] have been changed and paragraph (e) has been added.)

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form 5800.1 (Rev. 6/89) to the [Department within 15 days] **U.S. Department of Transportation within 30 days** of the date of discovery, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which [as a direct result of the hazardous materials,] any of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous [materials] waste has been discharged during transportation. If a report pertains to a hazardous waste discharge—

- (1) A copy of the hazardous waste manifest for the waste must be attached to the report[.]; and
- (2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any unremoved waste must be entered in [Part H] **Section IX** of the report form ([Form] F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send that report to the Information Systems Manager, **DHM-63**, Research and Special Programs Administration, U.S. Department of Transpor-

tation, Washington, DC 20590. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the U.S. Department of Transportation.

(c) through (e) (No change.)

Section 171.18-Section 171.19 (No change.)

Section 171.21 Assistance in investigations and special studies

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATION REGULATIONS

Subpart A—General

Section 172.1 Purpose and scope.

Section 172.3 Applicability

(a) This part applies to: (1) Each person who offers a hazardous material for transportation, and (2) Each carrier by highway or rail who transports a hazardous material.

(b) When a person other than one of those provided for in paragraph (a) of this section, performs a packaging, labeling or marking function required by this part, that person shall perform the function in accordance with this part.

Subpart B—Tables of Hazardous Materials, Their Description, Proper Shipping Name, Class, Label, Packaging, and Other Requirements

Section 172.101 Purpose and use of Hazardous Materials table, including the Hazardous Materials table, the CERCLA List, and the List of Hazardous Substances and Reportable Quantities.

Section 172.102 Purpose and Use of Optional Hazardous Materials Table for international shipments, including the Optional Hazardous Materials Table.

Appendix A to Subpart B above—Identification Number Cross Reference to Proper Shipping Names in Section 172.101 and Section 172.102.

Subpart C—Shipping Papers.

Section 172.200 [Appicability] **Applicability**

Section 172.201-Section 172.330 (No change.)

Section 172.331 Bulk packagings other than portable tanks, **cargo tanks**, tank cars and multi-unit tank car tanks.

Section 172.332-Section 172.558 (No change.)

Subpart G—Emergency Response Information

Section 172.600 Applicability and general requirements.

Section 172.602 Emergency response information.

Section 172.604 Emergency response telephone number.

Appendix A-Appendix C (No change.)

PART 173—SHIPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Subpart A—General

Section 173.1 Purpose and scope.

Section 173.2 Classification of [a]material having more than one hazard as defined in this part.

Section 173.3-Section 173.28 (No change.)

Section 173.29 Empty packagings [portable tanks, cargo tanks, and tank cars].

Section 173.30-Section 173.32d (No change.)

Section 173.33 [Qualification, maintenance, and use of cargo tanks.] **Hazardous materials in cargo tank motor vehicles.**

Section 173.34-Section 173.80 (No change.)

Section 173.81 [Detonating card] **Cord, detonating.**

Section 173.86-Section 173.91 (No change.)

Section 173.92 Jet thrust units (jato), Class B explosives; rocket motors, **Class B explosives; igniters, jet thrust (jato)**, Class B explosives; igniters, rocket

motors, Class B explosives; and starter cartridges, jet engine, Class B explosives.

Section 173.93-Section 173.110 (No change.)

Section 173.111 Cigarette loads, explosive auto alarms, toy propellant devices, toy smoke [device] devices, trick matches, and trick noise makers, explosive.

Section 173.112-Section 173.118 (No change.)

Section 173.118a Exceptions for combustible liquids. [Section 173.118a is revised to state the following: (Note: Subparagraph (a) has been modified and Subparagraph (b)(7) has been added. Most combustible liquids being transported are only subject to items (b)(1) through (b)(7) as stated below. They are not subject to the remainder of New Jersey's Hazardous Material Regulations.)]

[(a) Unless otherwise stated for a specific material, the regulations in this subchapter, with the exception of Section 173.24 (Standard requirements for all packages), do not apply to a material classed as a combustible liquid in a packaging having a rated capacity of 110 gallons or less, unless the combustible liquid is a hazardous substance, or a hazardous waste.

(b) A combustible liquid that is a hazardous substance or a hazardous waste in a packaging having rated capacity of 110 gallons or less, and a combustible liquid in a portable tank, cargo tank or a tank car is not subject to the requirements of this subchapter except those pertaining to:

(1) Shipping papers, waybills, switching orders, and hazardous waste manifests;

(2) Marking of portable tanks and marking of packages having a rated capacity of 110 gallons or less that contain hazardous substances or hazardous wastes;

(3) Display identification numbers on portable tanks, cargo tanks, tank cars and multi-unit tank car tanks;

(4) Placarding or portable tanks, cargo tanks and tank cars;

(5) Carriage aboard aircraft and vessels (for packaging requirements for transport by vessel see Section 173.340 of this subchapter); and

(6) Reporting incidents as prescribed by Sections 171.15, 171.16, and 171.17 of this subchapter as revised herein.

(7) The requirement of sections 173.1, 173.24, and 177.804 of this subchapter]

Section 173.119-Section 173.293 (No change.)

Section 173.294 [Monochloroacetic] Chloroacetic acid, liquid or solution.

Section 173.295-Section 173.372 (No change.)

Section 173.373 [Ortho-nitroaniline and paranitroaniline.] Nitroaniline, ortho or para.

Section 173.374-Section 173.1070 (No change.)

Section 173.1080 Sulfur, molten or solid.

Section 173.1090-Section 174.450 (No change.)

Section 174.480 Poisonous flammable [liquids] solids with food-stuffs.

Section 174.510-Section 174.840 (No change.)

PART 177—CARRIAGE BY PUBLIC HIGHWAY

Subpart A—General Information [Regulations] Regulations

Section 177.800 [Purpose of regulations in Parts 170-189 of this chapter.] Purpose and scope.

Section 177.801 [Scope of regulations in Parts 170-189 of this chapter.] Unacceptable hazardous materials shipments.

Section 177.802 [Application of regulations in Parts 170-189 of this chapter.] Inspection.

Section 177.803-Section 177.804 (No change.)

Motor carriers and other persons subject to this part shall comply with 49 CFR Parts 390 through 397 (excluding Section 391.69, [391.71], 393.81, [397.3, and 397.9] and 397.3) revised as of October 1, [1987] 1989, to the extent those rules apply. Carriers transporting

hazardous materials, substances, or wastes as defined herein must comply with these parts as listed below.
(See N.J.A.C. 16:49-1.3(1) herein).

MOTOR CARRIER SAFETY REGULATIONS

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

[Subpart A—Definitions]

Section 390.1	Motor vehicle.
Section 390.2	Vehicle.
Section 390.3	Bus.
Section 390.4	Truck.
Section 390.5	Truck tractor.
Section 390.6	Semitrailer.
Section 390.7	Full trailer.
Section 390.8	Pole trailer.
Section 390.9	Driveway-towaway operation.
Section 390.10	Gross weight.
Section 390.11	Driver.
Section 390.12	Business district.
Section 390.13	Residence district.
Section 390.15	Motor carrier.
Section 390.17	Lightweight vehicle.

Subpart B—General

Section 390.28	Other terms.
Section 390.30	State and local laws, effect on.
Section 390.31	Vehicles used for purposes other than as defined.
Section 390.32	Motor carrier to require observance of driver regulations.
Section 390.33	Applicability of regulations.
Section 390.40	Locations for filing accident reports and notifications.
Section 390.45	Photographic copies of records or documents.]

Subpart A—General Applicability and Definitions

Section 390.1	Purpose
Section 390.3	General applicability.
Section 390.5	Definitions.
Section 390.7	Rules of construction.

Subpart B—General Requirements and Information

Section 390.9	State and local law, effect on.
Section 390.11	Motor carrier to require observance of driver regulations.
Section 390.13	Aiding or abetting violations.
Section 390.19	Additional equipment and accessories.
Section 390.21	Marking of motor vehicles.
Section 390.23	Relief from hours-of-service regulations—disasters.
Section 390.27	Locations of regional motor carrier safety offices.
Section 390.31	Copies of records or documents.
Section 390.33	Vehicles used for purposes other than defined.
Section 390.35	Certificates, reports, and records: falsification, reproduction, or alteration.
Section 390.37	Violation and penalty.

PART 391—QUALIFICATIONS OF DRIVERS

Subpart A—General

Sections 391.1 and Section 391.2	(No change.)
[Section 391.3	Definitions.
Section 391.5	Familiarity with rules.
Section 391.7	Aiding or abetting violations.]

Subparts B-D (No change.)

Subpart E—Physical Qualifications and Examinations.

Section 391.41-Section 391.47	(No change.)
Section 391.49	Waiver of certain physical defects.

(Section 391.49(a) is revised to state the following:)

(a) A person who is not physically qualified to drive under Section 391.41(b), but who has been a regularly employed driver, as defined in Section 390.5, as of January 1, 1991, and who is otherwise qualified under N.J.S.A. 39:3-10 to drive a motor vehicle, may continue to drive a motor vehicle, provided that person is in possession of a valid New Jersey driver license issued prior to January 1, 1991, or has been granted a waiver pursuant to 49, Code of Federal Regulations, Section 391.49.

Section 391.49(b) through (1) (No change.)

Section 391.51-Section 391.61 (No change.)

Section 391.62 [Drivers of lightweight vehicles.] (Reserved)

Section 391.63-Section 391.67 (No change.)

Section 391.71 Intrastate drivers of vehicles transporting [combustible] combustible liquids (Section 391.71(a) and (b) are revised to state the following:)

(a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of the subchapter) as of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

(1) Is transporting combustible liquids (as defined in Section 173.115 of this title), and

(2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, the provisions of Section 391.41(b)(10) relating to minimum visual requirements, do not apply to a driver who was a regularly employed driver (as defined in Section 390.5 of this subchapter) as of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a vehicle that:

(1) Is a truck (as defined in Section 390.5 of this subchapter), and

(2) Is operated in retail delivery service, and

(3) Is transporting combustible liquids (as defined in Section 173.115 of this title), and

(4) Is operated in intrastate commerce.

Subpart H—Controlled Substances Testing

Section 391.81 Purpose and scope.

Section 391.83 Applicability.

Section 391.85 Definitions.

Section 391.87 Notification of test results and recordkeeping.

Section 391.93 Implementation schedule.

Section 391.95 Drug use prohibitions.

Section 391.97 Prescribed drugs.

Section 391.99 Reasonable cause testing requirements.

Section 391.101 Reasonable cause testing procedures.

Section 391.103 Pre-employment testing requirements.

Section 391.105 Biennial testing requirements.

Section 391.107 Pre-employment and Biennial testing procedures.

Section 391.109 Random testing requirements.

Section 391.111 Random testing procedures.

Section 391.113 Post-accident testing requirements.

Section 391.115 Post-accident testing procedures.

Section 391.117 Disqualifications

Section 391.119 Employee Assistance Program (EAP).

Section 391.121 EAP training program.

Section 391.123 After-care monitoring.

PART 392—DRIVING OF MOTOR VEHICLES

Section 391.1-Section 391.3 (No change.)

Section 392.4 [Narcotics, amphetamine, and other dangerous substances.] **Drugs and other substances.**

Section 392.5-Section 392.66 (No change.)

Section 392.67 Heater, flame producing; [or] on vehicle in motion.

Section 392.68-Section 393.1 (No change.)

[Section 393.2] Section 393.3 Additional equipment and accessories.

Section 393.5 Definitions.

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

Section 393.9 (No change.)

Section 393.11 [Lamps and reflectors, small buses and trucks.] **Lighting devices and reflectors.**

[Section 393.12 Lamps and reflectors, large buses and trucks.

Section 393.13 Lamps and reflectors, truck tractors.

Section 393.14 Lamps and reflectors, large semi-trailers and full trailers.

Section 393.15 Lamps and reflectors, small semi-trailers and full trailers.

Section 393.16 Lamps and reflectors, pole trailers.]

Section 393.17 (No change.)

[Section 393.18 Lamps on motor vehicles with projecting loads.]

Section 393.19-Section 393.106 (No change.)

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

Section 393.201 Frames.

Section 393.203 Cab and body components.

Section 393.205 Wheels.

Section 393.207 Suspension systems.

Section 393.209 Steering wheel systems.

PART 394—NOTIFICATION AND REPORTING OF ACCIDENTS

Section 394.1-394.3 (No change.)

Section 394.5 [Definition of "farm-to-market agricultural transportation".] (Reserved)

Section 394.7-Section 394.20 (No change.)

PART 395—HOURS OF SERVICE OF DRIVERS

Section 395.1 [Compliance with, and knowledge of, the rules in this part.] (Reserved)

Section 395.2-Section 395.8 (No change.)

Section 395.10 Adverse driving [and] conditions.

Section 395.11-Section 395.13 (No change.)

Section 395.15 Automatic on-board recording devices.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

Section 396.1-Section 396.15 (No change.)

Section 396.17 Periodic inspection.

Section 396.19 Inspector qualifications.

Section 396.21 Periodic inspection recordkeeping requirements.

Section 396.23 Equivalent to periodic inspection.

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

PART 397—TRANSPORTATION OF HAZARDOUS

MATERIALS; DRIVING AND PARKING RULES.

Section 397.1-Section 397.19 (No change.)

[Section 397.21 Marking of vehicles operated by private carriers.]

PART 177—CARRIAGE BY PUBLIC HIGHWAY (CONTINUED)

Section 177.805-Section 177.813 (No change.)

Section 177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and [retest] other reports.

Section 177.815-Section 177.839 (No change.)

Section 177.840 Compressed gases [, including cryogenic liquids].

Section 177.841-Section 178.241 (No change.)

Subpart H—Specifications for Portable Tanks

Section 178.245 Specifications [41] 51; steel portable tanks.

Section 178.251-Section 178.338 (No change.)

Section 178.340 [General design and construction requirements applicable to specifications MC 306 (Section 178.341), MC 307 (Section 178.342), and MC 312 (Section 178.343) cargo tanks.] (Reserved)

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

- Section 178.341 [Specification MC 306; cargo tanks.] (**Reserved**)
Section 178.342 [Specification MC 307; cargo tanks.] (**Reserved**)
Section 178.343 [Specification MC 312; cargo tanks.] (**Reserved**)
Section 178.345 **General design and construction requirements applicable to Specifications DOT 406 (Section 178.346), DOT 407 (Section 178.347), and DOT 412 (Section 178.348) cargo tank motor vehicles.**
- Section 178.346 **Specification DOT 406; cargo tank motor vehicle.**
- Section 178.347 **Specification DOT 407; cargo tank motor vehicle.**
- Section 178.348 **Specification DOT 412; cargo tank motor vehicle.**
- Subpart K through Section 179.13 (No change.)
Section 179.14 [Tank car couplers.] **Coupler vertical restraint system.**
- Subpart C through Section 179.221 (No change.)
Section 179.222 **Special commodity requirements for DOT [11SA] 115A tank car tanks.**
- Subpart E through Section 179.500 (No change.)

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**Subpart A—General**

- Section 180.1 **Purpose and scope.**
Section 180.2 **Applicability.**
Section 180.3 **General requirements.**

Subpart E—Qualification and Maintenance of Cargo Tanks

- Section 180.401 **Applicability**
Section 180.403 **Definitions**
Section 180.405 **Qualification of cargo tanks.**
Section 180.407 **Requirements for test and inspection of cargo tanks.**
Section 180.409 **Minimum qualifications for inspectors and testers.**
Section 180.411 **Acceptable results of tests and inspections.**
Section 180.413 **Repair, modifications, stretching, or rebarrelling of cargo tanks.**
Section 180.415 **Test and inspection markings.**
Section 180.417 **Reporting and record retention requirements.**

RULE ADOPTIONS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Administrative Correction Family Leave

N.J.A.C. 4A:6-1.8 and 1.21

Take notice that the Department of Personnel has discovered two errors in the adopted text of N.J.A.C. 4A:6-1.8, as amended, and new rule N.J.A.C. 4A:6-1.21, as published in the August 6, 1990 New Jersey Register at 22 N.J.R. 2263(a). The deletion upon adoption of the second use of the word "other" in N.J.A.C. 4A:6-1.8(b) was incorrect; for clarity, the first usage of the word is deleted through this notice and "other" is added before "leaves without pay." N.J.A.C. 4A:6-1.21(d)3i contains an erroneous reference to "(d)iii above." The correct reference is "(d)3 above." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

4A:6-1.8 Pregnancy-disability and child care leave: State Service

(a) (No change.)

(b) Child care leave may be granted to [other] State employees under the same terms and conditions as all other leaves without pay. See N.J.A.C. 4A:6-1.10. For family leave, see N.J.A.C. 4A:6-1.21.

4A:6-1.21 Family leave

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

(d) Family leave may be denied to an employee if:

1.-2. (No change.)

3. The appointing authority notifies the employee of its intent to deny the leave at the time the appointing authority determines that the denial is necessary.

i. When leave has already commenced at the time of the notification pursuant to (d)[iii]3 above, the employee shall return to work within 10 working days of the notification.

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

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development Full Disclosure Regulations

Adopted Amendments: N.J.A.C. 5:26-1.4, 2.11, 9.3, 11.1, and 11.5

Proposed: June 4, 1990 at 22 N.J.R. 1702(a).

Adopted: August 9, 1990, by William M. Connolly, Director,
Division of Housing and Development, Department of
Community Affairs.

Filed: August 13, 1990, as R.1990 d.452, without change, but with
the chapter readoption still pending.

Authority: N.J.S.A. 45:22A-35.

Effective Date: September 4, 1990.

Expiration Date: March 1, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Note that proposed readoption of N.J.A.C. 5:26 is still pending.

Full text of the adopted amendments follows.

5:26-1.4 Administration

The Act shall be administered by the Division of Housing and Development of the State Department of Community Affairs, through the Bureau of Homeowner Protection. All correspondence and inquiries may be addressed to the Bureau of Homeowner Protection, CN 805, Trenton, New Jersey 08625.

5:26-2.11 Order of revocation

(a) The Agency may revoke a registration after notice and 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 and upon finding of fact that the developer has:

1.-7. (No change.)

(b) (No change.)

5:26-9.3 Public Offering Statement

(a) Simultaneously with the filing of an application for registration with the Agency, the developer shall serve upon all tenants in the building a copy of the proposed Public Offering Statement and file an affidavit of service with the Agency within 10 days.

1. The proposed Public Offering Statement that is given to the tenants shall contain the following statement on the first page:

THIS IS THE PROPOSED PUBLIC OFFERING STATEMENT SUBMITTED TO THE DIVISION OF HOUSING AND DEVELOPMENT, DEPARTMENT OF COMMUNITY AFFAIRS, IN AN APPLICATION FOR REGISTRATION TO CONVERT THIS BUILDING TO A CONDOMINIUM OR COOPERATIVE. THIS STATEMENT IS SUBJECT TO CHANGE. THE DEPARTMENT OF COMMUNITY AFFAIRS WILL ACCEPT WRITTEN COMMENTS CONCERNING THIS STATEMENT FOR A PERIOD OF 45 DAYS. ALL COMMENTS SHOULD BE ADDRESSED TO:

Department of Community Affairs
Planned Real Estate Development Section
Bureau of Homeowner Protection
CN 805
Trenton, NJ 08625

THIS DOCUMENT IS NOT THE NOTICE OF INTENTION TO CONVERT AND FULL PLAN OF CONVERSION REQUIRED UNDER THE NEW JERSEY STATUTE GOVERNING REMOVAL OF TENANTS (N.J.S.A. 2A:18-61.1 et seq.).

5:26-11.1 Administration

The Division of Housing and Development in the Department of Community Affairs shall administer and enforce these regulations. Within the Division, responsibility for administration and enforcement of these regulations shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities vested in the Director, Division of Housing and Development, shall be executed by the Chief, Bureau of Homeowner Protection, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, with the exception of the power to make rules and the power to make final determinations resulting from any hearing required or permitted pursuant to law.

5:26-11.5 Penalties

(a) The Commissioner, through the Agency, may levy and collect the penalties set forth in the Act after affording the person allegedly in violation an opportunity for a hearing, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., on the alleged violations, and after a final determination that said person is guilty of the violation.

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

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Administrative Correction School Facility Planning Service Educational Facility Planning Standards Adopted Amendment: N.J.A.C. 6:22-5.4

Take notice that the Department of Education has requested an administrative correction to the text of N.J.A.C. 6:22-5.4(b)1, as adopted in the June 4, 1990 New Jersey Register at 22 N.J.R. 2350(a). As revised upon adoption, the term "library services" was deleted from the paragraph's first sentence and placed in the last sentence of the paragraph, added upon adoption. Upon review by the Department, these changes were discovered to be in error as contrary to the specific intention of the State Board of Education in revising this paragraph upon adoption. The Office of Administrative Law has agreed to correct this paragraph to reflect the intention of the State Board. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

6:22-5.4 Educational facility planning standards

(a) (No change.)

(b) General design and construction requirements are as follows:

1. School buildings shall afford accommodations for general, class and laboratory work, **library services**, health and physical education, guidance and counseling, administration, and health services, the suitability of which shall be pursuant to the requirements of this section. In addition, when the curriculum requires it, school buildings shall afford accommodations for [library services:] industrial, vocational and homemaking instruction; food services; art and music education; and other school services generally recognized in the approval of a school.

2.-12. (No change.)

(c)-(j) (No change.)

(b)

STATE BOARD OF EDUCATION

Special Education

Adopted Amendments: N.J.A.C. 6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5, through 2.9, 3.3 through 3.7, 3.9, 4.1, 4.2, 4.4 through 4.8, 5.1, 5.2, 6.1 through 6.4, 7.1, 7.4, 8.1, 8.4 through 8.6, 9.2, 10.1, 11.5, 11.6, 11.11 and 11.12

Adopted New Rules: N.J.A.C. 6:28-6.5

Proposed: May 21, 1990 at 22 N.J.R. 1412(a).

Adopted: August 1, 1990 by John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: August 10, 1990 as R.1990, d.450, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 94-142 and 99-457.

Effective Date: September 4, 1990.

Expiration Date: April 10, 1994.

Summary of Public Comments and Agency Responses:

The Department of Education received 95 comments from 26 individuals and organizations regarding the proposed amendments to N.J.A.C. 6:28, the Special Education rules. There were six speakers who presented comments at the March 22, 1990 State Board of Education public hearing, six at the May 16, 1990 hearing and two at the July 18, 1990 hearing.

Their comments, as well as those received in the month long written comment period which followed publication of the rules in the New Jersey Register, were carefully considered by the Department. A summary follows:

Five comments expressed support for changes proposed by the Department. These commenters were in support of amendments to N.J.A.C. 6:28-2.1(g), 2.3(f)3, 2.3(k), 2.6(a), 2.7(a), 2.8, 3.6(n), 4.5(b)2, 4.6(a)3iii, 4.7(a), 4.7(b), 8.1(n), (o) and 10.1(1).

COMMENT: Two commenters stated that the proposed amendment should not take the responsibility for day training pupils away from local school boards and place it with the Department of Human Services.

RESPONSE: The Department responds that jurisdiction over day training pupils for the development of individualized education programs (IEPs) remains with the local school district, as it has been. All mediation and due process rights remain the responsibility of the Department of Education. State statute requires day training centers to implement the IEP written by the local school district. This amendment allows the Department to ensure that day training pupils receive the program specified in their IEPs.

COMMENT: Four commenters stated the proposed amendment regarding discipline puts the onus on parents to predict their child's behavior before it occurs. Putting exemptions to the district board of education's disciplinary policies and procedures in IEPs will cause disputes.

RESPONSE: The Department responds that an IEP is a planning document which can be modified at any time. If the "prediction" of the developers of the IEP is incorrect in regard to discipline (or any other matter), modification should be made.

COMMENT: One of the same commenters asked, "Who reviews the proposed suspension of more than 10 days?"

RESPONSE: The Department responds that N.J.A.C. 6:28-2.8(c) states that the case manager shall review the status of the pupil and lists the components of that review.

COMMENT: The same commenter disagrees that handicapped pupils should be suspended for up to 10 days prior to action by the child study team and states that disciplinary action for nonhandicapped pupils is not appropriate for handicapped pupils. Notification will become a paperwork nightmare and will have to be done within 10 days.

RESPONSE: The Department responds that the proposed amendment is consistent with Federal policy and the interpretation of Federal court cases. Notification to the case manager and parent is necessary to ensure that they can be informed and participate in decisions regarding disciplinary action. There is no requirement that the paperwork be completed in 10 days.

COMMENT: Four commenters recommended that the definition of eligible for day training be eliminated and the segregation of these pupils be ended.

RESPONSE: The Department responds that the definition of day training eligible is required by State statute. The Department is developing a plan to provide an array of placement options (including integrated settings) of such pupils. Statutory change is needed before N.J.A.C. 6:28 can be amended.

COMMENT: One commenter stated that the rules should be returned to their state as of 1984. The Plan to Review is totally noncompliant with Federal law.

RESPONSE: The Department responds that N.J.A.C. 6:28 is in compliance with P.L. 94-142.

COMMENT: Two commenters stated that further clarification on disciplinary action standards is needed. The entire child study team and principal should review the status of a pupil when disciplined to determine if a suspension would result in a significant change in placement. The case manager is only one member of the team.

RESPONSE: The Department responds that Federal regulations allow an individual to make this decision and the Department feels that to require the participation of others would be unduly burdensome.

COMMENT: One commenter asked "Will the present components in the evaluation procedures continue to be required?"

RESPONSE: The Department responds, "Yes."

COMMENT: The same commenter stated that the board should ensure the confidentiality of teaching staff members making a special education complaint.

RESPONSE: The Department responds that confidentiality of the complainant cannot be assured as the complaint becomes a public record on completion.

COMMENT: The same commenter recommended extending program modification limits to all educationally handicapped pupils.

RESPONSE: The Department disagrees. Such an extension of the modification limits would create obstacles to mainstreaming of handicapped pupils.

COMMENT: One commenter stated support for the inclusion of transition planning, but wants clarification whether the intent of this section (N.J.A.C. 6:28-4.7) is that all students 14 years or older are entitled to transitioning programs.

RESPONSE: The Department responds that the intent of this section is that for all educationally handicapped pupils beginning at age 14 transition planning must be addressed in their IEPs.

COMMENT: The same commenter is concerned that the new definition of eligible for day training will allow pupils with cerebral palsy to be classified as eligible for day training regardless of their cognitive abilities. This commenter supports the recommendations that the primary responsibility for providing education to children with severe multiple disabilities should be transferred over time to the educational system.

RESPONSE: The Department responds that the new definition in N.J.A.C. 6:28 is drawn directly from State statute, N.J.S.A. 18A:46-9(c).

COMMENT: One commenter stated that case managers from the Division of Vocational Rehabilitation or Developmental Disabilities should be involved in the development of transition IEPs for severely handicapped pupils. Language should be added to the list of post-secondary areas to state that "Services from the Division of Vocational Rehabilitation or the Division of Developmental Disabilities" will be provided. Training is needed to fulfill the transition mandate and appropriately address this in the development of IEPs.

RESPONSE: The Department agrees that the Division of Vocational Rehabilitation or Developmental Disabilities should be involved; however, the Department has no authority to mandate participation of an outside agency. Technical assistance will be provided to districts.

COMMENT: The same commenter stated support for the clarification of respondents in due process hearings for pupils classified as eligible for day training. Service for eligible for day training pupils should be provided under the auspices of the Department of Education.

RESPONSE: The Department agrees and is developing a plan to increase the array of program options for pupils classified as eligible for day training. Statutory change is required before N.J.A.C. 6:28 can be amended.

COMMENT: The same commenter stated that the proposed amendments are in conflict with *Honig vs. Doe*, 108 S. Ct. 592 (1988) because they allow a handicapped pupil to be disciplined unless the IEP exempts the pupils. *Honig* states that an educationally handicapped pupil could not be disciplined if the behavior is a result of the child's handicapping condition.

RESPONSE: The Department responds that *Honig v. Doe* and subsequent Federal policy memorandum allow for short term suspension of up to 10 days in the aggregate.

COMMENT: The same commenter stated concern with the appropriateness of applying "normal district disciplinary action to educationally handicapped pupils" and believes that the proposed amendments discriminate against pupils whose handicapping condition includes behavior problems.

RESPONSE: The Department disagrees. It is appropriate to apply normal district disciplinary action to educationally handicapped pupils if such action is not addressed by the IEP. All pupils need some structured disciplinary system.

COMMENT: Two commenters stated that the Department's attempt to impose certification requirements on private schools serves no useful purpose. It is unnecessary and is a prohibitive restriction.

RESPONSE: The Department responds that requiring certification for staff in private schools is necessary for two reasons: a) they educate public school pupils using public funds, and b) administrators in private schools continually make educational decisions regarding the pupils placed in their schools by local districts. They have essentially the same responsibilities as their counterparts in the public schools. As such, it is appropriate to require certification.

COMMENT: One commenter stated that pupils could be suspended for 10 days before a determination is made as to whether or not there has been a significant change in placement.

RESPONSE: The Department responds that short suspension (of up to 10 days) is permissible under Federal rulings and policy.

COMMENT: One commenter expressed concern that requiring signatures of those who participate in the development of IEPs is excessive and cumbersome. Instead, have the pupil's case manager attest to the participation of those in attendance.

RESPONSE: The Department responds that, according to N.J.A.C. 6:3-2, signatures are required when a pupil record is generated. Therefore, signatures are required on IEPs.

COMMENT: One commenter objected to deleting parental consent at the referral stage because it weakens parental rights.

RESPONSE: The Department disagrees. Parental rights are protected by the requirement that notice be provided.

COMMENT: Three commenters recommended retaining the word "appeal" in N.J.A.C. 6:28-2.9(a).

RESPONSE: The Department disagrees. This is consistent with Federal regulations (34 CFR 300.562). Appeals are not required prior to an IEP meeting. The right to appeal is protected under N.J.A.C. 6:28-2.9(a).

COMMENT: One of the three commenters stated that school authority is broken down when some pupils are exempted from school regulations and discipline.

RESPONSE: The Department disagrees. The rights of handicapped pupils in regard to discipline have grown out of a series of court cases (including *Honig vs Doe*) and Federal policy. New Jersey must conform to those requirements.

COMMENT: One commenter suggested allowing the use of teacher assistants in resource rooms to allow the enrollment to increase to seven pupils.

RESPONSE: The Department is considering the increase of class size through waivers in resource room programs. An amendment would not be necessary to allow this.

COMMENT: One commenter suggested alternate language to N.J.A.C. 6:28-8.5(c) as follows: "This entitlement shall be forwarded to the Departments of Corrections and Human Services on July 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the Commissioner(s) of Human Services and/or Corrections. The Commissioner of Education may also withhold payments if he finds a facility's remedial plan or its implementation to be insufficient pursuant to N.J.S.A. 18A:7B-5. The withheld payments should be reasonable and consistent with the severity of the insufficiency."

RESPONSE: The Department responds that proposed revision does not allow the implementation of N.J.S.A. 18A:7B-5. The proposed language of the Department of Education allows the payment schedule to be modified by written agreement and this allows maximum flexibility.

COMMENT: Department staff noted that in N.J.A.C. 6:28-6.5(b)6 the citations to N.J.A.C. 6:29-7.1 and 9.6 are incorrect due to the recodification of N.J.A.C. 6:29.

RESPONSE: The Department agrees and will correct the error. The new citations will be N.J.A.C. 6:29-4.2 and 6.6.

COMMENT: The U.S. Department of Education informed all chief state school officers that P.L. 99-457 requires all states to provide a free appropriate public education to all children aged three to five.

The date of eligibility for services in preschool programs must begin on a child's third birthday. New Jersey rules conflict with this Federal requirement because children who turn three after December 31 in a school year continue to receive programs in early intervention centers or must wait until the next school year to begin a preschool program. In order for New Jersey to be eligible for the 1991 Federal Preschool Grant, the rules defining age three must be amended by July 1991.

RESPONSE: The Division of Special Education will return to the State Board in the fall of 1990 to provide substantial rule amendments as required by the Federal government.

COMMENT: One commenter suggested rewording N.J.A.C. 6:28-2.8(a) to state "are subject to the same district board of education disciplinary policies and procedures".

RESPONSE: The Department agrees to this grammatical change and recommends the non-substantive change.

COMMENT: The same commenter recommended that N.J.A.C. 6:28-2.8(d) be changed to clearly spell out that, following the reevaluation, discipline means suspension or expulsion. The following new language is suggested: "If the pupil's behavior is determined to be primarily caused by the pupil's educational handicap, the district may not suspend or expel the pupil." Secondly, the wording suggests that a student whose behavior is caused by his/her educational handicap may not be suspended even if the IEP includes suspension as an appropriate form of discipline.

RESPONSE: The Department responds that reevaluation, as used in this section, is conducted only after the conditions of N.J.A.C. 6:28-2.8(c)3 are met. The reevaluation would only be conducted to determine if suspension should occur.

COMMENT: Two commenters noted that the definition for eligible day training has a typographical error in it as published in the May 21, 1990 New Jersey Register. Change "capable" to "incapable".

RESPONSE: The Department agrees. The Office of Administrative Law was notified of the error and it has been corrected in the publication of the adoption in the Register.

COMMENT: One of the same commenters stated that the intention of the amendments concerning transition of handicapped pupils is laudatory but may not be necessary for all students. It may not be appropriate to decide post-secondary activities for all handicapped pupils at age 14. The requirement regarding assessment presents technical problems as there is little reported research regarding the validating of post-secondary outcomes from assessments. It may be dangerous to track pupils. It is suggested that this process should not be mandated for all pupils.

RESPONSE: The Department disagrees. The Department believes the goal of all education is to prepare all pupils for post-secondary outcomes. The Department has received considerable feed-back from parents stating the need for increased attention to transition.

COMMENT: The same commenter asks if the written approval of the chief school administrator for exemptions from the high school graduation requirements may come from a designee? What happens if approval is not given?

RESPONSE: The Department responds that designee may approve the exemptions. Frequently, districts have had the director of special services assume this responsibility. If approval is not granted, another IEP meeting must be convened.

COMMENT: The same commenter objects to N.J.A.C. 6:28-6.5(b)1, 5, 6 and 7 which require the district to function as a State monitoring team. The Department of Education should perform these certifications. Teams have neither the knowledge nor training. Also, the rule requires annual monitoring. For each district to separately certify the school is redundant. These rules place a burden on the districts and raise the question of liability.

RESPONSE: The Department responds that P.L. 1989, c.152 places the responsibility for ensuring a thorough and efficient education for all pupils (T&E) on local school districts. Monitoring, under this act, refers only to the program the child receives, not the school.

COMMENT: One commenter stated that there are procedural difficulties with having the Division of Developmental Disabilities or Office of Education named as respondents in a due process hearing, if a dispute arises concerning the services to pupils classified as eligible for day training. It is the district's responsibility to provide these pupils with related services.

RESPONSE: The Department responds that it already corrected the reference in N.J.A.C. 6:28-3.9(a) during the proposal process. This clarified the responsibility for the provision of related services in the day training center.

COMMENT: The same commenter stated that the district should bring due process against the day training center, if a dispute arises, rather than the parents.

RESPONSE: The Department responds that the Department of Human Services has the sole statutory responsibility to provide the program for day training eligible pupils. Therefore, allowing the parent to request due process will bring about a more timely resolution of the matter.

COMMENT: The same commenter stated that the parties named in due process must be "persons" who can be directed to act.

RESPONSE: The Department disagrees in regard to naming "persons". Federal regulations state that "public agencies" may engage in due process.

COMMENT: The same commenter stated that it is appropriate to place rules relating to P.L. 1989, c.152 into subchapter 6 of N.J.A.C. 6:28. They belong in N.J.A.C. 6:28-7.

RESPONSE: The Department disagrees because P.L. 1989, c.152 provides for placement in unapproved nonpublic schools. Subchapter 7 applies to approved private schools for the handicapped.

COMMENT: The same commenter felt that the requirements for T&E curriculum are unduly burdensome for nonpublic schools. Only the IEP requirements are necessary.

RESPONSE: The Department responds that the T&E curriculum requirements may be provided at the public school, if the nonpublic school is unable to provide them. Also, pupils may be exempt from course content if it is not appropriate to their needs.

COMMENT: The same commenter objects to requiring the nonpublic school to comply with antidiscrimination statutes. This is more restrictive than P.L. 1989, c.152.

RESPONSE: This requirement is necessary under both Sections 504 of the Rehabilitation Act and P.L. 94-142.

COMMENT: One commenter stated that the current rules make no provision for districts and communities to contract speech and psychiatric services from clinics and agencies. Consideration should be given to amending the rules to allow this.

RESPONSE: The Department responds that such services may be contracted for with individuals and, therefore, no amendment is necessary.

COMMENT: One commenter opposes the appeal to the State Board of the Commissioner's denial of placement in a nonpublic school. This violates a parent's right to have all issues regarding placement dealt with by the Office of Administrative Law. As a contested case, it must be heard by an independent tribunal.

RESPONSE: The Department disagrees. The Commissioner's determination is whether the program meets the statutory requirements of N.J.S.A. 18A:46-14. As such, it does not constitute a due process issue. Parents retain their rights to due process regarding appropriate placement.

COMMENT: The same commenter stated that the same staff certification standards should be applied to nonpublic schools as those applied to approved private schools.

RESPONSE: The Department agrees that the same standards should be applied. All staff in approved private schools are required to be certified according to N.J.A.C. 6:11.

COMMENT: The same commenter objects to the proposed amendments which attempt to establish an evaluative process to ensure T&E. The only requirement should be that the school be able to implement the child's IEP.

RESPONSE: The Department disagrees because P.L. 1989, c.152 requires the provision of T&E. It is correct that the IEP must address all the components of T&E. The proposed amendments make clear the components of the IEP relative to T&E.

COMMENT: The same commenter opposes requiring 180 days of instruction because it dilutes the intent of P.L. 1989, c.152 and it should be noted that most approved private schools have shorter days.

RESPONSE: T&E requires this amount of instruction. All approved private schools must also meet this requirement. All pupils have a right to a minimum school year of 180 days. The nonpublic school program can be supplemented by the placing school district if it offers less than 180 days.

COMMENT: One commenter suggests a proposed amendment to N.J.A.C. 6:28-8.5(c) as follows: "The entitlement shall be forwarded to the Departments of Corrections and Human Services on July 1 in accordance with N.J.S.A. 18A:7B-2. Funds may be withheld pursuant to N.J.S.A. 18A:7A-10, 11, 14, 15 and 18A:7B-5."

RESPONSE: The Department disagrees because the suggested language would not allow the implementation of N.J.S.A. 18A:7B-5. The Department's proposed amendment allows the payment schedule to be modified by written agreement which allows maximum flexibility to address the concerns of this commenter.

COMMENT: The same commenter recommends revision to N.J.A.C. 6:28-8.6(a) and (b). The recommended language which follows would remove special education's responsibility for unclassified pupils in State-operated facilities. "(a) Annually the Departments of Corrections and Human Services shall submit for approval detailed education program plans and budgets for all programs and services under their jurisdiction in a format prescribed by the Commissioner of Education. (b) The Department of Education's Division of Special Education shall review special educational programs provided for educationally handicapped pupils by the Departments of Corrections and Human Services for compliance with New Jersey Statutes Annotated, New Jersey Administrative Code and adherence to approved special education program plans and budgets."

RESPONSE: The Department disagrees because N.J.A.C. 6:28-8 applies to all pupils in State facilities. Not all of these pupils are educationally handicapped.

COMMENT: The same commenter recommended revision to N.J.A.C. 6:28-2.3(f)1vi as follows: "A curriculum consultant from the Department of Human Services, for those pupils (being considered for placement in a Day Training Center) or classified as Eligible for Day Training."

RESPONSE: The Department disagrees. The curriculum consultant is not part of the eligibility team. N.J.S.A. 18A:46-18.1 states that the Department of Human Services shall provide educational programs, services and transportation only after pupils are classified as eligible for day training.

COMMENT: The same commenter recommended defining the term "public agency" in N.J.A.C. 6:28-2.7(c).

RESPONSE: N.J.A.C. 6:28-1.3 states that "words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Education for All Handicapped Children Act." "Public agency" is defined in 34 CFR 300.11.

COMMENT: The same commenter recommended adding the words "or public agency" for clarification and consistency to N.J.A.C. 6:28-3.3(b) and (g) after the words "district board of education" and 3.4(h) after the words "educational services commission."

RESPONSE: The Department disagrees. Adding the term "or public agency" would not clarify or provide consistency to the rules.

COMMENT: The same commenter recommended that reasonable timelines be included denoting how much time a child study team has before it must begin the process of initial evaluation after notice of referral has been provided.

RESPONSE: The Department disagrees. Notice is provided to parents on referral and due process may be utilized if the district fails to initiate the evaluation in a reasonable time frame.

COMMENT: The same commenter recommended adding the following language to N.J.A.C. 6:28-3.7(a)5 to ensure that every attempt is made to include the original members of the evaluation team in the IEP conference: "If any of the participants are unable to attend a meeting, arrangements must be made for the person's involvement through other means including telephone conference call; or having a knowledgeable authorized representative attend the meeting; or making pertinent records available at the meeting through the child study team case manager."

RESPONSE: The Department disagrees. After reevaluation, the participants who conducted the reevaluation must attend the IEP meeting according to N.J.A.C. 6:28-3.7(a)5. The Department agrees that pertinent information should be available from those who do not attend. It is not necessary to amend the rules.

COMMENT: The same commenter suggested defining the term small group in the provision of home instruction.

RESPONSE: The Department responds that this is unnecessary as the group size is limited by N.J.A.C. 6:28-4.4(a)6.

COMMENT: The same commenter recommended that the 20 day timeline for conducting mediation conferences be shortened in consideration of the rapidly changing needs of children from birth to age five.

RESPONSE: The Department disagrees. Twenty days is not an unreasonably lengthy timeline to complete the activities.

COMMENT: The same commenter recommended shortening the 60 day timeline for conducting complaint investigations since it may negatively impact on children birth to age five.

RESPONSE: The Department disagrees. The 60 day timeline is required by 34 CFR 76.781(a).

COMMENT: The same commenter recommended adding the following language to N.J.A.C. 6:28-8.4(b) to emphasize placement in the least restrictive environment: "The board of education will provide rationale for not providing the alternative least restrictive environment to the State facility and the County Child Study Team Supervisor."

RESPONSE: The Department disagrees. The responsibility in this case appropriately rests with the residential State facility.

COMMENT: The same commenter recommended adding a timeline of January 1990 for the development of Department of Human Services (DHS) policies and procedures to ensure that a process for awarding diplomas to pupils with no identifiable district will be in place.

RESPONSE: The rules cannot mandate a retroactive timeline. For the past few months, DHS and the Department have worked together to develop the appropriate policies and procedures. It is expected that these policies and procedures will be approved by the time the amendments are adopted.

COMMENT: The same commenter suggested adding the requirement that the case manager who is from the pupil's district of residence be responsible for transition planning. This ensures consistency with N.J.S.A. 18A:46-18.3 and N.J.A.C. 10:12-3.

RESPONSE: The Department disagrees. The case manager is a member of the team responsible for developing the IEP regardless whether he or she is from the district of residence or public agency.

COMMENT: One commenter recommended that individuals with appropriate educational backgrounds be allowed to supervise pupils in non-teaching areas.

RESPONSE: The Department disagrees. Pupils must be supervised by appropriately certified staff.

COMMENT: One commenter recommended expanding the social impact statement to clarify that the Departments of Human Services and Corrections, parents of handicapped pupils, and handicapped pupils themselves will be affected by the proposed rules.

RESPONSE: The proposal, as published in the New Jersey Register of May 21, 1990, contains the clarification statement.

COMMENT: The same commenter suggested adding a provision to provide emergency relief if there is a dispute and no mutually agreed upon interim placement can be found.

RESPONSE: The Department responds it is not necessary to add this provision. Emergency relief is available in accordance with N.J.A.C. 1:6A-12.1.

COMMENT: The same commenter suggested defining the term "procedural safeguards statement" in N.J.A.C. 6:28-2.3(f) and requiring that districts provide copies of N.J.A.C. 6:28 to parents and adult pupils.

RESPONSE: It is not necessary to define the term because the Department of Education will be responsible as the author and publisher of the document to include all required information. Copies of N.J.A.C. 6:28 are provided to parents and adult pupils in accordance with N.J.A.C. 6:28-2.1(e) and 2.3(i).

COMMENT: The same commenter recommended amending N.J.A.C. 6:28-2.6(b)7 to reflect the U.S. Supreme Court holding that parents may change a pupil's program or placement regardless of whether mediation or due process is pending.

RESPONSE: Parents may unilaterally change their child's placement only by withdrawing from the public school which would remove them from the authority of these rules. Relief may be sought through due process if the parent wishes to seek reimbursement.

COMMENT: The same commenter recommended amending N.J.A.C. 6:28-2.7(b) to reflect that an adult pupil may request a change with respect to services.

RESPONSE: The Department responds that this change has been proposed and was printed in the May 21, 1990 New Jersey Register.

COMMENT: The same commenter stated that boards of education should be named as parties in due process proceedings involving pupils classified as eligible for day training.

RESPONSE: The Department responds that boards of education may be named in matters other than IEP implementation for pupils in day training centers. The local board of education is not responsible by statute for implementation of the IEP and therefore should not be named.

COMMENT: The same commenter suggested returning to the original rule language in N.J.A.C. 6:28-2.7(e)4vi because it may be unduly burdensome to have administrative law judges schedule hearings.

RESPONSE: The Department responds that the proposed amendment is consistent with Federal regulations.

COMMENT: The same commenter stated that scheduling of conferences should not take place without proof of actual notice to parents, guardians and/or adult pupils.

RESPONSE: The Department takes responsibility for contacting parents prior to the conference.

COMMENT: The same commenter stated that due to *Honig v. Doe*, there are limitations on disciplinary measures whether or not they are included in the pupil's IEP. Therefore, delete the first sentence of N.J.A.C. 6:28-2.8(a).

RESPONSE: The Department responds that N.J.A.C. 6:28-2.8(a) is consistent with *Honig v. Doe* and subsequent Federal policy memorandum.

COMMENT: The same commenter stated that there is no reason to state that reevaluation should be conducted prior to any significant change in placement. Delete this language in N.J.A.C. 6:28-2.8(a).

RESPONSE: The Department responds that reevaluation is included in N.J.A.C. 6:29-2.8(a) to make clear the district's responsibilities.

COMMENT: The same commenter felt that temporary suspensions should be limited to five days, which is sufficient time to obtain an emergency relief application. Also, the rules should provide that the suspension will cease if the on-going peril no longer exists.

RESPONSE: A five day limit is unnecessary as the district must immediately seek emergency relief. It is implicit in the use of the term "on-going peril" that the suspension shall cease if the peril ends.

COMMENT: The same commenter suggested providing 15 days notice for the reevaluation.

RESPONSE: This is already provided under N.J.A.C. 6:28-2.3(a)4.

COMMENT: The same commenter suggested deleting N.J.A.C. 6:28-3.6(e) 5xiii because *Honig v. Doe* places limitations on disciplinary measures.

RESPONSE: The Department disagrees as N.J.A.C. 6:28-2.8(a) and 3.6(e)5xiii are consistent with Federal policy memorandum.

COMMENT: The same commenter felt that upon completion of a reevaluation, parents should be given an opportunity to participate in development of the instructional guide.

RESPONSE: The Department responds that parents must be provided notification of the IEP instructional guide meeting and may participate if they choose to do so.

COMMENT: The same commenter recommends that the rules clearly specify that home instruction for pupils who are not classified as "chronically ill" be on a temporary basis.

RESPONSE: The Department responds that N.J.A.C. 6:28-4.5(b)2 states that approval may be granted for a maximum of 60 calendar days at a time.

COMMENT: The same commenter recommended deleting the proposed amendment requiring the written approval of the chief school administrator from the high school graduation requirements.

RESPONSE: The Department responds that this requirement is necessary because the chief school administrator is responsible for issuing State-endorsed diplomas and annually reporting pupils graduated under special education.

COMMENT: One commenter stated that definition of parent fails to provide guidance for cases where joint custody exists or there is no legal separation agreement.

RESPONSE: No further clarification is possible. The parent retains rights unless terminated by a court of appropriate jurisdiction.

COMMENT: The same commenter stated that consent should be granted for initial evaluation, not for referral.

RESPONSE: The Department agrees and proposed changes in the May 21, 1990 New Jersey Register.

COMMENT: The same commenter asked, "Does the stay put provision apply while conducting the reevaluation?"

RESPONSE: N.J.A.C. 6:28-2.8(c) states that the reevaluation shall be conducted prior to any suspension.

COMMENT: The same commenter stated that the program options listed in N.J.A.C. 6:28-4.2 imply an order from least to most restrictive. That fact should be made explicit.

RESPONSE: The Department responds that there is no such intended implication.

COMMENT: The same commenter asked "Why is the term 'suitable' used?" It creates a two tiered standard between "suitable" and "most appropriate."

RESPONSE: The Department responds that the term "suitable" is drawn directly from the law, N.J.S.A. 18A:46-14.

COMMENT: One commenter felt concerned that it may be a burden for the chief school administrator to grant approval for each exemption from the high school graduation requirements.

RESPONSE: The Department disagrees. The chief school administrator is responsible for issuing State-endorsed diplomas and annually reporting pupils graduated under special education.

COMMENT: The same commenter asked "What are the standards that constitute a significant change in placement?"

RESPONSE: The Department responds that the determination of a significant change in placement is made for each individual circumstance by the parties developing the IEP.

COMMENT: One commenter is concerned that districts would be required to conduct vocational assessments which are already provided by the Division of Vocational Rehabilitation or Division of Developmental Disabilities.

RESPONSE: The Department responds that vocational assessment may, in fact, be appropriate. The utilization of existing services such as the Division of Vocational Rehabilitation or Division of Developmental Disabilities would be encouraged.

COMMENT: One commenter recommended the following clarification to N.J.A.C. 6:28-6.5(c): "N.J.A.C. 6:28-6.5(d) In a due process hearing, the authority of the commissioner to consent to a placement in an accredited nonpublic school shall be delegated to the administrative law judge assigned to the case when: 1. The administrative law judge makes a factual determination that the certifications in N.J.A.C. 6:28-6.5(b) are met; or 2. The district board of education and the parent(s)

agree to a settlement of the matter which would include placement under N.J.S.A. 18A:46-14 and the administrative law judge approves the settlement. Approval may be granted if the district board of education makes the certifications in N.J.A.C. 6:28-6.5(b). A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through its county office."

RESPONSE: The Department agrees and recommends this nonsubstantive clarification.

COMMENT: Four commenters suggested changing the language in N.J.A.C. 6:28-2.8 to clarify the discipline section of the rules: "Special education students are subject to the same disciplinary actions as other students unless 1) their IEP says otherwise; or 2) the behavior involved is a result of their handicapping condition; or 3) the disciplinary actions would result in a significant change in placement."

RESPONSE: The Department's proposed amendment to N.J.A.C. 6:28-2.8 contains all of the suggested language. Any clarification that is needed will be provided through a question and answer guide which will be published by the Department and rule training which will be conducted in the fall.

COMMENT: The same four commenters stated that inservice should be provided to districts regarding *Honig v. Doe*, the most recent Federal court case or discipline.

RESPONSE: The Department agrees. Training will be provided to parents and districts in the fall of 1990 through the Learning Resource Centers.

COMMENT: The same four commenters recommended offering ongoing training on IEP writing and implementation.

RESPONSE: The Department agrees. An IEP technical assistance document has been developed by the Division of Special Education. It will be distributed to districts in the fall and training workshops on IEPs will also be conducted for all districts. The Learning Resource Centers will continue to provide ongoing training.

COMMENT: The same four commenters suggested providing training for regular classroom teachers so special education pupils can receive instruction in the least restrictive environment (LRE).

RESPONSE: The Department agrees. A technical assistance manual is in preparation which addresses LRE. Also, the Plan to Revise Special Education addresses the issue of providing instruction to handicapped pupils in the regular classroom.

COMMENT: The same four commenters recommended writing a "white paper" on special education discipline issues.

RESPONSE: The Department agrees. A technical assistance question/answer guide will be developed to address the discipline section of the chapter.

COMMENT: One commenter vehemently opposes the requirement for certification for directors of approved private schools for the following reasons: 1) the state should provide incentives to open schools, not create roadblocks; and 2) the certification requirements for superintendent require:

- a) A Masters degree in a recognized field of leadership or management;
- b) Obtaining an offer of employment in a position requiring the school administration endorsement; and
- c) One year of a State-approved residency program while employed under provisional certification.

RESPONSE: It is not the Department's responsibility to provide incentives for opening approved private schools. These programs are opened in response to needs expressed by local school districts when they are unable to serve handicapped pupils. Under Federal mandates, it is the Department's responsibility to ensure that these public school pupils placed by districts using public school funds receive a program that is comparable to what they would receive if they were placed in public schools. Approval standards are the Department's responsibility in order to provide a free, appropriate public education.

The certification requirements for school superintendent will permit a director of a private school to serve in the approved residency program when employed in a position which requires a school administrator certificate in an approved private school. Therefore, the Department does not feel that the proposed amendment will impede individuals from opening and directing a private school.

COMMENT: The same commenter stated that at the April State Board meeting the Department failed to offer any tangible reason for requiring certification for directors of private schools.

RESPONSE: The Department disagrees. At the April State Board meeting, several reasons for requiring certification were presented. They included: 1) approved private schools educate public school pupils using public school funds; and 2) administrators in private schools continually make educational decisions regarding the pupils placed in their schools by local school districts.

COMMENT: The same commenter stated that there is little similarity between the position of director of a private school and superintendent. The standard proposed is therefore illogical and not relevant. Public school superintendents are associated with public employment; whereas the director is engaged in mixing private enterprise and education.

RESPONSE: The Department disagrees. Directors of private schools have essentially the same responsibilities as their counterparts in public schools.

COMMENT: One commenter opposed the amendment to N.J.A.C. 6:28-7.1(h) because it runs contrary to the Department's long standing practice of allowing administrators of multi-faceted agencies to charge a portion of their salaries to the schools even without appropriate certification.

RESPONSE: The Department's proposed amendment is a "grandfather clause" permitting individuals currently employed to continue in their positions. As explained in the last paragraph of the Summary below, the Board has not adopted this subsection.

Summary of Agency-Initiated Changes:

At N.J.A.C. 6:28-6.5(b)4, the word "will" is being changed to "shall."

At N.J.A.C. 6:28-6.5(c), upon the request of the Office of Administrative Law, nonsubstantive changes were made to clarify the language in this section. N.J.A.C. 6:28-6.5(c) was deleted and replaced with, "In a due process hearing, the authority of the Commissioner to consent to a placement in an accredited nonpublic school shall be delegated to the Administrative Law Judge assigned to the case when:"

At N.J.A.C. 6:28-6.5(c)1, the words "of the Office of Administrative Law" are deleted because they are unnecessary. The second sentence is deleted because it is redundant with N.J.A.C. 6:28-6.5(d).

At N.J.A.C. 6:28-6.5(c)2, to correct a reference, "P.L. 1989, c.152" is replaced with "N.J.S.A. 18A:46-14." "On behalf of the Commissioner grants consent" is replaced with "approves the settlement" to clarify the role of the Administrative Law Judge. The words "Such consent" are replaced with "Approval" to provide consistency with the rule language.

The entire paragraph at N.J.A.C. 6:28-7.1(h) is deleted because the State Board of Education voted to delete it from the rules. Board members felt the rule was not consistent with N.J.A.C. 6:11 and requested the Division of Special Education to review certification standards for staff in approved private schools. The Division will return to the State Board with a recommendation in the fall.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

6:28-1.1 General requirements

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

(g) When a district board of education provides its educational programs through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. In a sending-receiving relationship, when all the pupils of one or more grades of a district board of education attend school(s) operated by other district boards of education, the receiving district board of education shall be responsible for determining the eligibility of those pupils and developing and implementing their individualized education programs.

2. (No change.)

(h) (No change.)

(i) With the exception of pupils placed in nonpublic schools according to N.J.A.C. 6:28-6.5, all educationally handicapped pupils shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(j)-(n) (No change.)

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those

words and terms used in the Education for All Handicapped Children Act.

"Consent" means that a parent having legal responsibility for educational decision making or the adult pupil has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; understands and agrees in writing to the implementation of this activity; and understands that the granting of consent is voluntary and may be revoked at any time.

6:28-1.4 District board of education policies and procedures

(a) Each district board of education shall develop and adopt written policies and procedures for the following:

1. Exemption of educationally handicapped pupils from the high school graduation requirements according to N.J.A.C. 6:8-7.1(b), 6:28-3.6 and 4.8;

2.-11. (No change.)

6:28-2.1 General requirements

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

(c) After parental consent for initial evaluation has been received, the district board of education shall ensure that within 90 calendar days evaluation and determination of eligibility for special education and/or related services, and, if eligible, development and implementation of the basic plan section of the individualized education program for the pupil shall be completed.

1. The basic plan shall be written within 30 calendar days of the determination that the pupil is eligible for special education and/or related services; and

2. Within the 90 calendar days, no more than 30 calendar days shall elapse between the development and the implementation of the basic plan section of the individualized education program.

(d)-(e) (No change.)

(f) Upon request by a parent or adult pupil, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6:28), pupil records rules (N.J.A.C. 6:3-2), and information regarding the availability of free and low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(g) If the mediation according to N.J.A.C. 6:28-2.6 or due process hearing according to N.J.A.C. 6:28-2.7 involves initial admission to the public school of a child age three through 21, the child, with the consent of the parent(s), shall be placed in the public school program or a placement agreed to by the parent(s) and district board of education pending the outcome of the hearing.

6:28-2.3 Parental notice, consent, participation and meetings

(a) Consent shall be obtained:

1. Prior to initial evaluation; and

2. Prior to initial implementation of a special education program and/or related services resulting from (a)1. above.

(b) For those pupils classified as eligible for speech-language services, additional consent shall be obtained prior to initial evaluation by the child study team and/or implementation of a special education program and/or related services resulting from that referral.

(c) Written notice which meets the requirements of this section shall be provided to the parent(s) when a district board of education:

1. Proposes to initiate or change the referral, classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;

2. Requests consent;

Recodify existing 4. and 5. as 3. and 4. (No change in text.)

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

(f) Each notice shall be written in language understandable to the general public and shall include:

1.-2. (No change.)

3. A copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents and/or adult pupils.

(g) (No change in text.)

(h) Meetings shall be conducted to determine eligibility and to develop, review and revise the basic plan of a pupil's individualized education program.

1. (No change.)

2. Parent(s) shall be notified in writing of meetings early enough to ensure that they will have an opportunity to attend.

Recodify existing 2.-5. as 3.-6. (No change in text.)

Recodify existing (g) and (h) as (i) and (j) (No change in text.)

(k) Adult pupils shall be given a copy of this chapter and the procedural safeguards statement published by the New Jersey Department of Education upon attainment of the eighteenth birthday.

6:28-2.5 Protection in evaluation procedures

(a) Each district board of education shall ensure that evaluation procedures, including, but not limited to, observations, tests and interviews used to determine eligibility and placement of handicapped pupils shall:

1.-4. (No change.)

5. Be selected, administered and interpreted so that when a pupil has sensory, manual or communication impairments the results accurately reflect the ability which that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;

6.-10. (No change.)

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

6:28-2.6 Mediation

(a) For pupils age three through 21, when disputes arise under this chapter, mediation shall be available through the district board of education, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. For children below the age of three, mediation shall be available through the Department of Education through the Division of Special Education. Mediation shall be provided in accordance with the following:

1. Attempts to resolve conflicts between the parent(s) and the district board of education prior to a request for a due process hearing are encouraged; however, a request for mediation is not a prerequisite to a hearing;

2.-4. (No change.)

(b) Mediation shall be provided as follows:

1.-6. (No change.)

7. Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement unless both parties agree or emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7(h).

6:28-2.7 Due process hearings

(a) A due process hearing may be requested in regard to the referral, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. A due process hearing may also be requested for all disputes regarding the provision of programs and services for children below the age of three. For pupils above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

(b) The parent(s) or adult pupil may request a hearing after receiving written notice of a proposed or denied action or after 30 calendar days have elapsed from the date of a written request by the parent(s) or adult pupil for a change with regard to the pupil.

(c) The district board of education or public agency responsible for the development of the pupil's individualized education program may request a hearing when it is unable to obtain required consent to a proposed action and shall request a due process hearing if it denies the parent(s) or adult pupil's request for an independent evaluation.

(d) For pupils classified as eligible for day training, if a dispute arises regarding the failure to provide the program or a service mandated by the individualized education program, the Division of Developmental Disabilities or the Office of Education, Department

of Human Services shall be named as respondent by the parents. If a dispute arises as to any other issue, the district board of education would be the named party.

(e) Due process hearings shall be conducted in the following manner:

1.-2. (No change.)

3. Upon receiving the Department of Education's acknowledgement, the parties shall begin to exchange relevant records and information according to the time limits in N.J.A.C. 1:6A.

4. Within seven calendar days of receipt of the written request, the Department of Education shall conduct a conference.

i.-v. (No change.)

vi. If the conference results in transmittal, the Department of Education representative will prepare a written document at the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be immediately forwarded to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties. The Department of Education representative shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the conference, unless a later date is granted by a hearing officer at the request of either party. If the parent or adult pupil does not attend the conference and is not available by individual or conference call to schedule a hearing date, a date shall be assigned within the required timelines.

(f) Subject to adjournments granted by the hearing officer, a final decision shall be rendered not later than 45 days after the receipt of the request for a hearing.

(g) (No change in text.)

(h) Either party may apply in writing for emergency relief as part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A. The request shall be supported by an affidavit. The applicant shall provide copies of the request to the other party.

1. (No change.)

(i) If the public agency responsible for implementing the individualized education program fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent(s). The request shall be made in writing to the Director of the Division of Special Education, Department of Education. On receipt of this request, implementation of the decision shall be assured according to Department of Education procedures.

(j) Pending the outcome of a due process hearing, no change shall be made to the pupil's classification, program or placement unless both parties agree or emergency relief is granted by the Office of Administrative Law according to (h) above.

6:28-2.8 Disciplinary action

(a) Educationally handicapped pupils are subject to the same *[disciplinary]* district board of education ***disciplinary*** policies and procedures as nonhandicapped pupils, unless the pupil's individualized education program includes exemptions to those policies or procedures. The individualized education program shall be implemented, with the following exception:

1. Prior to effecting any discipline which would result in a significant change in placement, the child study team shall conduct a reevaluation according to N.J.A.C. 6:28-3.7.

(b) The following standards shall be used in determining if a proposed discipline constitutes a significant change in placement:

1. If the proposed discipline involves expulsion or suspension for an indefinite period of time or for more than 10 consecutive school days, the expulsion or suspension constitutes a significant change in placement.

2. If the proposed discipline involves suspension of more than 10 non-consecutive school days, the suspension shall be reviewed to determine if it creates a pattern of exclusion which constitutes a significant change in placement.

(c) When an educationally handicapped pupil is suspended, the principal shall forward, at the time of suspension, written notification and description of the reasons for such action to the parent(s) with a copy to the case manager. Such notification shall occur prior to

EDUCATION

the suspension if this action would result in the pupil being suspended for more than 10 days in the school year. The case manager shall review the status of the pupil in order to:

1. Determine if the suspension results in a significant change in placement;

2. Document the review and the determination made; and

3. If the suspension would result in a significant change in placement:

- i. Immediately advise the principal that a reevaluation shall be conducted prior to the suspension; and

- ii. Initiate a reevaluation.

- (d) On completion of the reevaluation, the child study team shall determine if the pupil's behavior was primarily caused by his or her educational handicap and, if so, whether the pupil's current educational placement is appropriate.

1. If the pupil's behavior is determined to be primarily caused by the pupil's educational handicap, the district may not discipline the pupil.

2. If it is determined that the pupil's behavior is not related to his or her educational handicap, the district board of education may discipline the pupil. However, at no time shall the district board of education cease educational services to that pupil.

- (e) Upon making each of the determinations specified in (b), (c) and (d) above, the child study team shall prepare and forward to the principal and the parent(s) or adult pupil a written statement setting forth their conclusions and their recommendations, if any, and a statement that mediation or a due process hearing may be requested according to N.J.A.C. 6:28-2.6 or 2.7.

- (f) If there is ongoing peril of physical harm to self or others or of substantial disruption to the educational process, and the suspension would result in a significant change in placement, the pupil may be temporarily suspended while the district immediately seeks emergency relief.

- (g) Before a noneducationally handicapped pupil can be considered for expulsion by a district board of education, the district board of education shall obtain consent from the parent or adult pupil for evaluation and the child study team shall conduct an initial evaluation according to N.J.A.C. 6:28-3.4 to determine eligibility.

6:28-2.9 Pupil records

- (a) (No change.)

- (b) The parent(s), adult pupil or their designated representative shall be permitted to inspect and review the contents of the pupil's records maintained by the district board of education under N.J.A.C. 6:3-2 without unnecessary delay and before any meeting regarding the individualized education program.

- (c) Any consent required for educationally handicapped pupils under N.J.A.C. 6:3-2 shall be obtained according to N.J.A.C. 6:28-1.3 "Consent" and 2.3(c).

6:28-3.3 Referral

- (a) (No change.)

- (b) Pupils identified in conformance with written procedures adopted by the district board of education as being potentially educationally handicapped and considered to require services beyond those available within the regular public school program shall be referred to the child study team. Referral to the child study team shall take place after written notice has been provided.

1. When parental consent for initial evaluation is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

- (c)-(f) (No change.)

- (g) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally handicapped pupil for whom a district board of education is responsible, that district board of education shall accept the pupil's identification by the Division of Youth and Family Services and shall request parental consent for initial evaluation according to this subchapter.

6:28-3.4 Evaluation

- (a) After notice of the referral has been provided, the child study team shall meet and determine the need for an initial evaluation. If it is determined that an evaluation is needed, the child study team

ADOPTIONS

shall write an evaluation plan. Prior to the development of the evaluation plan, a determination of the pupil's communication skills and dominance in English and the native language shall be completed. The parent(s) and adult pupil shall be provided with a copy of the evaluation plan. Consent shall be obtained prior to conducting the initial evaluation. The evaluation plan shall include:

1. The specific information to be obtained to assess in all areas of suspected disability;

- 2.-4. (No change.)

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

- (f) Evaluation by additional specialists may be required as listed in N.J.A.C. 6:28-3.5(c).

- (g) (No change.)

- (h) If the reports and evaluations of other New Jersey public school district child study team members, Department of Education approved clinics or agencies, Educational Services Commissions or Jointure Commissions or professionals in private practice are accepted by members of the child study team, such acceptance shall be noted in writing and shall become part of the report(s) of the child study team member(s). If a report or evaluation is rejected, a written rationale shall be provided.

- (i) (No change.)

6:28-3.5 Determination of Eligibility

- (a) When an initial evaluation is completed, a meeting according to N.J.A.C. 6:28-2.3(h) shall be convened. The child study team shall attend. The purpose of the meeting shall be to:

- 1.-2. (No change.)

- (b) (No change.)

- (c) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, parent(s) and, if they choose to participate, the school principal and referring staff members. Classification according to the following definitions shall be based on all evaluations conducted:

1. (No change.)

2. "Chronically ill" means a health condition such as tuberculosis, cardiac condition, leukemia, asthma, seizure disorder or other medical disability which makes it impractical to receive adequate instruction through a regular school program. Evaluation by the school physician or his or her review and written acceptance of the medical report of another physician is required. The school nurse shall assist in the accumulation of the data necessary to determine eligibility.

- 3.-4. (No change.)

5. "Mentally retarded" means cognitive, social and academic functioning which is seriously below age expectations. Such functioning is comprehensive in nature being demonstrated in home, school and community setting, and characterized by one of the following:

- i.-ii. (No change.)

- iii. "Eligible for day training" means a level of functioning profoundly below age expectations whereby on a consistent basis the pupil is *[capable]* ***incapable*** of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

- 6.-11. (No change.)

6:28-3.6 Individualized education program

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

- (c) The basic plan of the individualized education program shall be developed with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and any additional persons required to attend the meeting according to N.J.A.C. 6:28-2.3(h).

- (d) When a pupil has been classified as eligible for speech-language services or the school physician has determined an educationally handicapped pupil needs home instruction, the individualized education program meeting shall be as follows:

1. For pupils classified as eligible for speech-language services, the meeting shall be attended by the parent(s) and, when appropriate, the pupil. The speech correctionist or speech-language specialist shall attend.

ADOPTIONS

2. Other certified school personnel and the principal or designee may participate in the meeting.

3. When an educationally handicapped pupil has been determined by the school physician to need home instruction, a meeting shall be conducted to review and revise the individualized education program according to N.J.A.C. 6:28-3.6(j).

(e) The basic plan of the individualized education program shall include, but not be limited to:

1. (No change.)

2. A statement of current educational status, which describes the pupil's present levels of educational performance and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, physical and health status, and where appropriate, language proficiency, communication style, physical education and recreation needs, prevocational, vocational and self-help skills;

3.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-iii. (No change.)

iv. A description of exemptions from regular education program options including testing programs, core course proficiencies and State and local graduation requirements which includes a rationale for the exemptions;

v.-vi. (No change.)

vii. For educationally handicapped pupils age 14 and over, goals and objectives which describe the preparation of the pupil for one or more of the following post-secondary areas, as appropriate: educational programs, vocational programs, work settings, or independent living according to N.J.A.C. 6:28-4.7(b);

viii.-x. (No change.)

xi. A statement describing the roles of special school personnel and their responsibilities for implementing the various aspects of the individualized education program;

xii. The criteria, procedure and schedule to determine if the pupil's goals and objectives are being met; and

xiii. Any exemptions from local disciplinary policies and/or procedures.

(f)-(j) (No change.)

(k) Signatures of those persons who participated in the development of the individualized education program shall be maintained and a copy of the individualized education program shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.

(l)-(m) (No change.)

(n) School personnel, adult pupils and the parent(s) of an educationally handicapped pupil shall be allowed to use an audio-tape recorder during the individualized education program meetings.

6:28-3.7 Reevaluation

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1.-4. (No change.)

5. When the reevaluation is completed those members of the district board of education child study team who have participated in the reevaluation shall attend a meeting according to N.J.A.C. 6:28-2.3(h) to determine eligibility and if the pupil remains eligible for special education and/or related services, the basic plan of the individualized education program shall be developed.

6:28-3.9 Services to pupils in programs operated by the State of New Jersey

(a) For a pupil classified as eligible for day training attending an approved day program, the district board of education shall provide the services according to N.J.A.C. 6:28-3.2 through 3.7.

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

EDUCATION

6:28-4.1 General requirements

(a)-(h) (No change.)

(i) When the individualized education program of an educationally handicapped pupil does not describe any restrictions, the pupil shall be included in the regular school program provided by the district board of education.

1. When instruction in health, physical education, industrial arts, fine arts, music, home economics and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities is provided to groups consisting solely of educationally handicapped pupils, the size of the groups and the age range shall conform to the requirements for special class programs described in this subchapter.

(j)-(k) (No change.)

6:28-4.2 Program options

(a) Educational program options include the following:

1.-6. (No change.)

7. An approved private school for the handicapped in the continental United States, when it is not appropriate to provide services according to (a)1 through 6 above. Placement in an approved private school for the handicapped shall only be made with the prior written approval of the Department of Education through its county office;

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

9. An accredited nonpublic school which is not specifically approved for the education of educationally handicapped pupils according to N.J.A.C. 6:28-6.5.

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

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

1.-2. (No change.)

3. Depending on the educational handicap(s) of the pupils assigned to the special class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted, and/or teacher of the deaf or hard of hearing;

4.-7. (No change.)

(b) Secondary special class programs shall meet the following criteria:

1. Programs shall be in schools in which any combination of grades six through 12 are contained;

2. An educationally handicapped pupil enrolled on the register of a secondary special class program shall receive a minimum of three instructional periods with the certified teacher(s) of the handicapped who maintains primary instructional responsibility for the pupil;

3. In secondary special class programs where the organizational structure is departmentalized for general education pupils:

i. Enrollment in secondary special class programs may be increased by one-half the maximum class size for pupils with the same classification as noted in (a)6 above;

ii. For instructional purposes:

(1) In all class groups comprised of pupils with a single classification, class sizes shall be according to (a)6 and 7 above; and

(2) In all class groups comprised of pupils with mixed handicaps, the group shall be limited to eight educationally handicapped pupils;

4. In addition to the requirement of (b)2 above, instruction may be provided in the following settings, as appropriate:

i. (No change.)

ii. A regular education class instructed by a subject area teacher.

(1) The number of educationally handicapped pupils enrolled on a special class register who can attend any given instructional period in such classes shall be limited to four if program modification is required; and

5. For class groups comprised of pupils with mixed handicaps, the maximum class size may be increased by no more than one-third with the addition of an aide.

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

EDUCATION

6:28-4.5 Program criteria: home instruction

(a) For pupils determined by the school physician to need confinement at their residence for at least a two week period of time, home instruction shall meet the following criteria:

1.-4. (No change.)

5. The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation. Educationally handicapped pupils may be exempted in their individualized education program according to N.J.A.C. 6:28-3.6(e)5iv;

6.-7. (No change.)

(b) A pupil classified as educationally handicapped shall have his or her individualized education program implemented through one to one instruction at home or in another appropriate setting when it can be documented that no other program option is appropriate at that time.

1. (No change.)

2. Approval may be obtained for a maximum of 60 calendar days at which time renewal of the request may be made. Each renewal of the approval may be granted for a maximum of 60 calendar days.

3.-4. (No change.)

(c) Instruction provided for pupils confined to a hospital, convalescent home or other medical institution for at least a two week period of time and determined by the school physician to need home instruction or classified by the child study team as educationally handicapped, shall meet the following criteria:

1. Instruction shall be provided by a district board of education, educational services commission, State-operated facility or jointure commission at the pupil's place of confinement;

2. (No change.)

3. Individualized instruction shall be provided through either:

i. (No change.)

ii. Instruction to small groups. The number of hours of instruction for the group shall be determined by multiplying the number of pupils in the group by five. The pupil to staff ratio shall not exceed the limit set by N.J.A.C. 6:28-4.4(a)6; or

iii. (No change.)

6:28-4.6 Exceptions

(a) Exceptions to the requirements of this chapter shall be:

1.-2. (No change.)

3. Regarding length of school day and/or the academic year or class size or classification according to N.J.A.C. 6:28-4.4(a)6 or age range according to N.J.A.C. 6:28-4.4(a)4 or required hours or periods of instruction. An exception shall not be required regarding the provision of an extended academic year program.

6:28-4.7 Transition

(a) Transition from an elementary program to the secondary program shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age. This determination shall be specified in the pupil's individualized education program according to N.J.A.C. 6:28-3.6.

(b) For educationally handicapped pupils age 14 and over, planning for transition to adulthood shall include the following:

1. The individualized education program shall include goals and objectives which describe the preparation of the pupil for one or more of the following post-secondary areas, as appropriate: educational programs, vocational programs, work-settings or independent living;

2. Initial evaluation or reevaluation shall include assessment(s) to determine appropriate post-secondary outcomes;

3. The case manager shall be responsible for transition planning;

4. The individualized education program shall designate the person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate; and

5. Post-secondary resource professionals shall be included in meetings according to N.J.A.C. 6:28-2.3(h) as appropriate.

6:28-4.8 Diplomas and graduation

(a) An educationally handicapped pupil who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements according to N.J.A.C. 6:8-7, unless exempted in his or her individualized education program with the written approval of the chief school administrator. The individualized

ADOPTIONS

education program must specifically address these graduation requirements. The individualized education program shall specify which requirements would qualify the educationally handicapped pupil for a State endorsed diploma issued by the school district responsible for his or her education.

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

6:28-5.1 General requirements

(a) Clinics and agencies approved by the Department of Education may provide those contracted services to district boards of education delineated in this subchapter.

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

6:28-5.2 Approval procedures

(a) Annual approval of clinics and agencies shall require, but not be limited to, submission and evaluation of the following:

1.-2. (No change.)

3. A list of professional staff who will provide services which indicates each individual's certification or license and the function he or she will fulfill;

i.-ii. (No change.)

iii. Professional staff employed by a clinic or agency who work full time according to N.J.A.C. 6:3-1.13 for a district board of education shall not provide service for the clinic or agency during the hours of that individual's public school employment; and

iv. (No change.)

4.-5. (No change.)

6. Assurance of an adequate accounting system according to generally accepted accounting principles;

7. Assurance of a system for the collection, maintenance, confidentiality and access of pupil records which is according to N.J.A.C. 6:3-2; and

8. Assurance of the maintenance of a log, which includes but shall not be limited to, a list of services provided indicating the date, time, location and professional staff providing the service.

SUBCHAPTER 6. SERVICES IN NONPUBLIC SCHOOLS

6:28-6.1 General requirements for programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

Recodify existing (b)-(d) as (a)-(c) (No change in text.)

6:28-6.2 Provision of programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

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

(f) Personnel providing a program or service under this subchapter shall meet appropriate certification requirements. Personnel shall not be employed by the nonpublic school in which the pupil is enrolled with the exception of personnel providing the types of instruction listed in N.J.A.C. 6:28-5.1(c)2ii and iii.

(g)-(j) (No change.)

6:28-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

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

6:28-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

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

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils

(a) According to N.J.S.A. 18A:46-14, educationally handicapped pupils may be placed in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils with the consent of the Commissioner or by an order of a court of competent jurisdiction.

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1. The nonpublic school is accredited. Accreditation means the ongoing, on-site evaluation of a nonpublic school by a governmental or independent educational accreditation agency which is based upon

written evaluation criteria that address educational programs and services, school facilities and school staff;

2. A suitable special education program pursuant to N.J.S.A. 18A:46-14a, b, c, d, e, f, g or h cannot be provided to this pupil;

3. The most appropriate placement for this pupil is this nonpublic school;

4. The program to be provided *[will]* ***shall*** meet the requirements of the pupil's individualized education program;

5. The pupil shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18:7A-5c, d, e, f, and g and as implemented in N.J.A.C. 6:8-2.2, 6:8-4.3(a)3i(3) (A), (B) and (C), 3iii, iv and v, 5ii, 6i and ii, 6:8-6.1(a), 6:8-7.1(c)1 and (d)1. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(e)5iv.

6. The pupil shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, 18A:58-16, N.J.A.C. 6:29-*[7.1, 6:29-9.6]* ***4.2 and 6.6*** and 6:28-1, 2, 3, and 4. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(e)5iv.

7. The nonpublic school provides services which are nonsectarian;

8. The nonpublic school complies with all relevant State and federal antidiscrimination statutes;

9. Written notice has been provided to the pupil's parent(s) regarding this placement which has included that:

i. The nonpublic school is not an approved private school for the handicapped and that the local school district assumes the ongoing monitoring responsibilities for the pupil's program;

ii. No suitable special education program could be provided to this pupil pursuant to N.J.A.C. 18A:46-14; and

iii. This is the most appropriate placement available to this pupil;

10. The placement is not contested by the parents; and

11. The nonpublic school has been provided copies of N.J.A.C. 6:28, N.J.A.C. 1:6A and N.J.A.C. 6:3-2.

(c) ***[The Commissioner's consent granted as part of a final determination in a due process hearing may be granted when:]* ***In a due process hearing, the authority of the Commissioner to consent to a placement in an accredited non-public school shall be delegated to the Administrative Law Judge assigned to the case when:*****

1. The Administrative Law Judge ***[of the Office of Administrative Law]*** makes a factual determination that the certifications in N.J.A.C. 6:28-6.5(b) are met. ***[If this is determined, the district board of education shall be responsible for monitoring the pupil's placement at least annually to ensure the program's ongoing compliance with N.J.A.C. 6:28-6.5(b)]***; or

2. The district board of education and the parent(s) agree to a settlement of the matter which would include placement under ***[P.L. 1989, c.152]* ***N.J.S.A. 18A:46-14*** and the Administrative Law Judge ***[, on behalf of the Commissioner grants consent.]* ***approves the settlement.*** ***[Such consent]* ***Approval*** may be granted if the district board of education makes the certifications in N.J.A.C. 6:28-6.5(b).** A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through its county office.****

(d) The district board of education shall be responsible to monitor the pupil's placement at least annually to ensure the program's ongoing compliance with the certifications.

6:28-7.1 General requirements

(a)-(g) (No change.)

***[(h) To provide a program of service under this subchapter, all professional personnel shall hold the appropriate New Jersey certification according to N.J.A.C. 6:11, commensurate with their assignments with the exception of personnel appointed prior to De-**

cember 1, 1990 in the positions of director, executive director, assistant director, administrative assistant to the director and business manager.]*

6:28-7.4 Responsibilities of district boards of education

(a) The educational program of a handicapped pupil provided through contractual agreements as described in N.J.A.C. 6:28-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the services required in N.J.A.C. 6:28-3.

1. For pupils placed in programs described in N.J.A.C. 6:28-7.1(a), representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6:28-2.3(h).

6:28-8.1 General requirements

(a)-(g) (No change.)

(h) All education programs with the exception of home instruction shall be provided for at least four hours per day and no fewer than 180 days each year.

(i)-(m) (No change.)

(n) For pupils in State facilities who do not have identifiable districts of residence as defined by N.J.S.A. 18A:7B-12, the Departments of Human Services and Corrections through their Offices of Education shall adopt policies and procedures for high school graduation requirements in accordance with N.J.A.C. 6:8-7.1. Those policies and procedures shall be submitted to the Commissioner of Education for approval.

(o) Upon certification by the Department of Human Services or Corrections Office of Education that a pupil has successfully completed the graduation requirements, the Commissioner of Education will issue a State endorsed high school diploma to the pupil through the Department of Human Services or Corrections as appropriate.

6:28-8.4 Provision of programs

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

(c) All professional staff shall be appropriately certified to function in their area of assignment and their certification shall be on file in the respective department's education office and in the appropriate county office of the Department of Education.

1.-2. (No change.)

(d)-(f) (No change.)

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

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

2. (No change.)

(h)-(j) (No change.)

6:28-8.5 Eligibility to receive State funds

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

(c) The entitlement shall be forwarded to the Departments of Corrections and Human Services in two payments, 90 percent on July 1, and 10 percent on April 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the Commissioners of Corrections and/or Human Services. These payments may be withheld pursuant to N.J.S.A. 18A:7B-5.

6:28-8.6 Program review and approval

(a) Annually the Departments of Corrections and Human Services shall submit for approval detailed education program plans and budgets for all programs and services under their jurisdiction in a format prescribed by the Commissioner of Education.

(b) The Department of Education shall review educational programs provided by the Departments of Corrections and Human Services for compliance with New Jersey Statutes Annotated, New Jersey Administrative Code and adherence to approved education program plans and budgets.

(c) All fiscal information shall be available for audit by the Department of Education.

6:28-9.2 Complaint investigation

(a) The Director of the Division of Special Education or his or her designee(s) shall be responsible for reviewing, investigating and taking action on any signed, written complaint of substance regarding the provision of special education and/or related services covered under this chapter. The Division of Special Education in conjunction with the county office of education, shall complete an investigation within 60 calendar days after a written complaint is received.

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

6:28-10.1 General requirements

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

(d) The Department of Education, in consultation with the Departments of Health and Human Services and the Developmental Disabilities Council, shall:

1. Monitor and review annually the programs and services of each funded early intervention program according to N.J.A.C. 6:28-9.1; and

2. Conduct complaint investigations according to N.J.A.C. 6:28-9.2.

(e)-(k) (No change.)

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

6:28-11.5 Referral

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

(c) The parent(s) of a pupil being considered for referral to a child study team shall receive written notice according to N.J.A.C. 6:28-3.3(b).

(d) When consent for initial evaluation is withheld, the district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(e)-(j) (No change.)

6:28-11.6 Comprehensive evaluation

(a) After notice of the referral has been provided, the child study team shall meet to determine the need for a comprehensive evaluation. If it is determined that an evaluation is needed, the child study team shall write an evaluation plan and designate a case manager. A determination of the pupil's communication skills and dominance in English and the native language shall be completed as part of the development of the evaluation plan. Consent shall be obtained prior to conducting the initial evaluation. The purpose of the evaluation shall be to:

1.-2. (No change.)

(b) The evaluation plan shall include:

1. The specific information to be obtained to assess in all areas of suspected disability;

2.-5. (No change.)

(c)-(m) (No change.)

6:28-11.11 Program options

(a) Educational program options shall include the following:

1.-8. (No change.)

9. Individual instruction at home or in school, excluding home instruction for temporary medical reasons, with the prior written approval of the Department of Education through its county office, when it is not appropriate to provide a full-time special education program for an educationally handicapped pupil according to (a)1 through 8 above. The number of hours of instruction provided shall be according to N.J.A.C. 6:28-4.5(b)4.

(b) The following program criteria shall be met:

1.-2. (No change.)

3. Full-time special class programs shall meet the following criteria:

i.-v. (No change.)

vi. Depending on the class type designation of the full-time special education class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted or teacher of deaf or hard of hearing.

vii. (No change.)

6:28-11.12 Full-time class types

(a) Preschool handicapped class types shall meet the following requirements:

1.-3. (No change.)

4. Age span shall be three years.

5.-7. (No change.)

(b)-(o) (No change.)

(a)

STATE BOARD OF EDUCATION

Vocational and Technical Education Programs and Standards

Adopted Repeal: N.J.A.C. 6:42

Readoption with Amendments: N.J.A.C. 6:43

Proposed: June 4, 1990 at 22 N.J.R. 1705(a).

Adopted: August 1, 1990 by John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: August 10, 1990 as R.1990 d.451, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-16, 18A:4-24, 18A:4-25, 18A:7A-1 et seq., 18A:54-1 et seq., 34:2-21 et seq., 29 C.F.R. Subpart C of Part 570, P.L. 1989 c.295, P.L. 97-300 and P.L. 98-524.

Effective Date: August 10, 1990, Readoption; September 4, 1990, Amendments and Repeal.

Expiration Date: August 10, 1995.

Summary of Public Comments and Agency Responses:

Ten individuals spoke at the June monthly public testimony session provided by the State Board of Education and 13 letters (nine were form letters) with comments were received.

COMMENT: Two commenters suggested that the 200 minute requirement for the related class in cooperative vocational education programs was restrictive and should be reduced, particularly for students in county vocational schools.

RESPONSE: The co-op pupil cannot be absorbed into a regular vocational course and still obtain instruction directly related to his or her job. Therefore, the 200 minutes assures specific instruction.

COMMENT: A commenter suggested that the vocational classroom teacher rather than the cooperative education program teacher was the individual most qualified to teach the related class.

RESPONSE: The cooperative vocational education program teacher is the most qualified person, based upon (1) applicable certification and (2) the coordinator must visit the pupil at the job site to assure that the "related instruction" is related to the job activities. An individualized training plan for each pupil would assure this and would provide flexibility.

COMMENT: A commenter recommended that districts be given authority for determining policy regarding the amount of credit to be awarded for cooperative vocational education programs.

RESPONSE: On-the-job training (OJT) with classroom instruction directly related to the job responsibilities is essential to a quality program. Otherwise, the OJT is nothing more than an after school job and not an educational experience. N.J.A.C. 6:8-7.1(4)(a) and (c) define the basis for awarding credit for cooperative vocational education programs.

COMMENT: Two commenters indicated that pupils not in cooperative vocational education programs can work longer hours and, therefore, employers are reluctant to hire pupils in cooperative programs. One of the commenters suggested that extra hours be allowed for marketing education students.

RESPONSE: Cooperative vocational education is a method of instruction. It is not a job placement program. The rules are designed to protect the pupil from injury (most industrial accidents occur when a worker is fatigued) and from exploitation (extra hours without appropriate compensation). Pupils not in a co-op program are not in a formal educational program and, therefore, are not subject to the same requirements. However, all minors (under the age of 18) are subject to New Jersey and Federal child labor laws and regulations, some of which are more

stringent than those imposed in an educational program. The pupils are permitted to work an eight hour day on the weekend, thereby making up the 33 hours which are currently allowed under existing guidelines.

COMMENT: Four individuals commented on N.J.A.C. 6:43-3.9(c), which requires the cooperative vocational education teacher to supervise pupils on the job at least 30 minutes every two weeks and suggested that it: be eliminated, and require the school to document adequate supervision in place of the minute requirement; would limit the number of students each coordinator could supervise; might require work beyond the local bargaining unit's established work day; and the frequency and amount of time used to supervise pupils on the job sites that should be left to the district.

RESPONSE: The requirement of 30 minutes supervision is consistent with appropriate contact on the part of the coordinator. The term "supervise" can be operationally defined to accommodate employer and coordinator needs. The current proposal provides for appropriate supervision for co-op students at the job site. The Department would, however, consider alternatives that would guarantee the safety and quality of training. The proposed amended rules are focused on quality vocational education programs that protect pupils from exploitation. While local contractual agreements are the responsibility of the district board of education, the Department disagrees that the frequency and amount of time used to supervise students on job sites should be left to the district.

COMMENT: One commenter recommended that occupational competencies be developed for all cooperative industrial education areas, as with any other vocational education program.

RESPONSE: The Department agrees that competencies should be developed for cooperative industrial education areas.

COMMENT: Two commenters recommended that the Department not develop occupational competency tests from scratch but make use of existing tests and work done by other states in measuring competencies.

RESPONSE: The Department is considering all available materials in the development of competency tests and will be guided by the Assessment Panel of State and national experts.

COMMENT: One commenter indicated that business and industry require more of vocational graduates than occupational skills and recommended that broad attitudinal and educational measures be included in the full array of skills to be developed and assessed.

RESPONSE: The Department agrees. Employability competencies will be designed to complement the occupational competencies.

COMMENT: One commenter recommended that occupations for which vocational pupils are trained must be those requiring longer term training and preparation, not occupations requiring only brief training.

RESPONSE: The Department agrees. However, special needs pupils may require a longer period of instruction to master competencies for some occupations which might require less time for other pupils.

COMMENT: Two individuals commented on the vocational student organization provisions. One commenter questioned whether teachers had to join vocational student organizations, who paid the cost and whether the district board of education had any say in the matter. The other commenter suggested that district boards of education should be required to pay dues for student memberships in the organizations.

RESPONSE: District boards of education may pay all costs associated with vocational student organizations, if they so choose. In many cases, students pay partial costs and raise other funds through chapter functions. Teachers, as chapter advisors and chaperones, support vocational student organization activities but do not have to join. The Department disagrees that districts should be required to pay students' dues; it is the district board of education's prerogative to pay dues or not.

COMMENT: One commenter expressed strong support for the rule provisions for occupational competencies, tests and job placement standards, saying they will enhance occupational training and facilitate cooperation between vocational schools and the New Jersey Department of Labor's Jobs New Jersey Programs.

RESPONSE: The Department agrees that occupational competencies, competency testing and job placement standards will enhance occupational training accountability consistent with the policy direction of the State Employment and Training Commission.

COMMENT: One commenter indicated that most comprehensive high schools do not track students and follow-up surveys would be inaccurate or inconsistent.

RESPONSE: All vocational pupils should be identified by applying the rule definition of "vocational pupil." Once identified, those pupils could be included in follow-up surveys.

COMMENT: One commenter recommended that, before graduation, all students 18 years of age or older authorize the Department to contact their employers in the future to determine the extent to which the employers found the students adequately prepared for their occupations. The Department should survey the employers, evaluate and summarize responses and report the results to school districts.

RESPONSE: The Department agrees. It is important for program improvement purposes to know how well pupils are doing on the job. The Department will conduct employer surveys to determine employer satisfaction with the job performance of vocational school program completers as provided in N.J.A.C. 6:43-3.19, Statewide data bank.

COMMENT: Sixteen individuals, including nine who sent form letters, commented on the job placement standards at N.J.A.C. 6:43-7, stating that the standards were as yet undefined and should not be the only measure of accountability. One commenter suggested that such standards fail to take into consideration job mobility.

RESPONSE: The job placement standards recommended by the Commission on Employment and Training will be made taking into consideration all relevant factors including job mobility, if it is a factor. Further, there is concern for cost effectiveness of occupational training due to limited resources.

COMMENT: A commenter recommended that credit for pupils entering full-time postsecondary education should not be limited to education related to the vocational or technical field in which the pupil was prepared.

RESPONSE: The Department does not agree. Training cost effectiveness must be a consideration. Random placement suggests inappropriate planning.

COMMENT: A commenter expressed concern that the only measure of the success of a business education program will be the count of vocational students.

RESPONSE: The Department disagrees. There are many ways districts can measure the success of nonvocational pupils in business education courses, including performance assessment.

COMMENT: Ten commenters, including nine who sent form letters, reported that most skills and competencies learned in business education are used for avocational purposes. The vocational students should be measured separately from the avocational students but most comprehensive high schools do not place students in tracks.

RESPONSE: The Department agrees and believes there is no conflict for students taking vocational courses for avocational or occupational purposes. Vocational students taking a sequence of courses for occupational placement must be measured.

COMMENT: One commenter was concerned about the negative impact placement standards will have on some vocational programs that might be forced to close as a result of low job placement rates.

RESPONSE: The rules recognize six categories which will count as job placements and allows for program improvement, where necessary. Districts have up to four years to work out and implement a remediation plan if rates are low.

COMMENT: A commenter suggested that variables are too vague for determination of program deficiency.

RESPONSE: The Department disagrees. Flexibility has been built into the process to accommodate unique problems and solutions.

COMMENT: A commenter recommended that the State should consider 15 hours of work a week as enough to count as a valid placement and that 20 hours a week was too high.

RESPONSE: The Department disagrees. The 20 hour limit is reasonable.

COMMENT: Two commenters suggested that proposed job placement standards ignore the importance of student success, as a result of the vocational education experience, in other trade or educational areas than that for which training was provided. All students cannot make permanent career decisions in high school. Many are successful in the labor market as a result of the vocational education experience, but not in the specific field for which they were trained.

RESPONSE: The rules recognize job placement as a major factor for measuring the success of vocational education programs. The job placement standards apply to districts which train vocational pupils for paid occupations. The rules also recognize many factors and indicators which may influence job placement rates. Pupil success in occupations not related to their training could be one factor influencing a district's placement data. Training cost effectiveness remains a concern.

COMMENT: A commenter suggested that the use of job placement standards constitutes the application of a standard that is different from other educational institutions.

RESPONSE: The Department agrees. Vocational education is different from purely academic preparation. Vocational schools are directly accountable for the success of pupils in business and industry.

COMMENT: Three commenters addressed the program and course approval process. One commenter suggested that, while the rules require district boards of education to request recommendations from the private industry council when establishing new vocational courses, decisions on courses offered should be left to the district. The rules requirement would slow the procedure.

RESPONSE: The Department disagrees that determination of vocational program need should be left solely to district boards of education. Federal and State legislation intends for coordination of labor and education agencies for educating workers to meet projected labor market demands for a stronger work force. Decisions will be made carefully and within established timelines, taking into consideration all relevant data for meeting instructional needs and labor market supply/demand.

COMMENT: The same commenter asked what the criteria were for approval or non-approval.

RESPONSE: The Vocational Education Program Review Panel will determine criteria for course approval or disapproval.

COMMENT: A commenter expressed concern that private industry councils will have power over approval of a general, broad-based business course.

RESPONSE: The private industry councils will make recommendations regarding the need for vocational courses in their labor market areas. They will not have authority to approve or disapprove requests to operate new courses or programs.

COMMENT: A commenter questioned whether it is realistic to believe that a group of people from around the state really knows what the specific needs are for every school district in New Jersey.

RESPONSE: The Vocational Education Review Panel will include representatives from business; industry; education; State agencies responsible for data collection, planning and economic development; and the Commission on Employment and Training. While their recommendations will include a review of the local private industry council's and the county superintendent's advice, their broad perspective on local, regional and statewide occupational supply and demand will ensure that district boards of education do not unnecessarily duplicate vocational education courses or programs.

Summary of Agency-Initiated Changes:

At N.J.A.C. 6:43-1.2, the Department corrected punctuation by adding a comma after "chapter." In definitions of "health occupation education," "technical education" and "trade and industrial education," hyphens at "entry-level" were deleted for consistency.

At N.J.A.C. 6:43-2.2, the Department made technical changes that were inadvertently overlooked prior to proposal. The term student was changed to pupil and references to education programs added.

At N.J.A.C. 6:43-3.13(d)2i, the Department added a rule cross reference for clarification as requested by the State Board.

At N.J.A.C. 6:43-3.17(b), the Department lower-cased the word "national".

At N.J.A.C. 6:43-3.19 the Department added "s" to "board" and changed "deliveries" to "deliverers" to correct typing errors and changed "These" to "The" for consistency.

At N.J.A.C. 6:43-8.2(4), the Department added "... their recommendation ..." to sentence for clarification.

Full text of the readoption with amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

CHAPTER 43

VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS AND STANDARDS

SUBCHAPTER 1. DEFINITIONS

6:43-1.1 Scope and purpose

This chapter specifies standards and procedures regarding vocational and technical education programs, specifically in the areas of: instruction; contracting between district boards of education; programs and services for handicapped pupils and for pupils whose achievement in vocational education programs is limited because of temporary academic or economic factors; private nonprofit school

pupil participation; an accountability system including competencies, testing and job placement standards; improved planning; and program and course approval. To assure standards and procedures, the Commissioner of Education and the State Board of Education have developed these rules in conformity with relevant Federal and State statutes concerning public education, vocational education, county vocational schools, child labor, private industry councils and the Commission on Employment and Training.

6:43-1.2 Words and phrases defined

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

"Academically or economically limited pupil" means a pupil (other than a handicapped pupil) who, because of economic or academic reasons, requires temporary special services and assistance in order to succeed in vocational education programs, including:

1. Pupils who are members of economically limited families;
2. Migrants;
3. Pupils who have limited English proficiency; and
4. Pupils who are dropouts from, or who are identified as potential dropouts from, secondary school.

"Act" means the Carl D. Perkins Vocational Education Act, P.L. 98-524.

"Agriculture/agribusiness education" means a program of instruction that provides pupils with the skills and knowledge for entry ***[-]***level employment in horticulture, production agriculture, agribusiness, agricultural processing, agricultural mechanics, natural resources and small animal care occupations.

"Alternate plan" means an educational plan prepared by the district board of education responsible for the pupil, and shall include educational activities in replacement of the on-the-job training portion of cooperative vocational education during a temporary period of unemployment.

"A temporary period of unemployment" is a period of time that will not exceed 20 school days.

"Apprentice" means an employee of legal working age who meets the qualifications established by the apprentice sponsor and who is employed under a written agreement which provides that related training and on-the-job experience received be in accordance with approved standards of apprenticeship.

"Business education" means a program of instruction that provides pupils with the skills and knowledge needed for entry ***[-]***level employment in a business career and the basic business skills and knowledge needed by all individuals in order to function effectively in society.

"Career orientation education" means programs such as employment orientation, industrial arts and other programs which assist students to clarify career goals, explore career possibilities, develop employability skills and make the transition between school and work. Emphasis is on awareness of self, careers, technology, problem solving, consumerism and preparation for appropriate career and education-related decision making.

"Commissioner" means the Commissioner, New Jersey State Department of Education.

"Commission on Employment and Training" means the State commission established under P.L. 1989 c.295 to develop and assist in the implementation of a State employment and training policy with the goal of creating a coherent, integrated system of employment and training programs and services which, in concert with the efforts of the private sector, will provide each citizen of the State with equal access to the learning opportunities needed to attain and maintain high levels of productivity and earning power.

"Cooperative vocational education program" means a method of instruction by which pupils, through a written training agreement between the school and employers, receive on-the-job training and related vocational instruction, by the alternation of related classroom instruction with regularly scheduled part-time paid employment in an approved occupational field.

"Course" means an organization of subject matter and related learning experiences designed to meet a vocational objective provided

for the instruction of pupils on a systematic basis, usually for a predetermined period of time.

"Handicapped individual" means a pupil who requires special education and related services and who cannot succeed in the regular vocational education programs without special educational assistance.

"Health occupations education" means a program of instruction that provides pupils with the skills and knowledge needed for entry*[-]*level employment in the health care industry, including skill development in direct patient care, health maintenance and supportive service occupations.

"Home economics and consumer education" means a program of instruction that provides pupils with the skills and knowledge needed for the unpaid occupation of homemaking and skills and knowledge needed for entry level paid employment in home economics-related occupations.

"Local area vocational school district" means a school district which complies with the requirements set forth in N.J.A.C. 6:46-2.

"Marketing education" means a program of instruction that provides pupils with the skills and knowledge needed for entry level employment in management, merchandising and marketing of goods and services.

"Occupational competencies" means the essential elements of vocational programs, the knowledge and skills pupils must master for specific entry level jobs in the fields of their choice.

"Postsecondary educational institution" means an institution legally authorized to provide postsecondary education within the State.

"Private industry council" means the council established under the Job Training Partnership Act (P.L. 97-300) to provide policy guidance for, and exercise oversight with respect to, all employment and training programs within its labor market area in partnership with units of local government. The private industry council includes representatives of private sector businesses, educational agencies, organized labor, rehabilitation agencies, community-based organizations, economic development agencies and the public employment service.

"Private vocational school" means a business enterprise operated either for profit or not-for-profit which maintains a place of business within the State of New Jersey and which:

1. Solicits pupils from the general public;
2. Charges tuition and/or other fees;
3. Offers instruction to a group or groups of four or more pupils at one time; and
4. Offers preparatory instruction to pupils for entry level employment or for upgrading in a specific occupational field. The occupational fields include those listed in the Classification of Instructional Programs (C.I.P.) requiring less than a baccalaureate degree. This document is available from the United States Department of Education, Office of Educational Research and Improvement, Center for Educational Statistics, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

"Program improvement plan" means a written document covering a two-year period describing how the district will mobilize resources and act to overcome program deficiencies which have resulted in below minimum job placement rates.

"Related instruction" means one or more courses in a school in which the cooperative vocational education pupil acquires concepts, competencies, understanding, and attitudes appropriate to training station assignments, occupational program areas and career objectives.

"Review panel" means the Vocational Education Program Review Panel established by the Commissioner of Education to assess the State's needs for new programs based upon labor market demand, advise on the continuation of programs, review job placement standards, and provide recommendations for the State Plan.

"State Council" means the New Jersey Council on Vocational Education established in accordance with the Carl D. Perkins Vocational Education Act, P.L. 98-524.

"State Plan" means the State Plan for Vocational Education.

"Technical education" means a program of instruction that provides pupils with the skills and knowledge needed for

entry*[-]*level employment and/or entry into post-high school education programs which require relatively complex and detailed information, considerable proficiency in college preparatory mathematics and the extensive application of laboratory physical science.

"Technology education" means a comprehensive action-based educational program concerned with the evolution, utilization, and significance of technology and its impact on industry, including its organization, personnel, systems, techniques, resources, products, and sociocultural aspects. Technology education emphasizes career and self-awareness, consumer knowledge, consequences of technology, creative problem-solving techniques, understanding of technical systems, application of science, mathematics and computers, activity oriented experiences in technology, and an interdisciplinary approach to education.

"Trade and industrial education" means a program of instruction that provides pupils with the skills and knowledge needed for entry*[-]*level employment in a specific trade or service occupation.

"Unemployed individual" means a vocational pupil who is not working.

"Vocational/career guidance and counseling" means those programs which pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision making, placement skills, and knowledge and understanding of local, State and national occupational, educational, and labor market needs, trends, and opportunities which assist them in making and implementing informed educational and occupational choices.

"Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment in such fields as agriculture/agribusiness, business occupations, health occupations, home economics, marketing occupations, technical occupations, and trade and industrial occupations or for additional preparation for a career in such fields and in other occupations requiring less than a baccalaureate or advanced degree. Vocational student organization activities are an integral part of the programs.

"Vocational pupil" means that pupil enrolled in a sequence of vocational education courses leading to certification of competencies for occupational placement.

"Vocational student organizations" means those organizations for pupils enrolled in vocational education programs and industrial arts/technology education programs which engage in activities as integral parts of the appropriate instructional programs. Such organizations may have State and national units which complement the development of leadership and career-related competencies in vocational education at the local level.

SUBCHAPTER 2. VOCATIONAL AND TECHNICAL EDUCATION

6:43-2.1 Vocational and technical education programs

(a) Any vocational and technical education program of less than college grade shall be conducted within the framework of a State Plan for Vocational Education approved by the State Board of Education and accepted by the United States Department of Education.

(b) The balance of vocational funds, which is matched with State funds and is available at the close of the school year, shall only be expended for support in the particular field for which such funds were originally appropriated.

(c) State and Federal funds for activities in any program of vocational education included in N.J.S.A. 18A:54 shall be withheld from local school districts when it appears to the satisfaction of the Commissioner that any of the following conditions exist:

1. The approved courses of study are not carried out;
2. There is exploitation of pupils participating in cooperative vocational education programs, or pupils in cooperative vocational education programs are illegally employed or employed under conditions which do not safeguard the pupils;
3. Teachers are not properly certificated for the subject they are teaching;

EDUCATION

4. The program is not operated in conformity with the current State Plan for Vocational Education which has been adopted by the State Board of Education.

6:43-2.2 General program requirements

(a) The proceeds from the sale or resale of any articles, materials or services produced in the various classes and shops maintained under a vocational program of any district shall be accounted for and credited to the vocational account of that district.

(b) (No change.)

(c) No application for State or Federal aid shall be approved until the annual financial and statistical reports on activities in any program of vocational education have been filed with the Commissioner.

(d) No application for State or Federal aid shall be approved unless the adequacy and suitability of the equipment for carrying out the courses of study in any program of vocational education has been approved by the Commissioner.

(e) It shall be the duty of every district board of education maintaining courses in any program of vocational education to provide all equipment, mechanical and electrical, now in service or which may hereafter be placed in service in such courses, with guards or other protective devices which shall meet the safety standards specified in N.J.A.C. 6:53.

(f) (No change.)

(g) District boards of education shall not establish or conduct any courses included in the State Plan for Vocational Education unless such courses conform to the requirements included in the current approved State Plan for Vocational Education and are approved by the State Board of Education.

(h) In any school district in which there is a plan of cooperation whereby the pupils spend part time in school and part time in employment, the district board of education shall submit for the approval of the Commissioner plans for protecting the pupils from illegal employment and exploitation. Pupils participating in these cooperative vocational education programs shall receive wages commensurate with wages paid to other employees for similar work, and shall be protected by provisions of the Workers' Compensation Act and any other acts of the State pertaining to such training and employment.

(i) School districts in which shared-time and full-time vocational education classes are in operation shall maintain an approved medical inspection service for applicants for admission to such schools and classes.

(j) It shall be the duty of the medical inspector to report immediately to the principal of any school in the district on any pupil whose physical condition may affect the pupil's safety or health while enrolled in vocational education, or which may prevent the pupil from obtaining regular employment.

(k) All full-time *[students]* *pupils* in approved vocational*[-]* *and technical *[preemployment]* *education* programs shall be entitled to State aid as prescribed by law or rule of the State Board of Education. This rule clarifies the status of practical nurse *[students]* *pupils* and other older *[students]* *pupils* who are enrolled full-*time in day school *[programs in]* vocational*[-]* *and* technical *[schools]* *education programs.*

6:43-2.3 Schools designated as other than full-time day schools

(a) When any school established as other than a full-time day school meets the criteria in (b) below, it will be eligible for State aid pursuant to N.J.S.A. 18A:54-9 and 18A:54-32.

(b) Schools established as other than full-time day schools shall meet the following criteria:

1. The school shall be designated by the district board of education as an entity separate and distinct from any and all other schools within the district.

2. The school shall have a curriculum approved by the district board of education and the county superintendent of schools for each program offered. Each program shall have as its objective the preparation of shared-time secondary pupils or adults for gainful employment.

3. The school shall maintain a separate register. The school may use either the Department of Education's New Jersey School Register or the New Jersey Adult High School Register format.

ADOPTIONS

4. The building(s) shall be approved by the New Jersey State Department of Education, Bureau of Facility Planning Services. When the district board of education has designated a facility other than a school building approvable by the Bureau of Facility Planning Services, the county superintendent of schools shall approve the off-site facility for training in accordance with N.J.A.C. 6:22-3.1.

5. Each school shall have the services of a certificated supervisor or administrator who shall be present while the school is in session.

6. The program(s) shall provide for the preparation of individuals for gainful employment requiring other than a baccalaureate or advanced degree.

7. Buildings approved as either full-time or shared-time day schools shall not be subdivided within the same time frame for funding purposes.

8. The laboratory portion of an existing instructional program housed apart from the basic program shall not be designated as a separate school.

SUBCHAPTER 3. VOCATIONAL INSTRUCTION

6:43-3.1 Arrangements for instruction

(a) Vocational instruction shall be provided either under public supervision and control meeting the criteria below, or under contract with the State Board of Education or a district board of education.

(b) To be under "public supervision and control," a school or class shall meet the following criteria:

1. It is organized and operated under the direction of the State Board of Education or a district board of education responsible for expenditure of public school funds for vocational education in the State;

2. Staff of the Department of Education or a district board of education responsible for vocational education have full charge of:

i. (No change.)

ii. Determining whether pupils qualify for admission to classes; and

iii. Determining content and organization of courses and curricula; and

3. Vocational instruction shall be designed to: prepare individuals for paid or unpaid employment, as semiskilled or skilled workers or technicians or semiprofessionals in recognized occupations and in new or emerging occupations; prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs; assist individuals in the making of informed and meaningful occupational choices; or achieve any combination of the above objectives.

6:43-3.2 Vocational education for paid or unpaid employment

(a) Vocational education for paid or unpaid employment includes:

1. Instruction related to paid or unpaid employment in the occupation or occupations for which the pupils are being trained;

2. Classroom related academic and technical instruction, field, shop, laboratory, cooperative vocational education, apprenticeship or other occupational experiences;

3. Instruction provided for entry level employment or instruction designed to upgrade or update workers in occupational skills and knowledge in order to enhance stability or upward mobility in employment; and

4. Remedial or other instruction designed to correct educational deficiencies or handicaps which prevent pupils from benefiting from instruction designed to teach competencies in occupations.

6:43-3.3 Advanced, skilled vocational and technical education

(a) Vocational instruction shall be primarily designed to prepare individuals for employment in a specific occupation. It may also prepare individuals for enrollment in advanced or highly skilled postsecondary vocational and/or technical education programs.

(b) An approved secondary technical education program includes three years of college preparatory mathematics, two one-year laboratory science courses and a technical laboratory course which is conducted a minimum of 400 minutes per week for a period of not less than two years.

6:43-3.4 Career orientation and technology education programs

Career orientation and technology education shall include instruction designed to familiarize individuals with the broad range of occupations for which special skills are required and the requisites for careers in such occupations, including employability skills.

6:43-3.5 Cooperative vocational education programs

(a) Cooperative vocational education programs recognized by the U.S. Department of Education and by the State Board of Education may be offered in the following areas:

1. Agriculture/agribusiness education;
2. Business education;
3. Health occupations education;
4. Home economics related occupations education;
5. Marketing education; and
6. Trade and industrial education.

6:43-3.6 Related training standards for cooperative vocational education programs

(a) Related class instruction shall develop competencies in each of the following:

1. Areas that are occupationally-general and needed by all workers;
2. Areas that are industry-specific and needed by all workers in the industry;
3. Areas that are occupationally-specific and needed by workers of a specific occupation only; and
4. Areas that are training site-specific and needed by individual pupils in their specific place of employment only.

(b) Safety instruction shall be taught by the teacher and coordinated with on-the-job training experiences.

(c) The cooperative vocational education teacher shall meet every pupil for related instruction a minimum of 200 minutes per week.

(d) A maximum of 15 credits and one final grade shall be earned in a 10-month period (September through June) for satisfactory completion of the combined on-the-job training and related instruction.

(e) Academic credit shall be awarded for no more than a two-year sequence of instruction or training for cooperative vocational education pupils.

6:43-3.7 Program procedures which apply to all cooperative vocational education programs

(a) The prospective cooperative vocational education pupil shall apply to and be interviewed by the cooperative vocational education teacher to define those occupations which are suited to the career objectives of the pupil.

(b) The pupil shall comply with rules established by the district board of education and the Department of Education.

(c) Each program shall provide on-the-job training which:

1. Conforms with Federal, State, and local laws, in a manner not resulting in the exploitation of the pupil;
2. Assures that the pupil may not displace a full-time worker;
3. Provides the pupil with training site experiences for not more than five hours per school day and that the combination of school and work does not exceed eight hours on any one day. The pupil shall not work for more than six consecutive days and the combination of hours for school instruction and employment training during this period may not exceed 40 hours per week. An average of 15 hours per week shall be worked during the approved period of the program; and
4. Provides work periods and school attendance that may be on alternate half-days, full-days, weeks, or other periods of time in fulfilling the cooperative vocational education program.

6:43-3.8 Training site assignment and supervision standards which apply to all cooperative vocational education programs

(a) The teacher shall have total responsibility for the pupil's on-the-job placement to ensure that employment is appropriate to the pupil's skills, abilities and career goals. The job assignment shall constitute a training and learning situation, be absent of pupil exploitation and comply with applicable safety standards.

(b) Transportation of the pupil to and from the cooperative vocational education training site shall be the responsibility of the pupil.

(c) Pupils under 18 years of age shall not drive as part of their job responsibility according to the Federal Fair Labor Standards Act, Hazardous Order No. 2 (29 C.F.R. Subpart C of Part 570). If a licensed (driver) pupil, 18 years of age or older, drives on an incidental basis only as part of the job responsibility, insurance shall be provided by the employer.

(d) Specific training site identification shall be developed with the following provisions:

1. Training site development and pupil placement shall be the responsibility of the teacher;
2. Training sites at which pupils are employed in occupations identified as hazardous by either State or Federal child labor laws or standards, and for which an exemption is granted pupils, shall be registered with the Division of Vocational Education.

(e) The teacher, in conjunction with the employer, shall determine the pupil's continuation, termination or change in job assignment. An alternate plan shall be developed for use when any cooperative vocational education pupil is temporarily unemployed.

(f) Assignments of pupils shall include assurances that:

1. Training site selection provides opportunity for a progressive structured training environment;
2. Training is free of pupil exploitation and provides a safe environment for the duration of the pupil's training;
3. Exposure of the pupil to hazardous conditions shall be limited to minimum exposure with proper safeguards;
4. All pupils are employed with a training agreement signed by the employer, the teacher, the pupil and the parent/guardian or, in cases where pupils are 18 years of age or older (unless prohibited by existing law), a training agreement which may be signed by the pupil;

5. Training of all pupils shall be developed with a training plan that identifies training site experiences, program objectives, individual responsibilities and measurable outcomes; and

6. The related vocational instruction and the regularly scheduled part-time paid employment are planned and supervised by a teacher who holds the appropriate teaching endorsement.

(g) The following standards for supervision of pupils on the training site shall apply to all cooperative vocational education programs:

1. All pupils shall be provided direct and close employer supervision at the training site by qualified and trained personnel.
2. The cooperative vocational education training plan shall provide for planned supervision of the pupil by the teacher during the hours of the pupil's work experiences, to assure that the pupil is free from exploitation and pupil safety is guaranteed.
3. When the pupil is employed in a hazardous occupation governed by State and Federal exemptions to the child labor laws, such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person.
4. Minors at least 16 years of age may be employed in restaurants, but not in the preparation, sale or serving of alcoholic beverages.
5. Minors at least 16 years of age may be employed in video stores, but not in the viewing, handling, sale or rental of adult videos.

6:43-3.9 General program standards which apply to all cooperative vocational education programs

(a) A program specific advisory committee shall be established and maintained for each cooperative vocational education program offered. Advisory committee members shall represent local business, industry, labor, management and other community agencies knowledgeable about the occupational program area.

(b) Teachers shall be appropriately certificated for the program area in which pupil placements are made.

(c) Teachers shall supervise pupils on the job for a minimum of 30 minutes every two weeks.

(d) The State Board of Education does not make provision for reimbursement to employers or to pupils for additional costs incurred for the operation of or participation in cooperative vocational education programs.

6:43-3.10 Vocational work study programs

(a) The vocational work study program provides wages for vocational pupils between the ages of 15 and 20 who work outside of school hours for public agencies. No educational credits are awarded for participation in this program.

(b) The following eligibility requirements apply to all State sponsored vocational work study programs and employment under the work study program shall be furnished only to a pupil who:

1. Has been accepted for enrollment or is already enrolled and in full-time attendance in a vocational education program which meets the standards prescribed by the State Board of Education and the district board of education;

2. Is between the ages of 15 and 20 at the date of the commencement of employment and is capable in the opinion of the appropriate school authorities of maintaining good standing in the school program while employed under the work study program; and

3. Is handicapped or economically limited according to one or more of the following indicators:

- i. The pupil is eligible for free or reduced price school lunch;
- ii. The pupil is eligible for participation in programs supported under Title II of the Job Training Partnership Act, P.L. 97-300;
- iii. The pupil has or is a member of a family which receives a total family income at or below the official poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget; and/or
- iv. The pupil is eligible or is a member of a family which is eligible to receive Aid to Families with Dependent Children or other public welfare assistance.

(c) No pupil shall be employed during the school year for more than 15 hours in any week during which classes in which the pupil is enrolled are in session. For the purposes of this subsection, school year work study programs shall operate for a period of 10 months, from September through June.

(d) Pupils employed in summer work study programs operating during July and August may work up to eight hours in one day and up to 40 hours in one week. The total of the pupil's summer earnings shall not be limited by or have the effect of limiting compensation paid during the school year work study program.

(e) Employment under work study programs shall be for the district board of education or for some other public agency or institution, Federal, State, or local, pursuant to a written arrangement between the district board of education and such other agency or institution, and work so performed will be adequately supervised and coordinated and will not supplant present employees of such agency or institution who ordinarily perform such work. In those instances where employment under work study programs is for a Federal agency or institution, the written arrangement between the district board of education and the Federal agency or institution will state that pupils so employed are not Federal employees for any purpose.

6:43-3.11 Access to vocational instruction offered

(a) Pupils shall be permitted to enroll in programs of vocational instruction offered by district boards of education other than their resident district so long as the resident district board of education does not offer a comparable type of program and space is available for additional enrollees in the programs offered by the receiving district board of education.

(b) To the extent that space is available, each type of program of vocational instruction offered by the State Board shall be made available to all pupils residing in the State, and each program of instruction offered by a district board of education shall be made available to all pupils residing in the district or community served by the district board of education offering such instruction.

(c) Pupils shall be admitted for enrollment in classes and provided instruction on the basis of their potential for achieving the occupational or other objective of such instruction.

6:43-3.12 Content of vocational instruction

(a) The content of vocational instruction shall be developed and conducted in accordance with the following standards to assure soundness and quality.

1. The program of instruction shall emphasize the most contemporary skills and knowledge required to master the occupational competencies.

2. The program of instruction shall be developed and conducted in consultation with employers and other individuals or groups of individuals (such as local advisory committees) having skills in and substantive knowledge of the occupations or the occupational programs included in the instruction.

3. The program of instruction shall be sufficiently extensive in duration and intensive within a schedule unit of time to enable the pupil to master the occupational competencies.

4. The program of instruction shall:

- i. Combine and coordinate classroom instruction with field, shop, laboratory, cooperative work, apprenticeship, or other experiences which are appropriate to the competencies of the occupation;
- ii. Be of sufficient duration to develop occupational competencies; and
- iii. Be supervised, directed, or coordinated by persons meeting teacher preparation and certification requirements in N.J.A.C. 6:11, Teacher Preparation and Certification.

6:43-3.13 Occupational competencies and tests

(a) The Commissioner shall establish competencies for occupations in the following major vocational education program areas:

- 1. Agriculture/agribusiness education;
- 2. Business education;
- 3. Health occupations education;
- 4. Home economics related occupations education;
- 5. Marketing education;
- 6. Technical education; and
- 7. Trade and industrial education.

(b) Occupational competencies shall be developed beginning November 30, 1991 and annually thereafter in accordance with the following:

1. The priority order for which competencies shall be developed for specific occupations will be determined by pupil enrollment and labor market demand factors.

2. The occupational competencies shall be developed and recommended to the Commissioner through a collaborative process which shall include:

- i. Occupational Competency Liaison Committees, composed of representatives from business, industry, labor and education;
- ii. Occupational Competency Industry Panels, composed of representatives from business, industry and labor;
- iii. Occupational Competency Educators Panels, composed of outstanding educators;
- iv. Reviews by employers throughout the State; and
- v. Reviews by educators throughout the State.

3. Competencies for entry level occupational skills shall be developed and revised in five-year cycles or, more frequently, should an industry require standards revision.

(c) The Department of Education will disseminate occupational competencies to all secondary schools offering vocational education programs which prepare vocational pupils for entry level employment.

1. The Department of Education will provide implementation training for school district staff.

2. Schools shall have the option to select strategies and course content to teach the occupational competencies.

(d) The Commissioner shall be responsible for determining which occupational competency tests will be used for the State's assessment of vocational pupil mastery of occupational competence and shall provide boards of education with test results which may be used by districts as indicators for modifying instructional programs, as necessary.

1. Occupational competency tests shall be designed to measure performance in a fair manner Statewide, giving attention to equitable pupil rating, reliability of data, testing security and administration.

2. Occupational competency tests shall be administered by June 1, 1993 and annually thereafter according to a specific Statewide testing schedule established by the Department.

i. Tests shall be required for all vocational pupils enrolled in secondary occupational programs ***except that special needs pupils shall be assessed as specified in N.J.A.C. 6:43-7.2(b)4***;

ii. Districts shall be instructed in using uniform standards for test administration and shall administer the tests;

iii. Districts shall certify proper administration of the tests to the Department of Education and shall contribute testing results to the State data bank, Division of Vocational Education; and

iv. The Department of Education shall provide districts with State-wide testing data analyses of pupil achievement in mastering occupational competencies, allowing comparisons of how well pupils are performing in different areas of the State.

3. Occupational competency tests shall require performance and/or written responses.

6:43-3.14 Adequate facilities and material for instruction

Classrooms, libraries, shops, laboratories, and other facilities (including instructional equipment, supplies, teaching aids and other materials) shall be adequate in supply and quality to meet the occupational or other objectives of the vocational instruction offered. If the district board of education cannot provide such facilities and materials, but they are available in a business, industrial, service, or other establishment, vocational instruction may be conducted in such establishment provided that such instruction meets the standards and requirements of the Act, this chapter, the State Plan and N.J.A.C. 6:22-3.1.

6:43-3.15 Qualified teachers and supervisors

Vocational instruction shall be conducted and supervised by teachers, teacher aides, supervisors, and other supporting personnel meeting minimum academic qualifications and minimum occupational experiences as established by the State Board of Education in N.J.A.C. 6:11, Teacher Preparation and Certification.

6:43-3.16 Vocational/career guidance and counseling

The program of instruction shall provide for vocational guidance and counseling personnel and services sufficient to enable the program to achieve and continue to meet its objectives, standards and requirements.

6:43-3.17 Vocational student organizations

(a) The program of instruction may include activities of vocational education student organizations which are an integral part of the vocational instruction offered and which are supervised by persons who are qualified as vocational education teachers or supervisors in the State.

(b) Payment of State and national dues shall be a requirement for membership in a New Jersey or ***[National]* *national*** vocational student organization.

(c) Membership in the appropriate vocational student organization and adherence to published deadlines shall be requirements for participation at State and national vocational student organization competitive events. The Commissioner shall publish deadlines by September 1 of each school year in accordance with planned State and national activities.

(d) The operation of a vocational student organization shall be in accordance with the organization's State and national constitution, bylaws, published rules and regulations.

(e) The local chapter advisor shall be responsible for the operation of the local chapter activities and for meeting membership and other eligibility requirements for State and national vocational student organization activities.

6:43-3.18 Evaluation

Evaluation of the results of the program of instruction will be made periodically on the State level by the State Board of Education and the State Council on Vocational Education and continuously on the local level, with results being used for necessary change or improvement in vocational education programs through experimentation, curriculum development, training of vocational education personnel, or other means.

6:43-3.19 Statewide data bank

(a) The Commissioner shall establish a comprehensive Statewide data bank within the Division of Vocational Education to include information collected from district board*s* of education and other ***[deliveries]* *deliverers*** of vocational education, employers, graduates and other State agencies. The*[se]* data will include information on:

1. Enrollments;
2. Program completions;
3. Job placements;
4. Employer satisfaction with job performance of vocational school program completers;
5. Salaries;
6. Promotions;
7. Employer and business or industry training needs; and
8. Such other data as necessary to strengthen vocational education instruction and to improve pupil achievement.

(b) District boards of education shall provide such data to the Department of Education on forms provided by the Department.

SUBCHAPTER 4. VOCATIONAL INSTRUCTION UNDER CONTRACT

6:43-4.1 Program arrangements

(a) Arrangements may be made for the provision of any portion of the program of instruction on an individual or group basis by public or nonpublic agencies or institutions other than the State Board or district board of education through a written contract with the State Board of Education or a district board of education. Such contract shall describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocational instruction set forth in this chapter. Such a contract shall be entered into only upon a determination by the State Board of Education or district board of education of satisfactory assurance that:

1. The contract is in accordance with State or local law;
2. The instruction being sought is not offered at a comparable cost by a district board of education within reasonable proximity of the district board of education seeking the vocational instruction; and
3. The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of available funds.

(b) Contracts with private vocational schools may be entered into where the State Board of Education or district board of education determines that such private institutions can achieve the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public agencies or institutions.

(c) Prior to entering into the contract the district board of education shall be responsible for determining that the private vocational school is currently approved by the Department of Education to enroll students in the subject to be taught, by contacting the Division of Vocational Education.

6:43-4.2 Tuition contracts for vocational schools

(a) To facilitate timely tuition payments, vocational school districts receiving pupils from other district boards of education shall enter into written contractual agreements for estimated tuition rates not to exceed the limitations imposed by N.J.S.A. 18A:54-23.

(b) The method of determining tuition rates shall be that as specified in N.J.A.C. 6:20-3, Tuition for Public Schools.

SUBCHAPTER 5. VOCATIONAL EDUCATION FOR ACADEMICALLY OR ECONOMICALLY LIMITED OR HANDICAPPED PUPILS

6:43-5.1 Special educational programs and services

(a) Vocational education for academically or economically limited or handicapped pupils shall include special educational programs and services designed to enable them to achieve vocational education objectives that would otherwise be beyond their reach as a result of their limitations.

(b) Funds available for vocational education for academically or economically limited or handicapped pupils may not be used to provide food, lodging, medical and dental services unless directly related to the provision of vocational instruction. However, the State Board of Education or district board of education conducting vocational programs shall encourage the provision of such services through arrangements with other agencies.

(c) Insofar as possible, academically or economically limited or handicapped pupils shall be placed in regular vocational education programs to the extent that they are able to benefit, and provided only with those supplementary special educational services necessary to enable them to so benefit.

(d) If certain academically or economically limited or handicapped pupils cannot benefit from regular vocational education programs to any extent, even with the provisions of supplementary special educational services, then they shall be provided with special programs of vocational instruction which meet the standards and requirements of regular vocational education programs and which, in addition, include such special instructional devices and techniques and such supplementary special educational services as are necessary to enable those pupils to achieve their vocational objective.

(e) Vocational education programs and services for academically or economically limited or handicapped pupils shall be planned, developed, established, and administered by the State Board of Education and district boards of education in cooperation with other public or private agencies, organizations, and institutions having responsibility for the education of academically or economically limited or handicapped persons in the area or community served by such programs or services. They may include community agencies, vocational rehabilitation agencies, special education divisions or offices of State agencies and district boards of education, and other agencies, organizations, and public or private institutions concerned with the problems of academically or economically limited or handicapped individuals.

SUBCHAPTER 6. PARTICIPATION OF PUPILS IN PRIVATE NONPROFIT SCHOOLS

6:43-6.1 Private nonprofit school program participation requirements

(a) Each program and project carried out with funds allotted under the Act shall be designed to include, to the extent consistent with the number of pupils enrolled in private nonprofit schools in the geographic area served by the program or project, vocational education services which will meet the vocational education needs of such pupils.

(b) The vocational education needs of pupils enrolled in private nonprofit schools located within the geographic areas served by the program or project, the number of such pupils who will participate in the program or project, and the types of vocational education services which will be provided for them shall be determined, after consultation with persons knowledgeable of the needs of those pupils, on a basis comparable to that used in providing such vocational education services to pupils enrolled in public schools and as specified in the State Plan as adopted by the State Board of Education. Each application submitted by the district board of education to the State Board of Education shall indicate the number of pupils enrolled in private nonprofit schools who are expected to participate in each program and project proposed by such agency and the degree and manner of their expected participation.

(c) Public school personnel may be made available on other than public school premises and to the extent necessary to provide vocational education services required by the pupils for whose needs such services were designed, and only when such services are not normally provided at the private school. The State Board of Education or district board of education providing such vocational education services to pupils in private nonprofit schools shall maintain administrative control and direction over such services, and each application from a district board of education providing such services shall so provide. Vocational education services provided with Federal funds shall not include the payment of salaries of teachers or other employees of private schools, except for services performed outside their

regular hours of duty and under public supervision and control, nor shall they include the use of equipment, other than mobile or portable equipment, on private school premises or the construction of private school facilities. Mobile or portable equipment may be used on private school premises for such period of time within the life of the current program or project for which the equipment is intended to be used as is necessary for the successful participation in that program or project by pupils enrolled in private schools.

(d) Any program or project to be carried out on public premises and involving joint participation by pupils enrolled in private nonprofit schools and pupils enrolled in public schools shall include such provisions as are necessary to avoid forming classes that are separated by school enrollment or religious affiliation.

SUBCHAPTER 7. JOB PLACEMENT STANDARDS

6:43-7.1 Establishing job placement standards

(a) The Commissioner shall establish annual minimum job placement standards by July 1, 1992 for district boards of education whose pupils are being trained for paid occupations.

(b) Prior to establishing minimum job placement standards, the Commissioner shall seek job market placement data recommendations from the New Jersey Commission on Employment and Training.

(c) The Commissioner shall notify district boards of education of annual minimum job placement standards.

6:43-7.2 Meeting job placement standards

(a) Districts shall be responsible for meeting minimum job placement standards for vocational pupils.

(b) Vocational pupils in the following categories will be considered job placements:

1. Vocational pupils who have been placed full-time in the occupation or related field in which they were trained;
2. Vocational pupils who have passed occupational competency tests for entry level employment skills and have entered the military service;

3. Vocational pupils entering full-time postsecondary education in the program area or related field in which they were trained;

4. Special needs pupils who have met alternative assessments for occupational competencies or individualized education program (IEP) assessments established by the district board of education;

5. Vocational pupils who are employed a minimum of 20 hours per week in the occupation or related field in which they were trained and who are enrolled in postsecondary education for a minimum of 12 credit hours per academic year in the program area or related field in which they were trained; and

6. Vocational pupils who are employed part-time an average of 20 hours per week or more in the occupation or related field in which they were trained.

(c) Vocational pupils not considered placements include:

1. Vocational pupils who are unemployed;
2. Vocational pupils who work fewer than 20 hours per week; and
3. Vocational pupils who are employed in an occupation or field not related to their training.

(d) All other pupils shall not be included in calculations for job placements.

(e) Beginning July 1, 1993 and annually thereafter district boards of education shall report job placement rates of vocational pupils to the Department of Education on forms provided by the Department.

6:43-7.3 Failure to meet minimum job placement standards

(a) If the district reports placement rates below the established job placement standards for two consecutive years, the district board of education shall be required to submit a two-year program improvement plan to overcome program deficiencies.

1. Occupational competency assessment data shall be included in the development of the program improvement plan.

2. The program improvement plan shall be submitted within 90 days following written notification by the Commissioner that such a plan is required.

3. Prior to the submission of the program improvement plan to the Commissioner, the plan shall be approved by the district board

ADOPTIONS

of education and submitted to the county superintendent for review and approval.

4. The county superintendent shall periodically review the progress of the district in meeting the objectives and in implementing the program improvement plan.

5. The district shall have two years following approval of the plan by the Commissioner to complete remediation and to overcome program deficiencies.

(b) In preparing the program improvement plan, the district shall review its programs based upon factors including, but not limited to, vocational pupil mastery of occupational competencies, inappropriate or inadequate training, pupil recruitment, placement deficiencies, market sensitivity and program cost effectiveness. Other indicators which might influence job placement which could be cited might include, but not be limited to, inadequate pay scales, economic trends and fluctuations, transportation difficulties, existing and anticipated local or regional occupational supply and demand.

(c) If the district fails to implement the program improvement plan and/or fails to overcome program deficiencies for meeting minimum job placement standards, within two years of approval of the plan by the Commissioner, the county superintendent, in consultation with the Assistant Commissioner for Vocational Education and the Vocational Education Program Review Panel may recommend that the Commissioner issue an order requiring the district to show cause as to why the program should not be discontinued (see N.J.A.C. 6:24-3.1). However, the county superintendent, Assistant Commissioner for Vocational Education and the Vocational Education Program Review Panel shall also consider vocational pupil mastery of occupational competencies, pupil recruitment, placement deficiencies, market sensitivity, program cost effectiveness, inadequate pay scales, inappropriate/inadequate training, economic trends and fluctuations, transportation difficulties, existing local or regional demands and anticipated local or regional demands.

(d) Any district board of education may appeal the decision of the Commissioner as set forth in N.J.A.C. 6:24, Controversies and Disputes.

SUBCHAPTER 8. VOCATIONAL EDUCATION PROGRAM AND COURSE APPROVAL

6:43-8.1 Vocational education program review panel

(a) The Commissioner shall establish and appoint a review panel to be known as the Vocational Education Program Review Panel to assess the State's needs for programs based upon local, regional and statewide labor market supply and demand, to review requests for approval or disapproval of those programs not meeting job placement standards and to advise the Assistant Commissioner for Vocational Education of Statewide occupational supply and demand which could be used by district boards of education for planning purposes.

1. The Assistant Commissioner for Vocational Education or the Assistant Commissioner's designee shall chair the Vocational Education Program Review Panel.

2. The Vocational Education Program Review Panel shall include three representatives from business and industry and one representative from each of the following:

- i. The New Jersey Occupational Information Coordinating Committee;
- ii. The New Jersey Department of Commerce;
- iii. The New Jersey Department of Labor;
- iv. The New Jersey Department of Higher Education;
- v. County vocational schools;
- vi. Local area vocational school districts;
- vii. Comprehensive high schools;
- viii. The Governor's Office of Management and Planning; and
- ix. The Commission on Employment and Training.

6:43-8.2 Program and course approval process

(a) The Commissioner shall establish a system for vocational education program and course approval in accordance with the following:

HEALTH

1. District boards of education seeking to establish any new vocational courses or programs shall request planning recommendations from the private industry council to eliminate unnecessary duplication of programs and to foster a unified delivery system in the labor market area.

2. Upon verification of the program need and recommendation from the private industry council, district boards of education shall submit the request for the new course or program to the county superintendent of schools.

3. The county superintendent of schools shall review the course or program request and the verification and recommendation of the private industry council and submit a recommendation to the Vocational Education Program Review Panel within 30 days of receipt of the request.

4. The Vocational Education Program Review Panel shall review the county superintendent's recommendation based upon a review of the occupational supply and demand needs and local or regional availability of the proposed courses or programs. The panel shall recommend approval or disapproval within 45 days of receipt of the county superintendent's recommendation and submit ***their recommendation*** to the Assistant Commissioner of Vocational Education.

5. The Assistant Commissioner of Vocational Education shall review the panel's recommendation and approve or disapprove the course or program request. The district board of education, the county superintendent, the local private industry council and the Vocational Education Program Review Panel will be notified of the decision within 10 days.

(b) District boards of education dissatisfied with the final decision on the request for program or course approval may appeal the decision to the Commissioner. The Commissioner's decision may be appealed as set forth in N.J.A.C. 6:24, Controversies and Disputes.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Adult Day Health Care Facilities

Standards for Licensure

Physical Plant and Functional Requirements

Adopted New Rules: N.J.A.C. 8:43F-23 and 24

Proposed: November 6, 1989 at 21 N.J.R. 3403(a).

Authorized By: Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: July 30, 1990, as R.1990 d.421 **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: September 4, 1990.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:

The Department received one written comment in connection with the proposed new rules.

COMMENT: N.J.A.C. 8:43-24.7. The commenter requests that the requirement for a total of 40 square feet per person for patient activities and dining be reduced to 30 square feet per person.

RESPONSE: The rule is changed to require 30 square feet per person since the proposed rule was requiring more than a long term care facility and the care provided in an Adult Medical Day only required the same space as long term care.

Full text of the adoption follows (addition to proposal shown in boldface with asterisks ***thus***; deletion from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 23. PHYSICAL PLANT

8:43F-23.1 Freestanding facilities

Construction standards for freestanding facilities for new buildings and alterations, renovations, and additions in existing buildings for freestanding adult day health care facilities shall comply with the New Jersey Uniform Construction Code, N.J.A.C. 5:23, Use Group Business (B).

8:43F-23.2 Facilities located within long-term care facilities

Construction standards for facilities within long-term care facilities for new buildings and alterations, renovations, and additions for adult day health care facilities in existing buildings which are part of long-term care facilities shall comply with the New Jersey Uniform Construction Code, N.J.A.C. 5:23, Use Group I-2 (Institutional).

8:43F-23.3 Plan review; fees

Prior to any construction, plans shall be submitted to the Department and review fees shall be paid, pursuant to N.J.A.C. 8:31-1.1.

SUBCHAPTER 24. FUNCTIONAL REQUIREMENTS

8:43F-24.1 Provision for the handicapped

Facilities shall be available and accessible to the physically handicapped pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23-7, Barrier Free Subcode.

8:43F-24.2 Functional service areas

(a) Each adult day health care facility shall provide the following service areas on site:

1. Administration services;
2. Employee facilities;
3. Housekeeping services;
4. Social work services;
5. Patient activities;
6. Nursing services and medical services;
7. Dietary services; and
8. Pharmaceutical services.

(b) Each adult day health care facility shall contain either on-site or through contract arrangement the following service areas:

1. Laboratory services;
2. Radiology services;
3. Occupational therapy;
4. Physical therapy;
5. Dental and emergency dental services;
6. Nutritional counseling;
7. Eye examination and eye glasses;
8. Speech-language pathology and audiology services; and
9. Laundry services.

8:43F-24.3 Administration and public areas

(a) The entrance shall be located at grade level and shall accommodate wheelchairs.

(b) The public area shall include:

1. Wheelchair storage;
2. Public toilets;
3. Public telephone(s); and
4. Drinking fountain(s).

(c) Interview space(s) for private interviews related to credit and admission shall be provided.

(d) General or individual office(s) for business transactions, records, administrative, and professional staffs shall be provided.

(e) Clerical space or rooms for typing, clerical work, and filing shall be provided.

(f) Multipurpose room(s) equipped for visual aids shall be provided for conferences, meetings, and health education purposes.

(g) General storage facilities for supplies and equipment shall be provided as needed for continuing operation.

8:43F-24.4 Employee facilities

Employee facilities, such as lockers, lounges and toilets, shall be provided for employees and volunteers.

8:43F-24.5 Housekeeping services

A janitor's closet shall be provided for each floor which shall contain a service sink and storage for housekeeping supplies and equipment.

8:43F-24.6 Social work services

The social work service area shall include office space for private interviewing and counseling, waiting space, record storage area and secretarial office space.

8:43F-24.7 Patient activities area

(a) A facility shall have a total of *[40]* *30* square feet per person for patient activities and dining.

(b) Storage space shall be provided for recreational equipment and supplies.

(c) An office or area for the patient activities director shall be provided.

8:43F-24.8 Nursing service

(a) There shall be space for one chaise lounge, bed, or reclining chair for every 10 patients, based upon the daily census.

(b) There shall be one toilet and lavatory for every eight patients.

(c) Office space for nursing staff shall be provided.

(d) A storage area for equipment and supplies shall be provided.

(e) An examination room or private treatment space shall be provided and shall have a minimum floor area of 80 square feet, including an area for the storage of patient charts. Handwashing facilities and a counter or shelf space for writing shall be provided.

8:43F-24.9 Dietary services

(a) The construction, equipment and installation of food service facilities shall meet the requirements of the functional program. Services may consist of an on-site conventional food preparation system, a convenience food service system, a catering service or an appropriate combination thereof. The following facilities shall be provided to implement the food service selected:

1. A control station for receiving food supplies;
2. Storage facilities for food supply, including cold storage items;
3. Food preparation facilities as follows:

i. Conventional food preparation system with space and equipment for preparing, cooking and baking;

ii. Convenience food service system, such as frozen prepared meals, bulk packaged entrees, individually packaged portions, and contractual commissary services with space and equipment for thawing, portioning, cooking, and/or baking;

4. Handwashing facility(ies), located in the food preparation area;

5. Warewashing space, which shall be located in a room or an alcove separate from the food preparation and serving area;

6. Waste storage facility(ies), which shall be located in a separate room easily accessible to the outside for direct waste pickup or disposal;

7. Office(s) or desk space(s) for dietitian(s) or the dietary service manager;

8. Toilets for dietary staff, with handwashing facility(ies) immediately available; and

9. A janitor's closet located within the dietary department and containing a floor receptor or service sink and a storage area for housekeeping equipment and supplies.

8:43F-24.10 Pharmaceutical services

(a) The following shall be provided for pharmaceutical services:

1. A dispensing area with a handwashing facility;
2. Space for a locked storage cart; and
3. Space for a refrigerator.

8:43F-24.11 Laboratory services

(a) Laboratory services shall be provided within the medical day care facility or through contract arrangement with a hospital or laboratory service.

(b) If these services are provided on contract, the following laboratory facilities shall also be provided in the facility:

1. Laboratory work counter(s), with sink; and

2. Specimen collection facilities with a water closet and lavatory. Blood collection facilities shall have seating space, a work counter, and handwashing facilities.

8:43F-24.12 Radiology services

Radiology services shall be available. If provided on-site, a portable x-ray with film processing facilities may be used, if required by the program.

8:43F-24.13 Occupational therapy service

(a) If occupational therapy services are provided on site, the following areas shall be provided:

1. Office space;
2. Waiting space;
3. Activity areas;
4. Storage for supplies and equipment; and
5. Patients' dressing areas, showers, lockers and toilet room.

(b) The areas designated in (a) 1, 2, 4 and 5 above may be planned and arranged for shared use by physical therapy patients and staff, if the program reflects this sharing concept.

8:43F-24.14 Physical therapy service

(a) If physical therapy services are provided on site, the following spaces shall be provided:

1. Office space;
2. Waiting space;
3. Treatment area(s);
4. Exercise area;
5. Storage for clean linen, supplies and equipment; and
6. Patient dressing areas, showers, lockers, and toilet.

(b) The areas designated in (a) 1, 2, 5 and 6 above may be planned and arranged for shared use by occupational therapy patients and staff if the program reflects this sharing concept.

8:43F-24.15 Dental and emergency dental services

(a) If dental service is to be provided on-site, a dental chair with light and drill, and a lavatory shall be provided.

(b) If the program does not require a room, a portable chair may be used.

8:43F-24.16 Eye examination services

If eye examination services are provided on-site, a special purpose examination room shall be provided and designed and equipped to accommodate service.

8:43F-24.17 Speech and language pathology and audiology services

(a) If speech and language pathology and audiology services are provided on-site, the following shall be provided:

1. Office(s) for the therapist;
2. Space for evaluation and treatment; and
3. Space for equipment and storage.

8:43F-24.18 Nutritional counseling

Nutritional counseling may be provided in the dietitian's office or in a conference room, based on program requirements.

8:43F-24.19 Laundry service

(a) If laundry services are provided on-site, the following areas shall be provided:

1. A laundry processing room;
2. A soiled linen receiving, holding, and sorting room with handwashing facility;
3. Storage for laundry supplies;
4. A clean linen storage, issuing and holding room or area; and
5. A janitor's closet, containing a floor receptor or service and storage space for housekeeping equipment and supplies.

(b) If linen is processed off-site, the following areas shall be provided:

1. A soiled linen holding room or area; and
2. A clean linen receiving, holding, inspection, and storage room(s) or area.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION Standards for Licensure of Hospital Facilities Physical Plant Standards for Newborn Care Services Adopted New Rules: N.J.A.C. 8:43G-19.35 through 8:43G-19.53

Proposed: November 20, 1989 at 21 N.J.R. 3642(a).

Authorized By: Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: July 30, 1990 as R.1990 d.422, 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. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: September 4, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The Department received nine written comments in connection with the proposed new rules. These comments and responses thereto are set forth below.

1. COMMENT: N.J.A.C. 8:43G-19.35. The Department of Community Affairs stated that physical plant standards shall be in compliance with the State of New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.2.

RESPONSE: The Department has agreed to this amendment and has revised the rule on adoption to comply with the New Jersey Uniform Construction Code, which incorporates physical plant standards and exceptions for health care facilities.

2. COMMENT: The Memorial Health Alliance has requested the addition of the word "mandatory" to N.J.A.C. 8:43G-19.47 through N.J.A.C. 8:43G-19.53, to conform to the structure of the chapter.

RESPONSE: The Department agrees that clarification may be helpful and has amended the rules as requested.

3. COMMENT: N.J.A.C. 8:43G-19.37(b). The Memorial Health Alliance noted individual rheostats are problematic, requiring costly repetitive maintenance and repair, since staff misuse causes premature burnout of tubes, ballasts and rheostat. The Alliance suggests that this standard be deleted.

RESPONSE: The Department's Neonatal Task Force felt it necessary to have variable light levels. The Task Force recommended lowering the minimum illumination level from 60 foot candles to 25 foot candles. This part of the rule was rewritten in order to allow greater flexibility to the hospitals' neonatal units for the purpose of examination and to allow for lower light levels, which recent studies have shown are beneficial to the infants' eyes.

4. COMMENT: Morristown Memorial Hospital requested that a free standing handwashing sink shall be provided for every eight infant stations/bassinets in N.J.A.C. 8:43G-19.48(g).

RESPONSE: The Department has rewritten the rule to require a minimum of one handwashing sink at each end of the nursery at a ratio of one sink per six infant stations, since one sink per two infant stations is not necessary in this area.

5. COMMENT: The Morristown Memorial Hospital recommended deletion of the numerical levels of neonatal care used throughout these rules, as is being proposed by the Perinatal Technical Advisory Committee.

RESPONSE: The recommendations of the Perinatal Technical Advisory Committee have not been adopted at this time; however, if these recommendations are adopted, these rules will be changed.

6. COMMENT: The Morristown Memorial Hospital states that N.J.A.C. 8:43G-19.50(a) is unclear regarding whether an isolation nursery is actually required or whether these requirements apply only when an isolation nursery is constructed.

RESPONSE: An isolation nursery is mandatory. The Department has clarified this requirement on adoption. Please refer to Comment 2.

7. COMMENT: N.J.A.C. 8:43G-19.37(f). The Centra State Medical Center opposes the mandatory requirement that the construction of the nursery shall include acoustic absorption units or other means to keep sound intensity below 75 decibels (db).

RESPONSE: The rule as originally proposed agrees with the American Academy of Pediatrics and the American College of Gynecology standards. For this reason, the Department has not changed the rule on adoption.

8. COMMENT: N.J.A.C. 8:43G-19.37(h). The Centra State Medical Center opposes mandatory requirements that wall finishes shall be off white or pale beige in color to minimize distortion of staff's color perception in patient care area.

RESPONSE: The standards of the American Academy of Pediatrics indicates that off white and pale beige colors do minimize distortion of staff's color perception of the infant being examined. Therefore, the Department has not changed the rule on adoption.

9. COMMENT: N.J.A.C. 8:43G-19.45(b). The Centra State Medical Center opposes the mandatory requirement that there shall be separate changing areas for men and women, located so that staff are able to change clothing prior to entering the clean area of the nursery.

RESPONSE: The rules require one changing area for each sex in the entire nursery area. The Department has clarified this requirement on adoption.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***):

8:43G-19.35 Physical plant general compliance for new construction, alteration or renovation for newborn care; mandatory

Physical plant standards for newborn care areas shall be in compliance with N.J.A.C. ***[8:43G-24.8 through 24.12]* *5:23-3.2 of the New Jersey Uniform Construction Code***.

8:43G-19.36 Functional areas for newborn care; mandatory

(a) Functional areas for newborn care shall be as follows:

1. Resuscitation Area or Room;
2. Admission Observation Area;
3. Normal Newborn Nursery (Level I);
4. Continuing Care Growing Nursery or Area;
5. Suspect Isolation Nursery;
6. Intermediate Care Nursery (Level II); and
7. Intensive Care Nursery (Level III).

8:43G-19.37 General newborn care functional area requirements; mandatory

(a) General requirements for functional areas designated in N.J.A.C. 8:43G-19.36 shall be as required in (b) through (i) below.

(b) Each nursery shall be illuminated with ceiling fixtures connected to a rheostat which shall provide a minimum of ***[60]* *25*** foot candles to a maximum of 150 foot candles at the body surface of the infant. In addition, each Level III facility shall have a ceiling fixture centered over each patient station connected to an individual rheostat.

(c) Viewing windows shall be extensive throughout the newborn suite. Exterior windows shall be energy efficient and insulated.

(d) Newborn care areas shall have oxygen and compressed air piped from a central source at 50 to 60 pounds per square inch (psi). Reduction valves and mixers shall produce a 21 percent to 100 percent concentration of oxygen at atmospheric pressure for head hoods and 50 to 60 psi for mechanical ventilators.

(e) Oxygen air and suction systems shall have chime alarms to signal loss of suction or low oxygen and air supply.

(f) The construction of the nursery shall include acoustic absorption units or other means to keep sound intensity below 75 decibel (db).

(g) A temperature of 75 degrees Fahrenheit and a relative humidity of 50 percent shall be maintained.

(h) Wall finishes shall be off white or pale beige in color to minimize distortion of staff's color perception in patient care area.

(i) An emergency call system shall be provided in each nursery.

(j) A free-standing handwashing sink shall be provided with foot control and a bowl large and deep enough to prevent splashing. A liquid soap dispenser and disposable towel dispenser shall be provided at each sink.

(k) Electric outlets shall be supplied by at least two branch circuits of 15 amps each.

(l) In the entire newborn suite there shall be a total of six air changes per hour, with two of these changes being outside air, and filtration of 25 percent with final filtration of 90 percent before air enters the nursery. Positive pressure shall be maintained.

8:43G-19.38 Staff offices and lounge; mandatory

There shall be two staff offices and a staff lounge in, or adjacent to, the newborn suite.

8:43G-19.39 Infant formula facilities; mandatory

(a) If infant formula is prepared on the hospital site, the following shall be provided:

1. Facilities for washing and sterilizing supplies;
2. A separate room for preparing infant formulas, with direct access from formula room to a nursery or to a nursery workroom; and
3. A separate refrigerator/freezer for the storage of breast milk and formula.

(b) If a commercially prepared pre-packaged infant formula is used, then a separate clean area shall be provided for the storage of formula. Such storage may be provided in the Nursery Workroom. The preparation area shall have a work counter, a handwashing sink and storage facilities. A separate refrigerator/freezer shall be provided for storage of breast milk.

8:43G-19.40 Neonatal unit soiled utility room; mandatory

(a) A soiled utility room shall contain the following:

1. A clinical sink;
2. A work counter;
3. A hand-washing sink foot control;
4. Liquid soap dispensers;
5. A paper towel dispenser; and
6. Space for storage of soiled equipment, soiled linen and trash receptacles.

8:43G-19.41 Neonatal unit clean work area or room; mandatory

(a) A neonatal unit clean work area or room shall contain:

1. A counter with cabinets;
2. A refrigerator;
3. A handwashing sink with knee control;
4. Liquid soap dispensers;
5. A paper towel dispenser; and
6. Space for storage of clean equipment and clean linen.

8:43G-19.42 Neonatal unit janitor's closet; mandatory

A neonatal unit janitor's closet shall be provided in the suite and shall contain floor receptor or service sink and storage space for housekeeping equipment and supplies.

8:43G-19.43 Neonatal unit clerical area; mandatory

There shall be a clerical area near the entrance to the nurseries which shall provide an area for recording. The clerical area shall be designed to allow staff to supervise traffic and to eliminate unwarranted entry into the patient care area. The clerical area shall have telecommunication with all nursery areas and the delivery suite.

8:43G-19.44 Neonatal unit multipurpose rooms; mandatory

(a) In Level I facilities, there shall be one multi-purpose room for consultation and conferences.

(b) In Level II facilities, there shall be two multi-purpose rooms, one for consultation and conferences and one for use as a parent teaching breast feeding room.

(c) In Level III facilities, there shall be four multi-purpose rooms, as follows:

1. A parent-teaching ***[room]*** demonstration room;
2. A consultation conference room;
3. A parent room for breast feeding; and
4. A parent sleeping room with adjoining toilet and shower.

8:43G-19.45 Neonatal unit nursery area; mandatory

(a) The normal newborn nursery, continuing care nursery and admission nursery shall be served by a connecting workroom. One workroom may serve several normal newborn nurseries, provided that required services are convenient to each. The workroom shall contain work space, with:

ADOPTIONS

HEALTH

1. A counter;
2. A refrigerator;
3. A handwashing sink with foot control; and
4. Storage space.

(b) There shall be separate changing areas for men and women, located so that staff are able to change clothing prior to entering the clean area of the ***neonatal unit*** nursery.

(c) A scrub gowning area shall be provided for staff and house-keeping personnel at the entrance of each nursery, but separated from the work area. The scrub gowning area shall contain a free standing handwashing sink with foot control and a bowl large enough to prevent splashing. The following shall be provided:

1. Racks, hooks or lockers for storage of street clothes and personal items;
2. Cabinets for clean gowns;
3. Receptacle for used gowns; and
4. A large wall clock with sweep second hand for timing hand washing.

8:43G-19.46 Neonatal unit resuscitation area; mandatory

(a) The resuscitation area shall be part of the delivery room or shall be a separate resuscitation room adjacent to an opening into the delivery room.

(b) The resuscitation area shall contain:

1. An overhead source of radiant heat;
2. A large wall clock with a clearly visible second hand;
3. A flat working surface for charting; and
4. A table or flat surface for trays.

(c) The resuscitation area shall contain a minimum of 40 additional square feet of clear floor area when included as part of the delivery section room.

(d) If the program requires a separate resuscitation room, it shall contain a minimum of 150 square feet of clear floor area.

(e) The neonatal resuscitation area shall have a minimum of:

1. One oxygen outlet;
2. One compressed air outlet; and
3. One suction outlet.

(f) A minimum of six single or three duplex electrical outlets shall be provided in each resuscitation area or room. If a separate resuscitation room is provided, an electrical outlet to accommodate a portable X-ray machine shall also be provided.

(g) If a separate resuscitation room is provided, the room shall contain a free-standing handwashing sink.

8:43G-19.47 Neonatal admission/observation area*; mandatory*

(a) The admission/observation area shall be near or adjacent to the delivery room and convenient to the postpartum Nursing Unit. One patient station for every 400 annual births shall be provided. There shall be a minimum of two stations in this area. In Level I facilities, the admission/observation area may be located in the newborn nursery or continuing care area, if a separate room is not provided.

(b) There shall be a minimum of 40 square feet of floor area for each infant station with a minimum of three feet between bassinets.

(c) One oxygen outlet, one compressed air outlet and two suction outlets shall be provided at each infant station.

(d) Six single or three duplex electrical outlets shall be provided at each infant station.

(e) A free-standing handwashing sink shall be provided in the room.

(f) The admission/observation area shall contain:

1. An overhead source of radiant heat;
2. A large wall clock with clearly visible second hand;
3. A flat working surface for charting; and
4. A table or flat surface for trays.

8:43G-19.48 Normal newborn nursery (Level I)*; mandatory*

(a) Normal newborn nurseries shall be located close to the postpartum unit and shall be inaccessible to unrelated traffic.

(b) The number of bassinets shall exceed the number of licensed obstetric beds by at least 20 percent, in order to accommodate multiple births and extended hospitalization beyond mother's discharge date, as well as beyond 28 days.

(c) A minimum of 24 square feet for each bassinet shall be provided, with three feet between bassinets in all directions from edge of one to the other with a separate aisle four feet wide, in addition to the required bed space.

(d) A maximum of 12 bassinets shall be permitted in one normal newborn nursery.

(e) One oxygen outlet, one compressed air outlet and one suction outlet for every six infant stations shall be provided. One such group of outlets shall be located at each end of the room.

(f) Two single or one duplex wall-mounted electrical outlets shall be provided for every two infant stations.

(g) A free-standing handwashing sink shall be provided*, **with a minimum of one sink at each end of the nursery, and at a ratio of one sink* for every *[two]* *six* infant stations.**

(h) A soiled utility room shall be provided.

(i) A clean utility room or area shall be provided.

(j) A parent room shall also be provided, to be used for breast feeding after mother's discharge and for sibling visitations. The parent room shall be equipped with a handwashing sink.

(k) An examination and treatment room or work area shall be provided within the suite. Such room or work area shall contain a workcounter, storage, and a free-standing sink equipped for handwashing with foot control.

(l) Storage facilities for the newborn nursery shall be as follows:

1. There shall be bedside cabinet storage of eight cubic feet per infant station;

2. There shall be three cubic feet per infant for secondary storage of items such as linens and formula within the area; and

3. There shall be six square feet per infant for large items of equipment in a clean storage area.

8:43G-19.49 Continuing care/growing area*; mandatory*

(a) The continuing care/growing nursery shall be provided for low birth weight infants who are not sick but require frequent feedings or infants who no longer require intermediate care but still require more nursing hours and closer observation than normal infants. This area shall be close to the intensive and intermediate care nursery or may be a part of the intermediate care nursery.

(b) There shall be a minimum of 40 square feet for each infant station with four feet between bassinets.

(c) There shall be one oxygen outlet, one compressed air outlet and one suction outlet for each infant station.

(d) There shall be four electrical outlets for each infant station.

(e) If the continuing care nursery is a separate nursery, then a separate work area with a scrub sink shall be provided.

8:43G-19.50 Isolation nursery*; mandatory*

(a) Each isolation nursery shall be an enclosed and separate room within the newborn nursery unit.

(b) The isolation nursery shall provide a minimum of 40 square feet of space per infant, exclusive of lavatory. There shall be a minimum of two stations with either one room or two rooms which may share a common anteroom.

(c) A free-standing handwashing sink shall be provided at the entrance inside the isolation nursery anteroom with foot or knee control.

(d) One oxygen outlet, one compressed air outlet and one suction outlet shall be provided for each infant station.

(e) Four electrical outlets shall be provided for each infant station.

8:43G-19.51 Intermediate care nursery (Level II)*; mandatory*

(a) The intermediate care nursery shall be located away from general hospital traffic and should be close to the delivery room and the intensive care nursery.

(b) Each infant patient station shall have a minimum of 50 square feet of floor space, excluding ancillary space for storage. There shall be four feet between incubators or bassinets with a separate aisle five feet wide, in addition to required bed space.

(c) Each infant care station shall have two oxygen outlets, two compressed air outlets and two suction outlets.

(d) Eight electrical outlets shall be provided for each infant station. A separate outlet shall be provided to supply power for a portable X-ray machine for the intermediate care nursery.

(e) A free-standing handwashing sink, soap dispenser and towel dispenser shall be provided at the entrance of the intermediate care nursery. One sink shall be provided for every three infant care stations within the nursery.

(f) A soiled utility room shall be provided.

(g) A clean utility room or area shall be provided.

(h) Storage facilities for the intermediate care nursery (Level II) shall be as follows:

1. There shall be eight cubic feet of storage for each infant care station for supplies needed for immediate use of shelves and cabinets within patient area;

2. There shall be at least 20 square feet of floor space for equipment for each infant care station adjacent to or with the intermediate care nursery outside of the patient area; and

3. There shall be 16 cubic feet of shelf or cabinet space for each infant care station adjacent to or within this area but outside of the infant care area.

8:43G-19.52 Intensive care nursery (Level III)*; mandatory*

(a) The intensive care nursery shall be near the delivery room and shall be accessible from an ambulance entrance. This area shall be removed from routine hospital traffic.

(b) The intensive care nursery shall provide 100 square feet per bassinets or incubator allowing a minimum of six feet between bassinets and at a minimum, an eight foot wide aisle.

(c) There shall be three oxygen outlets, three compressed air outlets and four suction outlets for each infant care station.

(d) There shall be 16 electrical outlets for each infant care station. A separate outlet shall be provided to supply power for a portable X-ray machine to serve the neonatal area.

(e) Storage facilities for the intensive care nursery (Level III) shall be as follows:

1. There shall be 16 cubic feet of storage counter and cabinet for supplies needed for immediate use within the infant's room for each infant care station;

2. There shall be at least 30 square feet of floor space adjacent to or within the intensive care nursery but outside of patient area for each infant care station; and

3. There shall be 24 cubic feet of shelf or cabinet space adjacent to or within the intensive care nursery but outside of the patient area for each infant care station.

(f) A soiled utility room shall be provided.

(g) A clean utility room or area shall be provided.

(h) A free-standing handwashing sink shall be provided at the entrance to the intensive care nursery. One sink with foot or knee controls shall be provided for every three infant care stations within the nursery.

(i) There shall be on-call room(s) for staff on the same floor of the hospital with an adjoining toilet, lavatory and shower.

8:43G-19.53 Shared services (Level II and Level III)*; mandatory*

(a) If intermediate care nursery (Level II) and intensive care nursery (Level III) are located in the same suite, then the following services may be shared:

1. Janitor's closet;
2. Soiled utility;
3. Clean utility;
4. Demonstration/conference room;
5. Storage room;
6. Formula storage room;
7. Male/female staff lockers, lounge and toilets;
8. Parent waiting room;
9. Consultation room;
10. Public toilet and telephone; and
11. On-call room.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Acute Renal Dialysis Services

Standards for Licensure

Physical Plant Requirements

Adopted New Rules: N.J.A.C. 8:43G-30.13 through 30.17

Proposed: November 6, 1989 at 21 N.J.R. 3406(a).

Adopted: July 27, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: July 30, 1990 as R.1990 d.423, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: September 4, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The Department received five written comments in connection with the new rules. These comments and responses are set forth below.

COMMENT: State of New Jersey, Department of Community Affairs. Physical plant standards shall be in compliance with the State of New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.2.

RESPONSE: N.J.A.C. 8:43G-30.13 has been rewritten to comply with the New Jersey Uniform Construction Code, which incorporates physical plant standards and exceptions for health care facilities.

COMMENT: N.J.A.C. 8:43G-30.14(f). The Newark Beth Israel Medical Center requested that handwashing sinks shall be positioned in the unit so that no patient bed or lounge is farther than 20 feet from a sink, in lieu of the proposed ratio of one sink per every three dialysis stations.

RESPONSE: Based on the square footage requirement for each dialysis station, the number of handwashing sinks would remain the same. Therefore, the Department has adopted the rule as originally proposed.

COMMENT: N.J.A.C. 8:43G-30.15(a)9. The Newark Beth Israel Medical Center requested that the Department delete the requirement for a dedicated nourishment station within each dialysis suite.

RESPONSE: The requirement for a nourishment station within the dialysis suite is to avoid staff having to leave the unit and to control possible cross-contamination. Therefore, the Department has adopted the rule as originally proposed.

COMMENT: N.J.A.C. 8:43G-30.15(a)11. The Newark Beth Israel Medical Center requested that storage space not be mandated to be within the suite.

RESPONSE: The Department agrees that flexibility in distribution of storage space is advisable; therefore, the rule has been rewritten to allow for storage either within or outside of suite.

COMMENT: N.J.A.C. 8:43G-30.16(a). The Newark Beth Israel Medical Center requested that the word separate be deleted preceding the term emergency generator so that a facility be permitted to use any generator housed in the facility.

RESPONSE: The Department agrees that an additional emergency generator is not required, since all hospitals are required to have an emergency generator. Therefore, the requested amendment has been made. In addition, the Department has clarified that all machines connected to the emergency generator need not be life support machines.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

8:43G-30.13 Physical plant general compliance for new construction, alteration, or renovation; mandatory

*[(a) The hospital shall comply with the New Jersey Uniform Construction Code (N.J.A.C. 5:23, Use Group I-2), standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs and the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 edition, as published by The American Institute of Architects Press, 1735 New York Ave., NW, Washington, D.C. 20006 Pub. No. ISB NO 913962-96-1). In order to avoid

conflict between N.J.A.C. 5:23 and the other standards listed above, Sections 501.3, 610.4.1, 704.0, 705.0, 706.0, 708.0 and 916.5 of the 1987 BOCA Basic Building Code of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities.]*
Physical plant standards for acute renal dialysis services shall be in compliance with N.J.A.C. 5:23-3.2 of the New Jersey Uniform Construction Code.

(b) The hospital shall submit plans and specifications to the Construction and Monitoring Program, Health Facilities Evaluation, New Jersey Department of Health, CN 367, Trenton, N.J. 08625-0367, for review and approval prior to construction, alteration, or renovation.

(c) Prior to approval, plan review fees shall be submitted, in accordance with N.J.A.C. 8:31-1.1.

8:43G-30.14 Treatment area requirements for acute renal dialysis services; mandatory

(a) The treatment area for acute renal dialysis services shall be an open planned area separated from administrative and service areas.

(b) The floor area allocated for each machine shall be 100 square feet, with a net usable area of 80 square feet, with 30 inches of clear space maintained around each machine or lounge. Machines may be installed flush against the wall on one side only. There shall be a four foot space between beds or lounges.

(c) Cubicle curtains around each patient station shall be provided for privacy and dignity.

(d) A nurses' station shall be located within the open treatment dialysis area and shall provide visibility of all patients' stations.

(e) Charting facilities for nurses and doctors shall be located adjacent to the nurses' station.

(f) Handwashing facilities shall be provided at a ratio of one handsink per every three stations and shall be distributed throughout the dialysis area.

8:43G-30.15 Service areas requirements for acute renal dialysis service; mandatory

(a) The size and location of each service area for acute renal dialysis services shall be based upon the number of beds or lounges to be served. The following service areas shall be located within the dialysis suite and readily available to the open treatment area:

1. Preparation space, which shall be adjacent to the open treatment area;

2. Separate clean and soiled work or utility rooms, which shall be within the suite. Soiled and clean utility rooms shall contain a minimum of 80 square feet each. Clean linen and clean utility room may be combined, and if combined, shall contain a minimum of 120 square feet and shall contain handwashing facilities. Soiled holding and soiled utility room may be combined, and if combined, shall contain a minimum of 120 square feet and shall contain handwashing facilities;

3. A separate janitor's closet, which shall be provided exclusively for the renal suite. The closet shall contain a floor receptor or service sink and storage space for housekeeping supplies and equipment;

4. If a separate employee kitchen or dining area is provided in the suite, it shall be separated from the patient area and shall not be utilized by patients. Employees shall not be permitted to eat in the dialysis treatment area;

5. Office space, which shall be provided for the medical director and nurse supervisor;

6. A lounge, locker room and staff toilet with handwashing facilities, which shall be available for staff;

7. A separate toilet room with handwashing facilities, which shall be provided for patients;

8. A drug distribution station, which may be a medicine preparation room or unit, a self-contained medicine dispensary unit, or another approved system. If used, a medicine preparation room or unit shall be under the nursing staff's visual control and contain a work counter with handwashing facilities, refrigerator, and locked storage for biologicals and drugs. A medicine dispensary unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff;

9. A nourishment station, which shall contain a sink equipped for handwashing, equipment for serving nourishment, refrigerator, storage cabinets and ice maker-dispenser unit;

10. Equipment and emergency storage room(s), which may be a combined unit. The size shall be determined by the needs in the program and the equipment to be stored;

11. A storage room ***or rooms, which shall be located either within or outside of the suite***, which shall house the working equipment to maintain the equipment applicable to the machines for the dialysis suite. At least one week of operation supplies must be available in the facility. There shall be 70 square feet per machine/station of storage;

12. Storage space, which shall be provided for wheelchairs and stretchers out of direct line of traffic;

13. Storage space for renal waste, which shall be provided within the unit until it is properly disposed;

14. Patient toilet rooms, which shall have doors equipped with hardware which will permit access by staff in any emergency; and

15. Home training rooms or areas, which, if provided, shall be equipped with a sink for handwashing.

8:43G-30.16 Emergency generator and water supply; mandatory

(a) ***[A separate]* *An* emergency generator *shall be provided in a* room which shall have a one-hour fire rating with an approved fresh air intake and an explosion release. All machines shall be connected to the emergency generator so that all *[life support]* machines will operate for at least four hours following a power shutdown or outage.**

(b) Water supply systems shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of 15 pounds per square inch during periods when fixtures and equipment are in use.

8:43G-30.17 Functional requirements for pediatric dialysis services; mandatory

(a) If separate pediatric dialysis services are provided, the services for young children and adolescents shall be housed in a unit separate from the services provided to adults.

(b) The area housing the pediatric dialysis unit shall be located within the treatment area.

(c) The area allocated per patient dialysis station shall be the same net usable square foot area as required in N.J.A.C. 8:43G-30.13.

(d) The area housing the pediatric dialysis unit shall be enclosed with fixed partitions that extend from finished floor to ceiling. Vision panels in partitions are required.

(e) The pediatric dialysis unit shall have handwashing facilities separate from the adult unit.

(f) Pediatric dialysis service areas may be shared with the adult unit.

(a)

REPORTABLE DISEASES

Notice of Administrative Correction Reporting of Diseases Occurring in Schools N.J.A.C. 8:57-1.6

Take notice that the Department of Health has discovered an error in the text of N.J.A.C. 8:57-1.6. As set forth in the Response to a Comment on a proposed amendment to N.J.A.C. 8:57-1.6(a), published in the notice of readoption with amendments of N.J.A.C. 8:57 published in the June 4, 1990 New Jersey Register at 22 N.J.R. 1766(a), the phrase "in writing" should have been deleted upon adoption from the subsection's first sentence. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

8:57-1.6 Reporting of diseases occurring in schools

(a) The principal, or other person in charge of any public, private, parochial, or other school, college, child care center shall report [in writing] the suspected presence of any diseases listed in N.J.A.C.

8:57-1.3(a) within 24 hours to the local health officer, except in the case of sexually transmitted diseases and tuberculosis, which are to be reported directly to the State Department of Health. Such report should contain the name of the suspected disease as well as the name, age, date of birth, gender, race, home address and telephone number of the person ill or infected with such disease; the name, municipality and telephone number of the attending physician; and such other information as may be required by the State Department of Health. Any unusual absenteeism thought to be due to disease shall also be reported.

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

(a)

DIVISION OF ALCOHOLISM AND DRUG ABUSE Intoxicated Driving Program/Intoxicated Driver Resource Center

Adopted Amendment: N.J.A.C. 8:66-1.1

Proposed: April 1, 1990 at 22 N.J.R. 1024(a).

Adopted: August 9, 1990 by Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health.

Filed: August 13, 1990 as R.1990 d.453, **without change**.

Authority: N.J.S.A. 39:4-50 et seq., specifically, N.J.S.A.
39:4-50(F).

Effective Date: September 4, 1990.

Expiration Date: March 5, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

8:66-1.1 Purpose and scope

The purpose of this chapter is to improve the driving behavior of individuals who have been identified as having some alcohol involvement in connection with the operation of a motor vehicle. This chapter shall apply to all persons convicted on or before October 4, 1984, pursuant to N.J.S.A. 39:4-50, and any other motor vehicle violation, who must complete a program of alcohol education, evaluation and treatment in connection with the offense. This chapter may also be applied to all persons convicted on or after October 4, 1984, pursuant to N.J.S.A. 39:4-50 and any other motor vehicle violations, who must complete a program of alcohol education when required by the Bureau of Alcohol Countermeasures in the Intoxicated Driving Programs Unit and/or when the Intoxicated Driver Resources Center Program is not available or a court has determined that the Intoxicated Driver Resource Center Program is not applicable.

HUMAN SERVICES

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS Transfers of Involuntarily Committed Patients Between State Psychiatric Facilities

Adopted New Rules: N.J.A.C. 10:36-3

Proposed: September 5, 1989 at 21 N.J.R. 2751(a).

Adopted: August 1, 1990 by Alan J. Gibbs, Commissioner,
Department of Human Services.

Filed: August 1, 1990 as R.1990 d.430, **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. 30:4-27.21a.

Effective Date: September 4, 1990.

Expiration Date: August 18, 1991.

Summary of Public Comments and Agency Responses:

Comments were received from the Department of the Public Advocate and the Division of Mental Health Advocacy. Responses to those comments are indicated by sections as follows:

N.J.A.C. 10:36-3.2 Scope

COMMENT: The proposal does not include and should include the Garrett W. Hagedorn Center for Geriatrics, the Developmental Center at Ancora or the Arthur Brisbane Child Treatment Center.

RESPONSE: N.J.S.A. 30:4-27.21(a) only references State psychiatric facilities. Since these new rules were proposed, the Senator Garrett W. Hagedorn Center for Geriatrics has become a psychiatric facility, as statutorily defined, and has, therefore, been added to the list of applicable facilities at N.J.A.C. 10:36-3.2(a)6. Neither the Developmental Center at Ancora nor the Arthur Brisbane Child Treatment Center meets the statutory definition of a psychiatric facility.

COMMENT: The proposed rules omit "voluntary," "conditional extension pending placement" and "not guilty by reason of insanity" patients.

RESPONSE: N.J.S.A. 30:4-27.21 references involuntarily committed individuals only and the rules were drafted accordingly. The Department of Human Services will consider amending the scope of these rules in the future to include "voluntary," "conditional extension pending placement" and "not guilty by reason of insanity" patients.

COMMENT: The proposed rules should not apply to any person who has not yet had an initial court hearing.

RESPONSE: The Department does not agree that the rules should not apply to any person who has not yet had an initial court hearing. Nearly all of the factors listed in N.J.A.C. 10:36, which serve as a basis for the transfer of patients, may apply equally to such patients.

COMMENT: The inclusion of the Forensic Hospital within the proposal is unacceptable since it is the most restrictive setting and no due process protections are provided.

RESPONSE: The Department disagrees. Transfers to the Forensic Psychiatric Hospital are sometimes indicated, due to factors listed in N.J.A.C. 10:36-3.3, and the Forensic Psychiatric Hospital meets the statutory definition of a State Psychiatric Hospital at N.J.S.A. 30:1-7.

N.J.A.C. 10:36-3.3 Factors

COMMENT: Many of the criteria listed in the proposal are vague.

RESPONSE: Some of the factors are not subject to precise application, but require some judgement or discretion on the part of administrative or clinical staff in their application. They are, therefore, more accurately described as factors rather than criteria.

COMMENT: Administrative needs are included among the various factors listed in the proposal.

RESPONSE: The Department believes that administrative needs that promote more effective or efficient operation of a facility and concurrently serve the best interests of all patients, generally, are sometimes appropriate factors in transfer decisions (see N.J.A.C. 10:36-3.3(a)). Examples may include hospitalization based on residence and inter-regional consolidation of services.

COMMENT: N.J.A.C. 10:36-3.3(a)1. Proximity to family, with few exceptions, should never be used to justify transfer in opposition to the wishes of the resident.

RESPONSE: The preference of the resident is very important when considering any transfer based on proximity to family. Such transfer decisions should consider the preferences of both residents and their family members.

COMMENT: N.J.A.C. 10:36-3.3(a)2. Residents may not be arbitrarily assigned to live in administratively designated locations, such as regional psychiatric hospitals, based upon county of residence.

RESPONSE: Although residents should not be arbitrarily assigned to live in administratively designated locations, the Department believes that residents may be grouped to promote purposes which ultimately promote the best interests of the clients. For example, hospitalizing patients in proximity to their counties of residence promotes several purposes, including the facilitating of their discharge and establishing of relationships with the community care providers who will be responsible for post-hospitalization treatment.

COMMENT: N.J.A.C. 10:36-3.3(a)3. In the event that a legitimate clinical need does not exist for "a new clinical and personal relationship," all of the facilities governed by this proposed rule are large enough so that an intra-facility transfer or change of assigned clinician should suffice.

RESPONSE: This comment is accurate for nearly all such treatment impasses, but the factor is listed only for exceptional instances. Language has been added to that factor at N.J.A.C. 10:36-3.3(a)3 to clarify the intent to this effect.

COMMENT: N.J.A.C. 10:36-3.3(a)4. Adequate due process protections must be assured for transfers providing greater clinical structure or security.

RESPONSE: Resident participation in clinical decision-making is promoted at State psychiatric facilities as a form of due process; however, the emergent nature of these transfers precludes more formal mechanisms.

COMMENT: N.J.A.C. 10:36-3.3(a)5. In no event should transfers to allow participation in specialized psychiatric services be permitted without informed consent and other appropriate due process protections.

RESPONSE: Whether informed consent would be required for transfers to specialized psychiatric services would depend upon the nature of the service being offered and the clinical condition of the individual as determined by appropriate clinical staff. Requests for review of such transfer decisions may be directed to the office of the facility's clinical director as a form of due process protection.

COMMENT: N.J.A.C. 10:36-3.3(a)6. This factor, "as a result of a change in legal status," is neither clinical nor programmatic and, without more, cannot justify transfer.

RESPONSE: The phrase "legal status" was intended to include court ordered transfers, as well as other changes in criminal justice status which cannot be accommodated at the individual's current facility.

COMMENT: N.J.A.C. 10:36-3.3(a)7. This factor, "To spare the patients the consequences of overcrowding at a specific mental health facility," seems to reflect administrative rather than clinical or programmatic issues.

RESPONSE: The Department believes that the statutory phrase "programmatic factors" permits legitimate administrative concerns to be considered.

COMMENT: N.J.A.C. 10:36-3.3(a)7. A transfer because of overcrowding should be permitted only where a resident requests it.

RESPONSE: Some residents living in overcrowded conditions may not be sufficiently aware of the risk involved or their vulnerability and, therefore, require protection afforded by the exercise of professional judgement regarding the risks inherent in overcrowded conditions.

COMMENT: N.J.A.C. 10:36-3.3(a)8. "In response to natural catastrophes, fires, or other life-safety concerns which necessitate transfer"—This concern should be managed by an alternate form of planning, in cooperation with local authorities and disaster control agencies.

RESPONSE: Not all natural catastrophes, fire and life-safety concerns are addressed by disaster control agencies and an appropriate internal response may be indicated.

COMMENT: N.J.A.C. 10:36-3.3(a)8. The phrase "other life-safety concerns" is so vague that it could be used to justify transfers based upon inadequate staffing.

RESPONSE: If inadequate staffing ever seriously threatened patient lives or safety, the Department would consider it a responsible administrative decision to transfer patients to a safe environment.

COMMENT: N.J.A.C. 10:36-3.3(a)9. This criteria—"As a consequence of inter-regional consolidation of services"—is so vague that it could be used to justify transfers which are only tenuously related to a consolidation of services somewhere in the mental health system.

RESPONSE: Since inter-regional consolidation of services are public policy decisions with high visibility, the Department does not believe they could be used very well to justify transfer decisions based on factors not listed in these rules.

N.J.A.C. 10:36-3.4 Procedures

COMMENT: The proposed rules fail to define either "administrative urgency" or "clinical urgency."

RESPONSE: "Administrative urgency" and "clinical urgency" are only used in the context of distinguishing between emergency and non-emergency transfers. The determination of "administrative urgency" is best made by the application of professional judgement to specific situations rather than a precise definition. "Clinical urgency" is to be determined by treatment team consensus or medical judgement and not by one individual on the ward staff.

COMMENT: The emergency transfer procedures contain no due process to protect residents' interests.

RESPONSE: The emergent nature of these transfers precludes formal due process mechanisms (see N.J.A.C. 10:36-3.4(a)).

COMMENT: At a minimum, procedural due process requires adequate notice to the resident, to his or her family and to counsel, as well as a meaningful hearing.

RESPONSE: Although appeals from transfer decisions are not offered by these rules, clarification that resident input into transfer decisions is desirable, unless the exigency of the situation precludes it, has been added at N.J.A.C. 10:36-3.4(c)6.

COMMENT: The proposed rules provide for no resident input or appeal from transfer decisions.

RESPONSE: In non-emergency situations, the Department agrees that residents and their families should be notified in advance of transfer plans and the reason for the transfer plan. In emergency situations, the Department agrees that family of residents who have been transferred should also be notified of the transfer and the reason for the transfer as soon after the transfer as possible. In fact, the Department believes they routinely are so notified. To demonstrate its commitment to this practice, the Department has added language to this effect at N.J.A.C. 10:36-3.4(c)7.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 3. TRANSFERS OF INVOLUNTARILY COMMITTED PATIENTS BETWEEN STATE PSYCHIATRIC FACILITIES

10:36-3.1 Purpose

The purpose of this subchapter is to define the factors to be used by State psychiatric facility staff in evaluating the need for inter-hospital transfers among the facilities cited in N.J.A.C. 10:36-3.2. The subchapter also delineates the procedures related to such transfers.

10:36-3.2 Scope

(a) The rules of this subchapter apply in all instances to involuntarily committed patients who are residing at and being considered for transfer to any of the following facilities specified in N.J.S.A. 30:4-160:

1. Greystone Park Psychiatric Hospital;
2. Trenton Psychiatric Hospital;
3. Marlboro Psychiatric Hospital;
4. Ancora Psychiatric Hospital; *[and]*
5. The Forensic Psychiatric Hospital*[.]*; and*
- *6. The Senator Garret W. Hagedorn Center for Geriatrics.*

10:36-3.3 Factors

(a) Any of the factors described below may serve as a basis for the transfer of a patient from and to any facility cited in N.J.A.C. 10:36-3.2:

1. To place him or her in closer proximity to family members;
2. To place the patient in the appropriate hospital according to the patient's residence (catchment area);
3. To provide a new clinical and personal relationship *in exceptional circumstances* when a treatment impasse has developed over a sustained period of time;
4. To provide greater or lesser clinical structure or security;
5. To participate in a specialized psychiatric service that is offered at another hospital or in the community that is more accessible from the receiving hospital;
6. As a result of a change in legal status;
7. To spare patients the consequences of overcrowding at a specific mental health facility;
8. In response to natural catastrophes, fires, or other life-safety concerns which necessitate transfer; and
9. As a consequence of inter-regional consolidation of services.

10:36-3.4 Procedures

(a) A written request for transfer, supported by a statement of the factors justifying the request, shall be forwarded from the chief executive officer (CEO) or designee of the sending institution to the chief executive officer or designee of the receiving institution. Transfers shall be subject to clinical review. A copy of that request is to be sent to the Assistant Director, Office of Quality Assurance.

(b) Transfers occurring as a result of overcrowding, life-safety concerns, natural catastrophes, or consolidation of services shall require the approval of the Director, Division of Mental Health and Hospitals.

(c) The following procedures shall be followed in cases of non-emergent transfers:

1. The designee of the sending institution must consult with the designee of the receiving institution. If they agree to the transfer, they will arrange for a specific date and time for the transfer to occur.

***2. Institutional staff should actively promote resident input into non-emergency transfer decisions.**

3. Both the residents scheduled to be transferred to a different facility and their family should be notified by institutional staff in advance of the transfer plans and the reason for the transfer plan.*

[2.]* *4. It is the responsibility of the institution initiating the transaction to make arrangements for transfers, including arrangements for transporting the patient from one facility to the other.

[3.]* *5. If the designees do not agree on the transfer, the matter shall be referred to the CEO's of the respective institution for resolution.

[4.]* *6. If the chief executive officers do not agree, the case is to be referred for resolution to the appropriate regional Assistant Directors, Division of Mental Health and Hospitals, who may, in making their decision, request clinical and technical input from central office staff. Resolution, in instances of continuing disagreement, rests with the Division Director or the Director's designee.

[5.]* *7. All transfer requests are to be handled in a timely manner.

(d) The following procedures shall be followed in cases of emergency transfers:

1. Emergency transfers are those that must be resolved after hours or on weekends or have clinical or administrative urgency.

2. The family of residents who have been transferred should be notified by institutional staff of the transfer and the reason for the transfer as soon after the transfer as possible.

[2.]* *3. The designee or, when unavailable, the administratively responsible person of the sending institution must contact directly his or her counterpart at the receiving institution and transmit verbally the factors supporting the transfer, as well as the reasons for the emergent nature of the transfer. This information must be submitted, in writing, to the receiving institution by close of the first regular business day after the transfer.

[3.]* *4. For the purpose of this section, "clinical urgency" means that the patient being proposed for transfer is considered by his or her clinicians as imminently dangerous to self or others or an imminent security risk if not immediately transferred. That finding is also to have been endorsed by the chief executive officer or designee on call.

[4.]* *5. If, after transfer, the CEO of the receiving institution objects to an emergency transfer, he or she may review the case with the CEO of the sending institution. If agreement cannot be reached, it is referred to the Assistant Director of the receiving region.

[5.]* *6. That Assistant Director shall consult with his or her counterpart from the sending region to resolve the issue.

[6.]* *7. If agreement cannot be reached by the Assistant Directors, the issue shall be referred for resolution to the Director or the Director's designee.

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Community Mental Health Services

Fiscal Administration

Adopted Amendment: N.J.A.C. 10:37-7.8

Proposed: October 16, 1989 at 21 N.J.R. 3221(a).

Adopted: August 1, 1990 by Alan J. Gibbs, Commissioner,

Department of Human Services.

Filed: August 1, 1990 as R.1990 d.431, without change.

Authority: N.J.S.A. 30:9A-1.

Effective Date: September 4, 1990.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from the Public Advocate and the New Jersey Department of Health.

COMMENT: The provision in P.L. 1989, c.1, requiring hospitals to take legal action to collect amounts due on a patient's account should read to harmonize with the duty of confidentiality contained in N.J.S.A. 30:4-24.3. Community mental health agency utilization of a collection agency, however, breaches the duty of confidentiality contained in N.J.S.A. 30:4-24.3.

RESPONSE: The Department of Human Services agrees that P.L. 1989, c.1 and N.J.S.A. 30:4-24.3 should not contradict on this issue, but disagrees that community mental health utilization of a collection agency must breach the duty of confidentiality contained in N.J.S.A. 30:4-24.3. Community mental health agencies are still expected to satisfy that duty of confidentiality while also complying with P.L. 1989, c.1. As long as the referral to a collection agency does not contain information protected by N.J.S.A. 30:4-24.3, such as the specific nature of the illness or services rendered, the two statutory provisions would be harmonized. For example, the delinquent fee collection may simply be for "Services Rendered".

COMMENT: P.L. 1989, c.1 does not expressly require hospitals to use collection agencies. Rather, it requires the taking of "legal action to collect the amount due . . .". The term "legal action" does not imply the use of a collection agency with its attendant breach of confidentiality.

RESPONSE: Although it is not the role of the Department of Human Services to interpret legislation directed to the Department of Health, it would appear that legislation requiring "legal action" does not preclude less drastic measures such as collection agency referrals. The relevant Department of Health regulatory provision at N.J.A.C. 8:31B-4.40(h) states, "Nothing in this section shall prevent a hospital from taking intermediate steps after the post discharge steps in (d) and (e) above, but before taking legal action. This includes, but is not limited to, sending an account to a collection agency." Thus, collection agency usage is not mandated by the Department of Human Services; it is merely not precluded for hospital-based community mental health programs.

COMMENT: The Department of Health stated its support for the proposed amendment as necessary to ensure that persons whose mental health service bills are paid by the Uncompensated Care Trust Fund are treated similarly to those with physical conditions requiring hospital care. The amendment also enhances the viability of the Trust Fund by ensuring that adequate collection efforts are used for all patients who are able to pay.

The amendment also brings these rules into conformance with the Trust Fund Act (N.J.S.A. 26:2H-18.4 et seq.) which requires such outside collection efforts for all patients whose bills are paid by the Trust Fund.

RESPONSE: The Department of Human Services accepts this comment and has adopted the amendment accordingly.

Full text of the adoption follows.

10:37-7.8 Grant/contract-related income

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

(e) An independent collection agency, however, should not be used for the purpose of fee collection directly from clients not covered by an insurance program, unless the provided service is subject to the authority of the Department of Health regarding such collection

ADOPTIONS

action, pursuant to N.J.S.A. 26:2H-1 et seq. (P.L. 1978, c.83) and N.J.S.A. 26:2H-18.4 et seq. (P.L. 1989, c.1). A client does not automatically waive his or her right to confidentiality because of payment delinquency.

(f)-(j) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Dental Services

HPCPS Codes

Adopted Amendments: N.J.A.C. 10:56-3.1, 3.3, 3.4, 3.10, and 3.12

Proposed: June 4, 1990 at 22 N.J.R. 1660(b).

Adopted: August 10, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: August 13, 1990 as R.1990 d.456, **without change**.

Authority: N.J.S.A. 30:4D-6b(4); 30:4D-7, 7a, b, and c; 30:4D-12; 42 CFR 440.100.

Effective Date: September 4, 1990.

Expiration Date: August 26, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:56-3.1 Introduction

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

(d) Specific elements of the HPCPS Coding System which require the attention of the dental provider.

The lists of HPCPS code numbers in the 11 separate sections of this subchapter are arranged in tabular form with specific information for a code given under columns with titles such as: "IND", "HPCPS CODES", "MOD", "DESCRIPTION", and "MAXIMUM FEE ALLOWANCE". The information given under each column is summarized below:

COLUMN TITLE

i. IND—(Indicator) Lists symbols used to refer provider to information concerning the New Jersey Medicaid Program's qualifications and requirements when a procedure or service code is used.

Explanation of indicators used in this column is given below:

i. "*" An asterisk (*) denotes those procedures which normally require prior authorization in order to be eligible for reimbursement under the New Jersey Medicaid Program.

ii. "**" A double asterisk (**) denotes those procedures which may be treated in an emergency situation when prior authorization is not feasible. These procedures must receive authorization prior to payment.

iii. "d" The letter (d) denotes those procedures which require that a diagnosis be entered in the appropriate item on the Dental Services Claim form (MC-10) in order to be eligible for reimbursement.

iv. "#" The cross-hatch (#) denotes those procedures for which special authorization requirements exist. Those requirements are listed adjacent to the procedure codes involved.

2.-5. (No change.)

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

10:56-3.3 01000-01999 II. PREVENTIVE

(a) Dental prophylaxis

1. (No change.)

2. Scaling over and above that necessary under prophylaxis (see codes 01110 and 01110 52 above). The calculus must be abnormally heavy and visible to the Dental Consultant on radiograph(s). Such scaling must be authorized for those recipients up to and including 17 years of age as denoted by codes with the "*" (cross-hatch) indicator.

HUMAN SERVICES

# Y2105	ADDITIONAL SCALING	11.00	10.00
	NOTE: Maxillary and mandibular arches.		
# Y2105 52	ADDITIONAL SCALING, ONE ARCH	5.50	5.00
	NOTE: Maxillary or mandibular arch.		
	Code to be used if patient is edentulous in one arch.		

(b) Topical fluoride treatment (office procedure)

1. Topical application of stannous fluoride or acid fluoride phosphate—one treatment following a complete prophylaxis (fee includes both services).

i. Reimbursement for topical fluoride treatment shall be limited to once every six months without authorization for those patients up to and including age 17, and once every 12 months for those patients 18 years of age, up to and including 20 years of age. (Not a covered service for persons 21 years of age and over.) A complete prophylaxis must be performed immediately prior to the topical fluoride treatment.

01201	Topical Application of Fluoride (Including Prophylaxis)—Child	14.00	12.00
	NOTE: Patients up to and including 15 years of age, maxillary and mandibular arches.		
01202	Topical Application of Fluoride (Including Prophylaxis)—Adult	17.00	15.00
	NOTE: Patients age 16, up to and including 20 years of age, maxillary and mandibular arches.		
01202 52	Topical Application of Fluoride (Including Prophylaxis)—Adult	8.50	7.50
	NOTE: Patients age 16, up to and including 20 years of age, maxillary or mandibular arch. Code to be used if patient is edentulous in one arch.		

(c) Other preventive services:

01351	Sealant—Per Tooth	7.00	6.00
	NOTE 1: Application of sealants is limited to a one time application to all occlusal surfaces that are unfilled and caries free, in bicusps and permanent molars.		
	NOTE 2: Application of sealants is limited to recipients up to and including 16 years of age.		
	NOTE 3: Sealants applied other than as detailed above are not reimbursable unless authorized by a Medicaid Dental Consultant. A complete explanation of the request must be attached.		
	NOTE 4: Since the sealants may be reimbursed only once for each tooth, the provider should make certain that sealants have not been applied previously.		

(d) (No change.)

10:56-3.4 02000-02999 III RESTORATIVE

(a)-(g) (No change.)

(h) Other restorative services:

*02980	Crown Repair, By Report	BR	BR
*02999	Unspecified Restorative Procedure By Report	BR	BR

HUMAN SERVICES

ADOPTIONS

10:56-3.10 07000-07999 IX. ORAL SURGERY

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

(c) Extractions—includes local anesthesia and routine post-operative care:

...

07130	Root Removal—Exposed Roots NOTE 1: Per tooth. NOTE 2: Root partially imbedded in bone.	15.00	13.00
-------	--	-------	-------

...

(d) Surgical extractions—includes local anesthesia and routine post-operative care:

1. Reimbursement will be made for the extraction of impacted teeth only when conditions arising from such impactions warrant their removal. Extraction of asymptomatic impacted teeth or those teeth where dental/medical necessity cannot be demonstrated will not be considered as reimbursable.

2. 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.

3. Authorization for the removal of impacted teeth is necessary for those recipients up to and including 17 years of age as denoted by those codes with the “#” (cross-hatch) indicator.

07210	Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of tooth	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) NOTE: Completely covered by bone.	30.00	26.00
--------	--	-------	-------

(e) Other surgical procedures:

...

*07280	Surgical Exposure of Impacted or Unerrupted Tooth for Orthodontic Reason (Including Orthodontic Attachments)	54.00	47.00
--------	--	-------	-------

*07281	Surgical Exposure of Impacted or Unerrupted Tooth to Aid Eruption	30.00	26.00
--------	--	-------	-------

...

(f) Alveoloplasty—surgical preparation of ridge for dentures:

1. Reimbursement will be based upon quadrants, a portion thereof or the equivalent thereof as determined by the Medicaid Dental Consultant.

07310	Alveoloplasty in Conjunction with Extractions—Per Quadrant NOTE 1: In conjunction with extractions of at least three teeth or the roots of at least three teeth in the same quadrant. NOTE 2: Specify quadrant.	43.50	37.50
-------	--	-------	-------

*07320	Alveoloplasty Not in Conjunction with Extraction—Per Quadrant	43.50	37.50
--------	--	-------	-------

(g)-(q) (No change.)

10:56-3.12 09000-09999 XI. ADJUNCTIVE GENERAL SERVICES

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

(e) Professional visits:

...

09420 52	Hospital Call	9.00	7.00
----------	---------------	------	------

NOTE 1: Hospital visit, Inpatient or Outpatient, in addition to fee for service provided.

NOTE 2: Code 09420 52 will not be reimbursable in conjunction with Code 09310 or Codes 0940 22 or 09420.

NOTE 3: Code 09420 52 is reimbursable only once per trip per facility regardless of the number of patients examined or treated.

09420 22	Hospital Call	22.00	17.00
----------	---------------	-------	-------

NOTE 1: Code to be used for Hospital Day—Initial—Inpatient or Same Day Surgery.

NOTE 2: Hospital record must include as a minimum:

a. Chief complaint(s);

b.-g. (No change.)

NOTE 3: (No change.)

...

09430	Office Visit for Observation (During Regularly Scheduled Hours)—No Other Services Performed.	9.00	7.00
-------	--	------	------

NOTE: Code may also be used when post-operative services are necessary following a major surgical procedure (for example, bony impactions, fractures, etc.).

(f) (No change.)

(g) Miscellaneous services

09910	Application of Desensitizing Medicaments	6.00	5.00
-------	---	------	------

NOTE 1: Application to a tooth, i.e., cervical sensitivity, erosions, etc.

NOTE 2: Specify tooth code(s).

**09920	Behavior Management, By Report	15.00	13.00
---------	--------------------------------	-------	-------

NOTE 1: Code to be used for those recipients with developmental and other disabilities whose disorders necessitate an excessive amount of time to accomplish treatment, for example, mental retardation, neurological disorders, etc.

NOTE 2: Payment will be based on 15 minute time units or a major portion thereof. Maximum reimbursement eight time units on a single date of service.

NOTE 3: The type of disorder and the number of time units requested must be entered on the Dental Services Claim form (MC-10).

NOTE 4: Authorization is required when four or more time units are requested on one date of service.

NOTE 5: Code to be used in addition to other procedures performed.

...

(a)**DIVISION OF ECONOMIC ASSISTANCE****Food Stamp Program****Annual Adjustments to the Maximum Coupon Allotments, Maximum Net and Gross Income Limits, 165 Percent Poverty Level Table, and Income Deductions****Adopted Amendments: N.J.A.C. 10:87-5.10, 6.15, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, and 12.7**

Proposed: June 4, 1990 at 22 N.J.R. 1670(a).

Adopted: August 3, 1990 by Alan J. Gibbs, Commissioner,
Department of Human Services

Filed: August 3, 1990 as R.1990 d.437, **without change.**

Authority: N.J.S.A. 30:4B-2, Food Stamp Act of 1977 as amended (7 U.S.C., Sections 3 and 5), 7 CFR Parts 273.2, 9 and 10, and United States Department of Agriculture Notice No. 79-47.

Effective Date: September 4, 1990.

Expiration Date: January 27, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1. Standard deduction: The standard deduction, specified at N.J.A.C. 10:87-12.1(a), shall be deducted from income, whether earned or unearned.

2.-3. (No change.)

4. Dependent care deduction: Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job-search criteria (or an equivalent effort by those not subject to job-search), or to attend training or pursue education which is preparatory to employment, shall be deducted. The amount of this deduction shall be the actual cost of such care, but shall not exceed \$160.00 per each dependent for whom the household pays dependent care.

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1(b) unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i. Allowable shelter costs: Only the following shall be considered in determining the shelter cost deduction:

(1)-(2) (No change.)

(3) Utilities: The costs of heating and cooking fuel; cooling and electricity; water and sewage; garbage and trash collection fees; the basic service fee, plus tax, for one telephone (the uniform telephone rate is found in N.J.A.C. 10:87-12.1(c)) and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

ii.-iii. (No change.)

iv. Utility standard: Households which incur certain utility costs separate and apart from their rent or mortgage payments are entitled to claim the appropriate utility allowance (see N.J.A.C. 10:87-12.1(d) or (e)) in accordance with the following provisions:

(1)-(7) (No change.)

10:87-6.15 Calculating net and gross income and benefit levels

(a) (No change.)

(b) Net and gross monthly income: To determine a household's net monthly income, the CWA shall follow steps (b)1 through 8 below. To determine a household's total gross income, the CWA shall add, after rounding (according to procedures at (c)1 below), each individual's monthly earned and unearned income(s). This total, minus income exclusions (see N.J.A.C. 10:87-5.9), provides the sum total gross monthly income figure which shall be used to determine the household's eligibility in accordance with (d)1 or 2 below.

1.-3. (No change.)

4. Step 4: Subtract the standard deduction (see N.J.A.C. 10:87-12.1(a)).

5.-7. (No change.)

8. Step 8: Subtract the excess shelter cost up to the maximum (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly net income after all other applicable deductions. The maximum amount allowed for shelter (for those households subject to a shelter maximum) is the maximum in N.J.A.C. 10:87-12.1(b). Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income now has been determined.

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

10:87-12.1 Income deductions

(a) The Standard Deduction shall be that calculated by the United States Department of Agriculture pursuant to 7 CFR 273.9(d)(7), published annually in the Federal Register, pursuant to 7 CFR 273.9(d)(1), and effective October 1 of each year.

(b) The Shelter Deduction shall be that calculated by the United States Department of Agriculture pursuant to 7 CFR 273.9(d)(8), published annually in the Federal Register, pursuant to 7 CFR 273.9(d)(5), and effective October 1 of each year.

(c) The Uniform Telephone Allowance shall be calculated by totalling the New Jersey Bell Telephone Company highest regional Flat Rate Service charge, the FCC subscriber line charge, applicable Federal Tax and the monthly A.T. and T. monthly leasing charge for a rotary dial telephone. As required by 7 CFR 273.9(d)(6), DEA shall review and adjust the Uniform Telephone Allowance on July 1, to be effective October 1 of each year.

(d) The Standard Utility Allowance shall be recalculated annually by DEA effective October 1, in accordance with 7 CFR 273.9(d) and the "Texas" methodology described in USDA Notice No. 79-47, issued May 25, 1979 and shall be the sum of the following:

1. The Major Non-Heating Utility component shall be calculated by collecting data from food stamp households in 1977 and 1978 to ascertain the non-heating utility expenses which those households incurred. The data shall be arranged to project what the 95th percentile of such monthly costs are, thus arriving at a Base Period amount of \$49.00 per month. The Base Period amount shall be updated to reflect projected non-heating major utility costs by using the U.S. Bureau of Labor Statistics' Consumer Price Indices-Urban "Fuels" item for the New York/Northern New Jersey and Philadelphia metropolitan regions to create an average "New Jersey Consumer Price Index" (NJCPI-U) which represents major non-heating utility costs incurred in New Jersey urban areas. The 12 NJCPI-U statistics representing July of the previous year through June of the current year shall be trended (straight line, least squares method) to project the average non-heating index amounts for November of the current year to October of the following year. The comparison of this average to that which existed in 1977 shall produce an inflation adjustment factor to be applied to the average monthly non-heating base cost figure of \$49.00.

2. The Minor Non-Heating Utility component (representing sewerage, garbage, water, and trash) shall be calculated by collecting data from food stamp households in 1977 and 1978 to ascertain the minor non-heating utility expenses which those households incurred. The data shall be arranged to project what the 95th percentile of such costs are, thus arriving at a Base Period amount of \$1.34 per month. The Base Period amount shall be updated to reflect projected minor

non-heating utility costs by using the U.S. Bureau of Labor Statistics' Consumer Price Indices-Urban "All Items" item for the New York/Northern New Jersey and Philadelphia metropolitan regions to create an average "New Jersey Consumer Price Index" (NJ CPI-U) which represents minor non-heating utility costs incurred in New Jersey urban areas. The 12 NJ CPI-U statistics representing July of the previous year through June of the current year shall be trended (straight line, least squares method) to project the average minor utility index amounts for November of the current year to October of the following year. The comparison of this average to that which existed in 1977 shall produce an inflation adjustment factor to be applied to the average monthly minor non-heating Base Period amount of \$1.34.

3. The Uniform Telephone Allowance described at N.J.A.C. 10:87-12.1(c) shall be a component of the SUA.

(e) The Heating Utility Allowance shall be recalculated annually by DEA effective October 1, in accordance with 7 CFR 273.9(d) and the "Texas" methodology described in USDA Notice No. 79-47, issued May 25, 1979 and shall be the sum of the following:

1. The Major Heating Utility component shall be calculated by collecting data from food stamp households in 1977 and 1978 to ascertain the heating utility expenses which those households incurred. The data shall be arranged to project what the 75th percentile of such monthly costs are, thus arriving at a winter Base Period amount of \$128.00 to represent November through April monthly utility costs, and a summer Base Period amount of \$44.00 to represent May through October monthly utility costs. Each base period amount shall be updated to reflect heating utility costs by using the U.S. Bureau of Labor Statistics' Consumer Price Indices-Urban "Fuels" item for the New York/Northern New Jersey and Philadelphia metropolitan regions. The six NJ CPI-U statistics for July through December of the previous year shall be trended (straight line, least squares method) to project the average heating index amounts for November of the current year through April of the following year. The six NJ CPI-U statistics for January through June of the following year shall be trended (straight line, least squares method) to project the average heating index amounts for May through October of the following year. Each amount shall be compared to the 1977 base data, thus creating an inflation adjustment factor. Each inflation adjustment factor shall be applied to the appropriate winter or summer Base Period amount. The totals shall be averaged to arrive at the annual Heating Utility component.

2. The Minor Non-Heating Utility component described at N.J.A.C. 10:87-12.1(d)2 shall be included in the HUA.

3. The Uniform Telephone Allowance described at N.J.A.C. 10:87-12.1(c) shall be a component of the HUA.

10:87-12.2 Maximum coupon allotment

The Maximum Coupon Allotment shall be that calculated by the United States Department of Agriculture pursuant to 7 CFR 273.10(e)(4), published annually in the Federal Register, pursuant to 7 CFR 273.9(e)(4), and effective October 1 of each year.

10:87-12.3 Maximum allowable net income standards

The Maximum allowable net income standards shall be those calculated by the United States Department of Agriculture and published annually in the Federal Register, pursuant to 7 CFR 273.9(a) and effective October 1 of each year.

10:87-12.4 Maximum allowable gross income standards

The Maximum allowable gross income standards shall be those calculated by the United States Department of Agriculture and published annually in the Federal Register, pursuant to 7 CFR 273.9(a) and effective October 1 of each year.

10:87-12.5 Food stamp allotment proration

(a) In accordance with 7 CFR 273.10(a)(1)(iii), the formula for determining food stamp proration is as follows:

$$\frac{\text{Full month's benefits} \times (31 \text{ minus date of application})}{30} = \text{prorated allotment}$$

1. (No change.)

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

10:87-12.6 Monthly coupon allotment

(a) In accordance with 7 CFR 273.10(e)(2)(ii), the formula for determining the monthly coupon allotment is as follows:

1. (No change.)

10:87-12.7 165 percent of poverty level

The 165 percent of poverty level amounts shall be that established and published annually as required by 7 U.S.C. 2014(c).

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Organization and General Policy Provisions of the Commission for the Blind and Visually Impaired

Adopted New Rules: N.J.A.C. 10:91

Proposed: September 5, 1989 at 21 N.J.R. 2753(a).

Adopted: August 1, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: August 1, 1990 as R.1990 d.432, 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. 30:1-2; 52:14B-3(1) et seq.

Effective Date: September 4, 1990.

Expiration Date: September 4, 1995.

Summary of Public Comments and Agency Responses:

N.J.A.C. 10:95, proposed for repeal, expired on August 23, 1989, pursuant to Executive Order No. 66(1978).

The New Jersey Commission for the Blind and Visually Impaired (the Commission) received numerous comments on the proposed new rules. A summary of the comments and the responses of the Commission for the Blind and Visually Impaired appears below. The following comments were received from the parent of a child who is receiving services from the Commission.

COMMENT: The commenter suggested that the language in proposed new N.J.A.C. 10:91-1.3(a), "or the services of specialists in the field of providing services to visually impaired, developmentally disabled students who provide technical assistance to the teachers and parents of these clients" should be changed to "or the services of specialists who provide technical assistance to the teachers and parents of visually impaired, developmentally disabled students."

RESPONSE: The Commission agrees that the suggested change would clarify the statement without altering it and has revised the language as suggested.

COMMENT: The commenter stated in response to the language, in proposed new N.J.A.C. 10:91-1.5(a) and (b), which deals with prevention services, that one cause of blindness in children is retinopathy of prematurity, or ROP, and current medical knowledge indicates that most premature births are preventable. The commenter suggested that the Commission could use its resources for a public awareness program on the prevention of premature birth and that the commenter has much information on this subject and would be happy to share it.

RESPONSE: The public awareness program suggested by the commenter is not within the mandate of the Commission. However, it is within the mandate of the Department's Office For Prevention. Therefore, under separate cover, the commenter will be referred to:

Deborah Cohen, Director
Office For Prevention of Mental Retardation
and Developmental Disabilities
Department of Human Services
222 S. Warren Street, CN-700
Trenton, NJ 08625

COMMENT: The commenter suggested that the language, in proposed new N.J.A.C. 10:91-1.7(b)4, "Study the causes for blindness" be changed to "Study the causes of blindness."

RESPONSE: The Commission agrees with this suggestion as it is consistent with statutory language and has revised the language.

COMMENT: The commenter inquired why and how would the Commission regulate the sale of products made by blind and visually impaired persons. This comment is in response to the language in proposed new

ADOPTIONS

N.J.A.C. 10:91-1.7(b)7, "Promote and regulate the sale and distribution of products made by blind and visually impaired persons."

RESPONSE: The Commission has added to this rule "pursuant to N.J.A.C. 10:96," which describes the sale and distribution of goods and articles made by blind persons as mandated by N.J.S.A. 30:6-17 et seq.

COMMENT: The commenter indicated that the language in proposed new N.J.A.C. 10:91-1.9(h)1 through 8, regarding responsibilities of consumer advisory boards, was changed at a review by the Board of the by-laws and that the language of the new by-laws and new rules should conform. In addition, the commenter did not understand the meaning of the language in N.J.A.C. 10:91-1.9(h)1, "advocate to and advisor to Commission staff" and suggested that usual language is "advocate for" and also did not think consumer advisors should be advocates for the Commission.

RESPONSE: The Commission agrees. Subsequent to the development of proposed new N.J.A.C. 10:91-1.9, the Commission's Consumer Advisory Board revised the by-laws governing the central and regional boards. Therefore, the rule language has been revised so as to be consistent with the new language in the by-laws. Since the language in this subchapter was revised by the Board members affected by this rule, there is no need for additional comment on the rule.

COMMENT: The commenter inquired why "communicable disease" was being defined in proposed new N.J.A.C. 10:91-1.12, as it is common English, as opposed to "ancillary caseworker" for example, and asked if there were specific diseases the Commission is concerned about, and if not, then this definition does not shed any new light on an ordinary, commonly understood term.

RESPONSE: The Commission agrees with this suggestion and has removed the definition of "communicable disease" from the rule.

COMMENT: The commenter suggested that the term "homemaker" defined in proposed new N.J.A.C. 10:91-1.12 is commonly understood, and inquired if the Commission meant to differentiate from people who receive a wage and if so, to so state, and if not, to delete the term.

RESPONSE: This definition is consistent with homemaking as defined in Section 1361.1(g) of the Federal Rehabilitation Services Manual regulations under employability and as discussed in 34 CFR Part 361.1(C). The term "homemaker" refers to a vocational rehabilitation work goal for which there is no cash payment associated with it.

COMMENT: The commenter suggested that the term "independent living" defined in proposed new N.J.A.C. 10:91-1.12 be changed for clarity from "means that a person is able to maximize their level of independent and productive functioning in the most appropriate, least restrictive setting" to "means an individual's maximum level of independent and productive functioning in the most appropriate, least restrictive setting."

RESPONSE: The Commission disagrees as it does not believe the suggested change adds clarity to the definition.

COMMENT: The commenter suggested that the term "placement equipment" be defined in proposed new N.J.A.C. 10:91-1.12.

RESPONSE: The Commission does not agree that the term "placement equipment" should be defined in this section. However, the provision of placement equipment will be dealt with in proposed new N.J.A.C. 10:95 when the chapter on vocational rehabilitation services is written.

COMMENT: The commenter noted in the definition of the words "referral" and "self employment" in proposed new N.J.A.C. 10:91-1.12, and elsewhere throughout the proposed new rules, the pronoun their is used with singular nouns and pronouns, resulting in incorrect, strange-sounding language such as, a person identifies themselves which should be, his or herself.

RESPONSE: The Commission disagrees as the pronoun "their" is beginning to have common usage as a replacement for the phrase "his or her."

COMMENT: The commenter suggested that the definition of "visual impairment" in proposed new N.J.A.C. 10:91-1.12 be changed from "means that a person identifies themselves as having difficulty" to "means a difficulty reading ordinary newsprint" as the commenter does not think the part about a person identifying himself is the point the Commission wishes to make.

RESPONSE: The Commission, for reasons of clarity, has decided to delete this definition and to define the phrase by using the statutory language found in N.J.S.A. 30:6-1.1C. This definition can be found in the response to the Public Advocate's comment on this phrase.

COMMENT: The commenter indicated that the language in proposed new N.J.A.C. 10:91-2.9(a)1 "no disability," which means an individual

HUMAN SERVICES

does not have a visual disability which renders him or her eligible for Commission services, such as TOO MUCH remaining vision" is very strange. The commenter stated that the language be changed to "no disability," means an individual does not have enough of a visual disability to render him or her eligible for Commission services."

RESPONSE: The Commission disagrees as it believes the definition adequately defines the phrase. The suggested language is not so different as to warrant a change. However, the Commission has deleted the phrase "such as TOO MUCH remaining vision," as this phrase does not serve to add to or clarify the statement.

COMMENT: The commenter suggested that the definitional language in proposed new N.J.A.C. 10:91-2.9(a)3, "no vocational potential," is pretty harsh, hopes no family member receives a letter with those words on it and is sure a more humane, respectful phrase could be found.

RESPONSE: Although this language may be perceived as harsh, it is consistent with the language used in the Rehabilitation Act of 1973, as amended. Therefore, the Commission has retained the language in the rule.

COMMENT: The commenter suggested that the language, in proposed new N.J.A.C. 10:91-2.10(b)3, "client institutionalized," be changed to "client is institutionalized."

RESPONSE: The Commission agrees with the suggested change and has revised the language.

COMMENT: The commenter stated that the language, in proposed new N.J.A.C. 10:91-4.2(b) and (c), "that is," in many instances makes for extremely awkward sentences, having no grammatical need for every item to be structured exactly the same way, especially at the expense of readability and at times, clarity. The commenter suggested that all entries under proposed new N.J.A.C. 10:91-4.2(c)1 could be rewritten, for example, change "A daily living skills evaluation, that is, an assessment whose outcome is a written report which delineates strengths, weaknesses and needs relative to a client's ability to perform personal management tasks (for example, grooming, cooking)" to "A daily living skills evaluation which assesses a client's ability to perform personal management tasks and which delineates in a written report the strengths, weaknesses and needs in this area."

RESPONSE: The Commission does not agree that the use of the phrase "that is" is awkward.

COMMENT: The commenter stated that the language, in proposed new N.J.A.C. 10:91-4.2(d), "Costs related to diagnostic and evaluation services as specified in (a) through (c) above are available to all applicants as follows:" does not make sense.

RESPONSE: The commission agrees and has rewritten the language in this subsection to read "The payment for certain services which ensure the provision of diagnostic and evaluation services as specified in (a) through (c) above are available to all applicants as follows":.

COMMENT: The commenter inquired, in proposed new N.J.A.C. 10:91-4.3(b), whether the procedures listed are the only procedures or should "that is" be changed to "such as" and further stated that the language, in proposed new N.J.A.C. 10:91-4.3(d)1 and 4.3(e), is awkward.

RESPONSE: The Commission agrees that the phrase "that is" in N.J.A.C. 10:91-4.3(b)2 should be changed to "such as," but does not agree that the language in proposed N.J.A.C. 10:91-4.3(d)1 and (e) is awkward.

COMMENT: The commenter suggested, in proposed new N.J.A.C. 10:91-4.3(g)1, that the language be changed from "Services by a psychiatrist, that is, the provision of ongoing treatment including psychotherapy and medication management"; to "Ongoing treatment including psychotherapy and medication management, by a psychiatrist" and further suggested the same change for proposed new N.J.A.C. 10:91-4.3(g)2 and 3.

RESPONSE: The Commission does not accept the suggested change as it does not believe the language is awkward.

COMMENT: The commenter stated that the language, in proposed new N.J.A.C. 10:91-4.3(h)1 through 5, is very strange as the explanations seem only to provide identical structure as they do not clarify or expand knowledge. In proposed new N.J.A.C. 10:91-4.3(h)2, the commenter suggested changing "used for observing printed materials such as books, menus, etc.;" to "used for reading printed materials";.

RESPONSE: The purpose of this rule is to explain and describe the services available to all eligible clients especially the prosthetics and aids services available as described in proposed N.J.A.C. 10:91-4.3(h)1 through 5. Therefore, the Commission disagrees with the suggested changes and does believe the explanations given do serve to clarify and expand knowledge and further believes that readability is not affected

in this subsection. For example, the language in proposed new N.J.A.C. 10:91-4.3(h)2 serves to clarify what is meant by printed materials.

COMMENT: The commenter stated that the language, in proposed new N.J.A.C. 10:91-4.3(j)1 through 8, contains explanations that are awkward and often redundant and that proposed new N.J.A.C. 10:91-4.3(j)10 should be rewritten.

RESPONSE: The Commission disagrees with the suggested changes to this subsection and further does not believe that the content is awkward or redundant.

COMMENT: The commenter stated that the language, in proposed new N.J.A.C. 10:91-4.3(k), "Related costs training as follows": is so phrased as not to be understood and that proposed new N.J.A.C. 10:91-4.3(k)1 is unclear and asked, whether transportation expenditures are different from costs of travel.

RESPONSE: The Commission agrees to the suggested change in proposed new N.J.A.C. 10:91-4.3(k), which has been revised to read: "Payment for certain training related costs which ensure the delivery of training services as follows". The Commission believes proposed new N.J.A.C. 10:91-4.3(k)1 is clear and reiterates that costs of travel as well as subsistence as stated in this paragraph are a part of transportation expenditures.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.3(l) is redundant.

RESPONSE: The Commission does not believe the language in this subsection is redundant.

COMMENT: The commenter suggested that the language following "that is" in proposed new N.J.A.C. 10:91-4.3(n)3 through 5 be deleted and, in proposed new N.J.A.C. 10:91-4.3(n)4, the commenter does not understand how the last line relates to the first three paragraphs without specifying exactly what has resulted in this lack of understanding.

RESPONSE: The Commission does not agree with these suggested changes and believes all of the language, including the language in proposed new N.J.A.C. 10:91-4.3(n)4, details the scope of Commission responsibilities. N.J.A.C. 10:91-4.3(n)1 through 3 describe the services that are available to family members as needed, that may enhance the training or instruction family members can receive in order to assist a handicapped individual by the family having an understanding of the impact of the emotional and physical difficulties being experienced by the handicapped person.

COMMENT: The commenter noted that the word "judgment" is misspelled, in proposed new N.J.A.C. 10:91-4.4(a).

RESPONSE: The Commission has corrected the spelling error.

COMMENT: The commenter suggested that the language in proposed new N.J.A.C. 10:91-4.4(b)1 be rewritten as suggested in proposed new N.J.A.C. 10:91-4.3(n).

RESPONSE: The Commission does not agree with this suggested change for the reason stated in proposed new N.J.A.C. 10:91-4.3(n).

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.4(b)2i does not have anything to do with "skills assessment".

RESPONSE: The Commission does not agree with this comment as skills assessment is a component of the Camp Marcella experience.

COMMENT: The commenter inquired, in proposed new N.J.A.C. 10:91-4.4(c)2i, what is a "Services Diabetologist"?

RESPONSE: The Commission has revised this language to read "Services of a Diabetologist". The phrase after "that is" defines what this service is.

COMMENT: The commenter inquired, in proposed new N.J.A.C. 10:91-4.4(d)1xii, does an audiogram detect impairment in speech?

RESPONSE: The commenter's observation is correct. The Commission has revised the language, eliminating the word speech, to read "A speech/hearing evaluation, that is, an evaluation by a speech pathologist including an audiogram designed to detect impairment in hearing".

COMMENT: The commenter suggested moving the word "both" to after "delineates" in proposed new N.J.A.C. 10:91-4.4(d)3iii.

RESPONSE: The Commission agrees and has revised the language as suggested.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.4(d)5xiv does not make sense.

RESPONSE: The Commission agrees and has revised the language in proposed new N.J.A.C. 10:91-4.4(d)5xiv as follows: "Services of other specialists, that is, non-vision restorative treatment provided by a specialist not identified in (d)5i through xii above." This change serves to clarify the language without changing its intent.

COMMENT: The commenter suggested that the word "type" be deleted in proposed new N.J.A.C. 10:91-4.4(d)10iii, and in proposed new N.J.A.C. 10:91-4.4(d)10iv, the commenter suggested changing "the employer" to "that employer."

RESPONSE: The Commission agrees to the suggested language change and has revised the language.

COMMENT: The commenter suggested changing the language in proposed new N.J.A.C. 10:91-4.4(d)11ii, from "learn the basic tools" to "learn the basic skills."

RESPONSE: The Commission agrees and has revised the language as suggested.

COMMENT: The commenter suggested deleting "that is" in proposed new N.J.A.C. 10:91-4.4(d)15ii.

RESPONSE: The Commission does not agree with this suggested change. The phrase "that is" serves as an introduction to the statement which describes the service.

COMMENT: The commenter suggested that the language in proposed new N.J.A.C. 10:91-4.4(d)15iii be deleted and replaced by "Foreign language interpreter service."

RESPONSE: The Commission disagrees with the suggested language change as it does not believe that the suggested change would clarify the service as it has been defined.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.4(f), "evaluates VR clients to determine their suitability" seems patronizing and disrespectful of clients, whereas the language, in proposed new N.J.A.C. 10:91-4.4(g), uses the phrase, "provides services to".

RESPONSE: The Commission agrees and has replaced "suitability" with "potential" as this language more accurately describes the intent of this subsection.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.4(i)1, "eligible clients" and in proposed new N.J.A.C. 10:91-4.4(i)1ii, "social needs" raises a question, as the commenter is unclear as to what these terms refer.

RESPONSE: The term "eligible" is defined in proposed new N.J.A.C. 10:91-1.12 and serves to clarify the phrase "eligible clients". The term "social needs" does not need to be defined as it simply is being used as an example of possible deprivations a client might experience.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.4(i)1iii, "another immediate crisis", is unclear and inquired if it is meant to be in relation to proposed new N.J.A.C. 10:91-4.4(i)1ii.

RESPONSE: The Commission agrees that this subparagraph is unclear and has revised it by replacing the word "another" with "an". N.J.A.C. 10:91-4.4(i)1iii relates to both N.J.A.C. 10:91-4.4(i)1i and ii as examples of what emergencies may include.

COMMENT: The commenter stated that it is the commenter's understanding that by definition grants are not intended to be repaid, in reference to the language in proposed new N.J.A.C. 10:91-4.4(i)4ii, and suggested that the last sentence be deleted.

RESPONSE: The Commission agrees with the commenter's observation. However, the language was included in the subparagraph so as to emphasize to any and all readers that repayment of grants shall not be required.

COMMENT: The commenter inquired, in proposed new N.J.A.C. 10:91-5.5(f), should "expense of Commission services" be "expense of purchased services" and, if not, then this section is not understood.

RESPONSE: Upon reviewing this subsection, the Commission found that it should have read "expense of Commission purchased services" and therefore the language has been revised.

COMMENT: "The commenter stated that the language is 'pretty strange' in proposed new N.J.A.C. 10:91-5.6(b), because it first refers to 'provider agencies' in the subsection and then refers to one 'provider agency' in the subsection's last sentence."

RESPONSE: The Commission, upon reviewing this subsection, found that it required rewording so that it would be consistent throughout. Therefore, in the first sentence, "clients" has been changed to "A client" and "provider agencies" has been changed to "a provider agency".

COMMENT: The commenter expressed confusion and worry about the language in proposed new N.J.A.C. 10:91-5.7(c) and inquired, does the term "personal information" refer to information about which a client signs a release form, called "confidential information and medical records" in proposed new N.J.A.C. 10:91-5.7(b), and if not, why would a release form not be necessary for this kind of information too, and who gives the Commission the right to dispense personal information

ADOPTIONS

about clients? The commenter also stated that if the language, in proposed new N.J.A.C. 10:91-5.7(c), is being correctly interpreted, personal information is released without release forms because the Commission knows most people would not want personal information given out and, also, the purpose for which it is given might be one that the client does not approve of.

RESPONSE: Upon review of this subsection, the Commission determined that "personal information" should have been worded "client information" and, in proposed new N.J.A.C. 10:91-5.7(c)5, "personal identifying information" should have been worded "client identifying information." The proposed new rule has been amended to reflect these changes. Furthermore, the Commission ensures confidentiality and will not release any client information without the written consent of a client or his/her duly authorized representative as indicated in proposed new N.J.A.C. 10:91-5.7(a) and (e).

COMMENT: The commenter inquired about the language in proposed new N.J.A.C. 10:91-5.7(c)3 as to why would the information be kept from the involved individual?

RESPONSE: Proposed new N.J.A.C. 10:91-5.7(c)3 deals only with releasing client information to organizations, agencies, or individuals who require access to client information in order to conduct audits, evaluations or research with the understanding that confidentiality will be safeguarded. The procedure for clients to gain access to their files is outlined in proposed new N.J.A.C. 10:91-5.7(e) and ensures that client information will be provided to clients through the prescribed means.

COMMENT: The commenter stated that it is the commenter's understanding that clients have a legal right to review their files and, if this is true, suggested that the language, in proposed new N.J.A.C. 10:91-5.7(e), "submit a written request for permission" should be changed since the client would not be requesting permission, but would rather be advising the Commission of his or her desire to review the records. The commenter also inquired, is there any stipulation for how quickly the request should be answered and how soon an appointment should be set up, as there are probably situations when timeliness would be of great importance to a client.

RESPONSE: The Commission agrees as it is the intent of the rule to inform individuals on how to access records; therefore, the language has been revised to state "Access to a client's records will be provided upon the Commission receiving a written request from a client or his or her duly authorized representative." This change more clearly defines this subsection and negates the need for the last sentence since a properly executed access from the client is sufficient to release records. Although there is no specific stipulation on timeliness, N.J.A.C. 10:91-5.7(g) states that a Commission supervisor shall contact the duly authorized representative to schedule a date and time to access a client's record. This contact affords an opportunity to express pertinent needs relative to the request.

COMMENT: The commenter indicated, in proposed new N.J.A.C. 10:91-5.7(f), that the commenter does not understand the point of this rather paranoid-sounding paragraph, and suggested, why not just state that clients should be advised of the Commission's procedure for requesting a review of records, especially since the commenter assumes if access were denied because a client did not follow protocol, that it would be granted as soon as the request was sent to the proper office.

RESPONSE: The Commission believes it is appropriate to set forth in the rule the general conditions for denying access to records. As a request to access records may not come from a client, the language in this subsection covers all situations where access has been requested.

COMMENT: The commenter inquired, in proposed new N.J.A.C. 10:91-5.8(b)1, whether it is supposed to mean that within 30 days an individual must be placed in applicant status, because the way it is written it sounds as if the closing of the case is some sort of consequence for the applicant's doing something wrong, as opposed to the language being a time frame for the caseworker.

RESPONSE: The Commission does not agree with the commenter's interpretation of this paragraph. Furthermore, the information contained herein needs to be read in context and for that reason reference was made to N.J.A.C. 10:91-2.8 and 2.9 in subchapter 2, which deals with eligibility standards for Commission services.

COMMENT: The commenter made the same inquiry, in proposed new N.J.A.C. 10:91-5.8(b)2, as in proposed new N.J.A.C. 10:91-5.8(b)1, and added that saying "the client shall have eligibility determined" makes it sound as if the client has control over this determination.

RESPONSE: The Commission does not agree with the commenter's interpretation as stated in the response to proposed new rule N.J.A.C. 10:91-5.8(b)1 above.

HUMAN SERVICES

COMMENT: The commenter made the same inquiry, in proposed new N.J.A.C. 10:91-5.8(b)3, as in proposed new N.J.A.C. 10:91-5.8(b) and stated that the intent does not come through. The commenter suggested that proposed new N.J.A.C. 10:91-5.8(b)3 should say, "Within 120 days of a client being placed in applicant status for vocational rehabilitation services, the client shall be placed either in extended evaluation status or VR eligibility shall be determined, or the client's case shall be closed."

RESPONSE: The Commission disagrees and believes the rule language as stated adequately expresses the intent of the rule.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-5.9(a), "alternative services" is unclear and inquired, "alternative to what?" The commenter further inquired, is the point that the Commission worker will not be expected to remain in contact with the client during the illness and if so, this should be stated.

RESPONSE: Alternative service is used in order to allow for flexibility, in keeping with the nature of an illness, to arrange for an appropriate other service, as needed. It is not the Commission's intent to say that a caseworker would not maintain contact with a client.

COMMENT: The commenter stated "pendency" is incorrectly used in proposed new N.J.A.C. 10:91-5.9(a)1, and suggested changing "pendency" to "duration."

RESPONSE: The Commission agrees and the rule language has been so revised.

COMMENT: The commenter inquired, in proposed new N.J.A.C. 10:91-5.12(a), does the "critical incident" have to involve a Commission worker, as this is not stated anywhere and by whom is the "incident report" written?

RESPONSE: A "critical incident" does not have to involve a Commission worker. Regardless of whom the "critical incident" involves, the information relative to the incident is reported upon as outlined in proposed new N.J.A.C. 10:91-5.12(b) and (c). The comment as to who writes the incident report is well taken. Subsection (c) which flows from subsection (b) is meant to imply that the report is to be written by the Commission staff person who first learns of the incident. However, for clarity the second sentence of subsection (b) is revised to include "which is to be followed by a written report".

COMMENT: The commenter expressed a real problem with the use of the word "their" in proposed new N.J.A.C. 10:91-5.1(f) and N.J.A.C. 10:91-6.1.

RESPONSE: The Commission disagrees as previously stated in response to the comment relative to proposed new N.J.A.C. 10:91-1.12.

COMMENT: The commenter suggested that the language, in proposed new N.J.A.C. 10:91-6.2(a)1 and 2, for the purpose of clarity, be changed to "1. A review of the papers in a client's file, or 2. An in-person review in which all relevant parties participate."

RESPONSE: The Commission agrees that greater clarity is achieved and has revised the language as suggested.

COMMENT: The commenter suggested that, in the first sentence in proposed new N.J.A.C. 10:91-6.2(e), change the word "it" to "the proceeding" and, in the second sentence, add the word "proceeding" following the appeal investigation.

RESPONSE: The Commission agrees with the suggestion to change the word "it" so as to clarify what is being referred to in the first sentence. For consistency "it" has been changed to "the investigation". The Commission does not agree that adding the word "proceeding" to the second sentence serves to clarify or enhance the sentence.

COMMENT: The commenter suggested that the language, in proposed new N.J.A.C. 10:91-6.2(f), be changed by deleting the word "investigation". The commenter asked if the details of these proceedings are governed by law and if so, suggested changing "will be permitted" to "has a right to." The commenter also suggested that the term "investigation" in proposed new N.J.A.C. 10:91-6.2(f)4 be changed to "proceeding."

RESPONSE: The Commission disagrees with the suggested wording change. The administrative appeal is an investigative process which a client can initiate if he or she is not satisfied with the provision of or denial of service, after all informal means have been attempted. Although not mandated by law, the Commission makes this internal investigative process available to clients. If a client disagrees with the recommendations made as a result of the administrative appeal investigation and the situation is deemed by the Commission's Executive Director to be a contested case, the case is referred for an administrative hearing, which is a formal judicial proceeding held by the Office of Administrative Law before an Administrative Law Judge.

COMMENT: The commenter suggested that the language, in proposed new N.J.A.C. 10:91-6.2(h), first sentence, be changed from "county where the client is domiciled." to "county of the client's domicile."

RESPONSE: The Commission disagrees as it deems the wording to be accurate.

COMMENT: The commenter inquired, in proposed new N.J.A.C. 10:91-6.2(i), whether the first phrase "for the purpose of this section and as needed," should appear earlier in the document assuming all correspondence from the Commission would be in the client's preferred medium? The commenter also suggested that "accessible to a client" be changed to "accessible to the client."

RESPONSE: The Commission disagrees with the suggestion to move the phrase "for the purpose of this section and as needed," as it believes its placement is pertinent to the information preceding it. The Commission agrees that "accessible to a client" be changed to "accessible to the client."

COMMENT: The commenter suggested that, for the purpose of clarity, the language in proposed new N.J.A.C. 10:91-6.2(k) be changed to: "In the case of an allied or education client, within five days of an appeal investigation report being submitted to the Executive Director, the appeal investigator shall forward a registered letter to the client or his or her parent or guardian advising that".

RESPONSE: The Commission does not agree and believes that the rewording of this statement will not increase clarity.

COMMENT: The commenter inquired as to the use of the word "spectacles" in proposed new N.J.A.C. 10:91-7.1(a)4, as this item is called eyeglasses elsewhere in the document.

RESPONSE: Although the Commission considers the words spectacles and eyeglasses to be interchangeable it has revised the rule by changing spectacles to eyeglasses where needed so as to be consistent.

COMMENT: The commenter suggested that "and prior to certifying an authorization/invoice for payment of these services," be deleted in proposed new N.J.A.C. 10:91-7.1(b) and replaced by "before the caseworker certifies an authorization/invoice for payment of these services,"

RESPONSE: The Commission agrees as this wording more clearly states the caseworker's responsibility in the processing of authorization/invoices.

COMMENT: The commenter suggested that the language, in proposed new N.J.A.C. 10:91-7.1(e), should be "Changes in" rather than "Changes to".

RESPONSE: The Commission agrees and has revised the language as suggested.

COMMENT: The commenter suggested that the closing of the sentence, in proposed new N.J.A.C. 10:91-7.1(f), "based on a written request from a caseworker," does not make sense in this context.

RESPONSE: The Commission agrees and has deleted this closing because it is not a requirement that only a caseworker would make such a request.

COMMENT: The commenter suggested that, for consistency, the language in proposed new N.J.A.C. 10:91-7.1(h) should include the word examination where appropriate in reference to "general medical includes" and "audiogram only".

RESPONSE: The Commission agrees and has revised the language as suggested.

COMMENT: The commenter inquired as to the correct spelling and/or usage of the words "hereditary," "prisms," "orthoptic" and also inquired if the statement "punctual occlusion" makes sense in proposed new N.J.A.C. 10:91-7.1(h).

RESPONSE: With the exception of the incorrect spelling of the word "prisms," all the other words are correctly spelled, properly used and have meaning. The commenter's inquiry concerning "punctual occlusion" is correct, in that due to a typographical error, "punctual occlusion" and its corresponding fee were not included in the rule. This oversight will be corrected. Therefore, the rule will now contain "punctual occlusion" and a fee, as well as "punctual occlusion, other eye" and a fee.

COMMENT: The commenter inquired concerning the Corning CPF UV lens as described in proposed new N.J.A.C. 10:91-7.1(h), and expressed the hope that the quality of the suggested use of less expensive lenses compares well with the Corning lenses.

RESPONSE: The Commission makes use of consultants, experienced in their respective fields, for the purpose of making sure that any item recommended for use by its clients, is a quality item.

COMMENT: The commenter inquired about the language in proposed new N.J.A.C. 10:91-7.1(h), "A copy of the page of the applicable catalog which stipulates the cost of the low vision aid shall be submitted by the low vision doctor" and asked to whom is the page to be submitted by the doctor.

RESPONSE: At the time this rule language was proposed, the Commission did not have the low vision aid catalogs available to it. As the Commission is now in possession of these catalogs, the language "A copy of the page of the applicable catalog which stipulates the cost of the low vision aid shall be submitted by the low vision doctor" is to be deleted from the rule.

The following comments were received from an eye doctor:

COMMENT: The commenter suggested that, in the language in proposed new N.J.A.C. 10:91-7.1(h) dealing with low-vision exams for clients, add to the lower \$100.00 fee that it is payable only to those doctors that provided the exam less than one year ago, and if the doctor has not evaluated the patient previously, he or she should be reimbursed the higher \$125.00 fee no matter when the patient was last examined, as the low vision panel member still has to provide the same length of service to either patient if he did not examine the patient previously.

RESPONSE: The Commission disagrees. An eye examination which is less than one year old should provide the needed essential information to the low vision doctor.

COMMENT: The commenter stated that the \$40.00 fee each for orthoptic and pleoptic evaluations, in proposed new N.J.A.C. 10:91-7.1(h), is grossly inadequate as these evaluations may take anywhere from one to over two hours to complete, which is over and above the general vision examination.

RESPONSE: Based on the Commission's analysis, the \$40.00 fee payable for each of these evaluations should be sufficient to meet the providing doctor's costs. However, based on this comment, the Commission will undertake an investigation into these fees and if determined to be inadequate, the fees payable will be revised by amending this rule.

COMMENT: The commenter stated that the fee of \$20.00 each for the orthoptic and pleoptic therapy session, in proposed new N.J.A.C. 10:91-7.1(h), is insufficient reimbursement for the time and personal care rendered to patients.

RESPONSE: Based on the Commission's analysis, the \$20.00 fee payable for each of these therapy sessions should be sufficient to meet the providing doctor's costs. However, based on this comment, the Commission will undertake an investigation into these fees and if determined to be inadequate, the fees payable will be revised by amending this rule.

COMMENT: The commenter questioned the fees for the custom fitted ocular prosthesis, in proposed new N.J.A.C. 10:91-7.1(h), which lists these fees as \$335.00 or \$390.00 depending on the manufacturing techniques used. The commenter further stated that the Medicare reimbursement is over double the Commission's fees and that the commenter's lab fee alone for a custom-designed, hand-painted prosthesis is many times over \$225.00. The commenter also indicated that several hours are spent in the initial evaluation and subsequent follow-up of patients.

RESPONSE: The Commission believes that the fees covering ocular prosthesis, as published in this rule, provide payment sufficient enough to cover the providing doctor's costs. The Commission may execute additional payments to the doctor providing the ocular prosthesis. For example, the Commission could pay \$110.00 for an orbital impression and \$55.00 for a temporary prosthesis.

The following comments were received from the Department of the Public Advocate:

COMMENT: The commenter stated that the proposed new N.J.A.C. 10:91-1.1(d), which refers to vending stands operated by the Commission, failed to note the specific statute or Act which authorizes these programs, as statute identification provides clients with a reference to the specific rules which govern such programs.

RESPONSE: The Commission agrees and has included language to reference N.J.A.C. 10:97, which contains this information as well as the rules governing the Commission's vending facility program.

COMMENT: The commenter stated that proposed new N.J.A.C. 10:91-1.2(a) is misleading as one is likely to incorrectly assume that N.J.S.A. 30:6-1 was repealed. The Public Advocate recommended a more concise statement which says clearly that the New Jersey Commission for the Blind and Visually Impaired is mandated by N.J.S.A. 30:6-1 to provide all means which it deems feasible for ameliorating the condition of the blind and visually impaired.

RESPONSE: The Commission agrees that the tense used in this subsection might cause a reader to assume that N.J.S.A. 30:6-1 was repealed. Therefore, the language has been revised to read, "The New Jersey Commission for the Blind and Visually Impaired is mandated by a 1910 State law, N.J.S.A. 30:6-1, which states it, "shall provide all means which it deems feasible for ameliorating the condition of the blind and visually impaired."

COMMENT: The commenter stated that proposed new N.J.A.C. 10:91-1.3 not only fails to establish clear standards for eligibility for services, but also is poorly written. For instance, the second sentence in proposed new N.J.A.C. 10:91-1.3(a) erroneously states that it is the developmentally disabled student who provides technical assistance to teachers and parents. The commenter suggested that this sentence be rewritten to reflect that it is the specialist who provides technical assistance. The commenter suggested that this section also include a reference to the Education of All Handicapped Children Act of 1975 (EHA) as amended, 20 U.S.C. §1400 et seq. The commenter indicated that the provision of educational services by the Commission is authorized under the EHA and must meet EHA standards.

RESPONSE: The Commission agrees that the second sentence in N.J.A.C. 10:91-1.3(a) will be clarified if written to read "or the services of specialists who provide technical assistance to the teachers and parents of visually impaired developmentally disabled students." The matter of eligibility standards is dealt with in proposed new N.J.A.C. 10:91-2.2. The issue of the Commission's adherence to EHA standards is discussed within proposed new N.J.A.C. 10:91-1.7. It should be noted that the Commission's services are not specifically authorized under EHA. The Commission is a provider of specific special education services and is not a local district board of education. The responsibility of ensuring that a child, who is in receipt of Commission services, receives all rights and benefits accorded to him or her under EHA rests with the child's school district and not with the Commission.

COMMENT: The commenter stated that for clarity and to better inform clients of their precise entitlements, it is suggested that proposed new N.J.A.C. 10:91-1.4 reference the pertinent statutes and regulations which govern the provision of independent living services. The commenter indicated that this section is very difficult to read and would be improved if it plainly stated that the major objectives of the Commission's independent living services are to provide daily living services to permit blind and visually impaired persons to live independently. The commenter also suggested that the types of services and a description of services should then be listed.

RESPONSE: Specific entitlements have not been included in proposed new N.J.A.C. 10:91-1.4 because there are no pertinent statutes and regulations. The Commission does not agree that the language in this section is difficult to read and retains the language as written.

COMMENT: The commenter stated that proposed new N.J.A.C. 10:91-1.5 does not specifically reflect the means by which allied prevention services can be accessed and that it could be expanded to indicate how and under what circumstances these services may be accessed. The commenter suggested, for clarity, that the six programs should be listed in paragraph headings and a description of the services provided under each heading.

RESPONSE: Proposed new N.J.A.C. 10:91-1.5(b), upon adoption, will be cross-referenced to N.J.A.C. 10:91-4.1 which discusses accessing and services available through the Commission. For the purpose of this section of the proposed new rules, the Commission believes that with the inclusion of the cross-referencing, the rule language as developed is clear and is not in need of reformatting.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-1.6(a), regarding the primary goal of programs included within vocational rehabilitation (VR) services, is ambiguous and that the specific language of the Federal regulations in regard to vocational rehabilitation, if included, would provide consistency and clarity as to the standards for rehabilitation. The commenter also stated that the language in the last sentence in regard to employment, specifically, "maintaining and managing one's home," creates an unnecessary ambiguity and that the word, homemaking, is the term defined in the proposed new rules.

RESPONSE: The Commission disagrees. Proposed new N.J.A.C. 10:91-1.6(a) has been developed to provide the reader with an overview of the purpose and scope of vocational rehabilitation services in language that is easily understood and not ambiguous. However, the Commission agrees that the term homemaking should be included in the last sentence and will include the term as suggested by the commenter.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-1.6(b) is incomplete and is likely to mislead a client and others into believing his or her entitlement is limited only to those services enumerated. The commenter suggested that, in order to prevent confusion, this provision be revised to reflect that upon a determination of eligibility for VR services, clients are entitled to all such services necessary to assist the client in obtaining his or her vocational objective as provided for in the federal vocational rehabilitation regulations.

RESPONSE: The Commission agrees and has revised the introductory language in proposed new N.J.A.C. 10:91-1.6(b) and replaced it with "Vocational rehabilitation services may be any goods and services necessary to assist an eligible individual in obtaining his or her vocational goal, including, but not limited to, the following".

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-1.7(e) fails to set forth the location and means to access the actual agreement between the Commission and the Division of Vocational Rehabilitation Services (DVRS), and suggested that, if included, clients will be more properly informed.

RESPONSE: The Commission agrees and has added as the third sentence in proposed new N.J.A.C. 10:91-1.7(e) the following: "A copy of the agreement may be obtained by contacting the Commission's toll free number (1-800-962-1233)."

COMMENT: The commenter stated that the reference in proposed new N.J.A.C. 10:91-1.8(a) to the register of all the blind should be amended to indicate that the Commission shall prepare and maintain a register of all blind and visually impaired persons in the State.

RESPONSE: The Commission agrees and has revised the language in this subsection to state, "In accordance with N.J.S.A. 30:6-1, the Commission shall prepare and maintain a register of all blind and visually impaired persons in the State."

COMMENT: The commenter stated that the first sentence of proposed new N.J.A.C. 10:91-1.8(b) fails to make reference to visually impaired persons as well as the blind.

RESPONSE: The Commission disagrees as the first sentence in this subsection is taken directly from N.J.S.A. 30:6-15 and, therefore, is stated correctly.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-1.10(b) regarding the client service representative's responsibilities in regard to suspected discrimination is incorrect. The commenter suggested that a more accurate statement of the client service representative's responsibilities and the services available would be that the client service representative is a client advocate who is responsible for informing and directing blind and visually impaired individuals to the Client Assistance Program located within the New Jersey Department of the Public Advocate. The commenter stated further that the Client Assistance Program is responsible for providing assistance by way of information and advice to all clients and client applicants about available programs and, upon request of such client or client applicants, to assist such clients or applicants in their relationships with projects, programs and facilities providing services to them including assistance in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals.

RESPONSE: The Commission disagrees. The commenter assumes a more narrow role for the Commission's client service representative than does the Commission. Therefore, the rule language accurately reflects the client services representative's responsibilities.

COMMENT: The commenter suggested the following changes to the definitions section in proposed new N.J.A.C. 10:91-1.12:

1. The definition of "active status" is misleading as the appropriateness of services is not determinative of one's active status. "Active status" simply means that a client has been found eligible to receive Commission services; therefore, the language "all appropriate" is misleading and serves no legitimate purpose.

2. Because many visually impaired individuals will not have the capacity to complete a written application, the commenter urges that the definition of the term "applicant" be amended and the language which states "completed the agency's application for service form" should be modified to indicate that a visually impaired individual only has to complete the application process, so as to recognize that a client may not personally be expected to fill out a written form.

3. The New Jersey Department of Health has set forth specific guidelines for defining what is a "communicable disease." Therefore, if the term "communicable disease" were to be defined in accordance with those guidelines, rather than as presently set forth, confusing ambiguity would be eliminated.

4. The definition of "visual impairment" is also ambiguous because "visual impairment" is defined in proposed new N.J.A.C. 10:91-2.1.

5. Because post-employment services are often crucial to a blind or visually impaired individual maintaining his or her independence and viability in the workplace, post-employment services should be set forth and specifically defined.

RESPONSE: The commenter's suggestions are responded to in the order presented by the commenter as follows:

1. The Commission agrees and has deleted "all appropriate" as this deletion does not change the intent of the definition.

2. The Commission disagrees. This comment assumes a stereotype which is not correct. The definition's use of the word "completed" does not assume that the applicant filled in the form.

3. The Commission previously responded to another commenter's suggestion that, as the phrase "communicable disease" is commonly understood, it does not need to be defined. Therefore, the Commission has deleted this phrase.

4. This is the second comment the Commission has received on the definition of the phrase "visual impairment" and the Commission has decided for reasons of clarity to delete this definition and to define the phrase by using the statutory language found in N.J.S.A. 30:6-1.1c, which states: "visual impairment" means having a condition in which a person has a corrected visual acuity not exceeding 20/70, but not less than 20/200, in the person's better eye, or in which the peripheral field of the person's vision has contracted so that the diameter of the visual field subtends an angle no greater than 40 degrees but no less than 20 degrees.

5. Post employment is a vocational rehabilitation service that will be dealt with when the chapter dealing with vocational rehabilitation services is written.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-2.3(a) and (b) is vague regarding eligibility being defined in terms of a job placement problem. The commenter suggested that eligibility for services can be defined in terms of the Federal VR statute and regulations which provide that an individual is eligible for VR services if such individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

RESPONSE: The Commission disagrees. The Commission, as the vocational rehabilitation agency for the blind and visually impaired, has the responsibility to clearly state the visual criteria for eligibility. The Federal vocational rehabilitation statutes and regulations referenced by the commenter, if used, would mislead people into believing the Commission serves a larger group of people than it does serve.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-2.4(b) is vague regarding who is responsible for the payment of eye examinations. The commenter suggested that payment of eye examinations ought to be consistent with other payment practices of the Commission for such services and the standard for such payment should be specifically included in the rules. The commenter also suggested that, in light of the mandate and purpose of the Commission, serious consideration might be given by the Commission to the payment of any and all necessary eye reports.

RESPONSE: The Commission does not believe the language is vague as the subject of the proposed new rule is the requesting of an eye report and not the payment of eye examinations.

COMMENT: The commenter stated that the Rehabilitation Act of 1973, as amended, and as implemented by 34 CFR Parts 361 et seq., states, at Part 361.31(2), that "The State Plan must assure that no residence requirement, durational or other, is imposed which excludes from services any individual who is present in the state." The commenter suggested that the language in proposed new N.J.A.C. 10:91-2.5, which sets forth residency requirements as a condition for certain services, is, therefore, clearly in conflict with the Federal regulations, and needs to indicate that any individual who is present in the State is eligible for services provided that individual meets the eligibility requirements set forth in 34 CFR Part 361.31(2).

RESPONSE: 34 CFR Parts 361 et seq. do not limit the Commission's authority to establish residency standards for its educational, independent living and prevention services. Consequently, the commenter's concern is applicable only to the Commission's vocational rehabilitation program. Therefore, the Commission has reworded proposed new N.J.A.C. 10:91-2.5(b)3, to bring the rule language into compliance with the Federal regulations by deleting "if they are available to complete the full vocational rehabilitation program including placement in employment".

COMMENT: The commenter suggested that the language in proposed new N.J.A.C. 10:91-2.6(a) should also reflect that the provision of educational services shall be consistent with the requirements of the Education of All Handicapped Children Act, 20 U.S.C. §1400 et seq., mandating that handicapped children are entitled to a free, appropriate education in the least restrictive environment.

RESPONSE: The Commission disagrees. The Commission provides educational services under the auspices of an Individual Educational Plan

developed by the individual child's local school district Child Study Team. The Commission has no authority to mandate the educational placement of a child.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-2.7(i), which sets forth the eligibility criteria for VR services, is confusing, and reiterated the language suggested under proposed new N.J.A.C. 10:91-2.3(a) and (b) and the adoption of the definition contained therein is urged.

RESPONSE: The Commission agrees and has deleted the proposed new language and revised new N.J.A.C. 10:91-2.7(i) to state: "In order for an individual to be eligible for vocational rehabilitation services, there shall exist a certification that: 1. The individual has a mental or physical disability which for that individual constitutes or results in a substantial handicap to employment; and 2. Vocational rehabilitation services may be reasonably expected to benefit the individual in terms of employability." This deletion does not change the intent of the proposed new rule but rather states the rule language in terms of the Federal vocational rehabilitation statute and regulations.

COMMENT: The commenter stated that the term "too much remaining vision" to define ineligibility for VR services, in proposed new N.J.A.C. 10:91-2.9(a)1, is ambiguous and should be deleted. The commenter suggested that ineligibility based upon visual acuity can more accurately be defined in terms of the specific vision standards set forth in the proposed rules and, rather than reciting examples of ineligibility, the commenter urged that ineligibility criteria be eliminated, in proposed new N.J.A.C. 10:91-2.9, and replaced with a simple statement to indicate that an individual shall be ineligible for services if that individual does not meet the criteria for eligibility provided in N.J.A.C. 10:91-2.7(i).

RESPONSE: The Commission agrees to delete "too much remaining vision" as this phrase is not needed to clarify the proposed new language. The Commission does not agree that the ineligibility criteria should be eliminated because proposed new N.J.A.C. 10:91-2.9 does not delineate criteria for ineligibility; rather, it enumerates reasons why a person might be found to be ineligible for services.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-3.1 is silent about the extent of a client's financial participation when receiving particular services, and suggested that the method of calculating a client's participation should be specifically stated. The commenter also stated that the language in proposed new N.J.A.C. 10:91-3.1(c) incorrectly infers that guardians are financially responsible for wards.

RESPONSE: The client financial participation amount is presented in the Financial Participation Worksheet, Column G, in proposed new N.J.A.C. 10:91-3.1(a), which also contains the method for calculating the amount of a client's participation. The Advocate's statement concerning the responsibility of guardians is correct and the reference has been deleted from the rule.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.1 is grammatically incorrect and also suggested that when referring to the services which are available, the services should be listed.

RESPONSE: The Commission disagrees as it believes the rule structure and format are appropriate and properly detail the scope of its responsibilities.

COMMENT: The commenter strongly suggested that the language in proposed new N.J.A.C. 10:91-4.3(a) relating to the type of services available to clients upon a determination of eligibility be deleted and rewritten to reflect that once a determination of eligibility has been made by the Commission, the client shall receive services in accordance with the Federal Rehabilitation Act and the Education of All Handicapped Children Act, as determined appropriate to a client's individual needs, including, but not limited to, the services specified in (b) through (g) below.

RESPONSE: The Commission disagrees. The Commission believes that simply referencing the Rehabilitation Act and/or the Education of All Handicapped Children Act (EHA) does not fulfill its responsibility to inform clients of what services are available. The commenter incorrectly interprets the relationship of the EHA to the provision of Commission programs. Since the Commission is not a district board of education, it is not mandated to provide the full scope of services included within the EHA. In addition, the Rehabilitation Act only has applicability to the Commission's vocational rehabilitation services.

COMMENT: The commenter suggested that the language in proposed new N.J.A.C. 10:91-4.3(g) should be clarified by indicating that individuals with disabilities, in addition to visual impairments, shall receive all appropriate services in accordance with the Federal regulations.

RESPONSE: Proposed new N.J.A.C. 10:91-4.3(g) details the non-vision related restorative treatment services which are available to all eligible clients. The Federal regulations cited by the commenter apply only to that portion of those clients who are eligible for vocational rehabilitation services. In proposed new N.J.A.C. 10:91-4.4(d)5, the Commission details the additional services which are available to eligible vocational rehabilitation clients.

COMMENT: The commenter stated that the introductory paragraph of proposed new N.J.A.C. 10:91-4.3(k), "Related costs training as follows"; is unclear and grammatically incorrect, and suggested that it be redrafted to state "Related training costs as follows".

RESPONSE: The Commission agrees and has reworded this phrase to state "Payment for certain training related costs which ensure the delivery of training services as follows".

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.3(p) is confusing and for clarity there is no need to divide the first three sentences in subheadings and suggested that the following be considered:

The Commission for the Blind and Visually Impaired in coordination with other New Jersey state agencies, provides certain services to those of its clients who are legally blind. Eligible Commission clients may request the following special services:

- i. Division of Motor Vehicles identification card;
- ii. Fishing license;
- iii. Income Tax certification letter;
- iv. Transit reduced fare program;
- v. Guide transportation pass;
- vi. Theater identification card;
- vii. Park, forest, or reservation (free) admission pass; and
- viii. Handicapped parking placard.

Persons who are legally blind, but whose best corrected visual acuity is 20/50-1 shall be eligible for issuance of a State of New Jersey Division of Motor Vehicles Identification card. If eligible for services, such persons are eligible for services enumerated above in paragraph 1."

RESPONSE: The Commission disagrees as it does not believe the proposed language is confusing or unclear. However, the Commission notes that it did not include the phrase "less than" in proposed new N.J.A.C. 10:91-4.3(p)li. this oversight has been corrected so as to accurately reflect who is eligible for this particular service. The phrase has been placed between "acuity is" and "20/50-1 shall be."

COMMENTER: The commenter suggested that the language in proposed new N.J.A.C. 10:91-4.4(a) should be deleted and redrafted consistent with the change suggested under N.J.A.C. 10:91-4.3(a).

RESPONSE: The Commission disagrees. As stated by the Commission in its response to the suggestion dealing with proposed new N.J.A.C. 10:91-4.3(a), the Education of All Handicapped Children Act (EHA) does not prohibit the Commission from choosing to provide only a selected number of educational services. Also there are no applicable Federal regulations which prohibit the Commission from specifying the allied prevention services available. Furthermore, additional services, in accordance with the Federal Rehabilitation Act, are detailed in proposed new N.J.A.C. 10:91-4.4(d).

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-4.4(i) which describes the Client Assistance Fund is silent as to the circumstances under which a client is eligible to receive client assistance funds in the form of a grant and suggested that the criteria for such a grant should be set forth.

RESPONSE: The Commission disagrees. The Client Assistance Fund allocates monies in the form of a loan or grant in accordance with criteria set forth in proposed new N.J.A.C. 10:91-4.4(i)1 and 2.

COMMENT: The commenter strongly suggested, in proposed new N.J.A.C. 10:91-5.4, the inclusion of a requirement that the Individual Written Rehabilitation Plan (IWRP) contain language informing the client of the Client Assistance Program.

RESPONSE: In 1988, the Commission redeveloped the Individual Written Rehabilitation Plan (IWRP). The revisions that were made were in response to directives received from the Federal Rehabilitation Services Administration (RSA) which defines the content of all IWRP's as they relate to state agency vocational rehabilitation programs. The IWRP's, therefore, were revised so as to be in compliance with federal regulations. In keeping with these directives, the Commission's client IWRP contains information advising clients about the Client Assistance Program (CAP) and how CAP may be contacted.

COMMENT: The commenter stated the requirement in proposed new N.J.A.C. 10:91-5.7(b) that a client specify the purpose for which the release of records is required is overly intrusive and serves no legitimate purpose.

RESPONSE: The Commission disagrees. The Department of Human Services Administrative Order 2:01 stipulates that the disclosure or release of information may occur with the client's or their duly authorized representative's written consent and is necessary for purposes directly connected with the administration of programs. Requesting the purpose for which the release of records is required assures that the Commission is in compliance with this administrative order.

COMMENT: The commenter suggested, in proposed new N.J.A.C. 10:91-5.7(e) that in order to prevent any difficulties in regard to authorization to access records, the language should say that access to records will be provided upon a written request by the client's duly authorized representative. The commenter also suggested the deletion of the language requiring the submission of "a written stipulation that he or she represents the Commission client and a release form", and stated that a properly executed access from the client should be sufficient to release records.

RESPONSE: The Commission agrees and has revised the language in the first sentence to state, "Access to a client's records will be provided upon the Commission receiving a written request from a client or his or her duly authorized representative." This language revision more clearly defines this subsection and eliminates the need for the second sentence, which has been deleted.

COMMENT: The commenter suggested that in order to adequately protect the client's rights, proposed new N.J.A.C. 10:91-5.9(a) needs a requirement that the supervisor, upon learning of a client's communicable disease, shall consult with the medical director as to what, if any, necessary precautions should be implemented.

RESPONSE: The Commission agrees and has revised proposed new N.J.A.C. 10:91-5.9(a) to state, "Upon learning of a client's communicable disease, a supervisor shall consult with the Commission's Administrative Medical Consultant as to what, if any, necessary precautions should be implemented and shall arrange for alternative services to a client where appropriate."

COMMENT: The commenter stated that the New Jersey Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled (DADD), is mandated to protect and advocate for developmentally disabled persons residing in the State of New Jersey pursuant to the Federal Developmental Disabilities and Bill of Rights Act, 42 U.S.C. §6000 et seq. and N.J.S.A. 52:27E-4.4. Therefore, the commenter suggested that proposed new N.J.A.C. 10:91-5.12(d) also require that all serious incidents of abuse and neglect involving developmentally disabled persons be reported to DADD.

RESPONSE: The Commission disagrees. In the absence of a mandate that the Commission report critical incidents to the DADD, the Commission does not believe that the suggested change in language is needed. However, the Commission does suggest that the Public Advocate discuss the issue with the Commissioner of the Department of Human Services as the Commission is required to report all serious incidents to the Commissioner.

COMMENT: The commenter suggested that the language in proposed new N.J.A.C. 10:91-6.1 should state that clients will be notified in writing of their right to contact the Client Assistance Program.

RESPONSE: The Commission disagrees. In the absence of a specific mandate to do this, the Commission does not believe that proposed new N.J.A.C. 10:91-6.1 should contain this statement.

COMMENT: The commenter stated that the language in proposed new N.J.A.C. 10:91-6.2 is inadequate and fails to give notice of the full legal requirements for the appeal procedure and to state that all appeal procedures shall conform to the standards set forth in the Rehabilitation Act of 1973, as amended, and the Education of All Handicapped Children Act of 1975, as amended.

RESPONSE: The Commission disagrees. The Education of All Handicapped Children Act of 1975 (EHA), as amended, does not apply for the reasons previously stated by the Commission. The Rehabilitation Act of 1973, as amended, only applies to vocational rehabilitation service clients. Proposed new N.J.A.C. 10:91-6.2 is constructed so as to conform with the appeal provisions of this Act.

COMMENT: The commenter stated that the toll-free telephone number for the Department of the Public Advocate and CAP as listed, in proposed new N.J.A.C. 10:91-6.2(h), is incorrect, and the correct number is 1-800-922-7233.

RESPONSE: The toll-free telephone number has been corrected.

COMMENT: The commenter stated that pursuant to the Rehabilitation Act of 1973, as amended and the EHA, medical fees should never preclude receipt of services, yet, proposed new N.J.A.C. 10:91-7.1 fails to include a provision stating that the proposed guidelines shall be used only as a guide and not as a bar to services.

RESPONSE: The Commission disagrees with the Public Advocate's premise that the Commission's medical fees, as detailed in proposed new N.J.A.C. 10:91-7.1, might be construed to be a bar to services. The Commission does not view its medical fees as a guide or as guidelines but rather they represent the Commission's published schedule of fees payable for the services listed therein. Furthermore, it should be noted that proposed new N.J.A.C. 10:91-7.1(g) indicates that exceptions to the published medical fees will be granted based upon a written request from a Commission caseworker where the fee payable is in question. Given this ability to grant exceptions the Commission does not believe the statement suggested by the Public Advocate to be necessary. In addition, while the EHA does not prohibit the Commission from establishing medical fees, the Federal regulations governing the vocational rehabilitation program stipulates that the Commission must establish and maintain written policies to govern rates of payment for available medical services.

Summary of Changes Subsequent to Proposal:

At N.J.A.C. 10:91-1.12, 3.1(a) and (h), 4.2(d), 4.3(g), (n)3, and (p)2vii, and 4.4(c)iii and 4iv, (d)5xiii and 12i, proposal printing errors are corrected.

At N.J.A.C. 10:91-2.5(d)3 and 3.2(a), the term "Equalization services" is replaced with "Other training and job placement related services". This change is made as a result of internal Commission review to clarify the text.

At N.J.A.C. 10:91-2.5, the following subsection has been added: "(e) A regional, district or Statewide office manager or the Chief of Field Operations shall have the authority to grant exceptions to the Commission's residency requirements in situations where a client will suffer irreversible damage to their visual system if services are not provided within 30 days of initial contact by the Commission. The requests for and granting of exceptions shall be dealt with on a case-by-case basis." This addition is made as a result of internal Commission review to more accurately define the intent and need for this section of the rule which hopefully will prevent visual damage that could be irreversible, and which also will result in more far reaching benefits to the public. Exceptions are reviewed on a case-by-case basis because under normal circumstances if the residency requirement is not met individuals would be excluded from a service necessary to prevent potentially damaging visual loss.

At N.J.A.C. 10:91-2.9(c), the phrase "full participation" is replaced by "consultation" so that the language in this subsection is consistent.

At N.J.A.C. 10:91-3.3(a)8, the text failed to include "if the low vision examiner has recommended low vision aids". This inclusion serves to explain under what circumstances the "up to three follow-up visits" would not be subject to the needs test standard. This change has also been added to N.J.A.C. 10:91-3.3(b)3, so as to further clarify the application of the needs test standard as it applies to the follow-up visits.

At N.J.A.C. 10:91-7.1(h), the Commission's medical fee schedule was updated based on a review of the fee schedule by the Commission's Administrative Medical Consultant who found that an increase in fees for these procedures was appropriate in keeping with current fees paid by other health care program providers. Furthermore additional public comment was not deemed necessary because the fee increases are considered fair and reasonable, and to the benefit of the public served by the Commission. Changes have been made as follows:

1. Under Cornea: Keratoplasty (corneal transplant), the fee is increased to "\$915.00";
2. Under X-ray, "Magnetic Resonance Imaging (MRI) of skull including interpretation \$500.00" has been included;
3. Following the "Soft contact lenses" fees, "gas permeable lens" has been reformatting to state "Gas permeable lenses (shall be initially approved by Administrative Medical Consultant):" and the word "(each)" has been added to "Gas permeable lens" for which the fee is \$200.00;
4. Following this "Therapeutic lenses (shall be initially approved by Administrative Medical Consultant):" has been added and "Soft contact bandage lens" and "Collagen shield \$75.00" has been added with "also called therapeutic lens" being deleted from "Bandage lens"; and
5. Under Non-spectacle low vision aids: "House of vision" which was a catalog used by the Commission has been deleted and changed to Coburn Optical Company.

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 91

ORGANIZATION AND GENERAL POLICY PROVISIONS OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

SUBCHAPTER 1. PURPOSE AND SCOPE OF COMMISSION SERVICES

10:91-1.1 Administration of the Commission

(a) The Commission for the Blind and Visually Impaired (the Commission) is an integral part of the Department of Human Services.

(b) The Commission's entire service delivery system is vested in two Statewide, three regional, one district and two satellite offices. The two Statewide offices offer Statewide vocational and specialized services. They are coordinated out of the Commission's Central Office in Newark. Educational, independent living, prevention and vocational rehabilitation services are provided through the regional, district and satellite offices. The three regions are: Northern, which includes Bergen, Hudson, Morris, Passaic, Sussex and Warren Counties; Central, which includes Essex, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Union Counties; and Southern, which includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem Counties.

(c) The Commission is coordinated by a Central Office, located in Newark, that includes staff headed by an Executive Director appointed by the Commissioner of Human Services. It provides support functions to the Statewide, regional, district and satellite offices. Some of these functions are policy and procedure development and publication, management and fiscal services, contract and information systems services, monitoring and staff training. Policy and procedural manuals, as they are prepared, shall be available to the public.

(d) The Commission licenses and supervises vending stands at various locations throughout the State, the majority of which are in governmental buildings ***(see: N.J.A.C. 10:97)***.

(e) The Commission operates:

1. The Joseph Kohn Rehabilitation Center;
2. The George F. Meyer Instructional Resource Center;
3. The Technical Aids Center; and
4. Camp Marcella, a summer camp for blind and visually impaired children.

10:91-1.2 General purpose and scope of services

(a) The New Jersey Commission for the Blind and Visually Impaired ***[was charged]*** ***is mandated*** by a 1910 State law, N.J.S.A. 30:6-1, which ***[stated]*** ***states*** it, "shall provide all means which it deems feasible for ameliorating the condition of the blind ***and visually impaired***."

(b) The Commission defines its mission as promoting eye health and assisting individuals with vision problems to reach their potential by whatever means possible.

(c) The Commission recognizes two major thrusts in carrying out this mission, which are:

1. Working with the community in regard to education and attitudes concerning visual impairment; and
2. Providing client services to persons with vision problems.

(d) For all of its clients, the Commission seeks to provide or insure access to those services which will enable them to obtain their fullest measure of self-reliance, to improve their quality of life, and to be treated with dignity and worth as individuals and fully integrated members of their community.

(e) To achieve this mission, the Commission has established the following goals for itself and for the New Jersey community serving the blind and visually impaired:

1. Prevention Goal: Because 50 percent of all blindness and loss of vision can be prevented or minimized, the Commission shall use its resources to publicize, maximize, coordinate, and increase efforts to conduct programs of education and detection to prevent blindness,

ADOPTIONS

to retain or restore vision, and to increase public awareness of the causes and treatment of vision loss; and

2. Independent Living Goal: The Commission shall provide the opportunity to persons who are blind or visually impaired to achieve their maximum level of independence and productive functioning in the most appropriate, least restrictive setting.

10:91-1.3 Purpose and scope of educational services

(a) The primary objective of the Commission's Educational Service Program is to provide those services which allow visually impaired students to participate in all classroom activities. To meet this objective, the Commission shall provide to visually impaired students either the services of itinerant instructors of the blind and partially sighted who visit clients in need of direct instruction at their school and/or home or the services of specialists **[in the field of providing services to visually impaired, developmentally disabled students]** who provide technical assistance to the teachers and parents of **[these clients]** ***visually impaired, developmentally disabled students***.

(b) Those students served by a Commission itinerant instructor are considered to be in need of both instructional (for example, instruction in the use of braille, low vision aids, or adaptive techniques) as well as non-instructional services (for example, consultation with the teacher to suggest ways to fully integrate the student into the classroom program).

(c) The students served by specialists usually require only non-instructional services. Both students served by itinerant instructors of the blind and partially sighted and students served by specialists of the visually impaired and developmentally disabled shall also be provided with accommodative aids, materials and/or equipment through the Meyer Instructional Resource Center (see: N.J.A.C. 10:92).

10:91-1.4 Purpose and scope of allied independent living services

The major objectives of the Commission's independent living services are the provision of services related to the instruction of visually impaired individuals by rehabilitation instructors in techniques for performing activities of daily living; traveling skills by orientation and mobility instructors; and meeting social service needs by social workers. Shopping, meal preparation, general maintenance of the home, walking to the mailbox, reading one's mail, enjoying a hobby, and washing clothes are examples of activities of daily living tasks which people carry out on a routine basis. These tasks are included within that group of activities which are a part of one's daily routine, and which permit people to live independently.

10:91-1.5 Purpose and scope of allied prevention services

(a) The main goal of the programs within the Commission's prevention planning area is to prevent, delay the onset of, and/or stabilize the effects of a visual problem. The objective is to alert individuals and/or their caregivers to the need to seek appropriate eye care. If these individuals cannot afford or have no means of paying for the required treatment, then the agency shall assist such persons either financially or through referral to existing benefit programs.

(b) The Commission includes six programs within its prevention services area. Five of these make available free eye screenings or examinations to members of specific target populations, for example, persons with diabetes, preschool children, persons existing on a low income, and children of migrant laborers. The other program within prevention services makes available medical casework services to both indigent persons in need of vision related medical treatment as well as visually impaired individuals who are in need of either health education, for example, instruction in techniques for self-administration of insulin, and/or low vision services. Through these programs, the Commission is able to provide a rather comprehensive package of prevention services **(see: N.J.A.C. 10:91-4.1)**.

10:91-1.6 Purpose and scope of vocational rehabilitation (VR) services

(a) The primary goal of the programs included within vocational rehabilitation (VR) services is to assist visually impaired individuals to obtain and maintain suitable employment. In the vernacular of vocational rehabilitation, someone is rehabilitated when placed into

HUMAN SERVICES

employment. Employment includes both wage earner positions (for example, competitive, sheltered, or self employment), as well as **[maintaining and managing one's home]** ***homemaking which is a non-wage earner position***.

(b) **[Through vocational rehabilitation services, a client may receive the following services]** ***Vocational rehabilitation services may be any goods and services necessary to assist an eligible individual in obtaining his or her vocational goal, including, but not limited to the following***:

1. Counseling and guidance;
2. Diagnostic and evaluative services;
3. Services which are of a restorative nature, for example, surgery or low vision aids;
4. Higher education, vocational and/or adaptive skills training;
5. Daily living expenses while receiving another VR service;
6. Job placement services;
7. Other services such as readers or sign language interpreters; and
8. Services after a person is employed.

10:91-1.7 Legal authority to provide services

(a) The Commission for the Blind and Visually Impaired operates under a variety of State and Federal laws. These include the State legislation which created the Commission and made it a division of the Department of Human Services, as well as the Federal Rehabilitation Act of 1973 as amended, and the Education for All Handicapped Children Act of 1975, as amended.

(b) Pursuant to N.J.S.A. 30:6, the Commission for the Blind and Visually Impaired is mandated to provide services to blind and visually impaired people in order to "ameliorate" their condition. Specifically, the Commission is legally authorized to:

1. Maintain a register of all the blind within the State;
2. Fund and provide vocational training;
3. Pay for medical and surgical equipment;
4. Study the causes **[for]** ***of*** blindness and undertake prevention programs;
5. Administer a vending stand program;
6. Provide instruction and assist in suitable educational placement for blind, visually impaired and multi-handicapped children; and
7. Promote and regulate the sale and distribution of products made by blind and visually impaired persons ***pursuant to N.J.A.C. 10:96***.

(c) The Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (P.L. 93-516), 1978 (P.L. 95-602), and 1986 (P.L. 99-506) is the Federal statute governing State administration of federally funded vocational rehabilitation services. The provisions of this Act are implemented in 34 CFR Parts 361, 365 and 370.

(d) In the State Plan submitted by the New Jersey Department of Labor, Division of Vocational Rehabilitation Services (DVRS), the Commission is designated the "sole State agency for the Blind" in New Jersey. This designation means that the Commission is the only State agency which is legally authorized to provide vocational rehabilitation services to blind and visually impaired persons.

(e) Because of the Commission's legal authority to provide vocational rehabilitation services to blind and visually impaired persons, DVRS and the Commission share the Federal VR Grant annually allotted to New Jersey. To clarify which agencies will be responsible for which clients, the Commission and DVRS have a written agreement pursuant to 34 CFR 361.5. ***A copy of the agreement may be obtained by contacting the Commission's toll free number (1-800-962-1233).*** The most recent DVRS/Commission agreement provides in summary that:

1. Where an individual has central vision of 20/70 or more in the better eye with correction and there is little likelihood that vision is deteriorating, the responsibility for providing rehabilitation services rests with DVRS;
2. Any individual who has an eye problem requiring surgery is considered to have a serious impairment and shall be referred to the Commission by DVRS;
3. Any other individual who DVRS finds has a serious visual problem or a work placement problem because of his or her vision shall be referred to the Commission by DVRS; and

4. Wherever necessary the respective agencies shall consult one another in order to review and clarify the status of the client so that referrals can be expedited to the agency which can better serve him or her.

(f) The Education of All Handicapped Children Act of 1975 (P.L. 94-142), as amended by the Education for All Handicapped Children Act Amendments of 1986 (P.L. 99-457), is the Federal statute guaranteeing handicapped children, ages three through 21, a "free appropriate public education emphasizing special education and related services." The Act provides formula grants to states to fund these services. The provisions of the Act are implemented in 45 CFR Parts 106b, 116b, 121a.

(g) The Education of All Handicapped Children Act and its implementing regulations apply to all agencies having direct or delegated authority for the education of handicapped children regardless of whether they receive funds under the Act. In New Jersey, these agencies include the New Jersey Department of Education, local school districts, State-operated facilities and the Commission.

(h) As a provider of educational services, the Commission also falls under N.J.A.C. 6:28, Special Education. These rules correspond to the Education of All Handicapped Children Act.

10:91-1.8 Purpose and scope of the New Jersey blind register

(a) In accordance with N.J.S.A. 30:6-1, the Commission shall prepare and maintain a register of all ***[the]* blind *[within]* *and visually impaired persons in* the State.**

(b) In accordance with N.J.S.A. 30:6-15, the Commission is empowered to make inquiries concerning the causes of blindness and the proportion of cases within the State which is preventable, and it is entitled to receive the cooperation of other State and local government agencies in making these inquiries. The Commission shall publish an annual report, including, but not limited to, incidence and prevalence rates of blind and visually impaired persons in all areas of the State.

10:91-1.9 Composition and functions of the Commission's consumer advisory boards

(a) The Commission's consumer advisory boards have been created in order to provide consumers and interested persons the opportunity to evaluate, comment upon and impact on services provided by the Commission. Additionally, the boards review the Commission's administrative policies and procedures and provide input on Commission initiatives. To be eligible for board membership, an individual shall be ***blind or* visually impaired *[(20/50-1 in the better eye with all possible corrections)]* or the parent or guardian *or representative* of a *blind or* visually impaired person.**

(b) Board membership should include representatives of the disabled and minority communities, as well as senior citizens and parents or guardians of below college level students.

(c) The Board(s) shall consist of ***[up to seven]*** members appointed by the Commission's Executive Director and/or the regional or Statewide office managers. There shall be no overrepresentation of existing consumer organizations. There shall be established regional, as well as central, office Boards.

(d) A letter over the Executive Director's and/or the regional or Statewide office manager's signature shall be sent to organized and unorganized blind and visually impaired groups and individuals seeking applicants for membership.

(e) The following persons shall not be eligible for consumer advisory board membership:

1. Paid Commission employees;
2. Paid Commission consultants;
3. Persons employed by an agency under contract with the Commission; and
4. Persons who are ***[members of the immediate household or direct business associates of a person described above or]* related to a Board member by blood or marriage *with the exception of ex-officio members who may be related to a Board member. However, this will be limited to one ex-officio member*.**

(f) Anyone wishing to apply for board membership shall express that desire in writing to the Executive Director or the appropriate regional or Statewide office manager and request an application. The applicants shall hear from the Executive Director or appropriate

manager regarding acceptance or denial of their request within 30 days after returning the application.

(g) Boards shall:

1. Comply with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;

2. Choose one of its members to act as chairperson. The chairperson shall automatically have a seat on the executive director's consumer advisory board, representing the regional board;

3. Meet ***[not less than four times a year]* *as often as required to conduct the business of the Board*;** and

4. Determine the location of the meetings.

(h) Board ***duties and* responsibilities** are:

1. To serve as ***[advocate]* *an advocating body* and *[advisor]* to *advise* Commission *[staff in]* *administration with regard to* the development of services ***[to]* *for* the blind and visually impaired;****

2. To review Commission ***policy* *[services]* and related programs;**

3. To ***[advise and make recommendations concerning services dealing with the development of policies and procedures within the general directive of the Department of Human Services and any changes affecting services and policies]* *participate in committee related activities and to establish communication networks with other relevant groups*;**

4. To review the Commission's Annual State Plan of services;

5. To survey client satisfaction with agency services;

6. To ***[assist in developing regional office budgets]* *comment on legislative proposals*;**

7. To ***[evaluate]* *review Commission* program *evaluations* *[planning and service delivery]*;** and

8. To review ***[and evaluate grant awards priorities.]* *the Commission's annual budget*.**

(i) Terms of office are as follows:

1. Board members may serve for ***[three]* *two* years *and shall serve without compensation*;**

2. Board members may serve two consecutive terms;

3. Board members shall not be reappointed until two years after their last active term of office; ***[and]***

4. Board members shall choose one of their members to act as chairperson who shall be elected for a term of one year and may serve two consecutive terms, but shall not be reappointed until three years after their last active term of office; and

***[4]**5.** Vacancies shall be filled within 60 days by the Executive Director and/or regional or Statewide office manager as appropriate.

(j) If an ***[expired]* *unexpired* term of office is *[more]* *less* than 50 percent *of the entire term*, a nominee can serve only one additional term of office. If ***[less]* *more* than 50 percent *of the entire term*, a nominee can serve two additional terms of office.****

(k) The scope of power of ***a* Board *[members]*** is as follows:

1. Board members shall have direct access to the Executive Director and/or regional or Statewide office manager; ***[and]***

2. Board members shall have access to public documents of the Commission such as the State Plan, policy manuals and budget ***[.]* ***

3. Board members shall establish committees and/or study groups as they deem necessary and appoint the members thereof; and

4. Board members shall have the right to make recommendations to the Commission and the Department of Human Services concerning any aspects of services for the blind and visually impaired.

(l) ***[Board members shall be replaced by the Board if 50 percent or more of scheduled meetings are missed without prior excused absence.]* *Any member of the Board who does not attend three consecutive Board meetings without being excused by the chairperson and does not attend more than 50 percent of the Board's meetings in a single year will upon notification by the Board chairperson be replaced by the Commission's Director. Replacement will be accomplished within three months of that notification.***

10:91-1.10 Purpose and responsibilities of the Commission's client service representative

(a) The Commission's client service representative shall assist applicants and clients who are not satisfied with Commission services

by seeking better and more timely services. The representative intervenes on behalf of the applicants or clients who are having difficulty with the Commission by identifying the problem and by attempting to resolve it.

(b) The client service representative is a client advocate who directs blind or visually impaired persons to appropriate Federal, State or local agencies mandated to help persons who suspect that they are being discriminated against because of their handicap. For example, the representative assists clients in contacting the New Jersey Department of the Public Advocate, the United States Office for Civil Rights, the New Jersey Division on Civil Rights, or the New Jersey Department of Labor.

(c) The client services representative can be reached by calling the Commission's toll free number, 1-800-962-1233.

10:91-1.11 Request for legal guardianship of a client

Pursuant to the recommendation of the Attorney General's office, neither the Commission, nor any staff member of the Commission, shall be named legal guardian for any Commission client. If any agency or individual wishes to request guardianship, such request shall be directed to the Commission's Chief of Field Operations. The request shall then be forwarded to the appropriate Department of Human Services division, depending on the nature of the client's disability.

10:91-1.12 Definitions

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

"Accommodation" means a process by which a person utilizes alternative techniques to perform vision oriented tasks.

"Active status" means that a person has been found eligible to receive *[all appropriate]* Commission services and the person is currently receiving said services.

"Adaptive skills" means those skills which a visually impaired person has learned allowing them to perform tasks that normally involve the utilization of the visual sense.

"Ancillary caseworker" means a Commission staff person who is providing services to a client but is not the client's primary caseworker.

"Applicant" means a person who has completed the agency's application for service form, but has not yet been found either eligible or ineligible for placement into active status.

"Best correction" means the optimal visual acuity which a person can attain after their visual functioning is evaluated by an eye doctor.

["Communicable disease" means any disease which can be acquired as a result of direct contact with someone who has the disease.]

"Competitive employment" means a job wherein the person is paid wages and the job is a position which is also available to non-disabled persons.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing (see N.J.S.A. 52:14B-2). The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

"Daily living skills" means those skills which a person learns that allows them to perform personal care activities, for example, dressing, washing and shopping.

"Developmentally disabled" means a severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental or physical impairment that is manifest

before age 22, is likely to continue indefinitely, 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, mobility, self-direction, and capacity for independent living or economic self-sufficiency, and reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and are individually planned and coordinated. Developmentally disabled 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.

"Eligible" means that a visually impaired person has met the eligibility criteria set forth for the services they wish to receive.

"Field of vision defect" means that the person cannot detect visual stimuli throughout the entire area being observed which normally can be seen without moving the head or eyes. See definition of "legally blind" in this section.

"Homemaker" means a person who performs the major portion of tasks associated with maintaining a home.

"Independent living" means that a person is able to maximize their level of independent and productive functioning in the most appropriate, least restrictive setting.

"Intake" means the process by which the Commission assesses a person's need, desire and eligibility for agency services.

"Last dollar resource" means that the Commission will execute payment for a service only after all other potential payors have been eliminated.

"Legally blind" means central visual acuity that does not exceed 20/200 in the better eye with best correction or fields of vision that are so limited that the widest diameter of visual field subtends an angle no greater than 20 *degrees*.

"Low vision" means reduced visual acuity and/or abnormal visual fields which are the result of a disorder in the visual system.

"Non-contested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

"Preschool" means that period of time between birth and a child's sixth birthday.

"Primary caseworker" means the Commission staff person who is assigned the responsibility of being the Commission's main representative to an individual client.

"Referral" means that a person or someone on their behalf has contacted the Commission to investigate the availability of services.

"Resident" means a person who is currently residing in New Jersey, or for the purpose of vocational rehabilitation, in the United States and who is either a United States citizen by birth or naturalization or can provide documentation that they have either applied for and/or been granted permanent residence by the Immigration and Naturalization Service.

"Self-employment" means that a person owns and operates their own business.

"Sheltered employment" means that a person is employed within a controlled environment which utilizes work experience and related services to assist the handicapped individual to achieve a more productive vocational status.

"Similar benefit" means any service or financial assistance for the same services from any other source(s).

"Visual acuity" means the measurement of the ability of the eye to perceive the shape of objects in the direct line of vision and to distinguish detail.

"Visual impairment" means *[that a person identifies themselves as having difficulty reading ordinary newsprint even when wearing glasses]* *having a condition in which a person has a corrected visual acuity not exceeding 20/70, but not less than 20/200, in the person's better eye, or in which the peripheral field of the person's vision has contracted so that the diameter of the visual field subtends an angle no greater than 40 degrees but no less than 20 degrees*.

SUBCHAPTER 2. ELIGIBILITY STANDARDS FOR COMMISSION SERVICES

10:91-2.1 Allied independent living and prevention services

(a) Individuals whose visual acuity is better than 20/70 shall be eligible for certain services, if they have a problem in one or both eyes requiring surgery or treatment if such surgery or treatment would prevent vision loss, as follows:

1. Social caseworker assistance, rehabilitation classes and/or teaching or orientation and mobility instruction provided with the approval of the regional manager;

2. Muscle surgery which may contribute to an overall improvement in vision by enabling both eyes to work in unison even if the surgery neither prevents vision loss nor restores vision. Requests for muscle surgery by individuals with visual acuity of 20/70 or better shall be considered for approval by an allied services supervisor on a case-by-case basis; and

3. Medical casework services.

(b) Individuals shall be eligible for all allied services if their best corrected vision is 20/70 or less in their better eye.

(c) Individuals who have field of vision defects shall be eligible for all allied services (see N.J.A.C. 10:91-1.12).

(d) Individuals shall be ineligible for non-surgery or treatment related services if their best corrected vision is 20/50-1 to 20/69 in their better eye except as outlined in (a) above.

10:91-2.2 Education services

(a) Individuals whose best corrected visual acuity is 20/70 or less in their better eye shall be eligible for educational services.

(b) Individuals with field of vision defects shall be eligible for education services (see N.J.A.C. 10:91-1.12).

(c) Individuals with a problem in one or both eyes requiring surgery or treatment with visual acuity better than 20/70 shall be ineligible for educational services.

(d) Individuals whose best correction is between 20/50-1 and 20/69 in their better eye shall be ineligible for educational services.

(e) Education services clients shall meet additional criteria as set forth in N.J.A.C. 10:92.

10:91-2.3 Vocational rehabilitation services

(a) Individuals shall be eligible for vocational rehabilitation services if their best corrected vision is 20/50-1 to 20/69 in their better eye and vision is deteriorating and there is a job placement problem because of vision dysfunction.

(b) Individuals whose visual acuity is better than 20/69 shall be eligible for vocational rehabilitation services if there is a problem in one or both eyes requiring surgery or treatment and if there is a job placement problem because of vision dysfunction.

(c) Individuals whose best corrected vision is 20/70 or less in their better eye shall be eligible for vocational rehabilitation services.

(d) Individuals with field of vision defects shall be eligible for vocational rehabilitation services (see N.J.A.C. 10:91-1.12).

(e) Vocational rehabilitation services' clients shall meet additional criteria pursuant to N.J.A.C. 10:95.

(f) To be eligible for the Vending Facility Program, a person shall meet the definition of legal blindness.

10:91-2.4 Eye reports

(a) Eye reports shall be completed by ophthalmologists or optometrists and forwarded to the client's primary caseworker at the Commission. The eye report shall include an initial report including an eligibility classification and treatment recommendation, a report of any follow-up visits, and a post-operative report. Eye reports are necessary as part of the preliminary diagnostic study, to determine eligibility for Commission services, to develop service plans and to monitor the client's visual progress or lack of progress.

(b) The Commission shall request an eye report when the Commission pays for a client's eye examination, when the client pays for an examination, when a new examination is needed, or when a client has not been examined within the past year and a current eye report is considered necessary.

(c) Eye reports shall be filed in the client's case record.

(d) The caseworker's responsibility is to secure the name and address of a client's eye doctor. If a client has no eye doctor, the

caseworker shall provide the client with a list of available doctors. If an eye exam has occurred within the past year, the caseworker shall inform the client that the eye report will be requested directly from the eye doctor.

(e) Commission staff cannot recommend specific doctors. Staff will provide a minimum of three doctors' names to clients in close proximity and accessible from a client's residence. The clients may select the doctor of their choice.

10:91-2.5 Residency requirements

(a) New Jersey residents who meet eligibility standards shall be eligible for all Commission services.

(b) Residents of other states who meet the eligibility standards shall be eligible for Commission services as follows:

1. Eligible for orientation and mobility training;

2. Eligible for educational services if they are receiving care at a New Jersey treatment center and the projected length of stay is not more than six months; and

3. Eligible for vocational rehabilitation *[if they are available to complete the full vocational rehabilitation program including placement in employment]*.

(c) Resident aliens who meet the eligibility standards shall be eligible for all Commission services.

(d) Non-resident aliens, including people with temporary and student visas, who meet the eligibility standards shall be eligible for Commission services as follows:

1. Eligible for orientation and mobility;

2. Eligible for Educational Services if attending preschool, elementary school or high school; and

3. *[Equalization]* ***Other training and job placement related*** services shall be provided to foreign students attending college full time if funds are available and if the Statewide manager approves pursuant to N.J.A.C. 10:95.

(e) A regional, district or statewide office manager or the Chief of Field Operations shall have the authority to grant exceptions to the Commission's residency requirements in situations where a client will suffer irreversible damage to their visual system if services are not provided within 30 days of initial contact by the Commission. The requests for and the granting of exceptions shall be dealt with on a case-by-case basis.

10:91-2.6 Other educational standards

(a) The Commission shall provide special instruction and/or related services to certain individuals whose visual dysfunction impedes or may impede their progress in elementary and secondary school.

(b) An applicant for special instruction and/or related services shall meet the following eligibility requirements:

1. As set forth in N.J.A.C. 10:91-2.2 and 2.5;

2. He or she is 21 years of age or younger; and

3. He or she has not completed secondary school.

(c) Assessment and evaluation of the need for Commission services is based upon a determination that an individual meets the visual eligibility standards pursuant to N.J.A.C. 10:91-2.2, following which the Commission shall make a further determination as to a student's eligibility for educational services.

(d) Educational needs related to visual loss shall be reviewed by the Commission with the student, his or her parent or guardian and the local school district study team.

1. If it is determined that the student's visual dysfunction adversely affects his or her academic progress, the Commission shall provide educational services; and

2. If it is determined that the student's visual dysfunction does not adversely affect his or her academic progress, but the individual is eligible for other Commission services, he or she shall be referred to allied services.

10:91-2.7 Other vocational rehabilitation (VR) standards

(a) The primary purpose of a VR eligibility determination shall be to identify those visually impaired persons who may be served with VR funds pursuant to 34 CFR 361.31.

(b) The VR counselor shall have the ultimate responsibility, after advice and consultation with the supervisor, ancillary workers and medical consultants, to determine an individual's:

ADOPTIONS

1. Eligibility for VR services;
2. Eligibility for extended evaluation; and
3. Ineligibility for VR services.

(c) Services to determine eligibility, while the client is in applicant status, shall be provided without regard to economic need.

(d) Illegal aliens present in the United States without legal status shall not be eligible for VR services.

(e) Immigrant aliens admitted for the purpose of permanent residence and who possess a valid alien registration card shall be eligible for VR services.

(f) Non-immigrant aliens are individuals admitted for a particular purpose or time period and are expected to return to their home country upon completion of a specific purpose or time period. Examples include:

1. Visitors for business or pleasure;
2. Crewmen of vessels or aircraft; and
3. Students pursuing a course of study.

(g) Non-immigrant aliens may be eligible for VR services if the individual is available to complete an Individual Written Rehabilitation Plan and the individual's temporary registration card (I-94) would allow the client to become employed.

(h) Eligibility shall be determined without regard to sex, race, age, color, religion, national origin, economic need, or category of disability.

(i) *Eligibility criteria are as follows:

1. "Criterion I" means the presence of a physical or mental disability;
2. "Criterion II" means the disability must constitute for that individual a substantial handicap to employment; and
3. "Criterion III" means there is a reasonable expectation that vocational rehabilitation services will benefit the individual in terms of employability.* **In order for an individual to be eligible for vocational rehabilitation services, there shall exist a certification that;**

1. The individual has a mental or physical disability which for that individual constitutes or results in a substantial handicap to employment; and

2. Vocational rehabilitation services may be reasonably expected to benefit the individual in terms of employability.*

(j) In all cases of legal blindness, severe visual impairment or where a rapidly progressive visual condition exists, the Commission shall have the responsibility for at least providing an evaluation to determine eligibility regardless of other documented disabilities.

10:91-2.8 Notification of ineligibility for allied and education services

(a) The Commission for the Blind and Visually Impaired shall notify by certified mail an individual, other than a preschool vision screening participant, who applied or was referred for Commission services whenever such an individual has been found to be ineligible for services (see N.J.A.C. 10:91-2.1 and 2.2). The Commission shall send this notice within two weeks of the determination that he or she does not meet basic eligibility criteria and cannot receive services.

(b) A caseworker may initially inform individuals of their ineligibility either in person or by telephone, as long as written notice is mailed within the required two-week period.

(c) The ineligibility notice shall state:

1. The Commission's decision;
2. The basis for the decision;
3. The effective date of the decision; and
4. The methods for appealing the decision.

10:91-2.9 Ineligibility for vocational rehabilitation services

(a) An individual may be determined ineligible for VR services for any of the following reasons:

1. "No disability", which means an individual does not have a visual disability which renders him or her eligible for Commission services*, such as TOO MUCH remaining vision*;
2. "No vocational handicap", which means a client may have a disability, but does not have a handicap to employment; and/or
3. "No vocational potential", which means a client may have a disability and a vocational handicap, but there is no reasonable

expectation that vocational rehabilitation services will benefit the person in terms of employability. For example:

- i. There is no vocational potential due to the severity of the disability or combination of disabling conditions; or
- ii. There is no vocational potential due to unfavorable medical prognosis.

(b) An individual shall be declared ineligible if he or she fails to meet any of the *[three]* eligibility criteria (see N.J.A.C. 10:91-2.7(i));

(c) An ineligibility determination shall be made only after *[full participation]* *consultation* with the individual, parent, guardian, or other representative, or after affording a clear opportunity for such consultation.

(d) The individual shall be notified in writing of an ineligibility decision, including the reasons for the decision, and the means for expressing any dissatisfaction and seeking remedy, including the procedures for an administrative review and fair hearing (see N.J.A.C. 10:91-6.2). The client shall receive a copy of the Certification of Ineligibility and an ineligibility letter.

10:91-2.10 Certificate of ineligibility for vocational rehabilitation services

(a) A certificate of ineligibility shall be maintained in all case records when a client is determined to be ineligible pursuant to N.J.A.C. 10:91-2.9.

(b) No ineligibility certificate shall be needed when clients are closed from referral or applicant status for the following reasons which do not constitute a decision of ineligibility.

1. Client death;
2. Client moves out of State or is impossible to contact after reasonable efforts to do so;
3. Client *is* institutionalized, causing the individual to be unavailable and precluding evaluation, diagnosis, or other essential services for an indefinite or considerable period of time and continuance of an open case would not benefit the individual; and/or
4. Client declines to accept or utilize vocational rehabilitation services after a reasonable effort has been expended to encourage participation.

(c) Appropriate explanations shall be included in the case record when the reason for closure does not fit into any other category and is not related to the eligibility criteria. An individual may decline to participate for reasons determined to be related to the severity of his or her condition, such as emotional problems, which cannot be satisfactorily resolved. The reason for closure is then one of ineligibility instead of unavailability.

10:91-2.11 Presumption of eligibility

(a) A person who meets one of the following criteria will be presumed to be eligible for those services described in N.J.A.C. 10:91-4.1 through 4.3:

1. The person is a former client of the Commissioner who was previously found eligible pursuant to N.J.A.C. 10:91-2.1 through 2.5 and the date on which the person was most recently referred to the Commission is not more than one year after the date on which the person's most recent previous case was closed;
2. The person is a former client of the Commission who was previously found eligible pursuant to N.J.A.C. 10:91-2.1 through 2.5, and whose eye condition, as reported on the most recent eye report the Commission has on file for this person, is one which generally remains stable; or
3. The person is a client of the Division of Developmental Disabilities (DDD) and is being referred to the Commission by a DDD staff person who has documentation on file that the person being referred is visually impaired.

(b) A person shall not be presumed eligible for those Commission services for which there is a financial needs standard (see N.J.A.C. 10:91-3.1 through 3.3).

(c) A person shall not be presumed eligible if in order to receive the services they request must meet the eligibility standards cited in N.J.A.C. 10:91-2.6 and 2.7.

(d) If, at any time, a Commission caseworker receives information which suggests a person who has been presumed eligible may not

HUMAN SERVICES

HUMAN SERVICES

ADOPTIONS

be eligible, then the caseworker will commence a full eligibility investigation.

SUBCHAPTER 3. FINANCIAL STANDARD

10:91-3.1 Financial need standard and survey

(a) The financial need standard is a test which shall be used to determine a client's ability to pay for certain services. For those clients who meet the test, the Commission shall provide the cost of these services. For clients who do not meet the test, the standard establishes the level of their responsibility toward the cost of those

services. The financial aid provided by the Commission shall supplement rather than replace resources available to a client including similar benefits (see N.J.A.C. 10:91-3.6). The Financial Survey Form and the Financial Participation Worksheet are the documents used to gather and analyze information needed to determine financial eligibility. The exception is college tuition assistance where the Commission *utilize* *utilizes* the Financial Aid Form which is a standard form utilized by many college applicants for financial aid. The Financial Survey Form and the Financial Participation Worksheet are as follows:

New Jersey Commission for the Blind and Visually Impaired FINANCIAL SURVEY FORM

1. Client Name _____ Social Security # _____
2. Counselor _____ Date _____
mo day yr

FAMILY INCOME

MONTHLY AM'T

	List Amount	How Often Paid	Benefits Cease	
3. Gross monthly pay of client (before deductions)	_____	_____	_____	_____
4. Husband/father gross monthly pay (if applicable)	_____	_____	_____	_____
5. Wife/mother gross monthly pay (if applicable)	_____	_____	_____	_____
6. Guardian and/or other contributing family member gross monthly pay	_____	_____	_____	_____
7. Unemployment/temporary disability ins.	_____	_____	_____	_____
8. Workers' Compensation	_____	_____	_____	_____
9. VA pension	_____	_____	_____	_____
10. Supplemental Security Income	_____	_____	_____	_____
11. Social Security Retirement or Disability	_____	_____	_____	_____
12. Welfare	_____	_____	_____	_____
13. Income from property	_____	_____	_____	_____
14. Interest and/or dividend	_____	_____	_____	_____
15. Alimony or child support	_____	_____	_____	_____
16. Other income (specify)	_____	_____	_____	_____
17. GROSS TOTAL MONTHLY CASH INCOME				
From all Sources (Total Lines 3 through 16)				_____

DEDUCTIONS FROM INCOME

MONTHLY AM'T

	Amount	How Often Paid	Paid Up Date	
18. Indebtedness	_____	_____	_____	_____
19. College/training costs	_____	_____	_____	_____
20. Medical care/treatment costs per year _____; less \$1068 = _____; divided by 12 = _____				
21. Second working parent (= \$167)	_____	_____	_____	_____
22. ALLOWABLE DEDUCTIONS FROM INCOME (Total lines 18 through 21)				_____
23. AVAILABLE INCOME (Line 17 minus Line 22)				_____

LIQUID ASSETS

24. Amount of cash on hand or money in the bank	_____
25. Amount invested in savings bonds, stock, bonds, etc.	_____
26. TOTAL LIQUID ASSETS	_____
27. Total number of persons depending on family income, including client	_____
28. Sources of income verification	_____

ADOPTIONS

HUMAN SERVICES

Medical Insurance (Check Appropriate Box)

Blue Cross _____ Blue Shield _____ Rider J or Major Medical _____
 Medicare _____ A _____ B _____ Medicaid _____ Other _____ (Specify) _____

The information given above is a true statement of my financial condition.

Signature of Client _____

A review of the information on this form on the following date(s) indicated that there had not been a change in the client's financial situation.

Date #1

Date #2

Date #3

Date #4

FINANCIAL PARTICIPATION WORKSHEET

The client is automatically eligible and the calculation below is unnecessary, if, for the corresponding family size, liquid assets (line 26 on the Financial Survey form) are less than the asset allowance shown in column B and available income (line 23 on the Financial Survey form) is less than the monthly income allowance shown in column E. Otherwise, complete this form on the line corresponding to family size of client. If calculations result in "0" or less, enter "0"

	A	B	C	D	E	F	G
Family Size (Line 27)	Liquid Assets (Line 26)	Asset Allowance	Assets Counted (A-B)/12	Available Income (Line 23)	Monthly Income Allowance	Low Income Deduction (E-D)	Participation Amount (C+D-E-F)
1	_____	\$ 2,000	_____	_____	\$1,024	_____	_____
2	_____	4,000	_____	_____	1,351	_____	_____
3	_____	6,000	_____	_____	1,718	_____	_____
4	_____	8,000	_____	_____	2,046	_____	_____
5	_____	10,000	_____	_____	2,454	_____	_____
6	_____	12,000	_____	_____	2,761	_____	_____
Over 6 (each)		(+2,000)			(+144)		
# _____	_____	_____ ¹	_____	_____	_____ ²	_____	_____

1. Family size times \$2,000.

2. \$2,761 + \$144 for each one above 6 persons.

ANNUAL FINANCIAL CONTRIBUTION ARRANGEMENT: (See: N.J.A.C. 10:91-3.4)

(b) Family income shall include gross wages before deductions, pensions, income from property and trusts, disability payments, interest and dividends, public assistance payments, and any other funds, not including loans, available to a client or legally responsible person. Dividends or interest from savings or insurance policies shall be counted as income. Only the actual contributions made to the family unit by siblings or other individuals living in the home shall be included as income.

(c) Legally responsible persons shall include spouse, parent or *[guardian]* *children depending on the ages involved (see: N.J.S.A. 44:4-100 et seq.)*. Where a client over age 18 is supported by a parent*[, guardian.]* or other responsible persons the full financial resources of the parents*[, guardians]* or legally responsible relatives shall be counted in establishing family income.

(d) Liquid assets shall include checking accounts, cash, savings, stocks, and bonds (current market value) or income from trusts available to a client or legally responsible person.

(e) A home occupied by a client as a residence is not counted as a resource. Income from property shall be counted after deducting the cost of operation and maintenance from the gross income received.

(f) Existing insurance policies shall not be counted as a resource but clients are advised to check to see whether they are eligible for disability payments. Disability payments received shall be counted as income at the time they are received.

(g) Personal effects such as personal apparel, jewelry, and household effects shall not be counted as a resource.

(h) Allowable deductions pertains to indebtedness or costs for medical care in excess of \$1,068 per year *[of]* *or* college tuitions or other training costs for family members. These shall be deducted from income. Regular payments for indebtedness of an extraordinary nature such as a business loss shall also be considered on a case-by-case basis to be reviewed by the Supervisor.

(i) Low income deduction pertains to clients who derive income from assets and have little or no income from wages or pension payments. Clients as described in this subchapter shall be allowed a low income deduction. This subsection primarily is intended to assist older persons in allowing them to retain assets needed to generate income.

10:91-3.2 Financial need standard applied to allied and education services

(a) The following table indicates the application of the financial need standard to allied and education clients pursuant to N.J.A.C. 10:91-3.1:

HUMAN SERVICES

ADOPTIONS

Purchase of:	Allied Services	Education Services
Maintenance	yes	no
Training Equipment	not applicable	no ¹
Homemaking: Daily Living Aids	yes (after initial purchase) ²	no
Optical or Accessory Low Vision Aids	no	no
Projection or Electronic Low Vision Aids	yes	See N.J.A.C. 10:92
Transportation	no	no
Hospitalization	yes	yes
Surgery and Treatment	yes	yes
Diagnostic Evaluations	no	no
Prosthetics	yes	yes
Eye Glasses and Lenses	no	no
Textbooks and Materials	no	no
[Equalization] *Other Training and Job Placement Related* Services	no	no

¹High cost equipment is provided on a loan basis; and

²The financial need standard does not apply to the initial purchase, but does apply to any subsequent purchases.

10:91-3.3 Financial need standard applied to vocational rehabilitation services

(a) Services not subject to the needs test standard are as follows:

1. The first \$10,000 spent on adaptive equipment;
2. Ancillary services provided by Commission staff including rehabilitation teaching, orientation and mobility, eye health nurse and social work services, etc.;

3. All diagnostic and evaluative assessment services while the client is an applicant or is being evaluated to determine eligible for VR services, including medical, psychological and vocational assessment;

4. Eye glasses and lenses;

5. Costs incurred for any client attending the Joseph Kohn Rehabilitation Center for tuition, transportation, maintenance, or room and board while in any phase of a client's vocational rehabilitation program;

6. Loan of training or other equipment;

7. Optical or accessory low vision aids;

8. Low vision examination for initial evaluation and ***if the low vision examiner has recommended low vision aids,*** up to three follow-up visits;

9. Initial purchases of homemaking aids and aids to daily living;

10. Maintenance and evaluation costs for a client attending any type of diagnostic or evaluation program while in work adjustment or a basic skill training program at a rehabilitation facility, including the Joseph Kohn Rehabilitation Center;

11. On-the-job training, although it is considered to be a training program;

12. Technical Aids Center approved training equipment which remains the property of the Commission;

13. Transportation for work adjustment and basic skills training at a rehabilitation facility, including the Joseph Kohn Rehabilitation Center;

14. Visits to and from a doctor's office or hospital in order to determine eligibility while undergoing evaluation for VR services; and

15. Vocational training for work adjustment and basic skills at a rehabilitation facility including the Joseph Kohn Rehabilitation Center.

(b) Services subject to the needs test standards are as follows:

1. All purchases of adaptive equipment above the first \$10,000 spent;

2. Tuition costs for college training. This includes graduate, undergraduate, and two year college programs;

3. Projection or electronic low vision aids and devices, and follow-up visits ***including low vision follow-up visits where the low vision examiner has not recommended any low vision aids*;**

4. Homemaking aids and aids to daily living subsequent to the initial purchase;

5. All maintenance costs not designated as non-needs test items;

6. Medical devices and equipment such as hearing aids, prosthetic devices;

7. All placement equipment purchases. When adaptive equipment is purchased for a client as part of the start-up costs of a small business and the total start-up costs are \$10,000 or less, the needs standard does not apply to the purchase of that adaptive equipment (see small business enterprise program, N.J.A.C. 10:95);

8. Medical costs for physical and mental restoration;

9. Telecommunication and technological aids and devices including Optacon, CCTV, Versabril, electronic guiding devices, etc.;

10. All training equipment except that purchased relative to work adjustment training (see Training and vocational programs, N.J.A.C. 10:95);

11. All transportation costs not designated as non-needs test items; and

12. All other vocational training costs not designated as non-needs test items.

10:91-3.4 Financial participation by clients

(a) Participation by a client in the cost of services subject to financial need shall be required up to the calculated participation amount and represents the maximum amount he or she shall be expected to contribute.

(b) The client's financial participation amount shall be applied to services authorized in the one year period from the date on which the financial participation amount was determined except for instances in which there is a change in income or resources during that period of time.

(c) The client and the primary caseworker shall mutually agree upon the financial participation arrangement, which shall be documented in the case file. Payments by the client shall be made directly to the vendor. Clients shall be expected to participate up to the calculated participation amounts as first dollar payments. Whenever the client is to participate by contributing a specific amount to the cost of service, and this is documented on the financial participation worksheet:

1. The caseworker shall prepare an authorization for the Commission's share of the cost; and

2. The copy of the authorization sent to the vendor shall be accompanied by a letter indicating the participation arrangement that has been made with the client. A copy of that letter shall be sent to the client.

(d) The Financial Needs Survey shall be reviewed annually and a new one prepared if there is a change in income or resources.

10:91-3.5 Financial survey form

(a) A financial survey form shall be completed for each new and readmitted client at the time of the first authorization for any services subject to financial need. The client supplies the information and the primary caseworker completes the form.

(b) Survey forms shall not be mailed to clients for completion.

(c) Income shall be verified by pay stubs, or check stubs from pensions or benefits. The caseworker may request the previous year's income tax forms to identify any additional income or to verify the number of individuals reported as dependent on family income. Dependent refers to the total number of individuals dependent on family income, consistent with what is reported on IRS income tax forms.

(d) The client or parents shall be told that the financial survey form and financial participation worksheet shall become part of the client's confidential case record.

(e) Client or parent refusal to provide financial information or to sign the financial survey form shall be noted in the client's case record.

(f) A copy of the completed survey shall be offered to the client, and mailed if requested.

ADOPTIONS

10:91-3.6 Commission as last dollar resource

(a) The concept of similar benefits means that the Commission is the last dollar resource for the purchase of services.

1. "Similar benefits" refers to any service or financial assistance available to visually handicapped persons from a resource other than the Commission. All clients shall be required to use or apply for similar benefits for which they are eligible in order to cover, in whole or in part, the cost of services unless this will cause a significant delay in the provision of services.

2. Similar benefits examples are as follows:

- i. An employer provides placement equipment on the basis of "reasonable accommodation"; and
- ii. Provision of textbooks and materials such as regular print texts and Recordings for the Blind tapes.

(b) Similar benefits shall include the utilization of community resources that may provide financial assistance, benefits, or services to a client.

SUBCHAPTER 4. DESCRIPTION OF SERVICES

10:91-4.1 Services available to all New Jersey residents

(a) The following services are available to all New Jersey residents:

1. The 800 Unit provides counseling and guidance services, outreach, information and referral services and processes service applications for anyone contacting the Commission's toll free number (1-800-962-1233). This service is staffed between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday. Persons contacting the Commission after working hours or on weekends and holidays may leave messages on a tape system. Follow-ups shall be made on all inquiries;

2. The diabetic eye disease detection program promotes the early detection and monitoring of retinal and other ocular changes in known diabetics (see N.J.A.C. 10:94);

3. The pre-school vision screening program provides visual acuity and muscle imbalance screening to preschool and kindergarten children, to detect symptoms of amblyopia and other eye conditions that may cause visual impairment or visual loss (see N.J.A.C. 10:94);

4. The glaucoma detection program (Eye Health Week follow-up) provides follow-up for glaucoma suspects and others individually referred from screening during Eye Health Week which is sponsored by the Medical Society of New Jersey (see N.J.A.C. 10:94);

5. The mobile eye examination units provide eye examinations to individuals for whom eye care is unavailable or available on a limited basis at sites such as housing projects, senior citizens centers, nursing homes, institutions, and facilities for the handicapped (see N.J.A.C. 10:94); and

6. The migrant eye examination program provides eye examinations and follow-up service in conjunction with the New Jersey Department of Education. Service is provided to children of migrant laborers who are attending schools or who are in the preschool handicapped program (see N.J.A.C. 10:94).

10:91-4.2 Services available to all applicants

(a) Vision related medical diagnostic services are available to all applicants as follows:

1. An ophthalmological exam, that is, an initial vision evaluation performed by an ophthalmologist including provision of a report which contains the physician's definitive diagnosis, prognosis, recommendations and classification;

2. An optometric exam, that is, an initial vision evaluation performed by an optometrist including provision of a report and classification; and

3. Evaluation by other vision specialists, such as, an examination by a corneal specialist, neuro-ophthalmologist, retinal specialist, ocular plastic specialist, or pediatric ophthalmologist.

(b) Non-vision related medical diagnostic services are available to all applicants as follows:

1. A general medical examination, that is, an examination performed by an internist, pediatrician or family practitioner with the objective of determining general health status; and

2. An otological exam, that is, an evaluation performed by an otologist which includes a hearing evaluation, detection of ab-

HUMAN SERVICES

normalities of the ear canal or ear drum, recommendations for medical/surgical treatment and/or a hearing aid evaluation.

(c) Skills assessment services are available to all applicants as follows:

1. A daily living skills evaluation, that is, an assessment whose outcome is a written report which delineates strengths, weaknesses and needs relative to a client's ability to perform personal management tasks (for example, grooming, cooking);

2. A communication skills evaluation, that is, an assessment whose outcome is a written report which delineates strengths, weaknesses and needs relative to a client's ability to perform reading, writing, listening or other tasks related to receiving or giving information;

3. An orientation and mobility evaluation, that is, an assessment whose outcome is a written report which delineates strengths, weaknesses and needs relative to a client's ability to establish position in and relationship to objects in the environment and to move from one location to another;

4. A functional vision evaluation, that is, an assessment whose outcome is a written report which delineates an individual's strengths, weaknesses and needs relative to a client's ability to use residual vision;

5. An educational skills evaluation, that is, an assessment whose outcome is a written report which delineates strengths, weaknesses and needs relative to a client's ability to perform academic tasks (for example, using textbooks, taking tests);

6. An eye health skills evaluation, that is, an assessment whose outcome is a written report which delineates an individual's strengths, weaknesses and needs relative to a client's ability to secure or carry out the appropriate treatment for an eye condition; and

7. An evaluation by a social worker, that is, an assessment whose outcome is a written report which delineates an individual's needs relative to housing, health care, nutrition, adequate income, family and social supports.

(d) *[Costs related to]* ***The payment for certain services which ensure the provision of* diagnostic and evaluation services as specified in (a) through (c) above are available to all *[applicants]* ***applicants*** as follows:**

1. Transportation, that is, expenditures for transporting clients, and their escorts or attendants, if necessary, incidental to the provision of diagnostic services, including costs of travel and subsistence (or per diem allowance in lieu of subsistence) while in transit; and

2. Other related costs, that is, payment for food or shelter incidental to the provision of diagnostic services.

10:91-4.3 Services available to all eligible clients

(a) Once a determination of eligibility has been made by the Commission the client may receive appropriate services as specified in (b) through (q) below.

(b) Vision related medical diagnostics as follows:

1. A low vision exam, that is, an evaluation which has as its objective a prescription of low vision aids and instruction/training programs to enhance the visual performance of clients with low vision;

2. Vision related diagnostic procedures, *[that is]* ***such as***, ultrasound of the eye (biometry), fluorescein angiogram, electroretinogram (ERG), endothelial cell count, fundus photography, visually-evoked response; and

3. Evaluation by other vision specialist (see N.J.A.C. 10:91-4.2 (a)3).

(c) Non-vision related medical diagnostics as follows:

1. Audiological exam, that is, an audiogram (hearing test) performed by an audiologist; and

2. A psychiatric evaluation, that is, an initial mental status examination provided by a psychiatrist in a face-to-face interview which includes a comprehensive history and evaluation of pertinent diagnostic information necessary to arrive at a diagnosis and treatment plan and recommendation for treatment or further diagnostic studies or consultation.

(d) Psychological diagnostics as follows:

1. Evaluation/testing by a psychologist, that is, an assessment which includes Weschler Intelligence Scale or its equivalent, and tests

in the following areas as needed: auditory, visual and visual motor, language, gross motor, personality and adjustment.

(e) Skills assessment at the Joseph Kohn Rehabilitation Center in a program of assessment and incidental instruction for clients who travel to and from the center on a daily basis, or who reside at the center, whose outcome is a written report which delineates the strengths, weaknesses, and needs relative to the client's ability to perform tasks associated with personal communication, orientation and mobility, arts and crafts, and industrial arts as well as the outcome of a vocational assessment of the client.

(f) Vision related restorative treatment by low vision specialists for services other than evaluations. Services are provided or supervised by a medical practitioner and are related to lens fitting and/or follow-up visits.

(g) Non-vision related restorative treatment as follows:

1. Services by a psychiatrist, that is, the provision of ongoing treatment including psychotherapy and medication management;

2. Services by a psychologist, that is, group and individual psychotherapy, marriage and family counseling; and

3. Services by other psychotherapist, that is, group and individual *[psychotherapy]* ***psychotherapy*** by a certified marriage and family counselor or clinical social worker.

(h) Provision of prosthetics and aids as follows:

1. A low vision aid for distance task, that is, an optical device used for observing objects, persons or other visual stimuli which are over five feet away from the user;

2. A low vision aid for near task (other than CCTV), that is, an optical device used for observing printed materials such as books, menus, etc.;

3. A closed circuit television (CCTV), that is, an optical device which utilizes a camera in conjunction with a monitor in order to magnify printed material;

4. Standard eyeglasses, that is, an optical device which consists of a frame and corrective lenses; and

5. Bifocal eyeglasses, that is, spectacles which contain lenses which correct for both a distance and near vision problem.

(i) Provision of training materials or equipment as follows:

1. Orientation and mobility aids, that is, materials and/or adaptive devices designed to help a blind or visually impaired person accommodate to vision loss when moving from one place to another or when establishing spatial position within the environment; and

2. Activities of daily living aids, that is, materials and/or adaptive devices designed to assist a blind or visually impaired person accommodate to vision loss when performing personal management tasks, for example, cooking, shopping, dressing.

(j) Skills acquisition instruction as follows:

1. Communication skills, that is, instruction whose purpose is to help clients acquire skills or other tasks related to receiving or giving information;

2. Use and care of low vision aids, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to maintain and use optical or electronic devices designed to enhance low vision;

3. Use of other specialized aids, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to maintain and use adaptive materials or devices (see N.J.A.C. 10:91-4.3(i));

4. Health maintenance, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to perform tasks associated with maintaining adequate health care;

5. Techniques for accomplishing activities of daily living, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to perform personal management tasks;

6. Orientation and mobility techniques, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to establish spatial position within the environment and to move from one location to another, for example, home to work, home to school;

7. Methods of caring for the eye, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to maintain proper eye care;

8. Use of residual vision, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to make maximum use of their visual capabilities;

9. Social worker intervention, that is, instruction and/or other services provided or arranged by a social worker which address socio-economic, medical, housing, recreational, and/or other needs of a client; and

10. Joseph Kohn Rehabilitation Center (JKRC) training program for commuters or residents means a program of instruction whose purpose is to provide clients who travel to and from the center on a daily basis or who reside at the center with the opportunity to acquire skills which are needed to perform specific occupations, for example, operator of a vending facility or clerical professions.

(k) ***[Related costs training]* *Payment for certain training related costs which ensure the delivery of training services*** as follows:

1. Transportation, that is, expenditures for transporting a client, and escorts or attendants as necessary, incidental to the provision of training services, including costs of travel and subsistence (or per diem allowance in lieu of subsistence) while in transit; and

2. Other related costs, that is payments for training services that cannot be properly classified under any other category.

(l) Room and board payments for training at the Joseph Kohn Rehabilitation Center, that is, room and board expenses in connection with the center.

(m) Other maintenance costs, that is, food, shelter, rent, clothing and other subsistence expenses not included within room and board payments.

(n) Training related to services to families as follows:

1. Psychiatric and/or psychological service to a member(s) of a client's immediate family (see N.J.A.C. 10:91-4.3(g));

2. Counseling services to a member(s) of a client's family by Commission staff;

3. Medical consultation to a member(s) of a client's family, that is, the provision of information to family members*[s]* to help them understand the needs of the handicapped individual;

4. Training/Instruction of a member(s) of a client's family, that is, the provision of services in order to prepare a family member to assist a handicapped individual in a program of independent living skills and to adapt to new or altered methods of home management and/or the provision of child care where such facilities are lacking; and

5. Other services to families, that is, any other service or commodity not listed above which is provided to a member of the client's family so that the client's service plan goals might be accomplished.

(o) Provider service programs to meet the special needs of Commission clients (see N.J.A.C. 10:91-5.6).

(p) Special services request as follows:

1. The Commission for the Blind and Visually Impaired, in coordination with other New Jersey state agencies, provides certain special services to those of its clients who are legally blind.

i. Persons who are not legally blind, but whose best corrected visual acuity is ***less than* 20/50-1** shall be eligible for issuance of a State of New Jersey Division of Motor Vehicles Identification card; and

2. Eligible Commission clients may request the following special services:

i. Division of Motor Vehicles identification card;

ii. Fishing license;

iii. Income tax certification letter;

iv. Transit Reduced Fare Program;

v. Guide transportation pass;

vi. Theater identification card;

vii. Park*,* forest, or reservation (free) admission pass; and

viii. Handicapped parking placard.

(q) Telephone directory assistance 411 exemption as follows:

1. Individuals whose impairment makes it impossible to use a telephone directory shall be allowed an exemption for directory assistance charges for calls made from their homes. These individuals also may obtain New Jersey Bell Calling Cards to make directory assistance calls from other locations;

ADOPTIONS

2. Eligibility standard, that is, an individual classified as legally blind after all possible correction shall be eligible for an exemption from directory assistance charges; and

3. Application procedures are as follows:

i. Eligible individuals in active status with the Commission may obtain from their caseworker application forms for exemption from directory assistance charges. Caseworkers shall assist the clients in filing the exemption form, if necessary; and

ii. Clients whose cases are closed may telephone the Commission by calling 1-800-962-1233 to request an exemption from directory assistance charges. The 800 Number Operator processes the request by conducting a computer search to verify the existence of an acceptable record of legal blindness, entering on an application form that the individual's entitlement to the exemption is verified by the Commission for the Blind and Visually Impaired, 1100 Raymond Boulevard, Newark, NJ 07102, and mailing the application form to the client for further processing.

10.91-4.4 Additional services available to applicants and/or eligible clients

(a) In addition to services specified in N.J.A.C. 10:91-4.1 through 4.3, services may be made available to clients, as described in (b) through (i) below, when determined to be appropriate to a client's individual needs and based on the *[judgement]* ***judgment*** and recommendation of a qualified professional, such as, a physician, psychologist or learning disability specialist.

(b) Educational services as follows:

1. Psychological diagnostics:

i. Learning disabilities evaluation, that is, an examination by a neuropsychologist or other learning disabilities specialist which include informal tests and observational measures, standard psychological tests and neuropsychological tests and which is designed to detect disorders of the cognitive processes involved in understanding, perceiving and/or using language or concepts that are spoken.

2. Skills assessment:

i. Camp Marcella provides one or two weeks residential summer camp experience for visually handicapped children.

3. Provision of training materials or equipment:

i. Educational aids, that is, materials and/or adaptive devices which are designed to help a blind or visually impaired person accommodate to vision loss when performing academic tasks.

4. Tuition payment:

i. Specialized school, that is, payment for attendance at residential schools for the deaf-blind;

ii. Nursery or day schools; and

iii. Day camp, that is, payment to an organization which operates a program of recreational activities.

5. Skills acquisition instruction:

i. Methods of accomplishing educational tasks, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to perform academically related tasks; and

ii. Physical education or recreation skills, that is, instruction whose purpose is to help clients acquire skills or concepts which will enable them to participate in sports and/or leisure activities.

6. Room and board payments:

i. For all other training, that is, any room and board cost; and

7. Other services:

i. Reader service, that is, payment to a person under the supervision of a Commission client who reads printed material to and/or writes what is dictated by the client. Reader service is equivalent to amanuensis service.

(c) Allied prevention services as follows:

1. Vision related restorative treatment:

i. Treatment to the eyelids, that is, services provided or supervised by a medical practitioner which are related to procedures involving the eye's lid.

ii. Treatment of the lacrimal system, that is, services provided or supervised by a medical practitioner relating to the tear duct and tearing;

iii. Treatment of the conjunctiva, that is, services provided or supervised by a medical practitioner which are related to conjunctivitis or removal of the pterygium;

iv. Procedures related to repair of the cornea, that is, services provided or supervised by a medical practitioner which are related to an injury to the cornea including lacerations;

v. Procedures related to a corneal transplant, that is, services provided or supervised by a medical practitioner which involves the removal and subsequent replacement of the eye's cornea;

vi. Other treatment of the cornea, that is, services provided by a medical practitioner which are related to the removal of a foreign body, treatment of corneal abrasions, scraping of an ulcer on the cornea, etc;

vii. Treatment of a condition of the iris, ciliary body, sclera, and anterior chamber, that is, services provided or supervised by a medical practitioner which are related to such treatment;

viii. Treatment related to cataract extraction, that is, services provided or supervised by a medical practitioner which are related to the removal of the eye's natural lens;

ix. Treatment related to insertion of prosthetic lens, that is, services provided or supervised by a medical practitioner which relate to the removal of the eye's natural lens and subsequent implantation of an artificial one;

x. Treatment related to the repair of retinal detachment/tear, that is, services provided or supervised by a medical practitioner which are related to a retinal detachment or tear;

xi. Other treatment related to the retina, choroid or posterior chamber, that is, services provided or supervised by a medical practitioner which are related to the treatment of inflammations or tumors;

xii. Treatment related to vitrectomy, that is, services provided or supervised by a medical practitioner which are related to the removal of the eye's vitreous;

xiii. Treatment related to the extra-ocular muscle, that is, services provided or supervised by a medical practitioner which are related to procedures involving eye muscles;

xiv. Treatment related to the eyeball, that is, services provided or supervised by a medical practitioner which are related to a medical procedure involving the eyeball (that is, enucleation);

xv. Contact lens specialists for services other than evaluation, that is, services provided or supervised by a medical practitioner which are related to lens fitting and/or follow-up visits;

xvi. An assistant surgeon in connection with vision-related treatment; and

xvii. An anesthesiologist for vision related treatment, that is, medical practitioner who is certified to administer anesthesia during a surgical procedure related to the eye.

2. Non-vision related restorative treatment:

i. Services ***of a*** Diabetologist, that is, an evaluation by a diabetes specialist.

3. Provision of prosthetics and aids:

i. An intraocular lens, that is, an optical device which is implanted in the eye as a replacement for the eye's natural lens;

ii. Contact lenses, that is, an optical device which rests directly on the eyeball whose purpose is to correct a refractive error;

iii. An ocular ***[prosthetic]* *prosthetic***, that is, a device which occupies the eye socket after an eye has been ***[enuclated]* *enucleated***; and

iv. Eyeglasses for aphakia, that is, lenses which mount on the face in front of the eyes in order to correct the refractive error caused by the removal of the eye's natural lens.

4. Other vision related medical services:

i. Treatment related drugs or supplies, that is, payment for prescribed medications, biologicals, or supplies which are incident to the restorative services;

ii. In-patient hospitalization, that is, payment to a hospital for services provided to a client who has been or will be admitted to a hospital. Clients who will be having "same day surgery" are admitted to the hospital as patients;

iii. Out-patient hospitalization, that is, payment for hospital care which is provided to a client who has not been admitted to the hospital facilities at which the treatment occurs;

iv. Convalescent care, that is, ***payment to a convalescent or nursing home or nursing services organization for clients to purchase**

HUMAN SERVICES

HUMAN SERVICES

room, board, nursing home care and other services provided by said facility or organization;

v. X-rays, that is, a diagnostic procedure wherein Roentgen ray photographs of bodily parts are made and then interpreted by a medical professional;

vi. Lab tests, that is, diagnostic and/or pathology procedures such as urinalysis; and

vii. Pre-admission testing, that is, an examination performed prior to same-day surgery or in-patient hospitalization which includes blood pressure measurement, lab work/tests, etc.

5. Other vision restoration related services:

i. Transportation, that is, expenditures for transporting a client, and their escorts or attendants, if necessary, incidental to the provision of restoration services, including costs of travel and subsistence (or per diem allowance in lieu of subsistence) while in transit; and

ii. Other related cost, that is, payment for restoration services that cannot be properly classified under any other category.

6. Provision of training materials or equipment:

i. Health aids, that is, materials and/or adaptive devices which are designed to help a blind or visually impaired person accommodate to vision loss when performing health maintenance tasks, for example, injecting insulin or administering medication.

(d) Vocational rehabilitation (VR) services as follows:

1. Non-vision related medical diagnostics;

i. A dental exam, that is, an evaluation performed or supervised by a dentist whose purpose is to detect maxillofacial problems and/or diseases of the teeth and gums;

ii. A diabetologist exam, that is, an evaluation by a diabetes specialist;

iii. A gastro-intestinal exam, that is, an evaluation performed by a specialist in diseases of the stomach and intestinal tract;

iv. A cardio-vascular examination, that is, an evaluation performed by a specialist in circulatory disorders of the heart and blood vessels;

v. A proctological exam, that is, an evaluation performed by a proctologist;

vi. A chiropractic exam, that is, an evaluation performed by a chiropractor;

vii. X-rays (see (c)4v above);

viii. Lab tests (see (c)4vi above);

ix. An orthopedic exam, that is, an evaluation by a specialist in spine, joint and bone diseases and conditions;

x. A neurological exam, that is, an evaluation by a specialist in central nervous systems disturbances.

xi. Evaluation by other medical specialists, that is, all other evaluations by a specialist not listed separately in this series;

xii. A speech/hearing evaluation, that is, an evaluation by a speech pathologist including an audiogram designed to detect impairment in *[speech and]* hearing;

xiii. A surgical evaluation, that is, an examination or pre-operative consultation by the practitioner who will be performing the surgery;

xiv. A respiratory exam, that is, an evaluation by a pulmonary lung specialist.

xv. A dermatological exam, that is, an evaluation by a skin specialist;

xvi. An oncological exam, that is, an evaluation by a cancer specialist;

xvii. A genito-urinary exam, that is, an examination performed by a urologist or gynecologist; and

xviii. An otorhinolaryngological exam, that is, evaluation by an ear, nose and throat specialist.

2. Psychological diagnostics:

i. Psychometric testing, that is, an assessment of a person's vocational skills, career preferences and performance.

3. Skills assessment:

i. A vocational/pre-vocational evaluation, that is, an assessment whose outcome is a written report which delineates strengths, weaknesses and needs relative to a client's ability to perform tasks associated with a particular job or to carry out job seeking activities;

ii. A career awareness evaluation, that is, an assessment whose outcome is a written report which delineates an individual's level of

ADOPTIONS

knowledge relative to current employment trends, level of ability to make informed career choices, and level of ability to make informed choices relative to the need for post-secondary education and/or the appropriate post-secondary course of study;

iii. A self-employment evaluation, that is, an assessment whose outcome is **[both]** a written report which delineates **both** an individual's potential for self-employment as well as the probability of whether the individual's self-employment goal will succeed; and

iv. A home products evaluation, that is, an assessment whose outcome is a written report which delineates a homebound individual's potential for self-employment.

4. Vision related restorative treatment (see (c)1 above);

5. Non-vision related restorative treatment:

i. Speech/hearing therapist services, that is, provision of training necessary to enable persons with speech/hearing impairments to develop useful communication skills;

ii. Physical therapist services, that is, provision of treatment necessary to overcome disabilities which interfere with activities of daily living/physical limitations of movement and bodily functions. Treatment can include the application of a range of therapeutic modalities such as exercise, gait training, massage, heat, water, light and electricity;

iii. Dental services, that is, provision of routine dental health care including cleaning, tooth extraction, filling of cavities, and replacement with artificial materials;

iv. Occupational therapist services, that is, provision of treatment directed toward an individual's participation in selected tasks designed to restore, reinforce, and enhance performance; facilitate learning of those skills and functions essential for adaptation and productivity or which diminish or correct pathology, and to promote and maintain health. Its fundamental concern is the development and maintenance of the capacity through the life span to perform those tasks and roles essential to productive living;

v. Gastro-intestinal specialist services (see (d)1iii above);

vi. Cardio-vascular specialist services (see (d)1iv above);

vii. Orthopedist services (see (d)1ix above);

viii. Neurologist services (see (d)1x above);

ix. Chiropractor services (see (d)1vi above);

x. E.N.T. specialist services (see (d)1xviii above);

xi. An assistant surgeon involved with on-vision related surgery;

xii. An anesthesiologist involved in non-vision related surgery;

xiii. Diabetologist services (see (c)2**i** above); and

xiv. Services of other **[specialist]* *specialists**, that is, **[all other services other than evaluation]* *non-vision restorative treatment** provided by **a* specialist*[s not listed separately in this series]* *not identified in (d)5i through xiii above**.

6. Provision of prosthetics and aids (see (c)3 above);

7. Other vision related medical services (see (c)4 above);

8. Other restoration related services (vision or non-vision) (see (c)5 above);

9. Provision of training or equipment:

i. Vocational aids, that is, materials and/or adaptive devices which are designed to help a blind or visually impaired person accommodate to vision loss when performing job related tasks, for example, reading a computer monitor;

10. Tuition payment:

i. College or university;

ii. Vocational training, that is, payment for specific job related instruction which is provided by an agency, school or individual;

iii. Adjustment training, that is, payment for pre-vocational type activities which promote an awareness of and healthy adjustment to the work environment and which provides clients with direct experiences of various types of work; and

iv. On-the-job training subsidies, that is, payment to an employer to support vocational training provided to a client by **[the]* *that** employer;

11. Job readiness training:

i. Career awareness training, that is, provision of pre-employment counseling and guidance related to occupational choices and career decisions;

ii. Job clubs, that is, counseling and guidance provided on a group basis to help clients learn the basic **[tools]* *skills** for obtaining

ADOPTIONS

employment and to offer peer support during the job-hunting process; and

iii. Job seeking skills, that is, counseling and guidance relating to resume preparations, dress and personal appearance, filling out applications and writing letters, applying for a job or responding to a job ad, interview techniques and taking employment tests;

12. Room and board payments:

i. For restoration services including hospitalization, that is, expenses incurred for restoration services a client receives while away from home;

ii. For placement, that is, expenses incurred by a client in conjunction with job interviews or employment up to the receipt of client's initial pay check; and

iii. For all other training, that is, any room and board cost not listed in this paragraph.

13. Training related to services to families:

i. Child care expenses incurred so that client may receive services.

14. Job placement:

i. Occupational exploration, that is, the process by which jobs are analyzed and, if needed, modified, and the client, employers, and supervisors are consulted, advised, and trained;

ii. Business Enterprise Program consultation, that is, the provision of assistance to either a vending stand operator on issues related to managing a vending stand or a person who has recently started his or her own business; and

iii. Placement tools or equipment, that is, payment for licenses, tools or equipment necessary to accomplish job functions, advertising, initial business insurance premium, initial stock and other start up expenses;

15. Other services:

i. Reader service (see (b)7i above);

ii. Services of an interpreter for the deaf, that is, payment to a person who acts as a translator for someone who communicates using a sign language such as AMSLAN; and

iii. Interpreter service, that is, payment to a person who acts as a translator for someone who communicates in a language other than English.

(e) The Vending Facility Program is a VR service program which evaluates, trains and places a person who is legally blind into employment as an operator of a vending facility. The Commission is empowered by the Federal Randolph-Sheppard Act, as amended, as the sole State licensing agency to certify and license blind individuals to operate vending facilities on Federal and non-Federal property in the State (see N.J.A.C. 10:97).

(f) The Small Business Enterprise Program evaluates VR clients to determine their *[suitability]* ***potential*** to own and operate an independent business enterprise that is not part of the vending facility program. (see N.J.A.C. 10:95).

(g) The Homebound Small Business Enterprise Program provides services to VR clients who have a goal of owning and operating a home-based business (see N.J.A.C. 10:95).

(h) The Home Products Program evaluates the work potential of VR clients in the home and provides business consultation and other services to train clients in the production of products in the home. These products are sold to the public at various sites throughout the State (see N.J.A.C. 10:96 and 10:95).

(i) Client Assistance Fund provisions are as follows:

1. The Client Assistance Fund shall be available to assist eligible clients of the Commission in meeting certain financial emergencies. These emergencies may include the following:

i. A client's specific, documented needs have not been met because money budgeted for the client by one or more Commission programs has not been provided for in a timely fashion;

ii. A client faces deprivation of a vital aspect of his or her life, for example, health care, shelter or social needs; and

iii. A client needs the funds to help overcome an*[other]* immediate crisis or short-term hardship.

2. A client shall request money from the Client Assistance Fund only when the client's family has no readily available money, the client can not obtain funds from any other public or private sources and there are no other financial resources available to the client;

HUMAN SERVICES

3. The Client Assistance Fund shall not impose a ceiling on the amount made available to a qualifying client. No limitation shall be placed on the number of requests for funds that a qualifying client may make; and

4. Types of allocations (loans or grants) are as follows:

i. Monies from the Client Assistance Fund shall be provided to eligible clients on a loan basis. Exact payment terms and any other relevant terms shall be stipulated to the client orally and in writing before the funds are issued. The client shall sign a standard promissory note which specifies the terms of the loan agreement. Examples of repayment terms are: the client agrees to repay the Client Assistance Fund as soon as he or she receives a social security check to replace the one that was lost; or the client's regular income is sufficient to allow repayment to the client assistance fund without hardship at a minimum rate of \$25.00 monthly; and

ii. Client assistance funds not allocated specifically as loans shall be disbursed as grants. Repayment of grants shall not be required.

SUBCHAPTER 5. CASE MANAGEMENT PRACTICES

10:91-5.1 Referral procedures

(a) Clients will be telephoned within 10 working days from the date of initial contact with the Commission. The supervisor will assign the applicant to a primary caseworker at this time.

(b) All emergency calls shall be responded to immediately.

(c) Referrals may be made by use of the toll-free 800 number available to callers throughout the State (see N.J.A.C. 10:91-4.1 (a)1).

10:91-5.2 Intake procedures

(a) The purposes of the intake interview shall be to gain an initial assessment of the applicant's total needs, to familiarize the applicant with Commission services and ways of helping, to respond to the applicant's most immediate or emergency needs, and to determine whether eligibility should be pursued, and, if so, to initiate together with the applicant, the development of a comprehensive service plan.

(b) The applicant survey is a device for gathering significant background information about the applicant during the initial interview. The survey is used by the Commission in identifying the needs of the applicant, making an overall assessment of the situation and developing a service plan. The survey is completed during the intake interview by the caseworker. After completion, the caseworker and the applicant, or his or her parent or guardian, shall sign the survey. The completed survey becomes a part of the applicant case record.

10:91-5.3 Case assignment and transfers

(a) Case assignments and transfers shall be made by a service supervisor or, if necessary, by the office manager.

(b) Case assignments shall be made to the primary caseworker whose area of expertise would involve 50 percent or more of the services to be provided to a client. The primary caseworker shall function as the Commission's main representative to an individual client.

(c) When requested by the primary caseworker, an ancillary caseworker with specialization in an area other than that of the primary caseworker, shall be assigned to provide Commission services.

10:91-5.4 Service plan development

(a) The client and primary caseworker shall discuss and agree to an organized plan of services which addresses the client's needs. This service plan is developed for all clients once a client, parent or guardian has signed an applicant survey form or sent a letter requesting services and is called the Individual Client Service Plan (ISP). Vocational rehabilitation (VR) clients have an additional plan called the Individualized Written Rehabilitation Plan (WRP) which is developed once eligibility for VR services has been determined (see N.J.A.C. 10:91-2.3 and 2.7). The primary caseworker is responsible for completing all service plan documents. Both the client and caseworker shall sign the ISP and IWRP.

(b) The ISP shall be completed at a face-to-face meeting with the client as soon as possible after the client, parent or guardian has signed the applicant survey. The ISP indicates:

HUMAN SERVICES

1. The type of exams needed to determine the client's eligibility for services;
2. The type of services to be provided;
3. Time frames for service provision;
4. The type of Commission specialist to whom the client will be referred; and

5. The client's comments, if any.

(c) The development and use of the IWRP is mandated by the Rehabilitation Act of 1973, as amended in 1986. (P.L. 99-506, Section 102(b) as amended). The IWRP contains:

1. The long range vocational goal which the services are expected to achieve;
2. The intermediate rehabilitation objectives related to the attainment of the goal;
3. The VR services to be provided with time frames for their provision;
4. The evaluation criteria and time schedule for determining whether the goals and objectives are being met;
5. A provision for an initial assessment of the need for post-employment services; and
6. Prior to case closure, a further reassessment.

(d) The IWRP is intended to insure that the client and primary caseworker shall have discussed and agreed to an organized plan of services addressing all of the client's vocationally relevant rehabilitation needs as documented in the certificate of eligibility.

(e) The IWRP shall further insure the establishment of planned time frames within which the services are to be provided.

(f) The IWRP shall also insure that the progress toward achievement of stated objectives will be regularly evaluated, and that the client, parent or guardian where appropriate shall have been fully informed of the rights and responsibilities that accompany acceptance into the VR program.

(g) The ISP and/or IWRP shall be reviewed with the client in a face-to-face meeting on an annual basis. A new ISP or IWRP shall be drawn up at the annual meeting between the primary caseworker and the client. The ISP or IWRP for the past year shall be annotated to reflect which objectives have or have not been accomplished. Revision of the ISP or IWRP may be necessary due to change in client's goals or objectives, change in a client's condition and/or situation, progress, achievement of objectives, newly identified problems or needs, or unobtainable objectives. For VR clients, an amendment to the IWRP shall be written. At case closure, the current ISP or IWRP shall be annotated to reflect which objectives were or were not achieved.

10:91-5.5 Purchase of services; emergency and immediate need situations

(a) Payment for purchase of services for clients may be made by the Commission when requested, approved and allocated from the Commission funds. Primary and ancillary caseworkers may initiate requests for payment.

(b) Approved purchase of services through a rapid payments system shall be made by the Commission on behalf of a client to respond to an emergency or to purchase those client related services or commodities which cannot be purchased through normal procedures because of the presence of an immediate need.

(c) In emergency situations, an approved rapid payment shall be made within 48 hours of the original request.

(d) In immediate need situations, the rapid payment shall be made within two weeks of the initial request.

(e) Only the following service categories shall be permitted rapid payments:

1. Transportation services;
2. Maintenance services;
3. Prosthetics and aids;
4. Training materials or equipment; and
5. Placement tools or equipment.

(f) Client financial participation toward the expense of Commission ***purchased*** services to be utilized shall be based on the level of responsibility set forth in detail in the financial need standard and survey (see N.J.A.C. 10:91-3.1).

ADOPTIONS

(g) Authorized time limits shall be in writing and an authorization shall not exceed three months, unless written approval is obtained from the Chief of Field Operations.

10:91-5.6 Referral to provider agencies

(a) The function of the Commission's program development and contracting unit shall be to develop community based programs with provider agencies to meet the special needs of Commission clients and develop grants to obtain additional funds for specialized program development. The program development and contracting unit shall administer the purchase of service contracts on a Statewide and regional basis.

(b) ***A* *Clients* *client*** shall be referred to ***a*** provider ***[agencies]* *agency*** for the purpose of achieving specific objectives or goals that the primary caseworker and the client have agreed are best achieved through the assistance of a provider agency. In making the referral, the primary caseworker shall indicate those services the provider agency is to provide. The client's ISP and IWRP shall contain a statement which specifies the fact that a particular provider agency will provide certain services so that the client might accomplish a specific objective or goal. Provided the client has signed a release to do so, information concerning a client's disabilities shall be provided the provider agency, as needed.

(c) On at least a quarterly basis the caseworker shall annotate the client's case record to reflect the outcome of the referral to the provider agency and/or the current status of the client's relationship with the provider agency. Additionally, the caseworker shall report in the client's case record any significant facts relative to the provider agency's service delivery to the client.

(d) All provider agencies shall submit a monthly report to the Commission, the contents of which shall be specified by contract.

10:91-5.7 Release of information and access to records

(a) No client information may be released unless Commission clients or their parents or guardians have consented in writing to such release or by order of a court of competent jurisdiction. This prohibition applies to release of the following:

1. Records from the Commission to outside agencies or practitioners;

2. Records from the Commission for other legitimate purposes; and/or

3. Records from outside agencies or practitioners to the Commission.

(b) A client and/or parent or guardian may authorize the release of confidential information and medical records to or from the Commission by signing a consent to release information form. This form shall specify the sending and receiving party, the purpose for which the release is required, and the date of the release.

(c) ***[Personal]* *Client*** information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of a vocational rehabilitation program, or for purposes which would significantly improve the quality of life for clients and only if the organization, agency, or individual assures that:

1. The information will be used only for the purposes for which it is being provided;

2. The information will be released only to persons officially connected with the audit, evaluation or research;

3. The information will not be released to the involved individual;

4. The information will be managed in a manner to safeguard confidentiality; and

5. The final product will not reveal any ***[personal]* *client*** identifying information without the informed written consent of the involved individual, or his or her representative.

(d) A Commission client may inspect and/or copy his or her own records. A client shall have access to all records relating to his or her eligibility for or receipt of assistance.

(e) ***[To request access to records, a client or the client's parent, guardian or attorney shall submit a written request for permission to the regional or Statewide manager of the Commission. An attorney making the request shall also submit a written stipulation that he or she represents the Commission client and a release form, signed**

ADOPTIONS

by the client, authorizing the disclosure of records to the attorney.]*
Access to a client's records will be provided upon the Commission receiving a written request from a client or his or her duly authorized representative.

(f) Access to client information shall be denied when the prescribed procedures are not followed. The client shall be notified of the denial verbally and in writing by the regional or Statewide manager. The written notification shall set forth the reasons for the denial. A copy of the denial shall be placed in the client's case record.

(g) The regional or Statewide manager for the Commission shall forward a request for client access to his or her case records to the supervisor responsible for the client's case records. The supervisor shall contact the client, the client's parent or guardian or the client's attorney to schedule the date and time for review of the client's case records. Reader services shall be provided by the supervisor if the client requires them in order to review his or her case record. Clients or their representatives shall be charged the following fees, pursuant to N.J.S.A. 47:1A-1 et seq., for photocopying materials from the client's case records:

1-10 pages	\$.50 per page
11-20 pages	\$.25 per page
21 pages or more	\$.10 per page

10:91-5.8 Time limitation standards

(a) All education and allied services applicants who have not had an eye examination within the year prior to the date of the application survey will need to schedule and undertake to have an eye examination within 45 calendar days of the date of the applicant survey.

(b) The following time limitation standards may be exceeded provided the caseworker justifies in writing the need for an extension of the times specified:

1. Within 30 calendar days from the date of referral, an individual shall be placed in applicant status or his or her case shall be closed (see N.J.A.C. 10:91-2.8 and 2.9);

2. Within 60 calendar days of a client being placed in applicant status for education and allied services, the client shall have eligibility determined, or have an individual service plan in effect, or the client's case shall be closed (see N.J.A.C. 10:91-2.8);

3. Within 120 calendar days of a client being placed in applicant status for vocational rehabilitation services, the client is placed in extended evaluation status, or VR eligibility shall be determined, or the client's case shall be closed (see N.J.A.C. 10:91-2.9);

4. VR clients in service plan development shall become involved in a diagnostic program within 90 calendar days of agreement to a service plan between client and primary caseworker. Within 30 calendar days of the completion of the diagnostic program, the Individualized Written Rehabilitation Plan (IWRP) shall be written and signed by the client, parent or guardian.

5. The VR services contained in the IWRP shall be implemented within 90 calendar days of the client's approval of this plan or the case shall be closed if implementation is impracticable (see N.J.A.C. 10:91-2.9); and

6. If a VR client is to receive homemaker training, the training shall commence within 90 calendar days of client's written approval of this vocational plan and shall be completed within nine months of the start of training.

10:91-5.9 Communicable diseases of Commission clients

(a) Upon learning of a client's communicable disease, a supervisor ***shall consult with the Commission's Administrative Medical Consultant as to what, if any, necessary precautions should be implemented and*** shall arrange for alternative services to a client where appropriate:

1. The supervisor shall develop a plan for an alternative service arrangement for the client during the ***[pendency]* *duration*** of the illness; and

2. The caseworker shall notify the client or his or her guardian in writing of established alternative service arrangements and the reasons for such action. The caseworker shall be responsible for the implementation of the alternative service plan.

HUMAN SERVICES

(b) The Commission shall in all respects comply with statutory and regulatory requirements concerning reporting of communicable diseases (see N.J.A.C. 8:57-1).

10:91-5.10 Reporting institutional abuse of elderly persons

Reporting of institutional abuse of elderly persons shall be undertaken pursuant to N.J.S.A. 52:27G-1 et seq. and N.J.A.C. 5:100.

10:91-5.11 Reporting suspected child abuse or neglect

Reporting of suspected child abuse or neglect shall be undertaken pursuant to N.J.S.A. 9:60-8.8 et seq. and N.J.A.C. 10:129.

10:91-5.12 Critical incidents involving clients

(a) A critical incident means the occurrence of serious accidental injuries to clients or suspected offenses involving injury to clients or their property which shall require the writing of an incident report. Incidents which need not be reported shall be those requiring only minor first aid treatment and which do not involve professional medical treatment, loss of consciousness or restriction of activity or motion.

(b) Incidents shall be verbally reported immediately to the Commission's Chief of Field Operations and Supervisor of Quality Assurance. This initial verbal notification*, **which is to be followed by a written report,*** shall be the responsibility of the Commission staff person who first learns of the occurrence of a critical incident, or his or her supervisor or manager and shall include:

1. The names and relationships of the persons involved;
2. The time, date and location of the incident;
3. A description of what occurred; and
4. The steps taken or to be taken to deal with the situation.

(c) Within 24 hours of this initial verbal notification, a written report shall be forwarded to the Chief of Field Operations and Supervisor of Quality Assurance containing the information listed in (b) above, and any other information related to the situation.

(d) Upon receipt of the initial verbal notification, the Commission's Executive and Deputy Directors shall be informed of the incident. All serious incidents shall be reported immediately by the Commission to the Commissioner of the Department of Human Services and its Office of Public Information.

(e) Within seven working days, the Supervisor of Quality Assurance shall initiate a follow-up investigation of the incident:

1. To determine any additional information not initially reported; and
2. To recommend any action or procedures to be taken to prevent a recurrence.

(f) The Commission's Executive Director or their designee shall supervise all follow-up activities, including presentation of recommendations, possible initiation of review by the Department of Human Services' Clinical Review Board, and implementation of all necessary actions.

(g) Based on the follow-up investigation report, the Commission's Chief of Field Operations shall oversee implementation of short- and long-term corrective actions.

SUBCHAPTER 6. CLIENT APPEAL RIGHTS

10:91-6.1 Recording of concerns by clients

Clients of the Commission for the Blind and Visually Impaired or their agents may record their concerns or problems regarding the timeliness of delivery of services or the adequacy of service by contacting their caseworker's supervisor or, in their absence, the office manager. The client also has the option of recording their concerns or problems with the Commission's Client Service Representative (see N.J.A.C. 10:91-1.10). Clients requesting an administrative appeal of their case may also do this through the Client Service Representative (see N.J.A.C. 10:91-6.2).

10:91-6.2 Administrative appeals

(a) A client (claimant) or his or her parent or guardian shall have the right to request an administrative appeal after all informal means of dispute resolution have been unsuccessful. The claimant may obtain an Administrative Appeal Request form from the caseworker or by telephone from the Client Service Representative,

1-800-962-1233 (see N.J.A.C. 10:91-1.10). Upon request, a claimant will be provided assistance in completing the form which will be forwarded, with relevant attachments, to the Executive Director of the Commission for the Blind and Visually Impaired. The claimant shall note on the form which type of appeal investigation is requested:

1. ***[An administrative appeal investigation of the papers in the client's case file (a review of the papers)]* *A review of the papers in a client's file*;** or

2. ***[An administrative appeal investigation proceeding at which all relevant parties appear in person (an in-person review)]* *An in-person review in which all relevant parties participate*.**

(b) Upon receipt of a request for an administrative appeal, the Executive Director shall assign a supervisory employee to conduct the appeal investigation and arrange to forward to that employee the client's case record. Neither the appeal investigator assigned this task nor his or her immediate supervisor shall have had any direct part in the dispute under appeal. Additionally, if the administrative appeal has been initiated by a VR services client, the assigned investigator shall have VR experience and knowledge.

(c) The appeal investigator conducting the administrative appeal investigation shall complete it within 30 working days of the time the client's case record shall have been received by him or her. This time limitation applies to both types of administrative appeal investigation.

(d) When the claimant requests an appeal investigation of the papers, the appeal investigator shall conduct an interview with the claimant, and as needed, other involved individuals. Notes of these interviews shall be typed and retained with the investigation records.

(e) When the claimant has requested an in-person administrative appeal investigation, the appeal investigator shall communicate with him or her to schedule ***[it]* *the investigation*** at a mutually convenient day and time between 9:00 A.M. and 5:00 P.M., Monday through Friday. The appeal investigation will be conducted at a regional or central office of the Commission. The appeal investigator will function as chairperson and arrange for minutes to be taken, typed and retained with the investigation records. If the client is unable to arrange for his or her transportation in order to be present at the appeal investigation, the Commission will make arrangements to provide transportation.

(f) The claimant at an in-person administrative appeal investigation will be permitted:

1. To represent him or herself or to be represented by an attorney or another individual;
2. To present his or her reason(s) for the appeal;
3. To recount his or her understanding of the Commission's position about the circumstances resulting in the appeal;
4. To submit additional documents; however, such documents shall be provided to the appeal investigator at least two working days prior to the date of the appeal investigation; and
5. To meet together with the appeal investigator and Commission staff member(s) involved in the appeal and to question them.

(g) A claimant who wishes to represent himself or herself shall be 18 years of age or older.

(h) A claimant who wishes to be represented by counsel shall make those arrangements independent of the appeal investigator, except that the appeal investigator will inform the claimant that a list of private attorneys is available from the bar association of the county where the client is domiciled. The claimant shall assume full responsibility for any and all legal costs incurred. A client who cannot afford a private attorney will be referred to a local legal services office or to the Department of the Public Advocate. Commission claimants who are also vocational rehabilitation services clients shall be referred to the Client Assistance Project (CAP) of the Department of the Public Advocate. Both the Department of the Public Advocate and the CAP may be reached by telephone at 1-800-*(792-8600)* ***922-7233*** or 1-609-292-9742.

(i) For the purpose of this section and as needed, all correspondence with a client will be in a medium accessible to ***[a]* *the*** client.

(j) Within 25 working days of completing an appeal investigation, the appeal investigator shall submit a written report of his or her findings and recommendations to the Executive Director.

(k) Within five working days of an appeal investigation report being submitted to the Executive Director, the appeal investigator shall forward a registered letter to the allied or education client involved in the appeal, or their parent or guardian advising that:

1. The investigation has been completed;
2. A report of the investigation has been submitted to the Commission's Executive Director; and
3. The Executive Director, upon reviewing the report of the investigation, will immediately inform by registered letter, the client, parent or guardian whether the matter will be disposed of pursuant to (n) or (o) below.

(l) Within five working days of an appeal investigation report being submitted to the Executive Director, the appeal investigator shall forward a registered letter to the vocational rehabilitation client who filed an administrative appeal or their parent or guardian advising that:

1. The investigation has been completed;
2. A report of the investigation containing a recommended decision has been submitted to the Commission's Executive Director;
3. The client, parent or guardian has the right to request an administrative hearing before an administrative law judge if they disagree with the recommended decision;

4. A request for an administrative hearing will be in writing by registered mail from the client, parent or guardian to the Executive Director within 10 days of the client, parent or guardian receiving the registered letter from the appeal investigator; and

5. The Executive Director will notify the client, parent or guardian by registered letter, at the end of the 10 day comment period, whether the matter will be disposed of pursuant to (n) or (o) below.

(m) Based on the report submitted to the Executive Director by the administrative appeal investigator, and within 20 working days of receipt of the report, the Executive Director shall determine if the appeal is a contested versus a non-contested case (see N.J.A.C. 10:91-1.12).

(n) If the Executive Director determines that the administrative appeal represents a contested case or a vocational rehabilitation client or their parent or guardian requests an administrative hearing, the matter is immediately forwarded to the Office of Administrative Law pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Executive Director will advise the client, parent or guardian of this action by registered letter.

(o) If the Executive Director determines that the administrative appeal represents a non-contested case, then the Executive Director shall issue a final decision and forward this decision by registered letter to the client, parent or guardian. The letter shall also contain a statement that any further appeal of this decision shall be made to the Appellate Division of the Superior Court of New Jersey.

(p) Following an administrative hearing of a contested case by an administrative law judge (ALJ), the ALJ renders a recommended decision that may be adopted, modified or rejected by the Executive Director, who by law is empowered to make a final decision in such matter. However, if the Executive Director does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10. The Executive Director shall advise the client, parent or guardian of the final decision and the reason for the decision, by registered letter.

SUBCHAPTER 7. MEDICAL POLICIES AND FEE SCHEDULES

10:91-7.1 Fee schedule

(a) In order to expedite authorizations for medical services, the Commission will maintain a medical fee schedule. This schedule will establish uniform and maximum authorization amounts for medical services. These services fall into one of the following categories:

1. Examinations;
2. Specialized eye procedures;
3. X-Ray, clinical, and lab tests;
4. ***[Spectacles]* *Eyeglasses***;
5. Contact lenses, prosthetics; and

ADOPTIONS

6. Hospital clinic speciality procedures.

(b) As described in (a)1, 2, 3, and 6 above, *[and prior to certifying]* ***before the caseworker certifies*** an authorization/invoice for payment of these services, the vendor shall provide to the client's caseworker a written report which details the services rendered by the vendor, the vendor's findings and recommendations, if any, and/or a description of the impact or the potential impact the service(s) has or will have on the client.

(c) The maximum authorization amounts in the Commission's medical fee schedule shall be established by the Commission's Administrative Medical Consultant. Prior to establishing a maximum amount, the Administrative Medical Consultant will do the following:

1. Review the current rate of payment for the service as established within the Blue Cross/Blue Shield 750 Series;

2. Review the current rate of payment for the service as established by other public health programs, for example, Medicaid or Medicare; and

3. Consult with applicable providers to gain an understanding of what the prevailing rate established by providers is.

(d) All established authorization amounts will be reviewed at least once every two years to determine if any adjustments are to be made to reflect inflation or other factors. Additionally, specific amounts will be reviewed at any time pursuant to a request for review from a provider or a Commission staff person or a change in Commission policy and procedure which will impact the providers associated with a particular Commission service, for example, low vision services.

(e) Changes *[to]* ***in*** established maximum authorization amounts will be reflected in a timely fashion on the Commission's medical fee schedule.

(f) The maximum authorization amount for a medical service or a combination of services not listed on the Commission's medical fee schedule will be established on a case-by-case basis by the Commission's Administrative Medical Consultant *[based on a written request from a caseworker]*.

(g) Exceptions to an established maximum authorization amount will be granted by the Commission's Administrative Medical Consultant based on a written request from caseworker.

(h) The Commission's medical fee schedule follows:

General examinations:

General vision exam to determine classification including evaluation to determine need for field test	\$ 45.00
Follow-up treatment examination up to four each	25.00
Exam under anesthesia	135.00
General medical *examination* includes \$50.00 for medical exam and report, \$5.00 for urinalysis and \$5.00 for hemoglobin test	60.00
In-hospital pre-operative medical examination or consultation	60.00
In-hospital follow-up visits up to five each	30.00
Out of hospital pre-operative medical examination or consultation	60.00
Otological *examination* , including audiogram	75.00
Audiogram only	25.00
Hearing aid evaluation	45.00
Tympanogram	15.00
Dental examination with full mouth X-rays	45.00
Neurological evaluation	65.00
Physical therapy per session, as approved by administrative medical consultant	55.00
Psychiatric, psychological or other psychotherapeutic evaluation, three sessions, each up to	75.00
Individual therapy, one hour	60.00
Speech therapy, per session	55.00
Vision related consultative specialty examinations:	
Corneal examination	60.00
Glaucoma examination and report	60.00
Hereditary evaluation	60.00

HUMAN SERVICES

Low vision exam for clients whose most recent eye report is one year old or less	100.00
Low vision exam for clients whose most recent eye report is over one year old	125.00
Up to three low vision exam follow-up visits which occur within four months of the date of the initial low vision exam, each	25.00
Low vision exam follow-up visit to fit fresnel prisms	22.00
Motility examination	60.00
Neuro-ophthalmological examination	130.00
Neuro-ophthalmological follow-up exam, up to three allowed	30.00 each
In-hospital consultations, first consultation with detailed report	130.00
Each succeeding day	30.00
Oculo-plastic examination	60.00
Ocular trauma examination	60.00
Orthoptic evaluation	40.00
Orthoptic follow-up exam	25.00 each
Orthoptic therapy, each session	20.00
Out of hospital pre-operative ophthalmic examination or consult	45.00
Pediatric ophthalmological examination	60.00
Pleoptic evaluation	40.00
Pleoptic therapy, each session	20.00
Retinal examination	60.00
Uveitis, tumor evaluation	60.00
Uveitis evaluation follow-up	25.00
Specialized eye procedures:	
Eyelids:	
Excision of cyst	55.00
Chalazion (multiple \$150.00)	80.00
Lesion (tumor)	135.00
Plastic repair of lid laceration:	
Without graft	185.00
With Graft	370.00
Surgical correction of entropion or ectropion	345.00
Ptosis surgical repair	I.C.†
Extensive plastic repair of lids and orbits	I.C.†
Incision and drainage of abscess	55.00
Canthotomy	160.00
Excision of xanthoma:	
Unilateral	160.00
Bilateral	320.00
Tarsorrhaphy	160.00
Canthorrhaphy	160.00
Punctual occlusion	*160.00*
Punctual occlusion, other eye	*[160.00]*
	100.00
Conjunctiva:	
Incision and removal of foreign body:	
Surface	25.00
Imbedded	30.00
Excision—lesion of conjunctiva:	
Biopsy	35.00
Excision of cyst or nevus	80.00
Excision of pterygium	180.00
Repair:	
Conjunctivoplasty with free graft:	
Conjunctival graft	375.00
Buccal mucosa membrane graft	425.00
Suture laceration	50.00
Glaucoma procedures:	
Goniotomy	280.00
Peripheral iridectomy, laser or surgical	330.00
Filter operation of any kind	400.00
Iridotomy by stab incision for iris bombe	200.00
Cyclo diathermy	230.00
Cyclo dialysis	370.00

HUMAN SERVICES

ADOPTIONS

Cyclo cyro therapy	240.00
Argon laser or surgical trabeculectomy	400.00
Cornea:	
Keratotomy:	
Removal of foreign body from surface	25.00
Embedded in Cornea	35.00
Keratotomy	240.00
Keratoplasty (corneal transplant)	*[710.00]*
	915.00
Radial keratotomy (as approved by Administrative Medical Consultant)	635.00
Epikeratophakia	635.00
Removal of foreign body anterior chamber	370.00
Delimiting keratotomy	95.00
Cauterization or cryotherapy of lesion of cornea	50.00
Crystalline lens:	
Cataract extraction by phaco	615.00
Cataract extraction with intraocular lens insertion	915.00
Cost of intraocular lens	370.00†
Secondary lens implant	615.00
Dissection of lens, surgical	215.00
YAG laser posterior capsulotomy	475.00
Removal of intraocular lens	615.00
Eyeball:	
Excision:	
Enucleation or evisceration	330.00
With non movable implant	330.00
With movable implant	375.00
Suture for wound or injury:	
Non-perforating	140.00
Perforating	470.00
Retina and vitreous:	
Scleral buckling	845.00
Sealing of retinal tear by argon laser coagulation	630.00
Focal/Argon or krypton photo-coagulation for Rx of diabetic retinopathy unilateral:	
Unilateral, initial treatment	290.00
Up to three additional treatments (each)	190.00
Pan retinal photo-coagulation for vein occlusion, initial treatment	290.00
One additional treatment	190.00
Pan retinal photo-coagulation for diabetic retinopathy initial treatment	290.00
Up to two additional treatments (each)	190.00
Vitrectomy pars plana approach with or without lensectomy	1,035.00
Cryoablation of retina (blind eye)	240.00
Gas fluid exchange	250.00
Endophotocoagulation	250.00
Orbit:	
Plastic repair of orbit:	
Fracture of floor	655.00
Orbitotomy	375.00
Removal of intra-orbital foreign body	425.00
Orbitotomy (kroenlein) as in exophthalmos	610.00
Ocular Muscles:	
Strabismus Surgery:	
One Muscle	425.00
Two Muscles, one or both eyes	470.00
Three or more muscles, one or both eyes	525.00
Lacrimal procedures:	
Dacryocystorhinostomy	425.00
Dacryocystectomy	375.00
Incision and drainage of lacrimal sac or lacrimal gland abscess	80.00
Plastic repair of torn canaliculi	265.00
Probing of naso-lacrimal duct	30.00
Subsequent (Max 4)	20.00
X-ray:	
Skull—less than four views with or without stereo	25.00

Skull—complete, four views	45.00
Chest—single view	45.00
Chest two views or stereo	30.00
Interpretation of chest—two views or stereo	15.00
Chest—three views	40.00
Chest—four views	45.00
GI series—upper gastrointestinal tract	95.00
CAT computerized tomography	200.00
Interpretation of CAT Scan	45.00
Magnetic Resonance Imaging (MRI) of skull, including interpretation	500.00
Special clinical tests:	
ECG, EKG, Electrocardiogram	25.00
ECG, EKG interpretation	15.00
ERG electro retinogram	55.00
VER electro encephalogram	55.00
Cardiovascular stress test	85.00
Electroencephalogram	55.00
Microscopic pathological evaluation of cataract after extraction	5.00
LABORATORY TESTS:	
Bun, Urea	7.00
CBC (complete blood count)	7.00
Creatinine	7.00
Blood sugar	7.00
Hemoglobin	6.00
Serology	7.00
Urine	6.00
SMA 12	60.00
Prothrombin (bleeding time)	6.00
PTT (partial thromboplastin time)	7.00
Pre-operative pre-admission testing, including chest x-ray, EKG, SMA 12 and urinalysis	130.00
Price list for *[spectacles]* *eyeglasses*:	
[Spectacles] *Eyeglasses* complete with frames prescribed as a result of a general vision examination, no dispensing fee:	
Single vision—distance or reading, spherical, hyperopia (+) or myopia (–)	60.00
Single vision—distance or reading, spherocylindrical, astigmatism in addition to hyperopia or myopia	70.00
Spherical bifocals, corrects both distance and reading	80.00
If bifocal "add" greater than + 3.00	95.00
Sphero-cylindrical bifocals (same as spherical bifocals, except also corrects for astigmatism)	85.00
If bifocal "add" greater than + 3.00	100.00
Single vision spherical cataract glass	95.00
Single vision sphero-cylindrical cataract glass	100.00
Bifocal—spherical cataract glass	140.00
Bifocal—sphero-cylindrical cataract glass	150.00
Welsh 4 Drop or OSI cataract glass	180.00
Corning CPF UV lens	205.00
(Commission low vision consultants suggest that the examining doctor consider prescribing less expensive alternatives to these Corning lenses, that is, Younger PLS 530, 540 and 550)	
[Spectacles] *Eyeglasses* prescribed as a result of a low vision evaluation:	
For the first or only pair made, the Commission will pay invoice costs for lenses and frames in- cluding a \$25.00 dispensing fee. A copy of the actual invoice shall be submitted for lenses and frames.	
For each additional pair provided at the same time as the initial pair, the Commission will pay invoice costs and a \$12.50 dispensing fee. A copy of the actual invoice shall be submitted for lenses and frames.	

ADOPTIONS

***[Spectacle]* *Eyeglasses* mounted bioptics or clip-on low vision aids or custom made *[spectacles]* *eyeglasses*:**

The Commission will pay invoice costs for lenses and frames and a \$50.00 dispensing fee. A copy of the actual invoice shall be submitted for lenses and frames.

Hard contact lenses:

Single lens	135.00
Two lens	225.00
Replacement lens	45.00
Hard pin hold contact lens (Aniridia)	335.00
	up to 390.00

Soft contact lenses (shall be initially approved by Administrative Medical Consultant):

Single lens	180.00
Two lens	270.00
Replacement lens (each)	67.00
Perma lens	200.00
Perma lens (pair)	225.00
Replacement perma lens (each)	73.00

***Gas permeable lenses** (shall be initially approved by an Administrative Medical Consultant);*

Gas permeable lens *(each)*	200.00
Gas permeable lens (pair)	300.00
Replacement gas permeable lens (each)	85.00

***Therapeutic lenses** (shall be initially approved by an Administrative Medical Consultant);*

Soft contact* *[Bandage]* *bandage* lens *[also called therapeutic lens] 200.00

***Collagen shield** 75.00*

Ocular prosthesis:

Custom fitted, hand painted, plastic ocular prosthesis	335.00
Custom fitted, hand painted, plastic scleral shell type ocular prosthesis	390.00
Orbital impression	110.00
Custom fitted temporary ocular prosthesis	55.00
Narcissus lens	390.00

Non-spectacle low vision aids:

The Commission will pay the price as listed in one of the following catalogs:

1. *[House of vision]* *Coburn Optical Company*;
2. Lighthouse;
3. American Optical Company; or
4. Designs for Vision.

[A copy of the page of the applicable catalog which stipulates the cost of the low vision aid shall be submitted by the low vision director.] If an aid or device appears in a catalog distinct from those listed above, the Commission's payment shall be set by its low vision consultant.

Hospital clinic and office specialty procedures:

Beta radiation therapy following excision of pterygium (up to three treatments)	50.00
Bronson ultrasound B scan (intracocular foreign body)	95.00
Color perimetry	90.00
Color fundus photos	45.00
Corneal transplant tissue	235.00
Dark adapt gross rod	130.00
Dark adapt rod and cone plateau	160.00
Electroculography	100.00
Electro retinography	100.00
Endothelial cell count	100.00
Fluorescein angiogram with interpretation and written report	100.00
Fresnell prism monocular	20.00
Fresnell prism binocular	30.00
Fresnell prism adaption	15.00
Gonioscopy	15.00
Goldman lens vitreous exam	15.00

HUMAN SERVICES

Hess screen exam	60.00
Pachymetry	100.00
Perimetry (visual field)	25.00
Perimetry (threshold)	75.00
Perimetry (octopus)	100.00
Saccadic velocity evaluation	105.00
Services provided by an ambulatory surgical center	700.00
Surgery set up (minor surgery)	60.00
Tonography	35.00
Ultrasonography A (axial length measure monocular)	105.00
Ultrasonography A (axial length measure binocular)	180.00
Ultrasonography B (scan for vitreal and retinal pathology)	100.00
Use *[for]* *of* laser and room (only in hospital)	200.00
Visual evoked response evaluation	115.00
Water bath ultrasound-monocular	170.00

†Individual consideration by the Commission's administrative medical consultant.

††To be allowed as a separate payment when outpatient surgery is performed in a freestanding outpatient facility or when surgery is performed on a "same day surgery" basis at a hospital. However, when surgery is performed on an in-patient basis, the cost of the lens is included in the DRG allowance.

10:91-7.2 Liability of Commission for missed medical appointments

(a) The Commission shall make no payment to a medical services provider for an education or allied services client who has given 24 hours notice of appointment cancellation.

(b) In the event that a Commission client fails to appear for a scheduled medical appointment or a Commission client fails to cancel a scheduled appointment prior to the date scheduled for the examination, the Commission shall be liable for one-half of the health provider's customary fee.

(c) Pursuant to Federal regulations, the Rehabilitation Services Administration has advised that the Commission shall not be liable for any fees associated with a missed medical appointment by a VR client.

10:91-7.3 Cataract surgery covered costs

The Commission shall cover the cost of outpatient facilities and services related to cataract surgery, for an eligible client, whether the surgery is conventional or employs a special procedure, such as an intraocular lens implant.

10:91-7.4 Payment to psychologists

(a) Psychologists who provide inservice training or who make formal presentations upon the request of the Commission shall be compensated at the rate of \$180.00 per diem.

(b) In the event that an education or allied services Commission client fails to appear for a scheduled test at the psychologist's office or fails to cancel an appointment to be tested prior to the date scheduled for the examination, a psychologist shall be reimbursed in the amount of \$45.00.

(c) In the event that an education or allied services Commission client fails to appear for a scheduled test at the Commission's offices or a location other than the psychologist's office, or fails to cancel an appointment prior to the date scheduled for the examination, a psychologist shall be reimbursed in the amount of \$90.00.

LABOR**(a)****DIVISION OF WORKPLACE STANDARDS****Liquefied Petroleum Gas****Readoption with Amendments: N.J.A.C. 12:200**

Proposed: July 2, 1990 at 22 N.J.R. 1984(a).

Adopted: August 3, 1990 by Raymond L. Bramucci,
Commissioner, Department of Labor.

Filed: August 3, 1990 as R.1990 d.436, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 21:1B-2.

Effective Date: August 3, 1990, Readoption; September 4, 1990,
Amendments.

Expiration Date: August 3, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:200.

Full text of the adopted amendments follows.

SUBCHAPTER 1. GENERAL PROVISIONS**12:200-1.1 Purpose and scope**

(a) The purpose of this chapter is to provide minimum standards for liquefied petroleum gas systems for the preservation of health and safety of the general public.

(b) This chapter shall apply to the design, construction, location, installation and operation of liquefied petroleum gas installations for health and safety.

(c) This chapter shall apply, except as provided in (d) below, to all liquefied petroleum gas systems at places of employment for the protection of the health and safety of the public at large.

(d) This chapter shall not apply to the following:

1. The transportation of liquefied petroleum gases over the highways in intrastate or interstate commerce; or
2. The installation of liquefied petroleum gas facilities at use group R-3 occupancies (one and two family residential); or
3. Liquefied petroleum gas vapor piping inside of buildings; or
4. (No change.)

12:200-1.2 Existing installations

(No change in text.)

12:200-1.3 Compliance

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

(c) The user/owner shall be responsible that the liquefied petroleum gas facility is installed and maintained in a safe operating condition.

(d) All liquefied petroleum gas facilities shall be installed and maintained in accordance with this chapter, except as provided in section 1.2.

(e) Only a qualified person shall sell, fill, or refill liquefied petroleum gas at a dispensing or distributing point.

(f)-(h) (No change.)

(i) Containers, other than cylinders in USDOT service, shall be registered as provided in N.J.A.C. 12:90-5.15, (Boilers, Pressure Vessels and Refrigeration).

(j) All parts of liquefied petroleum gas systems not specifically provided for in this chapter shall be designed and constructed to provide a reasonable degree of safety.

(k) When liquefied petroleum gas equipment is to be abandoned, the user/owner shall comply with the provisions of Section F 3005, Abandonment of Equipment, of the New Jersey State Fire Prevention Code.

12:200-1.4 Reporting emergency situation

(No change in text.)

12:200-1.5 Reporting of fires, explosions or accidents

Whenever there is a fire or explosion or accident involving serious injury or loss of life to the public from liquefied petroleum gas, the Commissioner shall be notified by the user/owner before the end of the first working day following the accident.

SUBCHAPTER 2. DEFINITIONS**12:200-2.1 Definitions**

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

... "API" means American Petroleum Institute.

... "Commissioner" means the Commissioner of Labor of the State of New Jersey or his or her authorized representative.

"Container" means any vessel including cylinders, tanks, portable tanks and cargo tanks used for storing liquefied petroleum gas.

"Cylinder" means a container having a capacity not exceeding 1,000 pounds of water.

"Dispensing device" or "dispenser" means a device normally used to transfer and measure liquefied petroleum gas for engine fuel into a fuel container, serving the same purpose for a liquefied petroleum gas service station as that served by a gasoline dispenser in a gasoline service station.

"Distributing plant" means a facility, the primary purpose of which is the distribution of gas, and which receives liquefied petroleum gas in tank car, truck transport or truck lots, distributing this gas to the end user by portable container (package) delivery, by tank truck or through gas piping. Such plants have bulk storage (2,000 gallons (7.6 cubic meters (m³)) water capacity or more) and usually have container filling and truck loading facilities on the premises. So-called "bulk plants" are considered as being in this category. Normally no persons other than the plant management or plant employees have access to these facilities.

"Distributing point" means a facility, other than a distributing plant or industrial plant, which normally receives gas by tank truck, and which fills small containers or the engine fuel tanks of motor vehicles on the premises. Any such facility having liquefied petroleum gas storage of 100 gallons (0.4 cubic meters (m³)) or more water capacity, and to which persons other than the owner of the facility or his or her employees have access, is considered to be a distributing point. A liquefied petroleum gas service station is one type of distributing point.

... "Hazardous material" means any substance defined as a flammable or combustible liquid in accordance with the Flammable or Combustible Liquids Code, NFPA No. 30-1987, or a material classified by Hazardous Material Regulations, 49 CFR Parts 171 through 177, as a flammable solid, liquid or gas.

"Important building" means a building that can be important for its replacement value, or its importance by virtue of human occupancy or for the building's effect on fire control activities by emergency handling groups.

... "NFPA" means National Fire Protection Association.

... "Office of Boiler and Pressure Vessel Compliance" means the Office of Boiler and Pressure Vessel Compliance, New Jersey Department of Labor, CN 392, Trenton, N.J. 08625-0392.

"Office of Safety Compliance" means the Office of Safety Compliance, New Jersey Department of Labor, CN 386, Trenton, N.J. 08625-0386.

... "Referenced standard" means N.J.A.C. 12:200-3.1(a), N.J.A.C. 12:200-4.1(a), or N.J.A.C. 12:200-5.1(a) as applicable.

... "Serious injury" means a hurt to a person which required treatment by a doctor, such as a fracture, or a condition requiring admittance to a hospital for at least 24 hours.

SUBCHAPTER 3. NFPA NO. 58 SYSTEMS

12:200-3.1 Standards adopted by reference

(a) The standards prescribed by Liquefied Petroleum Gases, NFPA No. 58-1989, are adopted as health and safety standards and shall apply according to their provisions, except that:

1. Subsections 1-2.2 and 1-2.3, Sections 1-5 and 3-6, and Chapter 6 shall not apply.

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

(d) Where the term "line of adjoining property which may be built upon" is used in Liquefied Petroleum Gases, NFPA No. 58-1989, it shall be understood to mean "the property line" as defined in N.J.A.C. 12:200-2.1.

(e) Buildings or structures housing liquefied petroleum gas distribution facilities and foundations for containers of over 2,000 gallons water capacity shall be constructed in accordance with the provisions of the New Jersey Uniform Construction Code.

12:200-3.2 Container markings

(a) Containers of 100 pounds product capacity or more shall be legibly marked "FLAMMABLE GAS" and the name of the gas to indicate contents such as "FLAMMABLE GAS—PROPANE" or "FLAMMABLE GAS—BUTANE", except as provided in (b) below. Compliance with the marking requirements of Title 49 of the Code of Federal Regulations shall meet this provision.

(b) A company identification system for marking containers which is approved by the Commissioner shall be acceptable in lieu of compliance with (a) above at processing plants.

12:200-3.3 Container storage

(a) (No change.)

(b) Containers installed outside of buildings shall be located with regard to property lines other than public ways, important buildings, or bulk storage of hazardous materials in accordance with Table 3-2.2.2 of Liquefied Petroleum Gases, NFPA No. 58-1989.

1. The term "buildings" as used in this subsection shall not be construed to include the buildings described in paragraph 3-2.2.5 of the referenced standard.

2. The term "hazardous materials" as used in this subsection shall recognize the specific requirements of the specific hazardous materials described in paragraph 3-2.2.6(e) and (f) of the referenced standard.

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

(e) Installations of aboveground containers of 90,000 gallons individual or aggregate water capacity or more that present a serious exposure hazard shall be protected by one or more of the following: distances at least 50 percent greater than the schedule for aboveground containers of Table 3-2.2.2 of Liquefied Petroleum Gases, NFPA No. 58-1989, water spray protection, fixed monitors, or insulation.

(f) If more than six containers, each of which is of 2,000 gallons water capacity or more, are used in a single installation, the containers shall be separated into batteries of not more than six containers with batteries separated from each other by the distances required for the schedule for mounded or underground containers of Table 3-2.2.2 of Liquefied Petroleum Gases, NFPA No. 58-1989.

(g)-(h) (No change.)

(i) Where there is a possibility of damage to storage containers from motor vehicles or other heavy objects, protection against such damage shall be provided by substantial bumper guards which are, as a minimum, four-inch diameter schedule 40 concrete filled steel pipe properly imbedded in concrete on a maximum of four-feet six-inch centers, or equivalent.

(j) (No change.)

(k) Storage areas having containers exceeding 100 pounds product capacity shall be posted with adequate "NO SMOKING" and "FLAMMABLE GAS" signs legibly marked. The "FLAMMABLE GAS" sign shall be marked "FLAMMABLE GAS" and the name of the gas to indicate the contents such as "FLAMMABLE GAS—PROPANE" or "FLAMMABLE GAS—BUTANE".

(l)-(o) (No change.)

(p) Containers proposed for mounding or underground installation shall be provided with cathodic protection in addition to a suitable coating for corrosion protection.

1. Cathodic protection will not be required if a professional engineer certifies in writing to the Department that based on his or her soil investigation such protection is unnecessary.

12:200-3.4 Distributing points, distributing plants and industrial plants

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

(e) The LP-Gas system shall be protected against vehicle damage with substantial bumper guards, where necessary. Bumper guards shall be, as a minimum, four-inch diameter schedule 40 concrete filled steel pipe properly imbedded in concrete on a maximum of four-feet six-inch centers, or equivalent.

(f)-(h) (No change.)

(i) The point of connection of an unmounted portable container being filled (point of transfer) shall be not less than five feet from the dispensing unit or a storage container of 2,000 gallons water capacity or less.

1. If weather protection for a scale is to be provided, such protection shall be constructed of non-combustible material except that the roofing material may be transparent corrugated plastic.

(j) Liquefied petroleum gas dispensers shall not be located on the same island as a Class I liquid dispenser.

(k) A pump stop-start switch at a distributing point shall be located inside the fence enclosure near the point of transfer.

12:200-3.5 Standby and peak sharing plants

(No change.)

SUBCHAPTER 4. NFPA NO. 59 SYSTEMS

12:200-4.1 Standards adopted by reference

(a) The standards prescribed by Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-1989, are adopted as health and safety standards and shall apply according to their provisions.

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

(e) Buildings or structures housing liquefied petroleum gas distribution facilities and foundations for containers of over 2,000 gallons water capacity shall be constructed in accordance with the provisions of the New Jersey Uniform Construction Code.

(f) Where the term "line of adjoining property which may be built upon" is used in Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-1989, it shall be understood to mean "the property line" as defined in N.J.A.C. 12:200-2.1.

12:200-4.2 Container markings

(No change.)

12:200-4.3 Container storage

(a) Containers of liquefied petroleum gases at utility gas plants shall be located with regard to property lines other than a public way, important buildings, or bulk storage of hazardous materials in accordance with the applicable schedule of Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-1989.

(b) Containers of liquefied petroleum gases at utility gas plants shall be located with regard to the near side of a public way in accordance with the applicable schedule for aboveground containers of Liquefied Petroleum Gases at Utility Gas Plants, NFPA No. 59-1989.

(c)-(g) (No change.)

12:200-4.4 Fencing

(No change.)

SUBCHAPTER 5. API 2510 INSTALLATIONS

12:200-5.1 Standards adopted by reference

(a) The standards prescribed by API 2510-1989 Design and Construction of Liquefied Petroleum Gas (LPG) Installations are adopted as health and safety standards for the design and construction of liquefied petroleum gas (LPG) installations at marine and pipeline terminals, refineries, petrochemical plants and tank farms.

(b) Only the technical standards relating to public health and safety of API 2510-1989 are incorporated by reference in subsection (a) above. The administrative and reporting procedures contained in API 2510-1989 are not incorporated by reference; rather, the Department has developed administrative and reporting procedures in this chapter. Questions concerning conflicts in administrative and reporting standards shall be referred to the Office of Safety Compliance.

(c) Where any conflict occurs between the standards prescribed in (a) above and this subchapter, this subchapter shall prevail.

(d) Buildings and structures housing liquefied petroleum gas distribution facilities and foundations for containers of over 2,000 gallons water capacity shall be constructed in accordance with the provisions of the New Jersey Uniform Construction Code.

(e) Where the term "line of adjoining property that may be developed" is used in API 2510, it shall be understood to mean "the property line" as defined in N.J.A.C. 12:200-2.1.

12:200-5.2 Container markings

Containers of liquefied petroleum gases at marine and pipeline terminals, refineries, petrochemical plants and tank farms shall be marked in accordance with N.J.A.C. 12:200-3.2.

12:200-5.3 Container storage

(a) Siting of containers shall conform with section 3 of the standard referenced in API 2510-1989.

(b) In case of storage in heavily populated areas or congested areas, or near places of public assembly, the Commissioner shall determine restrictions of individual tank capacity, total storage, distance to property lines, and other reasonable protective measures.

(c) Storage areas having liquefied petroleum gas containers shall be posted with adequate "NO SMOKING" and "FLAMMABLE GAS" signs legibly marked. The "FLAMMABLE GAS" sign shall be marked "FLAMMABLE GAS" and the name of the gas to indicate the contents such as "FLAMMABLE GAS—PROPANE" or "FLAMMABLE GAS—BUTANE".

(d) Storage containers shall not be placed under an electric power service transmitting voltage in excess of 240 volts or within six feet of a line projected vertically from any edge of the container.

(e) Above-ground containers exceeding 2,000 gallons individual water capacity shall be oriented so that their longitudinal axes do not point toward other liquefied petroleum gas containers within that installation.

12:200-5.4 Fencing

The liquefied petroleum gas system shall be enclosed within an industrial type fence at least six feet high with at least two egress gates opening outward and remotely located from each other, or be within an approved fenced plant area and protected from tampering.

12:200-5.5 General

NFPA 58-1989 may be used as a standard for those areas not specifically addressed in API 2510-1989 and which do not conflict with the intent of API 2510-1989.

SUBCHAPTER 6. SUBMITTAL OF PLANTS OR PROJECT DATA REPORT

12:200-6.1 Submittal of plans

(a) When required, at least three sets of plans shall be filed with the New Jersey Department of Labor Division of Workplace Standards, Office of Safety Compliance, CN 386, Trenton, New Jersey 08625-0386 prior to construction or installation of a proposed LP-Gas system or a substantial alteration to an existing system.

(b) These three sets of plans shall be filed for:

1. (No change.)

2. An LP-Gas system designed to transfer liquid from the container.

3. (No change.)

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

(e) Original tracings and documents may bear the required signature of the professional of record, and copies of these originals with the duplicated signature and his or her embossed seal shall be acceptable for filing. Where the prints of drawings and copies of documents do not include the duplicated signature of the professional of record,

each print of drawings and the title page of documents shall bear his or her signature and his or her embossed seal.

(f)-(g) (No change.)

(h) Plans required by (b) above shall include the following information:

1.-5. (No change.)

(i)-(l) (No change.)

12:200-6.2 Approval of plans

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

(e) Containers shall not be filled until the approval covered in (a) and (d) above has been obtained, except that:

1. The product not exceeding five percent of tank capacity may be placed in the container so that tests and adjustments may be made by the installer; or

2. The container may be filled, if the Office of Safety Compliance fails to comply with (d) above within 30 days, provided proper notice has been given to said office; or

3. (No change.)

(f) (No change.)

12:200-6.3 Submittal of project data report

(a) A project data report shall be filed for all new liquefied petroleum gas installations for which plans are not required under N.J.A.C. 12:200-6.1(b), except that a project data report is not required for a system under N.J.A.C. 12:200-6.1(b) that has a capacity of 250 gallons or less individual or aggregate capacity.

1. A project data report shall be submitted when a propane supplier is changed and a single storage tank dispensing system (not exceeding 1,000 gallons water capacity) is replaced to duplicate a previously State-approved unit.

(b) The project data report required by (a) above shall be filed within 10 days of actual installation for new liquefied petroleum gas installations.

(c) The project data report shall be filed with the New Jersey Department of Labor Division of Workplace Standards, Office of Safety Compliance, CN 386, Trenton, New Jersey 08625-0386.

(d) (No change.)

Appendix A

AVAILABILITY OF STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

A copy of each of the standards and publications referenced in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

State of New Jersey
Department of Labor
Division of Workplace Standards
Station Plaza Bldg. 4, Third Floor
28 Yard Avenue
Trenton, New Jersey

Copies of the referenced standards and publications may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed.

API American Petroleum Institute
1220 L Street Northwest
Washington, D.C. 20005

BOCA Building Officials
and Code Administration
4051 W. Flossmoor Rd.
Country Club Hills, Illinois 60477-5795

NFPA National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269

ADOPTIONS

N.J.A.C. New Jersey Administrative Code
Copies available from:
Office of Boiler and Pressure Vessel Compliance
New Jersey Department of Labor
CN 392
Trenton, N.J. 08625-0392

No. and Edition	Title
BOCA-1990	The BOCA Basic Building Code
NFPA No. 30-1987	Flammable and Combustible Liquids Code
NFPA No. 58-1989	Liquefied Petroleum Gases
NFPA No. 59-1989	Liquefied Petroleum Gases at Utility Gas Plants
N.J.A.C. 5:18	New Jersey Uniform Fire Code
N.J.A.C. 5:23	New Jersey Uniform Construction Code

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Licensing Service

Adopted Repeal: N.J.A.C. 13:21-16

Proposed: May 7, 1990 at 22 N.J.R. 1325(a).
Adopted: July 26, 1990, by Col. Clinton L. Pagano, Director,
Division of Motor Vehicles.
Filed: August 3, 1990 as R.1990 d.435, **without change**.
Authority: N.J.S.A. 39:2-3.
Effective Date: September 4, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:21-16.

(b)

STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Rules of the State Board of Professional Engineers and Land Surveyors

Readoption: N.J.A.C. 13:40

Proposed: June 18, 1990 at 22 N.J.R. 1867(a).
Adopted: July 23, 1990 by the Board of Professional Engineers
and Land Surveyors, Lewis Conley, President.
Filed: August 3, 1990 as R.1990 d.434, **without change**.
Authority: N.J.S.A. 45:8-27 et seq.
Effective Date: August 3, 1990.
Expiration Date: August 3, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:40.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF CONSUMER AFFAIRS KOSHER ENFORCEMENT BUREAU

Poultry Identification

Adopted Amendment: N.J.A.C. 13:45A-21.4

Proposed: May 21, 1990 at 22 N.J.R. 1439(a).
Adopted: July 25, 1990, by Patricia A. Royer, Director, Division
of Consumer Affairs.
Filed: August 2, 1990, as R.1990 d.433, **without change**.
Authority: N.J.S.A. 56:8-4.
Effective Date: September 4, 1990.
Expiration Date: December 16, 1990.

The Kosher Enforcement Bureau afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:45A-21.4 relating to poultry identification. The official comment period ended on June 20, 1990. Announcement of the opportunity to respond to the Bureau appeared in the New Jersey Register on May 21, 1990 at 22 N.J.R. 1439(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, persons and entities providing supervision to kosher establishments in the State, New Jersey retail establishments that sell exclusively kosher food, dealers in kosher food, and New Jersey-based manufacturers, wholesalers, processors and slaughterhouses which hold themselves out as kosher or which deal with kosher food or food products.

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, Room 504, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comment and Agency Response:

One telephone call was received in which the caller voiced general disagreement with the proposal. However, since no specific issues were raised during that telephone call, the Division cannot respond.

Full text of the adoption follows.

13:45A-21.4 Identification requirements

- (a) (No change.)
- (b) All poultry sold as kosher must have plumbas affixed at the slaughterhouse, as follows:
 1. Turkey necks: 10 pounds (lbs.) or less, in a bag securely closed with a plumba;
 2. Chicken necks: Five lbs. or less, in a bag securely closed with a plumba;
 3. Chicken and turkey livers: Two lbs. or less, in a bag securely closed with a plumba;
 4. Chicken and turkey gizzards: Two lbs. or less, in a bag securely closed with a plumba;
 5. Chicken wings: Five lbs. or less, in a bag securely closed with a plumba;
 6. Turkey wings: 10 lbs. or less, in a bag securely closed with a plumba;
 7. Chicken and turkey thighs with back portion: Each piece is to have securely affixed thereto a plumba;
 8. Chicken and turkey legs: Each piece is to have securely affixed thereto a plumba;
 9. Chicken and turkey boneless breasts: Five lbs. or less, in a bag securely closed with a plumba;
 10. Chicken and turkey breasts: Each piece is to have securely affixed thereto a plumba;
 11. Chicken and turkey boneless bottom meat: Five lbs. or less, in a bag securely closed with a plumba; and
 12. Chicken and turkey whole poultry: Each piece is to have securely affixed thereto a plumba.

(c) The slaughterer and/or wholesaler of kosher poultry is responsible to ensure that plumbas are affixed and so remain, as stated in (b) above. Slaughterers and/or wholesalers may not refuse to accept returned poultry not identified in accordance with this section and must provide a refund for the returned item.

(a)**OFFICE OF THE STATE ATHLETIC CONTROL BOARD****Rules Governing Boxing, Wrestling and Sparring Exhibitions and Performances****Adopted New Rules: N.J.A.C. 13:46**

Proposed: April 16, 1990 at 22 N.J.R. 1231(a).

Adopted: July 30, 1990 by the State Athletic Control Board,

Larry Hazzard, Sr., Commissioner.

Filed: August 13, 1990 as R.1990 d.454, **without change**.

Authority: N.J.S.A. 5:2A-4.

Effective Date: September 4, 1990.

Expiration Date: September 4, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Since N.J.A.C. 13:46 expired June 3, 1990, pursuant to Executive Order No. 66(1978), the rules proposed for readoption are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:46.

TRANSPORTATION**(b)****DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID****BUREAU OF LOCAL HIGHWAY DESIGN****Rural Secondary Road Systems Aid****Adopted New Rules: N.J.A.C. 16:13**

Proposed: July 2, 1990 at 22 N.J.R. 1989(a).

Adopted: August 2, 1990, by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: August 8, 1990 as R.1990 d.447, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 28:8-1 to 8-9.

Effective Date: September 4, 1990.

Expiration Date: September 4, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 13**RURAL SECONDARY ROAD SYSTEMS AID****SUBCHAPTER 1. GENERAL PROVISIONS****16:13-1.1 Appropriations and allocations of funds**

Rural Secondary funds are apportioned by the Federal Government and allocated annually to the State for right-of-way, preliminary engineering, construction and reconstruction of municipal, county and State highways on the Federal Aid Rural Secondary Road System. These funds are committed by the N.J. Department of Transportation and matched by funds provided by the State of New Jersey and/or the county or municipality sponsoring the project.

16:13-1.2 Compliance

All Rural Secondary Road System projects shall comply with applicable Federal Aid Highway Acts, regulations, policies and procedures.

SUBCHAPTER 2. APPLICATION PROCESS**16:13-2.1 Applications**

Counties and municipalities shall submit completed applications to the Local Aid District Office, accompanied by a resolution by the governing body authorizing the application. The application shall describe the existing rural secondary road and the contemplated project, with a notation of any special circumstances which exist. The application will be reviewed by the Department, in accordance with the standards set by the Surface Transportation and Relocation Assistance Act of 1987, other applicable Federal and State requirements and in consideration of funding available.

16:13-2.2 Federal Highway Administration approval

The Bureau of Local Aid District Operations shall initiate authorization requests for projects sponsored by counties and municipalities for submission to the Federal Highway Administration for approval. On approval by the Federal Highway Administration, the Bureau of Local Aid District Operations shall notify the county, municipality, or consultant engineer to proceed with development of the plans and specifications in accordance with current Federal and State policies and procedures.

16:13-2.3 State-sponsor agreements

The State will initiate a State-sponsor agreement which will be executed between the sponsor (applicant) and the Department, after program approval. The conditions of the agreement provide the State with exclusive right to enter into all utility agreements and to exclusively accomplish all appraisals, right-of-way acquisitions and relocations necessary for the project. It also requires the sponsor to maintain the completed improvement in a manner satisfactory to the State and the Federal Highway Administration and to repay all Federal and State funds expended on the project if the sponsor withdraws its support. An agreement shall be executed between the State and the consultant engineer when consulting engineering services involve Federal funds.

SUBCHAPTER 3. PROGRAM AND PAYMENT**16:13-3.1 Plans and specifications**

A professional engineer, registered in the State of New Jersey, shall prepare the plans and supplementary specifications and shall provide for the necessary engineering, planning, soil investigations, and other incidental services, in accordance with AASHTO design standards or as approved by the State. Traffic signals shall be designed in accordance with the current Federal Highway Administration "Manual on Uniform Traffic Control Devices" and N.J.S.A. 39. The guidelines set forth in the current "Highway Capacity Manual" (available from the National Research Council, Washington, D.C.) should be followed.

16:13-3.2 Bids and contracts

The Department shall receive all bids and shall award any contracts, pursuant to the provisions of N.J.A.C. 16:44. If the county or municipality is required to provide matching funds by the terms of the approved application, such county or municipality shall recommend to the Department that the Department award the contract to the lowest responsible bidder. Such county or municipality shall also deliver to the Department, by invoice, a check in the amount requested by the Department, to cover the county or municipality share of the project costs.

16:13-3.3 Surveillance

Surveillance shall be made by the State to provide inspection of materials, supervision of engineering and construction inspection.

16:13-3.4 Change in contract

Any change in the contract shall be made by change order, initiated and approved by the Department. Any additional work requested or authorized by the sponsor that does not meet with Federal and/or State approval will be classified as non-participating and the sponsor shall immediately make payment available to the State.

16:13-3.5 Payment

Payment shall be made to the contractor by the Department of Transportation.

ADOPTIONS

16:13-3.6 Inspection and acceptance

The Department and the Federal Highway Administration shall make a detailed final inspection, upon completion of the project. The county or municipality shall, by resolution, recommend acceptance of the project.

16:13-3.7 Final payment

All work shall be complete and accepted by the Department and the Federal Highway Administration prior to the issuance of final payment.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF LOCAL HIGHWAY DESIGN

State Aid to Counties and Municipalities

Readoption: N.J.A.C. 16:21

Proposed: June 18, 1990 at 22 N.J.R. 1896(a).

Adopted: July 19, 1990 by Robert A. Innocenzi, Deputy Commissioner, (State Transportation Engineer), Department of Transportation.

Filed: August 6, 1990 as R.1990 d.439, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:8-1 to 9.

Effective Date: August 6, 1990.

Expiration Date: August 6, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:21.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Route N.J. 47 in Cape May County

Adopted Amendment: N.J.A.C. 16:28A-1.33

Proposed: May 21, 1990 at 22 N.J.R. 1536(a).

Adopted: July 2, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: July 11, 1990 as R.1990 d.381, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.

Effective Date: September 4, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received a comment from Jose Jesus Martin of Woodbine, New Jersey concerning the proposed amendment. The comment and agency response follows:

COMMENT: The commenter protested the signs on Route N.J. 47 in Dennis Township because the signs precluded individuals from fishing in the lakes, when New Jersey is supposed to favor fishermen. He felt the proposal was against fishermen.

RESPONSE: The proposed amendment precludes stopping or standing of vehicular traffic on the shoulders along both sides of Route N.J. 47 in Dennis Township for the entire length within the corporate limits, and does not preclude anyone from fishing in the lakes. The Department is not aware of any such restrictions. Records indicate that no stopping or standing along both sides of Route N.J. 47 in Dennis Township were effective in 1967 within the areas of Johnson and Ludlams Ponds. Signs effecting no stopping or standing shall be posted where an official township request has been submitted to the Department.

TRANSPORTATION

Full text of the adoption follows.

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-9. (No change.)

10. No stopping or standing in Dennis Township, Cape May County:

i. Along both sides:

(1) For the entire length within the corporate limits of Dennis Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated Bus Stops and Time Limit Parking Areas. Signs shall be posted only in areas where an official township request has been submitted to the Department.

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

(c)

DIVISION OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route U.S. 9 in Cape May and Monmouth Counties; N.J. 15 in Morris County; and N.J. 21 in Passaic County

Adopted Amendments: N.J.A.C. 16:28A-1.7, 1.11, and 1.65

Proposed: June 18, 1990 at 22 N.J.R. 1897(a).

Adopted: July 19, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: August 6, 1990 as R.1990 d.438, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1, 39:4-197.5 and 39:4-199.

Effective Date: September 4, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 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.-4. (No change.)

5. Along the easterly (northbound) side in Marlboro Township, Monmouth County:

i. Mid-block bus stops:

(1) Beginning at a point 375 feet south of the prolongation of the southerly curb line of Longfellow Terrace and extending 135 feet southerly therefrom.

(2) (Off ramp at Union Mill Road)—Beginning 96 feet from the southerly curb line of Union Mill Road to a point 106 feet southerly therefrom;

ii. Near side bus stop:

(1) Beginning at the southerly curb line of County Route 520 and extending 225 feet southerly therefrom.

6.-39. (No change.)

(c) The certain parts of State highway Route U.S. 9 described in this subsection are designated and established as "restricted parking" space, for the use of persons who have been assigned handicapped vehicle identification license plates or cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission

is granted to erect appropriate signs at the following established handicapped parking space:

1. Restricted Parking Space zone in Middle Township, Cape May County:

i. Along the southbound (westerly) side:

(1) Beginning at a point 55 feet south of the southerly curb line of Church Street and extending 22 feet southerly therefrom.

16:28A-1.11 Route 21 including Old Route 21 (Passaic Place)

(a) (No change.)

(b) The certain parts of State highway Route 21 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 stop:

1. Along (River Road) southbound (westerly) side in Passaic City, Passaic County:

i. Near side bus stop:

(1) Union Avenue—Beginning at the northerly curb line of Union Avenue and extending 105 feet northerly therefrom.

16:28A-1.65 Route 15

(a) The certain parts of State highway Route 15 described in this subsection shall be designated and established as "no stopping and standing" zones where stopping or standing is prohibited at all times.

1.-2. (No change.)

3. No stopping or standing in the Town of Dover, Morris County:

i. (No change.)

ii. Along the southbound (westerly) side:

(1) Beginning at a point 65 feet north of the prolongation of the northerly curb line of Goodale Avenue and extending 110 feet northerly therefrom.

4.-5. (No change.)

(a)

DIVISION OF PROCUREMENT

Construction Services

Debarment, Suspension and Disqualification of a Person(s)

Definitions; Cause for Debarment of a Person(s)

Conditions Affecting the Debarment of a Person(s)

Adopted Amendments: N.J.A.C. 16:44-8.1, 8.2 and 8.3

Proposed: June 18, 1990 at 22 N.J.R. 1898(a).

Adopted: July 19, 1990, by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: August 1, 1990 as R.1990 d.429, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.

Effective Date: September 4, 1990.

Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:44-8.1 Definitions

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

"Vendor" means any person, firm, corporation or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.

16:44-8.2 Causes for debarment of a person(s)

(a) (No change.)

(b) In the public interest, the New Jersey Department of Transportation shall debar a vendor for violation of any of the following prohibitions on vendor activities or for breach of any of the following affirmative obligations:

1. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

3. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.

4. Any relationship subject to the provisions of (b)3 above shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

5. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

6. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

7. The provisions cited in (b)1 through 6 above shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines promulgated by the Executive Commission on Ethical Standards.

16:44-8.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1.-4. (No change.)

5. The existence of a cause set forth in N.J.A.C. 16:44-8.2(a)9 through 12 and (b) of this subchapter shall be established by evidence which the NJDOT determines to be clear and convincing in nature.

6. (No change.)

(a)

**DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF AVIATION****Air Safety and Hazardous Zoning****Amended and Special Standard****Somerset Airport, Bedminster Township, Somerset
County****Adopted New Rule: N.J.A.C. 16:62-7.2**

Proposed: June 18, 1990 at 22 N.J.R. 1899(a).

Adopted: July 19, 1990, by Robert A. Innocenzi, Deputy
Commissioner (State Transportation Engineer), Department
of Transportation.

Filed: August 6, 1990 as R.1990 d.441, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-32, and Air
Safety and Hazardous Zoning Act of 1983, P.L. 1983 c.260,
N.J.S.A. 6:1-80 et seq.

Effective Date: September 4, 1990.

Expiration Date: February 26, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:62-7.2 Amended and special standards

(a) The runway end subzone for Runway 30 of Somerset Airport shall end at the western border of Bridgewater Township, Somerset County, subject to the following conditions:

1. The lots which fall within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, shall not be further subdivided.

2. Within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, no person shall build, rebuild, create or cause to be built or rebuilt or created any structure which will exceed a height of 35 feet nor shall any person plant, or cause to be planted, or permit to grow any tree or vegetation which will exceed height of 50 feet.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION**Tax Maps****Adopted New Rules: N.J.A.C. 18:23A**

Proposed: July 2, 1990 at 22 N.J.R. 1997(a).

Adopted: August 10, 1990 by Benjamin J. Redmond, Acting
Director, Division of Taxation.

Filed: August 10, 1990 as R.1990 d.449, **without change**.

Authority: N.J.S.A. 54:1-15 and 54:50-1.

Effective Date: September 4, 1990.

Expiration Date: September 4, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

N.J.A.C. 18:23A expired on August 5, 1990, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted herein as new rules.

Full text of the rules proposed for readoption adopted as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 18:23A.

Full text of the adopted amendments to the rules proposed for readoption follows.

SUBCHAPTER 1. GENERAL PROVISIONS**18:23A-1.1 General provisions, scope and tax map defined**

(a) (No change.)

(b) A tax map may be defined as a map or maps drawn to scale, indicating every lot of land identified by a block and lot number except those areas allocated to roads, streets, highways, and tidal waters outside of riparian grants. In addition to the names of the roads, streets, highways and tidal waters listed above, the names of the adjoining counties, adjoining municipalities, rivers, streams, brooks, railroads, rights-of-way and easements shall be indicated in their proper location on the tax map.

18:23A-1.2 Approval of tax maps

(a) (No change.)

(b) No new map or set of maps shall be used for purposes of taxation until approved by the Director, Division of Taxation (Chapter 167, Laws of 1939; N.J.S.A. 54:1-15.3).

1. After maps have been completed and thoroughly checked by the maker for compliance with these rules, the maps shall be submitted to the Local Property Branch for examination. Any revisions or corrections found to be necessary shall be made by the maker of the tax map. The Branch reserves the right to reject any tax map for examination which, in its opinion, has not been adequately checked for compliance with these rules.

2. (No change.)

3. The Local Property Branch will make a set of prints of each approved tax map to be retained in its file. The tracings will then be made available to the municipality concerned.

4. (No change.)

18:23A-1.5 Scales

(a) Maps shall be drawn to the following scales, depending on the density and classification of the municipality.

1. City and urban districts—1 inch = 50 feet and 1 inch = 100 feet; however, large parcels of land such as airports or industrial tracts should be detailed at a scale of 1 inch = 200 feet or 1 inch = 400 feet, depending on size. Example: No parcel of land over 15 acres should be detailed at a scale of 1 inch = 50 feet.

2.-3. (No change.)

(b) The same scale should be used on all detail sheets throughout the taxing district, but where special conditions require the use of more than one scale, this may be done by first obtaining permission from the Local Property Branch.

(c) A supplemental sheet, or sheets, drawn to a larger scale may be used to show properties in a minor settlement or development, if this cannot be clearly shown on a smaller scale (See Standards, Page 43).

18:23A-1.6 Key map or sheet

(a) A Key Sheet shall be prepared for each map to a small scale which shall show the following data (See Standards, Page 40):

1.-13. (No change.)

14. Revision block (See Standards, Pages 39 and 40).

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

(d) When a new tax map supersedes an existing tax map, a note shall be placed on the Key Sheet or Key Sheets as follows: "This tax map supersedes the tax map approved (date)." This information is obtainable from the Local Property Branch.

18:23A-1.9 Block numbers

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

(c) Each block shall be bounded by streets, highways, rivers and prominent streams, but it shall be permissible, under special conditions, to use artificial block limits, provided they are clearly shown by heavy solid lines and marked "Block Limit" or "B.L."

1. (No change.)

2. In no case shall any block be so extended that it will include lands on both sides of any street, highway, prominent stream, or another block;

3. (No change.)

(d)-(e) (No change.)

(f) Block numbers used on filed maps which are located within the municipality may be shown but shall be distinct in appearance and less conspicuous than the block number to be used on the tax map. These filed map block numbers shall not be shown on the Key Sheet or Sheets (See Standards, Page 48).

(g) (No change.)

(h) Block numbers shall be assigned to high-rise (over three floors) condominiums (See Standards, Page 64).

18:23A-1.10 Lot numbers

(a) Lot numbers shall be assigned to every lot in the municipality including lots along the boundary lines, which may be assessed by an adjoining municipality, and "exempted" property, except areas occupied by roads, streets, highways, and tidal waters outside of riparian grants (N.J.S.A. 40:146-17; See Standards, Pages 50, 51 and 56).

(b)-(i) (No change.)

18:23A-1.12 Boundary lines of municipalities

(a) Boundary lines of the municipality shall be determined either by running traverse lines in the field or from other reliable sources.

1. If traverses are run, they shall be closed and the computations may be requested by the Local Property Branch for review.

2.-3. (No change.)

(b) Boundary lines of the municipality shall be shown by a very prominent, heavy dash and double dotted line (See Standards, Page 37).

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

18:23A-1.14 Dimensions and area of lots

(a) The deed (width and depth) dimensions of rectangular lots and all deed dimensions of irregular lots shall be shown on properties assessed as lots.

(b) All deed dimensions of acreage lots are required.

(c) A scaled distance may be used where the deed distance is unknown and cannot be determined at a reasonable cost.

1.-3. (No change.)

(d)-(g) (No change.)

(h) Where a lot must be shown in part on two or more detail sheets, the word "Total" shall be added to the acreage and dimensions to indicate that the acreage and dimensions shown include also that portion of the lot shown on other detail sheets (See Standards, Page 41).

(i) (No change.)

18:23A-1.15 Streets, roads, highways

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

(d) Private and vacated streets shall be shown with a separate lot number or shall be shown as dashed lines. Other private and vacated streets shall be part of the adjacent lot with the property lines as the division (See Standards, Pages 47, 62 and 71).

18:23A-1.17 Railroads

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

(d) Prints of the railroad lands as assessed by the State of New Jersey may be obtained, upon application, at a minimal cost from the Local Property Branch.

18:23A-1.18 Rivers, streams, riparian grants

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

(c) A single solid line shall be used to indicate a small stream when it is also a property line, provided it is marked "P/L" (See Standards, Pages 55 and 56).

(d) (No change.)

(e) Riparian grants, leases, and licenses shall be indicated and assigned lot numbers.

Example: (No change.)

18:23A-1.25 Review procedures employed by Local Property Branch

(a) The Local Property Branch will review and note corrections to be made by the tax map maker.

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

18:23A-1.27 Maintenance of tax maps

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

(c) Current maintenance of tax maps should be achieved by changing tracings whenever a land transfer occurs on a regular weekly or monthly basis. A revision block should be set forth on a key map and detail sheets indicating the following:

1.-3. (No change.)

(d)-(h) (No change.)

(a)

DIVISION OF TAXATION

Notice of Administrative Correction

Post Tax Amnesty Rules

Failure to File Return

N.J.A.C. 18:26-9.8

Take notice that the Office of Administrative Law has discovered an error in the New Jersey Administrative Code at N.J.A.C. 18:26-9.8. This rule, entitled "Failure to file return," was repealed effective September 6, 1988 (see 19 N.J.R. 2255(b) and 20 N.J.R. 2310(c)). However, the rule was erroneously not deleted from the Code in the publication of the Code's February 21, 1989 update. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

18:26-9.8 [Failure to file return] (Reserved)

[Any person who fails to file a return as required by law, or fails or causes to be filed with the Director any false or fraudulent return, report or statement, or aids another in filing with the Director any false or fraudulent return, report or statement, with the intent to defraud the State or evade the payment of any Transfer Inheritance Tax, penalty or interest or any part thereof, is guilty of a misdemeanor and may be fined in a sum not exceeding \$1,000.00, or may be imprisoned for a term not to exceed six months, or both at the court's discretion.]

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Applications

Employee Licenses

Adopted Amendment: N.J.A.C. 19:41-1.3

Proposed: June 18, 1990 at 22 N.J.R. 1911(a).

Adopted: August 8, 1990 by the Casino Control Commission,

Valerie H. Armstrong, Acting Chair.

Filed: August 9, 1990 as R.1990 d.448, **without change**.

Authority: N.J.S.A. 5:12-69 and 70c.

Effective Date: September 4, 1990.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from Marina Associates (Harrah's), the Sands Hotel, Casino and Country Club (the Sands) and TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: Harrah's and TropWorld submitted general comments in support of the proposed amendment. TropWorld commented that the control number is unnecessary in addition to the access code and Commission license number.

RESPONSE: The Commission agrees with these comments, as evidenced by the adoption of the proposed amendment.

COMMENT: The Sands contends that the proposed amendment could be read to have the effect of requiring that the employee access code and employee license number, as well as the casino licensee's control number, be eliminated from the credential holder. The Sands suggests that the amendment be modified to clarify its effect.

ADOPTIONS

ENVIRONMENTAL PROTECTION

RESPONSE: As is apparent from the text of the proposal, the amendment to N.J.A.C. 19:41-1.3(f) merely deletes the casino licensee's obligation to numerically control employee license credential holders. Clearly, the elimination of the casino licensee's control number neither expressly nor impliedly affects the display of an employee access code or employee license number. The Commission does not find that any modification of the proposed amendment is necessary or appropriate.

Full text of the adoption follows.

19:41-1.3 Employee licenses

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

(f) Each casino licensee shall provide each such employee with a holder for the Commission license credential which shall contain the name of the casino hotel complex and shall permit the prominent display of the information contained on the license credential. Thirty days prior to the use of any such holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

(g)-(h) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Freshwater Wetlands Protection Act

Statewide General Permits

Adopted Amendment: N.J.A.C. 7:7A-9.2

Proposed: February 5, 1990 at 22 N.J.R. 278(a).

Adopted: August 8, 1990 by Judith A. Yaskin, Commissioner,
Department of Environmental Protection.

Filed: August 8, 1990 as R.1990 d.446, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.5(c)).

Authority: N.J.S.A. 13:9B-1 et seq., particularly 13:9B-23 and 13:9B-25; N.J.S.A. 58:10A-1 et seq., particularly 58:10A-6.

DEP Docket Number: 066-89-12.

Effective Date: September 4, 1990.

Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

The proposed amendment to the rules implementing the Freshwater Wetlands Protection Act (FWPA), N.J.S.A. 13:9B-1 et seq., was published February 5, 1990 at 22 N.J.R. 278(a). A public hearing was held March 1, 1990, at the Mercer County Administration Building in Trenton, New Jersey. Secondary notice of the proposal and of the public hearing was published in the Atlantic City Press, the Courier-Post in Cherry Hill, the Trenton Times, the Newark Star-Ledger, and the Bridgeton Evening News. Although five people attended the public hearing, none commented at the hearing. Six commenters submitted written comments during the comment period which closed on April 6, 1990.

COMMENT: Four commenters supported the proposed amendment because it will result in a more timely and streamlined process for the cleanup of hazardous substances, while minimizing adverse impacts of cleanup operations on wetlands.

RESPONSE: The Department acknowledges these comments in support of the rule amendment.

COMMENT: The proposed amendment will be beneficial because cleanups will improve the environmental quality of each site, and because requiring an individual freshwater wetlands permit for the cleanups will not provide any additional benefit to the environment.

RESPONSE: The Department acknowledges this comment in support of the rule amendment.

COMMENT: The amendment is good because it removes the current prohibition on using the general permit in EPA priority wetlands.

RESPONSE: The Department acknowledges this comment in support of the rule amendment.

COMMENT: The list of activities allowed by the permit should specifically mention dredging and filling, since these are typically an important part of a cleanup.

RESPONSE: The rule at N.J.A.C. 7:7A-9.2(a)4 has been clarified to indicate that all regulated activities which are part of an approved cleanup are covered by the general permit. This clarification obviates the need to specify any particular activities.

COMMENT: The proposed amendment should not limit the availability of the general permit to the cleanup of hazardous substances defined by the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11 et seq. The general permit should be available for the cleanup of other substances which the Department or any State, federal or local agency has determined require investigation and/or remediation.

RESPONSE: N.J.A.C. 7:7A-9.2(a)4 has been clarified to indicate that a government approved cleanup of any pollutant or hazardous substance can be covered by the general permit.

COMMENT: To avoid delay, all emergency cleanup work should be permitted without government approval.

RESPONSE: Temporary emergency permits are available for emergency cleanups pursuant to N.J.A.C. 7:7A-5. Authorization of emergency work may be issued orally or in writing and such authorization provides an expeditious government approval for emergency cleanups. Allowing emergency cleanups without prior government approval would require members of the public who may not be trained to do so to make judgments as to what constitutes an emergency, how to identify wetlands, and how to minimize wetlands disturbance. In addition, private citizens may be poorly positioned to balance the public's interest in preserving wetlands against that of speedy cleanups of contaminants.

COMMENT: "At risk" cleanups under ECRA, the Spill Act, Superfund, or other programs should be covered by the proposed general permit because it is difficult and time consuming to obtain written government approval. If the work is merely reported to the Department, the wetlands will be adequately protected.

RESPONSE: An "at risk" cleanup is performed without government approval or oversight. Pursuant to section 23 of the FWPA, a general permit may only be adopted if the Department determines that the activity involved will have minimal individual and cumulative impacts on freshwater wetlands. Without government oversight, even the most well-intentioned cleanup planners may omit wetlands protection measures from their cleanup plans, causing unnecessary and sometimes irreparable damage to wetlands. Merely reporting the work to the Department is insufficient to ensure the level of wetlands protection required by the FWPA. The requirement of express government approval of a cleanup is necessary to ensure that wetlands issues are identified and wetlands impacts minimized.

COMMENT: The rule should state that mitigation is not required in transition areas.

RESPONSE: Mitigation pursuant to N.J.A.C. 7:7A-14 is not required for disturbances of transition areas by activities authorized under this general permit. This is made clear by N.J.A.C. 7:7A-9.2(a)4ii, which requires mitigation only for disturbances of freshwater wetlands or State open waters.

COMMENT: The rule should more clearly state that mitigation will only be required when it would otherwise be required under N.J.A.C. 7:7A-14, and that therefore, in some circumstances, mitigation will not be necessary.

RESPONSE: There is no circumstance in which a disturbance or loss of freshwater wetlands or State open waters which is authorized pursuant to this general permit will not require mitigation on at least an acre for acre basis. The language of N.J.A.C. 7:7A-9.2(a)4ii reflects this. Mitigation is necessary to meet the FWPA's mandate that activities authorized by a general permit must have only minimal impacts. The rules at N.J.A.C. 7:7A-14.2(a) detail the procedures for mitigation, and the extent of mitigation required for each type of mitigation performed.

COMMENT: The proposed amendment should clarify the various types of mitigation that may be required depending on the type of remedial activities to be conducted.

RESPONSE: The current freshwater wetlands rules at N.J.A.C. 7:7A-14 describe in detail the various options for mitigation including creation, restoration, enhancement and contributions to the Mitigation Bank. The type of mitigation required depends on many factors, only one of which may be the type of remedial activity which caused the wetlands loss or disturbance.

COMMENT: The mitigation requirement should only apply to cleanups of contaminated human-made or natural wetlands. Sludge lagoons do not contain true soils and, therefore, should not be classified as wetlands, and should be exempt from FWPA and from any mitigation requirements.

RESPONSE: Regardless of whether an area can be termed a "sludge lagoon," the Department determines whether it is a wetland by examining its soils, vegetation and hydrology using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, as required by the FWPA. There is no exemption from permit requirements in the FWPA for wetlands which develop in sludge lagoons. Therefore, if a sludge lagoon is classified as a wetlands, it will be subject to the same permit and mitigation requirements as other wetlands. However, if hydric soils are not present in a particular area, their absence will be considered in the determination of whether the area is classified as wetlands.

Summary of Agency-Initiated Changes:

The following changes have been made for clarification:

1. The wording of N.J.A.C. 7:7A-9.2(a)4 has been clarified to specify that the Statewide General Permit covers only activities expressly approved by the Department.
2. A typographical error in the citation for the Spill Compensation and Control Act has been corrected at N.J.A.C. 7:7A-9.2(a)4.
3. N.J.A.C. 7:7A-9.2(a)4i has been clarified to indicate that, in examining practicable alternatives to cleanups conducted in freshwater wetlands or State open waters of exceptional resource value, the Department may consider alternatives which will have a less adverse impact on these waters.
4. The language at N.J.A.C. 7:7A-9.2(a)4ii has been clarified to specify that, regardless of whether a mitigation plan has been incorporated in the document by which the Department approved the cleanup, Division of Coastal Resources approval of the mitigation proposal is a condition precedent to approval under this Statewide General Permit.

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

7:7A-9.2 Statewide General Permits

(a) The following activities in freshwater wetlands and State open waters are hereby allowed under Statewide General Permits provided the activity is in compliance with specific conditions contained in the Statewide General Permit and with the standard conditions for all Statewide General Permits in N.J.A.C. 7:7A-9.3 and provided the activities are in compliance with the Act, this chapter, and the Federal Act:

1.-3. (No change.)

4. ***[Activities]* *All regulated activities***, including work, discharges, and the construction or placement of structures, ***which are undertaken, authorized or otherwise expressly approved in writing by the Department,*** for the investigation, cleanup ***[and]* *or*** removal of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. ***[58:19-23.11 et seq.,]* *58:10-23.11 et seq., or pollutants, as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.,* *which are undertaken, authorized or otherwise approved by the Department,]*** provided the following conditions are met:

i. If the proposed cleanup activity is to take place in an exceptional resource value wetland, ***[the activity must be reviewed and approved by the Department to assure]* *the Statewide General Permit authorization shall be issued only if the Department finds*** that there are no practicable alternatives to the investigation, cleanup and removal of the hazardous ***[substance or]*** substances ***or pollutants*** that would ***[not involve the]* *involve less or no disturbance or*** destruction of wetlands ***[and]* *or*** State open waters.

[ii. All affected wetlands and State open waters shall be restored or mitigated as specified at N.J.A.C. 7:7A-14, Mitigation. The restoration or mitigation plan must either be part of the approved cleanup plan or submitted as a part of the Statewide General Permit authorization application and approved by the Department before the proposed activity may be authorized.]

***ii. Mitigation shall be performed according to the procedures for mitigation at N.J.A.C. 7:7A-14 for all disturbance or destruction of freshwater wetlands or State open waters caused by a cleanup authorized under this general permit. The mitigation plan may be incorporated as part of the document by which the Department approves the cleanup or it may be submitted as part of the Statewide General Permit authorization application. The Statewide General Permit**

authorization will not be issued until the mitigation plan is submitted and approved by the Division according to the standards at N.J.A.C. 7:7A-14.*

5.-17. (No change.)

(a)

DIVISION OF WATER RESOURCES

Sewer Connection Ban Exemptions

Application for a Sewer Connection Ban Exemption Adopted Amendments: N.J.A.C. 7:14A-12.22 and 12.23

Proposed: August 7, 1989 at 21 N.J.R. 2240(c).

Adopted: August 6, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: August 7, 1990 as R.1990 d.444, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., particularly 58:10A-4.

DEP Docket Number: 032-89-06.

Effective Date: September 4, 1990.

Expiration Date: June 2, 1994.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on August 7, 1989 at 21 N.J.R. 2240(c). The Department of Environmental Protection (the "Department") provided additional notice in 21 newspapers located throughout the State. A public hearing was held on September 26, 1989, at which 12 individuals testified. The Department received three written comments before the close of the comment period on October 5, 1989.

COMMENT: Changes recommended by N.J.A.C. 7:14A-12.22 and 12.23 concerning sewer connection ban exemptions attempt to create special circumstances that would allow for the supply of affordable housing to catch up with the demand. Although the intent is commendable, the proposal violates the Clean Water Act, 40 CFR 131.12.

There is no acceptable excuse for allowing the construction or occupation of housing units that would create a source of pollution. If a sewage treatment facility is not in compliance with regulations, it must be brought into compliance prior to allowing the generation of additional wastewater.

The imposition of a sewer connection ban is a result of a pollution crisis in this State. It is an extreme measure that is taken to gain some control over an obviously malfunctioning management problem. Conditions must be corrected before New Jersey allows the generation of additional wastewater, whether from low, moderate or high income units, since they all pollute the same.

An alternative approach might be to allow an exemption for affordable housing projects that use no-discharge sewage treatment systems. There is some Federal funding available for the construction of alternative technology systems, such as greenhouse aquaculture or recycling systems that use land treatment, which add no additional flow to already over-stressed treatment plants. The Federal money would be an incentive for the builders and could help ease the burden on municipal facilities.

Advanced waste treatment technologies such as aquaculture and land treatment have proven to be the best available technology when assessed according to:

1. Zero discharge
2. Ninety-five to 100 percent nutrient removal
3. Operating costs
4. Sludge production
5. Use of hazardous chemicals
6. Ground water recharge

Since Federal law requires that all projects using Federal funds use the best and most ecologically advanced technology available, publicly funded projects are going to have to consider the alternatives anyway (P.L. 92-500, Sec. 201). By adding a streamlined approval process which would require the Department of Environmental Protection to study and classify these alternative treatment works as acceptable systems, and by targeting affordable housing projects as a group that needs the red tape cut due to critical need, the State could aid the development of that

housing market and at the same time assist in introducing to New Jersey treatment systems which better comply with the best available technology requirements of the Clean Water Act.

RESPONSE: As stated in the summary of the proposal (see 21 N.J.R. 2241), the amendments represent a limited accommodation and balances competing public policies. The precedent for exempting certain affordable housing from sewer connection bans already exists (see N.J.A.C. 7:14A-12.22(b)). It is difficult to plan and develop affordable housing in New Jersey due to the narrow financial margins involved. Additional improvement and operational costs would jeopardize the feasibility of many projects. The suggested Federal funding is uncertain and represents a substantial increase in time to package these projects and obtain the necessary approvals.

The Department does not view this amendment as a contravention of the Clean Water Act. The section cited by the commenter (40 CFR 131.12) specifically allows the DEP to evaluate and consider the effects of lowering water quality to accommodate important economic or social development. The Department anticipates neither significant water quality degradation to result from these exemptions nor reduction in recreational and water supply use of the State's water bodies.

COMMENT: N.J.A.C. 7:14A-12.22(b)8 adequately addresses the situation that these proposed exemptions are attempting to address. Unless there is a misinterpretation of these amendments, the proposal appears to have more to do with building units for middle or higher income citizens than the lower income population.

RESPONSE: The exemption at N.J.A.C. 7:14A-12.22(b)8 is limited to low income senior citizen housing. Most sewer ban exemptions for low and moderate income housing would be considered under N.J.A.C. 7:14A-12.22(b)9, which exemption applies to projects which are occupied 100 percent by low and moderate income households and are owned by public entities or nonprofit corporations. The mixed income rental projects that qualify for the Department of Community Affairs (DCA) funding programs, on average, have rents that are based upon household earnings that are less than the county median; therefore, it would be erroneous to suggest that middle or upper income citizens would be the primary beneficiary of these amendments.

COMMENT: The Environmental Impact Statement of the rule proposal indicates that DCA estimates that only "... up to 100 additional housing units per year will be built under the exemption at N.J.A.C. 7:14A-12.22(b)9". Does this estimate apply only to the low and moderate part of the total project or to both the "for-profit" and non-profit combined package? Please explain how this figure was derived.

Also, the proposal does not supply a similar estimate for actual rental units as proposed at N.J.A.C. 7:14A-12.22(b)10.

RESPONSE: The estimate of "... up to 100 additional ..." refers to both the privately sponsored, mixed income projects of N.J.A.C. 7:14A-12.22(b)10 as well as the 100 percent low and moderate income projects of N.J.A.C. 7:14A-12.22(b)9. This is the Department of Community Affairs estimate based on its four years of experience.

COMMENT: As proposed, N.J.A.C. 7:14A-12.22(b)9ii and 10i provide little if any protection for the environment. Administrative Consent Orders (ACOs) and Judicial Consent Decrees (JCDs) have been regularly modified by the Department and USEPA to provide extensions to delinquent municipalities. Modification to the proposal should be made to require that the ACO and/or JCD must provide a date certain for compliance and that the municipality is in compliance with that schedule.

RESPONSE: The Department does not agree with the commenter's assertion. Administrative Consent Orders and Judicial Consent Decrees are modified only for just cause. The Department carefully reviews all force majeure requests before any consideration is given to extending a compliance date. In addition, the proposal requires the affected sewage authority to be in full compliance with their ACO or JCD at the time a sewer ban exemption application is submitted.

COMMENT: The provisions of N.J.A.C. 7:14A-12.22(b)9iv and v would limit the proposed projects to "... solely households of low and moderate income ...". However the "mutual housing sponsor" as defined at N.J.S.A. 52:27D-59 et seq., would allow a "for profit" private developer, to set up its own "public entity or nonprofit corporation or association", similar to the ratio of 4:1, in N.J.A.C. 7:14A-12.22(b)10iii but without a specific figure supplied. Neither section sets an upper limit on the number of units that can be built.

RESPONSE: Firstly, in the unlikely event that a private for profit developer establishes a nonprofit entity to build 100 percent low and moderate income housing, the development would still be required to

meet the criteria of the proposed exemption. Under N.J.A.C. 7:14A-12.22(b)9, the exemption would not be connected to the approval of market rate units. Secondly, mixed income rental projects are restricted to "Urban Aid" municipalities. The Department of Community Affairs has estimated that the restrictions in the provisions of N.J.A.C. 7:14A-12.22(b)9 and (b)10 limit the number of units that can be built under these provisions to 100 units, or fewer, per year.

COMMENT: The word "only" should be inserted after the words "residential purposes" in N.J.A.C. 7:14A-12.22(b)9i and 10v, to limit the coverage to actual residential projects and not mixed commercial/residential projects.

RESPONSE: The word "only" has been added to clarify the Department's intent concerning "residential purposes."

COMMENT: The exemption proposed at N.J.A.C. 7:14A-12.22(b)9 should not be limited to those housing projects that will be owned by a public entity, a non-profit corporation or association. Rather, the exemption should apply to any project where low and moderate income housing units are being produced since those units that are not low and moderate provide the funding mechanism for the affordable units. Failure to do so will constrict the total amount of affordable housing that can be built.

RESPONSE: While the Department recognizes that a primary source of affordable housing comes from inclusionary developments where up to 80 percent of the units may be market rate, especially in suburban municipalities, the limited approach taken is intentional. The purpose is to effect a modest change in the balance of competing policies, similar to the existing exemptions at N.J.A.C. 7:14A-12.22(b)3 and 8. There are many thousands of units that would be exempted if the suggested change was to be made to N.J.A.C. 7:14A-12.22(b)9. It is not the Department's intent to subordinate water quality policy to affordable housing policy. The Department, however, will evaluate the need for further amendments concerning affordable housing for future revisions.

COMMENT: N.J.A.C. 7:14A-12.22(b)9viii should require an environmental analysis to adequately demonstrate that the facility will remain in compliance with its interim effluent limits after the connection of the new project.

Also, N.J.A.C. 7:14A-12.22(b)10viii and ix should also require an environmental analysis to demonstrate that the receiving plant, as well as the facility to receive the diverted flow, will remain in compliance with its effluent limits after the connection of the new project.

RESPONSE: Current Departmental rules, regulations, and enforcement policies are adequate to determine compliance with interim effluent limitations.

The interim flow diversions contemplated in N.J.A.C. 7:14A-12.22(b)10ix will require a separate Treatment Works Approval (TWA) from the Department. During the Department's review of the TWA, the compliance record of the interim disposal facility is reviewed.

COMMENT: N.J.A.C. 7:14A-12.22(b)9viii and 10viii require the wastewater treatment facility which will serve the project to be in compliance with all other relevant rules of the Department. Clarification of the term "other" is suggested to acknowledge the fact that the facility in question is not meeting some requirement of the Department related to the imposition of the sewer ban. "Other" should clearly refer to other relevant rules, other than those which served as the basis for the imposition of the sewer ban.

RESPONSE: The Department has added the phrase "other than those which served as the basis for the imposition of the sewer ban" to clarify its intent.

COMMENT: N.J.A.C. 7:14A-12.22(b)10, the second proposed exemption, is limited to rental housing. As the effect on wastewater treatment facilities is not determined by the type of ownership, what is the basis for excluding "sales" housing?

RESPONSE: "Sales" housing is addressed in proposed paragraph N.J.A.C. 7:14A-12.22(b)9. The objective of the Department's proposal was to adopt limited exemptions that address state housing policy; in particular, in this instance, low and moderate income, urban housing which is not being built otherwise. N.J.A.C. 7:14A-12.22(b)10 addresses State-assisted rental housing, which is especially beneficial to low and moderate-income persons, who often cannot qualify for a mortgage to purchase a home. Therefore, the rule as adopted accomplishes the Department's purpose in proposing the rule. In this way, the Department will limit exemptions to projects that provide the greatest benefit to those persons most in need of affordable housing.

COMMENT: One commenter opposes the second proposed exemption at N.J.A.C. 7:14A-12.22(b)10, expressing concern that allowing

profit making private sector development will further degrade the environment and would result in only a negligible increase in the supply of available low income housing. The Supreme Court declared in the *Mt. Laurel II* decision that low and moderate income housing should not be built at the expense of the environment.

RESPONSE: The very limited exemption at N.J.A.C. 7:14A-12.22(b)10 recognizes the efficacy of the State's affordable housing policy. That policy, as embodied in the "Balanced Housing" and JUMPP programs, recognizes that the profit character of the sponsor is essentially outweighed by the critical need for the affordable rental housing units. Given the relatively small number of units involved in the JUMPP and Balanced Housing programs in Urban Aid municipalities, the Department projects the environmental impact to be insignificant.

COMMENT: The second proposed exemption at N.J.A.C. 7:14A-12.22(b)10 requires a diversion of flow from the existing treatment facility, essentially freeing up gallage in the facility subject to the sewer ban. It is maintained that such a requirement almost obviates the need for the exemption in the first place. Under the concept of substituted gallage, an exemption is permitted if an existing structure is razed and a substitute structure put in its place, which utilizes no more than the gallage previously utilized by the demolished structure. The concept has been utilized by wastewater facilities to allow for a more generalized substituted concept, even if the building has not been razed. The diversion of gallage to another treatment facility obviously frees up gallage in the existing facility and there should be no need for a special exemption for that category of use.

Perhaps a third exemption could be considered that would cover the diverted gallage issue by allowing connections to an existing facility, provided that an equal amount of gallage were diverted to another facility. A variation of this would be to allow an exemption if an ascertainable amount of infiltration and inflow can be certified to have been eliminated from the system. If the Department is unwilling to provide for these suggested exemptions, it is requested that the proposed exemption at N.J.A.C. 7:14A-12.22(b)10ix be deleted. It appears to undermine the intent and purpose of the exemption in the first place.

RESPONSE: Subparagraph N.J.A.C. 7:14A-22(b)10ix has been deleted.

COMMENT: N.J.A.C. 7:14A-12.22(b)10iii requires that 20 percent of the housing units be occupied by low income families. The traditional set-aside on a development sanctioned by the New Jersey Council on Affordable Housing (NJCOAH) is a maximum of 20 percent, half of which are to be occupied by low income families and the other half occupied by moderate income families. As proposed, the second exemption is potentially unrealistic and not in line with NJCOAH guidelines. The 20 percent figure should apply to a combination of low and moderate income households.

RESPONSE: The 20 percent low income housing requirement is a minimum. In Balanced Housing, the maximum is 100 percent (N.J.A.C. 5:14-1.1 et seq.); in JUMPP it's 35 percent. COAH does not have a rule that mandates 20 percent affordable housing. Each municipal plan evaluated must present a realistic opportunity for the production of the assigned low and moderate income housing targets. Balanced Housing has a 50/50 split for low and moderate income units and JUMPP projects require all affordable units to be for low income families.

COMMENT: N.J.A.C. 7:14A-12.22(b)10iii proposes a 20 percent set-aside, while the "Affordable Housing Rule", N.J.A.C. 5:92-14.4, sets 15 percent as the presumptive maximum set-aside amount for inclusionary rental units.

RESPONSE: N.J.A.C. 5:92-14.4 concerns presumptions required for approval of municipal housing plans. Balanced Housing and JUMPP projects, as well as others before COAH, are not prohibited from containing a greater percentage of affordable units.

COMMENT: The amount of affordable housing now being built by municipalities and non-profits, including the Neighborhood Preservation Balanced Housing Project (NPBHP) and New Jersey Urban Multi-Family Production Program (JUMPP) cited in N.J.A.C. 7:14A-12.22(b)10iv, amounts to a few hundred units per year. Although the proposed exemption at N.J.A.C. 7:14A-12.22(b)10 might serve as an incentive to municipalities, non-profits, and small for-profit developers, it is unlikely to produce a great deal more affordable housing. Therefore, the treatment facilities will not even notice the additional amount of sewage at issue.

One of the reasons this exemption is not much of an incentive is that even with an exemption from a sewer ban, a developer must obtain a treatment works approval. The Department has allowed developers to obtain dry and wet permits even though the municipality is technically under a sewer ban. In urban areas, which is where most of the affordable

housing is built, the proposed exemptions would be even less of an incentive for affordable housing developers.

If the Department is striving to cooperate with affordable housing developers, consideration should be given to more categorical exemptions and a more concerted effort to encourage communities to plan for affordable housing and open space at the same time. N.J.A.C. 7:14A-12.22(b)10 ignores any proposed developments outside NPBHP and JUMPP.

RESPONSE: N.J.A.C. 7:14A-12.22(b)10 was drafted specifically to exclude developments other than Balanced Housing and JUMPP projects. It is not intended to be an incentive, but rather a means to permit a limited number of affordable housing projects in sewer ban areas.

Contrary to the commenter's assertion, most affordable housing units are already being built in non-urban areas by private developers through inclusionary developments that designate 20 percent of the units for low and moderate income purchasers and renters. The provisions of N.J.A.C. 7:14A-12.22(b)9 and (b)10 will apply to urban areas, where needed units would not be built except for the assistance of the Department of Community Affairs.

COMMENT: The Department should not limit the N.J.A.C. 7:14A-12.22(b)10 exemption to projects that are located in urban aid municipalities. The problem of affordable housing and homelessness is Statewide, not only confined to urban areas.

RESPONSE: The Department's intent was to allow a limited exemption for specific types of affordable housing projects without undermining the sewer ban program and its goals.

COMMENT: N.J.A.C. 7:14A-12.22(b)10ix refers to wastewater "... diverted from the wastewater treatment facility subject to the sewer connection ban to a wastewater treatment facility that is meeting and will, upon receiving the diverted flow, continue to meet the final effluent limitations contained in its valid NJPDES permit". Aside from a new or existing package treatment plant or another municipal treatment works in that municipality, what other situations does the Department foresee? A new or expanding package treatment plant would worsen water quality and dependent habitats.

RESPONSE: Subparagraph N.J.A.C. 7:14A-12.22(b)10ix has been deleted. The Department, based on DCA estimates of the relatively small number of units in the Balanced Housing and JUMPP programs in Urban Aid municipalities, believes that the impact upon water quality will be insignificant compared to the effect of the flow diversion costs upon the affordability of the housing involved. The Department will continue its efforts to bring the affected wastewater treatment facilities back into compliance.

COMMENT: It is suggested that the diversion of flow requirement at N.J.A.C. 7:14A-12.22(b)10ix be eliminated. The commenter cites an actual development project to be constructed in a sewer ban area that would have a calculated daily wastewater volume of 20,000 to 24,000 gallons per day. At an average cost of 10 cents per gallon for off-site transportation of the effluent, it will cost approximately \$2,400 daily. Annually, this amounts to \$876,000 to be deducted from income rental of \$1,240,000, which is more than the mortgage payment for the project.

If the intent of the Department is to impose a limitation on the amount of exempt gallage, the commenter suggests that a percentage of the total municipal wastewater could be established to control runaway exemptions.

RESPONSE: The Department recognizes that the costs associated with interim flow diversions may jeopardize the feasibility of a project. The Department has deleted subparagraph N.J.A.C. 7:14A-12.22(b)10ix because the prohibitive costs of hauling wastewater outweighs the insignificant environmental impact, given DCA's assurances concerning the few affordable housing projects in Urban Aid municipalities under the JUMPP and Balanced Housing programs.

COMMENT: N.J.A.C. 7:14A-12.22(b)10ix implies that an amendment to the areawide plan will be required for any diversion. This section should be modified to clarify that the areawide plan amendment applications for any diversions are to be submitted to the existing applicable areawide agency, if existing, for review according to the approved plan amendment procedure. Is the proper mechanism for this amendment application to be in the form of an amendment to the municipal wastewater management plan?

RESPONSE: Interim flow diversions that conform to the requirements of N.J.A.C. 7:14A-12.22(b)10 would not be in conflict with an Areawide Water Quality Management Plan, and therefore, would not need a plan amendment. In any event, subparagraph (b)10ix has been deleted.

COMMENT: One commenter is concerned with conditions under paragraph 10 "... under which the Department can re-impose a ban and

ADOPTIONS

not allow for the exemption." "... the Department should not have this discretion in projects that produce affordable housing". For example, the requirement that the authority or municipality is in compliance with an Administrative Consent Order and that the primary construction contract for improvements/upgrades has been awarded, should be deleted. The current wording further limits the amount of affordable housing in areas where it is needed most.

RESPONSE: If the Department were to grant an exemption under N.J.A.C. 7:14A-12.22(b)10, it would not alter the Department's current policy on the use of Administrative Consent Orders as a tool in assuring regulatory compliance. The Department would take action to bring the authority or municipality back into compliance with the ACO or JCD, rather than revoke the exemption.

COMMENT: The proposed exemptions encourage new construction as opposed to the rehabilitation of existing structures. The Environmental Impact Summary does not address the "secondary" environmental impacts such as the increased impervious cover, the generation of additional stormwater runoff which increase the amount of nonpoint source pollutants, or, the further loss of habitat in certain locations. Concern should be given not to getting better performance from the NJPDES system but more so toward the nonpoint source pollution problems. There is no expressed environmental basis for exempting a housing project simply because of the residents' income. Adoption of this proposal may open the door for developers to argue that under the same circumstances, excluding the income factor, their projects would not have an environmental impact and therefore should be exempt from any sewer ban requirements.

RESPONSE: The issues of secondary environmental impacts are valid concerns. However, it would not be appropriate at this time to subject these projects to any additional or more stringent requirements than now required for projects approved pursuant to another ban exemption criteria. Any project proposed must be in compliance with all other relevant DEP rules and regulations. Also, an approval of an exemption at N.J.A.C. 7:14A-12.22(b)1 is not a defense against any penalties under the Clean Water Enforcement Act, P.L. 1990, c.28, or the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Therefore a municipality and sewer authority must carefully review the project's impact on the facility's permit, including any limit or condition imposed by an ACO or JCD, before endorsing or certifying the project pursuant to N.J.A.C. 7:14A-12.9.

As a result, the two exemptions are not expected to open the door to a flood of new projects in sewer ban areas. Although the commenters concern regarding secondary impacts and nonpoint source pollution are shared by the Department, the narrow scope of exemptions minimizes further environmental degradation.

The Department believes that planning and redevelopment in "Urban Aid" municipalities have the environmental benefit of preserving open space elsewhere. One result of urban decline is suburban sprawl. Therefore, it is reasonable to give special attention to "Urban Aid" municipalities because this will help to preserve open space and to minimize the secondary impacts of development referred to by the commenter.

Rehabilitation projects would not require an exemption to a sewer connection ban; therefore the Department does not see rehabilitation as being inconsistent with new construction. Both are needed to revitalize "Urban Aid" municipalities.

COMMENT: Projects which have been approved as part of the *Mt. Laurel* and *Mt. Laurel II* Doctrines are integral parts of the State plan to provide an ample supply of affordable housing throughout New Jersey. Many of these projects also provide funding to other municipalities so that even more affordable housing units may be constructed via Regional Contribution Agreements (RCAs). Under RCAs, a builder may construct up to half of the required low and moderate income units on his site and provide a per unit fee for each of the remaining units to a receiving community. These funds are then utilized by the receiving community to provide additional affordable housing either through publicly or privately constructed projects. Consequently, all sites, in their entirety, which have been approved as part of compliance packages by either the Council on Affordable Housing or the New Jersey Superior Court, should also be exempted from sewer connection bans.

RESPONSE: The Department, in creating these two limited additional exemptions to sewer bans, considered the importance of maintaining and improving the State's water quality. If the Department were to comply with the commenter's suggestion, a potentially large number of nonurban inclusionary developments would be allowed to go forward in sewer ban areas. Therefore, the Department will not, at this time, allow exemptions

ENVIRONMENTAL PROTECTION

for any project which would be developed under an RCA approval pursuant to N.J.A.C. 5:92-11.

Summary of Agency-Initiated Changes:

Upon further consideration of N.J.A.C. 7:14A-12.22(b)9 and (b)10, the Department has decided that the following minor modifications are appropriate and necessary.

N.J.A.C. 7:14A-12.22(b)9ii and (b)10ii have been revised to allow the existence of either an Administrative Consent Order (ACO), Judicial Consent Decree (JCD), or a primary construction contract award to satisfy this portion of the exemption. Initially, the proposal required an ACO or a JCD and, in all cases, a primary construction contract. It is felt that any of the three requirements, in and of themselves, provide adequate assurances that the necessary water quality related improvements will be completed. There are some situations where there is no ACO or JCD, but where a developer on his own initiative is providing additional capacity to end a building ban in a municipality. In these situations, Departmental review of the treatment works approval application will guarantee that the professional engineering design is adequate, even in the absence of an ACO or JCD, to address any environmental concerns. Thus, the change in the text of the rule will have no adverse environmental impact.

N.J.A.C. 7:14A-12.22(b)9iii and (b)10vii have been deleted in accordance with the modifications made to N.J.A.C. 7:14A-12.22(b)9ii and (b)10ii, as noted above.

N.J.A.C. 7:14A-12.22(b)9vii and (b)10vii have not been adopted since such approvals are conditions precedent to treatment works approvals and are not specific to the proposed amendments.

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

7:14A-12.22 Sewer connection ban exemptions

(a) (No change.)
(b) An applicant for an exemption must prove to the satisfaction of the affected sewage authority and the Department that it meets any of the following criteria:

1.-8. (No change.)
9. If the connection will allow for the construction of a proposed residential housing project, meeting all of the following conditions:
i. The housing project consists of buildings or structures to be occupied for residential purposes ***only***;

ii. The affected sewage authority or municipality has entered into and is in compliance with an Administrative Consent Order with the Department under the Water Pollution Control Act or Judicial Consent Decree with the United States Environmental Protection Agency ("USEPA") for the improvement or upgrade of the wastewater treatment facility ***or a primary construction contract for the improvement or upgrade of the wastewater treatment facility has been awarded***;

[iii. The primary construction contract for the improvement or upgrade of the wastewater treatment facility required by the Administrative Consent Order or Judicial Consent Decree entered into with the Department or USEPA has been awarded;]

***[iv.]*[iii.]* Occupancy of the proposed housing project shall be limited solely to households of low and moderate income as defined pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:92-1.3;**

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

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

[vii. All other necessary Federal, State and local approvals for the project have been obtained;]

[viii.]*[vi.]* The wastewater treatment facility which will serve the project is in compliance with all other relevant rules of the Department*[*]; and]* *** , other than those which served as the basis for the imposition of the ban.**

10. If the connection will allow for the construction of a proposed rental housing project meeting all of the following conditions:

i. The affected sewage authority or municipality has entered into and is in compliance with an Administrative Consent Order with the Department under the Water Pollution Control Act, or Judicial Consent Decree with the United States Environmental Protection Agency ("USEPA") for the improvement or upgrade of the wastewater treatment facility *or a primary construction contract for the improvement or upgrade of the wastewater treatment facility has been awarded*;

[ii. The primary construction contract for the improvement or upgrade of the wastewater treatment facility required by the Administrative Consent Order or Judicial Consent Decree entered into with the Department or USEPA has been awarded;]

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

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

*[v.]**iv.* The housing project consists of buildings or structures to be occupied for residential, rental purposes *only* and the units shall remain rental for, no less than 15 years if the project is receiving or has a commitment to receive a grant or loan through the New Jersey Urban Multi-Family Production Program, P.L. 1988, c.47, or for the amount of time set forth at N.J.A.C. 5:14 if the project is receiving or has a commitment to receive a grant or loan through the Neighborhood Preservation Balanced Housing Program;

*[vi.]**v.* The proposed project shall be located in a municipality that is or has been at one time designated as an Urban Aid Municipality as defined by Department of Community Affairs, Division of Local Government Services, in accordance with N.J.S.A. 52:27D-178 to 181;

[vii. All other necessary Federal, State and local approvals for the project have been obtained;]

*[viii.]**vi.* The wastewater treatment facility which will serve the project is in compliance with all other relevant rules of the Department*[*]; and]* **, other than those which served as the basis for the imposition of the ban.*

[ix. An equal amount of the wastewater flow from the operation of the project shall be diverted from the wastewater treatment facility subject to the sewer connection ban to a wastewater treatment facility that is meeting and will, upon receiving the diverted flow, continue to meet the final effluent limitations contained in its valid NJPDES permit. This diversion of flow shall be made in a manner consistent with water quality management plans prepared pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., specifically N.J.S.A. 58:11A-7, and all rules promulgated pursuant thereto.]

7:14A-12.23 Application for a sewer connection ban exemption
(a)-(h) (No change.)

(i) The granting of an exemption by the Department and the affected sewage authority does not relieve the applicant of the following responsibilities:

1. (No change.)

2. Obtaining the requisite treatment works approval from this Department or from the municipality or affected sewage authority in the case of a project granted an exemption under N.J.A.C. 7:14A-12.22(b).

(a)

DIVISION OF WATER RESOURCES Underground Storage Tank Systems Technical Requirements and Procedures

Adopted Amendments: N.J.A.C. 7:14B-1.3, 1.4, 1.6, 2.1, 2.2, 2.3, 2.4, 2.5, 2.7, 2.8, 3.1, 3.2, 3.4, and 3.5.

Adopted Repeal: N.J.A.C. 7:14B-4

Adopted New Rules: N.J.A.C. 7:14B-4 through 12 and 15

Proposed: August 7, 1989 at 21 N.J.R. 2242(a).

Adopted: August 6, 1990, by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: August 6, 1990 as R.1990 d.443 with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., more particularly 58:10A-21 et seq.

DEP Docket Number: 036-89-07.

Effective Date: September 4, 1990.

Expiration Date: December 21, 1992.

Summary of Public Comments and Agency Responses:

The proposed new rules, amendments and repeal were published in the August 7, 1989 New Jersey Register. The comment period extended from August 7, 1989 through October 6, 1989 during which time 85 individuals or entities submitted written comments on these rules as well as the Underground Storage Tank Improvement Fund Loan Program proposed the same day at 21 N.J.R. 2265(a). Public hearings were held at the Rutgers Labor Education Center in New Brunswick and the New Jersey State Museum on August 24 and 29, 1989. Twenty-one persons offered oral testimony on these rules as well as the proposed Underground Storage Tank Improvement Fund Loan Program. In addition to publication in the New Jersey Register, secondary notice of the proposal was provided by mailing over 2,000 copies of the proposed rules to persons on the Bureau of Underground Storage Tanks' mailing list.

GENERAL COMMENTS

COMMENT: Several commenters requested that the Department extend the comment period for the proposal beyond October 6, 1989.

RESPONSE: The Department is required to give a 30-day comment period pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Due to the length and complexity of the proposal, the Department extended the comment period to 60 days. Any further extension would have unnecessarily delayed adoption of the final rules.

COMMENT A: One comment was received stating that the provision for a corrosion expert (taken from the Environmental Protection Agency (EPA) Regulations) at N.J.A.C. 7:14B-1.6 should be modified to be less restrictive.

COMMENT B: One comment was received stating that the provision for overfill protection (taken from the EPA Regulations) at N.J.A.C. 7:14B-4.1(c)2 should be modified to allow less restrictive measures.

COMMENT C: One comment was received stating that the provision for corrosion protection for piping (taken from the EPA Regulations) at N.J.A.C. 7:14B-4.2 should be modified to allow less stringent measures.

COMMENT D: One comment was received stating that the provision for excavation liner material (taken from the EPA Regulations) at N.J.A.C. 7:14B-4.4(d) should be modified to allow soil clay as an acceptable material for the liner.

COMMENT E: One comment was received stating that the restrictions on the use of ground water monitoring (taken from the EPA Regulations) at N.J.A.C. 7:14B-6.2(b)2 should be modified to allow more owners or operators to use this method, presumably by increasing the acceptable depth or decreasing the acceptable permeability.

RESPONSE: In order for the State to receive Underground Storage Tank (UST) Program Approval from EPA, the Department must develop rules which are no less stringent than the Federal regulations. Thus, many provisions of these rules are similar to provisions in the EPA rules. The Department is allowed certain discretion in modifying the Federal regulations, but only if the Department can prove to EPA that its program is, as a whole, no less stringent than EPA's program. All of these comments request a change to an EPA rule which is restated in these rules.

ADOPTIONS

The Department does not believe that these changes can be made without endangering State UST Program Approval. Therefore, no rule changes have been made based on these comments.

COMMENT: Two comments were received requesting that the Department make available all the publications, standards, and practices that are referenced in the rules, or at least provide addresses and contacts for the various organizations who publish these referenced papers. One of the commenters, furthermore, believes that the referenced publications should be presented for public review and comment because incorporation by reference does not provide the regulated community with adequate guidance.

RESPONSE: It is common practice in rules to incorporate publications by reference in order to reduce the volume of the regulatory document and to allow the referenced materials to be updated periodically without having to amend the rules. The Department will make available upon request the addresses and phone numbers of the referenced organizations so that a person can contact them for a copy of their publications. The Department cannot make copies of these publications due to copyright laws. However, all documents referenced in these rules will be made available at the Department. Anyone who wants to inspect these documents and publications should contact the Bureau of Underground Storage Tanks at (609) 984-3156.

COMMENT: The rules should contain a mechanism through which the Department will sign off on completed cleanups and closures conducted under this program, similar to negative declaration approval letters issued under ECRA. A definitive end point to compliance is needed.

RESPONSE: For closures, the Department intends to issue a letter to the owner/operator specifying when compliance with all requirements has been achieved. If contamination is found during closure, then the owner/operator must comply with all appropriate requirements under N.J.A.C. 7:14B-7 and 8 (Release Reporting and Notification and Corrective Action). Similarly, when a cleanup has been completed in compliance with N.J.A.C. 7:14B-8 requirements, then the Department will issue a letter indicating that no further action is required. If a New Jersey Pollutant Discharge Elimination System (NJPDES) permit has been issued requiring a ground water cleanup, and the cleanup has been completed, then the Department will issue a termination of permit letter to the owner/operator. No changes to the rules are required to implement the above procedures.

COMMENT: One commenter was concerned that local construction code enforcement officials who are not familiar with the State permitting requirements will unduly delay installation activities.

RESPONSE: The Department has endeavored to design the permitting process to be linear, with the State process preceding the local permitting process. Therefore, there should be little or no conflict in the two activities. In addition, the Department has conducted 12 training sessions for over 600 local construction code enforcement officials on the UST program.

COMMENT: Several commenters were concerned that there will not be enough contractors to perform all the necessary installation, closure and upgrading work prior to the deadline of September 1991.

RESPONSE: There are two bills pending in the Legislature (S-2430, A-2923) extending the deadline for an additional two years. The extension is expected to allow enough time for the necessary activities to be performed.

COMMENT: One commenter believes that the rules are too complicated and need to be simplified.

RESPONSE: Due to the broad scope of the underground storage tank program, there are many activities which must be regulated. The Department has tried to keep the rules as simple as feasible, given the complexity of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (State Act) and the Federal regulations. The Department will develop technical guidance documents to assist owners and operators of underground storage tanks in the interpretation of these rules in order to achieve a higher degree of compliance.

COMMENT: One commenter recommended that the UST Task Force be continued in effect even after the rules are adopted.

RESPONSE: The Department intends to utilize the UST Task Force or a similar committee to assist the agency in the implementation of the program.

COMMENT: One commenter believes that the Department should develop and publish in the New Jersey Register a checklist which clearly defines the New Jersey technical requirements for new and existing tanks.

RESPONSE: The Department agrees that a simple-to-follow outline of the rules should be developed and made available to the regulated

ENVIRONMENTAL PROTECTION

community. However, the Department does not believe this should be published in the New Jersey Register but rather should be made available from the Department.

COMMENT: One commenter stated that it appears that the foot or poppet valve is being eliminated for suction product lines.

RESPONSE: The rules do not specifically state that the foot or poppet valves are being eliminated. Owners and operators of underground storage tanks with dispensing systems using suction systems utilizing foot valves or angle check valves, also known as "American Style" suction, will have to retrofit a monitoring system for the piping. Suction systems meeting the requirements of N.J.A.C. 7:14B-6.3(a)1, also known as "European Style" suction, are exempt from monitoring requirements. The Department believes that "European Style" suction systems will become more common due to the exemption from monitoring and that they are inherently safer. American style suction systems will still be an option but will be required to have monitoring systems. The absence of monitoring systems for the European Style suction systems makes this system more appealing.

COMMENT: One commenter stated that no cost estimates were included in the Basis and Background document for removal of underground storage tanks when in a retrofit situation.

RESPONSE: No cost estimates were included because, while this is a viable option, the Department believes that the vast majority of retrofits can be performed without removing the underground storage tank. Also, the additional cost of removing an underground storage tank would make this option less attractive to the regulated community. However, if someone wishes to estimate the cost of removing an underground storage tank in a retrofit situation, the Basis and Background document provides all the necessary information for calculating the cost. The removal of the tank would be considered a closure activity and would be required to comply with all aspects of these rules. These costs are included in the Basis and Background document. The tank could be retrofitted and the costs can be derived from the information in the Basis and Background document for retrofits. Re-installing the tank would be considered a new installation and the owner and operator would be required to comply with these rules. The costs can be estimated from the information in the Basis and Background document regarding new installations.

COMMENT: One commenter asked when a tank tightness test can be used.

RESPONSE: A tightness test (also called a precision test) on the underground storage tank and on piping must be conducted in accordance with the requirements of N.J.A.C. 7:14B-4.3(j). Tightness tests are required for a new tank and its associated piping after the new underground storage tank system is installed but before the excavated area is restored to grade (see N.J.A.C. 7:14B-4.3(j)). A tank tightness test is also required within 30 days after a repair to the tank unless the tank is equipped with a Department-approved release detection system (see N.J.A.C. 7:14B-5.3(f)). Tank tightness tests may be used as a means of assessing an existing metal tank's structural integrity before it is retrofitted with cathodic protection, since it may not be possible or feasible to repair a badly corroded tank in order to retrofit it with cathodic protection (see N.J.A.C. 7:14B-4.5(c)3). Tank and piping tightness tests may also be used in conjunction with monthly inventory reconciliations to meet the leak detection requirements for Federally-regulated underground storage tanks. These tanks that were installed prior to January 1, 1970 must comply with the leak detection requirements, 40 C.F.R. 280.40(c) until September 3, 1991 or until such time as the EPA delegates its authority to the Department. Remember that the Department, unlike the EPA, does not recognize periodic tightness tests combined with inventory reconciliations as an acceptable means of release detection. A Department approved release detection system must be installed by September 3, 1991 for existing tanks and upon installation for new underground storage tanks.

COMMENT: Many comments were received referencing N.J.A.C. 7:14B-1.6 (Definitions), 4.5(e)1 (Upgrading existing underground storage tank systems), 8.3(b) (Reporting requirements) and 9.2(b) (Closure requirements for underground storage tank systems containing petroleum products) regarding the Department's requirements for qualified geologists, ground water hydrologists or hydrogeologists. Some suggested that the Department approach the State Legislature to establish a certification or licensing program. Some stated that the enabling statutes give no authority to "qualify" or license individuals. One commenter found the requirement of five years experience to be unreasonable. Several suggested that the rules as written do not afford the Department sufficient control, since a dependence is put upon other State and national organizations

to certify or license consultants. Many suggested adding other professionals to the list of those qualified, such as Professional Engineers, chemical engineers, those certified by the Division of Professional Affairs of the American Association of Petroleum Geologists, Hazardous Materials Managers and the Society of Independent Professional Earth Scientists. One comment suggested that the Department define instead a "qualified professional" who can do everything from tank installations and upgrades to corrective action and closure, except install monitoring wells. One comment stated that the rules are too demanding in specifying which actions must be performed by a qualified hydrogeologist. Some comments requested the inclusion of the term "hydrogeologist" at N.J.A.C. 7:14B-1.6. Others requested that the definition of "hydrogeologist" include the language from N.J.A.C. 7:14B-4.5(e)1. One comment suggested dropping the language in N.J.A.C. 7:14B-1.6 in favor of the language in N.J.A.C. 7:14B-4.5(e)1; another questioned why the qualifications listed in these two provisions are different.

RESPONSE: The Department agrees that the best control mechanism to insure that only qualified professionals are responsible for the investigation and remediation of discharges from underground storage tanks and for determining that site conditions are appropriate for particular monitoring systems is a State certification program. A bill to register professional geologists and soil scientists is presently pending in the Legislature. The Department supports that bill. In the absence of such a legislative mandate, however, the Department has proposed requiring minimum education and experience requirements and utilizing existing programs in other states and in national professional organizations as the next best alternative to insure the competence of consultants.

The Department recognizes that other national professional organizations, in addition to those listed in the proposed rules, can also provide adequate certification as to the competence of consultants. Therefore, appropriate language has been added to the rules to allow for the possible future approval by the Department of such organizations. In addition, three professional organizations have been added to the list.

New Jersey Professional Engineers have also been added. The Department had expected that any Professional Engineer who wanted to be considered a qualified ground water consultant would be able to obtain one of the certifications listed in the proposal. However, as several commenters pointed out, Professional Engineers are prohibited by a code of ethics from working in a field of expertise in which they are not qualified. Thus, requiring the certification from another organization is duplicative. The Department agrees.

For purposes of clarity, all appropriate language concerning qualifications has been deleted from N.J.A.C. 7:14B-4.5(e)1 and inserted in N.J.A.C. 7:14B-1.6 under the definition of "Qualified Ground Water Consultant." Any specific reference to the minimum education and experience requirements of qualified ground water consultants has been deleted and replaced with minimum requirements for those State programs and national professional organizations which certify the qualifications of professionals and which the Department will find acceptable. Since these education requirements are essentially equivalent, this is not a substantive change. N.J.A.C. 7:14B-8.3(b) and 9.2(b) have been changed to be consistent with these modifications.

The Department has authority under its enabling legislation N.J.S.A. 13:1D-9 and N.J.S.A. 58:10A-21 et seq. to set minimum requirements or standards for consultants.

COMMENT: Many comments were received regarding the installation of monitoring wells as required by N.J.A.C. 7:14B-7.2(b)1 (investigating a suspected release), 8.2(a)3 (Discharge mitigation requirements) and 9.2(c) (Closure requirements for underground storage tank systems containing petroleum products). Most commenters advocated soil sampling or soil vapor sampling as an alternative (plus tank examination or tank tightness testing for closure), leaving monitoring wells to be installed only for site specific reasons. Two commenters felt that installing wells would spread contamination in the subsurface, especially if installed through clay barriers.

One commenter stated that installing one well for closure would give inconclusive results, and that the probability of that well detecting a leak would be low. Another commenter suggested installing wells for closure only when the UST cannot be removed or when soil contamination extends to the seasonal high water table.

One commenter felt that in highly urbanized areas, streets, buildings, utilities, traffic and urban fill would all restrict well drilling and ground water investigative capabilities. One comment discussed inherent uncertainties involved in the monitoring of ground water. Finally, one comment stated that the use of monitoring wells to detect contamination is a sound way to protect public health and the environment.

RESPONSE: Direct measuring of ground water quality is much more representative than extrapolation from soil analytical data to determine the transport of contaminants in the soil atmosphere or ground water. Soil/fill contaminant impacts on the soil atmosphere or ground water is variable depending on the soil type or fill type encountered, even without hydrogeology being considered. Soil vapor data can be transient, dependent on weather conditions. Comparatively, ground water analytical data is more consistent and is a direct measure of contamination transport in the ground water.

Monitoring wells can be used to detect contaminant transport in the soil atmosphere as well as in the ground water.

Monitoring wells, when properly installed in accordance with the Department's specifications, will not allow the downward vertical migration of contamination across a clay barrier. In urbanized areas, although well drilling activities can sometimes be difficult or disruptive, wells can usually be sited and drilled despite the difficulties. Typically, the same limitations that apply to well drilling activities will also apply to soil sampling. Most of the same limitations that result in uncertainties in the monitoring of ground water (that is, sampling error, laboratory analytical variations, poorly developed analytical procedures and variations in the quality of the matrix sampled) apply to soil sampling as well.

Additional reasons for ground water investigation are as follows:

1. Infiltrating rainwater will transport more water soluble contaminants from the unsaturated zone to the water table. This would result in lower concentrations of contaminants in the unsaturated zone but significant contamination in ground water.

2. Because ground water is mobile, a properly sited monitoring well presents a broader picture of conditions at the site and increases the chances of detecting contamination if present.

3. Monitoring wells can serve to identify historical releases or sources of contamination that may not be readily apparent in soil sampling or site inspection.

4. Contaminants migrating to the water table may not necessarily follow a direct vertical path. Depending on changes in lithology with depth, presence of a wetting front and moisture content of the soil, lateral flow components may exist. Hence, a soil boring located directly over a mass of contaminant can still give a false indication of penetration depth of the contaminant if lateral flow in the unsaturated zone occurs.

Monitoring wells will therefore be required to investigate a release from an underground storage tank system and to disprove a release at a closure of a regulated UST system, where those systems contained gasoline, jet fuel or kerosene. For other hazardous substances, however, the Department has modified its position. Based upon a review of available data, the Department has determined that due to the reduced mobility of certain hazardous substances in the subsurface (as compared to the mobility of gasoline, jet fuel and kerosene) and depending on site specific conditions, proper soil sampling can be a means to define subsurface contamination and help to determine the need for further subsurface investigations (which may include the installation of monitoring wells). Therefore, N.J.A.C. 7:14B-7.2(b), 8.2(a)3 and 9.2(c) have been modified and N.J.A.C. 7:14B-7.2(b)3 and 9.2(d) have been reserved for future proposal to allow other appropriate investigations to be conducted. Since many factors influence the need for further subsurface investigations, the Department will determine the appropriate sampling protocol on a site specific basis.

COMMENT: One commenter stated that the regulated community may experience budgeting problems in meeting the compliance deadline, particularly for companies with a large number of USTs.

RESPONSE: The Department realizes that some entities, with budget cycles extending over several years, may experience problems with the financial aspects. The Department is attempting to obtain an extension of the September 3, 1991 deadline by petitioning the State Legislature. However, the Department also believes that most of the regulated community has been aware of the deadline and should have taken steps to address their budgetary problems.

COMMENT: One commenter stated that adherence to these rules would have an enormous inflationary impact and generate needless and wasteful spending in a non-productive investment.

RESPONSE: The Department has considered these costs and impacts in both the Basis and Background document and the Economic Impact Statement in the Summary of the proposed rules as published in the New Jersey Register (see 21 N.J.R. 2244, August 7, 1989) and has concluded that the rules will have a beneficial impact, both from a social and economic viewpoint.

COMMENT: One commenter submitted to the Department for review a petition from the American Petroleum Institute to the Federal En-

Environmental Protection Agency, requesting amendments to the Federal Regulations, "Underground Storage Tanks: Technical Requirements (40 CFR 280)."

RESPONSE: EPA requires that the Department's regulations be as stringent or more stringent than the Federal Regulations. The EPA has not yet issued a final ruling on these amendments to the existing Federal Regulations. When the EPA addresses these amendments in final rules, the Department will review the merits of any changes to the Federal Regulations and may amend the Department's rules to reflect those changes if necessary.

COMMENT: One comment was received regarding the need for a certification program for tank installers, including the demonstration of experience and financial responsibility. The commenter also claimed that the Department has the authority under the Act to establish this program.

RESPONSE: While the Department believes that a certification program is meritorious, the statutory authority for establishing this program is uncertain. The Department has requested an opinion from the Attorney General on this issue. Until the issue is resolved, the Department does not plan to take any regulatory action on an installer certification program.

COMMENT: N.J.S.A. 58:10A-25a(3) states "... Any regulations adopted by the Department pursuant to this section requiring the installation of monitoring systems at a facility shall reflect the financial ability of an owner or operator of a facility, or classes of facilities, to install the monitoring system required by the Department." The proposed rules do not take this factor into consideration.

RESPONSE: The Basis and Background document provides a detailed discussion of this aspect of the rules on pages 107 through 118. The Department believes that this adequately addresses the financial ability requirements of N.J.A.C. 58:10A-25a(3).

COMMENT: Two comments were received asking for clarification of the terms "owner" and "operator"; their use and definition.

RESPONSE: Both terms are defined in the statute. The Department has determined the definition of "owner" means the present person having legal title to the facility. This is consistent with other Department regulatory programs that allow the Department to search back to previous persons owning the facility when the present owner is unknown. Operator means a person who controls the daily operations of a facility but does not necessarily have legal title to the facility. The owner of a facility is responsible for the facility's compliance with all administrative and technical requirements of the law. The owner of a facility may have the facility operator sign for him but this will not limit the owner's responsibility or liability pursuant to law. Sole proprietorships and partnerships need only have the owner sign the certification designed for these types of businesses while corporations must have the signature of an officer of at least vice president level or higher.

COMMENT: The State should develop a State-backed program of insurance to meet financial responsibility assurance requirements.

RESPONSE: New Jersey has not yet proposed rules developing a program for financial responsibility assurance requirements for USTs. The Department is currently developing this program for future proposal. Additionally, the Department is currently investigating the development of a State-backed program of insurance to meet financial responsibility assurance requirements and will propose it as a rule or include it with the rules for financial responsibility assurance.

COMMENT: One commenter begged the Department to adopt the regulatory proposal as soon as possible to prevent further delays in implementing the State Act.

RESPONSE: The preparation of a regulatory adoption document is a complex process involving both technical and legal review of the many comments received. The Department is confident that the extra time taken to adopt the rules will be beneficial to the underground storage tank program.

SUBCHAPTER 1. GENERAL INFORMATION

N.J.A.C. 7:14B-1.4 Applicability

COMMENT: One comment was received asking why new residential heating oil tanks (greater than 2,000 gallons) are exempt from the regulatory standards for corrosion protection, compatibility with product stored, and installation according to manufacturer's requirements.

RESPONSE: New residential heating oil tanks over 2,000 gallons are exempted by the State Act, N.J.S.A. 58:10A-21 et seq., from all requirements except those of registration, inventory control and release reporting.

COMMENT: One comment was received asking if Stage Two vapor recovery system lines are considered product bearing lines.

RESPONSE: The return lines for Stage Two vapor recovery systems contain vapor, not liquid. The State Act only regulates petroleum substances which are liquid at standard conditions.

COMMENT: One comment was received asking the Department to clarify its interpretation of "tank capacity" by adding it to the list of definitions.

RESPONSE: The Department agrees with this comment. "Tank capacity" will now be defined as the manufacturer's nominal tank size when referring to a single tank. When referring to multiple tanks storing the same hazardous substances and located on the same contiguous piece of property, the aggregate of the manufacturer's nominal tank sizes will be used to determine the capacity. Using the manufacturer's tank statistics will ensure that the proper facts and figures pertaining to tank dimensions and capabilities will be used since the manufacturer designed the tank.

COMMENT: One comment was received stating that the airport hydrant distribution system at Newark Airport is exempt from the State Act because hydrant systems are regulated under the Hazardous Liquid Pipeline Safety Act of 1979, P.L. 96-129 (49 U.S.C. §§2001 et seq.) and are supplied by above ground tanks that do not have 10 percent of their volume below ground.

RESPONSE: Facilities with extensive piping distribution systems which are supplied by above ground tanks are still considered USTs under this rule if the volume of piping is 10 percent or more beneath the surface of the ground. Any airport hydrant distribution system which is determined to be an UST will be examined on a case by case basis to determine if the system is subject to the Hazardous Liquid Pipeline Safety Act of 1979, P.L. 96-129 (49 U.S.C. §§2001 et seq.). A system which is subject to this act will be exempt from the Department's rules.

COMMENT: One commenter asked if a farm or large estate spread over many acres would be exempt from the 2,000 gallon limit for registration purposes.

RESPONSE: Only working, commercial farms have been given additional exemptions to registration requirements. This does not apply to large estates unless they qualify as a commercial, working farm and for farmland tax assessment, pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.

COMMENT: Several comments were received asking for clarification regarding the status of tanks closed before these rules are promulgated.

RESPONSE: The Department considers tanks which contain a hazardous substance to be regulated by these rules and conversely tanks which do not contain a hazardous substance not to be regulated. Tanks which formerly held a hazardous substance but were subsequently emptied are assured to contain a minute quantity of hazardous substances and must either be reused, temporarily closed or permanently closed. These tanks must comply with N.J.A.C. 7:14B-2, 3 and 9 (particularly N.J.A.C. 7:14B-9.1(b)), the New Jersey Uniform Fire Code and the New Jersey Uniform Construction Code. Facilities deciding to temporarily or permanently close must follow the appropriate procedures set forth in N.J.A.C. 7:14B-9 and perform a site assessment when required. Tanks which have never held a hazardous substance and do not now have any hazardous substance stored are not considered USTs. Owners of abandoned tanks which formerly contained a hazardous substance must present adequate documentation of the abandonment. Owners with inadequate information pertaining to the presence of hazardous substances in the tank may be required to perform additional work at the Department's discretion, depending on site specific conditions.

COMMENT: One comment was received questioning why any UST should be exempt from registration and inventory control requirements. Also, owners of residential tanks should be required to notify the Department of their existence. The UST Improvement Fund could best be used to assist the individual homeowner in remediating leaking USTs.

RESPONSE: The State Act specifically states what substances and what quantities are to be regulated. The Legislature, with assistance from the Department, determined that only the higher volume (usage and type of product) residential tanks would be regulated. Consideration was also given to the State's capacity to handle the workload that would result from this law. And, last but not least, consideration was also given to the types of people to be regulated. The result was that only larger home owned tanks would be regulated. These are motor fuel (gasoline, diesel fuel, aviation fuel, kerosene, gasohol, etc.) tanks of 1,101 gallons or more and heating oil (Numbers 2, 4 and 6 grades) tanks of 2,001 gallons or more. This is defined in N.J.A.C. 7:14B-1.6. These levels were determined by the Legislature to be fair to the homeowner and yet still regulate tanks

which may pose potential hazards to the environment with volume greater than those described above. Only regulated underground storage tank facilities are required to register and only certain regulated facilities may apply for a loan (see N.J.A.C. 7:14B-13).

COMMENT: Several comments were received questioning the wording interpretation of N.J.A.C. 7:14B-1.4(b)8 and 9. One commenter requested that N.J.A.C. 7:14B-1.4(b)9 read "... or tunnels, if the storage tank is situated upon or above the surface of the floor, or storage tanks located below the surface of the ground which are equipped with secondary containment and are uncovered ..."

RESPONSE: The Department agrees that the wording of these provisions is unclear. The definition of underground storage tank in N.J.S.A. 58:10A-22p includes all tank facilities with 10 percent or more of its volume beneath the surface of the ground. The intent of these provisions is to provide exemptions for tank facilities which are located in underground areas (for example, basements) but are not physically covered by the ground.

COMMENT: One comment was received requesting a "small tank exemption" for tanks with a volume of 110 gallons or less.

RESPONSE: Although the Federal regulations allow an exemption for tanks with a volume of 110 gallons or less, the Department has determined that a release of hazardous substances from any sized tank is unacceptable. Several gallons of gasoline, for example, can contaminate millions of gallons of drinking water.

COMMENT: One comment was received recommending that the Department's rules incorporate the Federal regulations exempting any tank system containing a "de minimus" concentration of hazardous substances.

RESPONSE: Although the Federal regulations allow an exemption for tanks containing a "de minimus" quantity of hazardous substances, the Department has determined that a release of any quantity of hazardous substances from a tank is unacceptable. Thus, no exemption is included.

COMMENT: One comment suggested that N.J.A.C. 7:14B-1.4(c) should include a reference to the cathodic protection measuring station requirement of N.J.A.C. 7:14B-4.1(a).

RESPONSE: The Department agrees and the change has been made to reflect this comment.

COMMENT: One comment was received suggesting that N.J.A.C. 7:14B-1.4(d) should not include a reference to N.J.A.C. 7:14B-5.4 due to the fact that heating oil tanks are not subject to inventory control requirements.

RESPONSE: The Department agrees and the change has been made to reflect this comment.

COMMENT: Several comments were received suggesting that the aggregate volume policy be stated in the rules. Another commenter asked if there is more than one heating oil tank at a facility, each with a capacity below 2,000 gallons, but with a total capacity at the facility exceeding 2,000 gallons, are the tanks exempt? Finally, one commenter questioned the economic feasibility of the aggregate tank concept.

RESPONSE: This policy was determined from the Department's interpretation of the definition of an underground storage tank contained in the State Act which states that "any one or combination of tanks, including appurtenant pipes, lines, fixtures and other related equipment" is a tank. The Department has added a definition for tank capacity at N.J.A.C. 7:14B-1.6 which clarifies this interpretation.

COMMENT: Two comments were received indicating that a comma was missing in N.J.A.C. 7:14B-1.4(c). The rule should read: (c) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2.3, 4.1(a) and (m), 4.3(a), 7 and 8.

RESPONSE: The Department agrees and has corrected the typographical error.

COMMENT: One comment was received stating that a review of Nuclear Regulatory Commission (NRC) requirements should be performed upon registering a tank with radioactive materials and that the small universe of these tanks should not be regulated by the Department.

RESPONSE: It is the responsibility of the tank owner to comply with all applicable rules and regulations pertaining to its tanks. This includes the rules of the NRC. The Department is required by statute to review UST facilities for compliance with the State Act. Compliance with other laws and rules is the responsibility of the UST facility owner. Incorporation of the rules pertaining to USTs under NRC jurisdiction is only included to maintain regulated community concerning USTs at an NRC site.

COMMENT: Many comments were received pertaining to sumps, and their applicability as underground storage tanks. Additionally, com-

menters asked if the 48 hour limit for the collection/containing of a substance is consecutive or cumulative. One commenter suggested that emergency spill and/or overflow containment systems be granted full exemptions.

RESPONSE: The Department considers the proposed definition of a sump acceptable and will require all facilities with sumps that meet this definition to comply with the rules. The Department has established reduced requirements for sumps due to the infrequent nature of their use. However, minimum requirements for registration, corrosion protection, release reporting and corrective action are included to reduce the possibility of a discharge. The 48 hour limit to collect or contain hazardous substances will begin from the time of discovery of a substance in the sump and will run consecutively. This time limit of 48 consecutive hours was chosen in order to minimize the regulation of small tanks and emergency sumps. These small tanks and emergency sumps collect or contain substances for a short time and immediately have the substance removed. It is not the intent of the Department to regulate these types of USTs. Containment of product for more than 48 consecutive hours could very easily start to be a source for large actual or potential discharges. Thus, any sump which contains product for greater than 48 consecutive hours is considered to be subject to all requirements of these rules.

COMMENT: One comment was received asking if a person may remove a hazardous substance from a sump after 47 hours and one hour later begin to store a hazardous substance in the sump.

RESPONSE: A person may not remove a hazardous substance from a sump after 47 hours and one hour later begin to store a hazardous substance. The intent of the special provisions for sumps is to allow a facility to store a hazardous substance infrequently for a short period of time after which the substance will be removed.

COMMENT: One comment was received requesting an exemption for schools from the 2,000 gallon capacity limit for on-site consumption of heating oil where the facility consists of more than one tank.

RESPONSE: This requirement that a facility consists of "any one or combination of tanks" is set by the State Act. The Department agrees with this requirement and will not grant an exemption to schools from the 2,000 gallon capacity limit for on-site consumption of heating oil where the facility consists of more than one tank.

COMMENT: One comment was received recommending that fuel oil tanks not be subject to the proposed rules, but be subject instead to the Federal regulations. The commenter submitted reports supporting this recommendation.

RESPONSE: The State Act includes heating oil as a regulated substance and certain types of heating oil tanks are subject to all the provisions of the State Act. Imposing only the Federal Regulatory requirements of 40 CFR 280 on these tanks would be in direct contravention of the intent of the New Jersey Legislature in including heating oil tanks in the State Act.

COMMENT: Many comments were received stating that tanks containing substances defined as hazardous waste are regulated by both the State Act and by the Hazardous Waste Regulations (see N.J.A.C. 7:26-1 through 13A, 16, 16A, 17) and suggesting that they should be consolidated into one program (Division) in order to maintain consistency in interpretation of the rules and their enforcement. Also, consolidation would avoid duplications of State efforts, fees and submissions.

RESPONSE: The Department realizes that there are two separate statutes and programs regulating hazardous waste tanks. Although there are certain differences in the programs, most of the regulatory requirements are similar. The two affected programs have strived to coordinate the requirements for hazardous waste tanks to avoid duplication. For examples, hazardous waste tanks subject to closure requirements of the Hazardous Waste Regulations, N.J.A.C. 7:26 do not have to meet the closure requirements of this chapter (see N.J.A.C. 7:14B-9.3(a)). The installation and monitoring requirements of N.J.A.C. 7:14B-4 and 6 will take precedence over the installation and monitoring requirements of the Hazardous Waste Regulations, N.J.A.C. 7:26.

COMMENT: One comment was received stating that there is an apparent error in these rules because they exclude flow-through "oil-water" separators.

RESPONSE: Oil-water separators are considered wastewater treatment systems and thus are exempt from these rules as per N.J.A.C. 7:14B-1.4(b)12. However, any tank storing a hazardous substance which is separate from the treatment system will not be entitled to the exemption at N.J.A.C. 7:14B-1.4(b)12.

ADOPTIONS

COMMENT: One comment was received asking the Department to define the term "residential" as it applied to this chapter and if it would encompass an office building or buildings equipped with a tank or tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption.

RESPONSE: "Residential building" is defined in the State Act as "a single and multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or any other structure designed primarily for use as a dwelling." An office building is not included since it is not PRIMARILY designed as a dwelling. The 2,000 gallon limit for on-site consumptive uses of heating oil tanks refers to both residential and non-residential buildings.

N.J.A.C. 7:14B-1.6 Definitions

COMMENT: One comment was received asking that the term "site" be defined.

RESPONSE: The term "site" is now defined as "the entire contiguous piece of property at which the facility is located."

COMMENT: One comment was received suggesting that the definition of the term "person" be included in the definition of the term "legal entity".

RESPONSE: Since the term "person" is defined in the statute as "any individual, partnership, company, corporation, consortium, joint venture, commercial or any other legal entity, the State of New Jersey, or the United States Government," including it in the definition of the term "legal entity" would be redundant and confusing to the regulated community.

COMMENT: Two comments were received asking for a clarification of the proposed definition of "new underground storage tank system" and "existing underground storage tank system." The rules as written indicate that tanks currently abandoned are closed in place and would be considered new tanks.

RESPONSE: Since these rules impose substantial requirements on new underground storage tank systems, the Department has detailed the criteria for an existing underground storage tank system. These criteria would not require an individual to immediately meet the conditions of N.J.A.C. 7:14B-4.1, 4.2, 4.3, 6.2, 6.3, and N.J.A.C. 7:14B-10. A new underground storage tank system as defined in N.J.A.C. 7:14B-1.6 is simply a system which does not presently exist or is closed as of the effective date of these rules.

COMMENT: One comment stated that the term "discharge monitoring system" is not defined and could mean "monitoring system" or "discharge detection system."

RESPONSE: A monitoring system is defined as either a discharge detection system or a leak detection system. A discharge monitoring system is the same as a discharge detection system.

COMMENT: Two comments were received stating that the definition of an "aquifer" should be defined in the true scientific manner and not be restricted by phrases such as "a significant amount" and "to a well or spring."

RESPONSE: The Department uses this definition in other rules, such as the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A and considers it acceptable for all programs.

COMMENT: One comment was received stating that the definition of the term "empty" should mean that all residue has been removed and/or made inert, whichever is most effective.

RESPONSE: The Department intends that the definition of "empty" refer only to tanks which are temporarily closed and must be returned to operational status or closed within 12 months from the effective date of these rules. Tanks that are to be abandoned in place or removed are to be cleaned thoroughly in accordance with N.J.A.C. 7:14B-9.2(b)3 and 4.

COMMENT: One comment was received stating that the phrase "and fluctuates according to season and rainfall" should be added to the definition of the term "water table."

RESPONSE: The Department agrees since a water table is dynamic in terms of its level and the fluctuation in the water table is raised by the season and the rainfall.

COMMENT: Many comments were received regarding the definition of the term "corrosion expert", claiming the addition of New Jersey Professional Engineers or those certified by the National Association of Corrosion Engineers to the list of qualified people makes the definition less stringent than the Federal requirement.

RESPONSE: The Department disagrees with this comment. There are two criteria which must be satisfied to be considered a corrosion expert: first, adequate education and experience in corrosion principles; second,

ENVIRONMENTAL PROTECTION

either a National Association of Corrosion Engineer (NACE) certificate or a Professional Engineering license. Any Professional Engineer that wishes to perform the tasks described in N.J.A.C. 7:14B-4 and 10.4 as a corrosion expert must meet the first criterion. A professional engineer is prohibited by a code of ethics from working in a field of expertise in which he or she is not qualified. Otherwise, the Engineer would be considered in violation of these rules in addition to the ethics provision of N.J.S.A. 45:8-27 et seq.

COMMENT: Many comments were received concerning the definition of the term "existing underground storage tank system" or specifically the word "existing." It is suggested that the definition be based on the effective date of promulgation of these rules rather than December 21, 1987.

RESPONSE: The Department agrees and the definition of "existing underground storage tank system" has been changed to reflect this comment.

COMMENT: One comment was received asking the Department to define the term "potential receptors."

RESPONSE: The Department agrees and will add the following definition to the rules at N.J.A.C. 7:14B-1.6: "potential receptor" means any structure or area that may become contaminated from or affected by a leak or spill from an underground storage tank which then may endanger the environment or public health, safety and welfare of any citizen."

COMMENT: Two comments were received recommending that the definition of "discharge" be added to the rules and that it should be the same as defined in N.J.S.A. 58:10-23.11 and N.J.A.C. 7:1E-1.3.

RESPONSE: The definition of the term "discharge" exists in the rules at N.J.A.C. 7:14B-1.6. The Department agrees that this definition should be modified and will propose to change the definition of "discharge" in a future rule proposal.

COMMENT: One comment was received recommending that the definition of the term "reportable discharge" be added to these rules.

RESPONSE: The Department disagrees with this comment. The term "reportable discharge" is not used in this rule; therefore, there is no need to define it.

COMMENT: One comment was received asking if the construction referred to in the definition of "existing UST system" is limited to construction activities associated with USTs only or does it refer to any site construction.

RESPONSE: The term "construction" in the definition of "existing UST system" refers to any construction on the site involving the underground storage tank system.

COMMENT: One comment was received requesting a change in the definition of the term "annual space" so that it includes the space between the walls of double walled piping.

RESPONSE: The Department agrees with this comment and the definition of the term "annual space" has been changed to refer to an underground storage tank system not an underground storage tank.

COMMENT: One comment was received questioning which portion of the definition of the term "empty," is controlling; the no more than one inch of residue or the 0.3 percent of the total capacity?

RESPONSE: To clarify this requirement the Department will change the definition of "empty" at N.J.A.C. 7:14B-1.6 to read "Empty" means all hazardous substances have been removed that can be removed by direct pumping or drainage and no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the system remains, whichever is the smaller amount.

COMMENT: One comment was received asking for the definition of "Number 2 fuel oil."

RESPONSE: Number 2 fuel oil is the petroleum product commonly known as home heating oil. There is no specific use of the term "Number 2 fuel oil" in the rule; therefore, it is not defined.

COMMENT: One comment was received questioning why the definition of the term "piping" does not cover vapor recovery lines.

RESPONSE: The State Act deals only with liquid at standard conditions. Vapor recovery lines do not carry liquids and therefore are not regulated by this law. They are regulated by the Division of Environmental Quality.

COMMENT: One comment was received questioning if the definition of the term "saturated zone" intended to exclude soils saturated with water which may be located in a confined aquifer.

RESPONSE: The definition of "saturated zone" does not exclude soils saturated with water which are located in a confined aquifer because these soils are saturated and below the water table. However, to clarify the definition, the term "saturated zone" or "zone of saturation" is modified

as follows: "Saturated zone" or "zone of saturation" means that part of the subsurface under greater than atmospheric pressure in which all voids are filled with water.

COMMENT: One comment was received asking for a clarification of the reference to gas in the definition of the term "screen." Does it refer to vapor or gasoline?

RESPONSE: The intent was for gas to mean a substance in the vapor phase. To avoid confusion, the term "gas" has been changed to "vapor."

COMMENT: One comment was received stating that the definition of "surface impoundment" refers to injection wells and that the proposed rules do not define the term "injection wells."

COMMENT: Injection wells are covered under the State Underground Injection Control (UIC) Program. The definition of injection wells is "a well into which fluids are injected." This type of system is clearly not covered within the purview of the UST program; therefore, a definition is not necessary in these rules.

COMMENT: One comment was received stating that the definition of the term "unsaturated zone" includes poor language. Further, the water present in this subsurface zone is not "under pressure less than that of the atmosphere." The water is at equilibrium with the atmospheric pressure. The hydrostatic head at the water table is equal to the atmospheric pressure. The water in the "unsaturated zone" exerts a hydrostatic head less than the atmospheric pressure.

RESPONSE: The definition of "unsaturated zone" is modified to read: "Unsaturated zone" means the subsurface zone containing water under a hydrostatic pressure less than held by capillary forces within the soil containing air or vapors generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation.

COMMENT: One comment was received asking if the "vadose zone" is different than the "unsaturated zone" and suggesting that the definition of "vadose zone" be used and that the "unsaturated zone" be defined as the "vadose zone."

RESPONSE: The "unsaturated zone" is sometimes referred to in the scientific community as the "vadose zone" or the "zone of aeration." All three of these terms have the same meaning and are often used interchangeably. However, since the term "vadose zone" is not used anywhere in the rules, its definition has been deleted. The term "zone of aeration" is not used in the rules; therefore, there is no need to define it.

COMMENT: One comment was received stating that the proper reference in the definition of the term "volatile organic substance" where it refers to "atmospheric pressure" should be standard conditions that is, 14 pounds per square inch (psi) absolute. Also asked, is why are the chloro-fluoro hydrocarbons excluded in light of the concern about their impact on ozone.

RESPONSE: The condition for atmospheric pressure is already included in the definition of the term "petroleum products;" thus, no change is necessary. The chloro-fluoro hydrocarbons are so volatile that they do not appear as liquids at standard conditions, and thus are not of concern to the underground storage tank program. There are other rules governing the emission of these compounds.

COMMENT: One commenter requested that the term "owner" be modified to reflect that facilities located on properties undergoing condemnation are the responsibility of the condemnee, leasee or prior owner and not the condemning authority. This responsibility would include registration (N.J.A.C. 7:14B-2.2), fee payment (N.J.A.C. 7:14B-3.5), monitoring (N.J.A.C. 7:14B-6), suspected release investigation (N.J.A.C. 7:14B-7.1), corrective action (N.J.A.C. 7:14B-8) and closure (N.J.A.C. 7:14B-9).

RESPONSE: In a property transfer, the Department considers the current owner or operator responsible for facility compliance with any Department rule. A condemnation procedure is no different than any other property transfer.

SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

N.J.A.C. 7:14B-2.1 General registration requirements

COMMENT: One comment was received asking if this section was necessary. It appears to be stating the obvious.

RESPONSE: Any tank storing hazardous substances after September 6, 1986 must be registered with the Department. Attempting to close a tank after this date without initially registering the tank is in violation of these rules. N.J.A.C. 7:14B-2.1(f) clearly states the necessity to register tanks prior to closure.

COMMENT: Two comments were received recommending that these rules only require registration of tank systems which were removed from the ground 180 days after September 3, 1986 and not 180 days prior to September 3, 1986.

RESPONSE: The Department disagrees with this comment. The State Act was passed on September 3, 1986 and was effective immediately. Thus, any tank in the ground as of that date was required to be registered. The deadline for registering that tank with the Department was 180 days after the effective date of the Act. N.J.A.C. 7:14B-2.1(d), which became effective December 21, 1987, required that tanks be registered no later than 60 days following the effective date. Therefore, no change is necessary.

COMMENT: Many comments were received which questioned the need for previously registered facilities to re-register.

RESPONSE: Facilities presently registered with the UST Program do not have to re-register; only report changes in status, annually certify as to the status of the facility, and apply for permits and approvals as needed.

N.J.A.C. 7:14B-2.2 Registration and certification procedures

COMMENT: Several comments were received regarding the registration and fee assessment for a property undergoing condemnation.

RESPONSE: In a property transfer the Department considers the current owner responsible for facility compliance with any Department rule. A condemnation procedure is no different than any other property transfer procedure.

COMMENT: Several comments were received regarding site plans. Commenters questioned their need, what they should consist of and what is their definition. Also asked was, is the requirement for site plans retroactive or only applicable to registrations made subsequent promulgation of these rules?

RESPONSE: The State Act requires site plans to be submitted with all UST registrations. N.J.S.A. 58:10A-23b(2) states what is required on a site plan while N.J.S.A. 58:10A-23b(4) allows the Department to request any other relevant information. To assist the regulated community in complying with this requirement, the Department states (on the front of each registration questionnaire) that an engineering site plan or a neat and legible hand-drawn sketch may be submitted. Either is acceptable as long as the plan or sketch shows the location and distances that tanks, buildings, and dispensers are from the facility's property boundary. Each tank on the plan or sketch must be numbered identically to the number assigned it in Question Number 12 of the registration questionnaire. Each tank's status (existing, empty, emergency, abandoned or other) must also match the plan or sketch and Question Number 12. Two copies have been required for all registrations since the initial canvas of UST facilities for the Federal government. This requirement will continue to be enforced.

COMMENT: Several comments were received stating that Federal facilities are excluded from financial responsibility requirements.

RESPONSE: This is correct; however, it should be indicated on any registration form that this particular provision is not applicable and the reason.

COMMENT: Two comments were received stating that the State financial responsibility requirements should be deferred since they are being reserved for proposal at a later date.

RESPONSE: The rules concerning registration and certification procedures include financial information because some facilities are currently required to meet Federal financial responsibility requirements. A registrant should indicate that this section is not applicable at the time of registration if the Federal deadline does not pertain to them.

N.J.A.C. 7:14B-2.3 Signatories

COMMENT: One comment noted that the cite referenced at N.J.A.C. 7:14B-2.3(c)2i(4) should read "(c)2i" not "(a)2i."

RESPONSE: The Department agrees and has corrected this citation.

COMMENT: Many comments were received stating that the proposed certification language is impractical and unreasonable, particularly where it refers to fines and/or imprisonment for incomplete information for owners, operators and registrants. These individuals cannot be expected to know that the facility is in compliance with this chapter and therefore, the certification should be deleted or be changed to be consistent with the certification which requires the highest ranking individual to certify based on the inquiry of individuals responsible for obtaining the information. Also, many comments regarding N.J.A.C. 7:14B-2.3 were received questioning the need for a principal executive officer of at least a vice president level to sign UST forms.

ADOPTIONS

RESPONSE: The Department has modified its approach to signatory requirements by permitting sole proprietorships and partnerships to need only one signature. However, the Department will require two signatures for all corporations with one being at vice president level or higher so as to maintain corporate accountability for large facilities with extensive underground storage tank operations. The second signature is by the person at the underground storage tank facility with day to day responsibility for that system.

COMMENT: Many comments were received recommending that the principal executive officer or higher level executive be permitted to delegate, in writing, the authority to sign for the higher level executive.

RESPONSE: The Department has designed the signatory requirements to both insure the appropriate level of responsibility as well as to maintain this individual's direct involvement with the UST process. In addition, the added logistical procedures which would be required would create an additional administrative burden to an already paper-intensive State government operation.

COMMENT: One comment suggested that N.J.A.C. 7:14B-2.3(c) be clarified.

RESPONSE: The Department agrees and has modified N.J.A.C. 7:14B-2.3(c) to read:

(c) All owners and operators shall, upon submission, sign the following certification for the activities set forth in (d) below;

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification set forth in (c)1 above shall be signed by the highest ranking individual with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this submittal and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fines and/or imprisonment."

i. The certification required by (c)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency by either the principal executive officer or ranking elected official.

(4) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (c)1i above is the same person as the official required to certify in (a)2i, only the certification in (c)1i need be made. In all other cases, the certifications of (c)1 and 2 shall be completed.

(d) The certifications set forth in (c) above shall be completed on the following submittals:

1. The Annual Certification Form required in N.J.A.C. 7:14B-2.2(e);

2. The discharge of hazardous substances report required in N.J.A.C. 7:14B-8.3(a)6;

3. A request for an exemption to site assessment requirements as set forth in N.J.A.C. 7:14B-9.4(c);

4. The closure report required by N.J.A.C. 7:14B-9.5(a)5; and

5. A permit application as required in N.J.A.C. 7:14B-10.1(f)8.

The term "submittal" has been added and the term "application" is deleted because the certification accompanies submittals other than applications.

If the person signing Certification No. 2 is the same as the person signing Certification No. 1, then Certification No. 1 only needs to be signed. If different persons are required to sign No. 1 and No. 2, then they must do so.

COMMENT: One comment was received stating that N.J.A.C. 7:14B-2.3(c) be changed from "all owners and operators" to "all owners and operators" because in many cases the operator does not possess the requisite knowledge.

RESPONSE: The Department agrees and N.J.A.C. 7:14B-2.3(c) has been changed to reflect this comment.

COMMENT: N.J.A.C. 7:14B-2.5(c), Changes to registration. One comment was received stating that N.J.A.C. 7:14B-2.5(c) makes reference to N.J.A.C. 7:14B-9.1 through 9 while N.J.A.C. 7:14B-9 ends at 9.5.

ENVIRONMENTAL PROTECTION

RESPONSE: The citation should have read N.J.A.C. 7:14B-9.1 through 9.5. This change has been made to correct the typographical error.

COMMENT: N.J.A.C. 7:14B-2.7, Display of Registration Certificate. One comment was received stating that the registration certificate should be displayed at the facility so that any concerned individual may review it.

RESPONSE: The Department disagrees with this comment. It was determined when the Underground Storage Tank Registration Requirements and Fee Rules were promulgated in December, 1987 (see 19 N.J.R. 2417(a)) that, due to the diversity of the types of facilities regulated under this law, all facilities would only need to have the registration certificates available for inspection at the facility at all times. Large facilities spread over acres or more of property would not have a convenient location to display the certificate.

N.J.A.C. 7:14B-2.8 Denial or revocation of registration

COMMENT: One comment suggested that the Department delete the provision in the proposed rules that would allow the Department to revoke a registration because an authorized government representative was denied access to a facility because an hourly employee would not allow the representative on-site when the owner or operator was not present.

RESPONSE: Authorized government representatives are permitted access by statute to any regulated underground storage tank facility at any reasonable time. All employees at any regulated facility should be made aware of this as part of their training and orientation. It should be in the facility's Standard Operating Procedure (SOP). This is especially true if the owner and/or operator are frequently absent from the facility. Having the owner and/or operator present, however, is not a prerequisite for access.

COMMENT: One comment was received recommending that the word "incomplete" be deleted from N.J.A.C. 7:14B-2.8(a)1 because certain information such as tank age may not be known or available to owners or operators of facilities.

RESPONSE: The Department is required by the State Act to collect all the data possible relative to the program. The Registration Questionnaire was developed to secure this information. To allow for incomplete questionnaires would lower the credibility of the data collected and distort statistical references developed therefrom.

COMMENT: Two comments were received requesting a provision be made for a stay of the revocation during an appeal process in the event that the tank in question is necessary for processing or maintenance purposes.

RESPONSE: The Department will consider such instances on a case by case basis. A change has been made to N.J.A.C. 7:14B-12.2 to reflect the Department's ability to grant a stay of the revocation under certain circumstances.

SUBCHAPTER 3. FEES

COMMENT: N.J.A.C. 7:14B-3.1, Initial Registration fee. One comment was received stating that if total revenue for the UST Program decreased, raising the initial registration fee would be supported.

RESPONSE: The Department appreciates the support and has the statutory authority to adjust registration fees should programmatic costs warrant.

N.J.A.C. 7:14B-3.4 Exemption from fees

COMMENT: One comment was received suggesting that municipalities be exempt from fees.

RESPONSE: There is language in the existing rules which provides for exemptions for public schools and religious or charitable institutions. This language is consistent with other Department regulations (see the NJPDES rules at N.J.A.C. 7:14A-1.8(a)2). The Department estimates that 15,000 of the registered facilities are small businesses. Exempting municipalities would reduce the number of billable facilities and, therefore, increase the economic burden on these small businesses. Therefore, the Department will not provide an exemption for municipalities.

COMMENT: One comment was received requesting that non-public, non-profit schools where attendance satisfies State school attendance laws be exempt from fees.

RESPONSE: The Department has exempted public schools from UST Fees at N.J.A.C. 7:14B-3.4. A public school is defined by the New Jersey Department of Education as a school below college level which receives tax monies for any part of its operation. Schools with ties to, charters from or affiliations with a recognized religious organization are also

exempt from fees. Therefore, the Department will not provide an exemption for a school that cannot meet either criterion.

COMMENT: One comment was received stating that all State agencies should be exempt from all initial, annual certification, and permit and approval fees.

RESPONSE: The statute gives the Department the authority to charge fees to all registered facilities for registration and permitting activities. The only permitted exemptions are for public schools and religious or charitable institutions. Reducing the number of billable facilities by exempting State agencies will place a severe hardship on the approximately 15,000 small businesses registered with the Department by making them share the fees which would have been paid by these State agencies.

COMMENT: One comment was received asking that a standard operating procedure (SOP) be developed to allow for closure, installation or substantial modification of UST facilities by a State agency without payment of a fee.

RESPONSE: The Department agrees that an SOP for closure, installation or substantial modifications of an UST facility should be developed and will initiate the development of this document through inter-departmental channels. The State Act mandates that the Department institute a fee program to recover the cost of issuing permits. The Department has exempted certain facilities from fee requirements. However, the Department believes that exempting any other facilities from the requirements of N.J.A.C. 7:14B-3.4 would raise the cost of permits to an unacceptable level.

COMMENT: One comment was received suggesting that underground storage tank systems which have been abandoned and/or closed prior to the effective date of the rules should not be assessed a fee.

RESPONSE: If the tank was properly abandoned prior to the effective date of the rules, no fees will be assessed. However, tanks which are improperly abandoned may be assessed a registration and/or closure fee depending on the site-specific situation.

N.J.A.C. 7:14B-3.5 Permit and approval fees

COMMENT: One comment was received stating that in addition to increasing the number of permits a regulated UST facility will be required to secure, the financial burden will also be increased by imposition of the proposed permit fee schedule.

RESPONSE: The State Act gives the Department the statutory authority to assess fees and allows the establishment of a program which would be fee-generating and therefore dependent on fees to exist. Department philosophy basically favors fee-generating programs which place the payment for the programs on the regulated community rather than on the general public.

COMMENT: One comment suggested that language be included at N.J.A.C. 7:14B-3.5(a) to clarify that new UST installations using Department approved secondary containment do not require permits and are not subject to prior approval of fees.

RESPONSE: The Department believes that the present language in N.J.A.C. 7:14B-10.1(b) is sufficient to satisfy this request.

COMMENT: Two comments were received asking why fees cannot be prorated based on the number of systems similar to the annual certification fee which has a base fee and an additional per tank fee.

RESPONSE: The fee for permits is based upon the staff time necessary to review and approve or deny the permit application. The number of tanks within the excavation is irrelevant provided they are all located within the same excavation area. There is no difference in staff time for the review of one versus two tanks in the same permit.

COMMENT: One comment asked if the fee to install a discharge monitoring system includes any monitoring wells installed with respect to closing a tank system and, if so, why. Shouldn't the charge be incorporated into the closure approval fee?

RESPONSE: Monitoring wells installed during a tank closure may be used for the monitoring system of a replacement tank provided that the system meets the specifications of N.J.A.C. 7:14B-6. The Department will not charge separate fees for each activity for the same well.

COMMENT: Several comments were received stating that a separate fee for each permit activity was improper and would lead to delays in approval and confusion on the part of the regulated community. Billing should be with the annual certification fee.

RESPONSE: The Department does not believe that charging a permit fee will cause any delays in permit processing. The advantage of the permit fee over the annual certification fee is that the staff time to perform the permit review will be charged directly to the facility obtaining the service. The State Act specifically establishes two separate and distinct fees within the UST program, registration and permit fees. Clearly, by

describing two distinct types of fees, the Legislature did not intend for permit review costs to be spread out over the entire universe of facilities. Using the annual certification fee would spread the costs out over many facilities which would not need the service.

COMMENT: Many comments were received stating that separate fees for each excavation area are acceptable but not separate fees for each permit activity.

RESPONSE: There are three distinct activities: installation, closure, and substantial modification. Each activity requires a distinctly separate review. Thus, the imposition of separate fees.

COMMENT: One comment was received stating that fees should be site specific not tank specific. Additionally, there should be a consistency and clarity in what the fees cover and guidance should be provided to local officials on what is covered and how fee calculations should be applied.

RESPONSE: The Department believes that these questions are adequately addressed on page 43 on the Basis and Background document.

COMMENT: Two comments recommended a simpler fee schedule to avoid confusion.

RESPONSE: The Department does not believe that the fee schedule will be confusing to applicants. However, the Bureau of Underground Storage Tanks will provide assistance to any applicant to insure that the correct fee is submitted. The fee schedule proposed by the commenter does not take into account the staff time to review permit applications and is therefore unacceptable. This is discussed on page 43 of the Basis and Background document.

COMMENT: One comment was received stating that there is no reason why underground storage tanks need be regulated by permit at all. Required modifications to tanks can be certified by the tank owners/operators and their experts following completion. The commenter suggested that the annual certification form can be used as the regulatory mechanism.

RESPONSE: The State Act mandates that the Department issue a permit for all replacement, installations or substantial modifications of tank systems (see N.J.S.A. 58:10A-24).

COMMENT: One comment was received stating that there might be some confusion about whether the \$100.00 permit fee for a field-installed cathodic protection system would be necessary for installation of an STI-P3 tank.

RESPONSE: If the underground storage tank system is totally corrosion protected then no fee will be assessed. However, if any portion of the underground storage tank system has bare steel and requires field-installed cathodic protection, then the \$100.00 fee will be assessed.

SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEM PERFORMANCE STANDARDS AND ENGINEERING REQUIREMENTS

COMMENT: N.J.A.C. 7:14B-4, General. One comment was received stating that contractors who excavate and install new tanks should be certified and subject to a qualification procedure by the Department.

RESPONSE: The Department disagrees with this comment. Unlike the Qualified Ground Water Consultant, there are no existing national, regional or state certification or licensing programs to use as prequalifiers for tank installers and excavators. However, the Department is exploring the possibility of developing a qualification program.

N.J.A.C. 7:14B-4.1(a) and 4.5(c), Performance standards for new underground storage tank systems and upgrading existing underground storage tank systems.

COMMENT: One comment was received arguing that internal linings should be permissible as a sole means of corrosion protection on metallic tanks since (1) the Federal underground storage tank regulations allow such; (2) linings prevent leaks if corrosion holes develop from the outside whereas cathodic protection cannot do either; (3) the lining industry has many years of experience in repairing tanks and preventing leaks, unlike the cathodic protection industry; (4) performance records are excellent for lined tanks, showing that linings alone extend the lives of the tanks, with a low failure rate; and (5) industry guidelines exist for the proper application of linings.

RESPONSE: The Department does not disagree that tank linings are useful; nor does the Department discourage tank owners and operators to exceed the regulatory minimum requirement (adding cathodic protection to metallic tanks) by also lining their tanks for additional protection against releases, to increase the tank's useful life, to qualify for reduced insurance rates, etc. Tank linings are routinely employed to make metallic storage tanks physically compatible with chemicals stored in them. The

Department maintains, however, that cathodic protection is necessary while interior linings are optional. An EPA sponsored study of 400 tank closures in Suffolk County New York indicates the internal corrosion is not a significant cause of release (see 53 FR 37128 (1988)). Moreover, installing striker plates (required for all new tanks) on bottoms where dipsticking is done and periodically pumping out water that settles at the tank bottoms can largely prevent incidences of internal corrosion holes. External corrosion on the other hand, has been deemed a significant cause of releases. A major concern with interior linings is that they do not guarantee the structural integrity of tanks in the future since external corrosion holes can continue to develop in the absence of cathodic protection. The State Act specifically states that no permit can be issued unless the tank owner or operator "demonstrates that the facility utilizes corrosion control features necessary to protect the structural integrity of underground storage tanks susceptible to corrosion."

(1) The Environmental Protection Agency also recognizes that interior linings do not guarantee tanks' structural integrity. In the Preamble on the Federal underground storage tank regulations, 53 FR 37089 (1988), the EPA states that tank interior linings have been used "as short-term solution for potentially leaking tanks and as a preventive measure for temporarily giving structurally sound, non-leaking existing tanks . . . protection from corrosion-induced releases . . ." The Federal regulations do not allow interior linings used alone (without cathodic protection) to serve as corrosion protection for the upgrade of existing metallic tanks as long as (a) the lining is installed in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; (b) the repaired tank is tightness tested within 30 days after the lining is installed or is internally inspected after installation or is monitored monthly for releases using an approved release detection method; and (c) the lined tank is internally inspected within 10 years after lining and every five years thereafter, and is found to be structurally sound with the lining still performing in accordance with the original design specifications. The Department disagrees that later internal inspections of lined tanks at 10 and five year intervals is stringent enough to prevent release due to lining and/or structural failure in the interim periods between inspections. The intent of the Department's rules after all, is to prevent as many releases as possible, within reasonable constraints, and to detect any releases that do occur. The Department and the EPA agree that all new metallic underground storage tanks must have cathodic protection.

In regard to the other arguments presented by the commenter:

(2) A properly installed and operated cathodic protection system will prevent corrosion holes in most cases, so that a physical barrier to prevent leaks due to corrosion should not be necessary. The daily or continuous release detection system required by the Department would detect any leaks that did still occur almost immediately, thus protecting the environment.

(3) The cathodic protection industry also has at least a 30 year history, where cathodic protection technology has been widely applied to pipelines and other buried structures.

(4) The performance records submitted to the Department did not give the necessary variables for conclusive evaluation, such as which tanks did and did not have cathodic protection as well as linings; the corrosive conditions at the sites; how much time elapsed between the lining application and the time of the study; how many external corrosion holes the linings did or did not bridge and the spacing of those holes; and what means of release detection was used to qualify tanks studied as "non-leaking."

(5) The Department references the American Petroleum Institute's Recommended Practice 1631 for interior linings at N.J.A.C. 7:14B-5.3(b). The National Leak Prevention Association's Standard 631 was not similarly included as a reference at N.J.A.C. 7:14B-5.3(b) because it describes linings by themselves, without having cathodic protection in addition to a lining, as an adequate corrosion protection option. The Department's rules mandate that metallic tank systems have cathodic protection, regardless of whether they do or do not have linings. Appendix F of the same National Leak Prevention Association's Standard 631, which discusses repairs to all fiberglass USTs, is referenced at N.J.A.C. 7:14B-5.3(d). Fiberglass, being a noncorrosive material, does not require cathodic protection. Therefore, no contradiction exists between the National Leak Prevention Association's Standard 631 and the State rules.

COMMENT: One commenter believes that the difference between the Federal underground storage tank regulations and the Department's rules concerning the use of interior tank lining as a means of corrosion protection will confuse the regulated community. Which must be followed—

the federal or Department rules? Are the Federal regulations the more stringent of the two? Would double regulation mean that tank owners must add cathodic protection and interior linings?

RESPONSE: When two bodies of rules exist, the regulated community must follow both of them or the more stringent of the two whenever they contradict. For corrosion protection on metallic tanks, there are two choices which are mutually agreeable to both the Environmental Protection Agency and the Department: cathodic protection alone or cathodic protection and interior lining. Double regulation, therefore, does not mean that tank owners/operators must add both cathodic protection and interior linings. The allowance of interior linings alone by the EPA is considered by the Department to be a less stringent means of providing corrosion protection for the reasons discussed in other comments (see comments pertaining to N.J.A.C. 7:14B-4.5). Eventually, the Department expects the EPA to delegate the sole authority for the regulation of underground storage tank systems to the Department.

COMMENT: One comment was received stating that the cathodic protection systems required by these rules will be installed with inadequate guidelines and scanty information. Underground storage tank owners often do not know how much underground piping exists on their site or its location, or the presence of cables, municipal and utility lines, and nearby interferences. Soil differentials between surface soil layers and deep soil layers will probably also not be known.

RESPONSE: Upon review, the Department has changed the wording in N.J.A.C. 7:14B-4.1(i) and 4.5(c)2 so as to require that any field-installed cathodic protection system being added to a new or existing metallic underground storage tank system be designed by a "corrosion expert", who is defined in N.J.A.C. 7:14B-1.6 of the rules. Such a corrosion expert should be able to evaluate the significance of on-site and nearby underground interferences and of the electrical conductance properties of non-uniform soil layers. The referenced industry standards also discuss factors to consider. Appropriate investigations must be undertaken until the corrosion expert can certify on the permit, which is required, that the cathodic protection system has been designed to operate effectively given the particular variables at that site. Such investigation could include excavation, review of past engineering plans for the site, use of metal detectors and radar equipment, etc. As the National Association of Corrosion Engineer's Standard RP-02-85 and the American Petroleum Institute's Publication 1632 warn, interferences must be avoided between existing facilities and off-site structures, often involving consultations and mutual cooperation between the parties affected. Both of these industry standards are referenced already in the rules at N.J.A.C. 7:14B-4.1(i) and 4.5(c)1, so the Department does not believe that any change is necessary. It is advisable to always consult with the local zoning authority or utility commission board whenever an impressed current system is intended to be installed so that the new system does not adversely affect the integrity of existing underground lines and so that the possible interferences acting on the intended new system are known. The Department's technical guidance document discusses this point also.

N.J.A.C. 7:14B-4.1 Performance standards for new underground storage tank systems

COMMENT: One commenter questioned if the accuracy required of equipment, such as product dispensing meters, is achievable, and also the accuracy of available tank tightness tests.

RESPONSE: The Department has set standards for the various monitoring systems for release detection and for inventory reconciliation utilizing in-tank monitors. If this equipment is to be used, then the manufacturer of the equipment must meet the necessary performance standards and provide information on whether a particular type of system will meet the performance standards. An example is that manufacturers of precision system tests must provide documentation stating that the test meets the performance standards as outlined in N.J.A.C. 7:14B-4.3(j). Likewise, an in-tank monitor must meet the requirements of N.J.A.C. 7:14B-6.2(b)4. Other performance standards are listed throughout the rules. Product dispensing meters are not being regulated under these rules.

COMMENT: Several commenters objected to the 15 gallon spill catchment basin requirement. Comments included eliminating the 15 gallon size altogether, requiring 15 gallon sizes on new installations only, and grandfathering existing spill catchment basins installed in good faith which have a means of releasing their contents into the tank to provide greater volume. One commenter stated that a larger fillpipe basin will be counterproductive by encouraging delivery personnel to "dump" excess hose drainings without taking the time to drain the hose properly. Another commenter requested that the catchment basin capacity be proportional to the amount of hazardous substance being stored.

RESPONSE: In reviewing the requirements for spill protection, the Department initially stated that a minimum of a 15 gallon spill catchment basin was necessary since the hose from the tanker truck had an average volume of 15 gallons. Commenters pointed out that combined with the overflow protection a 15 gallon spill catchment basin was excessive. Another commenter pointed out that for a 10,000 gallon tank with a high level alarm set at 90 percent of the tank volume, there would be additional space of 1,000 gallons for product left in the hose to be contained in the tank. After consideration, the Department has reduced the volume requirement to a minimum of a five gallon spill catchment basin. The overall intent of the spill/overflow requirement is to contain any residual product left in the hose after the transfer is complete. The combination of a five gallon bucket and the overflow prevention device is therefore equivalent to the proposed requirements of a 15 gallon bucket plus overflow protection. The Department has, however, left in the 15 gallon requirement for new installations on remote fill ports. The reasoning is that the overflow devices associated with tanks may not give adequate time to cease transfer operations. There is more of a risk causing a potential problem of contamination associated with these types of fill ports.

COMMENT: One comment was received stating that spill catchment basins should be located only on the fill pipe; not on other parts of the piping system.

RESPONSE: The Department agrees that additional wording would make this clearer. N.J.A.C. 7:14B-4.1(c)1 has been changed to make it clear that the spill catchment basin is associated with only the fill port.

COMMENT: One comment was received stating that spill catchment basins should not be required in product tight piping chambers if the fill pipe is in the chamber.

RESPONSE: The Department agrees and has added additional language at N.J.A.C. 7:14B-4.1(c)1 to make this distinction. The product tight piping chamber would satisfy the requirements established for a spill catchment basin.

COMMENT: Two comments were received regarding overflow protection. Commenters stated that there should be additional language allowing alternate spill and overflow prevention devices. Also, the use of a device which restricts the flow of a product into a tank does not guarantee protection from an overflow. A restrictive flow device should not be an option.

RESPONSE: The Federal regulations for underground storage tanks at 40 CFR 280.20(c)ii state that three types of overflow devices may be used: an automatic shutoff device, a restrictive flow device, and a high-level alarm device. The EPA believes that any one or a combination of these devices is adequate for the prevention of overflow. EPA has concluded that restrictive flow devices are the most widely used method of overflow prevention at this time and that they are protective of human health and the environment if they are coupled with the requirement that all transfers be closely monitored. The transfer operator, introducing product into the tank, will realize that the flow has been reduced and will terminate the delivery.

COMMENT: One commenter stated that, by itself, N.J.A.C. 7:14B-4.1(c)2ii is not sufficient to satisfy the requirement under 40 CFR 280.20(c)(2)(ii)(B). This states that the transfer operator be alerted when flow restriction occurs at 90 percent of the tank capacity.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:14B-4.1(c)2ii now has been modified to state that the transfer operator shall be alerted when the device designed to restrict the flow of product operates at 90 percent capacity.

COMMENT: One comment was received asking why petroleum products and waste oil are excluded from meeting secondary containment requirements?

RESPONSE: Not all petroleum product tanks and waste oil are excluded from meeting secondary containment requirements. If an UST system containing petroleum products and waste oil is installed in areas described in N.J.A.C. 7:14B-4.1(d)2, then secondary containment is required. The intent is to have additional protection of areas with potable water supplies. Secondary containment will help to identify releases as soon as possible. The Department has determined that single wallet UST systems with corrosion control, monitoring, and spill/overflow will be protective of human health and the environment outside of the areas described.

COMMENT: One commenter asked: "If a service station is supplied by well water, does that require secondary containment?"

RESPONSE: If a tank or tanks storing gasoline are proposed to be installed and located within 2,000 feet of a public community water system well or 300 feet from a public non-community water system well, then they are required to have secondary containment for the entire

system. If the tank or tanks are storing petroleum products other than gasoline and are located within 750 feet of a public community water system well, or 300 feet of a public non-community water system well, then secondary containment is required for the entire system. This is outlined in N.J.A.C. 7:14B-4.1(d)2. Tanks already existing on the site as of the effective date of these rules do not have to be upgraded to secondary containment.

COMMENT: Two comments were received regarding the referencing of "discharge monitoring sections" of N.J.A.C. 7:14B-6.2(a) in N.J.A.C. 7:14B-4.1(d)i. This provision refers to leak detection monitoring systems. "Discharge monitoring sections" should be changed to "leak detection monitoring sections" at N.J.A.C. 7:14B-4.1(d)i.

RESPONSE: The Department agrees that this is incorrect wording. "Discharge monitoring systems" has been changed to "monitoring systems" at N.J.A.C. 7:14B-4.1(d)i to clarify that an acceptable alternate method of leak detection is one which can detect a release of the stored substance as effectively as a leak detection monitoring system set forth in N.J.A.C. 7:14B-6.2(a) or a discharge detection system as set forth in N.J.A.C. 7:14B-6.2(b) and (c).

COMMENT: Several comments were received regarding the use of "water system." Commenters argue that "system" includes distribution lines from a well and that the language should be amended to include the word "well" in N.J.A.C. 7:14B-4.1(d)2i, 2ii, and 2iii. One commenter also stated that new gasoline storage tanks cannot be sited within 2,000 feet of a public community water system or within 300 feet of a public non-community water system. This concept should also apply to petroleum products other than gasoline. Finally, the term "system" should be defined.

RESPONSE: The Department agrees with the commenters that the use of the term "water system" includes distribution lines and that it would be virtually impossible to install an underground storage tank within the distances prescribed for a water system. The Department has thus changed "public community water system" and "public non-community water system" to "public community water system well" and "public non-community water system well", respectively, and has defined these systems in N.J.A.C. 7:14B-1.6. This will clarify the intent of N.J.A.C. 7:14B-4.1(d)2.

COMMENT: Two commenters questioned the arbitrary numbers imposed for the distances between USTs and water supply systems as set forth in N.J.A.C. 7:14B-4.1(d)2.

RESPONSE: In the Basis and Background Document for the UST rule proposal, there is a report entitled "Pollution Transport in New Jersey Aquifers." This report describes how the distances were derived. The Department is currently developing a well head protection program for the protection of public wells. Ultimately this will comprise public non-community wells. Until such time as the interim and/or final well head protection areas (WHPA) are delineated, the Department will utilize numbers derived from this report. Once interim and ultimately final WHPA's are delineated, the distances between new USTs with required secondary containment and public community water supply systems, public non-community water supply systems, and surface water bodies will be superseded by the final WHPA's.

COMMENT: Three commenters agreed with the transport rates set forth at N.J.A.C. 7:14B-4.1(d)2. However, the Department should establish absolute minimums and they should be based on site specific conditions such as time of travel and degree of hydraulic conductivity and subsurface geology.

RESPONSE: In theory, the Department agrees. However, the site specific transport rate is the essence of the development of the WHPA Program described above. Until such time as the WHPA Program is implemented, generic distances have been established.

COMMENT: Three commenters stated that the term "striker plate" should be defined or referenced to an industry standard.

RESPONSE: The Department believes that the term "striker plate" is better off not referenced or defined. The specifications outlined in the Basis and Background Document on page 57 are general guidelines. Since striker plates are required for all new underground storage tanks, the Department believes that this is a requirement that the tank manufacturers will automatically build into a new tank design. There is currently no reference standard for striker plates. Leaving specifications out of the rules encourages the industry to develop specifications for striker plates.

COMMENT: Three commenters stated that N.J.A.C. 7:14B-4.1(f) should become effective one year after the rules are promulgated or be deleted entirely. Reasons cited were that this technology is not readily available, and that product tight piping chambers are impractical except in cases where double walled piping is installed. This would not allow

for differential settlement of a connector and result in a sudden rupture of a line. Finally, one commenter stated that if a tank truck goes over the manhole, then it may endanger the structural integrity of the tank system.

RESPONSE: The Department disagrees. Product tight piping containment chambers are widely used and are practical. The purpose of the product tight piping chamber is to have access to the product bearing piping connections where the tank and piping meet. An example of this being useful is if a tank has a defective submersible pump, it would be simple to open a manhole cover and have easy access to repair the submersible pump. The same holds true for any fittings for product bearing piping. The product tight piping chamber eliminates the need for excavating to access the product bearing piping. If properly installed, the product tight piping chamber would be able to withstand the stresses of vehicles riding over the chamber. The Department believes that the stress of vehicles riding over the chamber is not a significant concern.

COMMENT: One commenter suggested that N.J.A.C. 7:14B-4.1(f) should refer to "piping containment chambers" to be consistent with the definitions given in N.J.A.C. 7:14B-1.6.

RESPONSE: The Department agrees and has inserted "containment" between the words "piping" and "chamber" at N.J.A.C. 7:14B-4.1(f) so that the term reads "piping containment chambers."

COMMENT: One commenter stated that the Steel Tank Institute (STI) has a new numbering system for its technical documents and suggests adding "STI-P3-87" for the Steel Tank Institute technical document entitled "Specifications for STI-P3 System for External Corrosion Protection of Underground Storage Tanks."

RESPONSE: The Department agrees and has added the specific citation for the STI document at N.J.A.C. 7:14B-4.1(h)1.

COMMENT: One commenter stated that the proposal lists UL 58 as an acceptable standard for a cathodically protected steel tank when in fact, taken by itself, UL 58 does not address cathodic protection. The commenter recommends deletion of UL 58 from N.J.A.C. 7:14B-4.1(h)4.

RESPONSE: The Department agrees that UL 58 by itself does not satisfy cathodic protection. However, the Department believes that UL 58 is an integral process in the manufacturing of steel underground storage tanks. Combined with other standards listed, the new underground storage tank will satisfy the Department's requirements. Therefore, the Department disagrees with the comment that the standard should be deleted.

COMMENT: One commenter stated that the Steel Tank Institute is developing a composite tank fabrication standard (Steel Tank Institute, F894-89, "Specification for External Corrosion Protection of Underground Steel Storage Tanks using Monolithic Coatings.") and suggests adding this standard to the two that are already listed in N.J.A.C. 7:14B-4.1(j).

RESPONSE: The Department agrees and has added this standard to N.J.A.C. 7:14B-4.1(j).

N.J.A.C. 7:14B-4.2 Performance standards for new underground storage tank appurtenant piping

COMMENT: Two commenters stated that the wording at N.J.A.C. 7:14B-4.2(a) implies that new underground storage tank appurtenant piping shall follow N.J.A.C. 7:14B-4.2(a)1 through 5. They suggest a wording change to clarify that appurtenant piping shall follow one of the methods stated in N.J.A.C. 7:14B-4.2(a)1 through 5.

RESPONSE: The Department agrees. The phrase "shall be constructed in the following manner:" at N.J.A.C. 7:14B-4.2(a) is replaced with "shall be constructed in accordance with one of the following methods:"

COMMENT: One commenter questioned why petroleum products and waste oil are excluded from secondary containment requirements in N.J.A.C. 7:14B-4.1(d) but only petroleum products are excluded from a requirement to be transported through double walled pipe in N.J.A.C. 7:14B-4.2(a). Waste oil should be included in N.J.A.C. 7:14B-4.2(a).

RESPONSE: The Department agrees and has inserted the term waste oil in N.J.A.C. 7:14B-4.2(a) to be consistent with N.J.A.C. 7:14B-4.1(d).

COMMENT: One commenter suggested adding "Steel Tank Institute, R892-89, Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems" to the list of standards in N.J.A.C. 7:14B-4.2(d).

RESPONSE: The Department agrees with the comment and has added the standard to N.J.A.C. 7:14B-4.2(d).

COMMENT: One commenter stated that, in N.J.A.C. 17:14B-4.2(e), it is unclear who receives approval: does the owner or operator receive

approval or do the alternate materials receive approval, which is transmitted to the owner or operator?

RESPONSE: In cases where materials other than those cited in N.J.A.C. 7:14B-4.2(c) and (d) are used, the owner or operator must have the alternate materials approved by one of the organizations listed in N.J.A.C. 7:14B-4.2(c) and N.J.A.C. 7:14B-4.2(d).

N.J.A.C. 7:14B-4.3 Installation requirements for new underground storage tanks and appurtenant piping

COMMENT: One commenter stated that N.J.A.C. 7:14B-4.3 should be amended to conform with the more general installation requirements in 40 CFR 280.20(d).

RESPONSE: The installation requirements set forth in 40 CFR 280.20(d) state that all tanks and piping must be installed in accordance with the manufacturer's instructions and in accordance with a code of practice developed by a nationally recognized association or independent laboratory. Additionally, EPA noted that documents such as the American Petroleum Institute Bulletin 1615 and the Petroleum Equipment Institute Bulletin RP 100 may be used. N.J.A.C. 7:14B-4.3 states the same requirement as set forth in American Petroleum Institute Bulletin 1615, and in addition, lists the critical issues which the reference documents and manufacturer's instructions require. These issues include the air pressure/soap test, type of backfill to be used, measurement of vertical deflection, and excavation requirements, to name a few. The Department believes that addressing these issues will put emphasis on the correct way to install UST systems so problems will not develop in the future due to faulty installations.

COMMENT: One commenter stated that there is no certification process for tank installation as required by 40 CFR 280.20(e).

RESPONSE: The Department disagrees with this comment. One of the requirements for a new tank installation is securing a permit from the local municipality through the construction code office. The construction code official or his designee will oversee the installation making sure that the installation is done in accordance with the requirements of the permit. The Department believes that this process will satisfy the requirements as stated in 40 CFR 280.20(e).

COMMENT: One commenter stated that this sentence in N.J.A.C. 7:14B-4.3(a) should read "... in conformance with the manufacturer's instructions and with current practices." The word "current" should be added.

RESPONSE: The Department agrees and the word "current" has been added to clarify the sentence.

COMMENT: Several commenters questioned the requirements for vertical deflection in N.J.A.C. 7:14B-4.3(e). Two commenters stated that this subsection should be deleted because it may be in conflict with manufacturers installation instructions and that N.J.A.C. 7:14B-4.3(a) covers this area. Other commenters asked how does one measure vertical deflection? Another commenter requested that the Department specify what steps or actions are to be taken once the manufacturer has been notified of a vertical deflection measurement which exceeds a recommended allowance.

RESPONSE: After consulting with manufacturers of underground storage tanks, the Department determined that the measurement of vertical deflection is a major concern for fiberglass tanks and not much of a concern for steel tanks. The structural integrity of fiberglass tanks is dependent on the type of backfill and the emplacement of the backfill surrounding the tank. If improper backfill is used or the backfill is improperly placed, then there is the inherent danger of structural failure. This is why the measuring of vertical deflection is critical. Steel tanks, on the other hand, are stiffer and are less prone to vertical deflection. However, the Department believes that the measurement of vertical deflection is important for all underground storage tanks that are being installed. In some cases, tank manufacturers may have more stringent criteria to meet for the differences of the measurements. The Department has modified N.J.A.C. 7:14B-4.3(e) to state that owner or operator shall, when vertical deflection varies by more than two percent between the two measurements, or by a smaller variation specified in the underground storage tank manufacturer's installation instructions and checklist, notify the underground storage tank manufacturer. One underground storage tank manufacturer uses the number of one percent for vertical deflection measurements. In this situation, the one percent figure would be used as a guideline for the notification of the underground storage tank manufacturer.

COMMENT: One commenter stated that the only way to measure the tank diameter, with the degree of accuracy required by N.J.A.C.

7:14B-4.3(e), is from inside the tank. The commenter further questioned whether the subsection is requiring an accessway in all tanks. Additionally, the Department should specify the locations for the measurement.

RESPONSE: N.J.A.C. 7:14B-4.3(e) is not requiring an accessway for all tanks. Vertical deflection is measured through one access point in the tank, usually closest to the center of the tank. A yardstick or other measuring device is inserted into the access point and the reading is recorded. When the backfill is placed in the excavation around the tank then a second reading is taken from the same access point. The difference between the two is then evaluated into a percentage. If the measurement varies by more than two percent or exceeds the manufacturer's recommendation, then the manufacturer must be notified. The Department will publish a guidance document discussing this method in more detail.

COMMENT: Two commenters stated that new tank installations should never be put in areas of high ground water or flooding.

RESPONSE: Underground storage tanks have been put in areas of flooding and high ground water table for a number of years. If the tank is anchored to offset any buoyancy factors and the system has the required monitoring systems, corrosion protection, spill prevention, and overflow protection, then the Department believes that the flooding or a high groundwater table are not major concerns. If an underground storage tank is located in a flood hazard area, it may require a stream encroachment permit pursuant to N.J.A.C. 7:13.

COMMENT: One commenter suggested that N.J.A.C. 7:14B-4.3(i) should be revised to state "Flexible connectors, or equivalent devices approved by the Department . . ." to allow for technological improvements in this area.

RESPONSE: The Department disagrees with this comment. Flexibility connectors are a valid and acceptable type of equipment to be used in lieu of swing joints. The use of the flexible connectors where piping joins the tank and dispenser will decrease the number of fittings associated with product bearing piping and minimize the number of releases which are associated with product bearing piping. However, N.J.A.C. 7:14B-4.2(f) states that the Department may, in its discretion, approve a new underground storage tank piping system not specified in this section upon review of data that proves that the new underground storage tank piping system will prevent discharges as effectively as other piping systems. The Department considers alternatives to flexible connectors to be included as new piping systems. This will ensure that in the future, there will be allowances for new products and technologies to be introduced.

COMMENT: One commenter asked how owners and operators of Number 6 fuel oil systems will perform a precision test.

RESPONSE: The Department believes that technology exists to perform precision tests for Number 6 fuel oil systems. Many manufacturers of volumetric precision tests claim that results can be derived to indicate whether a Number 6 fuel oil tank is leaking or not. The key element is the accurate temperature readings which are critical to compensate for the coefficient of expansion and contraction of the substance. Other manufacturers will not test Number 6 fuel oil tanks because of the problems associated with accurate temperature readings. Manufacturers of non-volumetric precision tests claim that a Number 6 fuel oil tank can be precision tested. Non-volumetric tests, which include the use of tracers or acoustical methods, determine the presence of releases by qualitative analysis. The volumetric precision test determines releases by quantitative analysis. Precision tank testing technology is a growing field with methods and protocol being updated and improved. New precision tank tests are becoming available while existing tank tests are being modified to become more reliable. With these advances in the precision tank testing field, the Department takes the position that testing Number 6 fuel oil is feasible. N.J.A.C. 7:14B-4.3(j) requires the owner or operator of a new underground storage tank system to conduct a precision test after the backfill has been installed but before the areas has been restored to grade. For underground storage tank systems which will contain Number 6 fuel oil, the owner or operator has the option of performing a precision tank test with water prior to adding the Number 6 fuel oil. This will satisfy the requirement of N.J.A.C. 7:14B-4.3(j).

COMMENT: One commenter asked if there is a doubt concerning the applicability of a standard specified in N.J.A.C. 7:14B-4.3(j) or the interpretation of a test result, whether adherence to the manufacturer's instructions and recommendations is acceptable to the Department.

RESPONSE: 40 CFR 280.40(a)3 requires that all manufactures of precision tests must be able to detect a 0.1 gallons per hour leak rate with a probability of detection (PD) of 95 percent and a probability of false alarm (PFA) of five percent. The manufacturer must provide documentation stating at what values and probability standards the test

can detect releases. If a test result exceeds the manufactures leak rate, then the tank system is determined to have a suspected release and procedures outlined in N.J.A.C. 7:14B-7 must be followed. Since the Department is not setting standards or approving the various tests on the market, the manufactures documentation will suffice to determine at what threshold a release is indicated.

COMMENT: Two commenters questioned why underground storage tanks and piping has to be precision tested after installation. One commenter further stated that underground storage tanks with secondary containment and leak detectors in the annular space should be exempt from this requirement. The leak detectors would quickly indicate if the tank was damaged during installation.

RESPONSE: The purpose of precision testing the tank system is to ascertain the integrity of the system once the installation is complete. This precision testing requirement also applies to dual-wall tanks and piping. The commenter is referring to double walled tanks where the interstitial monitoring will indicate a leak only in the interstitial space. Precision testing will not indicate a problem with the fitting on top of the tank. The precision test ensures that the underground storage tank system has integrity prior to being put into use.

COMMENT: One commenter asked how a precision test can be performed prior to putting the system into operation when the definition of operation includes the storing of product in the tank.

RESPONSE: The Department agrees that these statements contradict each other and the wording in N.J.A.C. 7:14B-4.3(j) has been modified. Instead of performing a precision test prior to operation, the underground storage tank system shall be tested after backfill material is installed but before the area has been restored to grade. In this scenario, the tank has been filled with the product to be stored and a precision test may take place. This eliminates using words such as "operation" and "use." The Department believes that this clarifies the original language.

COMMENT: One commenter stated that the term "Nation" should be "National" at N.J.A.C. 7:14B-4.3(j)1.

RESPONSE: The Department agrees. The term "Nation" is replaced with "National".

COMMENT: Three commenters stated that it is unnecessary to detail a precision test; however, reference should be made to recognized practices.

RESPONSE: The outlined requirements are cited extensively in the National Fire Protection Association (NFPA) Bulletin 329 "Underground Leakage of Flammable and Combustible Liquids" and the Federal Regulations on underground storage tanks, 40 CFR 280.40(c). The Department believes that detailing the requirements for a precision test and referencing NFPA 329 will ensure that manufacturers of the precision tests will take these factors into account. The requirements are essential for deriving valid results from precision tests.

COMMENT: One commenter stated that tank integrity testing through pressure changes should be de-emphasized because the pressurizing of tanks can cause leaks to occur and that the reliability of precision tank testing is questionable.

RESPONSE: The precision testing criteria outlined in N.J.A.C. 7:14B-4.3(j) are consistent with NFPA 329 and the EPA. For some precision tests, a pressure head is introduced on the tank to counter-balance the influences that ground water would have when it intercepts the tank surface. This is one of the factors which are addressed in N.J.A.C. 7:14B-4.3(j)4iv. The only pressure which is impressed onto the tank is from the product or liquid which is introduced. Finally, precision tests have played an integral part in the underground storage tank field. There are always some doubts regarding any test method but the EPA and other organizations have conducted extensive tests and experiments which show that precision tests are valid.

COMMENT: One commenter suggested that the Department should be specific with regard to the reporting of precision testing results. The Department should specify the elevation at which the precision test results are calculated.

RESPONSE: The Department believes that the minimum requirements for a precision tank test as outlined in N.J.S.A. 7:14B-4.3(j) are sufficient. For a precision tank test to be valid, the test must take into account the factors specified in N.J.A.C. 7:14B-4.3(j)4. Certain methods are employed to compensate for effects of the water table. For the presence of the water table intercepting the tank, some precision test methods use a standpipe or graduated cylinder attached to the fillpipe filled with product above grade to negate the effects of the water table. However, not all precision tank tests employ this methodology. The precision tank test manufacturer shall use a method which will determine

ADOPTIONS

the effects of the water table, whether it be a stand pipe or other method. The manufacturer of the precision test will decide how to meet the performance standards of N.J.A.C. 7:14B-4.3(j).

COMMENT: One commenter suggested that N.J.A.C. 7:14B-4.3(j)4iv should read "The pressure of a water table in the excavation area during testing and the hydrostatic effects of the water table."

RESPONSE: The Department agrees that this will clarify the sentence, thus the phrase "... and the hydrostatic effects of the water table" has been added at N.J.A.C. 7:14B-4.3(j)4iv.

COMMENT: Two commenters stated that product bearing piping should be tested at one and one half times the operating pressure prior to backfilling, thus indicating that the piping must be isolated from the tank prior to testing.

RESPONSE: The National Fire Protection Association Bulletin 329 and the Federal Regulations for underground storage tanks in 40 CFR 280.44(b) state that product bearing piping must be precision tested at one and one half times the operating pressure if and when a precision test is used. What the commenter may be confusing is performing an air pressure/soap test on the product bearing piping during the installation of the piping. This requirement is in N.J.A.C. 7:14B-4.3(d). In some instances, the piping may have to be isolated from the tank to achieve the one and one half times the pressure or equivalent. This is true for some suction systems and pressurized dispensing systems.

N.J.A.C. 7:14B-4.4 Construction requirements for secondary containment

COMMENT: One commenter questioned the requirement for a 360-degree wrap for a double-walled tank. Such an option does not make sense since tanks seldom are filled to capacity, especially when meeting the overfill requirements. The commenter stated a minimum of a 300-degree wrap is sufficient and that the extra materials and labor required to provide 360-degree are therefore superfluous.

RESPONSE: The Department disagrees with this comment. Secondary containment is not required for every underground storage tank, but rather in certain situations as specified in N.J.A.C. 7:14B-4.1(d). The Department determined that the 360-degree wrap is the best environmental protection for these situations. The 300-degree wrap on a dual-tank will contain approximately 97 percent of the tank capacity. This means three percent of the tank capacity is not secondarily contained. There is the possibility that a section of this area may have a structural failure, from which there is a possibility that the product stored may leak into the environment. This may occur when conducting a precision test which uses an overfill method. In the event of a structural failure, then product may leak into the environment. For these reasons, the Department believes that the requirement for a 360-degree wrap is the best environmental approach.

COMMENT: Two commenters wanted clarification as to why there should be a means to drain the primary container into the secondary container.

RESPONSE: The purpose of secondary containment is to have an added measure of protection as opposed to a singled walled system. A double walled tank is essentially a tank within a tank. The purpose of the outer wall or secondary level of containment is to contain a release from the inner wall if in fact that release has occurred. The double walled tank must be designed to contain a release and must have a method to detect that release from any point of the tank system. Whatever type of monitoring is used in conjunction with the double walled tank, it must be able to detect a release from any portion of the tank. If there is no means to drain the primary container into a specific location in the annular space, then the interstitial monitor employed will not detect a release and thus indicate a problem with the inner wall of the double walled tank.

COMMENT: One commenter stated that the phrase "... unless the liner and monitoring systems are intended for use under such conditions" should be deleted from N.J.A.C. 7:14B-4.4(d)4. Liners will cause problems when contacting ground water.

RESPONSE: The Department disagrees with the comment. If a manufacturer states that the liner may be used in ground water or in the 25 year flood plain, the Department will accept its use providing that the owner or operator can substantiate its claim with certifications and approvals from the manufacturer of the liner. These certifications and approvals must state that the liner system, including the tank and backfill, is designed to withstand the natural buoyant force of the ground water.

COMMENT: Two commenters stated that the expression "hydraulic conductivity" should be added within the description of "10⁻⁶ cm/sec" at N.J.A.C. 7:14B-4.4(d)5.

ENVIRONMENTAL PROTECTION

RESPONSE: The Department disagrees with this comment. The description of 10⁻⁶ cm/sec is referring to the permeability of the liner in relation to the hazardous substance stored.

N.J.A.C. 7:14B-4.5 Upgrading existing underground storage tank systems

COMMENT: One commenter asked why the compliance date for UST systems containing hazardous substances other than petroleum or waste oil to upgrade to secondary containment is December 22, 1998. Wouldn't 1991 be more reasonable?

RESPONSE: The State Act requires that all UST systems have monitoring systems or secondary containment by September 3, 1991. EPA regulation at 40 CFR 280.42(b) requires USTs containing hazardous substances other than petroleum products or waste oil to upgrade to secondary containment by December 22, 1998. There is no reason to require that these underground storage tanks be forced to comply with secondary containment requirements by the earlier date. The corrosion protection, spill prevention, and overfill prevention and monitoring system requirements should be adequate before that time.

COMMENT: One commenter stated that there are problems associated with external cathodic protection systems and that the State's proposed rules are less stringent than the Federal regulations.

RESPONSE: The Department believes that corrosion protection for metallic underground storage tank systems using cathodic protection is sound technology. Numerous reference documents are available to ensure the proper installation and maintenance of cathodic protection systems. By requiring an impressed current or sacrificial anode system for metallic underground storage tank systems, the Department is satisfying the requirements of N.J.S.A. 58:10A-25a(2). The Department's rules are more stringent than the Federal regulations. The Department is stating that cathodic protection is the only option for upgrading metallic underground storage tank systems. The Federal regulations allow three options for complying with the corrosion protection requirement for UST systems: cathodic protection, internal lining, and cathodic protection with internal lining. By allowing only cathodic protection alone and cathodic protection with internal lining, the Department's rules are more stringent than the Federal regulations. Further information may be obtained from the Basis and Background Document on pages 59 and 60.

COMMENT: One commenter asked: if a tank has cathodic protection before the effective date of the rule adoption, does it still require secondary containment?

RESPONSE: For existing underground storage tank systems, N.J.A.C. 7:14B-4.5(a) requires secondary containment by December 22, 1998 only for systems which contain hazardous substances other than petroleum products and waste oil. If an existing system holds such hazardous substances and is already equipped with cathodic protection, it must be equipped with a secondary level of containment by December 22, 1998. Such a tank owner is not excused from the other requirements for existing underground storage tanks, such as the requirement to have an approved monitoring system and spill and overfill prevention devices by September 3, 1991. Note that when the secondary level of containment has been added, cathodic protection will be required on any metallic portion of the piping or appurtenances which is underground and routinely contains product and on the secondary container surface, if metallic, so that a leak from the primary container could not escape to the environment through corrosion holes in the secondary container.

COMMENT: One commenter argued that adding cathodic protection to existing tanks may cause new holes to occur in the tanks according to the "rust plug theory," thereby doing more harm than good to protect the ground water. The commenter advocated interior linings.

RESPONSE: In the preamble to the Federal underground storage tank regulations at 53 FR 37132, EPA recognizes the "rust plug theory," where corrosion holes exist but do not leak because they are plugged with the by-products of corrosion. When cathodic protection is added, the plugs may loosen and leaks may begin. It is not known how common are such incidents. The structural integrity of tanks over 10 years old must be assessed prior to adding cathodic protection to existing tanks, as required by N.J.A.C. 7:14B-4.5(c)3. For tanks with corrosion holes, there is the option given in the rules of relining these tanks, in accordance with N.J.A.C. 7:14B-5.3, and then retrofitting them with cathodic protection in order to stay in operation past the September 3, 1991 deadline for upgrading existing tanks. (Note that when the discovery of existing corrosion holes indicates that a release may have occurred—such as corrosion holes in the tank below the normal product level—the procedures given in N.J.A.C. 7:14B-7 for release reporting and investigation must be followed.) It will not always be possible or economically worthwhile

to add cathodic protection to tanks which are not structurally sound or which have corrosion holes, including tanks with rust plugs. Should rust plugs go undetected or if repairs are not done on tanks needing repairs before cathodic protection is added, the mandatory Department approved release detection system will detect any leaks that occur almost immediately. Interior linings, on the other hand, are applied after sandblasting. It has been argued before that the sandblasting process also causes thin spots or pinpoint holes to develop into holes which can leak. These holes must be plugged before the lining is applied. Such plugs can be susceptible to localized external corrosion as a result of potential differentials set up by dissimilar metals or by new metal versus old metal. The reasons for not requiring interior linings has already been discussed in a prior comment.

COMMENT: One commenter suggested modifying N.J.A.C. 7:14B-4.5(c) to read: "all existing metallic underground storage tank systems without corrosion protection shall retrofit cathodic protection by September 3, 1991 . . ."

RESPONSE: The Department agrees with this comment and the term "metallic" has been added to N.J.A.C. 7:14B-4.5(c).

COMMENT: One commenter suggested that N.J.A.C. 7:14B-4.5(c) be amended to eliminate the requirement to provide cathodic protection for tanks in environments not creating a potential for corrosion. This would be consistent with the Federal Regulations, 40 CFR 280.20(a)(4).

RESPONSE: The Department's position is that cathodic protection would be beneficial to every metallic underground storage tank system. The fact that site conditions may change over the years due to man-made and natural occurrences with regard to corrosive environments is a very good argument for the requirement of cathodic protection.

COMMENT: One comment was received stating that the Department's rules were less stringent than the Federal underground storage tank regulations, because the Department's rules do not contain standards for determining whether a tank is structurally sound and free of corrosion holes before it is retrofitted with cathodic protection. The commenters believe that the rules should specify the means of inspecting the tank and who should perform such an inspection.

RESPONSE: The Federal regulations allow a tank's integrity (before retrofitting that tank with cathodic protection) to be determined in one of the following ways: (1) an internal inspection in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory or other assessment approved by the implementing agency, or (2) in the case of tanks installed for less than 10 years, a choice of monthly monitoring or a tank tightness test both before and after the cathodic protection is added and used. The Department's rules require (1) an internal inspection or other assessment approved by the Department, or (2) in the case of tanks installed for less than 10 years, no evidence of failure of the tank system's structural integrity. Examples of "evidence of failure" include known releases and/or inventory discrepancies and/or poor results from any monitoring methods, internal inspections, tightness tests, or soil vapor investigation, etc. . . . All tanks that are being retrofitted for cathodic protection, however, will also have to already have or be simultaneously installing a Department approved daily or continuous monitoring system in order to be issued a permit. The State Act stipulated that no permit could be issued unless the underground storage tank system in question had acceptable corrosion protection and was either secondarily contained or had a monitoring method in place for detecting releases. The requirement for daily or continuous monitoring makes the Department's rules more stringent than Federal regulations, given that the Federal regulations do not require daily or continuous monitoring and that options of tank tightness tests and visual internal inspections allowable by the Federal regulations may conceivably not detect small corrosion holes which are present. N.J.A.C. 7:14B-4.5(c)3 has been slightly modified to clarify this point. The intent of N.J.A.C. 7:14B-4.5(c)3 is to require an owner and/or operator to be sure his or her tank was structurally sound before cathodic protection was added. The Department does not desire to change that requirement; however, a clarification of how best to assure a tank's integrity seems necessary. The proposed rules stated that an "internal inspection and assessment" is necessary for existing tanks installed for more than 10 years or installed for less than 10 years but not equipped with a Department approved monitoring system. The proposed rules did not specify how an internal inspection should be performed. An internal inspection by mere visual examination, without first sandblasting the tank or without using ball-peen hammering or other inspection techniques, may not be adequate to determine that a tank is structurally sound. Also, many existing tanks do not have accessways accessible to grade to readily get into the tank, and many existing tanks may also be too small to permit

entrance for an internal inspection without cutting the tank. The Department will recognize internal inspections or other feasible means of determining a tank's structural soundness when they are at least as effective. The technical guidance document, which is available from the Bureau of Underground Storage Tanks, will detail how to perform internal inspections and other means of structurally assessing existing tanks, such as soil gas investigations, ultrasound tests, and conductivity tests. From an economical viewpoint of course, the owner is wise to obtain assurance that an existing tank is indeed structurally sound before cathodic protection and a monitoring system is added to it. Therefore, the owner/operator may choose to go above and beyond the minimum requirements of the rules.

COMMENT: Many commenters requested that the compliance deadline of September 3, 1991 for upgrading existing tank systems with corrosion protection, monitoring systems, spill prevention, and overfill protection be extended. Additionally, the compliance requirements should be a function of site and regional specific concerns. Comments include extending the date to 1998 as the EPA has done. Other comments stated that the intent of the law was to have rules promulgated one year after the State Act went into effect, thus giving the affected parties four years to comply. One commenter requested that the compliance deadline be extended and phased-in for the regulated community particularly taking into consideration school systems and small businesses. Finally, one commenter requested that N.J.A.C. 7:14B-4.5 should be amended to provide each owner and operator with the opportunity to propose a plan by September 3, 1991, for upgrading existing USTs.

RESPONSE: The reasoning for the compliance deadline of September 3, 1991 for upgrading existing tank systems with corrosion protection, monitoring systems, spill prevention, and overfill protection is that it is mandated by the State Act. This is discussed in the Basis and Background Document on pages 56 through 57. However, the Department is trying to obtain an extension of the deadline by petitioning the State Legislature.

COMMENT: Two commenters stated that there are not enough qualified personnel to assist the regulated community and perform the services required by the rules. Concerns include: contractor availability and demand, inflated costs, component availability, and shoddy work, all of which will cause massive non-compliance.

RESPONSE: The Department recognizes that the rules will increase the demand for tank contractors, professional engineers, geologists, etc., to perform services. The Department recognizes that the new rules will give opportunities for new firms and personnel to capitalize on the increased business that will be available. There is no certification or licensing program for tank contractors in New Jersey at this time but there is movement in the Legislature to regulate contractors performing tank services. Owners and operators are encouraged to have a working knowledge of the rules and to research the credentials of individuals and firms before deciding who will perform the necessary services as required by the rules. The costs that individuals and firms will charge for tank services will vary depending on the services rendered and the competition of the firms and individuals in the State. The costs for installation closure and retrofitting are outlined in the Economic Impact Statement of the Basis and Background document. There will be a wide variation in costs for services rendered, but the Department cannot foresee what the economic impact will be in the coming years. The Department believes that there will be enough contractors to provide tank services, so this will not be a cause of massive compliance. A lack of contractors will not be a contributing factor so long as the regulated community does not wait until the last possible moment to procure the services of a contractor in order to comply with the rules. Finally, the Department believes that component availability will not be a factor in noncompliance. Companies specializing in components for underground storage tank systems have anticipated the increased demand for equipment based upon the promulgation of the Federal regulations and the New Jersey rules.

COMMENT: One commenter stated that all existing underground storage tanks which were installed in good faith, with good engineering practices, and in conformance with the Resource Conservation and Recovery Act 42 U.S.C.A. 6901 et seq. (RCRA), should be grandfathered.

RESPONSE: The Department disagrees. Underground storage tank systems which were installed in good faith and with good engineering practices may not meet the requirements of the State Act for monitoring systems, corrosion protection, spill protection and overfill protection. The UST systems installed prior to the promulgation of the rules may only be in compliance with what was in effect at the time of installation. Similarly, RCRA does not address monitoring systems, spill protection and overfill protection. Therefore underground storage tank systems in-

stalled in compliance with RCRA will not meet the requirements of these rules and must be upgraded.

COMMENT: One commenter stated that the Steel Tank Institute standard "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks" cannot be used for retrofitting underground storage tanks and should be deleted. Additionally, the Underwriter Laboratory listings in N.J.A.C. 7:14B-4.5(c)1 are inappropriate references for tank upgrading.

RESPONSE: The Department agrees that the Steel Tank Institute standard "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," and UL standard 1746 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" cannot be used for retrofitting an existing system and these have been deleted from N.J.A.C. 7:14B-4.5(c)1. The Department is adding Steel Tank Institute, 4892-89, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems" to N.J.A.C. 7:14B-4.2(d)4.

COMMENT: One commenter stated that there is no statutory reference for the establishment of the 1991 date for spill and overflow protection. The commenter further recommended that such spill/overflow protection be the responsibility of the supplier and that the tank owner is unfairly being held accountable for any spills caused by the delivery of the product.

RESPONSE: The Department agrees that there is no statutory requirement for spill and overflow protection. The reasoning for requiring spill and overflow protection by September 3, 1991 is outlined on page 57 in the Basis and Background document. The Department disagrees with the idea that spill and overflow protection should be the responsibility of the supplier. The owner and operator is ultimately responsible for what occurs in and around his or her facility.

COMMENT: Two commenters stated that the reference to N.J.A.C. 7:14B-4.1(b) contained in N.J.A.C. 7:14B-4.5(d) is an error. The correct citation is N.J.A.C. 7:14B-4.1(c).

RESPONSE: The Department agrees with this comment and N.J.A.C. 7:14B-4.5(d) now refers to N.J.A.C. 7:14B-4.1(c).

COMMENT: There were various comments on the requirement for a qualified hydrogeologist and a professional engineer to certify on the Annual Certification Form that an existing monitoring system is in compliance with the rules. Some commenters want to know why both certifications are needed; others felt that no certification is necessary. One commenter stated that approvals should be granted for USTs which meet Federal standards or generally accepted standards at the time of installation. Two commenters questioned the need to use the Annual Certification Form, since theoretically a new certification would be needed each year. Finally, one commenter stated that existing USTs with interstitial monitoring should not have to meet the certification requirements of N.J.A.C. 7:14B-4.5(e) because such systems operate independent of site geological conditions or properties of the substance stored.

RESPONSE: The Department believes strongly that a certification by a qualified professional that the existing monitoring systems are in compliance with the rules be a minimum requirement for approving pre-existing monitoring systems (see page 57 of the Basis and Background Document). The Department has changed the "qualified hydrogeologist" to "Ground Water Consultant" and has included a definition for Ground Water Consultant in N.J.A.C. 7:14B-1.6. A New Jersey Professional Engineer is defined as qualified to be a Ground Water Consultant. Other changes to the wording in N.J.A.C. 7:14B-4.5(e) required that the owners or operators of USTs with pre-existing monitoring systems keep the above-mentioned certification from a Ground Water Consultant on site. This certification must state that the site conditions and locations of the monitoring devices comply with N.J.A.C. 7:14B-6.4 and must include documentation from the manufacturer or certification from a New Jersey Professional Engineer that the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized. Therefore, the owner has several choices in what type of proof is obtained:

(1) A certification from a New Jersey Professional Engineer that the site conditions, sensor locations, and the product stored are suitable for the proper operation of the existing monitoring system.

(2) Two certifications, one from a Ground Water Consultant and another from a New Jersey Professional Engineer.

(3) A certification from a Ground Water Consultant and documentation from the monitoring system manufacturer that it will effectively detect the product stored.

Note that the certification documentation must be kept on-site, rather than being submitted to the Department on the Annual Certification

Form. To keep the facility's registration up to date, the owner or operator must still sign and submit the Annual Certification Form, attesting that his or her USTs are in compliance with the State rules.

The Department is not willing to grant approvals for USTs which met Federal standards or generally accepted standards at the time of installation, as one commenter suggested. "Generally accepted standards" is too vague and unenforceable. The monitoring systems allowed under the Federal regulations are not daily or continuous; therefore, the Department does not believe the Federal regulations concerning monitoring systems are stringent enough.

Lastly, certifications and manufacturer documentation are not required to be kept on-site for secondarily contained systems with interstitial monitoring when the owner or operator certified that the existing UST system complies with N.J.A.C. 7:14B-4.4 and 6.3(a)2. It should be noted that many interstitial monitoring systems are not independent of the product stored. Guidance on this point can be obtained from the monitoring system manufacturer or a New Jersey Professional Engineer. The monitoring system must be appropriate for the product stored in order to comply with N.J.A.C. 7:14B-6.1, applicable to all UST systems, including those that are secondarily contained.

COMMENT: One commenter questioned the requirements for verification that monitoring systems installed prior to the effective date of the rules are in compliance with N.J.A.C. 7:14B-6.4. As stated in N.J.A.C. 7:14B-4.5(e), a certification from the qualified professional stating that site conditions are appropriate for the monitoring system utilized, the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized, and the monitoring system complies with N.J.A.C. 7:14B-6.4 is required. However, the commenter was unclear whether excavation is necessary to obtain the information for the certification.

RESPONSE: The owner or operator must get a certification from a qualified professional stating that the monitoring system complies with N.J.A.C. 7:14B-6.4, the site conditions are appropriate for the monitoring system utilized, and the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized. Excavating the site is not a requirement; however, situations may arise in which the qualified professional will have to perform a substance investigation to comply with the requirements. An example is determining the site conditions for the monitoring system that is already existing for an underground storage tank system. The qualified professional will have to determine the proper methods necessary to certify that the monitoring system is in compliance with N.J.A.C. 7:14B-6.4.

COMMENT: One commenter stated that N.J.A.C. 7:14B-4.5(e) is not discussed in the Basis and Background document in sufficient detail to shed light on the Department's thinking and justification. The commenter further questioned what conditions must be satisfied to have a certification for monitoring systems that are existing on a UST site.

RESPONSE: The Department is requiring that an owner or operator obtain the certification from a qualified professional for an existing monitoring system and that the monitoring system be able to detect the substance stored in the underground storage tank. The qualified professional must meet the minimum requirements as stated in N.J.A.C. 7:14B-1.4 and 4.5(e)1. The qualified professional will determine the steps and methods to be utilized to ensure that the site conditions are appropriate for the monitoring system utilized and that the physical properties of the hazardous substance stored will be detected by the monitoring system utilized. Factors such as permeability of the material between the monitoring location and the tank, depth to ground water, number of monitoring locations, physical properties of the substance stored, and manufacturer's claims for monitoring systems will be used for certification.

COMMENT: Four commenters stated that N.J.A.C. 7:14B-4.5(f) should be deleted or revised since certification may be impossible as well as inappropriate. Previously installed UST systems would have obtained the necessary State and local approvals at the time of installation.

RESPONSE: The Department is requiring that the owner or operator certify on the Annual Certification Form that previously installed secondary containment systems are in compliance with these rules. The Department had previously cited N.J.A.C. 7:14B-4.4(a) as the standard to be met for the secondary containment system. In order to be consistent with the remainder of these rules, the cite of N.J.A.C. 7:14B-4.4(a) has been changed to N.J.A.C. 7:14B-4.4. If the secondary containment system is a double-walled tank and the owner has records proving such, then the owner or operator may certify that it is. If the owner or operator is unsure what type of system is installed, then he or she would have to procure

the services of an individual to determine what type of secondarily contained system was installed. With this information, the owner or operator may now certify that the secondarily contained system meets the requirements of N.J.A.C. 7:14B-4.5(f). Although approvals may have been obtained in the past, there is no guarantee that tank systems installed prior to the adoption of the rules meet all the technical standards required by these rules. A certification will provide this guarantee. The State Act required regulation of all existing UST systems. The Department does not consider it impossible to have these systems certified as records should contain the necessary information.

COMMENT: Two commenters suggested extending the deadline in N.J.A.C. 7:14B-4.5(h) from 90 days to one year.

RESPONSE: The Department agrees that the deadline should be extended. However, the Department has extended it to 180 days, until March 3, 1991. The Department believes that this provides adequate time for compliance.

COMMENT: One commenter stated that N.J.A.C. 7:14B-4.5(i) should read: "By December 22, 1990, the owner or operator . . . using pressurized piping without a Department approved monitoring system on the piping shall:" adding the phrase on the piping.

RESPONSE: The Department agrees with this comment and has modified N.J.A.C. 7:14B-4.5(i) to read, "which is not in conformance with the requirements in N.J.A.C. 7:14B-6.4(e)."

COMMENT: Three commenters questioned the requirement to install a line release detector and conduct a precision test on pressurized piping systems which have monitoring systems. Commenters stated that the compliance date of December 22, 1990 is too short of a time frame to comply and should be consistent with the other compliance dates. Other commenters stated that this requirement should not apply to return lines from emergency generators since this piping seldom contains regulated substances.

RESPONSE: The deadline for the pressurized piping is consistent with the Federal regulations (40 CFR 280.40(c)). If the pressurized piping does not have a Department approved monitoring system for the piping, then the requirements of N.J.A.C. 7:14B-4.5(i) must be met. This consists of a line release detection and a precision test or a pressurized shutdown monitoring device. The Department has added the option of a pressurized shutdown monitoring device to N.J.A.C. 7:14B-4.5(i) to be consistent with the requirements of N.J.A.C. 7:14B-6.1(k)1 (formerly N.J.A.C. 7:14B-6.3(a)3) which allows pressurized shutdown monitoring devices in pressurized piping. If the pressurized piping has a Department approved monitoring system, then this monitoring system will satisfy the requirements of N.J.A.C. 7:14B-4.5(i). This requirement applies to all pressurized products bearing piping.

SUBCHAPTER 5. UNDERGROUND STORAGE TANK SYSTEM GENERAL OPERATION REQUIREMENTS

N.J.A.C. 7:14B-5.1(a) and 5.2(a) Spill and overfill control and cathodic protection system

COMMENT: Two comments were received requesting that the Department be more specific in identifying the responsible party when product deliveries are made to leased facilities. One of the commenters believed it is unfair to hold the owner or operator liable for a spill occurring during a product delivery, and that the rules should indicate that the responsibility for such a spill rests on the product delivery company. One commenter suggested that the rules should mirror the Federal regulatory language.

RESPONSE: The Department consistently requires the owner and operator to ensure compliance with the rules. The owner and operator, and landlords and tenants, will be held jointly and severally liable. If a spill or overfill occurs, the owner and operator will have the responsibility for cleaning up the resulting contamination, although they may institute legal action against the product delivery company if that company was at fault. It is standard practice in law for owners to be held liable for accidents occurring on their property. Lastly, the Federal regulations do not differ from the Department rules in identifying the owner and operator as the responsible party, even if the facility is leased, or in their definitions of owner and operator.

COMMENT: One commenter felt that a representative of the owner or operator should also be allowed to oversee a product delivery.

RESPONSE: The Department agrees with this comment and believes the rule language allows this.

N.J.A.C. 7:14B-5.2 Operation and maintenance of cathodic protection systems

COMMENT: One commenter from a public agency complained that the annual cathodic protection test would cost \$300.00 to \$400.00 per tank and would be a significant expenditure of public funds. In addition, since other State agencies benefitted from the use of the USTs, they should share the cost of testing.

RESPONSE: The Basis and Background document on page 114 lists cost for a cathodic protection inspection to be \$100.00 to \$200.00. In addition, these inspections are necessary on a triennial basis, not an annual basis, thus further reducing costs. The Department believes that there are adequate current measures available to distribute costs amongst State agencies. For example, such measures include debit-credit systems for agencies to pay for gasoline for State car usage.

COMMENT: One comment was received asking the Department to explain why the schedule for cathodic protection inspections in N.J.A.C. 7:14B-5.2(a)2i did not conform to the schedule given in the Basis and Background Document, that is, annual for field installed systems and every five years for factory installed systems.

RESPONSE: The schedule within the Basis and Background document is incorrect. The Department's rules can be no less stringent than the Federal regulations, which state in 40 CFR 280.31 that all cathodic protection systems must be tested at least once every three years and that impressed current systems must also be inspected every 60 days. Cathodic protection tests at five-year intervals would not be as stringent as the Federal regulations. While the National Association of Corrosion Engineers recommends annual inspections of cathodic protection systems, the Department does not wish to cause underground storage tank owners more expense than already required, and believes that an inspection every three years is adequate.

COMMENT: One commenter requested that the owner or operator be allowed to perform the cathodic protection test every three years if he or she has been trained by a cathodic protection tester.

RESPONSE: A cathodic protection tester is defined in N.J.A.C. 7:14B-1.6. This person must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems. The Department does not believe a person who does not meet this definition can adequately perform the cathodic protection test.

COMMENT: One commenter requested the Department change the requirement that an operator's agent be trained by a cathodic protection tester in order to visually verify that an impressed current cathodic protection system is operating correctly. It was suggested instead that the wording in N.J.A.C. 7:14B-5.2(a)2ii be ". . . systems shall be inspected every 60 days by the owner or operator or by an operator's trained agent," presumably trained by the owner or operator. Two other commenters objected to required inspections of the impressed current system every 60 days when the National Association of Corrosion Engineers (N.A.C.E.), referenced for its industry standard RP-02-85 in N.J.A.C. 7:14B-5.2(a)3, only recommends that annual inspections be made. The commenters suggested a compromise; inspections every 180 days instead of every 60 days.

RESPONSE: The Department agrees that the wording in N.J.A.C. 7:14B-5.2(a)2ii is incorrect because only the operator's agent is required to be trained by a cathodic protection tester as the rules now read. A change has been made to allow the owner, operator, or operator's agent to perform the visual inspection, as long as the individual doing the inspection has been trained by a cathodic protection tester. The Department will also allow an employee of the owner or operator to visually verify that the system is operational if that employee has been trained by the owner or operator, and the owner or operator has been trained by a cathodic protection tester. The visual inspection every 60 days is simply intended to verify that a current is being supplied to the impressed current system to allow it to function properly. The rules were changed from "The inspector shall visually verify that current is being supplied to the impressed current system to allow it to function properly." The intent of this requirement is to ensure that uninterrupted direct current is being supplied to power this type of corrosion protection design. If no current is supplied, no protection against corrosion is afforded. A visual inspection suffices since the power source may be verified in most cases by looking for a green light on the control panel of the rectifier (the power source) and/or checking the circuit breakers. The Department never intended to require that the entire tank system be excavated and visually inspected or that the net current reaching or leaving the tank be measured every 60 days. The change to the rules clarify that the visual

ADOPTIONS

ENVIRONMENTAL PROTECTION

verification only applies to the current from the power source being provided.

The Department's rules are in accordance with industry standards. The final two commenters are incorrect in their interpretation of the industry standard. The N.A.C.E. publication referenced in the rules, RP-02-85, does recommend that all sources of impressed current be checked at least every 60 days (the same requirement exists at N.J.A.C. 7:14B-5.2(a)2ii). The annual inspection that N.A.C.E. recommends, on the other hand, consists of electrical measurements, such as a structure-to-soil potential using a voltmeter, to ensure the effectiveness of the cathodic protection system in use, whether it is an impressed current system or a sacrificial anode system. N.A.C.E. also recommends that the annual inspection for impressed current systems include checks for any electrical shorts or potential sources of failure. The discrepancy between N.A.C.E.'s recommendation for annual inspections and the Department's requirement of an inspection on a triennial basis has already been discussed in an earlier response to a comment regarding N.J.A.C. 7:14B-5.2(a)2ii.

COMMENT: One comment was received stating that the reference to N.J.A.C. 7:14B-5.2 in N.J.A.C. 7:14B-5.2(c) is circular. This reference is not proper for "installation."

RESPONSE: There is no N.J.A.C. 7:14B-5.2(c). The commenter is probably referring to N.J.A.C. 7:14B-5.3(c) which correctly references N.J.A.C. 7:14B-5.2. Properly operating cathodic protection systems are required on all metal tanks that are installed. The Department does not see a problem in the rules as written.

N.J.A.C. 7:14B-5.3 Repairs

COMMENT: Two general comments were received without reference to a specific subpart of the section. One commenter believes "... the Department's apparent acceptance of continued use of tanks with corrosion holes is remarkable," while another commenter objected to the recommendation that tanks having more than five holes in a 500-square-foot area should not be repaired.

RESPONSE: Both the Federal regulations and the State Act allow repairs to be made to underground storage tanks. The Department's rules at N.J.A.C. 7:14B-5.3(c) and (f) stipulate that cathodic protection must be added to a tank that was repaired for corrosion holes before it is again placed into use and that a precision tank test be performed within 30 days after the repair unless a release detection system meets N.J.A.C. 7:14B-6.4(a) and (c) is operational. The Department believes that repairs are a satisfactory option for tank owners given the above required safeguards. Also, repairs must be done in accordance with standards set forth by the American Petroleum Industry and the National Fire Prevention Association, as specified in N.J.A.C. 7:14B-5.3(b). API's publication #1631, "Recommended Practice for the Interior Lining of Existing Underground Storage Tanks," states that a steel tank should not be lined, a common step in repairs, if more than five perforations (all less than 0.5 inches in diameter) exist in any 500-square-foot area.

COMMENT: Several comments were received objecting to the requirement that a permit be obtained for any repair that qualifies as a substantial modification, especially when all modifications are required to be made according to standards prescribed by the Department and certified by an expert who meets specific Department qualifications. The commenters believe that no permit should be required or that an emergency permit should be allowed in instances where a repair is necessary to continue to operate the facility. They do not wish to suffer delays in making repairs while waiting for a permit from the Department. One commenter suggested the rules be revised to require the Department to issue permits within 14 days, if the Department insists on permitting repairs. Three of the commenters also believe that the Department does not have the authority under the State Act or the Federal regulations to require a permit prior to repairs being performed. An additional commenter requested that a definition of "substantial modification," as referenced in N.J.A.C. 7:14B-5.3(a), be included in the rules at N.J.A.C. 7:14B-1.6.

RESPONSE: The Department does allow emergency permits in the event of a release in an underground storage tank system that contains fuel for a building's sole source of heat (see N.J.A.C. 7:14B-10.8); permits are not required for those repairs which do not qualify as substantial modifications (see N.J.A.C. 7:14B-10.5(c)). The Department believes that the necessity for most "major repairs" arise from the occurrence of a discharge, in which case the tank cannot continue to be used until such time as the corrective action requirements at N.J.A.C. 7:14B-8 have been met. Continued operation of the facility will be allowed as part of the overall approval of the corrective action alternative. The State Act does give the Department the authority to require permits prior to substantial

modifications. N.J.S.A. 58:10A-24 states clearly: "An owner or operator of a facility proposing to replace, install, expand or substantially modify the facility shall obtain a permit therefor from the commissioner." As for the necessity of a definition of "substantial modification," such definition already exists in N.J.A.C. 7:14B-1.6. The Department intends to issue permits within a reasonable time frame upon receiving a permit application which is in compliance with the rules.

COMMENT: Two comments were received maintaining that the repair of existing corrosion holes and the installation of a lining comprises an adequate repair without cathodic protection being added. The commenter further stated that the lining would bridge corrosion holes that developed later, and that the EPA allowed linings to be used without cathodic protection being added.

RESPONSE: The Department recognizes linings as one step in tank repairing as outlined in the industry standards referenced at N.J.A.C. 7:14B-5.3(b). The tank must still be retrofitted with a cathodic protection system prior to putting the underground storage tank system back into use, however, since more external corrosion holes may otherwise result, thereby threatening the tank's structural integrity. Moreover, a statutory requirement exists that all facilities obtaining a permit must be corrosion protected (see N.J.S.A. 58:10A-24(c)). The reasons for not allowing interior linings by themselves to qualify as adequate corrosion protection have already been discussed in a prior comment concerning N.J.A.C. 7:14B-4.1 and 4.5.

COMMENT: Two comments were received charging that the Department displayed inappropriate "favoritism" by requiring fiberglass tank repairs to be done only by fiberglass tank manufacturers or their authorized representatives. The commenters stated that the Department was (1) encouraging a monopoly in the fiberglass tank repair business by eliminating nonmanufacturer entities, including contractors with much repair experience, from the market; (2) violating the Fifth Amendment of the Constitution where due process is intended to protect individuals against "arbitrary" action of the government; (3) restraining free trade among the states; and (4) acting contrary to court decisions which stipulated that administrative agencies could not act in a discriminatory, capricious and arbitrary manner when promulgating rules and regulations. Because no fact-finding study has been done to indicate that repairs performed by nonmanufacturing firms are inferior to repairs performed by manufacturers, the commenters argued that no basis exists for the preferential treatment to be given to fiberglass tank manufacturers.

Another commenter stated that the proposed rules reference nonexistent industry standards for fiberglass repairs. They claim that the only standard which addresses fiberglass tanks is NLPA's (National Leak Prevention Association) Standard 631, which should be included as a reference in the Department's rules. Another commenter suggested that industry repair and qualification standards be developed in order to provide objective standards whereby manufacturers' authorization to repair fiberglass tanks may be obtained by nonmanufacturing contractors.

RESPONSE: The Department did not intend to show "favoritism" to fiberglass tank manufacturers. The Department allows non-manufacturers to perform repairs and therefore, is not acting in an arbitrary manner. This is why the proposed rules were worded to allow repairs to fiberglass tanks to be performed by manufacturers, authorized representatives of the manufacturers, or contractors who complied with a code of practice developed by the Fiberglass Petroleum Tank and Pipe Institute (FPTPI). The FPTPI's Recommended Practice RPT-89-1, draft version, specified that "This document is not intended to be used as a detailed repair manual or procedure for unauthorized tank repairs. All tank repairs must be performed by an employee of the original tank manufacturer or their designated agent." This stipulation was included in the industry standard to alert tank owners that fiberglass tank manufacturers demand involvement in the repairs of these tanks, or else these manufacturers have the right to void the owner's tank warranty. The Department still wishes to allow non-manufacturers the opportunity to perform repairs on fiberglass tanks as long as proper industry guidelines are followed. Therefore, the Department is supplementing the reference to FPTPI's RPT-89-1 with a reference to American Petroleum Institute's Recommended Practice 1631 for interior linings and the National Leak Prevention Association's Standard 631, Appendix F, for fiberglass tank linings. These new references allow non-manufacturers to perform repairs. In answer to the final comment above, the Department believes the tank manufacturers alone have the right to determine whom they wish to designate as their authorized representatives.

COMMENT: One comment was received objecting to the requirement for a precision tank test within 30 days after a repair in cases where a

State-approved release detection system is not in place. The argument was made that a properly applied lining, pursuant to National Leak Prevention Association's Standard 631, would be spark-tested at 15,000 volts or more to detect pinholes and voids in the lining. Any holes would then be corrected. Similarly, one comment received presented the commenter's "concern" about undiscovered damage to a lining existing after attaching or replacing tank fittings.

RESPONSE: The Department does believe that (1) the absence of holes in the tank lining at installation precludes any later breakdown of the lining and (2) the attachment or replacement of tank fittings would not still allow for a discharge to occur. Therefore, the Department is retaining the requirement that the precision tank test be performed within 30 days after a repair.

COMMENT: Six comments were received objecting to the requirement that records of repairs and precision tank test results be kept for the longer of six years or the life of the facility. The commenters instead recommended that records be kept for three years or the life of the tank, especially in cases where the underground storage tank is decommissioned and removed in accordance with the closure requirements of the Department's rules. One comment was received stating that the required retention period was impractical where the owner and/or operator changed during that time. Three comments were received requesting the rationale for obtaining the Department's permission before discarding records. The commenters argued that records should be able to be discarded at the end of the required retention period without first obtaining permission from the Department to do so, unless the Department includes in the rules a specific situation in which its permission must first be obtained. Lastly three comments were received objecting to the requirement that records be kept at the facility.

RESPONSE: It is in the facility owner or operator's own's best interest to keep records which indicate that tank management activities were performed properly. The Department believes that these records would also be beneficial information for parties interested in buying or operating the property in the future, whether the tanks remain in the ground or not. Transferring of records is routine, good business, and not impractical in the Department's opinion. The Department requires records to not be discarded without express permission because the only documentation of valuable information can be lost forever when records are discarded. In the case of future contamination on site or nearby, the Department needs access to such records to help locate the most likely sources of the contamination as well as the circumstances leading up to the release. Accurate records submitted upon request could also provide the Department with raw data from which a better understanding of the overall performance history and reliability of repaired tanks and certain types of tank systems could be obtained. With the recent increases in storage tank technology and equipment, trend analysis is a valuable means of feedback to technology and equipment, trend analysis is a valuable means of feedback to indicate problems, to guide future industry advancement, and to shape future rules.

The Department does not believe that a record retention requirement of six years will cause an undue burden on the regulated community. Concerning the location of records, the Department has modified N.J.A.C. 7:14B-5.3(g) to give the owner/operator the option of maintaining records at the site or making them available upon request.

COMMENT: One comment was received stating that N.J.A.C. 7:14B-5.3(g) included an incorrect reference. N.J.A.C. 7:14B-5.3(a)1, 2, and 3 should not be referenced because they do not exist.

RESPONSE: It is true that N.J.A.C. 7:14B-5.3(a)1, 2, and 3 do not exist. The Department has changed this sentence to read "After a six year period or after the facility goes out of operation, an owner or operator may make a written request to discard any such documents."

N.J.A.C. 7:14B-5.4 Interim inventory control and manual tank gauging requirements

COMMENT: Three commenters pointed out that the rules should specify that the monthly inventory reconciliations that are required must be based on daily inventory records, as recommended by the American Petroleum Institute, the EPA, and the Occupational Safety and Health Administration (OSHA).

RESPONSE: The Department agrees and has modified the language in N.J.A.C. 7:14B-5.4 accordingly, with the exception that owners or operators of remote, unmanned sites may prepare monthly inventory reconciliations based on product transfers and monthly volume measurements.

COMMENT: One comment was received suggesting that the rules be expanded to mandate uniform inventory control reporting forms for all underground tank owners in the State.

RESPONSE: The Department requires that monthly inventory reconciliations be prepared based on daily records and that monthly inventory reconciliations be maintained for a period of no less than six years (see N.J.A.C. 7:14B-6.6(a)2). The Department does not believe it is also necessary to mandate inventory control reporting forms, but there will be a suggested inventory control form given in the technical guidance document and the Department does encourage owners and operators to follow its format.

COMMENT: One commenter supported the proposed rule's release detection limit of "at least one percent of the tank volume plus 130 gallons", while another commenter noted that N.J.A.C. 7:14B-5.4 should read "at least one percent of the tank's monthly flow-through plus 130 gallons."

RESPONSE: N.J.S.A. 58:10A-28 states that the owner or operator must investigate and report "an unaccountable loss of the equivalent of one percent of the storage capacity of an underground storage tank or 40 gallons, whichever is smaller." The Department, in conjunction with 45 experts surveyed, believes such losses are too difficult to measure for the average tank owner, since complex statistical calculations would be necessary. Therefore, the Department decided to adopt the figure developed by the U.S. Environmental Protection Agency for their final regulation, 40 CFR 280: 1 percent of monthly flow-through plus 130 gallons. The preamble to the Federal regulations (see 53 FR 37157 (1988)) discuss this standard. The original publication of the proposed Department rules (see 21 NJR 2242) mistakenly read "one percent of the tank volume" when "one percent of the monthly flow-through" was intended. The rules at N.J.A.C. 7:14B-5.4 have been corrected to read: The owner or operator of an underground storage tank system shall conduct inventory reconciliations on a monthly basis to detect a release of at least one percent of the tanks monthly flow-through plus 130 gallons. N.J.A.C. 7:14B-7.1(a)1 has also been modified accordingly.

COMMENT: One comment was received stating that inventory losses which constitute a "suspected release" should take into account normal pumping through-put and the effects of product temperature. The commenter suggested that in-tank monitoring is a useful method for documenting thermally induced shrinkage.

RESPONSE: The Department does not desire to cause owners and/or operators to incur the expense of in-tank monitors for the sole purpose of inventory reconciliations, since automatic in-tank monitors cannot be used as a Department approved monitoring system unless site conditions preclude the use of vapor, ground water, of interstitial monitoring. It is true that thermal expansion and shrinkage of product and evaporation during pumping will affect the product volume, but these factors were already considered by the Environmental Protection Agency in determining that a "suspected release" exists if unaccountable volume losses are greater than one percent of tank through-put plus 130 gallons. The EPA retirement was based on the results from 20,000 measurements at nearly 600 tanks nationwide. Actual inventory records were used in a computer simulation of leak rates. Notice of this study was published in the Federal Register (see 53 FR 10403 (1988)).

COMMENT: One commenter argued that diesel fuel tanks for emergency generators are very similar to heating oil tanks in that both have return lines to the tanks. The commenter thought that these tanks for emergency generators should also be exempted from the requirements of N.J.A.C. 7:14B-5.4 since they have the same problem with inventory control as heating systems.

RESPONSE: The Department maintains that tanks for emergency generators are capable of performing inventory reconciliations because they do not experience continuous flow and can, therefore, obtain reasonably accurate volume measurements daily. The heating oil tanks, however, generally experience continuous flow, making inventory volume measurements more difficult and often use such defense products as fuel oil Number 4 and Number 6. For these reasons, heating oil tanks are exempted from performing inventory reconciliations. The Department does recognize that daily volume measurements would be difficult to perform on underground storage tank systems for emergency generators at remote, unstaffed sites. Therefore, the Department has made an exemption in N.J.A.C. 7:14B-5.4(a), allowing monthly volume measurements at such remote sites instead. N.J.S.A. 58:10A-27 allows inventory records to be maintained with a "periodic average."

COMMENT: Six different commenters called the inventory controls redundant and/or unnecessary. Specifically, commenters stated that inventory reconciliations should not be needed for the following under-

ground storage tank systems: any secondarily contained system, any double-walled waste oil tank, any diesel fuel tank system for emergency generators that has other "controls" in place including secondary containment, and for any tank system where a Department approved monitoring method is in place and operational.

RESPONSE: N.J.S.A. 58:10A-27 and N.J.S.A. 58:10A-28 require that inventory reconciliations be done for each underground storage tank, while N.J.S.A. 58:10A-29 requires, in addition, that all facilities be equipped with an approved method of secondary containment or a monitoring system. Thus, the Department maintains that inventory reconciliations are still needed for secondarily contained underground tank systems, including double-walled tanks for waste oil, and for underground tank systems which have Department approved monitoring systems in place and operational. Inventory tracking is also a good business practice for accounting and legal purposes. Most major oil companies require retailers to perform inventory reconciliations.

COMMENT: Two commenters noted that N.J.A.C. 7:14B-5.4(a) through (d) were hard to read and generally unclear. Four commenters requested a sample calculation to be included for determining a suspected release.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:14B-5.4 has been clarified to indicate that weekly tank gauging (see N.J.A.C. 7:14B-5.4(c)) and the given table for Weekly Standards and Monthly Standards for determining suspected releases (see N.J.A.C. 7:14B-5.4(d)) apply only to waste oil. Without such clarification, readers of the rules may be confused by the two conflicting standards given in N.J.A.C. 7:14B-5.4(a) and (d). The standard in N.J.A.C. 7:14B-5.4(a) for detecting a release is one percent of the tank's monthly flow through plus 130 gallons (the detectability limit designated by EPA in their Federal regulations at 40 CFR 280 and subsequently adopted by the Department) which is clearly different from the weekly and monthly standards for waste oil USTs given in the table in N.J.A.C. 7:14B-5.4(d)). The Department will assist people in the calculation of a suspected release upon request but believes that one percent of monthly tank through-put plus 130 gallons is generally straightforward.

COMMENT: One comment was received requesting that the wording of N.J.A.C. 7:14B-5.4(d) be changed from "A release is suspected . . . if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table" to "A release is suspected . . . if the variation between beginning and ending measurements as described in (c) above exceeds the weekly or monthly standards in the following table".

RESPONSE: The Department agrees with this comment. The table in N.J.A.C. 7:14B-5.4(d) refers to a "weekly standard" in determining whether or not there is a suspected release. The weekly test is described only in N.J.A.C. 7:14B-5.4(c) for waste oil tanks. Therefore to avoid confusion, N.J.A.C. 7:14B-5.4(d) has been modified to refer only to N.J.A.C. 7:14B-5.4(c), not the rest of N.J.A.C. 7:14B-5.4.

N.J.A.C. 7:14B-5.5 Release response plan

COMMENT: One commenter suggested that the term "release" be changed to the term "discharge" in N.J.A.C. 7:14B-5.5 in referring to a "release response plan" to remain consistent with the Department language throughout these rules.

RESPONSE: "Release" is defined as a leak or discharge in N.J.A.C. 7:14B-1.6. The Department intends to require a response plan for either a leak or a discharge and so is not changing the language in N.J.A.C. 7:14B-5.5.

COMMENT: One commenter did not agree with the necessity of having a release response plan since the rules themselves spell out the responses necessary in the case of a release. Four comments were received requesting that the Department allow 180 days to prepare release response plans, especially for the sake of owners with many tanks. One comment was received asking whether the rules require a corrective action contractor to be retained.

RESPONSE: The Department believes the release response plan is an important safety feature at facilities with regulated underground storage tank systems. In the interest of the people who work on these sites, their neighbors, and the environment, the Department maintains that the plans must be made available within 90 days of implementation of these rules. Gathering phone numbers and outlining the action steps already given in N.J.A.C. 7:14B-8 should not be unduly time-consuming. Note that N.J.A.C. 7:14B-5.5(a)3 does not require a corrective action contractor to be retained, although it is advisable. The Department believes the language in N.J.A.C. 7:14B-5.5(a)3 does not need revision.

COMMENT: One commenter felt that the release response plan should also be filed with the local fire department and local health department or any other agency which would be called upon to assist should a problem arise.

RESPONSE: The Department does not believe this is necessary. As long as the release response plan is available on the site, the fire department, the local health department, and the Department will be able to consult it. Moreover, when a discharge occurs at a facility, the owner and/or operator should contact their local fire department and local health agency as well as the Department's Release Hotline. Specifics about the product discharged, the facilities' operations, and other safety factors can be given over the phone at that time.

COMMENT: One commenter asked if facilities not subject to the requirements of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., but subject to Federal regulations at 40 CFR 112 would still need a release response plan under the Department rules.

RESPONSE: Any UST subject to these rules requires a release response plan. The Department will accept any release response plan already prepared and available at the facility if it includes the information required in N.J.A.C. 7:14B-5.5(a) and is current.

N.J.A.C. 7:14B-5.6 Right of entry

COMMENT: One commenter requested that the phrase "or condemning authority" be added to allow the agency performing a condemnation to enter the site and determine if contamination exists.

RESPONSE: The State Act does not provide for the right of entry to any other State agency for the purpose of inspection of the UST facility for contamination.

COMMENT: There were several issues of concern to commenters on the right of entry provision. Several commenters requested that the Department give advance notice for an inspection. Others want to know the identities of the authorized representatives. Several commenters wish to restrict the inspection to the tank system and deny access to the remainder of the site. Finally, comments were received concerning the denial or revocation of registrations (see N.J.A.C. 7:14B-2.8) and permits (N.J.A.C. 7:14B-10.10) if access to facility were denied by the owner or operator.

RESPONSE: N.J.S.A. 58:10A-30 gives the Department the authority to enter a property at reasonable hours and without prior notice. The Department wishes to retain its ability to enter and inspect a site (meaning the tank systems as well as the remainder of the site) without prior notice, even though it usually does arrange an appointment first, at a time convenient to all parties involved.

COMMENT: Two comments were received requesting that a sample taken by the Department or its authorized representative should be split with the owner or operator to permit analysis. In addition, one commenter noted that the Department should inform the owner or operator prior to any sampling to allow the owner or operator to have a representative on-site to observe the sampling and assume split-sample custody, and that the Department's agent who takes the sample should be trained in sampling procedures and certified.

RESPONSE: The Department agrees to split samples with the owner or operator upon request. The owner or operator, or their designated representative, must be present at the time of sampling and assume possession of split samples due to the quality assurance/quality control considerations in the chain of custody. The Department's agent who takes samples will follow the Division of Water Resources Field Procedures Manual for Water Data Acquisition and/or the Division of Hazardous Site Mitigations Field Sampling Procedures Manual. There is no certification program at this time for sampling.

SUBCHAPTER 6. MONITORING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

N.J.A.C. 7:14B-6.1 General monitoring requirements for all underground storage tank systems

COMMENT: One commenter stated the leak detection monitoring wells for small facilities should be required on a case-by-case basis and that there are other technologies which can be utilized.

RESPONSE: The Department is requiring discharge detection observation wells to satisfy the monitoring requirements of N.J.A.C. 7:14B-6, assuming the site conditions allow the use of them. However, there are other methods which may be employed if the use of discharge detection observation wells are precluded. In-tank monitors may be used in this case. The Department has decided that discharge detection observation

wells are the best method to detect releases into the environment for single walled underground storage tank systems. The use of such systems will be the best protection against any adverse impact to the environment.

COMMENT: One commenter suggested that the installation of a meter and the manual testing of oil before and after delivery will produce reasonably accurate data on tank leaks, and that stringent manual testing requirements will fulfill the goal of the monitoring procedure. Number 2 heating oil does not have the same viscosity as gasoline; therefore, the environmental threat is not as severe since the flow of the substance will be inhibited by the difference in viscosity.

RESPONSE: The Department disagrees. The Department believes that the manual testing will not provide the degree of accuracy that external monitoring or interstitial monitoring will provide. Large amounts of product may go undetected over a period of time if a tank is discharging. The monitoring systems that the Department is requiring will detect releases sooner and with greater efficiency. Inventory control reconciliation is required for all underground storage tanks and the method described would adequately satisfy the requirement. However, heating oil tanks are temporarily exempted from monthly inventory reconciliation requirements as stated in N.J.A.C. 7:14B-1.4(d) and 5.4(a)1. This is discussed further on pages 62 through 65 in the Basis and Background document.

COMMENT: One commenter stated that soil vapor monitoring or ground water monitoring wells cannot be used for Number 6 fuel.

RESPONSE: The Department believes that technology exists for the monitoring of Number 6 fuel oil. Ground water monitoring can be accomplished for Number 6 fuel oil due to the fact that it will float on the ground water. If the site conditions meet the requirements for ground water monitoring as specified in N.J.A.C. 7:14B-6.2(b)2, then it is feasible to detect releases on the ground water. The Department agrees the soil vapor monitoring probably cannot be used in most instances. However, there are other methods to detect releases. One example is using tracers to detect releases. The tracer may be added to the Number 6 fuel oil and sensors employed to detect that tracer. The tracer is usually a compound that is not native to the surrounding environment. In the event the monitoring system employed detects the tracer, then this is an indication of a release.

COMMENT: One commenter stated that monitoring requirements for tanks used solely for emergency generators should not be as rigorous as those for other tanks.

RESPONSE: The Department believes that tanks located at emergency generator sites have just as much chance of having a release as tanks located in other areas. Therefore, the Department is requiring that emergency generator tanks comply with the monitoring requirements specified in N.J.A.C. 7:14B-6.

COMMENT: One commenter stated that it is not practical to check for proper system operation once every 30 days at remote unstaffed emergency generator sites. Monitoring systems should be calibrated, operated and maintained in accordance with the manufacturer's instructions.

RESPONSE: N.J.S.A. 58:10A-26 states that each monitoring system shall be inspected at least monthly. The Department further believes that inspecting the monitoring system monthly is necessary for the proper maintenance of the monitoring system. This is not an unnecessary burden upon the owner or operator of the facility.

COMMENT: Three commenters requested that the Department's ability to specify which monitoring system and method of secondary containment may be used at a facility (see N.J.A.C. 7:14B-6.1(e)) be deleted because it is incumbent upon the owner or operator to be knowledgeable of and be in compliance with all requirements.

RESPONSE: In certain situations, the Department may specify additional protective measures and release detection methods if the proposed or existing monitoring system will not adequately detect releases or there is a higher risk of a release occurring. The two situations listed in N.J.A.C. 7:14B-6.1(e) would pose a threat to human health and the environment. The Department wants the flexibility to reserve the right to specify what type of monitoring system and in some instances, secondary containment would be required if such conditions existed.

COMMENT: One commenter stated that continuous electronic monitoring should be exempted from the written procedure requirements since they are inherently self-supervising and will sound an alarm if malfunctioning.

RESPONSE: The Department disagrees with this comment. The written monitoring procedure is required for the following reasons: (1) this information should be readily available for any inspectors who are examining the monitoring system for compliance with N.J.A.C. 7:14B-6;

and (2) all systems require some maintenance to keep the system operating properly. Continuous electronic monitoring systems require periodic checks and system performance evaluation. No system is inherently self-supervising.

COMMENT: Four commenters stated that because of personnel changes, it will be difficult to advise in advance who will implement procedures. Two of the commenters stated that N.J.A.C. 7:14B-6.1(f)4 should be deleted entirely because it is the owner's or operator's responsibility to comply with monitoring.

RESPONSE: The Department disagrees with this comment. These records must be available on site, not submitted to the Department. To add or delete information to the records stored at the site would not be a burden to the owner or operator.

COMMENT: Three commenters suggested that owners or operators of multiple UST facilities be allowed to keep monitoring procedures at a central location and required to make them available upon request.

RESPONSE: The Department disagrees with this comment. These records must be kept at the facility to allow any implementing agency to inspect the monitoring procedures. The monitoring procedures of the specific monitoring system are more useful at the facility than at a central location. The owner of multiple facilities may also keep a copy of these records at the central facility.

COMMENT: One commenter requested that the Department delete the requirement that the person responsible for monitoring and maintaining the monitoring equipment also be responsible for its repair. It is not necessary for the person to be trained in repairing the monitoring equipment.

RESPONSE: The Department agrees with this comment and has replaced the term "repair" with the term "maintenance."

COMMENT: One commenter stated that N.J.A.C. 7:14B-6.1(j) should read "All access points accessible to grade for monitoring systems shall be permanently marked or tagged with the words 'for monitoring only', the facility number listed on the Registration Certificate and, if applicable, the well drilling permit number."

RESPONSE: The Department agrees with this comment and the phrase "for monitoring only" has been added to N.J.A.C. 7:14B-6.1(j) to avoid confusion with other access points associated with UST systems such as fill ports.

N.J.A.C. 7:14B-6.2 Monitoring requirements for new underground storage tank systems

COMMENT: One commenter stated that the "slash" (/) at N.J.A.C. 7:14B-6.2(a) and (a)4 is not a proper punctuation mark. Is the "/" to mean "and" requiring the alarm to be both audible and visual, or may it be audible, visual, or both?

RESPONSE: The Department has replaced the "slash" (/) with term "and/or" to further clarify the meaning.

COMMENT: Four commenters stated that the word "of" between "above" and "the" at N.J.A.C. 7:14B-6.2(b) should be changed to "if".

RESPONSE: The Department has replaced "of" with "if."

COMMENT: One commenter stated that soil vapor as an indicator of product release is highly susceptible to false alarms when located around active dispensing areas and that these false alarms may lead to systems being shut down.

RESPONSE: The Department believes that vapor monitoring systems are effective and reliable monitoring devices if they are installed and operated properly. Vapor monitoring devices are inherently more sensitive than ground water monitoring. They can detect extremely small releases (0.003 gallons per hour) under certain conditions. The vapor sensors used are set at predetermined levels so the background interference associated with the underground storage tank facility will not mask any releases should they occur. A facility using vapor monitoring will have to practice good tank management techniques. Any spillage of the product stored on the surface at the UST site may cause the sensors to indicate a false positive. Combined with the other requirements in these rules, the Department believes that vapor sensing is a valid and effective monitoring option.

COMMENT: One commenter suggested replacing the word "contamination" with "interference" at N.J.A.C. 7:14B-6.2(b)1(iv).

RESPONSE: The Department agrees with this comment and has replaced the term "contamination" with the term "interference."

COMMENT: Three commenters suggested defining "observation well" and one of the commenters suggested changing "observation well" to "monitoring well."

RESPONSE: In reviewing N.J.A.C. 7:14B-6, the Department agrees that the term "observation well" is ambiguous. The Department has thus

added a definition of "discharge detection observation well" to N.J.A.C. 7:14B-1.6. A discharge detection observation well is defined as "an access point constructed of screen and casing used in conjunction with a monitoring system to detect a release of product or compound which is stored in the underground storage tank system in the vapor or liquid phase, for the operational life of the underground storage tank system." For the purpose of these rules, the term "discharge detection observation well" is referring to N.J.A.C. 7:14B-6, an access point to employ a method of monitoring, either with a leak detection system or a discharge detection system. The discharge detection observation well is used solely for these items. This is not to be confused with the term "monitoring well," which is used in other subchapters. The monitoring well is used to ascertain the quality of ground water. A monitoring well is required when an owner or operator is conducting a discharge investigation for a suspected or confirmed release, as specified in N.J.A.C. 7:14B-7 and 8, or for the closure of the UST system, as specified in N.J.A.C. 7:14B-9. For existing underground storage tank systems, a well permit is required from the Bureau of Water Allocation prior to the emplacement of the discharge detection observation well. However, a discharge detection observation well installed with a new underground storage tank installation will not need a well permit to install the screen and casing if the screen and casing is put in at the same time as the UST system. The reasoning is further explained in the Basis and Background Document on pages 75 and 76.

COMMENT: One commenter stated that the word "immiscible" could be construed to require that a substance have zero solubility in water, a condition that would exclude all liquid substances. The commenter suggested defining "immiscible" as some lower limit of solubility such as less than one milligram per milliliter.

RESPONSE: The use of the word immiscible implies that the substance stored will not readily mix with water. In every instance, there will be some interaction between the product stored and water. The slight solubility will not interfere with detection of the product stored because most of the product will be floating on the ground water and thus detectable. The Department has chosen not to define a lower limit of solubility for a product because of the many variable factors involved.

COMMENT: Three commenters suggested increasing the distance a well is located from a tank because a well within two feet of a tank can serve as a conduit for a discharge to migrate to the water table.

RESPONSE: The Department has changed the requirement for a discharge detection observation well from "within two feet of the tank system" to "adjacent to the tank system" in N.J.A.C. 7:14B-6.2(b)1 and 6.2(b)2iii. In reviewing this issue, it has been determined that some tank systems will not be accurately identified to within two feet of its true location. There are the inherent dangers of damaging the tank system when placing discharge detection observation wells if the tank system is not located properly. With this in mind the Department has changed the requirement to allow for the variables that will be encountered. The Department believes that this will eliminate any problems caused by the well contacting a portion of the tank, but keep the intent of detecting a discharge from the tank as soon as possible.

COMMENT: One commenter suggested that the specified constituents specified in N.J.A.C. 7:14B-6.2(b)2vii be listed in the rules.

RESPONSE: The Department has deleted N.J.A.C. 7:14B-6.2(b)2vii for various reasons. (1) The Department believes that the detection of floating free phase hazardous product by itself will be appropriate for ground water monitoring. If the site conditions and the product stored meet the requirements of N.J.A.C. 7:14B-6.2(b)2, then release from the UST system will be detected as product soon after the release occurs. Once floating free phase hazardous product is detected, the facility is required to initiate corrective action under N.J.A.C. 7:14B-8. (2) Potential problems may exist in the interpretation of the analytical results. If a variety of substances are stored at the UST facility, one analytical result may not address the full range of dissolved constituents which are analogous to the substance stored at the facility. This would create confusions as to what tests and methods are to be utilized and whether the target compounds for the substances stored at the facility are addressed. (3) The problem of obtaining valid ground water samples from discharge detection observation wells which are not permitted by the Bureau of Water Allocation. Some discharge detection observation wells were placed at the time of installation. These discharge detection observation wells were not installed by a licensed well driller, but by the underground storage tank contractor. Problems with the validity of the ground water samples would arise.

For these reasons, the Department has deleted the requirement for the yearly ground water sampling for dissolved phase constituents as an unnecessary activity.

COMMENT: One commenter stated that a typographical error exists in the proposed rule. N.J.A.C. 7:14B-6.2(b)3c should be N.J.A.C. 7:14B-6.2(b)3vi.

RESPONSE: This typographical error is in the mailing list version of the rules but does not appear in the New Jersey Register version of the rules. Since the New Jersey Register version is the "official" version, this citation does not need to be corrected.

COMMENT: One commenter stated that N.J.A.C. 7:14B-6.2(b)3iii and 6.2(b)3v may be construed as being in conflict.

RESPONSE: The Department has made changes to N.J.A.C. 7:14B-6.2(b)3v so as to be consistent with N.J.A.C. 7:14B-6.2(b)3iii. In N.J.A.C. 7:14B-6.2(b)3v, the Department has deleted the specifications of N.J.A.C. 7:14B-4.4(d)3. The Department has added a new subparagraph; N.J.A.C. 7:14B-6.2(b)3vi, which reads, "the liner shall be designed to prevent precipitation, ground water, or soil moisture from entering the excavation area." In general, the liner must meet the conditions as specified in N.J.A.C. 7:14B-4.4(d)4, 5, and 6, and N.J.A.C. 7:14B-6.2(b)3iii, iv, and vi. With these changes, N.J.A.C. 7:14B-6.2(b)3iii and v are now compatible with each other.

COMMENT: Many commenters stated that in-tank monitors are a valid and acceptable discharge detection method and that their use meets the intent of the State Act.

RESPONSE: The Department has several concerns about the use of in-tank monitors as an acceptable monitoring system as detailed on pages 71 through 73 of the Basis and Background document. Primary among the reasons is the inability of in-tank monitors to measure a release from the tank system in the environment outside of the tank. Thus, the owner or operator of a tank system must investigate the feasibility of using external monitoring prior to obtaining Department approval for the use of the intake monitor as a monitoring device. If the tank is in an area specified in N.J.A.C. 7:14B-4.1(d)2 then, in addition to the site characterization requirements, the owner or operator must conduct a site assessment in accordance with the closure requirements of N.J.A.C. 7:14B-9 prior to obtaining Department approval of the in-tank monitoring device.

COMMENT: Four commenters stated that N.J.A.C. 7:14B-6.2(b)4 should be revised, changing N.J.A.C. 7:14B-6.2(b)4i to 6.2(b)4 and N.J.A.C. 7:14B-6.2(b)4i(1) and (2) to 6.2(b)4i and ii. Additionally, N.J.A.C. 7:14B-6.2(b)4ii and iii should be changed to 6.2(b)4iii and iv. Finally, N.J.A.C. 7:14B-6.2(b)4 should have an "or" after i(2) and ii.

RESPONSE: The Department disagrees. The citations are accurate as they appear in the rules. If the site conditions as specified in N.J.A.C. 7:14B-6.2(d)1, 2, or 3 preclude the use of vapor monitoring, ground water monitoring, or interstitial monitoring, the owner or operator has three options available: an in-tank monitor, upgrade to secondary containment, or close the underground storage tank. This is clearly stated in N.J.A.C. 7:14B-6.2(b)4.

COMMENT: One commenter stated that citation N.J.A.C. 7:14B-6.2(c)4 should be N.J.A.C. 7:14B-6.2(c)1. In addition, N.J.A.C. 7:14B-6.2(c)4, as written, requires a tank owner who cannot install vapor or hazardous substances discharge monitoring systems to install an in-tank monitor and upgrade the tank system to meet the requirements of N.J.A.C. 7:14B-4.4. The rules should allow the tank owner to either install an in-tank gauge or upgrade to secondary containment.

RESPONSE: The Department agrees. The commenter is referring to the citation as it appears in the mailing list version of the rules. The correct citation as it appears in the New Jersey Register is N.J.A.C. 7:14B-6.2(b)4. N.J.A.C. 7:14B-6.2(b)4 already gives the owner or operator an option of either installing an in-tank monitor or of upgrading with secondary containment. The line now reads, "The owner or operator of an underground storage tank system located on a site where conditions as specified in (b)1, 2 or 3 above preclude the use of testing for vapors or hazardous substances shall take one of the following actions:", adding the terms "one" and "actions" to clarify the intent.

COMMENT: One commenter stated that a site assessment should not be required unless the tank in question is suspected of discharging.

RESPONSE: The site assessment is required for existing underground storage tank systems that are not equipped with secondary containment, are located in an area specified in N.J.A.C. 7:14B-4.1(d)2, and where the owner intends to install an in-tank monitor. For Department approval of the in-tank monitor, a full site assessment must be conducted because these areas are of primary concern.

COMMENT: One commenter questioned: does the ability to perform manual tank gauging on new waste oil tanks containing less than 1,000 gallons also apply to existing waste oil tanks of less than 1,000 gallons?

RESPONSE: The Department has reworded N.J.A.C. 7:14B-6.2(e) to make it clearer. N.J.A.C. 7:14B-6.2(e) means that a waste oil tank which cannot use vapor monitoring, ground water monitoring, u-tubes within a liner, or in-tank monitoring may use manual tank gauging as specified in N.J.A.C. 7:14B-5.4(c). Waste oil tanks have a variety of substances in them and the methods employed above may not cover the variety of products that are stored in waste oil tanks. Thus manual tank gauging would be an acceptable method.

N.J.A.C. 7:14B-6.3 Monitoring requirements for new piping on new underground storage tank systems

COMMENT: One commenter stated that this section requires vapor or liquid sensor monitoring for double-walled piping but allows use of a pressurized shut-down monitoring device on single-walled piping. The shut-down device should be permitted on double walled piping as well.

RESPONSE: The Department agrees and has added, at N.J.A.C. 7:14B-6.3(a), an option of a pressurized shutdown system for the monitoring of double-walled piping.

COMMENT: One commenter stated that the term "contamination" at N.J.A.C. 7:14B-6.3(a)2i(3) might be better replaced with the term "interference."

RESPONSE: The Department agrees and has replaced the term "contamination" with the term "interference" at N.J.A.C. 7:14B-6.3(a)2i(3).

N.J.A.C. 7:14B-6.5 Construction requirements for monitoring systems using screen and casing

COMMENT: One commenter questioned whether the Department will allow cement to be as deep as the casing-screen connection. A minimum of two feet of casing and a minimum of two feet of cement suggests that both minimum requirements must be met in all cases.

RESPONSE: N.J.A.C. 7:14B-6.5(a)2 states that the minimum length of solid casing and the minimum depth of grouting with neat cement must be two feet. If a discharge detection observation well was installed with two feet of solid casing, then the neat cement grout must be two feet at a minimum. In this scenario, both solid casing and grout would extend two feet below the surface.

COMMENT: One commenter suggested replacing the term "prevent" with the term "minimize" at N.J.A.C. 7:14B-6.5(a)6 because "prevent" could be construed to mean that absolutely no sediment would be allowed into the well, which no well screen could achieve.

RESPONSE: The Department agrees with this comment. "Prevent" has been replaced with "minimize" at N.J.A.C. 7:14B-6.5(a)6.

COMMENT: One commenter stated that installing an observation well at the time of retrofitting a tank, when the tank is exposed, does not require the services of a licensed well driller as long as specific criteria for the backfill around the observation well are met.

RESPONSE: The Department has set forth, at N.J.A.C. 7:14B-6.5, the conditions when a licensed well driller is required when installing a discharge detection observation well. This is discussed in further detail in the Basis and Background Document on pages 75 and 76.

N.J.A.C. 7:14B-6.6 Recordkeeping

COMMENT: Various commenters questioned the six-year requirements for maintaining records. Several commenters feel that six years is unnecessary and too long and that it should be pared down to three years. Other commenters questioned the procedure for discarding records required by N.J.A.C. 7:14B-6.6(c). Finally, one commenter stated that the recordkeeping requirement is unnecessarily cumbersome and unwarranted and should be modified to mirror the existing Federal regulations.

RESPONSE: The Department believes that these records would be necessary to regulatory agencies in the investigation of any suspected or confirmed releases at the facility or in the nearby vicinity. The Department requires records not to be discarded without express permission from the Department. The Department believes that six years is not an unnecessary length of time for records of a facility to be retained.

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

N.J.A.C. 7:14B-7 Release reporting and investigation

COMMENT: The term "release" in N.J.A.C. 7:14B-7 should be changed to "discharge" in order to be consistent with the New Jersey Spill Compensation and Control Act and N.J.S.A. 58:10A-21 et seq.

RESPONSE: "Release", as defined in these rules, means a leak or a discharge. It is an appropriate term in context. When "discharge" is used it means specifically a release to the environment. When "leak" is used,

it means specifically a release from a primary vessel into the secondary container.

COMMENT: The Department must establish uniform procedures for tank investigations and cleanup requirements for all bureaus.

RESPONSE: These rules deal specifically with the Department's responsibilities and responses to underground storage tank system releases regulated by N.J.S.A. 58:10A-21 et seq. Every effort has been made to conform these requirements with other Departmental policies and procedures where possible. Further coordination efforts are currently being addressed by the Department to provide consistency throughout.

COMMENT: The Department should delineate how the UST program will relate to the Environmental Cleanup Responsibility Act (ECRA), N.J.S.A. 13:1K-6, program regarding reporting discharges.

RESPONSE: ECRA has no specific provision for reporting discharges. If a recent or catastrophic discharge involving a regulated tank is encountered during an ECRA investigation, reporting will be required pursuant to the authority of N.J.A.C. 7:14B-7.

N.J.A.C. 7:14B-7.1 Suspected releases

COMMENT: Some procedures concerning suspected releases may take longer than seven days to complete.

RESPONSE: The purpose of N.J.A.C. 7:14B-7.1(a) is to verify a suspected release. To allow an extended period of time to conduct the investigation could allow a potentially serious pollution incident to continue unabated, and do irreparable environmental damage, as well as pose a threat to human health.

COMMENT: Since ground water investigations will take longer than seven days to complete, allow seven days only for those activities listed in N.J.A.C. 7:14B-7.2(a). For those activities specified in N.J.A.C. 7:14B-7.2(b), only require that they be conducted in an expeditious manner protective of the environment.

RESPONSE: The Department agrees that ground water investigations may take longer than seven days to complete; therefore, N.J.A.C. 7:14B-7.1(a) will be modified to read, "... requirements of N.J.A.C. 7:14B-7.2(a) within seven days ..." Additionally, N.J.A.C. 7:14B-7.2(b)1 will be amended to read, "... within 90 days after conducting the investigation required in (a) above, conduct analyses. ..." The Department believes that 90 days will be sufficient time for these activities, and will not create an undue burden on the regulated community.

COMMENT: A single precision test should be considered an indication of a potential release and other activities should be conducted to confirm that release.

RESPONSE: N.J.A.C. 7:14B-7.1(a) states clearly that a single precision test does precipitate a complete investigation of a suspected release.

COMMENT: N.J.A.C. 7:14B-7.1(a)7 contains an incorrect citation.

RESPONSE: The citation to N.J.A.C. 7:14B-6.3(b)1 located at N.J.A.C. 7:14B-7.1(a)7 will be changed to N.J.A.C. 7:14B-4.3(j)1 through 5.

N.J.A.C. 7:14B-7.2 Investigating a suspected release

COMMENT: One comment was received suggesting that if a release is suspected based on a tank integrity test failure, a test should be performed to confirm the results.

RESPONSE: The Department recognizes that many factors can lead to errors or inconclusive results during tank system precision tests. Therefore, in certain, but not all, circumstances the Department agrees that performing a second tank integrity test is an appropriate method to confirm a suspected release identified in the initial integrity test failure. The Department intends to specify under which circumstances it is appropriate to conduct a second integrity test to confirm the results of an initial test. Since the addition of this information would constitute a substantive change to the rules, the Department will propose this addition at a later time.

COMMENT: Should N.J.A.C. 7:14B-7.2(b)1 end with "or" instead of "and" as in the Basis and Background?

RESPONSE: The Department believes that ground water sampling and other appropriate investigations will be necessary to confirm or disprove a release. Therefore, no change is warranted.

COMMENT: The Department should set clear guidelines as to what constitutes acceptable or unacceptable levels of dissolved contaminants.

RESPONSE: N.J.A.C. 7:14A-6.15 sets standards and requirements for ground water protection and response. It is not appropriate to address the issue of dissolved contaminants in these rules.

COMMENT: One comment was received which suggests that the Department either specify other appropriate investigation methods such as soil borings, or eliminate N.J.A.C. 7:14B-7.2(b)2.

RESPONSE: The various techniques available to investigate and confirm releases are often dependent upon site specific conditions. Further, new technology is rapidly being developed. As a result, the Department finds it advantageous to the owner and operator as well as protective of the environment to allow for alternate appropriate methods of investigation. Therefore, N.J.A.C. 7:14B-7.2(b)2 will not be deleted. However, N.J.A.C. 7:14B-7.2(b)3 has been reserved for a future proposal which will further specify alternate methods of investigating suspected releases of UST systems containing hazardous substances other than gasoline, kerosene or jet fuel.

N.J.A.C. 7:14B-7.3 Confirmed releases

COMMENT: Several commenters feel that requiring a contractor or consultant or "any person" to report a release, rather than the owner, would be inappropriate and impose a burden on the client relationship. It is suggested that the person with knowledge of a release notify the owner, not the Department. The owner would then notify the Department. One commenter feels that consultants and contractors who comply with this rule may be forbidden by his or her client from contacting the Department or, if they indicate they will comply, will not be chosen to be a contractor or consultant. Another commenter feels that the reporting requirement goes beyond the authority in the enabling statutes and denies persons their right to seek legal counsel. Attorneys faced with the reporting requirements may have a problem with the attorney/client privilege. Further comment suggested mirroring the requirements of 40 CFR 280.

RESPONSE: It is the Department's position that anyone having knowledge of a confirmed release has a responsibility to report that release to the Department for investigation and cleanup. Adding contractors to the list of responsible people adds another layer of protection to human health and the environment. The rules place the burden for reporting on any person with knowledge of a confirmed release and that person or persons will be subject to penalties for noncompliance as well as any person who interferes with anyone complying with the rules.

COMMENT: The reporting requirements at N.J.A.C. 7:14B-7.3(a) should satisfy all other State, Federal and local requirements, and thus eliminate duplicative reporting under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Hazardous Substance Discharge, Reports and Notices Act, N.J.S.A. 13:1K-15 et seq.

RESPONSE: The reporting requirements in N.J.A.C. 7:14B-7.3(a) satisfy the requirements of the Spill Compensation and Control Act. The regulated community is responsible for compliance with all applicable environmental laws and rules.

COMMENT: The term "laboratory" at N.J.A.C. 7:14B-7.3(a)2 should mean a Department certified laboratory.

RESPONSE: The Department agrees with the comment. N.J.A.C. 7:14B-7.3(a)2 will be changed to read: "Analyses by a laboratory, certified pursuant to N.J.A.C. 7:18, of ground water samples . . ."

COMMENT: The specific analytical methodologies should be listed in N.J.A.C. 7:14B-7.3(a)2.

RESPONSE: It is not practical to specify parameters in these rules since these analyses are variable depending on the substances stored. In addition, the science controlling these analyses is dynamic and the Department does not want to restrict any future advances.

COMMENT: Two comments were received requesting that the Department specify the concentration of contaminants which would be indicative of the presence of contamination in the ground water. The commenter asked how background contamination or contamination from another source is accounted for.

RESPONSE: The Department considers any measurable amount of contamination to be indicative of its presence in the ground water. Since this is dependent upon the lower limit of detectability of the laboratory instrumentation, and since this capability varies from laboratory to laboratory and is also dependent upon the specific analytical method used and can change with the state of the art, it is not possible to specify a particular concentration. However, the Department recognizes that the contamination found may in some instances not originate from the UST system in question (for example, an off-site source of contamination). In those instances, the Department will modify its corrective action requirements accordingly.

COMMENT: The reference in N.J.A.C. 7:14B-7.3(a)3 to N.J.A.C. 7:14B-9.2(c) is incorrect and should be N.J.A.C. 7:14B-9.2(b).

RESPONSE: The reference to N.J.A.C. 7:14B-9.2(c) will be corrected to read N.J.A.C. 7:14B-9.2(b) or 9.3(b).

SUBCHAPTER 8. CORRECTIVE ACTION

N.J.A.C. 7:14B-8 Corrective action

COMMENT: One comment was received suggesting that the rules include an assessment of the scope of the cleanup problem, and funding sources for cleanup.

RESPONSE: The Economic Impact Statement in the Summary of the proposed rules contains a discussion of the scope of the cleanup problem. The State Act contains no provision or authority for funding cleanups. The Federal Underground Storage Tank Trust Fund and the New Jersey Spill Fund provide public monies for corrective action; however, the responsible parties are subject to cost recovery for any expenditures from those two funds.

COMMENT: One comment was received suggesting that the Department develop a phase-in schedule for cleanup projects and their costs. Another comment suggested that any cleanup activity in progress on the date the rules are promulgated should be "grandfathered".

RESPONSE: The purpose of the requirements in N.J.A.C. 7:14B-8 are to protect human health and the environment from releases from UST systems. Similar authority and rules already exist under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 and their respective rules. Under these laws and rules, cleanup activities equivalent to those required by N.J.A.C. 7:14B-8 are presently underway at many sites where UST systems have had releases. "Grandfathering" existing cleanup sites, or phasing in new sites, is neither appropriate nor warranted due to the potential health, and environmental threat, and the Department's existing cleanup programs.

COMMENT: Two comments were received suggesting that the Department propose as a rule the document titled "Scope of Work—Investigation and Corrective Action Requirements for Discharges from Underground Storage Tanks and Piping Systems."

RESPONSE: The Scope of Work document was developed by the Department to guide consultants hired by UST owners or operators to perform corrective action activities. It is a technical guidance document and, by its nature, not appropriate for proposal as a rule by the Department.

COMMENT: One comment was received suggesting that a reference to American Petroleum Institute (API) Publication 1628, "A Guide to the Assessment and Remediation of Underground Petroleum Releases" should be included in the rules.

RESPONSE: API Publication 1628 is a detailed, technical guidance document, which, in the Department's view, serves as an excellent reference document for the regulated community. There are other published documents that serve a similar purpose. The Department has also developed a technical guidance document for corrective action requirements. The Department is concerned that the API Publication 1628 is subject to misuse or improper application given the complex nature of most environmental subsurface cleanups. Additionally, any differences between the API and Department publications can be confusing to the regulated community. Therefore, the API Publication 1628 is not included as a reference in these rules.

N.J.A.C. 7:14B-8.1 Immediate corrective action requirements and procedures

COMMENT: The requirement to immediately cease use of an UST system, upon confirming a release from that UST system, may result in delays in removing hazardous substances from the UST system as required by N.J.A.C. 7:14B-8.1(a)5. A faster alternative may be to pump product for profit, where demand exists, rather than ceasing use of the UST system and subsequently pumping out the contents. The Department should allow exemptions where the existing pumping system can be used to draw the product away from the leak.

RESPONSE: In order to "pump product for profit", the owner or operator would pump at a rate dependent upon customer demand, which would not necessarily be the most expeditious means of emptying the tank and could cause additional environmental damage depending on the location of the release (such as from piping) and the additional time needed to empty the tank. The cessation of use and removal of substances are more or less simultaneous requirements upon confirmation of a discharge and are intended to prevent further migration of contamination into the subsurface.

COMMENT: At times, immediately ceasing use of the UST system can cause an emergency problem, such as with certain UST systems at a nuclear power plant.

RESPONSE: In the event that a true emergency situation, such as an immediate threat to human health and safety, arises as a result of ceasing use of an UST system, the Department would expect that immediately subsequent to effecting all necessary actions to abate the emergency, the owner or operator would cease use of the UST system. Similarly, where a building's sole source of heat is from an oil burner, and the UST system containing heating oil has discharged, the Department would expect the owner or operator to provide an alternate source of heat prior to ceasing use of the UST system. The Department anticipated that the provisions of N.J.A.C. 7:14B-8.1(a)3, which require the mitigation of any health hazard, would suffice to cover these circumstances. However, to avoid confusion over which activity, N.J.A.C. 7:14B-8.1(a)2 or 8.1(a)3 needs to be performed first, the Department has added two provisions to N.J.A.C. 7:14B-8.1(a)2 to account for those situations where the health hazard needs to be abated prior to the ceasing of the use of the tank system.

COMMENT: One comment was received suggesting that the Department qualify which ignition sources must be removed. The Department should specify the distance from the vapors to the ignition source or specify that ignition sources within the ignitable zone be removed.

RESPONSE: Measurement of explosive vapors is dependent upon many variables, including different instrumentation, the calibration of those instruments and the specific sampling location. Due to these variables, it is difficult to specify a particular measurement or distance from an ignition source as being inherently "safe" or "hazardous" for all situations. N.J.A.C. 7:14B-8.1(a)3 insures that safe practices are followed to eliminate any hazards from explosion, fire, or vapor inhalation. One source of general guidance in this matter is National Fire Protection Association Standard 329 "Underground Leakage of Flammable and Combustible Liquids." The rules have been modified to incorporate this document by reference.

COMMENT: The Department should not require immediate removal of hazardous substances from a leaking UST system. A time frame such as 12 hours or 12 to 24 hours should be established, unless there is an imminent threat to public health or the environment. The hazardous substance should be removed from the part of the UST system where the discharge occurred.

RESPONSE: Any discharge of a hazardous substance into the environment poses a potential threat to public health and the environment. The Department requires the removal of the hazardous substances from a discharging UST system upon confirmation of such a discharge. To allow any additional time whatsoever would be remiss on the part of the Department.

Where the confirmation of a discharge is made by means of a "tank test" which clearly identifies the discharge is from the appurtenant piping to the tank, and the tank itself has tested "tight", it may only be necessary to remove product to a level below that which feeds the piping. If the tank itself fails, the only way of assuring that no additional hazardous substance will discharge into the environment is to remove all hazardous substances from the UST system.

COMMENT: One comment was received requesting whether a 2,000 gallon UST which has discharged must be closed.

RESPONSE: Pursuant to N.J.A.C. 7:14B-1.4(b)2 and 3, tanks with a capacity of 2,000 gallons or less used to store heating oil for on site consumption in residential or non-residential buildings are exempt from the requirements of these rules. However, tanks with a capacity of 2,000 gallons used to store any other regulated hazardous substance must comply with the requirements of N.J.A.C. 7:14B-8, when a discharge occurs. These tanks are not necessarily required to be closed when a discharge occurs. They may be repaired in accordance with the requirements of N.J.A.C. 7:14B-4 and 5.

N.J.A.C. 7:14B-8.2 Discharge mitigation requirements

COMMENT: The need exists for the Department to grant verbal or written emergency approval to discharge wastewater when dewatering contaminated water from an excavation hole. Delaying response to obtain a NJPDES permit first may lessen recovery and increase environmental damage.

RESPONSE: The NJPDES rules, N.J.A.C. 7:14A, specify emergency discharge procedures. This is not within the purview of the Underground Storage of Hazardous Substances Act and will not be addressed as part of these rules.

COMMENT: Three comments were received requesting that the Department revise the language at N.J.A.C. 7:14B-8.2(a)2 concerning isolating the soils from the environment by specifying that the soils to be isolated are "excavated" soils.

RESPONSE: The Department agrees with this comment and has modified N.J.A.C. 7:14B-8.2(a)2 accordingly.

COMMENT: Three comments were received stating that complete isolation of excavated soil from the environment is not possible.

RESPONSE: The Department believes that excavated soils which are contaminated can be readily isolated from the environment such that no release of hazardous substances will occur to surface or ground waters. This can be accomplished, for example, by placing the soil on a membrane of low permeability and covering the soil with a similar membrane. This same technique will, in all probability, prevent any measurable release of hazardous vapors into the air. However, since the technique cannot guarantee that there will never be any release into the air, the word "completely" has been deleted from N.J.A.C. 7:14B-8.2(a)2.

COMMENT: One commenter suggested that complete contaminated soil removal is unrealistic and that contaminated soil should instead be exposed to the air to enhance bio-degradation.

RESPONSE: Exposing soils contaminated with volatile organic compounds to the air will result in a discharge of hazardous substances. Under existing State environmental laws this type of activity is allowed but must be permitted by the Department in order to establish treatment requirements and discharge limitations. Since N.J.A.C. 7:14B-8.2(a)2 states "Remove or decontaminate soils . . .", no change is required.

COMMENT: Two comments were received indicating that the Department should adopt soil cleanup standards. Three comments were received indicating the need for a comprehensive contaminated soil remediation, removal and disposal program.

RESPONSE: The Department is in the process of developing such standards. Once soil cleanup standards are adopted, they will apply to corrective action activities undertaken pursuant to N.J.A.C. 7:14B-8.2(a)2. Appropriate language has been added to N.J.A.C. 7:14B-8.2(a)2 to reflect this requirement.

COMMENT: One comment was received suggesting that the maximum amount of allowable free product in the soils be specified, using perhaps the Paint Filter Liquids Test (Method 9095, SW-846). Three comments were received requesting that the Department delete all references to free product contaminated soils.

RESPONSE: Free product contaminated soils are those soils through which free product has drained and includes, at a minimum level of contamination, soils at residual saturation. Residual contamination of soil by free product can generate dissolved ground water contamination at concentrations comparable to those associated with free product on the ground water. Generally, ground water impacts from residual separate phase contamination of soil are greater and relatively inexhaustible in comparison to dissolved product contaminated soil. Free product contaminated soils, therefore, are a source of ground water contamination and must, in the Department's view, be remediated in all instances. The Department has determined that the Paint Filter Liquids Test, by its nature, would not be sensitive enough to identify soils at residual saturation, since product has already gravity drained through those soils. The Department has, however, developed two field methods for determination of free product contaminated soils. These are presented in the Department's document entitled: "Scope of Work—Investigation and Corrective Action Requirements for Discharges from Underground Storage Tanks and Piping Systems."

COMMENT: Two comments were received stating that monitoring well installation should only be required if in fact it has been determined that ground water has been contaminated.

RESPONSE: The Department disagrees with this comment. In most instances, when a release of gasoline, jet fuel or kerosene has occurred, the only reliable way of determining whether ground water has been contaminated is to install monitoring wells. For other hazardous substances, alternative or additional appropriate investigations may be warranted. The Department has reserved addressing investigations for other hazardous substances for a future rule proposal. N.J.A.C. 7:14B-8.2(a)3 has been modified appropriately to specify gasoline, jet fuel and kerosene.

COMMENT: One comment was received stating that delineation of the contaminant plume is a function of the minimum concentration used and may be unnecessary and impractical. Efforts should focus instead on recovery, treatment or containment.

RESPONSE: The Department agrees that recovery, treatment and/or containment are important parts of the cleanup effort. However, in order to determine appropriate remedial measures, and the receptors potentially affected by ground water contamination, the contaminant plume must be delineated. Delineation requirements are dependent on site specific

conditions and therefore some discretion can be exercised, but in every instance the owner or operator has the responsibility to define the plume.

COMMENT: One comment was received stating that the UST owner/operator should be allowed to propose alternative methods to determine the extent of the contamination. This could only be done through a site specific evaluation, which would determine the best site assessment method for that particular site. Such site specific evaluations could reduce costs and advance the state of the art of UST discharge mitigation.

RESPONSE: The Department recognizes the fact that technology does change and therefore included a provision in N.J.A.C. 7:14B-8.2(b) which allows alternate methods of discharge investigation or mitigation upon the approval of the Department.

COMMENT: A limit for the area of investigation should be defined at N.J.A.C. 7:14B-8.2(a)4 (for example, 1/2 mile radius of UST system).

RESPONSE: The New Jersey Pollutant Discharge Elimination System (NJPDDES) rules, N.J.A.C. 7:14A-6, also describes an area of investigation which must be conducted by a responsible party after a discharge of hazardous substances to the environment. Since any discharge from an underground storage tank system is subject to the NJPDDES rules as well as these rules, a change has been made to N.J.A.C. 7:14B-8.2(a)4 to incorporate the distances stated in the NJPDDES rules into the UST rules. Additionally, N.J.A.C. 7:14B-8.3(a)3i and ii have been modified for purposes of consistency.

COMMENT: The phrase "sources of pollution" at N.J.A.C. 7:14B-8.2(a)4 should be defined and limited to those publicly known to exist.

RESPONSE: Sources of pollution is a typographical error and should read, "surrounding population." The phrase itself is deleted upon adoption (see prior response).

COMMENT: The Department should better define the term "nearby wells". N.J.A.C. 7:14B-8.2(a)6 is qualified in the Basis and Background Document by "potentially affected nearby well". Why was this changed?

RESPONSE: N.J.A.C. 7:14B-8.2(a)6 has been changed to the following: "If ground water contamination is found, the nearest downgradient potable well and the nearest potable well potentially affected by contamination following preferentially along each subsurface structure (that is, storm/sanitary sewers, telephone conduits and cable vaults) shall be sampled and analyzed. Analyses must be targeted to the substances released." This definition was expanded to clarify what constitutes a potentially affected nearby well.

COMMENT: The phrase "... at least as stringent ..." at N.J.A.C. 7:14B-8.2(b) appears punitive and does not contemplate the magnitude of the problem. This phrase should be changed to "... a determination that it is a technically appropriate response to the discharge under investigation."

RESPONSE: Requiring that a discharge investigation or mitigation method be at least as stringent as the approved standards in this section is in no way designed to inflict punishment upon an owner or operator of a facility at which there has been a discharge. N.J.A.C. 7:14B-8.2(b) allows alternate methods in recognition of changing technologies that may become available. However, these methods must afford at least as much confidence that the investigation will address the incident as appropriately as the method prescribed by the Department.

N.J.A.C. 7:14B-8.3 Reporting requirements

COMMENT: One comment was received requesting that the owner of a private water supply well be notified of contamination of that well.

RESPONSE: N.J.A.C. 7:14B-8.3(c)2 requires the owner/operator of an UST system which has discharged a hazardous substance to report the discovery of contaminated potable water supply wells to the Department and to the appropriate local health agencies. The Department will ensure that the owner of a contaminated private water supply will be notified. Notification will be provided by the appropriate local health agency, or directly by the Department.

COMMENT: One comment was received requesting what assistance will be provided to remove contamination from a public or private water supply well.

RESPONSE: Both the New Jersey Spill Fund and the Federal Underground Storage Tank (UST) Trust Fund are available to provide assistance. The UST Trust can be used only when the contamination is from a Federally regulated petroleum UST.

COMMENT: One comment was received stating that corrective action of contaminated water supply sources is not addressed.

RESPONSE: N.J.A.C. 7:14B-8.3(a) addresses further corrective action requirements that will take place under authority of N.J.A.C. 7:14A-6.15. Any ground water contamination that affects water supply sources will

be addressed under this authority. Furthermore, alternate water supplies can be provided under authority of other existing environmental laws and rules.

COMMENT: One comment was received stating that the reporting requirement at N.J.A.C. 7:14B-8.3(a) is inconsistent with N.J.A.C. 7:1-7.5(a) and N.J.A.C. 7:1E-2.2(a) which require written reports within 10 days and 60 days, respectively. These rules should be revised to be consistent with N.J.A.C. 7:1E-2.2(a).

RESPONSE: N.J.A.C. 7:14B-8.3(a) requires reporting on all activities conducted in accordance with the requirements of N.J.A.C. 7:14B-8.1 and 8.2. The Department has determined that these activities will typically take up to 120 days or more to complete and that 60 days is in most instances not enough time for completion.

COMMENT: One comment was received requesting that the Department provide a mechanism for granting the owner/operator an extension of the 120-day deadline for reporting site investigation and corrective action requirements undertaken pursuant to N.J.A.C. 7:14B-8. Since the demand for qualified hydrogeologists will exceed the supply, a backlog will result.

RESPONSE: The Department understands that site specific conditions (for example, situations where ground water contamination has been identified and its extent must be defined via the installation of additional monitoring wells) and the limited availability of contractors/consultants may delay completion of activities outlined in N.J.A.C. 7:14B-8.1 and 8.2. However, the Department has determined, based upon a review of existing corrective action cases, that most of the required activities can be completed within 120 days. For those activities that have not been completed, N.J.A.C. 7:14B-8.3(a)5 requires, in addition to reporting corrective actions taken, that the owner/operator report on any actions planned, including an implementation schedule. Therefore, the Department believes that no mechanism for granting extensions is needed.

COMMENT: One comment was received stating that county planning boards should also be notified of a release and the corrective action response, since ground water contamination often becomes a regional problem.

RESPONSE: Due to the nature and scope of the problems resulting from regional ground water contamination, the Department has assigned the Bureau of Ground Water Pollution Assessment the responsibility of completing a comprehensive Statewide ground water pollution investigation database which will be used for planning and the evaluation of the Department's various ground water programs. County planning boards have access to this information.

COMMENT: One comment was received stating that most of the reporting requirements are not appropriate for minor discharges and would be wasteful, time consuming, expensive and punitive. Case-by-case requests by the Department as circumstances warrant, was suggested as an alternative.

RESPONSE: The Department believes that reporting is important for all discharges. In many instances, the full impact of a discharge and its effect on the environment will not immediately be evident. The requirements of N.J.A.C. 7:14B-8.1 and 8.2 are designed, in part, to provide information on the nature and extent of the problem. If the discharge is truly "minor" (that is, minor impact to human health and the environment) then less effort will need to be expended to investigate, remediate, and report, resulting in less time, less expense, etc. Therefore, the reporting of a minor discharge will not be wasteful, time consuming, expensive and punitive.

COMMENT: The term "surface" in N.J.A.C. 7:14B-8.3(a)3iii should be changed to "subsurface."

RESPONSE: The Department agrees with this comment and has changed the term "surface" to "subsurface".

COMMENT: The Department should be aware that information on adjacent properties may be very difficult to obtain.

RESPONSE: While information concerning basements and subsurface utilities on adjacent properties may require some investigation to determine, the Department believes the importance of this information merits the effort.

COMMENT: The term "climatological" as used in N.J.A.C. 7:14B-8.3(a)3iv should be defined and may not be appropriate for inclusion on a map.

RESPONSE: The Department has determined that since New Jersey's climate is similar throughout the State, it is unnecessary to report this parameter. N.J.A.C. 7:14B-8.3(a)3iv has been revised to delete the term "climatological".

COMMENT: The title "Testing Methods for Evaluating Soil Waste" in N.J.A.C. 7:14B-8.3(a)4 should read, "Testing Methods for Evaluating Solid Waste".

RESPONSE: The Department agrees with this comment. This typographical error at N.J.A.C. 7:14B-8.3(a)4 has been corrected.

COMMENT: The Department should define or specify the parameters for which analyses are required at N.J.A.C. 7:14B-8.3(a)4.

RESPONSE: It is not practical to specify parameters in these rules since these analyses are variable depending on the substances stored. In addition, the science controlling these analyses is dynamic and the Department does not want to restrict any future advances.

COMMENT: Three comments were received stating that the wording of the certification required in N.J.A.C. 7:14B-2.3(d)2 should be included in N.J.A.C. 7:14B-8.3(a)6 rather than referenced.

RESPONSE: The certification language contained in N.J.A.C. 7:14B-2.3(c) applies to several submittals required by the rules as specified in N.J.A.C. 7:14B-2.3(d). In order to reduce repetitiveness, the language is centrally located.

COMMENT: One comment was received stating that these rules are attempting to standardize all site cleanup and removal activities. This standardization will remove judgment by an environmental professional.

RESPONSE: The Department developed N.J.A.C. 7:14B-8 to give general direction for corrective action activities and to allow some latitude for tailoring specific cleanup activities dependent on site specific conditions. Furthermore, the Department intends that corrective action activities be conducted by qualified consultants who will use their skills and judgment to perform proper remedial activities in compliance with the requirements of N.J.A.C. 7:14B-8, and appropriate to site specific conditions.

COMMENT: One comment was received stating that civil and criminal penalties, fines and/or imprisonment for environmental professionals is unauthorized by statute.

RESPONSE: The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., clearly authorizes the Department to issue orders requiring compliance, bring civil actions, levy civil administrative penalties, bring action for civil penalties, and petition the Attorney General to bring criminal action against any person who is in violation of this Act (see N.J.S.A. 58:10A-10).

COMMENT: N.J.A.C. 7:14B-8.3(c) should be clarified to require reporting to appropriate local health agencies and the local fire department if such reporting is required by the particular local entity.

RESPONSE: The Department believes that N.J.A.C. 7:14B-8.3(c) is clear on the need to notify local agencies. No change is warranted.

COMMENT: The activities set forth at N.J.A.C. 7:14B-8.3(c)3, which provides a schedule for tank or piping removal, well installation and well sampling, may be performed as part of the investigation and confirmation of a suspected release (see N.J.A.C. 7:14B-7.2 and 7.3). Providing a schedule in advance of the actual activities may not be feasible if the intent is to remediate the release as quickly as possible. One commenter suggested deleting this section since the tank or piping removal, well installation and well sampling activities are conducted under requirements listed in N.J.A.C. 7:14B-8.2, however, the requirement to report these activities is set forth at N.J.A.C. 7:14B-8.3. Since N.J.A.C. 7:14B-8.2 appears before N.J.A.C. 7:14B-8.3 in the text, the activity has already taken place and can therefore only be reported after the fact.

RESPONSE: It is the intent of N.J.A.C. 7:14B-8.3(c)3 to inform the proper regulatory agency of activities at a site prior to their implementation so that an inspection may be arranged where appropriate. If the activities have already been performed as part of the release response or in conjunction with another section of this rule, this section is not applicable.

COMMENT: N.J.A.C. 7:14B-8.5. Additional corrective action requirements. Two comments were received requesting that the Department provide a definite end point by establishing a system to certify that corrective actions are complete.

RESPONSE: The Department intended N.J.A.C. 7:14B-8.5 to address additional cleanup requirements including closure of cases, under authority of N.J.A.C. 7:14A-6.15. The Department intends to use NJPDES Permits, under appropriate circumstances, as the mechanism to formally conclude requirements for corrective actions.

COMMENT: N.J.A.C. 7:14B-8.6. Leak mitigation requirements. The requirements at N.J.A.C. 7:14B-8.6 are duplicative with some of the requirements listed in N.J.A.C. 7:14B-8.1 and 8.2. All these requirements should be consolidated into one section.

RESPONSE: N.J.A.C. 7:14B-8.1 and 8.2 deal with discharges to the environment. N.J.A.C. 7:14B-8.6 addresses leaks into a secondary container or annular space. Consolidation is not appropriate.

COMMENT: N.J.A.C. 7:14B-8.6(b). Leak mitigation requirements. It appears some of the text of N.J.A.C. 7:14B-8.6(b) may have been left out. Additionally, the word "calculating" may be incorrect.

RESPONSE: N.J.A.C. 7:14B-8.6(b) has been rephrased for clarity. The word "calculating" is incorrect and has been changed to "containing."

COMMENT: N.J.A.C. 7:14B-8.7(a), Recordkeeping. Delete the requirement at N.J.A.C. 7:14B-8.7(a) to maintain records indefinitely and define the responsibilities and liabilities of future owners and owners of closed tanks for the maintenance of the corrective action documentation. The Department should allow an owner to petition it for permission to dispose of the records. Records could be unduly voluminous; and therefore the requirement could be burdensome. The Department should set a three year maximum.

RESPONSE: The Department disagrees with this comment. N.J.S.A. 58:10A-25a(4) specifically authorizes the Department to require the maintenance of "records of any monitoring or leak detection system, inventory control system or underground storage tank system." Furthermore, in accordance with N.J.S.A. 58:10A-30, the Department is authorized to enter a facility and inspect and photograph any records related to an UST. In order for the Department to adequately perform its statutorily mandated duties, it cannot permit the destruction of records. Furthermore, the information contained in the records, especially that which identifies prior use, location, and closure of an UST is important for future references. The Department cannot allow an owner/operator to petition it for approval to destroy records. There are no means to determine what future use these records may have.

COMMENT: N.J.A.C. 7:14B-8.7 Recordkeeping, should be expanded to mandate uniform inventory control reporting forms for all underground storage tank owners in the State.

RESPONSE: N.J.A.C. 7:14B-8.7 is not the appropriate section to address inventory control reporting. This comment is addressed above in response to comments regarding N.J.A.C. 7:14B-5.4.

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

N.J.A.C. 7:14B-9 General

COMMENT: One general comment was received concerning the closure requirements of N.J.A.C. 7:14B-9. This commenter felt that the financial impact of the closure requirements will encourage the retention in service of underground storage tanks which have been used for on-site heating only. The commenter believes that these tanks are particularly expendable because of the availability of natural vapor as an alternative fuel. The commenter particularly objects to the requirement to install a monitoring well for the site assessment requirement of the closure rules for these tanks.

RESPONSE: The site assessment requirements, including the monitoring well requirement, in general, are addressed in the General Comment section of this Summary of Public Comments and Agency Responses document. The comment concerning tanks with heating oil for on-site use may involve a misunderstanding of the closure requirements. First, heating oil tanks storing 2,000 gallons and less, whether for residential or non-residential use, are totally exempt from these technical rules (see N.J.A.C. 7:14B-1.4(b)2 for non-residential tanks and N.J.A.C. 7:14B-1.4(b)3 for residential tanks). Second, heating oil tanks larger than 2,000 gallons for on-site residential use are only partially regulated, as set forth in N.J.A.C. 7:14B-1.4(d)1. Finally, heating oil tanks larger than 2,000 gallons for on-site non-residential use are the only type of tank storing heating oil for on-site consumption which are fully regulated by these technical rules. Therefore, the technical rules for closure (see N.J.A.C. 7:14B-9.2) apply only to heating oil tanks storing more than 2,000 gallons of heating oil used for on-site consumption at non-residential facilities. This type of facility would normally be an office building or commercial facility which is not normally used as a dwelling. The Department is in the process of formulating new site assessment requirements for petroleum products other than those in N.J.A.C. 7:14B-9.2(c). A guidance document will be made available to assist the regulated community until such time as the new site assessment rules are adopted.

COMMENT: One commenter wanted to know if tanks which have been abandoned in place prior to the effective date of the rules would have to be removed.

RESPONSE: Tanks abandoned in place prior to the effective date of the rules were subject to either the Uniform Construction Code, Federal Regulations at 40 CFR 280 or, at a minimum, standard industry practices (such as API 1604) which describe the proper method of abandoning a tank. The Department has no intention of regulating properly abandoned tanks, nor will it require that properly abandoned tanks be removed. However, tanks which are either improperly abandoned or for which there is no information may need further action taken on them. The type of action may include tank removal, proper abandonment, or a site assessment. This will depend on the available records, site conditions, age of the tank and other site-specific factors. The Department will handle these cases on an individual basis.

N.J.A.C. 7:14B-9.1 General requirements

COMMENT: Two commenters took exception to the provisions of N.J.A.C. 7:14B-9.1(b) which require out of service tanks to be closed after 12 months. One of the commenters requested a variance for tanks meeting the requirements of N.J.A.C. 7:14B-9.1(a) and (b) but are expected to be put into use and the other commenter referred to such tanks as "back-up tanks."

RESPONSE: The Department believes that adequate provision for tanks which are temporarily out of service has been made at N.J.A.C. 7:14B-9.1(b). Tanks may be kept out of service if a site assessment is performed.

COMMENT: Two comments were received concerning when the 12-month out of service period begins to run out. One commenter proposed that this period begin only when the rules become effective. The other commenter requested clarification of the beginning of the 12-month period.

RESPONSE: In order to clarify this rule, the Department intends that any tank which is inactive when the UST rules go into effect will be subject to the rule in N.J.A.C. 7:14B-9.1(b). Therefore, when such a tank has been inactive for 12 months from the effective date of these rules, it will be necessary to close the tank under N.J.A.C. 7:14B-9 of these rules. The Department believes that the intention of the rules would be circumvented otherwise.

COMMENT: One commenter proposed that closures in progress on the effective date of the rules be "grandfathered."

RESPONSE: Facilities which notify the Department of an impending closure by submitting a Standard Reporting Form (SRF's) before the effective date of the rules and have received a demolition permit from the local construction officials should follow the Federal technical requirements for closure. However, facilities which submit SRF's after the effective date of these rules will be subject to the closure requirements of N.J.A.C. 7:14B-9.

COMMENT: Three commenters stated that the requirement to remove tanks is too strict and goes beyond the Federal regulations which allow tanks to be removed from the ground or abandoned in place at closure. One of the commenters suggested that the Department allow abandonment in place of tank systems being closed if there is no history of a release from that system.

RESPONSE: The Federal rule under which State UST regulatory programs can be approved to operate in lieu of Federal rules requires that the State rules be no less stringent than the Federal rules. More stringent rules are allowable. The Department believes that it is advisable to require that tanks be removed when they are closed, with very few exceptions. The main reason for this is to facilitate a proper site assessment and to eliminate a possible source of contamination, the abandoned tank, from further consideration.

COMMENT: One commenter pointed out that the citation of N.J.A.C. 7:14B-9.1(c)2 is incorrect. The correct citation is N.J.A.C. 7:14B-8.2(a)3.

RESPONSE: The Department agrees with this comment and has made the requisite change.

COMMENT: One comment was received requesting a definition of the term "permanent" with respect to the tank closure requirements which allow abandonment in place of tank systems located under permanent structures. Another comment was received suggesting that the provision allowing abandonment in place of tank systems under permanent structures might create incentive to establish a permanent structure above a tank to avoid the requirement to remove the tank at closure. This commenter suggested that this provision be tightened to prevent this type of activity.

RESPONSE: The Department does not believe that a definition of the term "permanent" is needed in these rules. Furthermore, the local authorities can best prevent a circumvention of the regulatory intent of the exemption of the tank removal requirement for tanks under permanent structures. This can be accomplished under the local authority to issue a demolition permit for tank removal or abandonment.

COMMENT: One commenter agreed with the rule but suggested that if a tank is abandoned in place because of its proximity to a permanent structure that this fact be attached to the property deed. The suggestion is that the Department should be notified if the structure is demolished so that removal of the tank can be considered at that time.

RESPONSE: The Department believes that this comment has merit but that it would best be implemented by local enforcement officials. It should be noted that many urban municipalities are very strict about abandoning tanks in place.

COMMENT: Another commenter stated that tanks abandoned in place and filled with newly developed inert materials should be allowed as an alternative to the requirement that tanks be removed from the ground. This suggestion emphasizes the consideration of new technology which could make abandonment in place an environmentally sound option.

RESPONSE: The Department believes that abandonment in place will preclude a thorough site assessment. Furthermore, if the abandoned tank is not cleaned properly, it will remain a potential source of contamination. For these reasons, only under the conditions set forth in N.J.A.C. 7:14B-9.1(d) will abandonment in place be allowed. New products for use as inert fill in tank abandonment in place, where allowed, will be considered by the Department. The owner/operator will have to show that the material is at least as appropriate as previously approved materials.

N.J.A.C. 7:14B-9.2 Closure requirements for underground storage tank systems containing petroleum products.

COMMENT: One commenter stated that 30 days prior notice of anticipated closure of tanks containing petroleum products is too long and that seven days notice is "sufficient."

RESPONSE: The Department disagrees with this comment. The Department is sure that 30 days will be required, on average, to review a closure application after it is received in the Department.

COMMENT: One commenter suggested changing the language in N.J.A.C. 7:14B-9.2(b) from "to ensure compliance with the requirements of this chapter" to "if the plan does not meet the requirements of this subchapter."

RESPONSE: The Department agrees with this comment and has made the suggested change.

COMMENT: Three commenters suggested changing "prepared" to "that will be conducted" in N.J.A.C. 7:14B-9.2(b)2.

RESPONSE: The Department does not believe that the wording in N.J.A.C. 7:14B-9.2(b)2 should be changed. The intent of this rule is that the qualified ground water consultant who prepared and is responsible for the supervision of the site assessment be held accountable for it. The Department does not think it is advisable to hold a contractor's employee who "conducts" an assessment under someone else's direction accountable for it.

COMMENT: Two commenters suggested changing N.J.A.C. 7:14B-9.2(b)4 from "The owner or operator shall remove . . ." to "A plan for the removal of . . ."

RESPONSE: The Department agrees with this comment and has made the suggested change.

COMMENT: One comment was received which implied that the notification requirement regarding several aspects of closure, which in N.J.A.C. 7:14B-9.2(b)3i involves the Department, county officials, and local construction code enforcement officials under the Uniform Construction Code, is unclear.

RESPONSE: The Department plans to notify the respective counties at the time of receipt of an application to close a tank system. Certain counties have signed agreements with the Department under the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., to perform inspections at tank closures. The county inspector may be present to oversee the performance of the site assessment. The role of the local construction code enforcement official will be to issue a demolition permit to the owner or operator for the decommissioning of the tank. It is the Department's position that a change in wording is not necessary.

COMMENT: One comment was received which suggested that the requirements of N.J.A.C. 7:14B-9.2(b)4 "refer to an action not a plan."

RESPONSE: The Department does not believe that the wording of N.J.A.C. 7:14B-9.2(b)4 obscures its intent or meaning.

COMMENT: One commenter requests that vapor monitoring be allowed for site assessment instead of requiring at least one monitoring well. The commenter refers to the Federal requirement at 40 CFR 280.72 on site assessment as a precedent.

RESPONSE: The Department has written the closure rules so that both ground water and/or soil investigations will be required according to the stored substance and the site specific conditions. The Department points out that the Federal rule cited by the commenter, 40 CFR 280.72, applies only to vapor monitoring systems in operation as external release detection methods at the time of tank closure and which indicate that no release has occurred. The Department rules have a similar exemption in N.J.A.C. 7:14B-9.4.

COMMENT: Two comments were received stating that the Department's requirement at N.J.A.C. 7:14B-9.2(c)1 to drill a monitoring well for site assessment to 75 feet if ground water is not encountered at a shallower depth is unreasonable. A suggestion is made to change the maximum drilling depth to 35 feet or if an impermeable layer is encountered between 20 and 35 feet, the boring may be terminated.

RESPONSE: The Department will not change N.J.A.C. 7:14B-9.2(c)1. The Department believes that the great preponderance of ground water monitoring wells installed under this rule will encounter first water at depths shallower than 75 feet. The Department has data from several sites where contamination was encountered at depths greater than 35 feet.

COMMENT: One comment pointed out the potential problem of screening across a shallow aquifer perched on a thin aquitard. The suggestion was offered that the well be screened at least five feet into the water table or the entire thickness of the aquifer, whichever is less.

RESPONSE: The Department agrees with the reasoning behind this comment but does not believe that the rule needs to be changed. At the shallow depths involved in almost all UST closures, this concern will not have a significant impact. Good well drilling and development practice prohibits screening across two aquifers in a monitoring well (thus the practice of ceasing drilling operations at first water). It will be incumbent on the licensed well driller to develop the monitoring well drilled for closure in a proper manner.

COMMENT: One commenter suggested changing the wording of N.J.A.C. 7:14B-9.2(c)1 regarding screen interval in monitoring wells required for site assessments to read as follows: "The wells shall be screened in the first water encountered and the screens shall be placed a minimum of three feet above the water table . . ."

RESPONSE: The Department agrees with this suggestion and will make the change. N.J.A.C. 7:14B-9.2(c)1 now requires that wells shall be screened in the first water encounter and the screens shall be placed at a minimum of three feet above the water table where possible. The owner/operator continues to have the responsibility to properly design and develop any monitoring wells installed for ground water sampling.

COMMENT: Two comments were received requesting that the word "system" be deleted from the requirement defining the proximity of the required monitoring wells to the tanks. This suggestion would mean that the well would have to be five feet from the tank rather than from the tank system, as it now reads.

RESPONSE: The Department agrees to make this change. Other parts of this rule (see N.J.A.C. 7:14B-9.2(c)4ii and iv) address the site assessment requirements of extensive runs of piping and large facilities with multiple tanks. By deleting the term "system", the Department will not require that the monitoring wells are as close as possible to the tank itself. This will clarify the Department's intent to have the monitor wells placed as close as possible to the actual tank rather than other components of the tank system.

COMMENT: One commenter requested that the Department clarify whether standpipe set in an open excavation and backfilled can be used to obtain ground water samples to satisfy the site assessment requirement of tank closure.

RESPONSE: The Department believes that the installation of a ground water monitoring well at tank closure for site assessment must be implemented by a licensed well driller. As long as the well is permitted by the Bureau of Water Allocation it can be installed or drilled in the backfilled excavation. The reason for this requirement is that monitoring wells installed at the time of tank closure are intended for ground water monitoring and therefore must be regulated (note that no part of the closure operation is subject to permitting requirements under the UST rules). The installation of monitoring systems in an open excavation using screen and casing are regulated under N.J.A.C. 7:14B-6.2(b) and 6.5(a).

COMMENT: One commenter maintains that the site assessment requirement of a monitoring well at closure may preclude installing a new (replacement) tank where the excavation is small.

RESPONSE: The Department believes that almost all site specific factors such as the one mentioned by this commenter are solvable by good planning. For example, the well may be installed next to the tank system, prior to excavation. Assuming no contamination is found, the new tank may be installed in the location of the previous tank and the well.

COMMENT: One commenter suggested that the phrase "... will be prepared by the preparer" in N.J.A.C. 7:14B-9.2(c)4 is confusing. The term "prepared" appears to be an error and should be changed to "proposed".

RESPONSE: The suggested change does not adequately reflect the intent of N.J.A.C. 7:14B-9.2(c)4; however, to clarify the sentence, the word "determined" has been substituted for the term "prepared".

COMMENT: One commenter requested that guidelines be developed for how long a monitoring well needs to be maintained for site assessment if no contamination is found in the original closure investigation.

RESPONSE: In most instances, a single sample which has been obtained from a properly developed ground water monitoring well and which is negative for contamination will fulfill the requirements of the site assessment requirement. However, in environmentally sensitive areas the Department may require an additional sample from the well. The Department will provide technical guidance for these and other similar issues.

COMMENT: Two commenters surmised that even though the site assessment requirement calls for one well per tank it is likely that three wells will be required to determine the direction of ground water flow.

RESPONSE: The closure plan submitted to the Department will be reviewed carefully for compliance with the site assessment requirements. In the very few cases where a monitoring well is mistakenly placed upgradient of the tank and the leaking liquid is lighter than water, the tendency of the liquid to float on the water table and move slightly upgradient will make it feasible to recognize the release has occurred in spite of the poor well location. This is where the site assessment requirement that the well be located as close as possible to the tank comes in. The Department will be reviewing the closure plan for any site specific factors that may prevent recognition of contamination. The commenter is accurate in pointing out that three wells would be necessary to determine ground water flow direction; however, a single well should be adequate to determine if contamination exists.

COMMENT: Four comments requested that the maximum length of tanks which require only one monitoring well for site assessment be increased from 20 to 25 feet.

RESPONSE: The Department believes that this provision should remain as written. According to statistics on tank specifications provided by three manufacturers, tanks with 10,000 gallons and more capacity are more than 20 feet in length. The Department believes that larger tanks (capacity greater than 10,000 gallons) should have more attention directed toward evaluating their potential as sources of releases to the environment than smaller tanks. The effect of this requirement is that tanks larger than 10,000 gallons capacity which are closed will require at least two monitoring wells for site assessment, where monitoring wells are required.

COMMENT: Two comments were received requesting guidance on technical details. One commenter requested a definition of "water soluble constituents" as used in connection with the ground water sample analysis required from the site assessment process. The other comment asked that analytical requirements for ground water testing of monitoring wells be specified.

RESPONSE: The Department has carefully considered this comment and has modified the language in N.J.A.C. 7:14B-9.2(c)5. One sentence has been deleted and the reference to "water soluble constituents" has been changed to "contamination". The analytical requirements will be sent to the owner/operator of the tank being closed upon receipt of the closure notification as specified in N.J.A.C. 7:14B-9.2(a).

N.J.A.C. 7:14B-9.3 Closure requirements for underground storage tank systems containing hazardous substances other than petroleum products

COMMENT: A commenter asked the question "Is waste oil covered under N.J.A.C. 7:14B-9.2 or 7:14B-9.3?"

RESPONSE: Underground storage tank systems which contain waste oil and have a capacity of less than 1,001 gallons are subject to the closure requirements of N.J.A.C. 7:14B-9.2. "Petroleum" and "petroleum prod-

ucts" are defined in N.J.A.C. 7:14B-1.6 to include oil sludge, oil refuse, and oil mixed with other wastes.

COMMENT: One commenter stated that it was not clear to him whether site assessment at closure of a tank system containing a hazardous substance other than petroleum products included a requirement to install a monitoring well.

RESPONSE: The Department is in the process of formulating new site assessment requirements for hazardous substances other than petroleum products. A guidance document will be made available to assist the regulated community until such time as the new site assessment rules are adopted. The requirements for closure of an UST containing a hazardous substance other than petroleum are provided in N.J.A.C. 7:14B-9.3(b)2. N.J.A.C. 7:14B-9.2(c) states: "The site assessment plan for gasoline, kerosene and jet fuel shall, at a minimum, consist of ground water monitoring wells drilled in accordance with well drilling requirements promulgated pursuant to N.J.S.A. 58:4A-4.1 et seq."

COMMENT: One commenter requested that underground storage tank systems covered by N.J.A.C. 7:14B-9.3 (those that contain hazardous substances other than petroleum products) should be eligible for closure by being "filled-in" rather than being required to be removed at closure.

RESPONSE: The Department has written the closure rule to require that all tanks be removed when permanent closure takes place. Only in very limited circumstances are exemptions provided to the requirement to remove the tank. This rule applies to tanks with hazardous substances other than petroleum products as well as those with petroleum. The Department believes that the site assessment cannot be fully performed if a tank is left in the excavation because the condition of the tank and the soil in the excavation cannot be thoroughly determined. An additional consideration is that many urban municipalities require removal of tanks when they are closed.

COMMENT: Two comments were received which questioned the closure notification requirement of 45 days for tank systems containing hazardous substances other than petroleum products. One of these commenters questioned the difference in notice required for tanks of this type and those containing petroleum products which require 30 days prior notice of anticipated closure. Another commenter simply stated that 45 days notice was too long and that seven days notice would be sufficient.

RESPONSE: The Department believes that tanks containing chemicals other than petroleum products will require additional time for review of the closure application because these substances are not usually amenable to standardized analysis. The Department is in the process of formulating guidelines which will assist the owner/operator in preparing the site assessment. However, the owner/operator may be responsible for defining the appropriate site assessment procedures, including but not limited to: development procedure, ground water and soil sampling, and analytical methods for detecting these substances. The Department's review of these considerations will take longer for chemical tanks than for those with petroleum products.

N.J.A.C. 7:14B-9.4 Exemptions to site assessment requirements

COMMENT: One commenter suggested that an exemption to the closure requirements should be added to N.J.A.C. 7:14B-9.4(a) for those tank systems on sites holding a valid NJPDES/Discharge to Ground Water (DGW) permit and which have ground water monitoring wells as part of the permit requirements.

RESPONSE: The Department has determined that an exemption is not appropriate in this case because of differences in regulatory goals of the NJPDES/DGW permit process and the UST rules. On a case-by-case basis, the Department plans to modify existing NJPDES/DGW permits so that existing ground water monitoring wells can be used for part of the site assessment requirement where the location of such wells is adjacent to the facility. However, facilities which are performing corrective action under N.J.A.C. 7:14B-8 or N.J.A.C. 7:14A (NJPDES) are performing the same or similar activities as would be necessary to complete a site assessment under N.J.A.C. 7:14B-9. It would not be necessary to require a duplicative site assessment. Therefore, the Department has clarified its intent to require only a single site assessment by adding the following language at N.J.A.C. 7:14B-9.4(a)4: "The facility is undergoing corrective action pursuant to N.J.A.C. 7:14B-8 or a New Jersey Pollutant Discharge Elimination System permit to discharge to ground water in accordance with N.J.A.C. 7:14A." In addition, the word "or" has been added to the end of N.J.A.C. 7:14B-9.4(a)3.

COMMENT: One commenter suggested adding two additional categories of exemptions to site assessment requirements at the time of

tank closure, as follows: tanks which never contained hazardous substances, and tanks on a site that has undergone an ECRA cleanup.

RESPONSE: Tanks which never contained a hazardous substance do not meet the definition of USTs in N.J.A.C. 7:14B-1.6. The owner/operator may be requested to document the nature of a substance stored in an UST before the Department will determine that the UST is not subject to these rules. Secondly, the ECRA standards are used to determine that a site subject to ECRA rules is "clean" at a point-in-time. On the other hand, UST rules require that site assessments at closure provide a more definitive site assessment because of the finality of the results of the assessment of the tank site. The Department will implement procedures to efficiently process ECRA cases that involve UST closures.

COMMENT: A commenter suggested that the provisions regarding exemptions to site assessment requirements be expanded to allow the use of monitoring wells that are already in place for site assessment if they were installed prior to the effective date of the rules and were drilled and developed by standards equivalent to those specified in N.J.A.C. 7:14B-6.2 and 6.4.

RESPONSE: The Department believes that this suggestion is reasonable with the understanding that it will be the responsibility of the owner/operator to document that such wells are in compliance with N.J.A.C. 7:14B-6.2 and 6.4, and that all the site assessment requirements are met. N.J.A.C. 7:14B-9.4(a)1 is modified to reflect the requirement that ground water monitoring wells must be installed in accordance with N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act.

N.J.A.C. 7:14B-9.5 Reporting and recordkeeping requirements

COMMENT: One commenter requests that the information required by N.J.A.C. 7:14B-9.5(a) be submitted within 120 days rather than 90 days as proposed. The commenter feels that this requirement should be consistent with time required to file the discharge investigation report.

RESPONSE: The Department believes that because known contamination of the environment is involved in the discharge investigation report (see N.J.A.C. 7:14B-8.3(a)) it will require more time to prepare than the report required for closure of tanks. In many cases, this latter report will document a routine tank closure with no evidence of contamination. Therefore, no change is being made.

COMMENT: One comment was received which makes reference to the information required by N.J.A.C. 7:14B-8.2 and 9.2(c) and states that the reports should describe the information generated by the site assessment procedure recommended by this commenter, not necessarily the ground water information prescribed in these provisions.

RESPONSE: As described previously in the General Comments section of this Summary of Public Comments and Agency Responses, other appropriate site investigations may be allowed by the Department depending on site specific conditions. Any information collected during the investigation which is not ground water related must also be submitted in accordance with N.J.A.C. 7:14B-9.5(a)1 and 2. Therefore, no change to the rules is needed.

COMMENT: One commenter assumes that there is an error in N.J.A.C. 7:14B-9.5(a)3 and suggests that the term "preparer" be replaced by "performer".

RESPONSE: A minor change has been made to clarify N.J.A.C. 7:14B-9.5(a)3 by adding the word "plan" to site assessment. Thus the certification must be signed by the preparer of the site assessment plan.

COMMENT: One comment was received suggesting that the Department require contractors to meet pre-specified qualifications in order to be allowed to carry out tank decommissioning. This commenter states that such requirements would be consistent with those imposed on geologists, hydrogeologists, corrosion experts and professional engineers.

RESPONSE: The Department agrees with this comment. The Department is exploring the possibility of adopting such a program at a future date.

COMMENT: Three commenters recommend that only the owner or operator, not contractors or employees, be held responsible for reporting contamination discovered during closure activities. This recommended change would make N.J.A.C. 7:14B-9.5(c) consistent with the commenter's suggested changes to N.J.A.C. 7:14A-8 and 7.3.

RESPONSE: It is the Department's position that anyone having knowledge of a confirmed release has the responsibility to report that pollution to the Department for investigation and cleanup.

COMMENT: Five comments addressed the requirement that closure records be kept for an "indefinite period of time" at the closure site. These commenters stated that this rule was overly restrictive and that a three year period is more reasonable.

RESPONSE: The Department has proposed that these records be kept for an indefinite period of time due to the possibility of transfer of ownership of a facility where tanks, or tank systems were closed. The records of the tank closure should be part of any agreement for sale of the property. In this manner, knowledge of the previous use, location and closure of the tanks will also be available for future reference. The Department believes that this information will be of future use; therefore, no change will be made to the rule regarding the length of record retention. However, the Department agrees that because of problems associated with keeping records at some facilities the owner/operator of the facility who was responsible for the tank closure operation will be responsible for making these records available to the Department upon request. Therefore, N.J.A.C. 7:14B-9.5(d) has been modified to allow the records to be made available to the Department instead of being kept at the facility.

COMMENT: One comment was received which recommends that a provision be added to N.J.A.C. 7:14B-9.5(d) to ensure that monitoring wells are properly sealed and abandoned after use.

RESPONSE: Ground water monitoring wells drilled for site assessment must be drilled or installed by a licensed well driller under a permit issued by the Bureau of Ground Water Allocation. The rules governing the abandonment and sealing of inactive wells are set forth at N.J.A.C. 7:9-9.

SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

N.J.A.C. 7:14B-10.1 General permitting requirements and procedures

COMMENT: One comment was received stating that the Department should review the most common new double walled systems that are available and pre-approve such systems for the local construction code officials. Another commenter stated that the Department should issue guidelines to insure consistency of process by the local construction officials.

RESPONSE: The Department will not be reviewing such systems within the framework of these rules. However, the Department will be publishing a technical guidance document which will include a discussion of such systems.

COMMENT: One commenter stated that N.J.A.C. 7:14B-4.4(a) specifies methods, not devices as is stated in N.J.A.C. 7:14B-10.1(b).

RESPONSE: The Department agrees with this comment and will modify the wording in N.J.A.C. 7:14B-10.1(b) to be consistent by changing the reference from N.J.A.C. 7:14B-4.4(a) to 4.4.

COMMENT: Several commenters stated that the Department should require only one permit application. Most of the commenters stated that a single application should be made for tanks installed at the same time in the same excavation with the same equipment.

RESPONSE: The Department is requiring only a single permit for these activities. The confusion appears to be in the definition of activities as stated in N.J.A.C. 7:14B-3.5. The Department will delete the definition of "activity" from N.J.A.C. 7:14B-3.5 and place it in N.J.A.C. 7:14B-1.6, Definitions, as: "Activities means one of the following:

1. Installation of one or more underground storage tank systems;
2. Closure of one or more underground storage tank systems; or
3. Substantial modification of one or more underground storage tank systems."

COMMENT: One commenter requested that N.J.A.C. 7:14B-10 should contain the reference "except as exempted by N.J.A.C. 7:14B-10.1(b)," and that it be made clear that permit applications need not be sent to the Department if the local building official is the proper permitting agency.

RESPONSE: The Department believes that the language in N.J.A.C. 7:14B-10.1(b) is adequate and that this additional language is not necessary for clarity.

COMMENT: One commenter stated that modifications to tanks already made in order to upgrade to Federal regulatory standards should be "grandfathered" by the Department by use of an affidavit certifying the modifications and the condition of the tank by the applicant.

RESPONSE: All USTs must meet the New Jersey UST technical regulatory standards and any upgrades which do not meet these standards must be brought into compliance with them.

COMMENT: Several commenters requested that N.J.A.C. 7:14B-10.1(d) be expanded to reference N.J.A.C. 7:14B-10.1(b) for a secondarily contained system.

RESPONSE: The language in the proposed technical rules at N.J.A.C. 7:14B-10.1(d) is sufficient for the purpose of explaining the permitting requirements without additional reference to N.J.A.C. 7:14B-10.1(b).

COMMENT: Several commenters requested that N.J.A.C. 7:14B-10.1(d) be expanded to reference N.J.A.C. 7:14B-10.8 for emergency permits since an owner or operator is allowed to get a telephone issuance of an emergency permit pursuant to N.J.A.C. 7:14B-10.8.

RESPONSE: The Department agrees that a reference to N.J.A.C. 7:14B-10.8 should be included in N.J.A.C. 7:14B-10.1(d). However, the Department disagrees with adding language for a telephone issuance of permits in this section. All information on emergency permits is addressed in N.J.A.C. 7:14B-10.8.

COMMENT: One commenter stated that the Department should not need 45 days to review and issue a permit and therefore the application should only be required to be submitted 15 days in advance of activities.

RESPONSE: To administratively process and completely review permit applications for their technical correctness in order to safeguard the environment, a sufficient amount of time is needed. The Department does not believe that 15 days is sufficient and also believes that facilities should not have any problems with submitting permit applications 45 days before the scheduled permit activity.

COMMENT: One commenter stated that if no permit is received in 45 days the applicant should be allowed to implement his activities.

RESPONSE: N.J.S.A. 58:10A-24 requires that the Department issue a permit to insure compliance with the law prior to any permitted activities. For this reason the Department cannot allow activities to commence prior to issuance of the permit.

COMMENT: Several commenters stated that the requirement for reporting the Standard Industrial Code and a list of administrative penalties and actions against the facility in the permit application is irrelevant and unnecessary.

RESPONSE: The Department decided that the information required at N.J.A.C. 7:14B-10.1(f)5 and 7 should not be included in the permit application and has deleted those requirements. However, as in N.J.A.C. 7:14B-10.1(f)9, the Department will retain the right to require any information on Departmental forms that is necessary for purposes of issuing or denying a permit.

COMMENT: Several commenters requested that the use of the word "facility" be the same as it is defined at N.J.A.C. 7:14B-1.6 and that N.J.A.C. 7:14B-10.1(f)1, 2 and 3 be rewritten to reflect the correct wording.

RESPONSE: "Facility" has been defined in N.J.S.A. 58:10A-22d and in the rules at N.J.A.C. 7:14B-1.6. The Department agrees that the wording is unclear in this subchapter and has added a definition for "site" in N.J.A.C. 7:14B-1.6. Additionally, for purposes of consistency, the Department has changed N.J.A.C. 7:14B-5.3(g), 5.6(a) and 10.1(f)2 to include the term "site".

COMMENT: Several commenters requested that the language in N.J.A.C. 7:14B-10.1(h) be changed from "may" to "shall" issue a permit and that a specific time period should be referenced, within 15 or 30 days of receipt of the permit application.

RESPONSE: The Department will attempt to issue all permits in a timely manner; however, in order to have maximum control over unforeseen circumstances that may be contrary to the intent of the State Act or any other law or rule, the Department is not required to issue a permit. The owner/operator is required to demonstrate that the proposed activity will meet the requirements of this rule. The Department reserves the right to determine if and when a permit should be issued based upon its review of all pertinent information.

COMMENT: Several commenters stated that N.J.A.C. 7:14B-10.1(h)2 should end with "or."

RESPONSE: N.J.A.C. 7:14B-10.1(h)2 is correct as written. All of the conditions in N.J.A.C. 7:14B-10.1(h) must be met.

COMMENT: One commenter stated that the permit should be issued unless specific elements are not met and these elements should be listed in the rules.

RESPONSE: The Department has listed the requirements which must be met to be issued a permit.

COMMENT: Several commenters stated that the Department will be unable to process the anticipated number of permits that will be submitted. This will cause substantial delays in the ability of the owner and operator to comply with the upgrading requirements. One commenter stated that it is unclear whether the permit from the Department is a prior approval for obtaining a permit from the local construction official. One commenter stated that since the Department will be unable to process

permits in a timely manner, a permit application, properly signed and sealed by the appropriate designated professionals, should be deemed acceptable for the issuance of construction permits by the local construction officials if no response is received from the Department 30 days after submittal of the application.

RESPONSE: The owner or operator of a facility proposing to replace, install or substantially modify the facility shall obtain a permit from the Department. For this reason, the Department requires that an owner/operator receive a permit from the Department prior to receiving a construction permit from the local construction code official. The Department has designed the permitting process to be as routine as possible under the constraints of the statutory mandate. The applicant has a responsibility to understand the permit application requirements and insure that the application is complete at the initial submittal. Most of the delays in other permitting programs are due to the submittal of incomplete applications. The permit process includes several certifications by either the owner/operator or a qualified professional, which, if properly completed, will facilitate the Department's review.

COMMENT: One commenter suggested that the Department send a notice to the local construction code officials when a Departmental permit is not required.

RESPONSE: The Department will assist the local construction officials and provide training to assist them in determining when a prior approval is needed.

COMMENT: One commenter stated that the requirement of N.J.A.C. 7:14B-10.1(h)3: "The owner or operator proposes to equip the underground storage tank system with corrosion control meeting the requirements of N.J.A.C. 7:14B-4.1(g), (h), (i) or (j);" and N.J.A.C. 7:14B-10.1(h)5: "The owner or operator of an underground tank system shall ensure that the new underground storage tank system and the hazardous substance to be stored in or dispensed from that system will not interact in a way that may undermine the integrity of the system or promote corrosion;" are identical.

RESPONSE: The Department does not believe that the two paragraphs are identical since N.J.A.C. 7:14B-10.1(h)3 requires that all of the corrosion protection requirements for the construction materials must be met while N.J.A.C. 7:14B-10.1(h)5 requires the owner/operator to certify that his or her actions (storing or dispensing product) will not undermine the integrity of the system.

COMMENT: One commenter stated that a time limit for advance notice of permitted activities be given prior to commencement of the activities. The notice should be preferably three or seven days.

RESPONSE: The Department agrees with this comment and is specifying at N.J.A.C. 7:14B-10.1(i) that seven days advance notice be given to the Department and local officials before beginning construction activities.

COMMENT: One commenter stated that the requirement for insurance information at N.J.A.C. 7:14B-10.1(i)1 is already required in N.J.A.C. 7:14B-2.2(f) and therefore is needless duplication.

RESPONSE: The Department agrees that the information is required to be submitted on the Departmental Standard Reporting Form when applying for a permitted activity and will therefore delete the requirement at N.J.A.C. 7:14B-10.1(i)1.

COMMENT: One commenter stated that information on insurance policies is not necessary nor relevant until the financial assurance rules are promulgated.

RESPONSE: The Department is requiring this information to be submitted as part of registration and certification procedures. Those facilities which are required to meet Federal financial responsibility requirements are required to submit that information on a Standard Reporting Form when reporting changes at the facility to the Department.

COMMENT: N.J.A.C. 7:14B-10.2(a)1i, Additional application requirements for the installation of underground storage tank systems not equipped with secondary containment or equivalent devices. One commenter stated that "as built" is no longer the proper term for engineering plans. The term should be "record drawings."

RESPONSE: The Department agrees that the term should be modified. In order to clarify the intent, the Department will restate N.J.A.C. 7:14B-10.2(a)1i as "The Professional Engineer shall sign and seal and submit to the Department the record drawings where they differ from the proposed plans and specifications."

COMMENT: N.J.A.C. 7:14B-10.3(a)1iv, Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment or equivalent devices. One commenter asked if soil borings to

determine the elevation of the water table may be performed at any time of year.

RESPONSE: The Department will allow soil borings to be performed at any time of year. The professional who is interpreting the samples from the soil boring will be required to estimate the seasonal high water table based upon his technical analysis of the situation.

COMMENT: N.J.A.C. 7:14B-10.5, Additional application requirements for substantial modifications other than discharge monitoring systems and corrosion protection. One commenter stated that the Department should review all requests for modifications to determine when a permit is needed and/or if the repair or modification may be allowed without a permit. The Department should notify the local authorities of its decision in cases where no Departmental permit is required. One commenter stated that the Department should clarify "substantial modifications" by examples in the rules.

RESPONSE: The Department has utilized the definition of "substantially modify" provided at N.J.A.C. 58:10A-22n. The Department has also given examples of activities which are not substantial modifications in N.J.A.C. 7:14B-10.5(c). The Department will also be providing the local construction officials with a technical guidance document and specialized training in order that the local construction officials can also determine what is a substantial modification.

COMMENT: One commenter stated that "professional quality" as set forth in N.J.A.C. 7:14B-10.5(a)2 is subject to interpretation and is therefore arbitrary.

RESPONSE: A minimum level of quality should be required for any submittals and thus the phrase is appropriate. However, the Department will be issuing a technical guidance document and instructions with the permit application to better define the criteria for acceptable quality.

COMMENT: One commenter inquired if a certification is required only when plans must be sealed by a professional or is a certification required in all cases.

RESPONSE: A certification is only required under N.J.A.C. 7:14B-10.5(a)2 when a New Jersey professional engineer is submitting signed and sealed plans or specifications.

COMMENT: N.J.A.C. 7:14B-10.7, Display of permit and availability of approved plans. One commenter stated the term "facility" as used in N.J.A.C. 7:14B-10.7(a) and (b) and is inconsistent with its definition. The term should be "site".

RESPONSE: The Department agrees with this comment and has changed the wording from "facility" to "site" at N.J.A.C. 7:14B-10.7(a) and (b).

N.J.A.C. 7:14B-10.8 Emergency permits

COMMENT: Several commenters stated that the emergency permitting should be expanded to include leaking tanks that pose an emergency risk, small operators who will suffer financial hardship while awaiting a permit, and any other situations that the local authorities deem would necessitate issuing a permit. Also, the local authorities should be given the authority to issue emergency permits.

RESPONSE: Only cases which legitimately threaten the health or safety of the citizens of New Jersey should qualify for an emergency permit. The examples given that an operator may need to replace a tank to continue dispensing product does not constitute a reason to by-pass the permitting process. Also, in all cases it is the Department's responsibility to issue the initial permits and the Department will not allow the local authorities to issue emergency permits. The operator can install a double walled system if he decides that the time period in which to request a Departmental permit would be unacceptable. However, a construction permit would still need to be obtained from the local authorities and the underground storage tank system would need to meet all the technical requirements.

COMMENT: One commenter stated that the phone number in N.J.A.C. 7:14B-10.8(b) should not be in the rules since a phone number change would require a major modification to the rules and a public hearing.

RESPONSE: The Department does not believe that such an action would constitute a major modification nor necessitate a public hearing. A change in telephone number would only constitute a minor modification.

N.J.A.C. 7:14B-10.9(a) Permit expiration

COMMENT: One commenter stated that permits should have a two year expiration limit.

RESPONSE: The Department believes that requiring construction to begin within one year is appropriate. The modifications to existing systems and the replacement of substandard USTs should commence in a timely manner.

COMMENT: One commenter stated that in situations where circumstances beyond the control of the owner/operator causes a suspension of authorized work for a period of six months, the owner or operator should be able to petition the Department to grant a variance from the automatic expiration.

RESPONSE: The Department believes that a one year time frame should be adequate to begin work on a permitted activity and that a six month suspension or abandonment of permitted activities is cause for expiration. Instead of submitting information to allow the Department to evaluate circumstances for extensions, the applicant should submit a new application under the existing permitting program for review and approval.

N.J.A.C. 7:14B-10.10 Grounds for denial or revocation of permits

COMMENT: One commenter stated that denying a permit for incompleteness is subjective and the Department should be required to telephone the applicant to attempt to complete the application prior to denying the permit.

RESPONSE: The Department will make every effort possible to assist the applicant in furnishing a completed permit application. The Department disagrees that it should be required to telephone all applicants that may have furnished an incomplete application. It is the applicant's responsibility to provide a completed permit application to the Department.

COMMENT: One commenter stated that misunderstandings over the proper fee payments will result in the denial of the permit as set forth in N.J.A.C. 7:14B-10.10(a)2.

RESPONSE: The Department will provide information on the application for calculating the proper fee. The Department will quickly notify those applicants whose fee payment is deficient and will refund overpayments. However, it is the responsibility of the applicant to furnish the correct fee and the Department will not issue a permit until the fee payment is correct.

COMMENT: One commenter stated that the Department should modify the sentence at N.J.A.C. 7:14B-10.10(b)2 to read; "An authorized local, state or federal government representative is denied access to the site by the owner of the facility . . ." The owner should not be penalized for actions of lessees or lessees' employees.

RESPONSE: The State Act grants the Department the authority to enter, at reasonable hours, any property or place of business where underground storage tanks or non-operational storage tanks are or may be located. The Department believes that denial by an owner, operator, authorized representative, agent or other person with authority to deny access is reason to revoke a permit.

COMMENT: One commenter stated that the rules should clearly stipulate that an inspection is strictly limited to the facility (that is, the location of the UST).

RESPONSE: The Department believes that an authorized inspector has a right and a duty to inspect other areas of a site if he or she has reason to believe that such an inspection is necessary in order to determine compliance with the UST program.

COMMENT: Several commenters stated that the rules should more clearly define those with the authority to inspect and that a notice prior to inspection should be given to the owner/operator of the facility.

RESPONSE: If the owner/operator believes that the Department has unfairly penalized them for denying access to an unauthorized representative, they may raise this issue as a legitimate defense at an adjudicatory hearing as provided for in N.J.A.C. 7:14B-12, Penalties, Remedies, and Administrative Hearing Procedures. The State Act gives the Department the authority to enter, at any reasonable business hours, a facility without advance notice. However, the Department would like to add that most inspections are carried out with advance notice by the inspecting parties. Persons permitted to enter a facility are those specifically authorized by the Department or local authorities who have received delegation by the Department.

COMMENT: One commenter stated that if a permit is denied or revoked and a hearing has been requested that the permit activities can continue during the hearing process.

RESPONSE: The Department maintains that in order to perform an activity a valid permit is required. The Department cannot allow an activity to continue or begin if the permit has been denied. In case of a permit revocation, the Department may stay the revocation pending the outcome of the hearing.

SUBCHAPTER 11. MUNICIPAL ORDINANCES

N.J.A.C. 7:14B-11.2 Local ordinance enactment

COMMENT: Several commenters felt that public notice of a written petition from a municipality requesting permission to enforce more stringent UST rules should be given.

RESPONSE: It is the Department's belief that the public notice of a municipality, county or political subdivision's request for an exemption should be addressed prior to submission to the Department for approval. Public notice at the local level would provide interested parties with the opportunity for more input into the request for exemption. Adoption of municipal ordinances affords a forum for public participation on the local level. The rules provide for public notice by the Department of all approvals of municipal ordinances under this section.

N.J.A.C. 7:14B-11.3 Department determination

COMMENT: The Department should include a fourth category in N.J.A.C. 7:14B-11.3(b) as follows: The municipal ordinance provides greater environmental protection for unique hydrologic conditions.

RESPONSE: While the terms hydrogeology and hydrology are often used interchangeably, technically "hydrology" is a more comprehensive term and better reflects the intent of the Department when proposing a municipal exemption for unique conditions. Rather than add a fourth category to N.J.A.C. 7:14B-11.3(b), the Department has changed the term "hydrogeologic" to "hydrologic" at N.J.A.C. 7:14B-11.3(b)1.

COMMENT: N.J.A.C. 7:14B-11.3(e) states that a municipality, county or political subdivision can request an adjudicatory hearing pursuant to N.J.A.C. 7:14B-12. However, N.J.A.C. 7:14B-12 does not specifically allow a governmental agency to apply for an adjudicatory hearing.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:14B-12.2(b) has been modified to add a municipality's right to a hearing.

COMMENT: It is interesting that the rules provide the Department with a mandated deadline for reviewing proposed municipal ordinances, but there are no deadlines in reviewing permit applications from the regulated community.

RESPONSE: The commenter is correct. The deadline for reviewing proposed municipal ordinances is a legislative mandate (see N.J.S.A. 58:10A-35b). There is no such mandate for permit applications.

COMMENT: If a municipality proposes an ordinance providing greater environmental protection for unique hydrological conditions, the municipality should be required to use a "qualified geologist or hydrogeologist" and certify to those unique conditions.

RESPONSE: The Department utilizes certification by qualified professionals to lessen the staff time necessary for review of permit applications, corrective action reports and other underground storage tank program activities. For municipal ordinance submissions, the Department intends to perform a detailed review of the submittal to ascertain if there are indeed unique hydrological conditions within the municipality. In this context, the certification would have little bearing; however, the municipality is urged to submit whatever information it believes is necessary to support the submission.

SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING PROCEDURES

COMMENT: N.J.A.C. 7:14B-12, General. One commenter noticed that although political subdivisions were permitted to request a hearing under N.J.A.C. 7:14B-11.3(e), the language of N.J.A.C. 7:14B-12 specifies that only owners, operators or registrants can request hearings.

RESPONSE: The Department has corrected this oversight by adding the term "political subdivision" to N.J.A.C. 7:14B-12.2(a), 12.2(b), and 12.2(c). In addition, the term "ordinance adoption" has been added to N.J.A.C. 7:14B-12.2(a) and the title of N.J.A.C. 7:14B-12.2.

N.J.A.C. 7:14B-12.2 Procedures for requesting hearings after denial or revocation of registration and permits

COMMENT: One commenter requested the regulated entity retain the right to continue use of the tank system for which the hearing was requested.

RESPONSE: The rules require that the owner/operator obtain a registration from the Department. In the case of the revocation of a registration, the Department may stay the revocation pending the outcome of the hearing.

COMMENT: Two comments were received concerning the time limit for the receipt of hearing requests by the Department. Both commenters

ADOPTIONS

believe that 20 days from receipt by the registrant to receipt of the hearing request by the Department of the revocation was too short a time period.

RESPONSE: The Department agrees with this comment and has extended the time period from 20 to 30 days in N.J.A.C. 7:14B-12.2(a) and 12.2(b).

COMMENT: One commenter recommended that the applicant be granted a hearing if all the information required in N.J.A.C. 7:14B-12.2(a) is submitted.

RESPONSE: There may be circumstances when a registrant or political subdivision requests a hearing on an issue or Department activity which is not open to adjudication. Thus, the Department will review the information submitted and then make a determination if a hearing is appropriate. Thus, no change to the rule is proper.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:14B-1.6, Definitions. The term "activity" was previously described in N.J.A.C. 7:14B-3.5, Permit fees. Since the term is used elsewhere in the rule (see N.J.A.C. 7:14B-10), the description was moved to the Definitions section in the exact same form for purposes of consistency.

N.J.A.C. 7:14B-1.6, Definitions. The term "Below the surface of the ground" has been changed to "Beneath the surface of the ground," to be consistent with the definition of "underground storage tank" and the definition of the term in the EPA's regulations.

N.J.A.C. 7:14B-1.6, Definitions. The definition of "new underground storage tank system" has been reworded for clarity. The definition now reads, "means an underground storage tank system which is not an existing or closed underground storage tank system." The previous definition could be misconstrued to imply that a closed system is part of the universe of new systems.

N.J.A.C. 7:14B-1.6, Definitions. The definition of "public water system" has been changed to add the phrase, "at least 60 days out of the year." The definition now reads, "means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year." The change makes the definitions consistent with rules adopted pursuant to the New Jersey Safe Drinking Water Act, N.J.A.C. 7:10.

N.J.A.C. 7:14B-2.3(c)2, Signatories. The word "application" has been replaced by "submittal" in the certification by the owner or operator, since several of the documents required by the Department to have this certification are not truly applications. An example is the Annual Certification Form.

N.J.A.C. 7:14B-2.5(b)2, Changes to registration. The addition of N.J.A.C. 7:14B-2.5(c), which requires the submission of a Standard Reporting Form in advance of a closure activity, has made N.J.A.C. 7:14B-2.5(b)2 inaccurate. The words, "abandonment, removed or" have been removed to make the two sections consistent. The word "installation" had been removed as part of the proposal. Thus, the paragraph now reads, "The substantial modification of a facility."

N.J.A.C. 7:14B-2.8(b)4, Denial or revocation of registration. A minor change was made to this paragraph to make it consistent with the State Act. N.J.S.A. 58:10A-30 authorizes the Department "... to enter, at reasonable hours, any property or place of business ..." The paragraph now reads as follows: "An authorized representative is denied access to the facility during any reasonable hour."

N.J.A.C. 7:14B-2.8(b), Denial or revocation of registration and N.J.A.C. 7:14B-10.10(b)2. The term "authorized representative" has been included for purposes of consistency throughout the rules.

N.J.A.C. 7:14B-4.1(a), Performance standards for new underground storage tank systems. The Department has added N.J.A.C. 7:14B-4.2(d) to N.J.A.C. 7:14B-4.1(a), stating that the piping must be properly designed, constructed and protected from corrosion. Previously, only underground storage tanks were addressed in N.J.A.C. 7:14B-4.1(a). Since N.J.A.C. 7:14B-4.1(a) discusses UST systems, the piping must be addressed as well.

N.J.A.C. 7:14B-4.1(h)3, Performance standards for new underground storage tank systems. The Department has combined the UL of Canada standards listed in N.J.A.C. 7:14B-4.1(h)3i, ii, and iii into N.J.A.C. 7:14B-4.1(h)3. Combining the UL of Canada standards will ensure that if used in conjunction with one another, an underground storage tank will be adequately protected from corrosion.

N.J.A.C. 7:14B-4.1(h)4, Performance standards for new underground storage tank systems. In addition to the Underwriters Laboratory Standard 58, the Department has added National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on

ENVIRONMENTAL PROTECTION

Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems." By itself, UL 58 was not adequate for corrosion protection.

N.J.A.C. 7:14B-4.1(i), Performance standards for new underground storage tank systems. The Department requires that all field-installed cathodic protection systems be designed by a corrosion expert. This is detailed in the permitting requirements of N.J.A.C. 7:14B-10.4. The addition of the requirement for the corrosion expert to N.J.A.C. 7:14B-4.1(i) clarifies this intent.

N.J.A.C. 7:14B-4.1(i)1 Performance standards for new underground storage tank systems. The Department has added the American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", and has corrected the publication number of NACE from RP-02-05 to RP-02-85.

N.J.A.C. 7:14B-4.1(j)3, Performance standards for new underground storage tank systems. The Department has added as an option, the Steel Tank Institute standard F894-89, "Specification for External Corrosion Protection of Underground Storage Tank Using Monolithic Coatings" for all new USTs constructed of a steel-fiberglass-reinforced plastic composite.

N.J.A.C. 7:14B-4.2(a)2, Performance standards for new underground storage tank appurtenant piping. The Department has added the citation of N.J.A.C. 7:14B-4.4(d)2 through 6, and deleted N.J.A.C. 7:14B-4.4(d)6. This will now set performance standards and specifications for the membrane liner when used with piping systems. The proposed rule at N.J.A.C. 7:14-4.2(a)2 did not adequately reference all of the requirements for membrane liners which were set forth in N.J.A.C. 7:14B-4.4(d)2 through 6.

N.J.A.C. 7:14B-4.2(a)3, Performance standards for new underground storage tank appurtenant piping. The Department has changed the citation of N.J.A.C. 7:14B-6.3 to 6.3(a)1, to clarify the requirement for suction piping.

N.J.A.C. 7:14B-4.2(d), Performance standards for new underground storage tank appurtenant piping. The Department requires that all field-installed cathodic protection systems be designed by a corrosion expert. This is detailed in the permitting requirements of N.J.A.C. 7:14B-10.4. The addition of the requirement for the corrosion expert in N.J.A.C. 7:14B-4.2(d) clarifies this intent.

N.J.A.C. 7:14B-4.3(a), Installation requirements for new underground storage tanks and piping. The Department has replaced the word "pipe" with "piping" to clarify the intent.

N.J.A.C. 7:14B-4.4(d), Construction requirements for secondary containment. The Department has changed "followed" to "follows" to clarify the sentence.

N.J.A.C. 7:14B-4.4(d)1, Construction requirements for secondary containment. The Department has deleted "secondary containment" and replaced it with "membrane liner" to clarify the requirements for the liner. A membrane refers strictly to lined excavations. In order to avoid confusion, the indicated change was made to N.J.A.C. 7:14B-4.4(d)1.

N.J.A.C. 7:14B-4.4(d)3, Construction requirements for secondary containment. The Department has added the word "system" after membrane liner to include aspects of the liner including design, installation, and performance standards.

N.J.A.C. 7:14B-4.5(c)1, Upgrading existing underground storage tank systems. The Department has deleted N.J.A.C. 7:14B-4.5(c)1i, ii, iii, and iv. These references are already cited at N.J.A.C. 7:14B-4.1(i)1, (j) and (k), which refer to cathodic protection of underground storage tanks, and N.J.A.C. 7:14B-4.2(d), which refers to cathodic protection of metallic piping systems. N.J.A.C. 7:14B-4.5(c)1 now refers to these citations with respect to existing metallic underground storage tank systems.

N.J.A.C. 7:14B-4.5(c)2, Upgrading existing underground storage tank systems. The Department has reworded N.J.A.C. 7:14B-4.5(c)2 to require that the tank and/or piping constructed of steel and cathodically protected using a field-installed cathodic protection system must be designed by a corrosion expert and must be designed to allow for the inspections required in N.J.A.C. 7:14B-5.2. The citation previously read that the field-installed cathodic protection system using an impressed current system does not have to be designed by a corrosion expert, which would have been in conflict with N.J.A.C. 7:14B-4.1(i) and N.J.A.C. 7:14B-4.2(d).

N.J.A.C. 7:14B-5.2(a)3, Operation and maintenance of cathodic protection systems. The Department has added another valuable industry standard which may be used when testing the cathodic protection systems

on underground storage tank systems: American Petroleum Institute's Publication 1632.

N.J.A.C. 7:14B-5.3(f), Repairs. The Department clarified the requirement that a precision test be conducted on the entire underground tank system after a repair was performed, unless a Department-approved release detection system was already being used, and not just on the tank itself.

N.J.A.C. 7:14B-6.1(k), General monitoring requirements for all underground storage tank systems. The Department has rewritten the monitoring requirements for pressurized delivery systems to be clearer. N.J.A.C. 7:14B-6.1(k)1 replaces N.J.A.C. 7:14B-6.3(a)3 and N.J.A.C. 7:14B-6.1(k)2 replaces N.J.A.C. 7:14B-6.3(b)3. N.J.A.C. 7:14B-6.1(k)1 pertains to pressurized delivery systems using an automatic shutdown device for monitoring. N.J.A.C. 7:14B-6.1(k)2 now refers to a line release detector which restricts the flow to the dispenser in the event of a release. In addition to the line release detector, the owner or operator must have either a discharge detection monitoring device or a leak detection monitoring device, or in limited cases, an annual precision test.

N.J.A.C. 7:14B-6.3(a)3 and 6.3(b)3 were moved to N.J.A.C. 7:14B-6.1(k), general monitoring for all underground storage tank systems, to clarify that these provisions are applicable to all tank systems. Careful reading of the rule proposal indicates that no change has occurred since new piping systems are subject to N.J.A.C. 7:14B-6.3 and existing systems are subject to N.J.A.C. 7:14B-6.4, which refers back to N.J.A.C. 7:14B-6.3. The change is made to keep the construction of N.J.A.C. 7:14B-6 consistent, whereby all general requirements are located in N.J.A.C. 7:14B-6.1.

N.J.A.C. 7:14B-6.1(l), General monitoring requirements for all underground storage tank systems. The Department has added the option for an owner or operator to use a monitoring system which is not specified providing that the owner or operator obtains approval for the device from the Bureau of Underground Storage Tanks. The monitoring system must comply with N.J.A.C. 7:14B-6.1 and be as effective in detecting releases as the monitoring systems listed in N.J.A.C. 7:14B-6.2.

N.J.A.C. 7:14B-6.2(b)3vi, Monitoring requirements for new underground storage tank systems. The Department has added an additional performance standard for the membrane liner stating that the liner shall be designed to prevent precipitation, ground water, or soil moisture from entering the excavation area. This requirement already exists in N.J.A.C. 7:14B-4.4(d)3 and is being included in N.J.A.C. 7:14B-6.2(b)3vi for consistency.

N.J.A.C. 7:14B-6.2(b)4i(2), Monitoring requirements for new underground storage tank systems. The Department has replaced "automatic inventory" with "inventory." In most instances, automatic inventory reconciliation will not be feasible unless some type of electronic device is utilized, such as an in-tank monitor. The majority of inventory reconciliation is performed by manual methods.

N.J.A.C. 7:14B-6.2(f) Monitoring requirements for new underground storage tank systems. The Department has deleted N.J.A.C. 7:14B-6.2(f) to avoid confusion. The definition of sump in N.J.A.C. 7:14B-1.6 clearly states that a sump must store hazardous substances only for 48 hours or less. Otherwise the unit becomes an underground storage tank. Therefore N.J.A.C. 7:14B-6.2(f) is nonsensical, since all sumps store hazardous substances for less than 40 hours. The requirements for sumps are located at N.J.A.C. 7:14B-1.4(c).

N.J.A.C. 7:14B-6.3(a)2, Monitoring requirements for new piping on new underground storage tank systems. The Department has added a third option to N.J.A.C. 7:14B-6.3(a)2 for secondary containment for product bearing piping. The option listed, N.J.A.C. 7:14B-4.2(a)5, states that the product bearing piping may be secondarily contained utilizing a semirigid, dielectric, noncorrosive material. Previously, N.J.A.C. 7:14B-4.2(a)1, which is double walled piping, and N.J.A.C. 7:14B-4.2(a)2, which is single walled piping with a lined excavation, were the only options listed. The new option is an equivalent device which does not impose a new requirement or relax an existing requirement.

N.J.A.C. 7:14B-6.3(a)3, Monitoring requirements for new piping on new underground storage tank systems. The Department has deleted the performance requirements from N.J.A.C. 6.3(a)3 and has inserted them in N.J.A.C. 7:14B-6.1(k)1. N.J.A.C. 7:14B-6.3(a)3 now refers to N.J.A.C. 7:14B-6.1(k)1 for the performance standards for the automatic shut-down device.

N.J.A.C. 7:14B-6.3(b)3, Monitoring requirements for new piping on new underground storage tank systems. The Department has moved the option for installing a line release detector on pressurized piping from N.J.A.C. 7:14B-6.3(b)3 to N.J.A.C. 7:14B-6.1(k)2. N.J.A.C. 7:14B-6.3(b)3 now refers to N.J.A.C. 7:14B-6.1(k)2.

N.J.A.C. 7:14B-6.5(a), Construction requirements for monitoring systems using screen and casing. In order to clarify the type of permit specified under N.J.S.A. 58:4A-4.1 et seq., the word "well" has been added in front of "permit" at N.J.A.C. 7:14B-6.5(a) to indicate that a well permit is not required if the conditions of N.J.A.C. 7:14B-6.5(a) are met.

N.J.A.C. 7:14B-6.5(b), Construction requirements for monitoring systems using screen and casing. The intent of N.J.A.C. 7:14B-6.5(b) is to require facilities installing a monitoring system using a well which does not meet the requirements of N.J.A.C. 7:14B-6.5(a) to obtain a well permit. The language has been modified as follows to clarify this intent: "The owner or operator of a proposed monitoring system * [using screen and casing which required the drilling of a borehole for installation] * **not in conformance with N.J.A.C. 7:14B-6.5(a)** * shall comply with N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act."

N.J.A.C. 7:14B-6.6, Recordkeeping. In order to emphasize that monthly inventory reconciliation is a form of leak detection monitoring, the Department has added the language, "and monthly inventory reconciliations" to N.J.A.C. 7:14B-6.6(a)2.

N.J.A.C. 7:14B-7.3(e), Confirmed releases. In order to provide all the different reporting requirements which might be involved with an underground storage tank system, the Department has added the already existing requirement for the owner or operator to report discharges of certain substances over their reportable amount. These requirements are located at 40 CFR 302 and are mandated by the Comprehensive, Environmental Responsibility and Cleanup Liability Act of 1980, 42 U.S.C. 9601 et seq. All reports must be directed to the National Response Center.

N.J.A.C. 7:14B-8.3(c), Reporting requirements. The phrase "underground storage tank" was changed to "underground storage tank system" for purposes of clarity.

N.J.A.C. 7:14B-8.4(a), Health and safety requirements. The phrase "incorporated herein by reference" was added in for clarity.

N.J.A.C. 7:14B-9.1(a), General Requirements. The Department has made modifications to the subsection concerning temporary closure of tank systems to clarify the intent of the temporary closure provision. First, although these tank systems are not in use, any suspected or confirmed release at the facility must be followed up in accordance with N.J.A.C. 7:14B-7 and 8. Second, the owner or operator of a temporarily closed tank will still be required to have spill and overflow protection as required by N.J.A.C. 7:14B-4.1(b), and release detection, as required by N.J.A.C. 7:14B-6, prior to putting the tank system back into use or by September 3, 1991, whichever is later. Finally, in order to properly administer the registration program, the Department must be notified by the owner or operator of any tank which is temporarily closed. None of these additions place a new requirement on the regulated community.

N.J.A.C. 7:14B-9.2(a)5, Closure requirements for underground storage tank systems containing petroleum products. This paragraph has been modified to clarify that a registration fee is required for any unregistered tank system which is undergoing closure.

N.J.A.C. 7:14B-9.2(b), Closure requirements for underground storage tank systems containing petroleum products. This subsection has been modified to ensure that all parties understand that a closure approval must be received before any closure activities begin. It also clarifies the Department's intent to allow those county health agencies who have signed an interagency agreement with the Department pursuant to by the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., to issue the needed closure approvals in place of the Department. The interagency agreement must include a specific reference to the closure activity within the Underground Storage Tank Program.

N.J.A.C. 7:14B-9.2(c), Closure requirements for underground storage tank systems containing petroleum products. The citation used has been changed from N.J.S.A. 58:4A-5 to N.J.S.A. 58:4A-4.1 et seq. to be more accurate.

N.J.A.C. 7:14B-9.2(c)1, Closure requirements for underground storage tank systems containing petroleum products. The Department is requiring that site assessments for closure consist of ground water monitoring wells drilled either to first water or 75 feet, whichever comes first. In the rare case when ground water is not reached, or when site conditions such as tank location or geologic formation preclude drilling to 75 feet, the Department will accept an alternative method of site assessment. The paragraph has been modified to reflect the change allowing the alternate method when site conditions preclude drilling. The paragraph now reads, "The wells shall be screened in the first water encountered and the screens shall be placed a minimum of three feet above the water table whenever possible and five feet below the water table. When ground water is not

encountered within 75 feet of the surface, or when site conditions preclude drilling to this depth, the Department may, in its discretion, approve another method of site assessment."

N.J.A.C. 7:14B-9.4(a)2, Exemptions to site assessment requirements. A minor change was made to reflect that all of N.J.A.C. 7:14B-6 should be referenced within N.J.A.C. 7:14B-9.4(a)2 for the location of monitoring system requirements, not just N.J.A.C. 7:14B-6.2.

N.J.A.C. 7:14B-9.4(a)3, Exemptions to site assessment requirements. A change has been made to N.J.A.C. 7:14B-9.4(a)3 to simplify the exemption for vapor sensors. The precondition that there could never be any detectable contamination at the lowest detection limit of the monitoring system is inconsistent with the requirements of N.J.A.C. 7:14B-6.2(b)1 and 7. These sections allow minor exceedances of the monitoring system under the certain conditions. In order to correct this inconsistency, the paragraph has been rewritten to read, "The installation of vapor sensors as an approved monitoring system as specified in N.J.A.C. 7:14B-6.2(b)1.

N.J.A.C. 7:14B-9.5(c), Reporting and recordkeeping requirements. Any person knowing of a release is already required to report the release to the Department in accordance with N.J.A.C. 7:14B-7.3(a). N.J.A.C. 7:14B-9.5(c) has been changed to read as follows to be consistent with N.J.A.C. 7:14B-7.3(a): "Any person, including but not limited to, the owner or operator shall report any evidence of contamination discovered during closure activities in accordance with the procedures in N.J.A.C. 7:14B-7.3 and performing corrective action in accordance with N.J.A.C. 7:14B-8.

N.J.A.C. 7:14B-10.1(a), General permitting requirements and procedures. The Department modified this subsection to make it clear that construction permits are necessary for tank installation, expansion, or substantial modification pursuant to the New Jersey Uniform Construction Code (UCC), N.J.A.C. 5:23, in addition to the requirement to obtain a permit from the Department. The UCC permit will only be issued after all other Federal and State approvals have been obtained. The permits pursuant to the UCC were mentioned in the proposed rules at N.J.A.C. 7:14B-10.1(b), for secondarily contained underground storage tank systems, but not at N.J.A.C. 7:14B-10.1(a). The Department feared confusion might ensue if N.J.A.C. 7:14B-10.1(a) was not modified.

N.J.A.C. 7:14B-10.1(h)2, General permitting requirements and procedures. The Department corrected this paragraph to omit mention of secondary containment as a factor in determining when a permit will be issued since permits will not be issued for secondarily contained systems, as was already stated in N.J.A.C. 7:14B-10.1(b). In addition, N.J.A.C. 7:14B-10.1(h)2 originally stated that a permit would be denied if the monitoring system did not meet the requirements of N.J.A.C. 7:14B-6.2 or 6.4. Since all tank systems must be in compliance with the entirety of N.J.A.C. 7:14B-6, the reference in N.J.A.C. 7:14B-10.1(h)2 has been changed to read N.J.A.C. 7:14B-6, instead of N.J.A.C. 7:14B-6.2 or 6.4. This makes N.J.A.C. 7:14B-10.1(h)2 consistent with the rest of the rules.

N.J.A.C. 7:14B-10.2(a)1, Additional application requirements for the installation of underground storage tank systems not equipped with secondary containment. The Department changed N.J.A.C. 7:14B-10.2(a)1 to make it clear that a New Jersey Professional Engineer must be the one to sign the certification when submitting plans and specifications. In the wording of the Professional Engineer's certification, the word "subchapter" was changed to "chapter" to be consistent with the preceding sentence.

N.J.A.C. 7:14B-10.2 and 10.2(a), Additional application requirements for the installation of underground storage tank systems not equipped with secondary containment or equivalent devices. The phrase "equivalent devices" is being deleted from N.J.A.C. 7:14B-10.2 and 10.2(a). Owners and operators of equivalent devices for secondary containment are not exempted by N.J.A.C. 7:14B-10.1(b) from applying for a permit. The reference to N.J.A.C. 7:14B-6.3 has been amended to read "N.J.A.C. 7:14B-6.3(a)2".

N.J.A.C. 7:14B-10.3, Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment or equivalent devices. The phrase "equivalent devices" is being deleted from N.J.A.C. 7:14B-10.3. Owners and operators of equivalent devices for secondary containment are not exempted by N.J.A.C. 7:14B-10.1(b) from applying for a permit.

N.J.A.C. 7:14B-10.3(a)1, Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment. The Department deleted references to "proposed" underground storage tank

systems and locations because N.J.A.C. 7:14B-10.3(a) only applies to existing tank systems.

N.J.A.C. 7:14B-10.3(a)1i and (b)1i, Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment. The Department changed two references to N.J.S.A. 58:4A-5 to the appropriate reference which is N.J.S.A. 58:4A-4.1 et seq., "The Subsurface and Percolating Waters Act." The Department's Bureau of Water Allocation, who implements the act, requires that boreholes and wells are sealed when no longer in use.

N.J.A.C. 7:14B-10.3(b)1, Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment. Soil vapor can be analyzed in the field in a variety of ways. The procedures used to collect the samples and conduct the analyses can, of course, greatly affect the results. Furthermore, after speaking to several manufacturers of vapor monitoring systems, the Department found that many of them measured "relative" levels of background contamination rather than "actual" quantifiable levels. In order for the Department to review the results of soil vapor analyses, the numbers reported must be defined in order to be meaningful. If relative measurements are made in the field, they should be related to actual levels for the particular product to be stored in the underground storage tank system, such as by using a calibration curve. For these reasons, the department expanded on the information requested in this paragraph when vapor sensors are proposed.

N.J.A.C. 7:14B-10.4, Additional application requirements for the installation of corrosion protection systems for existing underground storage tank systems. Because this section applies to requirements for the addition of corrosion protection on existing underground tank systems, the Department changed the reference to N.J.A.C. 7:14B-4.1(a), which addresses new underground storage tank systems, to the more appropriate reference N.J.A.C. 7:14B-4.5(c), which addresses the upgrading of existing tank systems.

N.J.A.C. 7:14B-10.5(b), Additional application requirements for substantial modifications other than discharge monitoring systems and corrosion protection. The wording has been revised to reflect the fact that N.J.A.C. 7:14B-5.3(b) does not require a certification. N.J.A.C. 7:14B-5.3(b) requires that a repair must be performed in accordance with industry standards.

N.J.A.C. 7:14B-12.1(a), General Penalty. The Department originally referred to only the civil administrative penalties section of N.J.S.A. 58:10A-10 and N.J.A.C. 7:14B-8. There are several other enforcement alternatives available to the Department which are stated in these two references. For consistency purposes, they are restated in N.J.A.C. 7:14B-12.1(a) as follows: "Failure by an owner or operator of an underground storage tank system to comply with any requirement of the State Act or this chapter may result in denial or revocation of the owner's or operator's registration or permit for the tank system and/or the imposition of civil administrative penalties, issuance of administrative compliance orders, imposition of civil penalties, initiation of civil action for injunctive relief, or petition to the Attorney General to bring criminal action in accordance with N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

7:14B-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

- 1.-2. (No change in text.)
3. To establish Initial Registration and Annual Certification fees;
4. To implement the technical requirements of the State Act;
5. To implement the reporting requirements of the State Act;
6. To implement the corrective action requirements of the State Act;
7. To implement the permitting requirements of the State Act; and
8. (No change.)

7:14B-1.4 Applicability

(a) (No change.)

(b) The following types of underground storage tank systems are exempt from the requirements of this chapter:

- 1.-2. (No change.)
3. Tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a residential building;
- 4.-8. (No change.)

9. Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels if the storage tank is equipped with secondary containment, and is uncovered so as to allow visual inspection of the exterior of the tank;

10. Any pipes, lines, fixtures or other related equipment connected to any tank exempted from the provisions of this chapter as set forth in (b)1 to 9 above, and 11 to 14 below;

11.-14. (No change.)

(c) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2, 3, 4.1(a)*, (l)* and (m), 4.3(a)*, 7 and 8:

1. Tanks used to contain radioactive materials that are regulated under the Atomic Energy Act of 1954;

2. Tanks that are part of an emergency generator system at nuclear power generator facilities regulated by the Nuclear Regulatory Commission under 10 C.F.R. §50 Appendix A; and

3. Sumps.

(d) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2, 3, *[5.4,]* 7 and 8:

1. Tanks used to store heating oil for onsite consumption in a residential building with a capacity greater than 2,000 gallons.

7:14B-1.6 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Abandon in place" or "abandonment in place" means a tank system rendered permanently nonoperational and left in the ground.

...
"Activity" means any one of the following:

1. Installation of a new underground storage tank system;

2. Closure of an underground storage tank system; or

3. Substantial modification of an underground storage tank system.*

"Annular space" means the space created between the primary and secondary container of a double-walled underground storage tank system*.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

...
"*[Below]* *Beneath* the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Casing" means a pipe used to support the sides of a hole to prevent caving or the entrance of water or other fluids into the hole.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Close" or "closure" means the permanent elimination from service of any underground storage tank system by removal or abandonment in place.

"Commercial" means any activity involving a hazardous substance from an underground storage tank system including, but not limited to, the resale, distribution, processing and transportation of any hazardous substance, as well as the use of any hazardous substance to perform or carry out these or other activities, that results in monetary gain.

...
"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

"Continuous monitoring" means a monitoring system that incorporates automatic equipment that can detect leaks and/or discharges without interruption.

"Corrosion" means the deterioration of a material by direct or electrochemical reaction with its environment.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a licensed New Jersey Professional Engineer as defined in N.J.S.A. 45:8-27 et seq.

"Daily" means at least five days per week.

"Decommissioning" means the excavating, cleaning, degassing, removal or abandonment in place of an underground storage tank system.

...
"Discharge detection system" means a method of detecting a discharge of hazardous substances into the environment from an underground storage tank system.

"Discharge detection observation well" means an access point constructed of screen and casing used in conjunction with a monitoring system to detect a release of product or compound in the vapor or liquid phase which is stored in the underground storage tank system, for the operational life of the underground storage tank system.*

"Double-walled tank" means an underground storage tank in which a rigid secondary container is attached to the primary container and which has an annular space.

...
"Empty" means all hazardous substances have been removed that can be removed by direct pumping or drainage and no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the system remains*, whichever is the smaller amount*.

"Excavation area" means the area containing the underground storage tank system and backfill material and bounded by the above ground surface, walls, and pit and trenches into which the underground storage tank system is placed at the time of installation.

"Existing underground storage tank system" means an underground storage tank system for which installation has commenced on or before *[December 21, 1987]* *September 4, 1990* and is not closed pursuant to this chapter. Installation is considered to have commenced if:

1. The owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

i. A continuous on-site physical construction or installation program has begun; or

ii. The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss. These contractual obligations shall be for physical construction at the site or installation of the tank system which shall be completed within a reasonable time.

"Exposure assessment" means a study to identify all existing and/or potential receptors of contamination due to a release of hazardous substances into the environment.

"Facility" means one or more underground storage tank systems owned by one person on a contiguous piece of property.

...
"Field constructed tank" means a tank constructed at the facility with a capacity of 50,000 gallons or more. Tanks which are factory-built and assembled in the field are not considered field-constructed tanks.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" means a hazardous substance that is present as a non-aqueous phase liquid.

ADOPTIONS

"Holiday" means a flaw in the integrity of the metal or a flaw in the corrosion resistant coating of the metallic parts of an underground storage tank system which may cause the metal to corrode.

...

"Installation" means the emplacement of a new underground storage tank or underground storage tank system including the replacement of an existing underground storage tank or underground storage tank system.

"Inventory controls" means the techniques used to identify a loss of product that are based on volumetric measurements in the underground storage tank and reconciliation of these measurements with hazardous substance delivery and withdrawal records.

"Leak" means the release of a hazardous substance from an underground storage tank system into a space created by a method of secondary containment wherein hazardous substances can be detected by visual inspection or a monitoring system before it enters the environment.

"Leak detection system" means a method of detecting a leak in the space created by a method of secondary containment.

"Legal entity" means all public and private entities including all political subdivisions of the State such as counties and municipalities as well as utility authorities.

"Lining" means a layer of non-corrodible material resistant to the hazardous substance stored and bonded firmly to the interior surface of the tank, pipe, line, fixture or other equipment.

...

"Liquid level indicator" means a monitoring system which detects a change in the height of a fixed volume of liquid in an annular space.

"Liquid sensor" means a monitoring system which detects the liquid phase of a hazardous substance.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids for subsequent disposition or reinjection into a production or pipeline stream, or which may collect and separate liquids from a gas stream.

"Membrane liner" means a synthetic non-corrodible impervious material used as a barrier around the tank system to facilitate monitoring releases.

...

"Monitor well" means a well used to observe the elevation of the water table or potentiometric surface, or to determine water quality in an aquifer.

"Monitoring system" means either a discharge detection system or leak detection system capable of detecting leaks or discharges, or both, other than an inventory control system, used in conjunction with an underground storage tank, or a facility conforming to criteria established in N.J.A.C. 7:14B-6.

"Motor fuel" means any petroleum product that includes, but is not limited to, all grades of gasoline, diesel fuel and kerosene used in the operation of any type of engine.

"New underground storage tank system" means an underground storage tank system which *[does not presently exist or is closed]* *is not an existing or closed underground storage tank system*.

...

"Non-public water supply" means a water system that is not a public water system.

"Numbers 4, 5, and 6 fuel oil" means grades of fuel oil used for power generation or heating with properties listed with ASTM Specifications D-396 and 975.

...

"Permit" means an authorization or license or equivalent control document issued by the Department or its designee to implement the requirements of N.J.A.C. 7:14B-10.

...

"Piping" or "pipe" means any hollow cylinder or tubular conveyance which routinely contains a hazardous substance, is in contact with the ground and is constructed of non-earthen materials including any valves, elbows, joints, flanges and flexible connections and is designed to transport hazardous substances. Piping does not in-

ENVIRONMENTAL PROTECTION

clude vent lines, vapor recovery lines or fittings located on top of the tank.

"Piping containment chambers" means a container attached to the top of the underground storage tank accessible to grade providing containment of product bearing appurtenant pipe fittings.

"Potential receptor" means any structure or area that may become contaminated from or affected by a leak or spill from an underground storage tank which then may endanger the environment or public health, safety and welfare of any citizen.*

"Pressure loss sensor" means a monitoring system which can detect a loss of pressure in a pressurized annular space.

"Primary container" means the first level of containment which comes into immediate contact on its inner surface with the hazardous substance being contained (for example, single-walled tank).

"Product tight" means impervious to the hazardous substance contained or to be contained so as to prevent a release.

...

"Public community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.*

"Public non-community water system" means a public water system that is not a community water system.*

"Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily *at least 60 days out of the year*.

*["Qualified geologist or ground water hydrologist" means any person who has:

1. Graduated from an accredited college with a bachelor's degree in hydrogeology, geohydrology, or soil science and has five years of appropriate professional experience;

2. Graduated from an accredited college with a bachelor's degree in geology including and/or supplemented by a minimum of three credit hours in hydrogeology or geohydrology and has five years of appropriate professional experience; or

3. Graduated from an accredited college with a bachelor's degree in one of the natural or physical sciences including and/or supplemented by 21 credit hours in pedology (course work in paleontology or mining will not be considered acceptable) and has five years of appropriate professional experience.]*

"Qualified Ground Water Consultant" means any person who holds one or more of the following:

1. A certification used by one of the following organizations:

i. American Institute of Hydrology—professional hydrologist, professional hydrogeologist, or professional hydrologist (ground water);

ii. American Institute of Professional Geologists—certified professional geologist or certified professional geological scientist;

iii. American Society of Agronomy, American Registry of Certified Professionals in Agronomy, Crops and Soils—certified professional soil scientist or certified professional soil specialist;

iv. National Water Well Association, Association of Ground Water Scientists and Engineers—certified ground water professional;

v. American Association of Petroleum Geologists, Division of Professional Affairs—certified petroleum geologist;

vi. Society of Independent Professional Earth Scientists—member; or

vii. Association of Engineering Geologists—member;

2. A New Jersey Professional Engineer License; or

3. Any other license, certification, or registration to practice geology, hydrogeology or ground water hydrology issued by any state in the United States or by any national organization, provided that the license, certification or registration process requires, at a minimum, the following:

i. Possession of a bachelor's degree from an accredited college;

ii. Five years of professional experience in geology, hydrogeology, or ground water hydrology;

iii. Three qualified references;

iv. Review by a board for acceptance; and

v. Adherence to a code of ethics.*

...

"Saturated zone" or "zone of saturation" means that part of the subsurface under ***greater than*** atmospheric pressure in which all voids are filled with water.

"Screen" means a pipe used to support the sides of a hole which allows the entrance of water, ***[gas]* *vapor***, or other fluid into the hole.

"Secondary containment" means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank system may be detected before it enters the environment.

"Site" means the contiguous piece of property at which a facility is located.*

"Stage" means to place in a temporary holding area prior to final disposal.

"Sump" means any pit or reservoir that meets the definition of an underground storage tank (including pipes, troughs or trenches connected to it) that serve to collect or contain a leak or discharge of a hazardous substance for no more than 48 hours.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of hazardous substances and that is not an injection well.

"Tank capacity" means the manufacturer's nominal tank size, when referring to a single tank. When referring to multiple tanks storing the same hazardous substance at the same site, the aggregate of the nominal tank sizes will be used to determine capacity.*

"Underground storage tank" means any one or combination of tanks as set forth in N.J.A.C. 7:14B-1.4, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more beneath the surface of the ground.

"Underground storage tank system" or "tank system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

"Unsaturated zone" means the subsurface zone containing water under ***[pressure]* *a hydrostatic pressure*** less than ***[that of the atmosphere]* *atmospheric***, including water held by capillary forces within the soil containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation.

"Use" means the filling, dispensing or storing of any hazardous substance from or in an underground storage tank system.

"U-tube" means a slotted pipe located lengthwise and underneath each tank, sloped to a collection sump and accessible at grade.

"Vacuum loss sensor" means a monitoring system which detects the loss of vacuum from an annular space and thereby indicates a breach in either the primary or secondary container.

"Vadose zone" means the zone containing water under hydrostatic pressure less than atmospheric pressure and which is bounded by the ground surface and the water table.

"Vapor sensor" means a monitoring system which can detect the gaseous phase of a hazardous substance.

"Volatile organic substance" means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of substances of 0.02 pounds per square inch (one millimeter of mercury) absolute or greater measured at standard conditions of atmospheric pressure and a temperature of 60 degrees Fahrenheit; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, dichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2,

trifluoroethane, 1,2 dichloro-1,1,2,2 tetrafluoroethane and chloropentafluoroethane.

"Water table" means the surface of the body of unconfined ground water where the hydrostatic pressure is equal to atmospheric pressure. The water table is the boundary between the saturated and unsaturated zones ***and fluctuates according to season and rainfall***.

7:14B-2.1 General registration requirements

(a) Any person that owns or operates an underground storage tank system shall register each tank system with the Department.

(b) Any person that owns or operates an underground storage tank system who notified the Department pursuant to Section 9002 of the "Hazardous Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act", 42 U.S.C. §§ 6901 et seq., shall comply with all requirements set forth in this chapter.

(c) Any person that owns or operates an underground storage tank system shall only use such tank system upon receipt of a valid Registration Certificate issued by the Department.

(d) Any person that owns or operates an underground storage tank system that began use of the tank on or before December 21, 1987 shall register the tank system with the Department no later than 60 days following this date. Any person that owns or operates an underground storage tank system that was installed after December 21, 1987 shall register the tank system with the Department 30 days prior to the use of that tank system.

(e) Any person that owned or operated an underground storage tank system which was removed from the ground on or after September 3, 1986 shall register that tank system for the period between September 3, 1986 and the date that the tank system was removed.

(f) Any owner or operator intending to close an underground storage tank system shall register the underground storage tank system with the Department before these closure activities are begun.

7:14B-2.2 Registration and certification procedures

(a) Any person that owns or operates a facility shall file registration and certification information on the New Jersey Underground Storage Tank Registration Questionnaire and the New Jersey Underground Storage Tank Annual Certification Form, respectively.

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

(d) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Registration Questionnaire:

1. The name, location, and contact person for the facility;
2. The name and address of the facility owner;
3. The number and type of underground storage tank systems at the facility, including, but not limited to, contents, size, age, type of construction and other characteristics of the tank system;
4. A site plan of the facility, including the location of the tanks, lines, pumps, dispensers, fill pipes, and other features of the tank system, including the distance from existing buildings and property boundaries; and

5. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

- i. Type of mechanism;
- ii. Carrier or issuing institution;
- iii. Date of coverage;
- iv. Policy number (if applicable); and
- v. Policy amount (if applicable).

(e) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Annual Certification Form:

1. Certification that the facility is in compliance with this chapter;
2. Notification of any changes to the status of the facility; and
3. Provide the following information for all general liability insurance or other financial responsibility mechanisms:
 - i. Type of mechanism;
 - ii. Carrier or issuing institution;
 - iii. Date of coverage;
 - iv. Policy number (if applicable); and
 - v. Policy amount (if applicable).

(f) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Standard Reporting Form:

1. Identify whether the underground storage tank located at the owner or operator's facility is being installed, abandoned, removed, sold or transferred, or substantially modified;
2. The name and address of the owner or operator;
3. The facility name and location;
4. The identification number of the affected tank as it appears on the Registration Questionnaire;
5. The underground storage tank registration number (if known);
6. Specific information concerning transfer of ownership, abandonment or removal, substantial modifications and new or replacement installations, depending on which activity is applicable;
7. Certification that the facility is in compliance with this chapter; and
8. Provide the following information for all general liability insurance or other financial responsibility mechanisms:
 - i. Type of mechanism;
 - ii. Carrier or issuing institution;
 - iii. Date of coverage;
 - iv. Policy number (if applicable); and
 - v. Policy amount (if applicable).

7:14B-2.3 Signatories

(a) All registrants shall, upon submission, sign the following certification on the forms identified in (b) below:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by in (a)1 above shall be signed by the highest ranking individual at the facility with overall responsibility for that facility.

(b) The certification set forth in (a) above shall be signed on the following forms:

- i. The New Jersey Underground Storage Tank Registration Questionnaire;
- ii. The New Jersey Underground Storage Tank Standard Reporting Form.

(c) All owners ***[and]* *or*** operators shall, upon submission, sign the following certification for the activities set forth in (d) below:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification set forth in (c)1 above shall be signed by the highest ranking individual with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this ***[application]* *submittal*** and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fines and/or imprisonment."

i. The certification required by (c)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency by either the principal executive officer or ranking elected official.

(4) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (c)1i above is the same person as the official required to certify in ***[(a)]* *(c)*2i**, only the certification in (c)1i need be made. In all other cases, the certifications of (c)1 and 2 shall be completed.

(d) The certifications set forth in (c) above shall be completed on the following submittals:

1. The Annual Certification Form required in N.J.A.C. 7:14B-2.2(e);
2. The discharge of hazardous substances report required in N.J.A.C. 7:14B-8.3(a)6;
3. A request for an exemption to site assessment requirements as set forth in N.J.A.C. 7:14B-9.4(c);
4. The closure report required by N.J.A.C. 7:14B-9.5(a)5; and
5. A permit application as required in N.J.A.C. 7:14B-10.1(f)8.

7:14B-2.4 Transfer of registration

(a) (No change.)

(b) The owner or operator of an underground storage tank system shall notify the Department of any change in the ownership of a facility within 30 days after the contract date or the date of closing on the Standard Reporting Form obtainable from the Department at the address provided in N.J.A.C. 7:14B-2.2(b) and in accordance with the procedures for reporting modifications set forth in N.J.A.C. 7:14B-2.5.

(c) (No change.)

7:14B-2.5 Changes to registration

(a) The owner or operator of a facility shall amend a facility's registration to reflect any modification of any information included in the New Jersey Underground Storage Tank Registration Questionnaire or New Jersey Underground Storage Tank Annual Certification Form. Each modification shall be reported to the Department on a separate Standard Reporting Form within 30 days after completion of the modification except as provided for in (c) below.

(b) Modifications include, but are not limited to, the following:

1. The sale or transfer of ownership of a facility;
2. The ***[abandonment, removal or]*** substantial modification of a facility;
3. A change in the type of hazardous substances stored at a facility.

(c) The owner or operator intending to close an underground storage tank system shall submit a Standard Reporting Form in advance of the closure as required by N.J.A.C. 7:14B-9.1 through 9.5.*

7:14B-2.7 Display of Registration Certificate

The owner or operator of an underground storage tank system shall prominently display a valid Registration Certificate at the facility or shall make the Registration Certificate available for inspection by an authorized local, State or Federal representative.

7:14B-2.8 Denial or revocation of registration

(a) The Department may, in its discretion, deny the issuance of a Registration Certificate upon a determination of the following:

1. The New Jersey Underground Storage Tank Registration Questionnaire is incomplete, contains inaccurate information and/or is illegible;
2. The owner or operator fails to enclose the accurate Initial Registration Fee with the New Jersey Underground Storage Tank Registration Questionnaire pursuant to N.J.A.C. 7:14B-3.1; or
3. The owner or operator fails to comply with any requirement of the State Act or this chapter.

(b) The Department may revoke the registration of a facility upon a determination of the following:

1. The New Jersey Underground Storage Tank Registration Questionnaire contains false or inaccurate information;
2. The owner or operator has failed to submit an Annual Certification Form pursuant to N.J.A.C. 7:14B-2.2;
3. The owner or operator has failed to pay the Annual Certification fee pursuant to N.J.A.C. 7:14B-3.1;
4. An authorized ***[government]*** representative is denied access to the facility during ***[normal business hours]* *any reasonable hour***; or
5. The owner or operator has failed to comply with any requirement of the State Act or this chapter.

(c) The Department shall inform an owner or operator of the denial or revocation of registration by Notice of Intent to Deny

Registration or Notice of Intent to Revoke Registration. This Notice shall include:

1. The specific grounds for denial of issuance as set forth in N.J.A.C. 7:14B-2.8(a) above; or

2. The specific grounds for revocation as set forth in N.J.A.C. 7:14B-2.8(b) above.

(d) The Department shall serve this Notice to an owner or operator by certified mail (return receipt requested) or by personal service.

(e) An owner or operator that receives a Notice from the Department denying or revoking a registration shall not use the tank as required by N.J.A.C. 7:14B-2.1(c).

(f) Any person whose registration has been denied or revoked may request a hearing pursuant to N.J.A.C. 7:14B-12.2(a).

7:14B-3.1 Initial Registration fee

The owner or operator of an underground storage tank system shall submit a \$100.00 Initial Registration fee for each facility upon registration of the facility with the Department.

7:14B-3.2 Annual Certification fee

(a) The owner or operator of an underground storage tank system shall submit an Annual Certification fee for each facility upon the yearly re-registration of the facility with the Department.

(b) The Annual Certification fee is as follows:

1.-2. (No change.)

7:14B-3.4 Exemption from fees

(a) The Department shall not assess a fee to public schools or religious or charitable institutions.

1. For the purpose of this exemption, "public school" means a school, under college grade, which derives its support entirely or in part from public funds and is listed as a public school in the current edition of the New Jersey Department of Education's "School Directory."

(b) The Department shall not assess a fee for underground storage tank systems which have been abandoned in place in accordance with N.J.A.C. 7:14B-9.1(d).

7:14B-3.5 Permit and approval fees

(a) The owner or operator of an existing or proposed underground storage tank system shall obtain a permit or approval from the Department before beginning any of the activities listed below. The owner or operator shall submit a fee for each activity at a facility which requires a permit or approval. *[An activity is one of the following:

1. Installation of a new underground storage tank system;
2. Closure of an underground storage tank system; or
3. Substantial modification of an underground storage tank system.]*

(b) The owner or operator shall submit a separate fee for each excavation area where an activity occurs.

(c) The fee schedule is as follows:

1. \$50.00 for application review and permit or approval issuance for each activity;
2. \$25.00 to receive a permit for the installation of spill and/or overfill protection devices;
3. \$300.00 to receive a permit for the installation of a discharge monitoring system;
4. \$100.00 to receive a permit for the installation of a field installed cathodic protection system on a new or existing tank system;
5. \$100.00 to receive a permit for the substantial modification of an underground storage tank system which is not included in 2, 3 or 4 above;
6. \$120.00 to receive an approval for the closure of an underground storage tank system requiring a site assessment; and
7. \$80.00 to receive an approval for the closure of an underground storage tank system which does not require a site assessment.

AGENCY NOTE: Penalties are now in N.J.A.C. 7:14B-12.

SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEM PERFORMANCE STANDARDS AND ENGINEERING REQUIREMENTS

7:14B-4.1 Performance standards for new underground storage tank systems

(a) All new underground storage tank systems shall be properly designed, constructed and protected from corrosion in accordance with (g), (h), (i), (j), or (k) below ***and with N.J.A.C. 7:14B-4.2(d)***

(b) All compartmentalized tanks shall hold, in each compartment, hazardous substances compatible with one another to prevent safety hazards such as fire or explosion or corrosion of the underground storage tank system in case of breaches in the compartment walls.

(c) All new underground storage tank systems shall be equipped with spill and overfill prevention devices as follows:

1. A spill catchment basin of at least *[15]* ***five*** gallons capacity*[*]; and]* ***designed to prevent the release of product to the environment when the transfer hose is detached from the fill pipe except that:**

i. **The owner or operator of the underground storage tank system with a remote fill port shall provide a spill catchment basin of at least 15 gallons capacity;**

ii. **The owner or operator of the underground storage tank system is not required to install spill prevention if the fill pipe is contained within the product-tight piping chamber*;**

2. Overfill protection which satisfies one of the following:

i. A sensor for measuring the level of product in the tank, equipped with an audible or visual alarm (mounted in proximity to the point of delivery so that the alarm can be easily heard or seen) that is triggered when the tank is 90 percent full;

ii. A device designed to restrict the flow of product into the tank ***and which will alert the transfer operator*** when the tank is 90 percent full; or

iii. A device designed to automatically stop the flow of product into the tank when the tank is 95 percent full.

3. The owner or operator of the underground storage tank system is not required to install the overfill protection required by (c)2 above if the tank system is filled by transfers of no more than 25 gallons at one time.

(d) The following categories of new underground storage tanks shall be equipped with both primary and secondary levels of containment;

1. All new tanks containing hazardous substances other than petroleum products and waste oil, except that the Department may, in its discretion, waive this requirement where the owner or operator provides the following;

i. An alternate method which can detect a release of the stored substance as effectively as any of the methods allowed in the discharge monitoring sections of N.J.A.C. 7:14B-6.2*[a]*(a), (b) and (c) can detect a release of petroleum; and

ii. Information on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the underground storage tank site;

2. All new tanks located within any one of the following distances:

i. For underground storage tanks containing gasoline, within 2,000 feet of a public community water system ***well***;

ii. For underground storage tanks containing petroleum products other than gasoline, within 750 feet of a public community water system ***well***;

iii. Within 300 feet of a public non-community water system well; or

iv. Within 300 feet of a surface water body; and

3. All new tanks that cannot comply with the requirements of N.J.A.C. 7:14B-6.3(b)2 for discharge monitoring systems.

(e) All new underground storage tanks shall be equipped with striker plates.

(f) All new underground storage tanks shall be equipped with product tight piping ***containment*** chambers accessible to grade containing all piping connections of product bearing piping excluding the fill pipe where a spill catchment basin is used.

ADOPTIONS

ENVIRONMENTAL PROTECTION

(g) All new underground storage tanks constructed of fiberglass reinforced plastic shall conform to the standards set forth by one of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products";

2. Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or

3. American Society of Testing and Materials Standards D4021-86.

(h) All new underground storage tanks constructed of dielectrically coated steel and cathodically protected with factory installed sacrificial anodes shall conform to the standards set forth by one of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. Steel Tank Institute, ***STI-P3-87***, "Specification for STI-P3 System for External Corrosion Protection of Underground Storage Tanks";

2. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; or

***[3. Underwriters Laboratories of Canada:**

i. CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";

ii. CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids"; or

iii. CAN-S631-M-84, "Isolating Bushings for Steel Underground Tanks Protected with Coating and Galvanic Systems;" or]

3. Underwriters Laboratories of Canada; CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems;" or

4. ***National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," or American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems; and* UL standard 58, "Steel Underground Storage Tanks for Flammable and Combustible Liquids."**

(i) All new underground storage tanks constructed of dielectrically coated steel and cathodically protected with a field installed cathodic protection system shall ***have a corrosion expert design the cathodic protection system and shall*** conform to the standards set forth by the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. National Association of Corrosion Engineers Standard ***[RP-02-05]* *R-02-85***, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," ***or American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;"***

2. Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids;" or

3. UL standard 58, "Steel Underground Storage Tanks for Flammable and Combustible Liquids."

(j) All new underground storage tanks constructed of a steel-fiberglass-reinforced-plastic composite shall conform to the standard set forth by the following national trade association or independent testing laboratories, incorporated herein by reference:

1. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks;" ***[or]***

2. Association for Composite Tanks ACT-100, "Specification for Fabrication of FRP clad Underground Storage Tanks*["]***"; or*

3. Steel Tank Institute F894-89, "Specification for External Corrosion Protection of Underground Storage Tanks Using Monolithic Coatings."

(k) An owner or operator may install a new underground storage tank constructed of materials other than those listed in (g) through (j) above if the material is approved by one of the organizations listed in (g) through (j) above.

(l) All new underground storage tanks systems with cathodic protection systems shall be equipped with a measuring station accessible to grade to allow for the testing of the cathodic protection systems.

(m) The owner or the operator of an underground storage tank system shall ensure that the new underground storage tank system and the hazardous substance to be stored in or dispensed from that system will not interact in a way that may undermine the integrity of the system or promote its corrosion.

7:14B-4.2 Performance standards for new underground storage tank appurtenant piping

(a) All new underground storage tank appurtenant piping conveying hazardous substances other than petroleum products ***and waste oil*** or conveying hazardous substances in ***[area]* *areas*** described in N.J.A.C. 7:14B-4.1(d) shall be constructed in ***[the following manner]* *accordance with one of the following methods*:**

1. Double walled with a leak detection monitoring system installed in accordance with N.J.A.C. 7:14B-6.3(a)2;

2. Placed within a lined trench which terminates at the bottom of ***the*** dispenser and ***the*** top of the tank, installed in accordance with ***[N.J.A.C. 7:14B-4.4(d)6]* *N.J.A.C. 7:14B-4.4(d) 2 through 6***, and equipped with a leak detection monitoring system in accordance with N.J.A.C. 7:14B-6.3(a)2;

3. Suction line piping^{*}, except for gravity return lines and remote fill ports,^{*} equipped and installed in accordance with ***[N.J.A.C. 7:14B-6.3]* *N.J.A.C. 7:14B-6.3(a)1*;**

4. ***[Single walled piping with line leak detectors, except for gravity return lines and remote fill ports installed on product bearing lines in accordance with N.J.A.C. 7:14B-6.3]* *Single walled or secondarily contained piping with a pressurized shut-down monitoring device installed in accordance with N.J.A.C. 7:14B-6.1(k)1*;** or

5. Secondarily contained utilizing a semirigid, dielectric, noncorrosive material. This material shall be compatible with the hazardous substance stored. It shall be at least 175 mils thick and provide an interstitial space to be tested at a pressure recommended by the manufacturer.

(b) All new underground storage tank appurtenant piping material shall be compatible with the hazardous substance being stored and dispensed from the underground storage tank.

(c) All new underground storage tank appurtenant piping constructed of fiberglass reinforced plastic shall conform to the standards set forth by one of the following national trade associations or independent laboratories, incorporated herein by reference:

1. Underwriters Laboratories:

i. Standard 971, "UL Listed Non-Metal Pipe"; or

ii. Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; or

2. Underwriters Laboratories of Canada:

i. Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; or

ii. Standard CAN4-S633-M81, "Flexible Underground Hose Connectors."

(d) All new underground storage tank appurtenant piping constructed of dielectrically coated steel and equipped with a field installed cathodic protection system ***shall have a corrosion expert design the cathodic protection system and*** shall conform to the standard set forth by ***at*** least one or more of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

2. American Petroleum Institute:

i. Publication 1615, "Installation of Underground Petroleum Storage Systems"; and

ii. Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; ***[or]***

3. National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems*['']**";*

4. Steel Tank Institute R892-89, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

(e) The owner or operator of all new underground storage tank appurtenant piping constructed of materials other than those listed in (c) and (d) above must receive approval from one of the organizations listed in (c) and (d) above. This information must be submitted to the Bureau of Underground Storage Tanks.

(f) The Department may, in its discretion, approve a new underground storage tank piping system not specified in this section upon the submittal to the Bureau of Underground Storage Tanks by the owner or operator of data from one of the following organizations that proves that the new underground storage tank piping system will prevent discharges as effectively as the systems listed in (a) above:

1. American Petroleum Institute;
2. Petroleum Equipment Institute;
3. Underwriter's Laboratories; or
4. American Society for Testing and Materials.

7:14B-4.3 Installation requirements for new underground storage tanks and appurtenant piping

(a) All new underground storage tanks and appurtenant *[pipe]* *piping* shall be installed in conformance with the manufacturer's instructions and with the *current* practices of one of the following national trade associations, incorporated herein by reference:

1. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";
2. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or
3. American National Standards Institute:
 - i. Standard B31.3, "Petroleum Refinery Piping"; and
 - ii. Standard B31.4, "Liquid Petroleum."

(b) The underground storage tank system excavation shall provide adequate space for the tank, appurtenant piping and associated equipment, and for the proper placement and compaction of backfill materials.

(c) The underground storage tank system backfill material shall be a clean, washed, non-corrosive material such as sand, crushed rock or pea gravel, selected in conformance with the manufacturer's instructions, and placed and compacted, if necessary, in uniform lifts for proper support and protection of the tank and piping after installation.

(d) The underground storage tank shall be pressure/soap tested immediately prior to installation with three to five pounds per square inch air pressure and appurtenant piping shall be pressure/soap tested with 50 pounds per square inch pressure, soaping all surfaces, seams, and fittings while inspecting for bubbles. Pressure shall be monitored by the underground storage tank installer for a period of one hour. Additional tests or testing variations on piping may be required in accordance with manufacturer's instructions.

(e) The underground storage tank shall be tested for vertical deflection by measuring the tank diameter once before and once after backfill is placed in the excavation around the tank. The owner or operator shall, when vertical deflection varies by more than two percent between the two measurements, *or by a smaller variation specified in the underground storage tank manufacturer's installation instructions and checklist*, notify the underground storage tank manufacturer.

(f) An underground storage tank installed in areas subject to a high water table or flooding shall be anchored in accordance with manufacturer's instructions.

(g) The underground storage tank appurtenant piping shall be designed to minimize crossed underground storage tank piping and/or interference with conduit and other tank system components. Where the crossing of piping is unavoidable, adequate clearance shall be provided to prevent contact.

(h) The underground storage tank piping joints shall be accurately cut and deburred to provide liquid-tight seals.

(i) Flexible connectors shall be installed where pipes join dispenser and underground storage tank fittings.

(j) Underground storage tank precision tests and appurtenant piping precision tests shall be performed as follows after backfill material is installed but before the underground storage tank system *[is placed into operation]* *area is restored to grade*:

1. Precision tank system testing shall, except where specified below, conform to the requirements of the current edition of the *[Nation]* *National* Fire Protection Association Bulletin #329, "Underground Leakage of Flammable and Combustible Liquids," incorporated herein by reference;

2. Precision tank system testing shall be performed by qualified technical personnel certified by the manufacturer of the test method and in the interpretation of the data produced;

3. Precision tank system testing shall be capable of detecting a 0.1 gallon per hour leak rate with a 95 percent probability of detection and a five percent probability of false positive and/or results from any part of the underground storage tank system;

4. Precision tank system testing shall, at a minimum, take into account the following factors:

- i. Changes in the temperature of the liquid during testing;
- ii. The coefficient of expansion of the liquid;
- iii. Tank end deflection or movement;
- iv. The presence of a water table in the tank excavation area during testing *and the hydrostatic effects of the water table*;
- v. Vapor pockets;
- vi. Evaporation of the liquid during testing; and
- vii. Precision test operator error; and

5. Testing of the product-bearing piping shall detect a 0.1 gallon per hour leak conducted at one and one half times the operating pressure or equivalent.

(k) The Department may, in its discretion, approve an underground storage tank or piping installation procedure not specified in this section, provided that the procedure is approved by one of the organizations listed in (a) above or by the tank manufacturer.

7:14B-4.4 Construction requirements for secondary containment

(a) The Department-approved methods of secondary containment for underground storage tanks include the following:

1. A double-walled tank with its secondary container completely surrounding the primary container (360 degrees) and constructed of materials as set forth in N.J.A.C. 7:14B-4.1;

2. A single-walled tank within a lined excavation and constructed of materials as set forth in N.J.A.C. 7:14B-4.1; or

3. A tank system conforming to Underwriters Laboratories specification 73-S-3, incorporated herein by reference, consisting of a steel tank totally encased in a semi-rigid, dielectric, noncorrosive material.

(b) All secondary containment systems shall be equipped with a collection system to contain, store and allow for the removal of a leak of hazardous substance from any part of an underground storage tank systems.

(c) The requirements in (a)1 above for secondary containment systems consisting of double-walled tanks shall be as follows:

1. Double-walled tanks shall provide for the monitoring of the annular space; and

2. Double-walled tanks shall be designed and installed to provide for the drainage of any hazardous substance and/or water from the primary container to a specific location in the annular space.

(d) The requirements in (a)2 above for secondary containment systems consisting of single-walled tanks within a lined excavation shall be as *[followed]* *follows*.

1. The *[secondary containment]* *membrane liner* system shall have the capacity to contain 100 percent of the capacity of the largest tank within its boundary;

2. The membrane liner shall surround the tank system completely so as to prevent vertical and lateral migration of the stored hazardous substance;

3. The membrane liner *system* shall *be designed to* prevent the intrusion of precipitation, ground water or soil moisture which interferes with the ability of the monitoring system to detect a release. The lined excavation shall be capped with an impermeable material

which extends no less than one foot beyond the edges of the lined excavation to prevent infiltration from the surface;

4. The membrane liner shall always be above the ground water level and the underground storage tank system shall not be in the 25 year flood plain unless the liner and monitoring systems are intended for use under such conditions;

5. The membrane liner shall consist of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the hazardous substance stored) to direct a release to a monitoring point or points and permit its detection;

6. The membrane liner shall be compatible with the hazardous substance stored so that a release from the underground storage tank system will not cause a deterioration of the liner allowing a release to pass through undetected; and

7. For cathodically protected tanks, the membrane liner shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

7:14B-4.5 Upgrading existing underground storage tank systems

(a) All existing underground storage tank systems containing hazardous substances other than petroleum products and waste oil shall, by December 22, 1998, be equipped with both primary and secondary levels of containment except as provided for under N.J.A.C. 7:14B-4.1(d) and 4.2(a).

(b) All existing underground storage tank systems used primarily for agricultural purposes on land that qualifies for a special tax assessment under N.J.S.A. 54:4-23.1 et seq. and installed prior to September 3, 1986 shall, by December 22, 1993, install a monitoring system in accordance with N.J.A.C. 7:14B-6, except as provided for in (g) below, install corrosion protection in accordance with N.J.A.C. 7:14B-4.1 and install spill and overfill protection in accordance with N.J.A.C. 7:14B-4.1.

(c) All existing ***metallic*** underground storage tank systems without corrosion protection shall retrofit cathodic protection by September 3, 1991 in accordance with the following conditions:

1. Installation, operation and design of cathodic protection systems shall be performed in accordance with one of the ***[following]*** codes and standards ***stated in N.J.A.C. 7:14B-4.1(i)1, (j) or (k) and one of the codes and standards stated in N.J.A.C. 7:14B-4.2(d)***, incorporated herein by reference¹*******;

***[i. Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";**

ii. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" and Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";

iii. Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

iv. National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."

2. The tank and/or piping is constructed of steel and cathodically protected using:

i. A field-installed cathodic protection system designed by a corrosion expert; or

ii. Impressed current systems which are designed to allow for the inspections required in N.J.A.C. 7:14B-5.2;²

***2. The tank and/or piping is constructed of steel and cathodically protected using a field-installed cathodic protection system that is:**

i. Designed by a corrosion expert; and

ii. Designed to allow for the inspections required in N.J.A.C. 7:14B-5.2;²

3. The tank is internally inspected ***[and is]* *or otherwise*** assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system³,⁴ or the tank has been installed for less than 10 years and ***there is no evidence of failure of the tank system's structural integrity. In any**

case, the underground storage tank system must be* equipped with a Department-approved monitoring system;

4. Tanks which have corrosion holes may be relined in accordance with N.J.A.C. 7:14B-5.3 to allow for the retrofitting of cathodic protection; and

5. A station accessible to grade shall be made available for testing of the cathodic protection system.

(d) All existing underground storage tank systems shall, except as provided for in (g) below, install a monitoring system in accordance with N.J.A.C. 7:14B-6, and spill prevention and overfill protection in accordance with N.J.A.C. 7:14B-4.1⁵**[(b)]***(c)***, by September 3, 1991.

(e) The owner or operator of an underground storage tank system that is equipped with a monitoring system installed prior to ***[the effective date of this subchapter]* *September 4, 1990*** shall ***[certify on the Annual Certification Form required in N.J.A.C. 7:14B-2.2(e) that the monitoring system complies with N.J.A.C. 7:14B-6.4. The owner or operator shall also obtain the certification of a qualified hydrogeologist, as described below, that site conditions are appropriate for the monitoring system utilized and the certification of a New Jersey Professional Engineer that the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized]* *maintain on site a certification from a Ground Water Consultant that the site conditions and locations of the monitoring devices comply with N.J.A.C. 7:14B-6.4 and documentation from the manufacturer or certification from a New Jersey Professional Engineer that the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized*.**

***[1. The Department will accept license or certification from the following as qualifications for a hydrogeologist, geologist or ground-water hydrologist:**

i. A geologist licensed by any state in the United States to practice geology; or

ii. Any person holding a certification used by one of the following organizations:

(1) American Institute of Hydrology—Professional Hydrologist or Hydrogeologist;

(2) American Institute of Professional Geologists—Certified Professional Geologist or Certified Professional Geological Scientist;

(3) American Society of Agronomy—Certified Professional Soil Scientist or Certified Professional Soil Specialist; or

(4) Association of Ground Water Scientists and Engineers—Certified Ground Water Professional.

iii. Individuals with the above qualifications must submit this information to the Bureau of Underground Storage Tanks for acceptance as a hydrogeologist, geologist or ground water hydrogeologist.]⁶

(f) The owner or operator of an underground storage tank system that ***contains hazardous substances other than petroleum products and waste oil and that*** is equipped with a secondary containment system installed prior to ***[December 21, 1987]*** shall certify on the Annual Certification Form required in N.J.A.C. 7:14B-2.2(e) that the secondary containment system complies with ***[N.J.A.C. 7:14B-4.4(a)]* *7:14B-4.4*.**

(g) All existing underground storage tanks that are equipped with a monitoring system in accordance with a valid New Jersey Pollutant Discharge Elimination System/Discharge to Ground Water permit (see N.J.A.C. 7:14A-6) and in compliance with this permit shall be exempt from the monitoring system upgrade requirements of (b), (d) and (e) above. Compliance may be determined by review of the issued permit, discharge monitoring reports and other required submittals.

(h) ***[Within 90 days of the effective date of this subchapter,]* *By March 3, 1991*** the owner or operator shall permanently mark all fill ports to identify product inside the underground storage tank system. The markings shall be consistent with the colors and symbol codes established by the American Petroleum Institute Bulletin #1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Station and Distribution Terminals," incorporated herein by reference.

(i) By December 22, 1990, the owner or operator of an underground storage tank system using pressurized piping ***[without a**

Department-approved monitoring system]* ***which is not in conformance with the requirements of N.J.A.C. 7:14B-6.4(e)*** shall:

*[1. Install a line release detector which detects releases at a minimum of three gallons per hour at 10 pounds per square inch pressure within one hour and restricts flow to the dispenser in the event of a release; and

2. Conduct a precision test on the piping in accordance with N.J.A.C. 7:14B-4.3(j).]*

***1. Install a line release detector which detects releases at a minimum of three gallons per hour at 10 pounds per square inch pressure within one hour and restricts flow to the dispenser in the event of a release and conduct an annual precision test on the piping in accordance with N.J.A.C. 7:14B-4.3(j); or**

2. Install a pressurized shut-down monitoring device in accordance with N.J.A.C. 7:14B-6.1(k)1.*

SUBCHAPTER 5. UNDERGROUND STORAGE TANK SYSTEM GENERAL OPERATING REQUIREMENTS

7:14B-5.1 Spill and overfill control

(a) The owner and the operator of an underground storage tank system shall ensure the following:

1. There shall be no release of hazardous substance due to spills or overfills at an underground storage tank facility;

2. The available volume in an underground storage tank shall always be greater than the volume of hazardous substance being transferred to the tank; and

3. The owner, the operator or the person who delivers the hazardous substance is always physically present to observe the transfer of a hazardous substance into the underground storage tank.

7:14B-5.2 Operation and maintenance of cathodic protection systems

(a) The owner and operator of an underground storage tank system with cathodic protection systems shall comply with the following requirements:

1. All cathodic protection systems shall be operated and maintained in a manner which provides continuous corrosion protection to the metal components of the underground storage tank system;

2. All underground storage tank systems equipped with cathodic protection systems shall be inspected in accordance with the following schedule:

i. Within six months after installation or repair and at least every three years thereafter, a cathodic protection tester shall test all cathodic protection systems to see if they are being operated properly and are operating properly;

ii. All underground storage tank systems equipped with impressed current cathodic protection systems shall be inspected every 60 days by the owner or operator or the owner or operator's agent***[. The operator's agent shall be trained by a cathodic protection tester. The inspector shall visually verify that the system is operating correctly;]* ***, **provided that the individual performing the inspection has been trained by a cathodic protection tester. An employee of the owner or operator may also perform the inspection if the employee has been trained by the owner or operator who was trained by a cathodic protection tester. The inspector shall visually verify that current is being supplied to the impressed current system to allow it to function properly.***

3. The inspection conducted pursuant to (a)2i and ii above shall test the cathodic protection system of each underground storage tank system in accordance with the National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion in Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," ***or American Petroleum Institute's Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"***, incorporated herein by reference;

4. All owners or operators of underground storage tank systems shall maintain records that detail the following:

i. The results of the two most recent tests required under (a)2i above; and

ii. The results of the three most recent inspections required under (a)2ii above; and

5. The owner and the operator of an underground storage tank system shall certify compliance with the requirements of N.J.A.C. 7:14B-5.1 and 5.2 on the New Jersey Underground Storage Tank Annual Certification Form.

7:14B-5.3 Repairs

(a) The owner or operator of an underground storage tank system shall obtain a permit from the Department, pursuant to N.J.A.C. 7:14B-10(a), prior to performing repairs which constitute a substantial modification under N.J.A.C. 7:14B-10.

(b) The underground storage tank system shall be repaired in accordance with the standards set forth by one of the following national associations, incorporated herein by reference:

1. American Petroleum Institute Publication #1631, "Recommended Practice for the Interior Lining of Existing Underground Storage Tanks";

2. American Petroleum Institute Publication #2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipeline"; or

3. National Fire Prevention Association Standard 30, "Flammable and Combustible Liquids Code";

(c) All steel underground storage tanks with corrosion holes that are repaired shall be retrofitted with a cathodic protection system prior to putting the underground storage tank system back into use. The cathodic protection system shall be installed, maintained and operated in accordance with N.J.A.C. 7:14B-5.2.

(d) All fiberglass underground storage tank systems shall be repaired by an authorized representative of the manufacturer or in accordance with a code of practice developed by the Fiberglass Petroleum Tank and Pipe ***[Institute]* *Institute's Recommended Practice RPT-89-1 the American Petroleum Institute's Recommended Practice 1631, or the National Leak Prevention Association's Standard 631, Appendix F*.**

(e) The owner or operator of an underground storage tank system shall replace, not repair, faulty fittings. Loose fittings and joints in piping that have been tightened to eliminate leakage may be put back into service. An entire section of metal piping shall be replaced and not repaired. A section of pipe is considered one length of pipe between two joints, elbows, tees or other fittings.

(f) The owner or operator of an underground storage tank system shall perform a precision tank ***system*** test in accordance with N.J.A.C. 7:14B-4.3(j) within 30 days after the repair of the underground storage tank unless a release detection system meeting the requirements of N.J.A.C. 7:14B-6.4(a) and (c) is installed or is already in place.

(g) The owner or operator of an underground storage tank system shall maintain records of all repairs and associated precision testing at the ***[facility]* *site or available upon request*** for as long as the ***[facility]* *site*** is in operation or six years, whichever is longer. After ***[the]* *a* six year period *required in (a)1, 2 and 3 above]* *or the site goes out of operation***, an owner or operator may make a written request to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Department, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

(h) Upon receipt of a written request by the Department, the owner or operator shall submit to the Department all records and documents or copies of the same required to be maintained by the Act, this chapter, registration certificates, permits or approvals or administrative orders.

7:14B-5.4 Interim inventory control and manual tank gauging requirements

(a) The owner or operator of an underground storage tank system shall conduct inventory ***[reconciliation]* *reconciliations*** on a monthly basis to detect a release of at least one percent of the ***[tank volume plus 130 gallons except for:]* *tank's monthly flow-through plus 130 gallons. The monthly inventory reconciliation shall be based on daily inventory records except in the case of underground storage tank systems located at remote, unmanned sites who may perform volume measurements monthly instead of daily in order to prepare their monthly reconciliations. The following underground storage tank systems are exempted from preparing monthly inventory reconciliations:***

ADOPTIONS

1. Underground storage tank systems that contain heating oil for on-site consumption;

2. Waste oil underground storage tank systems*, **except as described in (c) and (d) below***;

3. Field constructed tanks; and

4. Airport hydrant fuel distribution systems.

(b) Inventory control and reconciliation shall be performed as follows:

1. Inventory volume measurements for hazardous substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day*, **except for underground storage tank systems located at remote, unmanned sites who may perform volume measurements monthly***;

2. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

3. The regulated substance inputs shall be reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

4. Deliveries shall be made through a drop tube that extends to within one foot of the tank bottom;

5. Product dispensing shall be metered and recorded within New Jersey's standards for meter calibration or an accuracy of six cubic inches for every five gallons of product withdrawn; and

6. The measurement of any water level in the bottom of the tank shall be made to the nearest one-eighth of an inch at least once a month.

(c) Manual tank gauging shall be performed at least weekly for underground storage tank systems containing waste oil as follows:

1. Tank liquid level measurements shall be taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

2. The recorded level measurements shall be based on an average of two consecutive stick readings at both the beginning and ending of the period; and

3. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

(d) A release ***from an underground storage tank system containing waste oil*** is suspected and subject to the requirements of N.J.A.C. 7:14B-7 if the variation between beginning and ending measurements*, **as described in (c) above***, exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons
2,001 gallons and above	1.3 percent of tank volume	.65 percent of tank volume

7:14B-5.5 Release response plan

(a) The owner or operator of an underground storage tank system shall prepare a release response plan which includes the following information:

1. The emergency telephone numbers of the local fire department, local health department, Department of Environmental Protection Hotline (609-292-7172), and any other appropriate local or State agencies;

2. The name and telephone number of the person responsible for the operation of the facility during an emergency if he or she is not present at the facility;

3. The name and telephone number of any retained corrective action contractor; and

4. The procedures to be followed pursuant to N.J.A.C. 7:14B-8 in the event of a leak or discharge of a hazardous substance from the facility.

(b) The release response plan shall be available for onsite inspection within 90 days after the effective date of N.J.A.C. 7:14B-5.

ENVIRONMENTAL PROTECTION

(c) Any release response plan which is required by and is in compliance with the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. will suffice for this requirement.

7:14B-5.6 Right of entry

(a) The owner or operator of an underground storage tank shall allow the Department, or an authorized representative, upon the presentation of credentials, to:

1. Enter upon the ***[facility]* *site*** where an underground storage tank is or might be located or in which monitoring equipment or records required by this chapter are kept, for purposes of inspection, sampling, copying or photographing. Photographing shall be allowed only as related to the underground storage tank system;

2. Have access to and copy any records that must be kept under the conditions of this chapter;

3. Inspect any facilities or equipment (including monitoring and control equipment);

4. Observe practices or operations regulated or required under this chapter; and

5. Sample soil, ground water, surface water and/or air.

SUBCHAPTER 6. MONITORING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-6.1 General monitoring requirements for all underground storage tank systems

(a) The owner or operator of an underground storage tank system shall, in accordance with the schedule in N.J.A.C. 7:14B-4.5, equip each system with a Department-approved monitoring system.

(b) The installation of a discharge monitoring system shall constitute a substantial modification to an existing underground storage tank system and shall require a permit as specified in N.J.A.C. 7:14B-10.1(a).

(c) The owner or operator of an underground storage tank system shall ensure that the monitoring system is:

1. Capable of detecting a leak or discharge from any part of the system;

2. Installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions including, but not limited to, routine maintenance and service checks for proper operation;

3. Checked for proper system operation at least once every 30 days; and

4. Examined for evidence of leaks or discharges either continuously or daily except for the monitoring system described in N.J.A.C. 7:14B-6.2(a)5.

(d) Electronic monitoring systems installed after December 22, 1990 shall be capable of detecting a release at the rate or quantity specified for that method in N.J.A.C. 7:14B-6.2 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(e) The Department may, in its discretion, specify the monitoring system and/or the method of secondary containment to be used when:

1. The underground storage tank system is subject to excessive corrosion; or

2. A discharge from the facility has been detected.

(f) The owner or operator of an underground storage tank system shall develop written routine monitoring procedures which set forth the following:

1. The frequency with which the monitoring is to be performed;

2. The method and equipment used to conduct the monitoring;

3. The location at which the monitoring is to be performed; and

4. The name and/or titles of the person responsible for performing the monitoring and maintenance of the monitoring system.

(g) The written routine monitoring procedure developed in accordance with (f) above shall be kept at the underground storage tank facility and made available for inspection by any authorized local, State or Federal representative at any time after installation of the monitoring system. The owner or operator of an existing monitoring system shall have the monitoring procedure available for inspection at any time after the monitoring system is installed.

(h) The person responsible for performing the monitoring and maintenance of the monitoring system shall be trained in the use and ***[repair]* *maintenance*** of the equipment.

(i) The owner or operator shall, on a monthly basis, complete a summary of the results of daily or continuous monitoring of the underground storage tank system and maintenance checks of the monitoring system. This summary shall be made available for inspection by any authorized local, State or Federal representative.

(j) All access points accessible to grade for monitoring systems shall be permanently marked or tagged with ***the words "for monitoring only"***, the facility number listed on the Registration Certificate and, if applicable, the well drilling permit number.

***(k) All pressurized delivery systems shall have:**

1. A pressurized shut-down monitoring device which prevents dispensing when a minimum of a 0.10 gallon per hour release has been detected and also where the pressurized shut-down device works independently of another device not expressly manufactured to work in conjunction with the pressurized shut-down monitoring device. An annual test of the operation of this device shall be conducted in accordance with the manufacturer's requirements; or

2. A line release detector which detects releases at a minimum of three gallons per hour at 10 pounds pressure per square inch line pressure within one hour and restricts flow to the dispenser in the event of a release, an annual test of the operation of this device conducted in accordance with the manufacturer's requirements, and at least one of the following:

i. A discharge detection monitoring system on the piping which meets the requirements of N.J.A.C. 7:14B-6.2(b)1, 2, or 3;

ii. A leak detection monitoring system on the piping which meets the requirements of N.J.A.C. 7:14B-6.2(b)1, 2, or 3; or

iii. For existing underground storage tank systems which meet the conditions of N.J.A.C. 7:14B-6.2(d), an annual precision test of the piping shall be performed in accordance with N.J.A.C. 7:14B-4.3(j).

(l) The Department may, in its discretion, approve a monitoring system not specified in this subchapter upon the submittal to the Bureau of Underground Storage Tanks by the owner or operator of data indicating that the proposed monitoring system is in conformance with N.J.A.C. 7:14B-6.1 and is equivalent to the effectiveness of the monitoring systems listed in N.J.A.C. 7:14B-6.2.*

7:14B-6.2 Monitoring requirements for new underground storage tank systems

(a) The owner or operator of a new underground storage tank system that requires secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall install a leak detection monitoring system which shall, except as specified in (a)5 below, employ a continuous leak detection monitoring system connected to an ***[audible/visual]* *audible and/or visual*** alarm system or a manual leak detection inspection shall be performed on a daily basis. Department-approved leak detection monitoring systems include the following:

1. Liquid level indicators which detect a change in the height of a fixed volume of liquid in an annular space;

2. Liquid sensors as follows:

i. For double-walled tanks and similar secondarily contained single-walled tanks, at least one sensor or device shall be employed to detect liquid in the annular space; or

ii. For lined excavations, at a minimum, one monitoring location in each of the four corners of the excavation or a slotted pipe located lengthwise and underneath each tank, sloped to a collection point and accessible at grade for monitoring of liquids;

3. For volatile hazardous substances, vapor sensors as follows:

i. For double-walled tanks and similar secondarily contained single-walled tanks, at least one sensor or device shall be located to detect vapors from any part of the annular space; or

ii. For lined excavations, at a minimum, one monitoring location in each of the four corners of the excavation or a u-tube;

4. Pressure^{*/} ***and/or*** vacuum loss sensors; or

5. Monthly precision testing in accordance with N.J.A.C. 7:14B-4.3(j) and inventory control conducted in accordance with N.J.A.C. 7:14B-5.4.

(b) The owner or operator of a new underground storage tank that is not specified in N.J.A.C. 7:14B-4.1(d) and therefore does not

require secondary containment shall install and operate a Department approved leak detection monitoring system as specified in (a) above ***[of]* *if*** the tank system is secondarily contained. If the tank system was not secondarily contained at the time of tank installation the owner or operator shall install and operate a discharge monitoring system using one of the following methods:

1. Daily or continuous testing for vapors within the fill of the excavation area ***[(or within two feet of the tank)]* *(or adjacent to the tank system)*** upon a determination that:

i. The material used as backfill is sufficiently permeable (at least 0.01 centimeters per second) to readily allow diffusion of vapors from discharge into the excavation area;

ii. The stored hazardous substance or a tracer compound placed in the system is sufficiently volatile to result in a vapor level that is detectable by sensors employed in the excavation area in the event of a release;

iii. The measurement of vapors by the monitoring system is not adversely affected by ground water, rainfall or soil moisture or other known interferences;

iv. The level of background ***[contamination]* *interference*** in the soil gas of the excavation zone will not interfere with the method used to detect releases;

v. The detection limit of the vapor monitoring system is set at no more than 100 percent over the background level as determined during the calibration period recommended by the manufacturer;

vi. The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination; and

vii. Within and immediately below the underground storage tank system excavation area, the site is evaluated to ensure that the number and positioning of the monitoring locations or sensors in the excavation will detect releases from any portion of the underground storage tank system;

2. Daily or continuous testing for hazardous substances on the water table using ***discharge detection*** observation wells under the following conditions:

i. The stored hazardous substance is immiscible in water and has specific gravity of less than one;

ii. The water table is never more than 20 feet from the ground surface and the hydraulic conductivity of the fill between the underground storage tank system and the ***discharge detection*** observation well is not less than 0.01 centimeters per second;

iii. All the monitoring locations intercept the excavation area ***[(or are within two feet of the tank system)]* *(or are adjacent to the tank system)*** and intercept the water table;

iv. The sensors or devices that are used are able to detect the presence of at least one-eighth of an inch of floating free phase hazardous substance on top of the water table;

v. The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination;

vi. Within and immediately below the underground storage tank system excavation area, the site is evaluated to ensure that the number and positioning of the monitoring locations or sensors in the excavation will detect releases from any portion of the underground storage tank system; ***[and]* *or***

[vii. Every 12 months, one ground water sample is collected from one of the observation wells and analyzed for dissolved constituents of the petroleum products stored as specified by the Department. Ground water samples shall be collected in accordance with the Department's Division of Water Resources Field Procedures Manual for Water Data Acquisition and/or Division of Hazardous Waste Management's Field Sampling Procedure Manual; or]

3. Daily or continuous testing ***[of]* *for*** vapors or liquids in ***discharge detection*** observation wells or u-tubes in combination with an impermeable liner in the bottom of the excavation area under the following conditions:

i. Testing for vapors meets the specifications in (b)1 above;

ii. Testing for hazardous substances where:

(1) The hydraulic conductivity of the fill between the underground storage tank system and the ***discharge detection*** observation wells or u-tubes is not less than 0.01 centimeters per second;

ADOPTIONS

(2) The sensors or devices that are used are able to detect at least one-eighth inch of hazardous substance in the ***discharge detection*** observation well or collection sump; and

(3) The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination;

iii. The liner shall be extended from the bottom of the excavation to at least two feet up the sides of the excavation;

iv. The ground water table shall be determined to always be below the bottom of the excavation; ***[and]***

v. The liner shall also meet the conditions specified in N.J.A.C. 7:14B-4.4(d)*[3,]* 4, 5 and 6***[.]***; **and***

vi. The liner shall be designed to prevent precipitation, ground water, or soil moisture from entering the excavation area.

4. The owner or operator of an underground storage tank system located on a site where conditions as specified in (b)1, 2 or 3 above preclude the use of testing for vapors or hazardous substances shall take ***one of*** the following ***[action]*** ***actions***:

i. Perform in-tank monitoring provided that:

(1) The automatic level monitor test or release rate test is conducted at a minimum once every 30 days when the tank is at least 50 percent full and capable of detecting a 0.2 gallon per hour release rate with a 95 percent probability of detection and a five percent probability of false alarm. One test shall be conducted annually when the tank is at least 80 percent full; and

(2) ***[Automatic inventory]*** ***Inventory*** reconciliation is conducted in accordance with the requirements of N.J.A.C. 7:14B-5.4;

ii. Upgrade the underground storage tank system to the requirements of N.J.A.C. 7:14B-4.4; or

iii. Close the underground storage tank system in accordance with the requirements of N.J.A.C. 7:14B-9.2.

(c) The minimum number of ***[vapor]*** monitoring locations or ***discharge detection*** observation wells required for discharge monitoring systems not using u-tubes are as follows:

Total Capacity in Gallons per Tank Excavation	Minimum Number of Monitoring Devices or Locations
0-10,000	2
10,001-20,000	3
20,001-30,000	4
30,001-40,000	5
40,001-50,000	6
50,001 or greater	7

(d) The owner or operator of an underground storage tank who intends to install an in tank monitoring device as specified in (b)4 above for an existing underground storage tank system that is not equipped with secondary containment but is located in an area specified in N.J.A.C. 7:14B-4.1(d)2, shall perform a site assessment in accordance with the closure requirements of N.J.A.C. 7:14B-9 prior to obtaining Department approval of the in-tank monitoring device.

(e) ***[The performance of manual tank gauging as specified in N.J.A.C. 7:14B-5.4 may be conducted by the owner]*** ***The owner*** or operator of a single-walled underground storage tank system of 1,000 gallons or less capacity for storing waste oil ***shall conduct manual tank gauging as specified in N.J.A.C. 7:14B-5.4,*** if the use of monitoring systems specified in (b)1, 2, 3 or 4 above is precluded.

[(f) The owner or operator of a new underground storage tank system used as a sump shall be exempt from discharge monitoring requirements as long as a hazardous substance is not stored for more than 48 hours.]

(g) Electronic monitoring systems shall detect, at a minimum, a 0.2 gallon per hour release rate or a release of 150 gallons within a month with a probability of detection of 0.95 and probability of false alarm of 0.05.

7:14B-6.3 Monitoring requirements for new piping on new underground storage tank systems

(a) The owner or operator of a new underground storage tank that requires secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall equip the product-bearing appurtenant piping with at least one of the following:

ENVIRONMENTAL PROTECTION

1. Single-walled piping with a suction pump system if:

i. The below-grade piping operates at less than atmospheric pressure;

ii. Only one check valve is included in each suction line;

iii. The check valve is located directly below, and as close as practical to, the suction pump;

iv. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if suction is released; and

v. A method of inspecting the piping is provided that allows compliance with this paragraph to be readily determined;

2. Piping with secondary containment consistent with the requirements of N.J.A.C. ***[7:14B-4.2(a)1 or 2]*** ***7:14B-4.2(a)1, 2 or 5*** and equipped with one of the following daily or continuous detection monitoring systems:

i. Vapor sensors where at least one sensor shall be employed to detect any vapor in the annular space or where there is at least one sensor or monitoring location for every 50 linear feet of piping between the tank and the dispenser in a lined excavation and:

(1) The material used as backfill shall be sufficiently permeable (at least 0.01 centimeters per second) to readily allow diffusion of vapors from leaks to the monitoring location in the lined excavation;

(2) The stored hazardous substance is sufficiently volatile to result in a vapor level that is detectable by sensors employed in the annular space or lined excavation area;

(3) The level of background ***[contamination]*** ***interference*** in the fill material in the lined excavation area will not interfere with the method used to detect releases; and

(4) The monitoring locations are clearly marked and secure from unauthorized access and contamination.

ii. Liquid sensors where at least one sensor shall be employed to detect any liquid in the annular space piping chamber or each collection sump of a lined excavation which meet the following additional conditions:

(1) The material used as backfill in the lined excavation is sufficiently porous (at least 0.01 centimeters per second) to readily allow the migration of the hazardous substance to the monitoring location;

(2) The monitoring device is able to detect at least one-eighth inch of floating free phase hazardous substance;

(3) Lined excavations have a monitoring location or device every 50 feet from the tank to the dispenser; and

(4) The monitoring locations are clearly marked and secure from unauthorized access and contamination; or

3. Single-walled ***or secondarily contained*** piping with a pressurized shut-down monitoring device ***[which prevents dispensing when a minimum of a 0.10 gallon per hour release has been detected and also where the pressurized shut-down device works independently of another device not expressly manufactured to work in conjunction with the pressurized shut-down monitoring device. An annual precision test of the piping shall be done in accordance with N.J.A.C. 7:14B-4.3(j)]*** ***in accordance with N.J.A.C. 7:14B-6.1(k)1*.**

(b) The owner or operator of a new underground storage tank which is not required to have secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall equip the product-bearing appurtenant piping with at least one of the following:

1. A leak detection monitoring system authorized by (a) above for a secondarily contained tank system; or

2. A discharge monitoring system which meets the requirement of N.J.A.C. 7:14B-6.2(b)1, 2 or 3***[.]***; **or***

3. ***[Pressurized delivery systems using a discharge monitoring system shall install a line release detector which detects releases at a minimum of three gallons per hour at 10 pounds per square inch line pressure within one hour and restricts flow to the dispenser in the event of a release. An annual test of the operation of this device shall be conducted in accordance with manufacturer's requirements]*** ***A monitoring device in accordance with N.J.A.C. 7:14B-6.1(k)*.**

(c) The owner or operator of an underground storage tank system which contains hazardous substances other than petroleum products who intends to utilize the monitoring system options of (a)1 or 3 above shall demonstrate to the Department that effective corrective action technology is available for the hazardous substance to be stored.

7:14B-6.4 Monitoring requirements of existing underground storage tanks and piping systems

(a) The owner or operator of an existing underground storage tank with Department-approved secondary containment shall install and operate a leak detection monitoring system which meets the requirements of N.J.A.C. 7:14B-6.2(a) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(b) The owner or operator of an existing piping system with Department-approved secondary containment shall install and operate a leak detection monitoring system which meets the requirements of N.J.A.C. 7:14B-6.3(a) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(c) The owner or operator of an existing single-walled tank shall install and operate a discharge monitoring system which meets the requirements of N.J.A.C. 7:14B-6.2(b) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(d) The owner or operator of an existing underground storage tank system with an existing monitoring system installed prior to the effective date of this subchapter shall comply at a minimum with N.J.A.C. 7:14B-4.5(e).

(e) The owner or operator of an existing single-walled piping system shall install and operate a monitoring system which meets the requirements of N.J.A.C. 7:14B-6.3 in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

7:14B-6.5 Construction requirements for monitoring systems using screen and casing

(a) Monitoring systems such as vapor or liquid sensors and ***discharge detection*** observation wells which use screen and casing and which are being emplaced in the excavation area during installation of an underground storage tank system do not require a ***well*** permit as specified in N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act. These monitoring systems shall be constructed in the following manner:

1. Screen and casing materials shall be compatible with the substances stored in the underground storage tank system so as not to preclude the use of the monitoring system;

2. Solid casing shall extend at least two feet below the surface. Glue shall not be used to attach screen to casing. The casing shall be grouted with at least two feet of neat cement to protect against surface infiltration. Screens shall be capped at the bottom;

3. All monitoring systems using screen and casing shall have protective coverings at the surface. Grade level access ports shall be four inches greater in diameter than the casing, watertight and strong enough to withstand the anticipated traffic load. For casing that extends above grade, a protective outer casing at least four inches greater in diameter than that of the inner casing shall be used. The protective coverings shall be seated in neat cement;

4. The top of the screen shall be located at least two feet above the seasonal high water table and five feet into the water table for ground water observation wells;

5. The innermost casing or cap shall be perforated with one hole to allow for venting; and

6. The screen shall be designed to ***[prevent]* *minimize*** migration of natural soils or filter pack in the well.

(b) The owner or operator of a proposed monitoring system ***[using screen and casing which requires the drilling of a borehole for installation]* *not in conformance with N.J.A.C. 7:14B-6.5(a)*** shall comply with N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act.

7:14B-6.6 Recordkeeping

(a) The owner or operator of an underground storage tank system shall maintain the following records:

1. All written performance claims pertaining to any monitoring system used and the manner in which these claims have been justified or tested by the equipment manufacturer or installer. These records shall be kept for a period of six years;

2. The results of any sampling, testing or monitoring*, and **monthly inventory reconciliations*** for a period of no less than six years; and

3. Written documentation of all calibration, maintenance and repair of monitoring system equipment shall be maintained for a period no less than six years after the servicing work is performed.

(b) Owners and operators of underground storage tank systems may be required to submit records required by (a) above to the Department.

(c) After the six year period required in (a) above, an owner or operator may make a written request to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Department, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

(d) Upon receipt of a written request by the Department, the owner or operator shall submit to the Department all records and documents or copies of the same required to be maintained by the Act, this chapter, registration certificates, permits or approvals or administrative orders.

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.1 Suspected releases

(a) The owner or operator of an underground storage tank system shall complete an investigation of a suspected release in accordance with the requirements of N.J.A.C. 7:14B-7.2*(a)* within seven days of the discovery of the suspected release, when any of the following situations have occurred:

1. Inventory control records maintained in accordance with N.J.A.C. 7:14B-5.4(a) and (b) indicate a release may have occurred in excess of one percent of the ***[tank volume]* *tank's monthly flow-through*** plus 130 gallons;

2. Inventory control records for an underground storage tank system containing waste oil maintained in accordance with the manual tank gauging requirements of N.J.A.C. 7:14B-5.4(c) indicate that a release of hazardous substances may have occurred;

3. There is evidence of a hazardous substance or resulting vapors in the soil, in surface water, or in any underground structure or well in the vicinity of the facility;

4. There is an unexplained presence of water in the underground storage tank;

5. Product dispensing equipment exhibits erratic behavior;

6. There is the sudden loss of product from the underground storage tank system;

7. Test results from a single precision test of an underground storage tank system performed in accordance with ***[N.J.A.C. 7:14B-6.3(b)1]* *N.J.A.C. 7:14B-4.3(j)1 through 5*** that indicates that a release may have occurred; or

8. Any other method of discovery of a suspected release.

7:14B-7.2 Investigating a suspected release

(a) The owner or operator of an underground storage tank system shall confirm or disprove a suspected release by conducting an investigation in accordance with one or more of the following procedures:

1. Check inventory control records for mathematical accuracy;

2. Conduct a visual inspection of all readily accessible physical facilities for evidence of leakage or discharge;

3. Check the calibration of all dispenser meters associated with hazardous substance withdrawal and if necessary perform calibration; or

4. Check for a malfunction of the monitoring system.

(b) If the investigation conducted in accordance with (a) above is inconclusive in confirming or disproving a suspected release, the owner or operator shall:

1. ***[Conduct]* *For underground storage tank systems containing gasoline jet fuel or kerosene, within 90 days after conducting the investigation required in (a) above, conduct*** analyses of ground water samples for hazardous substance contamination on the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system; and

2. Conduct any other appropriate investigation designed to confirm or disprove a suspected release.

ADOPTIONS

3. For underground storage tank systems containing other hazardous substances—RESERVED

7:14B-7.3 Confirmed releases

(a) Any person, including, but not limited to, the owner or operator of an underground storage tank system or contractor hired to install, remove or test an underground storage tank system shall, upon confirming a release, immediately report the release to the appropriate local health agency in accordance with local requirements, and to the Department's Environmental Action Hotline (609) 292-7172. Releases may be confirmed on the basis of the following:

1. Test, sampling or monitoring results from a leak or discharge detection method specified in N.J.A.C. 7:14B-6.2, 3, and 4 that indicate that a release has occurred;

2. ***[Laboratory analyses]* *Analyses by a laboratory, certified pursuant to N.J.A.C. 7:18,*** of ground water samples which indicate the presence of contamination in the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system;

3. Results from a closure plan conducted in accordance with the requirements of ***[N.J.A.C. 7:14B-9.2(c)]* *N.J.A.C. 7:14B-9.2(b) or 9.3(b)*** which indicate the presence of contamination in the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system;

4. Any other method, including visual inspection, that confirms that a release has occurred; or

5. A release is confirmed based upon the investigation conducted under N.J.A.C. 7:14B-7.2.

(b) When notifying the Department in accordance with (a) above, the following information shall be provided:

1. The type and estimated quantity of substance released;

2. The location of the release;

3. The actions being taken to contain, clean up, and/or remove the substance; and

4. Any other relevant information which the Department may request at the time of notification.

(c) The owner or operator of an underground storage tank system shall take corrective action as set forth in N.J.A.C. 7:14B-8 when a release is confirmed.

(d) The owner or operator of an underground storage tank system shall implement the release response plan required by N.J.A.C. 7:14B-5.5 when a release is confirmed.

(e) The owner or operator of an underground storage tank system containing hazardous substances other than petroleum or waste oil shall report a discharge of the substance, over its reportable quantity, to the National Response Center in accordance with the provisions of 40 CFR Part 302.

SUBCHAPTER 8. CORRECTIVE ACTION

7:14B-8.1 Immediate corrective action requirements and procedures

(a) The owner or operator of an underground storage tank system shall, upon confirming a release, take immediate action to:

1. Determine the source of the discharge;

2. Cease use of the underground storage tank system;

***i. In the event that ceasing use of the underground storage tank system would precipitate an emergency which constitutes an immediate threat to human health and safety, then the owner/operator shall cease use of the underground storage tank system immediately subsequent to taking all necessary actions to abate the emergency.**

ii. Where a building's sole source of heat is from an oil burner, and there has been a discharge from the underground storage tank system containing heating oil, then the owner/operator shall take immediate action to provide an alternate source of heat. Upon providing an alternate source of heat, the owner/operator shall immediately cease use of the underground storage tank system which has discharged.*

3. Mitigate any fire, safety or health hazard including, but not limited to, hazards from combustible vapor or vapor inhalation and the removal of ignition sources*, in accordance with appropriate standards and practices, including National Fire Protection Association Standard 329, "Underground Leakage of Flammable and Combustible Liquids", incorporated herein by reference*;

ENVIRONMENTAL PROTECTION

4. Conduct a visual inspection to detect any above ground or exposed below ground discharge, and where any discharge is evident, mitigate the effects of the discharge;

5. Properly remove all hazardous substances from the underground storage tank system;

6. Repair, replace or close the underground storage tank system in accordance with the requirements of N.J.A.C. 7:14B-4, 5 and 9; and

7. Comply with the reporting requirements set forth in N.J.A.C. 7:14B-7.3.

7:14B-8.2 Discharge mitigation requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall:

1. Remove free floating or sinking product (non-aqueous phase liquids) from above or below the water table in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. If this activity will result in a discharge regulated in accordance with N.J.A.C. 7:14A, a New Jersey Pollutant Discharge Elimination System Permit shall be obtained before discharge activities are begun;

2. Remove or decontaminate soils that contribute to a violation of the State's Ground Water Quality ***[standards]* *Standards* * [set forth in N.J.A.C. 7:9-6]* *(N.J.A.C. 7:9-6), Surface Water Quality Standards (N.J.A.C. 7:9-4), or any other standards, including soil standards, adopted by the Department, or*** that will result in vapor hazards, or that pose a threat to human health due to direct contact. All ***[such]* *excavated* ***soils shall be staged in such a manner that the soils are ***[completely]* ***isolated from the environment and any hazardous substances in the soils are prevented from making contact with or being released into the environment. At a minimum, this shall entail removal or decontamination of free product contaminated soils;

3. ***For underground storage tank systems containing gasoline, jet fuel or kerosene,* * [Install]* *install* *** monitoring wells to define the full vertical and horizontal extent of ground water contamination resulting from the discharge;

4. Determine the proximity of the discharge to ***[potable water supplies, surface water bodies, underground structures and sources of pollution;]* *the following:***

***i. Public water supply wells, industrial supply wells and other wells with water allocation permits within one mile and non public water supply wells within one-half mile;**

ii. Surface water bodies and wetlands within one-half mile;

iii. Underground structures on site and on adjacent properties; and

iv. Surrounding population within one-half mile;*

5. Perform additional ground water and soil remediation as required by the Department under this subchapter and N.J.A.C. 7:14A-6.15; and

6. ***[If ground water contamination is found, sample nearby residential and public water supply wells that may be affected by the ground water contamination and analyze the samples for the parameters found in the ground water.]* *If ground water contamination is found, the nearest downgradient potable well and the nearest potable well potentially affected by contamination flowing preferentially along each subsurface structure (that is, storm/sanitary sewers, telephone conduits and cable vaults) shall be sampled and analyzed. Analyses must be targeted to the substances released.***

(b) The Department may, in its discretion, approve a discharge investigation or mitigation method not specified in this subchapter upon a determination that it is at least as stringent as the approved standards in this section.

7:14B-8.3 Reporting requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall provide the local health department and the Department with a written report within 120 days of the notification of N.J.A.C. 7:14B-7.3, containing the following information:

1. The results of all work conducted to comply with the requirements of N.J.A.C. 7:14B-8.1 and 8.2;

2. The nature, estimated quantity and migration route of the hazardous substance;

3. Results from a site investigation which identifies on an area-wide map:

i. ***[Private]* *Non-public* water supply *[well locations]* *wells* surface water bodies and wetlands within *[1,000 feet]* ***one-half mile*** of ***the*** discharge;**

ii. **Public water supply wells *[within 2,500 feet]* *, industrial supply wells and other wells with water allocation permits within one mile*** of the discharge;

iii. Basements and ***[surface]* ***subsurface*** utilities on adjacent properties; and**

iv. Surrounding population, land use^{*,} ***and*** subsurface soil conditions ***[and climatological conditions]*;**

4. The results of any monitoring or sampling conducted in connection with the discharge. All samples shall be collected in accordance with the Department's Division of Hazardous Site Mitigation's Field Sampling Procedures Manual and/or the Division of Water Resources' Field Procedures Manual for Water Data Acquisition. All samples collected shall be analyzed by a laboratory certified pursuant to N.J.A.C. 7:18. The laboratory shall meet the performance standards and quality control requirements specified in N.J.A.C. 7:18^{*,} ***and*** 40 CFR Part 136 for water and wastewater analysis and in USEPA's manual "Testing Methods for Evaluating ***[Soil]* ***Solid*** Waste"** (SW-846 Third Edition) for solid waste analyses. All samples shall be analyzed for parameters that are representative of the substances which have been stored in and/or discharged from the underground storage tank system;

5. A detailed description of corrective actions taken and any actions planned, including an implementation schedule;

6. A certification signed by the owner or operator as required by N.J.A.C. 7:14B-2.3(d)2; and

7. Any other relevant information requested by the Department.

(b) The report described in (a) above shall be prepared by a qualified ***[geologist or]* ground water ***consultant*** ***[hydrologist that meets the requirements of N.J.A.C. 7:14B-4.5(e)i]***. The preparer of the report shall sign the following certification:**

"I certify under penalty of law that the information provided in this document is true, accurate and complete and was obtained by procedures in compliance with this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(c) In addition to the requirements listed in (a) above, the owner or operator of an underground storage tank ***system*** which has discharged a hazardous substance shall report the following to the Department^{*,} ***[s]*** and to the appropriate local health agencies and, in addition, for (c)1 below, the local fire department in accordance with local requirements:

1. The discovery of any vapor hazard;

2. The discovery of contaminated potable water supply wells; and

3. A schedule for performing the following activities prior to their implementation:

- i. Dates of tank or piping removal;
- ii. Date of well installation; and
- iii. Date of sample collection.

7:14B-8.4 Health and safety requirements

All investigative and corrective action activities required under this chapter shall be undertaken in a manner consistent with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (165.5)) incorporated herein by reference, and U.S. Department of Labor's Occupational Safety and Health ***[Standards health and safety practices]* ***Administration's Safety and Health Standards*** (29 CFR Part 1910 and 1926 (1989)) ***incorporated herein by reference***.**

7:14B-8.5 Additional corrective action requirements

Upon review of the report required by N.J.A.C. 7:14B-8.3(a), the Department may require the owner of an underground storage tank

system which has discharged a hazardous substance to apply for a New Jersey Pollutant Discharge Elimination System Permit, in accordance with N.J.A.C. 7:14A and satisfy the corrective action program requirements in N.J.A.C. 7:14A-6.15.

7:14B-8.6 Leak mitigation requirements

(a) The owner or operator of an underground storage tank system which has leaked a hazardous substance into the annular space created by the secondary containment system shall:

- 1. Determine the source of the leak;
- 2. Properly remove all hazardous substances from the underground storage tank system; and
- 3. Repair, replace or close the underground storage tank system in accordance with the requirements of this chapter.

(b) ***[The owner or operator of an underground storage tank system shall, within 30 days after reporting a leak in the annular space to the Department in accordance with the requirements of N.J.A.C. 7:14B-7, provide the Department with a written report calculating a detailed description of the corrective actions taken concerning the leak into the annular space.]* ***Within 30 days after reporting a leak into the annular space of an underground storage tank system in accordance with N.J.A.C. 7:14B-7, the owner or operator shall provide the Department with a written report containing a detailed description of the corrective actions taken concerning the leak into the annular space.*****

7:14B-8.7 Recordkeeping

(a) As of the effective date of this subchapter, the current and subsequent owners of the property on which an underground storage tank system exists and was closed shall maintain all records generated to comply with the requirements of this subchapter. These records shall be maintained indefinitely.

(b) These records shall be submitted for inspection upon request by any authorized local, State and/or Federal representative.

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.1 General requirements

(a) The owner or operator of an underground storage tank system which is empty for a period of 12 months or less after the effective date of this subchapter shall maintain all existing cathodic protection systems as required by N.J.A.C. 7:14B-5.2 and shall follow the procedures in American Petroleum Institute Recommended Practice 1604 "Removal and Disposal of Used Underground Petroleum Storage Tanks," incorporated herein by reference, for placing a tank system temporarily out of service. ***The owner or operator of such tank systems are required to comply with N.J.A.C. 7:14B-7 and 8 during the temporary closure period. The owner and operator of a temporarily closed underground storage tank system shall install spill and overflow prevention in accordance with the requirements of N.J.A.C. 7:14B-4.1(c) and release detection in accordance with the requirements of N.J.A.C. 7:14B-6 either by September 3, 1991 or at the time the underground storage tank system is put back into use, whichever is later. The Department shall be notified in writing on forms provided by the Department of any tank system which is undergoing temporary closure.***

(b) The owner or operator of an underground storage tank system which has been empty for more than 12 months shall close the tank system. The owner or operator may request an extension from the Department of this 12 month period, by submitting a site assessment in accordance with N.J.A.C. 7:14B-9.2 or 7:14B-9.3 at least 30 days prior to the expiration date.

(c) The owner or operator closing an underground storage tank system shall:

- 1. Remove the tank except as provided in (d) below; and
- 2. Remove any monitoring system unless the monitoring system will be used for a new tank system or for monitoring a release in accordance with N.J.A.C. ***[7:14B-8.3(a)4]* ***7:14B-8.2(a)3***.**

(d) The Department may, in its discretion, allow the owner or operator of an underground storage tank system to abandon the system in place if:

1. The underground storage tank is located under a permanent structure; or
2. The owner or operator submits a certification, signed and sealed by a New Jersey professional engineer, stating that removal of the underground storage tank will cause damage to another structure, or that the tank is difficult to remove from the ground because of inaccessibility or type of tank construction.

(e) The owner or operator of an underground storage tank system considering a change in storage to a non-regulated substance, shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with N.J.A.C. 7:14B-9.2 or 9.3.

7:14B-9.2 Closure requirements for underground storage tank systems containing petroleum products

(a) The owner or operator of an underground storage tank system containing petroleum products who intends to permanently close the underground storage tank system shall, 30 days prior to the anticipated closure date, notify the Department in writing on forms provided by the Department. This notification shall include:

1. The facility registration number;
2. A statement as to whether the tank system is being removed or abandoned in place;
3. Three copies of a detailed implementation schedule;
4. If abandonment in place is being proposed, the information required by N.J.A.C. 7:14B-9.1(d) shall be provided; and
5. If the facility is not registered as required by N.J.A.C. 7:14B-2.2, the owner or the operator shall attach a completed New Jersey Underground Storage Tank Registration Questionnaire ***with the appropriate fee as specified by N.J.A.C. 7:14B-3.1***.

(b) The owner or operator who intends to close an underground storage tank containing petroleum products shall develop and implement a closure plan which consists of a site assessment and a tank decommissioning plan. The Department or the county health agency as designated pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. ***[may]* *shall*** require the owner or operator to submit the closure plan for review prior to implementation and the Department or ***designated*** county health agency ***[may]* *shall*** disapprove or require modification of the plan ***[to ensure compliance with]* *if the plan does not meet*** the requirements of this ***[chapter]* *subchapter. Closure shall not be undertaken before a closure plan approval is obtained from the Department or designated county health agency.*** The closure plan shall include the following:

1. An implementation schedule;
2. A site assessment plan as described in (c) below prepared by a qualified ***[geologist or ground-water hydrologist that meets the requirements of N.J.A.C. 7:14B-4.5(e)]*** ***ground water consultant***;
3. A tank decommissioning plan which conforms with:
 - i. The New Jersey Uniform Construction Code, N.J.A.C. 5:23; and
 - ii. The American Petroleum Institute Bulletin No. 1604, "Recommended Practice for Abandonment and Removal of Used Underground Storage Tanks", incorporated herein by reference; and
4. The ***[owner or operator shall remove]* *A plan for the removal of*** all residual liquids, solids, or sludges from the tank and appurtenant piping by draining, pumping, or in-tank cleaning and disposing of such material and the tank in accordance with all applicable Federal, State and local rules and regulations.

(c) The site assessment plan ***for gasoline, kerosene, and jet fuel*** shall, at a minimum, consist of ground water monitoring wells drilled in accordance with well drilling requirements promulgated pursuant to ***[N.J.S.A. 58:4A-5]* *N.J.S.A. 58:4A-4.1 et seq.***

1. The wells shall be screened in the first water encountered and the screens shall be placed ***a minimum of*** three feet above the water table wherever possible and five feet below the water table. When ground water is not encountered within 75 feet of the surface, ***or when site conditions preclude drilling to this depth,*** the Department may, in its discretion, approve another method of site assessment.

2. The wells shall be located ***[within five feet of]* *as close as practical to the location of*** the underground storage tank ***[system or within the excavation if ground water is present in the excavation]***;

3. The wells shall be placed in the anticipated downgradient direction of ground water flow.

4. The necessary number of wells will be ***[prepared]* *determined*** by the preparer of the site assessment, using his or her best professional judgment, and based on the following minimum criteria:

- i. One tank up to 20 feet in length requires one well;
- ii. Two to three tanks up to 20 feet in length in the same excavation require two wells;
- iii. Each pump island or dispenser that is more than 20 feet away from the tanks or located in a position hydraulically down-gradient of other monitoring wells requires one well for each island; and
- iv. Additional monitoring wells will be necessary for extensive runs of piping at facilities including, but not limited to:

- (1) Bulk storage terminals; and
- (2) Refineries, large industrial complexes, and multiple buildings served by a centralized underground heating system.

5. The monitoring wells shall be properly developed and sampled in accordance with the Department's Division of Water Resources Field Procedures Manual for Water Data Acquisition and/or the Division of Hazardous Site Mitigation Field Sampling Procedures Manual. ***[Ground water samples shall be examined for the presence of any visible free product contamination.]*** In addition, the ground water samples ***[may be required to]* *shall*** be analyzed for ***[the water soluble constituents of the substances stored]* *contamination*** as specified by the Department. The depth of the water table in each well shall be noted and reported with the sampling results.

7:14B-9.3 Closure requirements for underground storage tank systems containing hazardous substances other than petroleum products

(a) The owner or operator of an underground storage tank system regulated by the New Jersey Hazardous Waste Regulations, N.J.A.C. 7:26, shall follow the closure procedures in that chapter (see N.J.A.C. 7:26-9).

(b) The owner or operator of an underground storage tank system containing a hazardous substance which is not a petroleum product or a hazardous waste shall comply with the following closure procedures:

1. A closure plan shall be submitted to the Department for review and approval at least 45 days in advance of the anticipated closure date.
2. The closure plan shall contain all the information required by N.J.A.C. 7:14B-9.2(a), (b), and (c).

7:14B-9.4 Exemptions to site assessment requirements

(a) Facilities shall be exempt from performing the site assessment portion of the closure plan as described in N.J.A.C. 7:14B-9.2 and 9.3 if ***the*** owner or operator of the facility submits documents showing:

1. The installation of ground water monitoring wells at the facility in accordance with ***[N.J.A.C. 7:14B-6.2 and 6.4]* *N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act***;
2. The installation of secondary containment and monitoring systems as defined in N.J.A.C. 7:14B-4 and ***[6.2]* *6*** where there were no underground storage tank systems at the facility prior to the existing system; and
3. The installation of vapor sensors as an approved monitoring system as specified in ***[N.J.A.C. 7:14B-6 if there has never been any detectable contamination at the lowest detection limit of the monitoring system.]* *N.J.A.C. 7:14B-6.2(b)1; or***

4. The facility is undergoing corrective action pursuant to N.J.A.C. 7:14B-8 or a New Jersey Pollutant Discharge Elimination System permit to discharge to ground water in accordance with N.J.A.C. 7:14A.

(b) In addition to submitting the documents in (a) above, before receiving an exemption, the owner or operator shall provide the Department with information which shows that the facility:

1. Is in compliance with all other requirements in this chapter; and

2. Has never had a reportable release or a suspected release which was not fully investigated.

(c) The owner or operator shall include a certification with the information set forth above as required by N.J.A.C. 7:14B-2.3(d)3.

(d) The owner or operator of a facility desiring an exemption shall submit the supporting information to the Bureau of Underground Storage Tanks for review and approval at least 45 days in advance of the anticipated closure date.

7:14B-9.5 Reporting and recordkeeping requirements

(a) The owner or operator of an underground storage tank closed after *[the effective date of this subchapter]* ***September 4, 1990*** shall, within 90 days of completing implementation of the closure plan, submit the following information to the Department:

1. A site diagram with a plan view which indicates the locations of the groundwater monitoring wells, all major structures and utilities, approximate property boundaries, and all existing or closed underground storage tank systems including appurtenant piping and a cross-sectional view indicating depth of tank, stratigraphy and location of water table;

2. A summary of the site assessment sampling results and depths to water table in tabular form and keyed to the site diagram;

3. A certification, signed by the preparer of the site assessment ***plan***, which states the following with regard to the site assessment portion of the closure plan:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and was obtained by procedures in compliance with this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

4. A certification signed by the person performing the tank decommissioning portion of the closure plan which states the following:

"I certify under penalty of law that tank decommissioning activities were performed in compliance with N.J.A.C. 7:14B-9.2(b)3. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

5. Certifications, signed by the appropriate representatives of the owner or operator of the closed underground storage tank system, in accordance with the requirements of N.J.A.C. 7:14B-2.3(d)4.

(b) The owner or operator of a closed facility may be required to submit additional information regarding site conditions depending upon the sampling results in order to ensure compliance with the requirements of this subchapter.

(c) ***[The]* *Any person, including, but not limited to, the* owner or operator shall report any evidence of contamination discovered during closure activities in accordance with the procedures in N.J.A.C. 7:14B-7.3 and perform corrective action in accordance with N.J.A.C. 7:14B-8.**

(d) The owner ***[or]* *of* the property on which an underground storage tank system exists and was closed shall maintain all records generated to comply with the requirements of this subchapter. These records shall be *[maintained at the closure site]* ***made available to the Department upon request*** for an indefinite period of time.**

(e) These records shall be made available for inspection by any authorized local, State and/or Federal representative and shall be submitted to the Department if required.

SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-10.1 General permitting requirements and procedures

[(a) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system shall, except as provided for under (b) below, obtain a permit from the Department prior to replacing, installing, expanding or substantially modifying the underground storage tank system.]

***[(a) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system shall, except as provided for under (b) below:**

1. Obtain a permit from the Department prior to replacing, installing, expanding or substantially modifying the underground storage tank system; and

2. Obtain a construction permit issued pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to installing, expanding or substantially modifying the underground storage tank system.*

(b) Any person who owns or operates, or is proposing to own or operate, an underground storage tank that is or will be equipped with one of the Department-approved methods of secondary containment or devices specified in N.J.A.C. ***[7:14B-4.4(a)]* *7:14B-4.4 and 7:14B-6.3(a)2***, shall obtain a construction permit issued pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to installation and shall maintain at the underground storage tank facility the site diagrams and plans and specifications required by N.J.A.C. 7:14B-10.2(a)2.

(c) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system and intends to replace, install, expand or substantially modify the underground storage tank system shall complete and submit a separate permit application form for each activity in each excavation area.

(d) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system which requires a permit under this subchapter, shall complete and submit the permit application form at least 45 days in advance of the anticipated date of initiating the activity for which the permit is required. ***Emergency Permits may be obtained as specified in N.J.A.C. 7:14B-10.8***

(e) Permit application forms shall be obtained from and accurately completed, signed, dated, and returned to:

Bureau of Underground Storage Tanks/
Permitting Unit
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

(f) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system which requires a permit under this subchapter, shall provide the following information on the permit application form:

1. The activity to be conducted at the facility ***or site*** which requires the person to obtain a permit;

2. The name, mailing address, and location of the facility ***or site*** where the activity will take place;

3. The facility owner's and operator's name, address, and telephone number;

4. The name, address, and telephone number of the applicant's authorized agent, where applicable;

[5. The facility SIC code;]

***[6.]* *5.* A listing of all the permits or construction approvals received or applied for in relation to the proposed activity;**

[7. A listing of any administrative orders, notices of violations, complaints filed against, or other corrective action required or enforcement action taken by any governmental entity with regard to the operation of the facility;]

***[8.]* *6.* A certification by the owner or operator as required by N.J.A.C. 7:14B-2.3(d)5*[*];* and**

***[9.]* *7.* Any other relevant information which the Department, in its discretion, requires.**

(g) Depending on which underground storage tank permit is being sought, the owner or operator must provide the additional information required in N.J.A.C. 7:14B-10.2 through 10.5.

(h) The Department may issue a permit to the owner or operator of an existing or proposed underground storage tank system upon a determination that:

1. The owner or operator proposes to construct the underground storage tank system with materials that meet or exceed the standards contained in the New Jersey Uniform Construction Code, N.J.A.C. 5:23;

2. The owner or operator proposes to equip the underground storage tank system with ***[either a method of secondary containment meeting the requirements of N.J.A.C. 7:14B-4.4(a) or]*** a monitoring

system meeting the requirements of *[N.J.A.C. 7:14B-6.2 or 6.4]*
N.J.A.C. 7:14B-6;

3. The owner or operator proposes to equip the underground storage tank system with corrosion control meeting the requirements of N.J.A.C. 7:14B-4.1 (g), (h), (i) or (j);

4. The owner or operator proposes to equip the underground storage tank system with spill and overflow protection meeting the requirements of N.J.A.C. 7:14B-4.1(c);

5. The owner or operator of an underground storage tank system shall ensure that the new underground storage tank system and the hazardous substance to be stored in or dispensed from that system will not interact in a way that may undermine the integrity of the system or promote corrosion; and

6. The permit application form is accurate and complete, and all application fees have been paid in accordance with N.J.A.C. 7:14B-3.

(i) Any person who has been issued a permit under this section shall be required to notify the Department or the local code enforcement official ***seven days*** in advance of beginning one or more of the activities listed in (a) above. This shall be done to allow a Department or local code enforcement official to inspect the facility and determine whether the facility is in compliance with all applicable rules and regulations.

[1. The permittee shall also provide the Department or the local fire code official with the names of all insurance companies and insurance policy numbers related to the facility.]

7:14B-10.2 Additional application requirements for the installation of underground storage tank systems not equipped with secondary containment *[or equivalent devices]*

(a) In addition to the general permitting requirements and procedures set forth in this subchapter, any owner or operator that intends to install an underground storage tank system which is not equipped with secondary containment or equivalent devices as specified in N.J.A.C. 7:14B-4.4 and 6.3*(a)2* on either the tank or the appurtenant piping shall:

1. Submit two copies of a set of plans and specifications signed and sealed by a New Jersey professional engineer, drawn to scale and depicting the top, front, and side views of the proposed underground storage tank system installation. Plans submitted shall show all information and details necessary to indicate compliance with this chapter and shall include a certification ***by the New Jersey professional engineer*** which states the following:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this *[sub]*chapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

i. The Professional Engineer shall sign and seal ***and submit to the Department*** the ***["as built" plans and specifications]*** ***record drawings*** where they differ from the proposed plans and specifications; and

2. Submit three copies of the site diagram showing to scale the size and location of all new underground storage tank systems, all existing structures on the site, and distances from lot lines.

(b) Where the set of plans and specifications are or will be used repeatedly at different underground storage tank system facilities, the plans attached to the first application for a Department installation permit and accompanied by a request for the designation may, following approval by the Department, be designated as a "prototype or master plan." An additional copy of the signed and sealed plans shall be submitted to the Department for retention. Subsequent permit applications shall consist of three copies each of the site diagram required by (a)2 above, signed and sealed by a New Jersey professional engineer, and a reference to the original approval of the "prototype or master plan".

7:14B-10.3 Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment *[or equivalent devices]*

(a) In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, any person planning to install a dis-

charge monitoring system on an existing underground storage tank system shall provide the following information on the permit application form:

1. The results of at least one boring drilled adjacent to the existing underground storage tank system*[, or at the location of the proposed underground storage tank system]*;

i. The boring shall be drilled*, **and, after use, sealed*** in accordance with the well drilling ***and*** requirements *[promulgated pursuant to N.J.S.A. 58:4A-5]* ***of N.J.S.A. 58:4A-4.1 et seq.***;

ii. The boring may extend not more than 15 feet below the bottom of the tank excavation area;

iii. The boring shall be evaluated for textural analysis of split spoon samples every five feet for the length of the boring using standard methods of classification including, but not limited to, Burmeister, Unified, or United States Department of Agriculture systems. This requirement shall not apply to monitoring systems which are in entirely homogeneous backfill consisting of crushed gravel, clean sand, or pea gravel as recommended by the tank or piping manufacturer; and

iv. The boring shall be examined to determine the highest seasonal water table as indicated by water level measurement or other indicators including, but not limited to, mottling (if seen within the maximum extent of the boring);

2. A detailed description of the monitoring device to be installed including, but not limited to, operation requirements, monitoring frequency, written performance claims and their manner of determination, and monitoring points; and

3. A site diagram which accurately indicates the location of all sampling and proposed monitoring points in relation to all underground storage tank systems at the facility. For purposes of proper identification, each monitoring point, sensor, or sampling device shall be designated with a number.

(b) The owner or operator of an underground storage tank system that proposes to install vapor sensors as a discharge monitoring system shall submit the following specific information on the permit application form:

1. The results of soil gas analyses from at least five borings ***the manner by which the soil vapor was collected and analyzed, and the basis of any relative measurements such as the manufacturer's calibration curve***. Four of the borings shall be located in each of the corners of the proposed or original tank excavation area and one boring shall be performed adjacent to the appurtenant piping;

i. The borings shall be drilled*, **and, after use, sealed*** in accordance with the well drilling ***and*** requirements of *[N.J.S.A. 58:4A-5]* ***N.J.S.A. 58:4A-4.1 et seq.***; and

ii. The borings may not extend more than five feet below the ground surface for the purpose of detecting background contamination of soil gas by field instruments with detection limits of 10 parts per million or less and calibrated to the substance being stored; and

2. Verification of field results through samples analyzed by a New Jersey Certified Laboratory upon request of the Department.

(c) The Department may, in its discretion, require additional borings for those facilities with over 30,000 gallons of storage capacity in one excavation area and/or unusual, complex or long piping configurations.

7:14B-10.4 Additional application requirements for the installation of corrosion protection systems for existing underground storage tank systems

In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, any owner or operator that intends to install corrosion protection in accordance with N.J.A.C. 7:14B-*[4.1(a)]* ***4.5(c)*** on an existing underground storage tank system shall provide the Department with plans and specifications and a testing and maintenance schedule designed by a corrosion expert. The submission shall be accompanied by the following certification made by the corrosion expert:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this subchapter. I am aware that there are

significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

7:14B-10.5 Additional application requirements for substantial modifications other than discharge monitoring systems and corrosion protection

(a) In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, the owner or operator of an underground storage tank system that proposes to substantially modify that tank system in any way other than through installation of a monitoring system or corrosion protection shall submit the following information to the Department:

1. A detailed narrative description of the proposed substantial modification; and

2. Three copies of drawings of professional quality that accurately depict the proposed substantial modification. The Department may, in its discretion, require plans and specifications signed and sealed by a New Jersey professional engineer. In addition to this submission, the New Jersey professional engineer shall provide the following certification:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

(b) The owner or operator of an existing underground storage tank system who intends to install an interior lining shall *[provide the Department with a certification pursuant to N.J.A.C. 7:14B-5.3(b)]* ***do so in accordance with industry standards as specified in N.J.A.C. 7:14B-5.3(b)*.**

(c) For the purposes of this subchapter only, the following activities shall not constitute substantial modifications which require a permit under this subchapter issued by the Department:

1. Installation of vapor control systems required by N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances;

2. Installation of replacement appurtenant piping sections as long as the appurtenant piping meets standards set forth in N.J.A.C. 7:14B-4.2(b) and the entire length of piping from the dispenser to the tank is not being replaced. Replacement of the entire length of piping from the dispenser to the tank shall constitute a new installation and require a permit under this subchapter;

3. Minor repairs which will not:
i. Involve cutting the tank shell;
ii. Affect cathodic protection systems, for example, introducing new unprotected metal parts; or
iii. Otherwise affect the storage, capacity, physical configuration or integrity of the facility or its monitoring system;

4. A change in the tank's contents where the new hazardous substance is chemically compatible with the tank's construction material or lining;

5. The installation of a line release detector as required in N.J.A.C. 7:14B-4.5(i); or

6. Any other activities which, in the opinion of the Department, will not affect storage capacity, physical configuration, or the physical integrity of the facility or its monitoring system.

7:14B-10.6 Public access to permit information

(a) All completed New Jersey Underground Storage Tank permit application forms, as well as documented information pertaining to the permit, shall be considered public records pursuant to N.J.S.A. 47:1A-1 et seq.

(b) Interested persons shall request in writing an appointment to review the public records. This written request shall be sent to:

New Jersey Department of Environmental Protection
CN 029

Bureau of Underground Storage Tanks
401 East State Street
Trenton, New Jersey 08625-0029

7:14B-10.7 Display of permit and availability of approved plans

(a) The owner or operator of an underground storage tank system for which a Department permit has been issued shall prominently display the valid permit at the facility ***site*** during the course of the permitted activity and shall make the permit available for inspection by an authorized local, State or Federal representative.

(b) The owner or operator of an underground storage tank system for which a Department permit has been issued shall maintain one set of approved plans at the facility ***site*** during the course of the permitted activity and shall make the approved plans available for inspection by any authorized local, State or Federal representative.

7:14B-10.8 Emergency permits

(a) The Department may, in its discretion, issue an emergency underground storage tank permit in the specific instance where:

1. A building's sole source of heat is from an oil burner and that building's underground storage tank system containing heating oil is determined to be leaking.

i. When this type of underground storage tank system is discovered to have released a hazardous substance into the environment then, in order to reduce the period of time that the building must remain without heat, the owner or operator may request an emergency permit to remove and replace the leaking underground storage tank system.

(b) The owner or operator of an underground storage tank system, requesting an emergency permit, shall contact the Department on the day of the emergency or, when the emergency occurs after business hours, on a weekend or on a holiday, the owner or operator shall contact the Department on the next working day thereafter at (609) 984-3156 for telephone issuance of an emergency permit. The owner or operator shall, within 14 days of receipt of telephone issuance of the emergency permit, submit a formal permit application, including the appropriate fee, to the Department.

(c) The owner or operator shall provide the following information when requesting an emergency permit:

1. Name, address and telephone number of the owner and the operator;

2. A clear and concise factual description of the nature and scope of the emergency;

3. The address and location of the facility where the emergency occurred; and

4. A description of the underground storage tank system installed or repaired, including all features necessary to be in compliance with this chapter.

(d) The Department, upon issuance of an emergency permit, shall assign to the owner or the operator of the underground storage tank system an emergency permit number. The owner or operator shall prominently display the number of the facility and make it available for on-site inspection by any authorized local, State or Federal representative.

7:14B-10.9 Permit expiration

Any permit issued pursuant to this chapter shall expire if the work authorized by the permit is not commenced within 12 months after the effective date of the permit, or if the authorized work is suspended or abandoned for a period of six months at any time after work has begun.

7:14B-10.10 Grounds for denial or revocation of permits

(a) The Department may, in its discretion, deny the issuance of a permit under this subchapter upon a determination of the following:

1. The permit application is incomplete, contains inaccurate information and/or is illegible; or

2. The owner or operator fails to comply with any requirement of the State Act or this chapter.

(b) The Department may revoke a permit upon a determination of the following:

1. The permit application contains false or inaccurate information;

2. An authorized *[local, State or Federal government]* representative is denied access to the *[facility]* site;

3. The owner or operator fails to comply with any requirement of the State Act or this subchapter; or

ADOPTIONS

4. The owner or operator of an underground storage tank system is performing or has authorized an activity which is not in compliance with this chapter.

(c) The Department shall inform an owner or operator of the denial or revocation of a permit by a Notice of Intent to Deny a Permit or a Notice of Intent to Revoke a Permit. This Notice shall include:

1. The specific grounds for denial of issuance as set forth in (a) above; or

2. The specific grounds for revocation as set forth in (b) above.

(d) The Department shall serve this Notice to an owner or operator by certified mail (return receipt requested) or by personal service.

(e) An owner or operator that receives a Notice from the Department denying or revoking a permit shall not begin the proposed permitted activities or shall discontinue any ongoing permitted activities.

(f) The Department, in seeking to revoke a permit, shall comply with the procedures and requirements of N.J.A.C. 7:14B-12.

SUBCHAPTER 11. MUNICIPAL ORDINANCES

7:14B-11.1 Local ordinance exemption

(a) This chapter supersedes any law or ordinance regulating underground storage tanks regulated subject to this chapter, enacted by a municipality, county or political subdivision thereof prior to the effective date of this chapter.

(b) No municipality, county, or political subdivision thereof shall enact any law or ordinance regulating underground storage tanks regulated subject to this chapter without express permission from the Department in accordance with N.J.A.C. 7:14B-11.2 below.

7:14B-11.2 Local ordinance enactment

(a) A municipality, county, or political subdivision thereof may apply to the Department for authority to enact a municipal ordinance that provides rules and regulations that are more environmentally protective than this chapter. The application shall consist of the following:

1. A copy of the proposed ordinance;
2. A resolution from the governing body supporting the proposed ordinance;
3. A written statement setting forth all the provisions of the proposed ordinance which differ from those set forth, or are not found in, this chapter;
4. The legal and environmental basis for the difference; and
5. All supporting facts and data.

(b) A municipality may apply to the Department to continue enforcement or testing activities under an existing ordinance so to affect an uninterrupted monitoring program between the effective date of this subchapter and the dates found in the tank system upgrading schedule of N.J.A.C. 7:14B-4.5(a), (b), (c), (d), (e), (f), (h) and (i).

7:14B-11.3 Department determination

(a) The Department shall, within 180 days of receipt of a written petition from a municipality, evaluate the proposed municipal ordinance to determine whether the exemption is warranted and advise the municipality of its findings.

(b) The Department shall base its determination on the following criteria:

1. The municipal ordinance provides greater environmental protection for unique ***[hydrogeologic]* hydrologic** conditions;
2. The municipal ordinance provides greater protection against imminent threats to human health; or
3. The municipal ordinance provides greater environmental protection for wetlands or flood plains.

(c) The Department shall provide public notice of all approvals of municipal ordinances under this section by publishing notice of each approval in the DEP Bulletin.

(d) The municipality, county or political subdivision receiving approval from the Department to adopt the ordinance shall submit to the Department a copy of the final ordinance along with a detailed description of the means by which the local government will enforce the provisions of the ordinance.

ENVIRONMENTAL PROTECTION

(e) The municipality, county or political subdivision that is denied the right by the Department to adopt an ordinance may request an adjudicatory hearing pursuant to N.J.A.C. 7:14B-12.

SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING PROCEDURES

7:14B-12.1 General penalty

(a) Failure by an owner or operator of an underground storage tank system to comply with any requirement of the State Act or this chapter may result in denial or revocation of the owner's or operator's registration or permit for the tank system and/or the ***imposition of*** civil administrative penalties ***[set forth in]* ***, ***issuance of administrative compliance orders, imposition of civil penalties, initiation of civil action for injunctive relief, or petitioning the Attorney General to bring a criminal action in accordance with*** N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

(b) An owner or operator may request an administrative hearing for appealing a penalty issued pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or N.J.A.C. 7:14-8 by meeting the requirements of N.J.A.C. 7:14-8.4.

7:14B-12.2 Procedures for requesting hearings after denial or revocation of registration and permits*, and denial of ordinance adoption*

(a) Within ***[20]* *30*** calendar days from receipt of notification from the Bureau of Underground Storage Tanks denying or revoking a permit or registration, ***or denying an ordinance adoption,*** issued pursuant to N.J.S.A. 58:10A-21 et seq., the Underground Storage of Hazardous Substances Act, the registrant, ***or political subdivision,*** may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the registrant ***or political subdivision***, and its authorized representative, if any;
2. The Underground Storage Tank registration number for the facility ***(if applicable)***;
3. The registrant's ***or political subdivision's*** factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions;
4. Information supporting the registrant's ***or political subdivision's*** factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within ***[20]* *30*** days after receipt by the registrant ***or political subdivision*** shall be denied by the Department.

(c) If the registrant ***or political subdivision*** fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

*** (e) Pending the decision on appeal to the Department and upon a typewritten request supporting the ongoing need to use the tank, the Department may stay the revocation of the permit, for good cause shown, upon such terms and conditions as are deemed proper. The request for stay of revocation of the permit shall be included in the request for hearing.***

SUBCHAPTERS 13 AND 14 (RESERVED)

SUBCHAPTER 15. CONFIDENTIALITY

7:14B-15.1 Scope and exchange of information

(a) This subchapter sets forth the procedures for making information received by the Department in administering the Underground Storage Tank program under N.J.A.C. 7:14B-1 available to the public and maintaining confidentiality of certain parts of that information.

(b) All information collected by or originated by the Department in connection with underground storage tank regulatory activities under N.J.A.C. 7:14B shall be generally available to the public except as provided otherwise in this subchapter.

(c) Claims for confidentiality will be decided by the Department in accordance with the provisions of this subchapter.

(d) If a request for information is made for interagency or intra-agency memoranda or letters, the Department may deny this request if such request is exempted from disclosure pursuant to 5 U.S.C. §552 (b)(5).

(e) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to 5 U.S.C. §552 (b)(7) or N.J.S.A. 47:1A-3.

(f) When USEPA supplies information to the Department which was submitted to USEPA under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from USEPA that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

(g) Notwithstanding any other provision of this subchapter, any information obtained or used in the administration of the underground storage tank program shall be available to EPA and U.S. Department of Justice upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to EPA when providing information as required in this section.

(h) Access to any information for which a confidentiality claim has been made will be limited to Department employees, representative and contractors, whose activities necessitate such access. Also USEPA employees may have access to confidential information subject to (f) above.

(i) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(j) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:14B-15.2 Confidential claims

(a) Any owner or operator of an underground storage tank system required to submit any information pursuant to the Act or this chapter which in the owner's or operator's opinion constitutes trade secrets, proprietary information, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) Any owner or operator submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One document shall contain all the information required by the Act or this chapter including any information which the owner or operator alleges to be entitled to confidential treatment. The second document shall be identical to the first except that it shall contain no information which the owner or operator alleges to be entitled to confidential treatment. The second document can be a photocopy of the first, with the allegedly confidential material blacked out.

(c) The top of each page of the first document containing the information which the owner or operator alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first document which the owner or operator alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first document, containing the information which the owner or operator alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential document (which may or may not be enclosed in a separate envelope, at the option of the owner or operator), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided below:

New Jersey Department of Environmental Protection
CN 029
Bureau of Underground Storage Tanks
401 East State Street
Trenton, New Jersey 08625-0029

7:14B-15.3 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department when the contractor's activities necessitate such access.

(b) No information may be disclosed to a contractor unless the contract in question provides that the contractor and the contractor's employees, agents and representatives use the information only for the purpose of carrying out the work required by the contract, not disclose the information to anyone not authorized in writing by the Department, store the information in locked cabinets in secure rooms, and return the information to the Department whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5 Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

7:14B-15.4 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided ***for*** in this ***[section and N.J.A.C. 7:14B-15]*** ***subchapter***.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;

2. Desires to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the owner or operator who submitted the information.

2. The notice required under this subsection shall be sent by certified mail, return receipt requested and shall state the reasons for the Department's initial determination.

3. An owner or operator who wishes to contest a determination by the Department shall, within 30 days of notification of the de-

ADOPTIONS

termination, submit evidence to support the owner's or operator's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

- i. The period of time for which confidential treatment is desired by the owner or operator (for example, until a certain date, until the occurrence of a specified event, or permanently);
- ii. The measures taken by the owner or operator to guard against undesired disclosure of the information to others;
- iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and
- iv. The extent to which disclosure of the information would result in substantial damage to the owner or operator, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the relationship between disclosures and the damage.

4. Failure of an owner or operator to furnish timely comments or exceptions waives the owner's or operator's confidentiality claim.

5. The owner or operator may assert a confidentiality claim to any information submitted to the Department by an owner or operator as part of its comments pursuant to (c)3 above.

6. The Department may extend the time limit for submitting comments pursuant to (c)3 above for good cause shown by the owner or operator and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the owner or operator by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the owner or operator of the written notice.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The owner or operator shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:14B-15.5 Substantive criteria for use in confidentiality determinations

(a) When the owner or operator satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The owner or operator has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;
2. The owner or operator has shown that reasonable measures have been taken to protect the confidentiality of the information and that the owner or operator intends to continue to take such measures;
3. The information is not, and has not been, available or otherwise disclosed to other persons without the owner's or operator's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute specifically requires disclosure of the information; and

5. Except for information related to national security, the owner or operator has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

7:14B-15.6 Disclosure of confidential information to USEPA and other public agencies

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in this section or N.J.A.C. 7:14B-15.3.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

ENVIRONMENTAL PROTECTION

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;

5. The other agency agrees not to disclose the information further unless:

- i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or
- ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted rules or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided in N.J.A.C. 7:14B-15.7, the Department shall notify in writing the owner or operator who supplied the confidential information of:

1. Its disclosure to another agency;
2. The date on which disclosure was made;
3. The name of the agency to which disclosed; and
4. A description of the information disclosed.

7:14B-15.7 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the owner or operator to such disclosure.

(b) The giving of consent by an owner or operator to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

7:14B-15.8 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health and the environment, the Department may:

1. Prescribe and make known to the owner or operator such shorter comment period (see N.J.A.C. 7:14B-15.4(c)4), post-determination waiting period (see N.J.A.C. 7:14B-15.4(d)1), or both, as it finds necessary under the circumstances; or

2. Disclose confidential information to any person whose role in alleviating the danger to public health and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it, of itself, be grounds for any determination that information is no longer entitled to confidential treatment.

(c) The Department will notify the owner or operator of any disclosure made pursuant to this section as soon as is feasible.

7:14B-15.9 Security procedures

(a) Submissions to the Department pursuant to the Act and this chapter will be marked confidential and opened only by persons authorized by the Department engaged in administering the Act and this chapter.

(b) All submissions entitled to confidential treatment shall be stored by the Department or its contractors only in locked cabinets.

(c) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:14B-15.10 Wrongful access or disclosure; penalties

(a) A person may not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or this chapter, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

(a)

DIVISION OF WATER RESOURCES**Underground Storage Tank Improvement Fund Loan Program****Adopted New Rules: N.J.A.C. 7:14B-13**

Proposed: August 7, 1989 at 21 N.J.R. 2265(a).

Adopted: August 6, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: August 6, 1990 as R.1990 d.442, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4).

Authority: N.J.S.A. 13:1D-9, N.J.S.A. 58:10A-21 et seq., more particularly 10A-36.

DEP Docket Number: 035-89-07.

Effective Date: September 4, 1990.

Expiration Date: December 21, 1992.

Summary of Public Comments and Agency Responses:

The proposed rules were published in the August 7, 1989 New Jersey Register. The comment period extended from August 7, 1989 through October 6, 1989 during which time 85 individuals or entities submitted written comments on these rules as well as the Underground Storage Tank System Technical Requirements and Procedures proposed the same day at 21 N.J.R. 2242(a). Public hearings were held at the Rutgers Labor Education Center in New Brunswick and the New Jersey State Museum on August 24 and 29, 1989. Twenty one persons offered oral testimony on these rules and the proposed Underground Storage Tank Systems Technical Requirements and Procedures. In addition to publication in the New Jersey Register, secondary notice of the proposal was provided by mailing copies of the proposed rules to over 2,000 people on the Bureau of Underground Storage Tanks' mailing list.

N.J.A.C. 7:14B-13 General issues

COMMENT: Several comments were received stating that banking institutions are refusing to give loans for the purpose of performing upgrades. It was suggested that banks and lending institutions be insulated from any liability if they lend money to companies for environmental improvements.

RESPONSE: The Department has no authority to insulate banks and lending institutions against environmental liability.

COMMENT: Several comments were received requesting that the deadline for accepting loan applications be extended and the loan repayment period be lengthened.

RESPONSE: The deadline for accepting loan applications and the maximum time allowed for repayment of a loan was established by statute, and cannot be changed by the Department. The Department has prepared a proposal to the Legislature to extend the deadline until December 23, 1993, which coincides with certain Federal deadlines.

COMMENT: One comment was made requesting that additional funds be made available so that a larger number of tank owners will be able to obtain loans for upgrading their tank systems.

RESPONSE: The Department agrees that additional funding will be needed to accomplish the goal of N.J.A.C. 7:14B-13 which is to award as many loans as feasible to eligible applicants. However, the appropriation for the Fund was set at \$5,000,000 by the Legislature.

COMMENT: Several comments were received stating that the costs of tank upgrading will rise due to the unavailability of funds until the rules are adopted. The money should be available now for the small businessman to implement the rules. Commenters also wanted to know if the money will go back to the "General Treasury" since the program has been delayed so long.

RESPONSE: There are administrative procedures which the Department must follow before loans may be awarded pursuant to N.J.A.C. 7:14B-13. The Department cannot award loans without having these rules in place. Any rise in costs due to unavailability of funds prior to adoption of the rules is beyond the control of the Department. N.J.S.A. 58:10A-36 states that all money remaining in the fund after December 31, 1991 shall revert to the General Fund.

N.J.A.C. 7:14B-13.1 Scope and construction

COMMENT: One comment was received requesting that the word "relative" be deleted from N.J.A.C. 7:14B-13.1(b). This program should apply only to applicants who can prove economic hardship. "Relative" is an adjective which raises doubt as to economic hardship; it clouds the issue and should be deleted.

RESPONSE: The word "relative" as an adjective also means "comparative" and was used in this context in determining the degree of economic hardship of the applicant. Since only \$5,000,000 was appropriated by the State Act and loans are awarded depending upon the availability of funds, the degree of relative economic hardship becomes important. To implement this program with a limited amount of funds available, a loan award schedule (see N.J.A.C. 7:14B-13.10) was devised whereby the interest rate, term of the loan and percentage of project costs awarded will be based on the degree of economic hardship of the eligible loan recipient.

COMMENT: One comment was received questioning the meaning of "liberally construed" in N.J.A.C. 7:14B-13.1(c). The rules have set up a priority system for the awarding of loans based on greatest need. The sentence should read: These rules shall be followed so as to permit the Department to effectuate the purpose of the law.

RESPONSE: The Department disagrees with this comment. The term "liberally" provides the Department with the discretion necessary for carrying out the provisions of the State Act.

N.J.A.C. 7:14B-13.3 Preapplication procedure

COMMENT: Several comments were received expressing concern over how individuals under economic hardship are going to deal with the complexities of the various loan program requirements. The comments suggested that the Department supplement its program by providing guidance and assistance to the applicants and develop an easy to follow manual for application and compliance.

RESPONSE: Prior to submitting a loan application an applicant may request an informal conference. During the conference the Department will identify and explain all loan application documents and Department permits the applicant must obtain prior to being awarded a loan. In addition, a guide providing assistance for completing the application form will be part of the Department application package.

N.J.A.C. 7:14B-13.5 Eligibility of loan recipients and costs

COMMENT: One comment was received requesting the Department to extend the same eligibility rights to the lessee of the underground storage tank system as the owner of the system has been granted.

RESPONSE: The Department disagrees. N.J.S.A. 58:10A-36 indicates that only the underground storage tank system owners demonstrating economic hardship are eligible for loan awards.

ADOPTIONS

COMMENT: One comment was received requesting that a new provision be added to N.J.A.C. 7:14B-13.5 which requires that: "The applicant has proven economic hardship."

RESPONSE: The Department has determined that N.J.A.C. 7:14B-13.5(a)4 contains all the eligibility requirements necessary for this subchapter including the language requested in the comment. Thereby adding the revised language would be unnecessary duplication.

COMMENT: One comment was received expressing the belief that unless there is specific money earmarked by the State for schools with UST systems they are going to have serious problems.

RESPONSE: The State Act specifically requires the Department to take into consideration the "economic hardship" as it relates to "annual gross receipts" and "net profit" of a facility. Thus, the Department came to the conclusion that the Underground Storage Tank Improvement Fund is not readily applicable to public agencies.

N.J.A.C. 7:14B-13.6 Application procedures

COMMENT: One comment was received requesting that the phrase "or tax identification number" be added to N.J.A.C. 7:14B-13.6(b)li and ii.

RESPONSE: The Department agrees with this comment and N.J.A.C. 7:14B-13.6(b)li and ii have been modified accordingly.

COMMENT: One comment was received suggesting the \$250.00 non-refundable fee should be refunded.

RESPONSE: The Department agrees with the comment. N.J.A.C. 7:14B-13.6(b)7 will be modified to include the provision that the \$250.00 application fee shall be returned by the Department to the applicant if a loan is not made.

COMMENT: N.J.A.C. 7:14B-13.6(b)7, Application procedure, and N.J.A.C. 7:14B-13.11(e), Notice of approval or denial. Several comments were received expressing concern that the \$250.00 application fee and closing fee of \$600.00 are excessive. Since the closing fee applies across the board rather than as a percentage of the actual loan award, an UST owner/operator borrowing the smallest amount (\$5,000) under the loan program will pay 17 percent of the loan amount in closing costs and application fees. These sums, coupled with initial registration fees, yearly assessment fees and permit/approval fees will only impose greater economic hardship on small businesses.

RESPONSE: When implementing N.J.A.C. 7:14B-13, there are necessary steps that have to be taken in order to insure repayment of loans. The Department will be procuring the services of the New Jersey Economic Development Authority (NJEDA) to perform the financial evaluation and loan closing. NJEDA is charging the Department \$1,800 to perform these services. Since the Department is absorbing \$950.00 of the financial evaluation fee and not charging any additional closing service charges, the \$600.00 closing fee would be charged to the approved applicant. In most cases the total combined fee of \$850.00 will be substantially less than if the loan was granted through a bank or lending institution. Therefore, the Department believes that the application and closing fees are reasonable and do not impose an unnecessary burden on the regulated community.

N.J.A.C. 7:14B-13.9 Evaluation of application and economic hardship

COMMENT: Several comments were received regarding the 90 hours necessary to review an application for a loan. This will cause additional delays in having the work performed or discourage small businesses most in need of financial assistance from even filing an application.

RESPONSE: The Department's main objective is to perform an evaluation of the application package in an objective and efficient manner taking into consideration the circumstances of each applicant separately. In carrying out this objective, the Department will attempt to streamline the estimated 90 hours of staff time required to perform the evaluation process. However, as was stated before, the NJEDA will be performing the financial evaluation; its estimated time to perform this service is 38 hours. The breakdown and analysis of the estimated time is explained in detail on pages 99 to 100 of the Basis and Background document.

COMMENT: Several comments were received requesting that N.J.A.C. 7:14B-13 be revised to focus on economic hardship and environmental benefit, rather than credit worthiness of applicants.

RESPONSE: The Department does not agree. In accordance with N.J.S.A. 58:10A-36, the Underground Storage Tank Improvement Fund shall be credited with moneys appropriated by the Legislature and sums received as repayment of principal and interest from loans awarded. Therefore, it is important for an applicant to be capable of satisfying the established financial requirements in order to maximize the amount of loans repaid.

ENVIRONMENTAL PROTECTION

COMMENT: N.J.A.C. 7:14B-13.11(g), Notice of approval or denial. One comment was received requesting that the time frame of 60 days for obtaining all necessary Federal, State and local permits and approvals be extended to 90 or 120 days. Due to the existing permit system and its delays, it is unfair and unrealistic to require that all necessary permits be obtained within 60 days of notice of intent to award a loan.

RESPONSE: The Department agrees with this comment and has modified N.J.A.C. 7:14B-13.11(g). It now requires the necessary Federal, State and local permits and approvals to be submitted within 90 days. For consistency, the Department is also extending the time periods in N.J.A.C. 7:14B-13.11(d) and (e) to 90 days.

N.J.A.C. 7:14B-13.13 Loan award issuance including loan award agreement and promissory note

COMMENT: One comment was received stating that the terms and conditions make this program so disagreeable that it probably will not be utilized at all.

RESPONSE: N.J.A.C. 7:14B-13, in the same manner as private commercial loan programs, contains standard terms and conditions including default remedies that would protect the institutions in the event a borrower is unable to repay the loan and/or complete the project being funded.

COMMENT: One comment was received stating that the word "loan" was misspelled in N.J.A.C. 7:14B-13.13(c)4.

RESPONSE: This correction was made in the New Jersey Register; therefore, no further change is necessary.

COMMENT: One comment was received requesting that N.J.A.C. 7:14B-13.13(c)6 be revised to indicate that all documents submitted by the applicant will be obtained at their own expense.

RESPONSE: The Department disagrees that N.J.A.C. 7:14B-13.13(c)6 should be revised. N.J.A.C. 7:14B-13.40, Eligible project cost, states that all administrative fees related to the application process will be considered an ineligible cost. Therefore, these costs must be borne by the applicant.

COMMENT: N.J.A.C. 7:14B-13.22, Project completion certifications. One comment was received requesting that the project completion certification at N.J.A.C. 7:14B-13.22(a)1 should include the phrase "to the best of my knowledge." The owner of the project may not be an expert in the technical aspects of the design and construction of the project and therefore must rely on statements from the engineer, inspector and contractor.

RESPONSE: The Department understands that the applicant is not an expert. Provisions were made in this section requiring the borrower to obtain a certification from a New Jersey Professional Engineer stating the upgrades were performed in compliance with this chapter. However, the Department believes that it is the responsibility of the borrower to certify the information provided is true, accurate and complete. Therefore, the requested language has not been added to this section.

COMMENT: N.J.A.C. 7:14B-13.26, Publicity and signs. One comment was received questioning the purpose of publicizing the loan. This program is strictly a loan program and normally a State sign is posted when a grant is also included. This requirement should be deleted.

RESPONSE: The Department disagrees with this comment. Since the Department will be providing financial assistance to eligible applicants, the sign will serve as an announcement to the public that there are funds available when complying with Federal and State UST requirements.

COMMENT: N.J.A.C. 7:14B-13.32, Defaults. One comment was received requesting that a mechanism be included for the Department to notify the borrower that he or she is 15 days late on a loan payment and must contact the Department within a specific amount of days to explain the delay in payment.

RESPONSE: The Department agrees with this comment. The requested language is already in N.J.A.C. 7:14B-13.32(a)4 and 5. However, the Department is modifying N.J.A.C. 7:14B-13.32(a)4 to indicate that the Department will send a written notification to the borrower if a loan payment is late.

N.J.A.C. 7:14B-13.40 Definitions

COMMENT: One comment was received requesting that the term "economic hardship" be defined.

RESPONSE: The Department agrees and the following definition has been added. The term "economic hardship" is defined as:

"measurement of relative need taking into consideration the applicant's gross receipts and net profit in relationship to the industry average, the cost of compliance, and type of upgrade performed."

COMMENT: Several comments were received requesting that some clauses be added to allow for reimbursement to service station owners who have replaced their tanks at the same time they performed the necessary upgrade procedures to comply with the deadlines for Stage II Vapor recovery systems.

RESPONSE: The Department disagrees. There would not be an opportunity for the Department to review and approve the plans and costs prior to the work being performed. Therefore, the Department could not ensure that the upgrading met the criteria of N.J.A.C. 7:14B-13.5 and 13.9.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 13. UNDERGROUND STORAGE TANK LOAN PROGRAM

7:14B-13.1 Scope and construction

(a) The following shall constitute the rules governing loans from the State Underground Storage Tank Improvement Fund for the replacement or repair of underground storage tanks or for the purpose of installing monitoring systems. These rules prescribe procedures, minimum standards of conduct for borrowers, and standards for obtaining loans for replacement or repair of one or more underground storage tanks.

(b) Loans shall be awarded to eligible applicants depending upon the relative economic hardship of the applicant and availability of money in the Fund.

(c) These rules shall be liberally construed to permit the Department to effectuate the purposes of the law.

7:14B-13.2 Purpose

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., specifically N.J.S.A. 58:10A-36, the Underground Storage Tank Improvement Fund;

2. To establish policies and procedures for administration of funds appropriated pursuant to the above act for the purpose of making State loans to underground storage tank owners for the replacement or repair of one or more underground storage tanks or for the installation of underground storage tank monitoring systems;

3. To protect the public and the State of New Jersey by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State of New Jersey; and

5. To establish minimum standards of conduct to prevent conflicts of interest and insure proper administration of loans.

7:14B-13.3 Preapplication procedure

(a) Every applicant may request an informal conference prior to making a formal application for a loan. During the conference the Department shall identify and explain all loan application documents. It shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. This conference is not part of the application procedure and verbal statements made during the conference shall not bind the Department. Such conferences may be waived at the discretion of the Department.

(b) Questions concerning the program should be directed to:

Department of Environmental Protection
Division of Water Resources
Bureau of Underground Storage Tanks
CN 029
401 East State Street
Trenton, New Jersey 08625

7:14B-13.4 Preliminary procedure for obtaining an underground storage tank loan

(a) Each applicant for an underground storage tank loan shall:

1. Determine if it meets the eligibility criteria of N.J.A.C.

7:14B-13.5;

2. Arrange for a preapplication conference, if necessary; and
3. Complete the application procedures required by N.J.A.C. 7:14B-13.6.

7:14B-13.5 Eligibility of loan recipients and costs

(a) An applicant is eligible for a loan award provided the following requirements are met:

1. The applicant is the owner of the underground storage tank system;

2. The applicant is a small business;

3. The applicant is required to upgrade his or her tank system to meet the requirements of this chapter by:

i. Replacing an underground storage tank system, pursuant to N.J.A.C. 7:14B-4;

ii. Repairing (see N.J.A.C. 7:14B-13.40) underground storage tank system; or

iii. Installing a monitoring system, pursuant to N.J.A.C. 7:14B-6; and

4. The applicant meets the eligibility requirements of this subchapter.

7:14B-13.6 Application procedure

(a) To apply for an underground storage tank loan, an applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the Department at the address specified at N.J.A.C. 7:14B-13.3, on the forms provided for that purpose.

(b) An applicant for an underground storage tank loan shall submit:

1. A completed loan application, which shall include the following information:

i. The name, address and social security number ***or tax identification number*** of the applicant;

ii. The name, address and social security number ***or tax identification number*** of the owner of the property where the underground storage tank system is located (if different);

iii. The contractual relationship between the owner and operator of the underground storage tank system, if applicable; and a copy of the contractual agreement between the owner and operator of the underground storage tank system;

iv. The name, mailing address, block and lot, and phone number of the business where the underground storage tank system is located;

v. The nature of the ownership, for example, sole proprietorship, partnership, corporation or joint tenancy;

vi. If the owner is a partnership or corporation, a copy of the partnership agreement or articles of incorporation;

vii. The names of all mortgage or lien holders and the original and outstanding balance of all mortgages and liens;

viii. The owner's personal debt including amounts owed on all loans, mortgages or rent payments and credit cards;

ix. A list of suppliers, including name, address, telephone number and contact person; and

x. For a corporation, joint tenancy, or partnership a list of the names, addresses, social security numbers of the principals and officers;

2. In addition to the information submitted on the application form listed above, the applicant shall submit, at a minimum, the following information:

i. Copies of the applicant's balance sheet for the last three years;

ii. Copies of the applicant's income statement for the last three years;

iii. A statement of changes in the applicant's financial position for the last three years;

iv. An applicant's year-to-date balance sheet;

v. An applicant's year-to-date income statement; and

vi. Signed income tax returns including all schedules for the last three years;

3. If the financial statements required by (b)2i through v above are not available, the applicant shall be required to submit the following information:

i. Yearly gross receipts and net profit or weekly gross receipts and net profit from all sources of the business for the last three years;

ADOPTIONS

ii. Asset data including value of equipment and property or real estate; and

iii. Debt data including amounts owed on all loans, mortgages or rent payments and credit cards;

4. The borrower shall have collateral in an amount sufficient to adequately secure the loan and that collateral may include a lien on the real and/or personal property of the applicant and/or its owners. Types of collateral may include, at a minimum, mortgages, security interests in equipment, and life insurance policies. The borrower shall submit a certified copy of the deed to any real estate he or she owns;

5. If an applicant intends to use the property on which the tank is located for collateral, then the applicant shall perform a site assessment on the property pursuant to N.J.A.C. 7:14B-9.2;

i. If the site assessment shows there is no contamination on the property, then the applicant may use this property to secure the loan.

ii. If the site assessment confirms a discharge from an underground storage tank on the property, the applicant shall complete the corrective action requirements of N.J.A.C. 7:14B-8 before the property may be used as security for the loan;

6. The applicant shall submit three price proposals for completion of the project;

7. An application evaluation fee of \$250.00 shall be submitted to cover the cost of reviewing the loan application*. **The Department shall return the application evaluation fee if a loan award is not made*.**

8. A description of how the applicant plans to repay the loan and pay any other expenses necessary to fully complete the proposed underground storage tank improvement, the steps the owner has taken to implement this plan, and the steps the owner plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award agreement the owner will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete the underground storage tank improvement;

9. A written explanation of the need for the project;

10. A proposed construction schedule for the project;

11. Proof of ownership of the real property on which the underground storage tank is located;

12. The loan applicant shall sign a certification which states the following:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (b)12 above shall be signed by an individual with the power to bind the corporation, company or partnership and, as appropriate, at the levels indicated below:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; and

13. A corporate seal shall be attached to the application if the applicant is a corporation. In cases of joint ownership, all owners of record shall sign the loan applications and bind themselves to the loan award conditions.

(c) Each application shall constitute an undertaking to accept the requirements of this subchapter and the terms and conditions of the loan award agreement.

(d) The Department may require an applicant to submit additional relevant information.

7:14B-13.7 Emergency loan application procedures

(a) An applicant may submit an application after an underground storage tank improvement has been completed under the following emergency conditions:

1. A release has occurred at the facility;

2. There are no other underground storage tank systems available for business operations to continue;

3. The applicant submits an application within 30 days after the work is completed; and

ENVIRONMENTAL PROTECTION

4. The applicant meets the loan award eligibility requirements of N.J.A.C. 7:14B-13.5.

(b) Applications shall be submitted to the address specified at N.J.A.C. 7:14B-13.3.

7:14B-13.8 Use and disclosure of information

All loan applications and other submittals, when received by the Department, constitute public records. The Department shall make them available to persons who request their release, to the extent allowed by New Jersey and Federal law.

7:14B-13.9 Evaluation of application and economic hardship

(a) The Department shall notify the applicant that his or her application has been received and is being evaluated in accordance with this subchapter. Each application shall be subjected to:

1. Preliminary administrative review to determine the completeness of the application;

2. Program evaluation (including technical and financial); and

3. Final administrative evaluation.

(b) Each application shall be evaluated, at a minimum, against the following basic criteria;

1. Monies available in the fund;

2. The application requirement at N.J.A.C. 7:14B-13.6; and

3. The eligibility requirements of N.J.A.C. 7:14B-13.5.

(c) The three price proposals submitted pursuant to N.J.A.C. 7:14B-13.6(b)5 shall be evaluated to determine which proposal meets the minimum responsive requirements. The Department reserves the right to reject all proposals if the plans and costs are deemed excessive or not in compliance with N.J.A.C. 7:14B-13.2 and N.J.A.C. 7:14B-4 through 6.

(d) The minimum loan award available to any one business is \$5,000 and the maximum award available to any one business is \$100,000.

(e) A financial evaluation of the application shall be conducted to determine the credit worthiness of the applicant, taking into consideration, at a minimum, the following factors:

1. The ability of the applicant to properly manage the loan and the project; and

2. The ability of the applicant to repay the loan.

(f) An economic hardship evaluation shall be conducted in accordance with the following criteria:

ECONOMIC HARDSHIP CRITERIA

Percent	Points	Score
Gross Receipts/Industry Average Gross Receipts		
50 or less	10	
50.1-75	7	
75.1-125	5	
125.1-150	3	
150.1-higher	0	
SUBTOTAL		
Net Profit/Industry Average Net Profit		
50 or less	10	
50.1-75	7	
75.1-125	5	
125.1-150	3	
150.1 or higher	0	
SUBTOTAL		
Cost of Compliance/Gross Receipts		
8.1 or higher	10	
6.1-8	7	
4.1-6	5	
2.1-4	3	
2 or less	0	
SUBTOTAL		

Project Type	
Replace tank	5
Repairing tank to meet regulations or install monitoring systems	3
SUBTOTAL	
Degree of Economic Hardship equals total points	TOTAL

7:14B-13.10 Loan award schedule

(a) The interest rate, term of the loan and percentage of project cost awarded shall be based on the degree of economic hardship of the loan recipients according to the following schedule:

LOAN AWARD SCHEDULE

Total Criteria Points	Percentage of Total Eligible Project Costs	Interest Rates	Term of the Loan
35	100	2½	10 years
34-28	90	2½	10 years
27-21	75	3½	7 years
20-14	50	4½	5 years
13-7	25	6	5 years
6 or less	Ineligible	Ineligible	Ineligible

(b) Because of the limited amount of money in the Fund, the Department shall give priority to applicants that demonstrate the most severe economic hardship which means the applicants with the greatest number of criteria points.

7:14B-13.11 Notice of approval or denial

(a) The Department shall notify all applicants in writing by certified mail of the approval or denial of a loan award.

(b) The Department shall identify in writing the reasons for loan denial. A denial of an application shall not preclude its reconsideration or resubmittal by applicant.

(c) The Department's approval of a loan will be in the form of a notice of intent to award a loan. The notice shall contain the amount of the loan, interest rate, and the term of the loan based upon the Loan Award Schedule at N.J.A.C. 7:14B-13.10(a). Interest rates shall remain fixed during the term of the loan period.

(d) The approved applicant shall submit a fully signed contract between the applicant and contractor, which includes the cost of the project, plans, schedule and signatures of all responsible parties within *60* *90* days of receipt of the notice of intent.

(e) The approved applicant shall submit a non-refundable loan closing fee of \$600.00 within *60* *90* days of receipt of the notice of intent.

(f) The applicant's failure to submit any requested information within the required time period shall make him ineligible for a loan award.

(g) Applicants receiving a notice of intent to award a loan shall obtain all necessary Federal, State and local permits and approvals within *60* *90* days of receipt of the notice of intent to award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the Assistant Director.

(h) If subsequent to the issuance of a notice of intent to award a loan the applicant discovers that costs will exceed those previously estimated, or that the scope of the project will be modified, or any other circumstances appear which affect the award of priority points, the applicant shall notify the Department immediately. The Department shall then recalculate, if appropriate, the applicant's priority determination utilizing the new information submitted.

(i) In addition, if any changes in the project costs, scope or other circumstances result in a reduction in the total eligible loan amount from the total amount specified in the notice of intent to award a loan, the notice of intent to award a loan may be recalled and revised to reflect the reduction in the total eligible loan amount approved for the project.

(j) Any applicant receiving a notice of intent to award a loan who decides not to proceed with a project shall notify the Department within 30 days of the date of the notice.

7:14B-13.12 Commitment letter

(a) Upon receipt of the documentation and fee required in N.J.A.C. 7:14B-13.11, the Department shall prepare and transmit by certified mail a Commitment Letter to the approved applicant containing a description of the terms and conditions of the loan award agreement.

(b) The approved applicant for the loan award shall execute the Commitment Letter and return it by certified mail within 30 days. The date, time and location of the loan closing shall be included in the Commitment Letter. The Commitment Letter shall be signed by a person authorized to bind the borrower to the described terms and conditions in the Letter.

7:14B-13.13 Loan award issuance including loan award agreement and promissory note

(a) The Department shall prepare and transmit four copies of the loan award agreement to the applicant.

1. The loan award agreement shall set forth the terms and conditions of the loan, approved project scope, approved project costs, and the approved commencement and completion dates for the underground storage tank project. The loan award agreement and promissory note shall contain the repayment schedule, interest rate, the length of the loan periods and approved project costs, plans and time schedule.

2. The application and required documentation submitted shall become part of the loan award agreement. The loan award agreement shall be deemed to incorporate all requirements, provisions and information in documents or papers submitted to the Department in the application process.

(b) The borrower shall submit at the closing, proof of its and its contractors, and subcontractors, compliance with all hazard insurance requirements of the loan award agreement and certify that the insurance is in full force and effect and that the premiums have been paid. At all times during the term of this agreement, the borrower shall comply with the laws of New Jersey relating to Workman's Compensation Insurance.

(c) The Loan Award Agreement shall consist, at a minimum, of the following terms and conditions:

1. Award of the loan shall create a personal debt of the borrower and a lien or security interest against the borrower's property in the amount of the loan, which lien or security interest may be recorded as appropriate in the county hall of records or with the Secretary of State;

2. If the borrower is any entity other than an individual, a personal guarantee of the principal of the entity may be required. This personal guarantee may be secured by the assets of the guarantor, which lien may be recorded as appropriate in the county hall of records or with the Secretary of State;

3. The Department may require an appraisal, survey, and title search if the borrower's real property is being offered as collateral. Any cost of preparing the documentation of this nature shall be paid by the borrower and it shall be the borrower's responsibility to obtain such services;

4. A borrower may reapply for additional funding, if the loan award project work cannot be performed or completed due to conditions discovered after work has started. This additional funding may be an increase in the amount of the present loan or a separate loan. The borrower may submit a request for additional funding to the address in N.J.A.C. 7:14B-13.3;

5. Any loan awarded pursuant to this subchapter may be prepaid in whole or in part at any time without penalty;

6. All documents, searches, opinions, evidence of insurance and guarantees shall be submitted to the Department prior to disbursement of any monies from the Fund; and

7. The Department's approval of all costs and plans is required prior to disbursement of any monies from the Fund.

7:14B-13.14 Loan closing

(a) The loan award agreement and promissory note shall be delivered and executed by all parties at the closing.

(b) Prior to closing an update of the financial evaluation will be performed and any required outstanding documentation shall be submitted by the applicant.

ADOPTIONS

(c) The full amount of the borrower's loan shall be disbursed at the loan closing.

7:14B-13.15 Representations and warranties of borrowers

(a) The following representations and warranties shall be made by the borrower when he or she executes the loan award agreement and shall be contained therein:

1. The borrower has power to enter into the loan award agreement and the promissory note evidencing the debt obligation of the borrower to the Department and has authorized the taking of all action necessary to carry out and give effect to the transactions contemplated by the loan award agreement;

2. There is no action or proceeding pending or threatened against the borrower before any court or administrative agency that might adversely affect the ability of the borrower to perform its obligations under the loan award agreement and all authorizations, consents and approvals of governmental bodies or agencies, required in connection with the execution and delivery of the loan award agreement or in connection with the performance of the borrower's obligations under the loan award agreement have been obtained and will be obtained whenever required by the loan award agreement or by law;

3. Neither the execution and delivery of the loan award agreement, the consummation of the transactions contemplated by it, nor the fulfillment of or compliance with the terms and conditions of the loan award agreement is prevented, limited by, or conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restrictions or any evidence of indebtedness, agreement or instrument of whatever nature to which the borrower is now a party or by which it is bound, or constitutes a default under any of the foregoing;

4. All tax returns and reports of the borrower required by law to be filed have been duly filed and all taxes, assessments, fees and other governmental charges upon the borrower or upon any of its respective properties, assets, income or franchises which are due and payable pursuant to such returns and reports, or pursuant to any assessment received by the borrower have been paid other than those which may be presently payable without penalty or interest;

5. The borrower has, or will have, title to all the collateral whenever acquired or arising free and clear of all liens and claims, encumbrances, set-offs, defenses and counterclaims, and has not made and will not make any assignment, pledge, mortgage, hypothecation or transfer (other than sales or leases in the ordinary course of business) of any such collateral or the proceeds thereof;

6. There has been no material adverse change in the aggregate assets or aggregate liabilities or in the condition, financial or otherwise, of the borrower from that set forth in the financial statements delivered to the Department by the borrower in connection with the loan award agreement;

7. All statements, representations and warranties made by the borrower in its application to the Department and any materials furnished in support of the request for Department financial assistance and this loan award agreement are true. It is specifically understood by the borrower that all such statements, representations and warranties shall be deemed to have been relied upon by the Department as an inducement to make the loan and that if any such statements, representations or warranties were materially false at the time they were made or are breached during the term of the loan award agreement, the Department may, in its sole discretion, consider any such misrepresentation or breach an event of default;

8. The borrower shall pay during the term of this loan award agreement as the same become due, all taxes, assessments and governmental charges which may be required by law or contract to be paid by the borrower. The borrower may in good faith contest such taxes and governmental charges and such taxes and charges may remain unpaid during the period of such contest provided the underground storage tank facility and collateral will not be subject to loss or forfeiture as a result;

9. The borrower shall during the term of the loan award agreement operate and maintain all assets of the borrower in compliance with all governmental laws, ordinances, approvals, rules and regulations which are applicable to and binding upon the borrower;

ENVIRONMENTAL PROTECTION

10. The borrower will not relocate all or any substantial part of its business operation from the facility without the express prior written consent of the Department;

11. Collateral will be kept and maintained at the locations specified in the loan award agreement. The borrower shall not remove the collateral from those locations, except in the normal course of business for temporary periods, without the express prior consent of the Department;

12. The borrower shall join the Department in executing, filing, and doing whatever may be necessary under applicable law, to perfect and continue the Department's security interest in the collateral at the borrower's expense;

13. The borrower agrees that it will at all times keep accurate and complete records with respect to the collateral including, but not limited to, a record of all proceeds received therefrom or as a result of the sale thereof;

14. The borrower may not sell, lease, convey, assign, transfer or otherwise dispose of any use or possessory interest in the underground storage tank facility and collateral without the express prior written consent of the Department except that the borrower may grant a utility, access and other easements and rights-of-way which will not impair the borrower's use of the underground storage tank facility and collateral. The Department reserves the right to deny approval of any proposed lease, sublease, assignment or transfer if the lessee, sublessee or assignee does not, in the judgment of the Department, satisfy guidelines for eligibility for Department financial assistance. No permitted subleasing or assignment shall relieve the borrower from primary liability under the loan award agreement;

15. During the term of the loan award agreement the borrower shall continue in business and without the prior written consent of the Department shall not dispose of all or substantially all of its assets and shall not consolidate business with or merge into another entity or permit one or more other entities to consolidate with or merge with the borrower's business;

16. The borrower shall not, without the express prior written consent of the Department:

i. Issue any additional stock;

ii. Declare cash or stock dividends;

iii. Purchase its own stock for value; or

iv. Transfer any excess funds of the borrower, its affiliates or subsidiaries for investment in any other business venture. The term "business venture" does not include bank accounts or certificates of deposit;

17. The borrower shall make no material or substantial changes in the present management or operating control of the borrower without prior notification to the Department;

18. The borrower shall not borrow any funds or grant any liens on the collateral without the express prior written consent of the Department;

19. The borrower its contractors and subcontractors shall maintain their financial records in accordance with generally accepted accounting principles;

20. The borrower shall maintain the borrower's net worth in an amount not less than that indicated by the borrower's financial statements submitted to the Department; and

21. The borrower shall maintain the borrower's current assets at a level greater than the borrower's current liabilities.

7:14B-13.16 Condemnation

(a) If the underground storage tank facility or the collateral shall be damaged or either partially or totally destroyed or if title to or the temporary use of the whole or any part of the underground storage tank facility or collateral shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable by the borrower under the loan award agreement or under the promissory note.

(b) In the event of any damage, destruction, taking or condemnation of the underground storage tank facility or collateral, the proceeds from any insurance or condemnation award shall be deposited with the Department and applied to the payment of any amounts due on the loan unless the borrower and the Department

shall agree to apply the proceeds to the repair, reconstruction, replacement or relocation of the underground storage tank facility or collateral.

7:14B-13.17 Indemnification

(a) The borrower shall covenant and agree that the Department, its members, agents, servants, officers or employees shall not be liable for:

1. Any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in the underground storage tank facility or the collateral;

2. Any damage or injury to the persons or property of the borrower, or its officers, agents, servants or employees, or any other person who may be about the underground storage tank facility, caused by any act of negligence of any person (other than the Department or their members, officers, agents, servants or employees); or

3. Any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by the Department in connection with the underground storage tank facility or the collateral.

(b) The borrower shall indemnify, protect, defend and hold the Department, the State of New Jersey, and their respective members, agents, servants, officers and employees (each an "Indemnified Party"), harmless from and against any and all such losses, damages, injuries, costs or expenses and (except for claims, demands, suits, actions or other proceedings brought against an Indemnified Party) from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever (except the borrower), and arising or purportedly arising from the loan award agreement, the promissory note or any transaction contemplated in any such documents, or from the construction, ownership and operation of the underground storage tank facility or the collateral.

7:14B-13.18 Effect of loan award

(a) The loan award agreement shall become effective immediately after its execution by the Department and the borrower, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award document.

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project.

7:14B-13.19 Repayment of loan

(a) The Department will issue a repayment schedule and coupon book to the borrowers in accordance to the terms and conditions of the loan award agreement.

(b) Copies of signed income tax returns including all schedules shall be submitted each year as long as the loan is outstanding.

7:14B-13.20 Recycling of funds

Subject to Federal and/or State law, funds from repayment of Loans issued under the authority of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq., and this subchapter, shall be deposited in the Underground Storage Tank Improvement Fund and shall remain available for further disbursements as new loans to be awarded pursuant to this chapter until December 31, 1991.

7:14B-13.21 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer the loan, award contracts and subcontracts pursuant to the loan free from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall notify the Assistant Director immediately after such allegation or evidence comes to its attention, and shall periodically advise the Assistant Director of the status and ultimate disposition of any matter.

7:14B-13.22 Project completion certifications

(a) The following project completion requirements shall be satisfied, in addition to requirements prescribed by other statutes, rules and agreements as may be applicable to particular loans:

1. The borrower shall certify that the project was initiated and completed in accordance with all the requirements of this chapter and the loan award agreement and was completed within the time schedule specified in the loan award agreement. The borrower shall sign a certification which states the following:

"I certify under penalty of law that the information provided in this document and its attachments is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (a)1 above shall be signed by an individual with the power to bind the corporation or partnership and, as appropriate, at the levels indicated below:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor respectively.

2. A borrower shall obtain a certification from a New Jersey professional engineer stating the underground storage tank repair or replacement, or the installation of monitoring system was done in compliance with this chapter and the loan award agreement. This certification shall be sealed by the professional engineer and submitted as an attachment to the document required by (a)1 above.

7:14B-13.23 Administration and performance of loan

The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan award agreement to achieve loan objectives and to insure that the purposes set forth in the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., are accomplished.

7:14B-13.24 Access

(a) The borrower and its contractor and subcontractors shall provide access to the Department personnel and any authorized representative of the Department to the facilities, premises and records related to the project.

(b) The borrower shall submit to the Department such documents and information as requested by the Department.

1. All borrowers, contractors and subcontractors may be subject to a financial audit.

2. Records shall be retained and available to the Department for a minimum of six years after issuance of the final payment by the Department.

7:14B-13.25 Assignment

The right to receive payment from the State under a loan may not be assigned, nor may payments due under a loan be similarly encumbered.

7:14B-13.26 Publicity and signs

A project identification sign, bearing the emblem of the New Jersey Department of Environmental Protection, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:14B-13.27 Debarment

No borrower shall contract with or allow any of his or her contractors to contract with any person debarred or suspended pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work with the State.

ADOPTIONS

7:14B-13.28 Project changes and loan modifications

(a) A loan modification means any written alteration of the loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) The borrower shall promptly notify the Assistant Director in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification including, but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objective of a project;
4. Significant, changed conditions at the project site; and/or
5. Changes which may increase or substantially decrease the total cost of a project.

(c) If the Department decides a formal loan amendment is necessary it shall notify the borrower and a formal loan amendment shall be prepared in accordance with N.J.A.C. 7:14B-13.29. If the Department decides a formal loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:14B-13.30 or 13.31, as applicable.

7:14B-13.29 Formal loan award amendments

(a) The Department shall require a formal loan award amendment to change principal provisions of a loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) The Department and borrower shall effect a formal loan award amendment only by a written amendment to the loan award agreement.

7:14B-13.30 Administrative loan changes

Administrative changes by the Department, such as change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, or a change in the payment schedule for underground storage tank loans constitute changes to the loan award agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the borrower.

7:14B-13.31 Other changes

All other project changes, which do not require formal loan award amendment, require written approval of the Assistant Director.

7:14B-13.32 Defaults

(a) The Department may in writing declare a default in the loan award agreement if it determines:

1. The loan award project has not been completed within 90 days of the closing. An extension may be requested in writing;
2. The loan award project work was not performed in compliance with N.J.A.C. 7:14B-4 through 6;
3. Any representation or warranty made in the loan award agreement or in any report, certificate, financial statement or other instrument furnished in connection with the loan award agreement is false or misleading in any material respect;
4. There is a default in the payment of any installment of the principal or interest on the promissory note and such default has continued unremedied for *15* *30* days;
5. The borrower has failed to observe and perform any covenant, condition or agreement of the loan award agreement required to be performed by the borrower and such failure has continued for a period of 10 days after receipt by the borrower of written notice by the Department specifying the nature of such failure and requesting that it be remedied; or if by reason of the nature of such failure the same cannot be remedied within the said 10 days, the borrower fails to proceed with reasonable diligence after receipt of said notice to cure same;
6. The borrower shall have applied for or consented to the appointment of a receiver, trustee or liquidator of all or a substantial

ENVIRONMENTAL PROTECTION

part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been adjudged a bankrupt, or filed a petition or an answer seeking an arrangement with creditors or taken advantage of any insolvency law, or an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding; or an order, judgment or decree shall have been entered, without the application, approval or consent of the borrower by any court of competent jurisdiction approving a petition seeking reorganization of the borrower, or appointing a receiver, trustee or liquidator of the borrower or a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of 45 consecutive days; or file a voluntary petition in bankruptcy or fail to remove an involuntary petition in bankruptcy filed against it within 45 days of the filing thereof; or

7. Failure to observe any of the terms or conditions of the commitment letter of the Department.

7:14B-13.33 Default consequences

(a) Whenever any event of default shall have occurred and be continuing, the Department may take one or more of the following remedial steps:

1. Declare the entire principal amount of the promissory note to be due and payable forthwith, whereupon the promissory note shall become forthwith, due and payable, both as to principal and interest, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained in this loan award agreement or in the promissory note to the contrary notwithstanding;

2. Take any action at law or in equity to collect the payments then due and thereafter to become due under the promissory note or to enforce performance and observance of any obligation, agreement or covenant of the borrower under the loan award agreement;

3. Without further notice or demand or legal process, enter upon any premises of the borrower and take possession of the collateral, all records and items relating to the collateral and, at the Department's request, the borrower will assemble the collateral and such records and deliver them to the Department;

4. Sell the collateral but the Department shall give the borrower reasonable notice of the time and place of any public sale of such collateral or of the time after which any private sale or other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if notice of the sale or other intended disposition is mailed (by certified mail, postage paid) to the borrower at least 10 days prior to the time of such sale or disposition or delivered to the borrower at least five days prior to the time of such sale or disposition. At such sale the Department may sell the collateral for cash or upon credit or otherwise, at such prices and upon such terms as it deems advisable and the Department may bid or become purchaser at such sale, free of the right of redemption, which is hereby waived. The Department may adjourn such sales at the time and place fixed therefor without further notice or advertisement and may sell such collateral as an entirety or in separate lots as it deems advisable, but the Department shall not be obligated to sell all or any part of such collateral at the time and place fixed for such sale if it determines not to do so. Upon the institution of any such action by the Department, the Department shall be entitled to the appointment of a receiver for the collateral without proof of the depreciation of the value of same; or

5. Terminate all of the borrower's right, title and interest in the facility under the loan award agreement or in equity and the borrower's rights to possession thereof by an action for foreclosure or repossession in accordance with the statutes of the State of New Jersey.

i. Upon the institution of any such action by the Department, the Department shall be entitled to the appointment of a receiver for the facility.

(b) No remedy herein conferred or reserved to the Department is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this subchapter, the loan award agreement or now or hereafter existing at law or in equity or

by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Department to exercise any remedy reserved to it in this subchapter, it shall not be necessary to give notice other than such notice as may be required in this subchapter.

(c) In the event the borrower should default under any of the provisions of this subchapter or the loan award agreement and the Department shall require and employ attorneys or incur other expenses for the collection of payments due or to become due for the enforcement or performance or observance of any obligation or agreement on the part of the borrower, the borrower shall on demand therefor pay to the Department the reasonable fees of such attorneys and other expenses so incurred by the Department.

(d) The Department shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the borrower if a default shall occur.

7:14B-13.34 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any loan conditions, requirements of this chapter, or loan award agreement requirement or specifications, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:14B-13.35;
2. Order suspension of the project work pursuant to N.J.A.C. 7:14B-13.36; and/or
3. Terminate or rescind a loan pursuant to N.J.A.C. 7:14B-13.37 and 7:14B-13.38.

7:14B-13.35 Notice of noncompliance

When the Department determines that the borrower is in non-compliance with any condition or requirement of this subchapter or with any loan award agreement specification or requirement, it shall notify the borrower of the noncompliance. The Department may require the borrower, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the borrower, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop work order. The Department may, however, issue a stop work order pursuant to N.J.A.C. 7:14B-13.16 without issuing a notice pursuant to this section.

7:14B-13.36 Stop work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the borrower or noncompliance with the terms and conditions of the loan. The Department shall limit use of a stop work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the borrower an opportunity to discuss the stop work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop work orders shall contain:

1. The reasons for issuance of the stop work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the borrower for materials or services; and
4. Other suggestions to the borrower for minimizing costs.

(c) The Department may, by written order to the borrower (certified mail, return receipt requested) require the borrower to stop all, or any part of, the project work for a period of not more than 45 days after the borrower receives the order, and for any further period to which the parties may agree.

(d) The effect of a stop work order is as follows:

1. Upon receipt of a stop work order, the borrower shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension

period or within any extension of that period to which the parties shall have agreed, the Department shall either:

- i. Rescind the stop work order in full or in part;
- ii. Terminate the work covered by such order; or
- iii. Authorize resumption of work.

2. If a stop work order is cancelled or the period of the order or any extension thereof expires, the borrower shall promptly resume the previously suspended work. An equitable adjustment shall be made in the loan period, the project, or both of these, and the loan award agreement shall be modified accordingly within discretion of the Department.

7:14B-13.37 Termination of loans

(a) The Department may terminate a loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include, but not be limited to, substantial failure to comply with the terms and conditions of the loan, or default by the borrower.

1. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate a loan in whole or in part at least 10 days prior to the intended date of termination, stating reasons for the proposed termination.

2. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested) terminate the loan in whole or in part.

(b) A borrower shall not unilaterally terminate the project work for which a loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The borrower shall promptly give written notice to the Assistant Director of any complete or partial termination of the project work by the borrower. If the Department determines that there is good cause for the termination of all or any portion of a project for which the loan has been awarded the Department may enter into a termination agreement or unilaterally terminate the loan effective with the date of cessation of the project work by the borrower. If the Department determines that a borrower has ceased work on a project without good cause, the Department may unilaterally terminate the loan pursuant to this section or rescind the loan pursuant to N.J.A.C. 7:14B-13.38.

(c) The Department and borrower may enter into an agreement to terminate the loan at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and loan, basis for settlement of loan termination costs, and the amount and date of payment of any sums due either party.

(d) Upon termination, the borrower shall refund or credit to the State of New Jersey that portion of loan funds paid to the borrower and allocated to the terminated project work, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination and as may be otherwise allowable. The borrower shall make no new commitments without Department approval.

1. The borrower shall reduce the amount of outstanding commitments insofar as possible and report to the Assistant Director the uncommitted balance of funds awarded under the loan. The Department shall make the final determination of the allowability of termination costs.

7:14B-13.38 Rescission of loan

(a) The Department may, in writing, rescind the loan if it determines that:

1. Without good cause therefore, substantial performance of the project work has not occurred;
2. The loan was obtained by fraud; or
3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of rescission, the Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to rescind the loan. The Department shall afford the borrower an opportunity for consultation prior to rescission of the loan. Upon rescission of the loan, the borrower

shall return all loan funds previously paid to the borrower. The Department shall make no further payments to the borrower. In addition, the Department shall pursue such remedies as may be available under Federal, State and local law.

7:14B-13.39 Administrative hearing

(a) Within 20 calendar days from receipt of a notice of non-compliance, a stop-work order, or a notice terminating the loan award agreement or rescinding the loan pursuant to the procedures in N.J.A.C. 7:14B-13.35 through 13.38, or from receipt of a written notice from the Department denying a loan application pursuant, the applicant or borrower may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the applicant or borrower and its authorized representative, if any;
2. The applicant's or borrower's factual position on each question at issue and its relevance to the Department's decision;
3. Information supporting the applicant's or borrower's factual position and copies of other written documents relied upon to support the request for a hearing;
4. An estimate of the time required for the hearing (in days and/or hours); and
5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the applicant or borrower of the notice being challenged in (a) above, shall be denied by the Department.

(c) During the pendency of the review and hearing, the challenged Department decision shall remain in full force and effect, unless a stay is granted by the Director upon formal request of the recipient.

(d) Following receipt of request for a hearing pursuant to (a) above, the Department may attempt to settle and dispute by conducting such proceedings, meetings, and conferences as deemed appropriate.

(e) If the applicant or borrower fails to include all the information required by (a) above, the Department may deny the hearing request.

(f) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

7:14B-13.40 Definitions

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

"Applicant" means any underground storage tank owner that applies for a loan pursuant to the provisions of this subchapter.

"Assistant Director" means the Assistant Director in the Division of Water Resources in charge of the Ground Water Quality Management Element.

"Balance sheet" means a statement of financial position that reports the assets, liabilities and owners' equity of the business unit at a given time. The statement shall be prepared in accordance with the generally accepted accounting principles.

"Borrower" means an applicant who has received a loan pursuant to the Act and this chapter and has executed a loan award agreement.

"Commitment letter" means a document demonstrating the lender's acceptance of the preliminary loan award which creates a contract to award the loan.

"Credit worthy" means the applicant has the ability to repay the loan and properly manage the loan and project.

"Economic hardship" means a measurement of relative need taking into consideration the applicant's gross receipts and net profits in relationship to the industry average, the cost of compliance, and type of upgrade performed.*

"Eligible project cost" means those costs to upgrade the underground storage tank system to meet the requirements of this chapter. Included are the costs for engineering/design services and installation. Ineligible costs shall include, at a minimum, the following:

1. All costs for corrective action, pursuant to N.J.A.C. 7:14B-8;

2. All administrative fees related to the application process;

3. All costs incurred prior to the submission of an application, except under emergency conditions listed in N.J.A.C. 7:14B-13.7;

4. All costs incurred for closure as required by N.J.A.C. 7:14B-9.2 or 3 if the owner does not intend to replace the tank system;

5. Any costs the Department has determined to be excessive; and
6. Any costs not included in the loan award application.

"Eligible project scope" means the repair or replacement of one or more underground storage tanks or installation of a monitoring system on an underground storage tank.

"Fund" means the State Underground Storage Tank Improvement Fund, established by the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., which allocates monies to provide loans to eligible applicants at an interest rate of not more than six percent per year for a term of not more than ten years.

"Gross receipts" means the total receipts of a business prior to deducting expenses.

"Income statement" means a statement of profit and loss which summarizes business activities for a given period and reports the net income or loss resulting from operating and from certain other defined activities. The statement shall be prepared in accordance with generally accepted accounting principles.

"Industry average" means the averages of earnings and financial ratios shown for different industries in the current edition of the Dun & Bradstreet's Industry Norms and Key Business Ratios. A standard based on the combined average gross receipts and average net profits of the industries representing a large segment of applicants, will be utilized when the applicant's industry is not included in the Dun & Bradstreet publication.

"Loan award agreement" means an agreement which constitutes the terms and conditions of the loan award between the Department and the borrower.

"Loan award schedule" means a schedule reflecting the interest rate, loan period and percentage of project costs awarded to eligible applicants.

"Net profit" means the actual profit made during a specific period of business activities, after deducting all costs from the gross receipts.

"Notice of intent to award" means the Department's written notification to an approved loan applicant of the Department's intent to approve a loan.

"Owner" means any person who owns a facility, or in the case of a non-operational storage tank, the person who owned the non-operational storage tank immediately prior to the discontinuation of its use.

"Person" means any individual, partnerships, company, corporation consortium, joint venture, commercial or any other legal entity, the State of New Jersey or the United States Government.

"Property" means the borrower's collateral, either real or personal, that will be used to secure a loan from the underground storage tank improvement fund.

"Repair" means, for the purpose of N.J.A.C. 7:14B-13, the installation of a corrosion protection system, a spill containment device or an overfill protection device on an underground storage tank.

"Small business" means any business which is a resident in this State, independently owned and operated, not dominant in its field and employs fewer than 100 full-time employees.

"Statement of changes in financial position" means a statement of source and application of funds which summarizes the business operations as well as the financing and investing activities of the business for a given period. The statement shall be prepared in accordance with generally accepted accounting principles.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT
Manifesting and Reporting Requirements for
Imported and Exported Hazardous Waste, Small
Quantity Generator Requirements and Waste
Pesticides Generated by Farmers

Adopted Amendments: N.J.A.C. 7:26-1.4, 7.4, 7.5, 7.6, 8.2 and 8.3

Proposed: May 21, 1990 at 22 N.J.R. 1472(a).

Adopted: August 6, 1990 by Judith A. Yaskin, Commissioner
 Department of Environmental Protection.

Filed: August 7, 1990 as R.1990 d.445, **without change**.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 016-90-04.

Effective Date: September 4, 1990.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

The amendments were proposed May 21, 1990. **No comments** were received during the public comment period which closed July 20, 1990. The amendments are being adopted **without change**.

Full text of the adoption follows.

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:

...
 "Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which hazardous waste will be sent.

...
 "EPA" or USEPA" means the United States Environmental Protection Agency.

"EPA Acknowledgement of Consent" means the cable communication sent to the United States Environmental Protection Agency from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

...
 "Hazardous waste transporter" means any person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

...
 "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with N.J.A.C. 7:26-7.4(a) which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

...
 "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

...
 "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

7:26-7.4 Hazardous waste generator responsibilities

(a) (No change.)

(b) Any person who exports hazardous waste to a foreign country shall comply with the requirements of this subchapter and with the special requirements of this section, including recordkeeping and annual reporting requirements at (f) and (g) below.

1. A person shall not export hazardous waste unless:

i. Notification is provided in accordance with (c) below;

ii. The receiving country has consented to accept the hazardous waste;

iii. A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest or for exports by water (bulk shipment) to the shipping paper; and

iv. The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

Note: In conjunction with the United States Department of State, EPA will provide a complete notification, described in (c) below, to the receiving country and any transit countries. Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of this subsection (b). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

(c) When shipping hazardous waste outside the United States, a primary exporter shall:

1. Provide a complete notification to the EPA and a copy to the Department at least 60 days prior to the date the initial shipment is intended to be shipped off site. This notification may cover a period of up to 12 months.

i. Complete notification shall be in writing, signed by the primary exporter and contain, at a minimum, the following information:

(1) The name, mailing address, telephone number, and EPA identification number of the primary exporter.

(2) By consignee, for each hazardous waste type:

(A) The name and site address of the consignee and any alternative consignee;

(B) A description of the hazardous waste and the EPA hazardous waste number (from 40 C.F.R. Pt. 261, Subparts C and D), United States Department of Transportation proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste identified in 49 C.F.R. Pts. 171-177;

(C) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;

(D) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(E) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(F) A description of the means by which each shipment of the hazardous waste will be transported (for example, mode of transportation (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.);

(G) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (for example, land or ocean incineration, other land disposal, ocean dumping, recycling); and

(H) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

2. Upon request by EPA, furnish to EPA any additional information which a receiving country requests in order to respond to a notification;

3. Send the notification to the Office of International Activities (A-106), EPA, 401 M Street, SW, Washington, D.C. 20460 and a copy to the New Jersey Department of Environmental Protection, Division of Hazardous Waste Management Manifest Section, CN 028, Trenton, New Jersey 08625, with "Attention: Notification to Export" prominently displayed on the front of each envelope. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (c)1 above. Where a claim of confidentiality is asserted with respect to any notification information required by (c)1 above, EPA may find the notification not

complete until such a claim is resolved in accordance with 40 C.F.R. 260.2;

4. Provide EPA, the Department, and the receiving country through EPA with a written renotification of any change in the conditions specified in the original notification, including any exceedance of the original estimate of the quantity of hazardous waste, except that renotification is not required for changes of the telephone number reported under (c)1i(1) above, decreases in the quantity of hazardous waste reported under (c)1i(2)(D) above, or changes in the means of transportation reported under (c)1i(2)(F) above;

5. Not ship the hazardous waste prior to obtaining an EPA Acknowledgment of Consent, acknowledging the receiving country's consent to the changes requiring renotification, except that the receiving country's consent is not required for changes in the transit country information required under (c)1i(2)(E) or (c)1i(2)(H) above;

6. Obtain the manifest in accordance with N.J.A.C. 7:26-7.3(a)4, and complete the manifest in accordance with (a)4 above, except as modified by the requirements below:

i. In lieu of the name, site address, and EPA identification number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

ii. In Special Handling Instructions and Additional Information, the primary exporter shall identify the point of departure from the United States;

iii. In lieu of the name, site address and EPA identification number of a permitted alternate facility, the primary exporter shall enter the name and site address of any alternate consignee;

iv. The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent."; and

v. In lieu of the requirements of (a)6 above, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA and the Department, in accordance with (c)4 above, of a change in the conditions of the original notification to allow shipment to a new consignee and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

7. Attach a copy of the EPA Acknowledgment of Consent to the manifest required to accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper;

i. The hazardous waste shipment shall conform to the terms of the receiving country's written consent as stated in the EPA Acknowledgment of Consent (See (b)1iv above);

8. Provide the transporter with an additional copy of the manifest for delivery to the United States Customs official at the point the hazardous waste leaves the United States in accordance with N.J.A.C. 7:26-7.5(d)9iii; and

9. Require the consignee to confirm in writing the delivery of the hazardous waste to consignee's facility and to describe any significant discrepancies (as defined in 40 C.F.R. §264.72(a) for purposes of this section only) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(d) In lieu of the requirements of (h) below, a primary exporter shall file an Exception Report, in accordance with (h) below, with the Administrator of EPA and a copy to the Department if:

1. The primary exporter has not received a copy of the manifest signed by the transporter stating the date and place of departure from

the United States within 45 days from the date it was accepted by the initial transporter;

2. Within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the foreign consignee that the hazardous waste was received in accordance with (c)9 above; or

3. The waste is returned to the United States.

(e) (No change.)

(f) Recordkeeping requirements are as follows:

1. A generator shall keep a copy of each manifest, signed in accordance with (a)5 above, for three years, and a signed copy from the owner and operator of the facility which received the waste. The signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

2. A generator shall keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1).

i. For all exports a primary exporter shall:

(1) Keep a copy of each notification of intent to export sent in accordance with (c)1 above for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent received in accordance with (c)5 above for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste received from the consignee in accordance with (c)9 above for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report submitted in accordance with (g) below for a period of at least three years from the due date of the report.

3. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department or USEPA.

(g) Annual reporting requirements are as follows:

1.-3. (No change.)

4. Any person exporting hazardous waste shall file with the EPA and the Department no later than March 1 of each calendar year, a report summarizing the types, quantities, frequency and ultimate destination of all such hazardous waste exported during the previous calendar year. The report shall include the following information:

i. The EPA identification number, name, and mailing and site address of the exporter;

ii. The calendar year covered by the report;

iii. The name and site address of each consignee;

iv. By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, the United States Department of Transportation (DOT) hazard class, the name and USEPA identification number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

v. Waste minimization information, which shall include the following:

(1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years dating to 1984 and, to the extent such information is available, for years prior to 1984; and

vi. A certification signed by the primary exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil and criminal penalties for submitting false information including the possibility of fine and/or imprisonment."

5. Reports required under (g)4 above shall be sent to: Office of the International Activities (A-106), United States Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 and New Jersey Department of Environmental Protection, Division of Hazardous Waste Management Manifest Section, CN 028, 401 East State Street, Trenton, New Jersey 08625.

(h) Exception reporting requirements are as follows:

1. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste and the Department at 609-292-7081 to inform the Department of the situation.

2. A generator shall submit an Exception Report to the Department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

i.-ii. (No change.)

3.-4. (No change.)

(i)-(j) (No change.)

7:26-7.5 Hazardous waste transporter responsibilities

(a) This section applies to all hazardous waste transporting, including the transporting of hazardous waste fuels and the import or export of hazardous waste from or to a foreign country. This section does not apply to 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) A transporter of hazardous waste shall also comply with N.J.A.C. 7:26-7.4 if the transporter:

1. (No change in text.)

2. Accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c).

i. A transporter of hazardous waste who accepts a hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall compile a list of sites corresponding to each manifested shipment at which the transporter accepts these hazardous wastes.

ii. The list of sites at which the transporter accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall contain the waste owner's name and address, the address of the site, the quantity of waste accepted at the site, and the identification numbers of the manifest corresponding to the list.

iii. The transporter shall attach a copy of the site list to the copy of the manifest and forward these to the Department in compliance with N.J.A.C. 7:26-7.4. The transporter shall also retain a copy of this list on file for a period of three years and shall make this list available, upon request, to representatives of the New Jersey Department of Environmental Protection.

iv. The transporter shall obtain a signed receipt from each site at which he accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c), retain a copy of these receipts on file for a period of three years, and shall make these receipts available to the Department upon request.

v. The transporter shall notify the USEPA and update the transporter's notification of hazardous waste activities to include generator activities in addition to transporter activities.

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

1. Prior to operation, a hazardous waste transporter shall obtain a hazardous waste transporter license from the Department. A "hazardous waste transporter license" is a form of approved registration, and shall be deemed the equivalent of an "approved registration" under N.J.S.A. 13:1E-5.

2. The application for a hazardous waste transporter license shall be executed on forms provided by the Department, and shall state

such information as required below, as well as any additional information that the Department may require. This information includes, but is not limited to, the following:

i.-iii. (No change.)

3. After July 2, 1984, any person who files an application for a hazardous waste transporter license shall submit with the application the disclosure statement described in N.J.A.C. 7:26-16.4. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d).

4. (No change.)

5. Every hazardous waste transporter license issued by the Department shall indicate on its face an annual renewal/expiration date, which shall be September 30. Prior to October 1 in each calendar year, each licensee shall submit to the Department a statement updating the information contained in the license application. Such information shall be submitted on forms supplied by the Department. In no case shall the submission of an updated licensing statement alter the conditions under which the license was granted.

6.-7. (No change.)

8. No person shall be issued a hazardous waste transporter license nor shall any hazardous waste transporter license be renewed if the applicant or licensee has failed to provide the accurate and complete information required to be submitted on the application for issuance or the updating statement for renewal.

9. No person shall be issued a hazardous waste transporter license if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

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 transporter 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. A transporter shall not transport hazardous wastes without having received an EPA identification number.

2. A transporter shall not accept hazardous waste from a generator unless it is accompanied by a manifest, properly completed with all information required by State and Federal law and rules and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-7.4. In the case of exports, the transporter shall not accept such waste from a primary exporter or other person:

i. If the transporter knows that the shipment does not conform to the EPA Acknowledgment of Consent; and

ii. Unless, in addition to a manifest signed in accordance with the provisions of N.J.A.C. 7:26-7.4(a)5, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

3. The hazardous waste transporter shall not accept hazardous waste from a generator or from another transporter if it is not labeled as set forth at N.J.A.C. 7:26-7.2(a) or if the hazardous waste does not reasonably fit the description of the manifest.

4. Before transporting the hazardous waste and in accordance with instructions on the manifest, the transporter shall sign and date the manifest, acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's property.

5. The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter shall ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

6. A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

i. Obtain the date of delivery and the handwritten signature of that transporter or of the owner and operator of the designated facility on the manifest;

ii. (No change.)

iii. Give the remaining copies of the manifest to the accepting transporter or designated facility.

ADOPTIONS

7. The requirements of (d)5 and (d)6 above do not apply to water (bulk shipment) transporters if:

i. The hazardous waste is delivered by water (bulk shipment) to the designated facility;

ii. A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification and signature) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste;

iii. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

iv. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

v. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter.

8. For shipments involving rail transportation, the requirements of (d)5, 6 and 7 above do not apply and the following requirements do apply:

i. When accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(1) (No change.)

(2) Return a signed copy of the manifest to the non-rail transporters;

(3) Forward the approved manifest form to:

(A) The next non-rail transporter, if any;

(B) (No change.)

(C) The last rail transporter designated to handle the waste in the United States; and

(4) (No change.)

ii. Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times;

iii. Intermediate rail transporters are not required to sign either the manifest or shipping paper;

iv. When delivering hazardous waste to the designated facility, a rail transporter shall:

(1)-(2) (No change.)

v. When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(1) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(2) (No change.)

vi. Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

9. Transporters who transport hazardous waste out of the United States shall, in addition to all other applicable requirements of this subchapter:

i. Indicate on the manifest the date the hazardous waste left the United States;

ii. Return a signed copy of the manifest to the generator; and

iii. Give a copy of the manifest to a United States Customs Official at the point of departure from the United States.

10.-19. (No change.)

(e) The Department and its authorized representatives shall have the power to enter and inspect vehicles transporting or licensed to transport hazardous waste, while in operation on the highways of this State or at the premises or places of business of the owner or lessee of such vehicles.

(f) An unauthorized discharge of hazardous waste during transportation requires the following:

1. The hazardous waste transporter shall:

i.-iv. (No change.)

2. If a discharge of hazardous waste occurs during transportation and an official (Federal, State or local government) acting within the scope of official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment,

ENVIRONMENTAL PROTECTION

that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

3. An air, rail, highway or water transporter who has discharged hazardous waste shall:

i.-iii. (No change.)

(g) It shall be considered a violation of this section for a hazardous waste transporter to:

1.-3. (No change.)

(h)-(i) (No change.)

7:26-7.6 Hazardous waste facility operator responsibilities

(a) General requirements are as follows:

1. Every facility owner or operator shall obtain an EPA identification number from the Department.

2. Except as hereinafter provided, the facility operator shall only accept hazardous waste shipments which are properly labeled and marked in accordance with these rules, and which are accompanied by a properly completed manifest unless no manifest is required pursuant to N.J.A.C. 7:26-8. All manifests for waste shipments destined for New Jersey shall contain all elements of information listed in N.J.A.C. 7:26-7.4(a)4.

3. (No change.)

4. If after acceptance of the hazardous waste delivery, the facility operator determines that the waste is not as described in the manifest, the operator shall:

i. Attempt to reconcile the discrepancy with the waste generator or transporter;

ii.-iii. (No change.)

5. The manifest facility shall not ship the waste received to another facility unless prior written approval from the generator of the waste is obtained and all required manifest forms are executed.

6. (No change.)

(b) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his or her agent, shall:

1.-3. (No change.)

4. Immediately give the transporter at least one copy of the signed manifest;

5.-7. (No change.)

(c) When importing hazardous waste from a foreign country, a person shall meet all the requirements of this subchapter and this section. The manifest for imported hazardous waste shall be completed in accordance with N.J.A.C. 7:26-7.3 except that:

1. In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

2. In place of the generator's signature on the certification statement, the United States importer or his/her agent shall sign and date the certification and obtain the signature of the initial transporter.

3. (No change.)

(d) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all information required on the manifest (excluding the EPA identification numbers, generator's certification and signatures), the owner or operator of the facility shall:

1.-2. (No change.)

3. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been reviewed); and

4. Within 30 days after delivery, send a copy of the signed and dated shipping paper to the generator; however, if the manifest has not been received within 30 days after delivery the owner or operator, or the owner's or operator's agent, shall send a copy of the shipping paper signed and dated to the generator; and

5. (No change.)

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

1. (No change.)

2. Accept waste from a hazardous waste transporter which is not authorized by the Department to transport that waste; or

3. (No change.)

(f) Reporting and recordkeeping requirements are as follows:

1. (No change.)
2. The owner or operator shall prepare and submit two copies of an annual report to the Department by March 1 of each year, except for owners and operators of industrial waste management facilities which are subject to N.J.A.C. 7:14A-4.6. The report shall include:
 - i.-iv. (No change.)
 - v. For each type of hazardous waste accepted, a report of the total quantity received and the quantities consigned to each treatment, recovery, or disposal process used. The report shall include the quantities of each waste type placed into storage and removed from storage during the reporting period. For off-site facilities, this information shall be listed by the EPA identification number of each generator;
 - vi.-viii. (No change.)
 - ix. For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator.
3. (No change.)
- (g) (No change.)

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

- 1.-15. (No change.)
16. Reclaimed industrial ethyl alcohol regulated by the Federal Bureau of Alcohol, Tobacco, and Firearms in the Federal Treasury Department, except this exclusion does not apply in the case of exports; whereupon the person initiating a shipment for reclamation in a foreign country, any intermediary and/or transporter shall comply with N.J.A.C. 7:26-7.4(b) through (d), and 7.5(d), unless provided otherwise in an international agreement as specified in 40 C.F.R. 262.58;
- 17.-21. (No change.)
- 22.-23. (Reserved.)
24. Waste pesticides generated by farmers from their own use, provided they are disposed of on-site, at the farm which generated the waste, in a manner consistent with the disposal instructions on the pesticide label. Empty pesticide containers are also excluded, provided each container is triple rinsed using a solvent capable of removing the commercial chemical product.

(b) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a) (No change.)

(b) Except for those wastes identified in (d) and (e) below, and provided the requirements at (f) below are met, a small quantity generator's hazardous wastes are not subject to regulation under N.J.A.C. 7:26-7 and N.J.A.C. 7:26-9 through 11.

(c) (No change.)

(d) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through 12. If the acutely hazardous waste in a calendar month is equal to or less than those quantities set forth below, then the small quantity generator's quantities of acutely hazardous waste are not subject to regulation under N.J.A.C. 7:26-7 through 12 provided the requirements at (f) below are met.

1. A total of one kilogram of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15(a)5; or

2. (No change.)

(e) (No change.)

(f) In order for hazardous waste generated by a small quantity generator, in quantities equal to or less than those described at (a) above or at (d) above for acutely hazardous waste, to be excluded from full regulation under this section, the generator shall:

1.-3. (No change.)

(g)-(i) (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Administrative Correction

Fees for Initial Registration Application and Annual Registration of Ionizing Radiation-Producing Machines

Adopted Amendment: N.J.A.C. 7:28-3.12

Take notice that the Department of Environmental Protection has discovered an error in the adopted amended text of N.J.A.C. 7:28-3.12, as published in the August 6, 1990 New Jersey Register at 22 N.J.R. 2302(a). The text in the right-hand column on Register page 2302, after the line, "Full text of the adopted amendment follows.", is not part of the adopted amendment, but is a portion of the proposed amendment's Economic Impact statement which was printed in the notice of adoption through a typesetting error. The text of the amendment, adopted without change from the proposal, appears on the top half of Register page 2303. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the Medford Lakes Borough sewer service area to include Block 6409, Lot 2.02 of Medford Township. This tract is adjacent to the boundary of Medford Lakes Borough and is located within the Pinelands Regional Growth Area in Medford Township.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Denial of Petition for Rulemaking Concerning Hazardous Waste Recycling

Petitioner: Electrum Recovery Works, Inc.

Authority: N.J.S.A. 13:1E-6(a)2; 52:14B-4(f).

Take notice that on February 1, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the recycling of non-listed, characteristic hazardous wastes. The Department filed a Notice of Receipt and a Notice of Action with the Office of Administrative Law on February 11, 1990 and February 23, 1990, respectively. These notices were published in the March 19, 1990 New Jersey Register at 22 N.J.R. 994(a) and (d). The Notice of Action deferred the matter for further deliberation. The Petitioner requested that the Department amend N.J.A.C. 7:26-8 to exempt from hazardous waste regulation by-products which exhibit a "characteristic" of hazardous waste (see N.J.A.C. 7:26-8.9 to 8.12) when they are recycled such as, in Petitioner's case, solder skimmings. The Petitioner also requested the creation of a new section, N.J.A.C. 7:26-8.20, which would set special standards for the management of recyclable characteristic by-products, to be called "Class A regulated materials," which could be treated without obtaining a hazardous waste facility permit and which could be transported without use of a manifest or registered hazardous waste transporter. Instead, the facility which recycles or reclaims the material would obtain a "Class A permit" which would contain certain general operational and compliance conditions described by the Petitioner.

Since the inception of the hazardous waste regulatory program in New Jersey, the Department has been concerned with regulating the treatment (including recycling), storage and disposal of all hazardous wastes. Sham

recycling in the past created a number of badly contaminated sites necessitating costly remediation. Mismanagement of hazardous wastes by generators has also resulted in significant environmental pollution. As a result, the Department has regulated most hazardous waste recycling activities. The Department has exempted from regulation certain specific hazardous wastes when recycled (see N.J.A.C. 7:26-8.2) and certain hazardous waste activities listed at N.J.A.C. 7:26-9.1 and 7:26-12.1 including on-site recycling of hazardous waste (see N.J.A.C. 7:26-9.1(c)10 and 7:26-12.1(b)9). The Department also provides a conditional exemption from regulation for waste reuse facilities which can use hazardous waste directly in a process without prior treatment (see N.J.A.C. 7:26-9.1(c)13 and 7:26-12.1(b)11). In the case of waste reuse facilities, the exemption applies where the waste is used, without prior treatment, as a substitute for a commercially available product or as an ingredient in an industrial process to make a product.

These exemptions from full regulation represent activities which the Department believes pose a minimal environmental risk since the materials are reintroduced in production processes or regulated under other existing regulatory programs. The recycling activities the Petitioner proposes to exempt from regulation would allow off-site recycling, where the waste changes possession, in order to reclaim distinct end products from the waste. The Department considers this to fall outside the concept of minimal environmental risk. Recovery or reclamation of materials from hazardous waste which is not otherwise exempted from regulation is viewed by the Department to be treatment of hazardous waste and, therefore, subject to hazardous waste facility permitting requirements.

The Department notes that all off-site shipments of hazardous waste, other than shipments of exempted material, are subject to manifesting requirements, including hazardous waste shipments sent to waste reuse facilities, due to the Department's concern for the proper management of hazardous waste during transportation. The use of manifests allows hazardous waste to be tracked by the Department from generation to disposal. The Petitioner's proposed scheme seems to allow common carriers and Class A permitted transporters, in addition to licensed transporters, to transport so-called Class A material without a manifest. This would permit the movement of hazardous waste in New Jersey without sufficient Departmental oversight, which could lead to improper storage and management of hazardous waste. The Department maintains that the off-site shipment of hazardous waste without manifesting is unacceptable.

Furthermore, if the Department were to allow hazardous waste transport by unlicensed common carrier, then the transporter would not be subject to the background investigation required of all persons in the solid and hazardous waste business to determine if they possess the reliability, integrity, and competence to operate within the State's waste management scheme. The Department believes that the use of transporters who have not obtained a NJDEP hazardous waste transporter license and undergone the background investigation is contrary to the legislative intent and the present regulatory scheme for hazardous waste management in the State of New Jersey. Hazardous waste, whether it is sent for recycling or disposal, has the potential to do serious harm to public health and the environment during transportation; therefore, the Department extensively regulates off-site shipments of hazardous waste, including the use of licensed transporters and manifests. The Department has determined that certain materials when recycled and the activities of on-site recycling and waste reuse pose a minimal environmental risk; therefore, it has provided exemptions from full regulation.

Under the Petitioner's proposed Class A permit scheme, a generator or facility could accumulate waste provided it can show that at least 75 percent of the material was recycled during the year. The Department maintains that this scenario has the broad potential for misuse and to create instances of "sham recycling." Without appropriate safeguards as required by a hazardous waste treatment, storage, or disposal permit, such materials pose a serious risk to human health and the environment. Moreover, the Petitioner is requesting that an entire class of hazardous waste, characteristic by-products, be exempted when recycled. As discussed above, the Department has exempted specific wastes when recycled but has not exempted entire classes of wastes.

Although the Petitioner's proposal would provide for partial regulation of hazardous waste recycling and reclamation activities, the Department maintains that full regulation of these activities is necessary. A hazardous waste facility permit, which is comprehensive, provides assurance that the

proper management standards for hazardous waste in New Jersey will be utilized. The Department views recycling of non-exempted hazardous waste as a form of hazardous waste treatment; therefore, a hazardous waste facility permit is required.

The Department is cognizant of the need to encourage waste minimization but does not believe that waste minimization is achieved by calling fewer materials "wastes"; rather, it should be accomplished through source reduction and recycling on-site under conditions that minimize environmental risks.

In accordance with the provisions of N.J.A.C. 7:1-1.2, the petition for rulemaking is denied.

A copy of this notice has been mailed to the Petitioner, as required by N.J.A.C. 7:1-1.2.

HUMAN SERVICES

(a)

THE COMMISSIONER

Notice of Receipt of Funds for State Fiscal Year 1991 Social Services Block Grant Program

Take notice that, in compliance with P.L. 1987, c.7, which supplements Title 52 of the Revised Statutes, the Department of Human Services announces the receipt of \$245,923,138 in Federal and State funds for the State Fiscal Year 1991 Social Services Block Grant program. Funding is contingent upon legislative appropriation and the availability of funds.

The Social Services Block Grant program supports a wide array of social services which address the needs of 18 target populations. The program is administered by the Department of Human Services. Services are provided directly by Divisions within the Department, by private and public provider agencies under contract with the Department, and through interdepartmental agreements with other State agencies. A pre-expenditure report delineating expenditures for these funds is available for review. Requests for the document should be directed to Karen Kasick, Community Services Planner, Office of Community Affairs, Department of Human Services, State of New Jersey, CN 700, Trenton, N.J. 08625.

Community-based organizations interested in applying for the purchase of service component of the program should contact the County Human Services Advisory Council listed below for available funding, eligibility criteria, and application procedures.

COUNTY HUMAN SERVICES ADVISORY COUNCIL (HSAC)

REVISED: 7/18/90

COUNTY	CHAIRPERSONS
ATLANTIC	Joseph Gaynor, Chairperson Atlantic County HSAC c/o Atlantic County Human Resources 10 S. Tennessee Ave. Atlantic City, NJ 08401 (609) 348-4131
BERGEN	Ruth Boer, Chairperson Bergen County HSAC c/o Home Health Agency of Hackensack Medical Center 30 Prospect Avenue Hackensack, NJ 07601 (201) 342-6311
BURLINGTON	Betty Lou Barnard, Chairperson Burlington County HSAC c/o Family Service of Burlington County Tarnsfield Executive Office Bldg. Suite 23, Woodlane Road P.O. Box 588 Mount Holly, NJ 08060 (609) 267-5928
CAMDEN	Father Edward Walsh, Chairperson Community Planning and Advocacy Council Human Services Coalition of Camden County Northgate I 7th and Linden Streets Camden, NJ 08102 (609) 966-0400

CAPE MAY	Frank Unkle, Director Association for Retarded Children c/o Cape May County HSAC 922 Delsea Drive—Rt. #47 South Dennis, NJ 08245 (609) 861-7100
CUMBERLAND	Susan Crossley, Chairperson Cumberland County HSAC 790 E. Commerce Street Bridgeton, NJ 08302 (609) 453-2147
ESSEX	Joseph V. Dimino, Chairperson Essex County Department of Citizen Services 15 South Munn Avenue East Orange, NJ 07018 (201) 535-1181
GLOUCESTER	Michael Carlin, Chairperson Gloucester County HSAC Budd Boulevard Complex Rt. 45 and Budd Blvd. P.O. Box 337 Woodbury, NJ 08096 (609) 384-6950
HUDSON	Carol Ann Wilson, Director Hudson County Department of Human Services 567 Pavonia Avenue Jersey City, NJ 07306 (201) 795-6933
HUNTERDON	Joan Crawford, Chairperson Hunterdon County HSAC c/o ARC of Hunterdon County 84 Park Avenue Flemington, NJ 08822 (201) 782-1603
MERCER	Ronald Gering, Program Director Ewing Township Family Growth Program c/o Mercer County HSAC 19 Pershing Avenue Trenton, NJ 08618 (609) 394-5157
MIDDLESEX	Edwin Beckerman, Chairperson Middlesex County HSAC Woodbridge Public Library 1 George Frederick Plaza Woodbridge, NJ 07095 (201) 634-4450
MONMOUTH	James Bourgue, Chairperson Monmouth County HSAC c/o United Way of Monmouth County 1415 Wyckoff Road Farmingdale, NJ 07710 (201) 938-5988
MORRIS	Mary Petti, Chairperson Morris County HSAC 8 Arnold Drive Randolph, NJ 07869 (201) 266-2000
OCEAN	Virgil Keller, Executive Director United Way of Ocean County c/o Ocean County HSAC Human Resource Department CN 2191 Toms River, NJ 08754 (201) 929-2140
PASSAIC	Kenneth Wessel, Chairperson Passaic County HSAC c/o Visiting Homemaker Services of Passaic 2 Market Street Paterson, NJ 07505 (201) 523-1224

PUBLIC NOTICES**HUMAN SERVICES**

SALEM Shirley Evans, Chairperson
Salem County HSAC
Salem Unit-NJARC
P.O. Box 5
Salem, NJ 08079
(609) 935-3600

SOMERSET Cornelia Thum, Chairperson
Somerset County HSAC
c/o Somerset Bd. of Social Services
73 East High Street
Somerville, NJ 08876
(201) 526-8800

SUSSEX Karen Bevans, Chairperson
Sussex County HSAC
c/o Sussex County Transit System
P.O. Box 68
Newton, NJ 07860
(201) 383-3590

UNION Edward Murphy, Chairperson
Union County HSAC
Department of Human Services
County of Union Administration Bldg.
4th Floor
Elizabeth, NJ 07207
(201) 527-4844 Agency: (201) 272-0300

WARREN Margaret Dickerson, Chairperson
Warren County HSAC
RD #3
Box 157
Port Murray, NJ 07865
(201) 475-6332

The Human Services Advisory Council Chairpersons are subject to change due to Board of Chosen Freeholder elections.

COUNTY STAFFPERSONS

ATLANTIC Sarah Griffith, Human Services Coordinator
Atlantic County Planning
1333 Atlantic Avenue
Atlantic City, NJ 08401
(609) 345-6700 x2571
c: Rina Terry, Human Services Coordinator
(Same address as above)

BERGEN Bernadette Langbein, Director
Bergen County Department of Human Services
Office of Planning and Contract Administration
21 Main Street, Room 115 W
Hackensack, NJ 07601
(201) 646-2965

BURLINGTON Bill Stewart, Senior Administrative Analyst
Burlington County Office of Human Services
Raphael Meadows Health Center
Woodlane Road
Mount Holly, NJ 08060
(609) 265-5546

CAMDEN Catherine DeCheser, Director
Community Planning and Advocacy Council
Human Services Coalition of Camden County
Northgate I
7th and Linden Streets
Camden, NJ 08102
(609) 966-0400

CAPE MAY Patricia Devaney, Director
Cape May County HSAC
CN 907
Central Mail Room
Cape May Court House, NJ 08210
(609) 465-1055

CUMBERLAND Eva Moffat, Staff
Cumberland County HSAC
790 E. Commerce Street
Cumberland Drive
Bridgeton, NJ 08302
(609) 453-2147
c: Warren Martnelli, Director
(Same address as above)

ESSEX Frank Cuoco, Acting HSAC Coordinator
Essex County Department of Citizen Services
15 South Munn Avenue
East Orange, NJ 07418
(201) 535-1181
c: Alan Zalkind, Director
(Same address as above)
(201) 678-4501

GLOUCESTER Celia Albanese, Staff
Gloucester County Office of Government Services
Budd Boulevard Complex
Route 45 & Budd Boulevard
P.O. Box 337
Woodbury, NJ 08096
(609) 384-6950

HUDSON Leon Socha, Human Services Administrator
Hudson County Department of Human Services
567 Pavonia Avenue
Jersey City, NJ 07036
(201) 795-6920

HUNTERDON Angelo DiOrio, Director
Hunterdon County Department of Human Services
Administration Building
Main Street
Flemington, NJ 08822
(201) 788-1253 or 788-1352

MERCER Mary Ellen Procaccini, Supervisor
Program Development Specialist
Mercer County Department of Human Services
Joyce McDade Administration Building
640 South Broad Street
CN 850
Trenton, NJ 08650
(609) 989-6719

MIDDLESEX Bridget Stillwell-Kennedy, Director
Social Services
Middlesex County Department of Human Services
100 Bayard Street
P.O. Box 273
New Brunswick, NJ 08903
(201) 745-4186

MONMOUTH Mary Ann Strozak, Director
Monmouth County Department of Human Services
Division of Planning and Contracting
Special Services Complex
300 Halls Mill Road
P.O. Box 1255
Freehold, NJ 07728
(201) 431-6585

MORRIS Carol Mohan, Human Services Planner
Morris County Department of Human Services
CN 900
Morristown, NJ 07960
(201) 285-6865
c: Diane Schulman, Director
(Same address as above)
(201) 285-6844

HUMAN SERVICES

OCEAN Marcella DeRosa, Human Services Coordinator
Ocean County Department of Human Resources
Court House Square
CN 2191
Toms River, NJ 08754
(201) 929-2140
c: Barbara Damon
Sr. Program Development Specialist
(Same address as above)

PASSAIC Pamela Goar, Administrator
Passaic County Department of Human Services
County Administration Bldg.
317 Pennsylvania Avenue
Paterson, NJ 07503
(201) 881-2834

SALEM Raymond Bolden, Executive Dir.
Salem Interagency Council
Court House
92 Market Street
Salem, NJ 08079
(609) 935-7510 x315

SOMERSET Kathie O'Brien, Planner
Somerset County Department of Human Services
P.O. Box 3000
Somerville, NJ 08876
(201) 725-4640
c: Patricia Kalmbach McNally, Director
(Same address as above)

SUSSEX Kathleen Wood, Coordinator
Sussex County HSAC
Department of Human Services
Admin. Bldg.
P.O. Box 709
Newton, NJ 07860
(201) 579-0545

PUBLIC NOTICES

UNION Frank Guzzo, Acting Director
Union County Department of Human Services
County Administration Building
Elizabeth, NJ 07207
(201) 527-4844

WARREN Lorraine Scheibener, Coordinator of Monitoring & Evaluation
Warren County Department of Human Services
P.O. Box 15
Belvidere, NJ 07823
(201) 475-6332
c: Karen Rosanoff, Director
(Same address as above)
(201) 475-6331

TRANSPORTATION

(a)

DIVISION OF TRANSPORTATION ASSISTANCE

Office of Regulatory Affairs

Notice of Relocation of Office of Regulatory Affairs

Take notice that effective July 23, 1990, the Office of Regulatory Affairs, New Jersey Department of Transportation, moved its offices from Newark to Trenton (1600 North Olden Avenue). The mailing address for all petitions, correspondence or other mail directed to the Office of Regulatory Affairs and to its Motor Carrier Inspection Unit shall be as follows:

Office of Regulatory Affairs
New Jersey Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1		N.J.A.C.	Expiration Date
N.J.A.C.	Expiration Date		
1:1	5/4/92	3:17	6/18/91
1:5	10/20/91	3:18	1/19/93
1:6	5/4/92	3:19	3/17/91
1:6A	3/19/95	3:21	2/2/92
1:7	5/4/92	3:22	5/12/94
1:10	5/4/92	3:23	7/6/92
1:10A	5/4/92	3:24	8/18/94
1:10B	10/6/91	3:25	8/17/92
1:11	5/4/92	3:26	12/31/90
1:13	5/4/92	3:27	9/16/90
1:13A	4/3/94	3:28	12/12/94
1:20	5/4/92	3:32	10/3/93
1:21	5/4/92	3:33	9/18/94
1:30	2/14/91	3:38	10/5/92
1:31	6/17/92	3:41	10/16/90
		3:42	4/4/93

AGRICULTURE—TITLE 2		PERSONNEL (CIVIL SERVICE)—TITLE 4/4A	
N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
2:1	9/3/90	4:1	1/28/90
2:2	1/17/94	4:2	1/28/90
2:3	8/21/94	4:3	6/20/94
2:5	8/21/94	4:6	5/5/91
2:6	9/3/90	4A:1	10/5/92
2:9	7/7/91	4A:2	10/5/92
2:16	5/7/90	4A:3	9/6/93
2:22	7/6/92	4A:4	6/6/93
2:23	7/18/93	4A:5	10/5/92
2:24	4/2/95	4A:6	1/4/93
2:32	6/1/92	4A:7	10/5/92
2:33	3/6/94	4A:8	1/16/95
2:34	1/2/95	4A:9	10/5/92
2:48	11/27/90	4A:10	11/2/92
2:50	5/1/92		
2:52	5/1/95		
2:53	3/3/91		
2:54	Exempt		
	(7 U.S.C. 601 et seq.		
	7 C.F.R. 1004)		

BANKING—TITLE 3		COMMUNITY AFFAIRS—TITLE 5	
N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
3:1	1/6/91	5:1	2/5/95
3:2	4/12/95	5:2	4/10/94
3:3	1/11/95	5:3	9/1/93
3:6	3/3/91	5:4	10/5/92
3:7	9/16/90	5:10	11/17/93
3:11	5/1/94	5:11	3/10/94
3:13	11/17/91	5:12	12/27/94
3:16	6/18/95	5:13	12/24/92
		5:14	12/1/90
		5:15	5/1/94
		5:18	1/4/95
		5:18A	1/4/95
		5:18B	1/4/95
		5:18C	2/5/95
		5:19	2/1/93
		5:22	2/5/95
		5:23	3/1/93
		5:24	7/10/95
		5:25	3/1/91
		5:26	3/1/91
		5:27	5/2/95
		5:28	12/20/90
		5:29	6/18/91

N.J.A.C.	Expiration Date
5:30	6/29/93
5:31	12/1/94
5:33	8/6/95
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	6/4/95
5:80	4/20/95
5:91	6/16/91
5:92	6/16/91
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:7	1/2/95
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	12/19/93
6:24	4/2/91
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	8/10/95
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	2/26/95
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/15/95
7:1D	11/28/93
7:1E	8/6/95
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/13/95
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94

N.J.A.C.	Expiration Date
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:17	4/7/91
7:18	8/6/91
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	1/5/92
7:22A	2/5/95
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	4/23/95
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/90
7:45	2/6/94

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	1/16/95
8:31A	2/20/95
8:31B	10/15/90
8:31C	1/20/92
8:33	7/27/95
8:33A	2/20/92
8:33B	7/27/95
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	5/16/95
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:34	11/15/93
8:39	6/20/93
8:40	5/7/91
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94

N.J.A.C.	Expiration Date
8:42B	7/18/93
8:43	1/21/91
8:43A	7/27/95
8:43E	12/11/92
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	2/7/95
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/6/91
8:65	12/2/90
8:66	3/5/95
8:66A	3/5/95
8:70	8/19/93
8:71	2/17/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	5/4/95
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	4/30/95
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	4/11/95
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:11	1/16/95
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	5/7/95
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44A	11/21/93
10:44B	7/16/95
10:45	2/20/95
10:47	11/4/90
10:48	1/21/91
10:49	7/13/95
10:50	3/3/91
10:51	10/28/90
10:52	2/8/95
10:53	4/27/95
10:54	3/3/91
10:55	3/8/95
10:56	8/26/91
10:57	3/3/91

N.J.A.C.	Expiration Date
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/28/94
10:64	3/3/91
10:65	8/25/94
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	12/20/94
10:87	1/27/94
10:89	5/24/95
10:90	10/14/92
10:95	Exempt
10:97	5/15/94
10:99	6/4/95
10:109	3/17/91
10:120	8/21/91
10:121	7/16/95
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:123	7/13/95
10:124	12/7/92
10:125	6/4/95
10:126	11/7/93
10:126A	5/7/95
10:127	8/26/93
10:129	7/13/95
10:130	7/2/95
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:2	2/5/95
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:2	12/2/90

N.J.A.C.	Expiration Date
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/12/95
11:12	10/27/91
11:13	11/12/92
11:15	10/26/94
11:16	2/3/91
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	7/30/95
12:16	3/23/95
12:17	1/6/91
12:18	3/7/93
12:19	7/2/95
12:20	8/14/94
12:35	7/16/95
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/95
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:196	8/6/95
12:200	8/3/95
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	7/24/95
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	7/16/95
13:18	3/30/95
13:19	8/18/94
13:20	12/18/90
13:21	12/16/90
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	5/23/95
13:30	3/12/95
13:31	12/12/91
13:32	10/23/92
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	8/3/95
13:41	7/17/95
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	9/4/95
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:59	7/30/95
13:60	1/20/92
13:61	3/5/95
13:62	3/19/95
13:70	1/25/95
13:71	1/25/95
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94
13:81	8/6/95

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/26/95
14:25	3/5/95

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:6	1/16/95
14A:7	9/16/90
14A:8	1/16/95
14A:11	1/16/95
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	9/4/95
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94
16:22	2/3/91
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	2/8/95
16:41	7/28/92
16:41A	1/23/95
16:41B	7/2/95
16:43	5/10/95
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	2/8/95
16:51	4/6/92
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	2/26/95
16:72	3/31/91
16:73	1/30/92
16:74	10/20/91

N.J.A.C.

	Expiration Date
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	6/8/95
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	12/2/90
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	9/4/95
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:35	6/7/93
18:36	3/19/95
18:37	7/23/95
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
19:8	7/5/93	19:42	5/12/93
19:9	10/17/93	19:43	4/27/94
19:10	9/5/94	19:44	9/29/93
19:11	8/20/95	19:45	3/24/93
19:12	8/7/91	19:46	4/28/93
19:14	8/20/95	19:47	4/28/93
19:16	8/7/91	19:48	10/13/93
19:17	6/8/93	19:49	3/24/93
19:18	5/21/95	19:50	5/12/93
19:20	2/5/95	19:51	8/14/91
19:25	1/9/91	19:52	9/25/91
19:30	7/23/95	19:53	4/28/93
19:31	8/20/95	19:54	3/24/93
19:40	8/24/94	19:61	7/7/91
19:41	5/12/93	19:65	7/7/91
		19:75	1/13/94

RULE PROPOSAL

EDUCATION

(a)

STATE BOARD OF EDUCATION

Controversies and Disputes

Proposed Readoption with Amendments: N.J.A.C. 6:24

Authorized By: John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:4-15, 18A:6-9, 18A:6-10 et seq., 18A:14-63.1 et seq., 18A:29-14 and 18A:60-1.

Proposal Number: PRN 1990-464.

Submit written comments by October 4, 1990 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:24 expires on April 2, 1991 unless readopted. The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, 18A:6-9, 18A:6-10 et seq., 18A:14-63.1 et seq., 18A:29-14 and 18A:60-1, proposes a readoption with amendments of the rules pertaining to controversies and disputes, N.J.A.C. 6:24.

This chapter provides the rules of procedure for filing of a petition with the Commissioner of Education pursuant to his statutory authority under N.J.S.A. 18A:6-9 to hear and decide controversies and disputes arising under school law and regulations. The entire chapter has been carefully reviewed by the staff of the Bureau of Controversies and Disputes, the Office of Administrative Law (OAL), representatives of the Attorney General and division heads of the Department of Education. Its readoption and revision have been deemed essential to the fulfillment of the Commissioner's responsibilities to hear and decide cases involving alleged violations of school law and rules and for providing the means for individuals to initiate due process proceedings for the correction of alleged violations of statutes, rules or abuse of discretion.

The most significant substantive proposed amendment to these rules involves changes in the procedure for deciding budget appeals contained within subchapter 7. Pursuant to N.J.S.A. 18A:22-14, 18A:22-17 and 18A:22-37, the Commissioner of Education has the statutory responsibility to decide budget appeals brought by district boards of education which contend that the amount of taxes certified by municipal governing bodies for the following school year are insufficient to provide for a thorough and efficient system of education. In a decision of the New Jersey Supreme Court entitled *Board of Education of Deptford Township v. Mayor and Council of Deptford Township*, 116 N.J. 305 (1989), the Court expressed concern over the length of time which has typically transpired between the time in which budget appeals have been filed and their ultimate determination by the Commissioner. As a consequence of the *Deptford Township* decision, subchapter 7 has been revised to provide for a process which permits the Commissioner to decide budget appeals upon written submissions with the provision that evidentiary hearings would be provided only in cases in which there are material issues of fact to be determined and those hearings would be specifically limited to those issues in dispute.

The bulk of the proposed amendments is essentially editorial in nature designed to clarify or simplify existing provisions or to correct various citations to OAL rules which have been amended by that agency.

Subchapter 1 contains general provisions of a procedural nature associated with the process for deciding controversies and disputes brought to the Commissioner. Included in this subchapter are definitions necessary for understanding the process, procedures for filing a petition, the format for petitions and various procedural requirements.

A more detailed summary of the proposed amendments in subchapter 1 is presented below:

At N.J.A.C. 6:24-1.1, Definitions, the term "proof of service" is defined in order to assist pro se petitioners who are often perplexed as to the meaning of the requirement that a petition must be accompanied by proof of service.

N.J.A.C. 6:24-1.2, Filing and service of petition, is amended to provide for the filing of two copies of a petition in order to conform to OAL rules which require the transmittal of two copies of any petition.

N.J.A.C. 6:24-1.2(b) describes what documentation may be accepted to prove that service has been accomplished.

N.J.A.C. 6:24-1.2(d) requires that the Attorney General of the State of New Jersey must be served if the Department of Education or one of its agents is named as a party.

N.J.A.C. 6:24-1.4(d) provides for filing of two copies of the answer to conform to OAL rules.

N.J.A.C. 6:24-1.4(e) provides notice to respondents that failure to answer after a second notice shall result in notification that further failure to respond within 10 days will result in the Commissioner rendering summary decision.

N.J.A.C. 6:24-1.5(a) is amended to clarify that motions for stays of action or the granting of emergent relief may be directed at parties other than boards of education and that such requested action should be by way of a separate motion.

N.J.A.C. 6:24-1.5(b) is amended to provide that a motion for stay or emergent relief must be accompanied by a letter memorandum or brief addressing the standard for such relief as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982).

N.J.A.C. 6:24-1.5(c) provides that the Commissioner may decide a motion for a stay prior to receipt of an answer, after the filing of an answer or transmit the matter to OAL for an immediate hearing on the motion.

N.J.A.C. 6:24-1.8 is amended to include the right to representation as set forth in N.J.A.C. 1:1-5.

N.J.A.C. 6:24-1.9, Dismissal of petition, is amended to include specific language which permits the Commissioner to dismiss a matter for failure to set forth a claim for which relief can be granted.

N.J.A.C. 6:24-1.13 and N.J.A.C. 6:24-1.14 are being deleted upon advice of OAL as being related to the actual conduct of the hearing and repetitious of OAL rules.

N.J.A.C. 6:24-1.15 through 1.18 are recodified as 1.13 through 1.16 as a result of the above-cited deletions.

N.J.A.C. 6:24-1.16 is amended to emphasize that a decision of the Commissioner is appealable to the State Board of Education, but by statute is a binding decision unless reversed on appeal or a stay is granted pursuant to State Board rules.

Subchapter 2 describes the format of a petition for declaratory judgment. No changes in text are proposed.

Subchapter 3 describes the circumstances under which the Commissioner may issue an order to show cause. Specific amendments to this subchapter are summarized below.

N.J.A.C. 6:24-3.1(a) is amended to clarify that entities other than boards of education may be accorded the right to respond to an order to show cause.

N.J.A.C. 6:24-3.1(b) has been added to notify parties that the Commissioner will not entertain orders to show cause to enforce litigants' rights but such action must be initiated by way of petition with request for emergent relief.

Subchapter 4 provides for the right of a teacher to seek a hearing before the Commissioner when an increment is withheld by a district board of education. This subsection has been amended to conform with the provisions of N.J.S.A. 34:13A-1 et seq. which limits the Commissioner's jurisdiction to hear appeals of increment withholdings to those which are based upon teaching performance.

Subchapter 5 describes the manner in which charges are to be filed under the Tenure Employees Hearing Act. No changes are being proposed to this subchapter.

Subchapter 6 provides a process for contesting the results of school elections. No changes are being proposed to this subchapter.

Subchapter 7 provides a revised and accelerated process for deciding budget appeals brought to the Commissioner. The specific amendments are described below.

N.J.A.C. 6:24-7.1 is amended to include language that recognizes appeals of actions reducing a district budget by boards of school estimate

as well as those of governing bodies. It also includes a reference to the standard for budget review imposed by the *Deptford Township* decision of the New Jersey Supreme Court.

The proposed new rule at N.J.A.C. 6:24-7.2 defines the process for certifying the tax levy in both type I and type II districts and requires any reductions in the amount requested by the board made by either the board of school estimate or a governing body to be specific as to line item and the reasons for each reduction. It further provides a specific date, April 28, by which a local governing body in a type I district must appropriate the amount certified by the board of school estimate and requires that boards of school estimate and governing bodies provide a statement that the amount certified for taxation is sufficient to assure the provision of a thorough and efficient system of education.

N.J.A.C. 6:24-7.2(b) delineates specifically what information a type II district must provide to the governing body upon defeat of its budget by the electorate.

N.J.A.C. 6:24-7.3 delineates the budget dispute resolution procedures initiated by the county superintendent should the board dispute the tax levy certification. It also specifically provides that any agreement worked out by the parties must be approved by the county superintendent. It also defines the responsibility and authority of the county superintendent to seek an order to show cause from the Commissioner should the amount agreed to by the parties be less than that required for the provision of a thorough and efficient system of education.

N.J.A.C. 6:24-7.4, Time for filing petition, is amended to add a time period of 20 days to conform to statutory language.

N.J.A.C. 6:24-7.7 is amended to provide greater specificity as to what is required from a governing body by way of an answer to a budget appeal.

N.J.A.C. 6:24-7.8 describes the new process designed to accelerate the Commissioner's decision in budget appeal cases. It essentially requires that both the governing body and the board set forth its position in writing which may include sworn affidavits from individuals whose input may be relevant to assisting the Commissioner in making a decision. Parties are permitted to file responsive papers to each other's submissions and final summations of their respective positions. N.J.A.C. 6:24-7.8(a)7 limits hearing to circumstances where the Commissioner finds that there are material issues of fact to be determined.

Social Impact

Since 1903 the Commissioner of Education in the State of New Jersey has been authorized by the Legislature to hear and decide all controversies and disputes which arise under school law and regulations of the State Board of Education. The rules being readopted and amended, N.J.A.C. 6:24, define the procedures to be followed by persons seeking to invoke the jurisdiction of the Commissioner to hear a controversy or dispute which has arisen under the education laws.

As a consequence of adopting these rules, school districts, school employees, pupils and the general public are afforded a means of obtaining due process in disputes arising under school laws and regulations. In the absence of these rules, the public would be without guidance as to how to seek relief from alleged illegalities.

Economic Impact

The readoption and revisions of these rules impose no economic burden on parties other than those which the parties assume themselves by way of seeking representation of counsel. The rules require no filing fee, nor are parties obliged to be represented by counsel. The accelerated process for deciding budget appeals will have the positive impact of decreasing fiscal uncertainty both on the part of local school districts and governing bodies and deciding appeals on the written submissions might reduce the cost of litigation by virtue of eliminating appearances of counsel at hearings.

Regulatory Flexibility Analysis

A small business, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which provides service or supplies/materials to a district board of education, may seek relief before the Commissioner concerning alleged violation of bidding laws or regulations. Under these circumstances, the small business would be required to comply with the reporting, recordkeeping and other compliance requirements of this chapter in the same manner as any other individual, body or entity invoking the Commissioner's jurisdiction. However, the burden of compliance with these rules is minimal and is offset positively by the provision of such a mechanism for relief.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:24.

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

SUBCHAPTER 1. GENERAL PROVISIONS

6:24-1.1 Definitions

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

"Interested person(s)" means a person(s) who will be substantially, specifically and directly affected by the outcome of a controversy before the [commissioner] **Commissioner**.

"OAL" means the Office of Administrative Law.

"**Proof of service**" means the provision of proof of the delivery of a paper by mail or in person to a party, person or entity to whom papers are required to be transmitted.

6:24-1.2 Filing and service of petition

(a) To initiate a contested case for the [commissioner's] **Commissioner's** determination of a controversy or dispute arising under the school laws, a petitioner shall serve a copy of a petition upon each respondent. The petitioner then shall file proof of service and the original **and two copies** of the petition with the [commissioner] **Commissioner** c/o the Director of the Bureau of the Controversies and Disputes, New Jersey Department of Education, 225 West State Street, CN-500, Trenton, New Jersey 08625.

(b) **Proof of service shall be in the form of one of the following:**

1. **An acknowledgement of service signed by the attorney for the respondent or signed and acknowledged by the respondent or its agent;**
2. **A sworn affidavit of the person making service;**
3. **A certificate of service signed by the attorney making service; or**
4. **A receipt of certified mailing.**

[b](c) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, **individual party, or agency**, which is the subject of the requested contested case hearing.

(d) **When the State of New Jersey Department of Education or one of its agents is named as a party, proof of service to the Attorney General of the State of New Jersey is required.**

6:24-1.3 Format of petition

(a) (No change.)

(b) Any party to a controversy or dispute before the [commissioner] **Commissioner**, who is a party to another action before any other administrative agency, arbitration proceeding or court involving the same or similar issue of fact or law, shall indicate the existence of such action or complaint within the petition of appeal or the answer to the [commissioner] **Commissioner**, as may be appropriate. Failure to so certify may be deemed to be sufficient cause for dismissal of the petition of appeal when, in the judgment of the [commissioner] **Commissioner** and/or the ALJ, such failure results in the duplication of administrative procedures for the resolution of a controversy or dispute.

(c) (No change.)

6:24-1.4 Filing and service of answer

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, which shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition. Upon written application by a party the [commissioner] **Commissioner** may extend the time for answer. Such application must be received prior to the expiration of the 20 day period.

(b) (No change.)

(c) The [commissioner] **Commissioner** shall deem an affirmative defense to an allegation as also a denial of that allegation.

(d) The original **and two copies** of the answer shall be filed with the [commissioner] **Commissioner**, together with proof of service of a copy thereof upon petitioner.

(e) Failure to answer within the 20 day period from receipt of service [may] **shall** result in [the petition being transmitted to the OAL for proceedings pursuant to the provisions of N.J.A.C. 1:1-5.1.] **a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.**

6:24-1.5 Interim relief and/or stay [of district board action]

(a) Where the subject matter of the controversy is a particular course of action by a district board of education **or any other party subject to the jurisdiction of the Commissioner**, the petitioner may include [in the petition], **by way of separate motion**, an application for emergent relief or a stay of that action pending the [commissioner's] **Commissioner's** final decision in the contested case.

(b) **Where a motion for a stay or emergent relief is filed, it shall be accompanied by a letter memorandum or brief which shall address the standard to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982).**

[(b)](c) Any party opposing such an application shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6:24-1.4; however, upon review, the [commissioner] **Commissioner** may:

1. [act] **Act upon such application prior to the filing of an answer[.], provided a reasonable effort is made to give the opposing party an opportunity to be heard on that application;**
2. **Act upon such application upon receipt of the answer; or**
3. **Transmit the application to OAL for immediate hearing on the motion.**

[(c)](d) The [commissioner] **Commissioner** may decide such application prior to any transmittal of the matter to the OAL for hearing. After transmittal to OAL, any motion for emergent relief shall be determined by the OAL. (See N.J.A.C. 1:1-[9.6]**12.6**.)

6:24-1.6 Amendment of petition and answer

Prior to the transmittal of any matter to the OAL, the [commissioner] **Commissioner** may order the amendment of any petition or answer, or any petitioner may amend his or her petition, and any respondent may amend his or her answer, at any time and in any manner which the [commissioner] **Commissioner** deems fair and reasonable. Upon transmittal to the OAL, motions to amend a petition or answer shall be determined by the OAL. (See N.J.A.C. 1:1-[6.3]**6.2**)

6:24-1.7 Permission to intervene

Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the [commissioner] **Commissioner**. Upon transmittal, requests should be made to the OAL. Such requests are governed by N.J.A.C. 1:1-[12] **16**.

6:24-1.8 Appearance pro se

Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State **or by such persons as set forth in N.J.A.C. 1:1-5. [(See N.J.A.C. 1:1-1.3.)]**

6:24-1.9 Dismissal of petition

At any time after the receipt of the answer and prior to transmittal of the pleadings to the OAL, the [commissioner] **Commissioner**, in his or her discretion, may dismiss the petition on the grounds that no sufficient cause for determination has been advanced, lack of jurisdiction, failure to prosecute or other good reason.

6:24-1.10 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the [commissioner] **Commissioner** may either retain the matter for hearing directly and individually, **designate an Assistant Commissioner to hear and decide the case directly and individually** or transmit the matter for hearing before the OAL. Should the [commissioner] **Commissioner** retain the matter, procedures relating to pre-hearing conferences shall be governed by the rules of the OAL. (See N.J.A.C. 1:1-[10.1]**13.1**.)

(b) (No change.)

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the [commissioner] **Commissioner** or the ALJ, whoever is hearing the case.

6:24-1.11 Oaths

The [commissioner] **Commissioner** or the ALJ, whoever is hearing the case, shall have authority to administer oaths and affirmations, examine witnesses and receive evidence, issue subpoenas, rule upon offers of proof, take or cause depositions to be taken whenever the ends of justice would be served thereby, regulate the course of the hearing, and dispose of procedural requests or similar matters. [(See N.J.A.C. 1:1-15.5(b).)]

6:24-1.12 Subpoenas

Subpoenas[, including subpoenas duces tecum,] **requiring the appearance of persons or the production of documents** may be issued [in] at the discretion of the [commissioner] **Commissioner** or the ALJ, whoever is hearing the case, upon request of any party. (See also N.J.A.C. 1:1-[8.3, 8.4, 8.5]**11.1**.)

[6:24-1.13 Evidence

Parties in a contested case shall be bound by the rules of evidence as contained within the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1. (See N.J.A.C. 1:1-15)

6:24-1.14 Stenographic transcript

Where there is available a stenographic transcript of proceedings before a district board of education or before any other official or body whose action is called into question before the commissioner, the parties may proceed pursuant to N.J.A.C. 1:1-15.2]

6:24-[1.15]**1.13 Summary judgment**

(a) Should the [commissioner] **Commissioner** determine to decide a motion for summary judgment prior to transmission to OAL such motion shall be subject to the following process:

1. If a statement of the material facts has been agreed upon by the parties and the [commissioner] **Commissioner**, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval, or at the direction, of the [commissioner] **Commissioner**, or if for any other reason there are no issues of fact to be heard, the [commissioner] **Commissioner** shall require all parties to submit briefs on the matter. Such briefs shall be submitted within the time fixed by the [commissioner] **Commissioner** in consultation with the parties and confirmed by a written directive. The [commissioner] **Commissioner** shall thereupon determine the matter on the basis of the total record before him or her.

2. At any time prior to transmittal to the OAL any party may move for summary judgment, which motion shall be decided by the [commissioner] **Commissioner** on the basis of conference stipulations, affidavits and briefs. The parties must submit said affidavits and briefs within the time fixed by the [commissioner] **Commissioner** in consultation with the parties and confirmed by a written directive. Applications for summary judgment made after transmittal to the OAL shall be subject to the provision of N.J.A.C. 1:1-[13]**12.5**.

3. Unless otherwise ordered by the [commissioner] **Commissioner**, there shall be no oral argument in connection with a summary judgment action. If the [commissioner] **Commissioner** grants oral argument, it shall be limited to 30 minutes for each party and shall not include testimony of witnesses.

6:24-[1.16]**1.14 Written decision**

(a) Every determination of a controversy or dispute arising under the school law, or of charges against a **district board of education employee or employees of the Departments of Human Services, Corrections or Education serving under tenure**, shall be made by the [commissioner] **Commissioner**. Every such determination shall be embodied in a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order pursuant to the provisions of N.J.A.C. 1:1-[16]**18.6**.

(b) **Any determination or decision of the Commissioner is appealable to the State Board of Education pursuant to N.J.A.C. 6:2-1; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by either the Commissioner or State Board pursuant to N.J.A.C. 6:2-2.2.**

6:24-[1.17]1.15 Relaxing of rules

(a) The rules herein contained shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of, the [commissioner] **Commissioner** in connection with the determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the [commissioner] **Commissioner**, in his or her discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

6:24-[1.18]1.16 Awarding of interest

(a) The [commissioner] **Commissioner** pursuant to the criteria herein may award both pre-judgment and/or post-judgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

(b) "Interest" is defined as follows:

1. (No change.)

2. Post-judgment interest is interest determined by the [commissioner] **Commissioner** to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. Pre-judgment interest shall be awarded by the [commissioner] **Commissioner** when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

2. Post-judgment interest shall be awarded when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or **could have been established** and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) (No change.)

SUBCHAPTER 2. DECLARATORY RULINGS

6:24-2.1 Petition for declaratory rulings

Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the [commissioner] **Commissioner** for a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the [commissioner] **Commissioner**. The determination to entertain such petitions for declaratory judgments shall be within the sole discretion of the [commissioner] **Commissioner**. If upon receipt and review of the answer such request is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory judgment shall be binding upon the [commissioner] **Commissioner** and all parties to the proceedings on the specific statement of facts set forth therein.

6:24-2.2 Format of petition for declaratory rulings

(a) The format of the petition for declaratory rulings follows:

: BEFORE THE COMMISSIONER OF
: EDUCATION OF NEW JERSEY
CAPTION :
: PETITION FOR DECLARATORY
: JUDGMENT

Petitioner, _____, residing at _____, hereby requests the [commissioner] **Commissioner** to render a declaratory judgment concerning the application of (N.J.S.A. 18A: _____, N.J.A.C. 6: _____) to the controversy which has arisen between petitioner and respondent who resides at _____ by reason of:

1. (Here set forth in appropriate paragraphs the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the [commissioner] **Commissioner** shall construe the provisions of _____ and determine and declare _____

Signature of petitioner or
his or her attorney

Date: _____

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.

2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

(Signature)

Sworn and subscribed to before me this

_____ day of _____, 19_____
(Signature)

6:24-2.3 Dissemination

The **Commissioner** shall ensure the dissemination to district boards of education of the result of any declaratory judgment through the county superintendents of schools.

SUBCHAPTER 3. ORDER TO SHOW CAUSE

6:24-3.1 Commissioner's order to show cause

(a) If in the course of supervising the schools, and following investigation, the [commissioner] **Commissioner** should become aware of violation(s) of the school laws in [local] school districts which if true would entitle him or her to impose a sanction on his or her own initiative, he or she may accord the district board of education or **any other party subject to the Commissioner's jurisdiction** an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing and, where authorized by law, the right to a contested case hearing is independent of and in addition to this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1.-5. (No change.)

(b) **Submission by parties of orders to show cause seeking enforcement of litigants' rights shall not be deemed appropriate. Such actions are to be initiated by way of petition accompanied by motion for emergent relief pursuant to N.J.A.C. 6:24-1.2 and 6:24-1.5.**

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

6:24-4.1 Withholding salary increment

Where a district board of education acts to withhold a teacher's salary increment **based upon teaching performance** pursuant to N.J.S.A. 18A:29-14 **as modified by N.J.S.A. 34:13A-1**, the teacher may file a formal petition of appeal for a hearing according to the procedures outlined in this chapter.

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

6:24-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred against an employee of a district board of education pursuant to the Tenure Employees' Hearing Act which are to be brought before the [commissioner] **Commissioner**, N.J.A.C. 6:24-1.2 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education shall file the written charges and the required certificate of determination with the [commissioner] **Commissioner** together with proof of service upon the employee.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1.-5. (No change.)

6. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charge and the required certificate of determination with the [commissioner] **Commissioner** together with proof of service upon the employee.

7. (No change.)

(c) In the event that the tenure charges are charges of inefficiency, the following procedures and timelines shall be observed:

1.-2. (No change.)

3. The district board of education, through its board secretary, shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90-day period, or any longer period provided by the board, it intends to certify those charges of inefficiency to the [commissioner] **Commissioner** pursuant to N.J.S.A. 18A:6-11.

4.-8. (No change.)

9. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charges and the required certificate of determination with the [commissioner] **Commissioner** together with proof of service upon the employee.

10. (No change.)

SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS

6:24-6.1 Request for recount or investigation

(a) Request for recount of the ballots cast or for an investigation of the procedures at a school election shall be in compliance with N.J.S.A. 18A:14-63.1 et seq. and need not conform with N.J.A.C. 6:24-1.2 (Filing and service of petition). Such request shall be in letter form addressed to the [commissioner] **Commissioner** and shall set forth with particularity the grounds on which the election results are contested.

(b) Request for inquiry into alleged violations of statutorily prescribed election procedures, pursuant to N.J.S.A. 18A:14-63.12, shall be in writing to the [commissioner] **Commissioner**.

(c) Hearings inquiring into alleged violations of statutorily prescribed election procedures shall be conducted pursuant to N.J.A.C. 1:1 by the [commissioner] **Commissioner** or an ALJ.

6:24-6.3 Subpoenas

In any school election recount initiated pursuant to this subchapter, the [commissioner] **Commissioner** shall have the power to subpoena necessary witnesses to testify and to produce books, papers, documents and other objects designated in the subpoena.

6:24-6.4 Continuation of recheck

In districts where election machines have been used, the [commissioner] **Commissioner** shall ascertain from the party or parties applying for a recount which voting machines shall be rechecked. In the event that it shall appear during the course of the recheck that there has been a sufficient change in the tally of the votes cast to alter the result of the election, any candidate who appears then to have been defeated, or, in the event of a question, proposition or referendum, the parties in interest who may be affected adversely, may, within five days of such changed result, apply to the [commissioner] **Commissioner** to continue the recheck on his or her behalf upon the same terms and conditions under which the original recheck was held.

6:24-6.5 Finding of error/relief

Where the [commissioner] **Commissioner** finds as a result of a recount or an inquiry that an error has occurred which alters the result of the election or that irregularities have occurred sufficient to influence the outcome, he or she shall order such relief as is appropriate.

SUBCHAPTER 7. BUDGET [HEARING] APPEAL RULES

6:24-7.1 Authority

Unless otherwise expressly noted, all provisions of this subchapter governing a petition by a district board of education appealing a board of school estimate's or a governing body's decision to reduce a school budget have been prescribed by the [commissioner] **Commissioner** and approved by the State Board of Education pursuant to N.J.S.A. 18A:6-9 [and], 18A:22-14, 18A:22-17, 18A:22-37, *Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick*, 48 N.J. 94 (1966) and Board of Education of Deptford Township v. Mayor and Council of Deptford Township, 116 N.J. 305 (1989).

6:24-7.2 Process for certifying the amount of tax levy

(a) In type I districts or type II districts having a board of school estimate, the following process for certifying the amount of tax levy necessary for school purposes shall be implemented.

1. On or before March 18, the board of school estimate shall fix and determine the amount of money necessary to be appropriated for use of the public schools for the ensuing school year pursuant to the provisions of N.J.S.A. 18A:22-14.

2. If the amount so appropriated shall be less than the amount proposed to the board of school estimate by the district board of education, the board of school estimate shall present to the district board of education, the municipal governing body and the county superintendent a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

3. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the board of school estimate has reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

4. The governing body of each municipality comprising a type I district or a type II district having a board of school estimate shall appropriate on or before April 28 the amount certified by the board of school estimate.

5. Should a municipal governing body certify an amount less than that appropriated by the board of school estimate pursuant to N.J.S.A. 18A:22-17, it shall provide the district board of education and the county superintendent those line items wherein reductions were effectuated and the supporting reasons for such reductions. The governing body shall further certify that the amount appropriated for school purposes is sufficient to ensure the provision of a thorough and efficient system of education.

(b) In type II districts the following process for certifying the amount of tax levy necessary for school purposes shall be implemented upon rejection of either or both the current expense and capital outlay budget by the voters of the district.

1. If voters reject the tax levy for either or both capital outlay and current expense at the annual school election, the district board of education shall supply to the governing body or bodies within two days from the defeat of the referendum the following information:

i. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the next school year (as submitted to the voters);

ii. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year, with reasons for increase or decrease;

iii. Pupil enrollment by grade for the district as of June 30, preceding; September 30 preceding; and that projected for September of the next school year;

iv. Salary schedules for all employees;

v. Number of schools and classrooms in each;

vi. Costs for non-aided transportation for the previous school year projected for the current school year and the next school year;

vii. Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;

viii. Advertised budget for the next school year; and

ix. If a capital budget is in dispute, a substantiation for each proposed capital project.

2. The governing body or bodies of the municipality or municipalities involved shall as soon as immediately practicable, consistent with N.J.S.A. 18A:22-37, consult with the district board of education for purposes of arriving at a tax levy sufficient to assure the provision of a thorough and efficient system of education.

3. By April 28th, the governing body or bodies shall certify to the county board of taxation an amount to be appropriated sufficient to provide a thorough and efficient system of education.

4. If the amount so appropriated shall be less than that which was submitted to the voters by the district board of education, the municipal governing body or bodies shall present to the board of education and the county superintendent of schools a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

5. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the governing body or bodies have reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

6:24-7.3 Dispute resolution

(a) Upon receipt of the reduced line item budget and the supporting reasons for such reductions, the county superintendent shall schedule a conference which shall be attended by representatives of the district board of education and representatives of the municipal governing body or bodies for purposes of reaching agreement on a tax levy to be certified sufficient to provide a thorough and efficient system of education. The county superintendent shall not be precluded from initiating actions designed to assist the parties in resolving budgetary issues prior to formal action by the governing body or bodies.

(b) At said conference it shall be the responsibility of the county superintendent to review with the parties their respective positions relative to the line item reductions recommended by the governing body or bodies and/or the board of school estimate.

(c) If an agreement is reached between the parties at the conference to accept the reductions as certified and such agreement is approved by the county superintendent, no further action shall be required unless the district board of education has submitted a notice of intent to appeal or a petition of appeal in which case the parties shall submit a consent order to the Commissioner no later than 10 days from the conclusion of the conference.

(d) Should no agreement be reached settling the case at the conference, any agreement reached as to stipulation of facts or narrowing of differences shall be submitted to the Commissioner.

(e) Any agreement concluded between the district board of education and the governing body or bodies which results in a lower budget than approved by the county superintendent pursuant to N.J.S.A. 18A:7A-28 shall be submitted to the county superintendent for his or her approval in order to ensure that such reduction does not impair the district's ability to provide a thorough and efficient system of education.

(f) Should the county superintendent, acting for the Commissioner, determine that the budget reduction agreed upon results in providing an amount less than that which is necessary to ensure a thorough and efficient system of education, the Commissioner shall issue an order to show cause directing the district board of education and governing body or bodies to show cause why the amount agreed upon is sufficient to ensure a thorough and efficient system of education.

6:24-[7.2]7.4 Time for filing petition

(a) Within 20 days after the certification by either the board of school estimate or the governing body in a type I district or the governing body or bodies in a type II district with a board of school estimate and within 15 days of the certification by the governing body or bodies in a type II district, the district board of education shall notify the governing body or bodies of its intent to appeal the reduction of the certification to the Commissioner of Education.

(b) A petition by a district board of education appealing the decision of its board of school estimate or its governing body or bodies to certify a tax levy less than that deemed necessary by the district board to insure a thorough and efficient educational program shall be taken no later than 30 days following the governing body's or bodies' decision.

6:24-[7.3]7.5 Format and documentation of petition

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

(c) The district board of education shall attach to its petition a copy of the following form:

Proposed tax levy adopted by the district board of education	Amount of tax levy certified by governing body or bodies
Current expense \$ _____	Current expense \$ _____
Capital outlay \$ _____	Capital outlay \$ _____
Amount of reduction in the budget by governing body or bodies	
	Current expense \$ _____
	Capital outlay \$ _____
Amount of reduction in dispute before the [commissioner] Commissioner	
	Current expense \$ _____
	Capital outlay \$ _____

6:24-[7.4]7.6 Filing and service of answer

The governing body or bodies shall file an answer with the [commissioner] Commissioner not later than 15 days after receiving the district board of education's petition.

6:24-[7.5]7.7 Documentation of answer

(a) The governing body shall submit with its answer the following documents:

1. The amount certified for each of the major accounts;
2. Line item budget stating recommended specific economies together with supporting reasons.]

(a) In conjunction with its answer, the governing body or bodies shall forward to the Commissioner a copy of the information which was given to the district board of education and the county superintendent at the time the reduction was made including the following documents:

1. A copy of the current expense line item budget detailing specific reductions that were effectuated by the governing body along with the statement of supporting reasons for each of the line item reductions;
2. A copy of the capital outlay budget detailing specific reductions that were effectuated along with a statement of supporting reasons for each of the line item reductions; and
3. Accompanying the foregoing shall be a certification stating the date on which the documents were originally given to the district board of education.

[6:24-7.6 Conference of parties with county superintendent

(a) Following receipt of the petition and answer, the commissioner may schedule a conference to be attended by representatives of the district board of education and the governing body and to be conducted by the county superintendent of schools.

(b) If the district board of education and governing body reach an agreement at the conference as to the tax levy to be certified to the county board of taxation, the district board shall submit a consent order reflecting the elements of that agreement to the commissioner not later than 10 days after the conference is concluded.

(c) If the parties do not reach an agreement settling the case, any agreement reached as to stipulations of facts or narrowing of issues shall be submitted to the commissioner or the ALJ, whoever is hearing the case.

6:24-7.7 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the conduct of the proceedings shall be governed by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1, as supplemented by the Rules of Special Applicability in this chapter.

(b) Upon the filing of the petition and answer(s) in a contested case, the commissioner may either retain the matter for hearing directly and individually or transmit the matter for hearing before the OAL.

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the commissioner or the ALJ, whoever is hearing the case.

(d) See N.J.A.C. 1:6-1.1 Rules of Special Applicability for description of the rules governing Department of Education budget hearings.]

6:24-7.8 [(Reserved)] Commissioner's review and decision

(a) Within 20 days from the filing of the governing body's or bodies' answer to the district board of education's Petition of Appeal, the following submissions shall be filed with the Commissioner:

1. The governing body or bodies shall set forth its or their position in written form detailing by individual line item its or their reasons for effectuating the economies which represent the subject matter of the dispute. In so doing, the governing body or bodies shall provide sufficient detail based upon that data provided to it or them by the district board of education at the time of the budget defeat. Should the governing body or bodies fail to provide the district board of education with the specific line item reductions and the reasons for same, it or they shall bear the burden of demonstrating that its or their actions were not arbitrary or capricious.

2. The district board of education shall set forth its position in written form detailing by individual line item why the amount by which

the governing body or bodies reduced the line item is necessary to meet the requirement of providing a thorough and efficient system of education.

3. Each party may, in addition to its written position, submit sworn affidavits from individuals whose input may be relevant to assisting the Commissioner in rendering a determination.

4. Within 10 days from receipt of the written position of the opposing party, each party may file responses to such positions.

5. Within five days of the receipt of the responses to each other's written positions or the expiration of the time period for filing responses, each party may submit to the Commissioner a final summation of its position.

6. Upon the receipt of the summaries submitted by the parties or the expiration of the time period for filing, the Commissioner shall review the total record before him or her and render a written decision which shall be a final decision unless or until reversed upon appeal.

7. Should the Commissioner find that there are material issues of fact to be determined, he or she may conduct an evidentiary hearing or transmit the case to the OAL for a hearing on all of the disputed issues that remain undecided.

6:24-[7.8]7.9 through 6:24-7.12 (Reserved)

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 2, 1990 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.1990 d.1 means the first rule adopted in 1990.

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 18, 1990

NEXT UPDATE: SUPPLEMENT JULY 16, 1990

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
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1-8.2	Transmission of contested cases to the OAL
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case
1:1-12.5	Partial summary decisions
1:1-18.4	Filing of exceptions to initial decisions
1:6A	Special education hearings: public hearings
1:6A-4.2, 9.1	Scheduling of special education hearing
1:10-8.1	Transmission of Economic Assistance cases
1:10-18.2	Filing of exceptions to initial decisions
1:10B-18.2	Filing of exceptions to initial decisions
1:11-10.1	Discovery in private passenger automobile insurance rate hearings

PROPOSAL NOTICE (N.J.R. CITATION)

22 N.J.R. 2066(a)
22 N.J.R. 2066(b)
22 N.J.R. 3(a)
22 N.J.R. 2065(a)
21 N.J.R. 3045(a)
22 N.J.R. 1295(a)
22 N.J.R. 2389(a)
22 N.J.R. 2065(a)
22 N.J.R. 2065(a)
21 N.J.R. 3815(a)

DOCUMENT NUMBER

R.1990 d.368
R.1990 d.405

ADOPTION NOTICE (N.J.R. CITATION)

22 N.J.R. 2262(a)
22 N.J.R. 2262(b)

Most recent update to Title 1: TRANSMITTAL 1990-3 (supplement May 21, 1990)

AGRICULTURE—TITLE 2

2:6-1	Distribution and use of veterinary biologics
2:19-2	Rose mosaic disease control
2:20-2	White pine blister rust control
2:52-6, 7	Milk supply and sale
2:53-3, 4, 6, 7	Milk supply and sale
2:69-1.11	Commercial values of primary plant nutrients
2:70-1	Classification of liming materials
2:71-2.2-2.6	Jersey Fresh Quality Grading Program
2:76-6.2, 6.5, 6.6, 6.9-6.12, 6.15-6.17	Farmland preservation program
2:90	State Soil Conservation Committee rules

22 N.J.R. 2068(a)
22 N.J.R. 2069(a)
22 N.J.R. 2070(a)
22 N.J.R. 1629(a)
22 N.J.R. 1629(a)
22 N.J.R. 1295(b)
22 N.J.R. 1411(a)
22 N.J.R. 1296(a)
22 N.J.R. 1244(a)

R.1990 d.355
R.1990 d.355
R.1990 d.353
R.1990 d.414
R.1990 d.354

22 N.J.R. 2138(a)
22 N.J.R. 2138(a)
22 N.J.R. 2140(a)
22 N.J.R. 2503(a)
22 N.J.R. 2140(b)

Most recent update to Title 2: TRANSMITTAL 1990-5 (supplement June 18, 1990)

BANKING—TITLE 3

3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits
3:1-14	Revolving credit equity loans
3:1-17	Senior citizen homeowner's reverse mortgage loans
3:7	Safe and sound methods of banking
3:18-3.5	Repeal (see 3:1-14)
3:27	Mortgage loans by savings and loan associations
3:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements
3:41-7.4	Temporary storage of human remains by cemetery company

22 N.J.R. 275(a)
22 N.J.R. 1809(a)
21 N.J.R. 3333(b)
21 N.J.R. 3207(b)
22 N.J.R. 2205(a)
21 N.J.R. 3333(b)
22 N.J.R. 2206(a)
22 N.J.R. 1968(a)

R.1990 d.357

22 N.J.R. 2142(b)

Most recent update to Title 3: TRANSMITTAL 1990-4 (supplement June 18, 1990)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-4 (supplement June 18, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:4-6.5	Psychological disqualification proceeding	22 N.J.R. 1300(a)	R.1990 d.346	22 N.J.R. 2143(a)
4A:6-1.1, 1.3, 1.8, 1.10, 1.21	Family leave	22 N.J.R. 1300(b)	R.1990 d.387	22 N.J.R. 2263(a)
4A:6-1-.8, 1.21	Family leave: administrative correction	_____	_____	22 N.J.R. 2682(a)
4A:7-1.1	Equal employment opportunity: administrative correction	_____	_____	22 N.J.R. 2266(a)
4A:8-2.4	Family leave	22 N.J.R. 1300(b)	R.1990 d.387	22 N.J.R. 2263(a)
Most recent update to Title 4A: TRANSMITTAL 1990-2 (supplement June 18, 1990)				
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:15-2.1	Emergency shelters for homeless: hospitality rooms	22 N.J.R. 1969(a)		
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)	R.1990 d.325	22 N.J.R. 2001(a)
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12-4.15, 4.21, 4.22, 4.24-4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)	R.1990 d.313	22 N.J.R. 1915(b)
5:23-2.2, 2.10, 2.14, 2.15, 2.37, 3.9, 3.11, 3.11A, 4.3, 4.9, 4.10, 5.2, 5.4, 5.5, 5.6, 5.7, 5.20, 5.21, 5.22, 5.23, 5.24	Uniform Construction Code: administrative corrections	_____	_____	22 N.J.R. 2503(b)
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)		
5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14-3.18, 3.20, 4A.8	Uniform Construction Code: subcodes	22 N.J.R. 2208(a)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)	R.1990 d.325	22 N.J.R. 2001(a)
5:23-3.16	Electrical subcode: administrative correction	_____	_____	22 N.J.R. 2366(b)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)	R.1990 d.345	22 N.J.R. 2267(a)
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:23-9.5	Uniform Construction Code: records retention by code office	22 N.J.R. 1455(a)	R.1990 d.364	22 N.J.R. 2275(a)
5:24	Condominium and cooperative conversion	22 N.J.R. 1455(b)	R.1990 d.379	22 N.J.R. 2276(a)
5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10, 1.11	Mobile home park conversion or retirement from rental market	22 N.J.R. 2214(a)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)	R.1990 d.452	22 N.J.R. 2682(b)
5:26-2.2	Planned real estate development full disclosure: registration exemptions	22 N.J.R. 1872(a)	R.1990 d.408	22 N.J.R. 2505(a)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)	R.1990 d.383	22 N.J.R. 2276(b)
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)	R.1990 d.383	22 N.J.R. 2276(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:34	Local public contracts	22 N.J.R. 724(a)		
5:70-6.3	Congregate Housing Services Program: income and service subsidies	22 N.J.R. 1970(a)		
5:80-5.1, 5.2, 5.3, 5.8, 5.9, 5.10	Housing and Mortgage Finance Agency: transfer of ownership interests	22 N.J.R. 1971(a)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		
5:92-8.2	Council on Affordable Housing: administrative correction to adoption notice	_____	_____	22 N.J.R. 2143(b)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

Most recent update to Title 5: TRANSMITTAL 1990-6 (supplement June 18, 1990)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:3-1.11, 1.12, 1.24	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:3-2.1, 2.2, 2.5-2.8	Pupil records	22 N.J.R. 1302(a)	R.1990 d.380	22 N.J.R. 2344(a)
6:11	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:20	School business services	22 N.J.R. 1246(a)	R.1990 d.393	22 N.J.R. 2345(a)
6:22	School facility planning service	22 N.J.R. 1253(a)	R.1990 d.394	22 N.J.R. 2350(a)
6:22-1.1, 1.7	School facility planning: administrative corrections	_____	_____	22 N.J.R. 2359(a)
6:22-5.4	School facility planning service: administrative correction	_____	_____	22 N.J.R. 2683(a)
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5-2.9, 3.3-3.7, 3.9, 4.1, 4.2, 4.4-4.8, 5.1, 5.2, 6.1-6.5, 7.1, 7.4, 8.1, 8.4-8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)	R.1990 d.450	22 N.J.R. 2683(b)
6:29-2.4, 5.2	Health services: administrative corrections	_____	_____	22 N.J.R. 2359(a)
6:42	Repeal (see 6:43)	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:43	Vocational and technical programs and standards	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:68-2.4, 5.1, 5.8, 10.2	Library assistance: administrative corrections	_____	_____	22 N.J.R. 2359(a)

Most recent update to Title 6: TRANSMITTAL 1990-4 (supplement May 21, 1990)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1	Practice and procedure; hazardous substances discharge reporting; pesticides disposal	22 N.J.R. 1457(a)		
7:1C	Ninety-day construction permits	22 N.J.R. 731(a)	R.1990 d.343	22 N.J.R. 2143(c)
7:1E	Discharges of petroleum and other hazardous substances	22 N.J.R. 1651(a)	R.1990 d.398	22 N.J.R. 2284(a)
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)	R.1990 d.385	22 N.J.R. 2284(b)
7:5	Matching Grants Program for Local Environmental Agencies	22 N.J.R. 2392(a)		
7:6-3.13, 4.9	Boating and water skiing on Budd Lake	22 N.J.R. 1631(a)	R.1990 d.366	22 N.J.R. 2182(b)
7:7-2.3	Waterfront development	Emergency (expires 9-15-90)	R.1990 d.403	22 N.J.R. 2361(a)
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)	R.1990 d.446	22 N.J.R. 2753(a)
7:7E	Coastal zone management	22 N.J.R. 1188(a)	R.1990 d.413	22 N.J.R. 2542(b)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2	Shellfish growing water classification	22 N.J.R. 1304(a)	R.1990 d.399	22 N.J.R. 2285(a)
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:14A-2.1	Application for NJPDES permit: administrative corrections	_____	_____	22 N.J.R. 2001(b)
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)	R.1990 d.444	22 N.J.R. 2754(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)	R.1990 d.443	22 N.J.R. 2758(a)
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)	R.1990 d.442	22 N.J.R. 2816(a)
7:15-1.1, 1.5, 3.1, 3.2, 3.4, 3.5, 3.6, 3.8, 3.9, 4.1, 4.2, 5.2, 5.4, 5.6, 5.8, 5.14, 5.18, 5.19, 5.23	Statewide water quality management planning: administrative corrections	_____	_____	22 N.J.R. 2001(b)
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-5	1990-91 Game Code	22 N.J.R. 1459(a)	R.1990 d.404	22 N.J.R. 2288(a)
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)		
7:25-7.13	Crab dredging in Atlantic Coast section: administrative correction	_____	_____	22 N.J.R. 2005(a)
7:25-18.5	Gill netting: administrative correction	_____	_____	22 N.J.R. 2301(a)
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26-1.4, 7.4, 7.5, 7.6, 8.2, 8.3	Hazardous waste exports, imports; small quantity generators; farm pesticide waste	22 N.J.R. 1472(a)	R.1990 d.445	22 N.J.R. 2826(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-3A.8	Medical waste generator fees	22 N.J.R. 1478(a)	R.1990 d.358	22 N.J.R. 2145(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(a)	R.1990 d.324	22 N.J.R. 2005(b)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)	R.1990 d.342	22 N.J.R. 2145(b)
7:28	Radiation protection	22 N.J.R. 890(a)	R.1990 d.427	22 N.J.R. 2570(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-3.12	Ionizing radiation-producing machines: registration fees	22 N.J.R. 1653(a)	R.1990 d.400	22 N.J.R. 2302(a)
7:28-3.12	Ionizing radiation-producing machines: registration fees: administrative correction	_____	_____	22 N.J.R. 2830(a)
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, 9.3	Pesticide Control Program: certification, registration and permit fees	22 N.J.R. 1314(a)	R.1990 d.426	22 N.J.R. 2571(a)
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)		

Most recent update to Title 7: TRANSMITTAL 1990-6 (supplement June 18, 1990)

HEALTH—TITLE 8

8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)		
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:21	Food and drugs	22 N.J.R. 2465(a)		
8:31B	Hospital rate setting	22 N.J.R. 1480(a)		
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:33	Certificate of need application and review process	22 N.J.R. 1494(a)	R.1990 d.417	22 N.J.R. 2506(a)
8:33B-1	Extracorporeal shock wave lithotripsy services	22 N.J.R. 1495(a)	R.1990 d.418	22 N.J.R. 2506(b)
8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)		
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)		
8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)		
8:39-25.2	Nurse staffing requirements for long-term care facilities: suspension of enforcement	_____	_____	22 N.J.R. 2162(a)
8:41-8.1, 8.3	Mobile intensive care units: administration of medications	22 N.J.R. 1980(a)		
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)		
8:43A	Ambulatory care facilities: licensure standards	22 N.J.R. 1496(a)	R.1990 d.416	22 N.J.R. 2507(a)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)	R.1990 d.421	22 N.J.R. 2703(b)
8:43G-4.2	Patient rights (advisory)	21 N.J.R. 2160(b)	Expired	
8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)		
8:43G-7.4, 7.6, 7.11, 7.13, 7.27, 7.36	Cardiac services (advisory)	21 N.J.R. 2162(a)	Expired	
8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17, 9.22	Critical and intermediate care (advisory)	21 N.J.R. 2167(a)	Expired	
8:43G-15.6	Medical records (advisory)	21 N.J.R. 2171(a)	Expired	
8:43G-19.4, 19.6, 19.9, 19.11, 19.28	Obstetrics (advisory)	21 N.J.R. 2926(a)		
8:43G-19.35-19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)	R.1990 d.422	22 N.J.R. 2705(a)
8:43G-20.3, 20.5	Employee health (advisory)	21 N.J.R. 2173(a)	Expired	
8:43G-21.3, 21.6, 21.8, 21.10, 21.12, 21.14, 21.16	Oncology (advisory)	21 N.J.R. 2926(a)		
8:43G-22.4, 22.7, 22.11, 22.18, 22.21	Pediatrics (advisory)	21 N.J.R. 2926(a)		
8:43G-24.5, 24.7, 24.14	Plant maintenance and fire and emergency preparedness (advisory)	21 N.J.R. 2926(a)		
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.15, 28.17, 28.21	Radiology (advisory)	21 N.J.R. 2174(a)	Expired	
8:43G-29.2, 29.4, 29.7, 29.11, 29.14, 29.16, 29.18, 29.22	Physical and occupational therapy (advisory)	21 N.J.R. 2926(a)		
8:43G-30.4, 30.7, 30.10, 30.12	Renal dialysis (advisory)	21 N.J.R. 2926(a)		
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)	R.1990 d.423	22 N.J.R. 2708(a)
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)		
8:43G-32.6, 32.8, 32.15, 32.17, 32.19	Same-day stay (advisory)	21 N.J.R. 2177(a)	Expired	
8:43G-34.2, 34.10, 34.12	Surgery (advisory)	21 N.J.R. 2177(a)	Expired	
8:43G-35.5, 35.8	Postanesthesia care (advisory)	21 N.J.R. 2926(a)		
8:43I-1.3, 1.11	Hospital Policy Manual: inpatient obstetric units	22 N.J.R. 1891(a)		
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)		
8:51	Childhood lead poisoning	22 N.J.R. 1502(a)		
8:57-1.6	Reportable communicable diseases and immunization requirements: administrative correction	_____	_____	22 N.J.R. 2709(a)
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)	R.1990 d.453	22 N.J.R. 2710(a)
8:66-1.1	Intoxicated Driving Program: reopening of comment period	22 N.J.R. 1655(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b), 1597(a))	21 N.J.R. 3292(a)	R.1990 d.349	22 N.J.R. 2164(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b))	22 N.J.R. 596(a)	R.1990 d.348	22 N.J.R. 2163(a)
8:71	Interchangeable drug products	22 N.J.R. 1214(b)	R.1990 d.347	22 N.J.R. 2162(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)		

Most recent update to Title 8: TRANSMITTAL 1990-6 (supplement June 18, 1990)

HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)		
9:6-3.7, 3.9, 7	State college promotional and tenure policies; institutional plan	22 N.J.R. 1216(a)	R.1990 d.375	22 N.J.R. 2303(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)		
9:7-3.2	Tuition Aid Grant Program: 1990-91 award table	22 N.J.R. 1318(a)	R.1990 d.386	22 N.J.R. 2305(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)		
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)		

Most recent update to Title 9: TRANSMITTAL 1990-5 (supplement June 18, 1990)

HUMAN SERVICES—TITLE 10

10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)	R.1990 d.430	22 N.J.R. 2710(b)
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)	R.1990 d.431	22 N.J.R. 2712(a)
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)	R.1990 d.370	22 N.J.R. 2306(a)
10:44B	Community care residences for developmentally disabled	22 N.J.R. 756(a)	R.1990 d.359	22 N.J.R. 2164(b)
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:49	Medicaid program administration manual	22 N.J.R. 1512(a)	R.1990 d.390	22 N.J.R. 2313(a)
10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)	R.1990 d.326	22 N.J.R. 2009(a)
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51	Pharmacy Manual	22 N.J.R. 2217(a)		
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: non-legend drugs and products	22 N.J.R. 1217(a)	R.1990 d.391	22 N.J.R. 2314(a)
10:56-3.1, 3.3, 3.4, 3.10, 3.12	Dental services HCPCS codes	22 N.J.R. 1660(b)	R.1990 d.456	22 N.J.R. 2713(a)
10:60	Home Care Services Manual	22 N.J.R. 1663(a)		
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)		
10:63-1.2-1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)	R.1990 d.428	22 N.J.R. 2588(a)
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)	R.1990 d.327	22 N.J.R. 2009(b)
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)		
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	Emergency (expires 9-28-90)	R.1990 d.424	22 N.J.R. 2604(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1-14.8, 14.10-14.15, 14.17, 14.19-14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)		
10:81-10.7	Refugee Resettlement Program: eligibility for assistance	22 N.J.R. 1225(a)	R.1990 d.365	22 N.J.R. 2317(a)
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11-11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)		
10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)	R.1990 d.401	22 N.J.R. 2318(a)
10:81-14.18, 14.18A, 14.18B	REACH post-AFDC sliding fee scales	22 N.J.R. 1054(a)	R.1990 d.340	22 N.J.R. 2010(a)
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)		
10:85-4.6	Emergency shelter grants: administrative correction	_____	_____	22 N.J.R. 2171(a)
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)		
10:87-5.10, 6.15, 12.1-12.7	Food Stamp Program: annual adjustments	22 N.J.R. 1670(a)	R.1990 d.437	22 N.J.R. 2715(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121	Adoption of children	21 N.J.R. 3047(b)	R.1990 d.344	22 N.J.R. 2172(a)
10:121	Adoption of children: extension of comment period	22 N.J.R. 310(a)		
10:123	Social services program for individuals and families	22 N.J.R. 1520(a)	R.1990 d.388	22 N.J.R. 2318(b)
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendance Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:129	Child abuse and neglect cases	22 N.J.R. 1535(a)	R.1990 d.389	22 N.J.R. 2320(a)
10:130	Shelters for victims of domestic violence	22 N.J.R. 767(a)	R.1990 d.328	22 N.J.R. 2019(a)

Most recent update to Title 10: TRANSMITTAL 1990-6 (supplement June 18, 1990)

CORRECTIONS—TITLE 10A

10A:2-6	Inmate reimbursement for lost, damaged or destroyed personal property	22 N.J.R. 1320(a)	R.1990 d.363	22 N.J.R. 2321(a)
10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)		
10A:16-5.2, 5.5, 5.6, 5.7	Medical and health services: guardianship of an adult inmate	22 N.J.R. 1322(a)	R.1990 d.369	22 N.J.R. 2322(a)
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(a)		
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
10A:32-4.2	Transfer of juvenile under State sentence: public hearing	22 N.J.R. 2224(a)		

Most recent update to Title 10A: TRANSMITTAL 1990-6 (supplement June 18, 1990)

INSURANCE—TITLE 11

11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)	Expired	
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)		
11:3-8.2-8.7, App. A & B	Nonrenewal of automobile policies	22 N.J.R. 2224(b)		
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	22 N.J.R. 2231(a)		
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App. 11:3-20.9	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)		
11:3-25.4	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)		
	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)	Expired	
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 2086(a)		
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	22 N.J.R. 2108(a)		
11:3-35	Private passenger automobile insurance: underwriting rules	22 N.J.R. 2233(a)		
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	22 N.J.R. 2111(a)		
11:3-38	Automobile towing and storage fee schedule	22 N.J.R. 2455(a)		
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)	Expired	
11:4-16.6, 16.8, 23.6, 23.8, App. 11:4-18.4, 18.5	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-35	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:5-1.25	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.28	Repeal (see 11:5-6)	22 N.J.R. 1421(a)		
11:5-6	Approved real estate schools	22 N.J.R. 777(a)	R.1990 d.378	22 N.J.R. 2323(a)
11:10	Real estate sales full disclosure	22 N.J.R. 1421(a)		
11:13-6	Hospital/medical-dental services	22 N.J.R. 1691(a)	R.1990 d.384	22 N.J.R. 2326(a)
11:13-7	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Commercial lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:17A-1.2, 1.7	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		
	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
Most recent update to Title 11: TRANSMITTAL 1990-5 (supplement June 18, 1990)				
LABOR—TITLE 12				
12:15-1	Unemployment compensation and temporary disability insurance	22 N.J.R. 1895(b)	R.1990 d.419	22 N.J.R. 2508(a)
12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)	R.1990 d.420	22 N.J.R. 2508(b)
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)	R.1990 d.337	22 N.J.R. 2020(a)
12:35	Workfare: General Assistance Employability Program	22 N.J.R. 1430(a)	R.1990 d.396	22 N.J.R. 2326(b)
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46-12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:56	Wage and hour	22 N.J.R. 2235(a)		
12:57	Wage orders for minors	22 N.J.R. 2240(a)		
12:58	Child labor	22 N.J.R. 2241(a)		
12:190-3.15	Explosives: administrative correction concerning recordkeeping by permit holders			22 N.J.R. 2022(a)
12:196	Safe dispensing of retail gasoline	22 N.J.R. 1433(a)	R.1990 d.397	22 N.J.R. 2329(a)
12:200	Liquefied petroleum gas installations: standards of design and operations	22 N.J.R. 1984(a)	R.1990 d.436	22 N.J.R. 2744(a)
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)	R.1990 d.338	22 N.J.R. 2023(a)

Most recent update to Title 12: TRANSMITTAL 1990-5 (supplement June 18, 1990)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	22 N.J.R. 608(a)	R.1990 d.350	22 N.J.R. 2173(a)
12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)	R.1990 d.351	22 N.J.R. 2176(a)
12A:31-2.3, 3.3	Loan guarantee and direct loan programs: administrative corrections			22 N.J.R. 2330(a)
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)	R.1990 d.352	22 N.J.R. 2178(a)
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)

Most recent update to Title 12A: TRANSMITTAL 1990-1 (supplement April 16, 1990)

LAW AND PUBLIC SAFETY—TITLE 13

13:1-4.6	Physical conditioning instruction at police academies	22 N.J.R. 1435(a)		
13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)		
13:2	Alcoholic beverage control	22 N.J.R. 1811(a)	R.1990 d.412	22 N.J.R. 2508(c)
13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)		
13:13	Discrimination on the basis of handicap	22 N.J.R. 1436(a)	R.1990 d.360	22 N.J.R. 2181(a)
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:20-10	Automatic vehicle identification system for toll collection	22 N.J.R. 2133(a)		
13:21-1.3, 1.4, 1.5	Commercial driver licenses: disclosure and use of social security numbers	22 N.J.R. 2134(a)		
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)	R.1990 d.435	22 N.J.R. 2747(a)
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:27-5.5, 5.6	Architecture pre-examination requirements	22 N.J.R. 1326(a)	R.1990 d.341	22 N.J.R. 2181(b)
13:29-1.4	Board of Accountancy: licensee change of address	22 N.J.R. 1438(a)	R.1990 d.373	22 N.J.R. 2331(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)		
13:35-6.13	Board of medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)	R.1990 d.372	22 N.J.R. 2331(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:38	Board of Optometrists rules	22 N.J.R. 1866(a)		
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)		
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40	Professional engineers and land surveyors	22 N.J.R. 1867(a)	R.1990 d.434	22 N.J.R. 2747(b)
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:41	Board of Professional Planners rules	22 N.J.R. 1438(b)	R.1990 d.402	22 N.J.R. 2530(a)
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)	R.1990 d.371	22 N.J.R. 2331(c)
13:45A-21.4	Kosher poultry identification	22 N.J.R. 1439(a)	R.1990 d.433	22 N.J.R. 2747(c)
13:45B-6.1	Private employment agencies and personnel services forms: administrative correction regarding license fees			22 N.J.R. 2182(a)
13:46	Boxing, wrestling and sparring events	22 N.J.R. 1231(a)	R.1990 d.454	22 N.J.R. 2748(a)
13:47D	Repeal (see 13:47K)	22 N.J.R. 1440(a)		
13:47K	Weights and measures: packaged commodities	22 N.J.R. 1440(a)		
13:59-1	Criminal history checks for non-criminal matters	22 N.J.R. 1869(a)	R.1990 d.425	22 N.J.R. 2530(b)
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)		
13:70-3.44	Thoroughbred racing: public telephones at tracks	22 N.J.R. 2402(a)		
13:70-13.8	Thoroughbred racing: protest by jockey	22 N.J.R. 2402(b)		
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	22 N.J.R. 1716(b)		
13:70-19.23	Thoroughbred racing: declaring race official	22 N.J.R. 2403(a)		
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)		
13:71-22.1	Harness racing: public telephones at tracks	22 N.J.R. 2403(b)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	22 N.J.R. 1718(a)		
13:75-1.12	Violent Crimes Compensation Board: attorney fees	22 N.J.R. 2260(a)		
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		
13:81	Statewide 9-1-1 emergency telecommunication system	22 N.J.R. 1234(a)	R.1990 d.392	22 N.J.R. 2332(a)

Most recent update to Title 13: TRANSMITTAL 1990-5 (supplement June 18, 1990)

PUBLIC UTILITIES—TITLE 14

14:0	Energy conservation: preproposal and public hearing	22 N.J.R. 1692(a)		
14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television	22 N.J.R. 1330(b)	R.1990 d.415	22 N.J.R. 2575(a)

Most recent update to Title 14: TRANSMITTAL 1990-2 (supplement March 19, 1990)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1990-1 (supplement January 16, 1990)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

PUBLIC ADVOCATE—TITLE 15A

15A:2-1.1	Organization of department	Exempt	R.1990 d.374	22 N.J.R. 2338(a)
15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)	R.1990 d.367	22 N.J.R. 2339(a)
15A:2-1.2	Petitions for rulemaking: extension of comment period	22 N.J.R. 1694(a)		

Most recent update to Title 15A: TRANSMITTAL 1990-2 (supplement April 16, 1990)

TRANSPORTATION—TITLE 16

16:1	Records management	22 N.J.R. 2243(a)		
16:13	Rural Secondary Road System Aid	22 N.J.R. 1989(a)	R.1990 d.447	22 N.J.R. 2748(b)
16:21	State aid to counties and municipalities	22 N.J.R. 1896(a)	R.1990 d.439	22 N.J.R. 2749(a)
16:28-1.8, 1.27	Speed limit zones along Route 159 in Morris and Essex counties, Route 183 in Morris and Sussex counties	22 N.J.R. 2244(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28-1.20, 1.37, 1.81, 1.105	Speed limit zones along U.S. 322, Routes 182, 49, and 284	22 N.J.R. 1340(a)	R.1990 d.330	22 N.J.R. 2028(a)
16:28-1.41, 1.55, 1.69, 1.132	Speed limit zones along U.S. 9 in Cape May County, Route 54 in Atlantic County, U.S. 130 in Camden County, and Route 47 in Cumberland, Gloucester and Camden counties	22 N.J.R. 1694(b)	R.1990 d.382	22 N.J.R. 2339(b)
16:28-1.57	Speed limit zones along U.S. 30 in Camden County	22 N.J.R. 1343(a)	R.1990 d.331	22 N.J.R. 2030(a)
16:28-1.94	Speed limit zones along Route 10 in Morris and Essex counties	22 N.J.R. 1697(a)		
16:28-1.106, 1.132	Speed limit zones along Route 31 in Hunterdon County and Route 47 in Cape May County	22 N.J.R. 2245(a)		
16:28A-1.7, 1.11, 1.65	Restricted parking and stopping along U.S. 9 in Marlboro and Middle Township, Route 21 in Passaic, and Route 15 in Dover	22 N.J.R. 1897(a)	R.1990 d.438	22 N.J.R. 2749(c)
16:28A-1.13, 1.62	No stopping or standing zones along U.S. 22 in Warren, Hunterdon, Somerset and Union counties, and Route 12 in Hunterdon County	22 N.J.R. 2118(a)		
16:28A-1.33	Restricted stopping along Route 47 in Dennis Township	22 N.J.R. 1536(a)	R.1990 d.381	22 N.J.R. 2749(b)
16:28A-1.33, 1.41, 1.55	Restricted parking and stopping along Routes 47 in Vineland, 77 in Bridgeton, and U.S. 202 in Morris Plains	22 N.J.R. 1990(a)		
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	22 N.J.R. 1536(b)	R.1990 d.361	22 N.J.R. 2341(a)
16:30-3.6	Shoulder lane usage along U.S. 1 in West Windsor and Plainsboro	22 N.J.R. 1345(a)	R.1990 d.332	22 N.J.R. 2031(a)
16:30-3.6	Shoulder lane usage along U.S. 1: administrative correction to adoption notice			22 N.J.R. 2183(a)
16:30-10.12	Mid-block crosswalks along Route 47 in Glassboro and Deptford	22 N.J.R. 1992(a)		
16:38-1.1, 1.5	Roadside and drainage maintenance	22 N.J.R. 2246(a)		
16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
16:41B	Newspaper boxes on State highways	22 N.J.R. 1346(a)	R.1990 d.333	22 N.J.R. 2032(a)
16:44-3.1-3.5, 7.2, 7.3	Construction services	22 N.J.R. 2247(a)		
16:44-8.1, 8.2, 8.3	Construction services: vendor ethical standards	22 N.J.R. 1898(a)	R.1990 d.429	22 N.J.R. 2750(a)
16:47	State Highway Access Management Code	22 N.J.R. 1061(b)		
16:47	State Highway Access Management Code: public hearings	22 N.J.R. 1346(b)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1347(a)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1699(a)		
16:53D-1	Regular route autobus carriers: zone of rate freedom	22 N.J.R. 1993(a)		
16:62-7.2	Air safety zone for Somerset Airport	22 N.J.R. 1899(a)	R.1990 d.441	22 N.J.R. 2751(b)
16:72	NJ TRANSIT: procurement policies and procedures	22 N.J.R. 2460(a)		

Most recent update to Title 16: TRANSMITTAL 1990-6 (supplement June 18, 1990)

TREASURY-GENERAL—TITLE 17

17:1-1.10	State retirement systems: debt repayment by retired members	22 N.J.R. 2404(b)		
17:1-1.19, 1.21, 1.22, 1.23, 1.24	Pensioners' Group Health Insurance Plan	22 N.J.R. 1347(b)	R.1990 d.395	22 N.J.R. 2342(a)
17:1-2.36	Alternate Benefit Program: transferred funds	22 N.J.R. 2405(a)		
17:1-12.7	Police and Firemen's Retirement System: entry age limit and transfers	22 N.J.R. 1454(a)	R.1990 d.376	22 N.J.R. 2342(b)
17:2-3.2, 6.24	Public Employees' Retirement System: computation of final compensation	22 N.J.R. 1348(a)	R.1990 d.377	22 N.J.R. 2342(c)
17:4	Police and Firemen's Retirement System	22 N.J.R. 908(a)	R.1990 d.329	22 N.J.R. 2032(b)
17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)		
17:5-5.5	State Police Retirement System: outstanding loans at retirement	22 N.J.R. 1348(b)		
17:8	Supplemental Annuity Collective Trust program	22 N.J.R. 1900(a)		
17:9-4.2	State Health Benefits Program: "full-time employee"	22 N.J.R. 1903(a)		
17:9-6.7	Police and Firemen's and State Police retirement systems: health insurance coverage for accidental death benefit recipients	22 N.J.R. 1903(b)		
17:16-27.1	State funds investment: certificates of deposit	22 N.J.R. 1349(a)	R.1990 d.335	22 N.J.R. 2032(c)
17:16-51	State pension fund investments: guaranteed income contracts	22 N.J.R. 1044(a)		
17:28	Public Employee Charitable Fund-Raising Campaign	22 N.J.R. 1994(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:29	Charitable fund-raising among local government employees	22 N.J.R. 2248(a)		
17:32-3, 4	Municipal and county cross-acceptance of State Development and Redevelopment Plan	22 N.J.R. 621(c)	R.1990 d.336	22 N.J.R. 2033(a)
17:40	Governor's Council on Alcoholism and Drug Abuse	22 N.J.R. 2120(a)		

Most recent update to Title 17: TRANSMITTAL 1990-4 (supplement June 18, 1990)

TREASURY-TAXATION—TITLE 18

18:1-1.8	Administrative hearings	22 N.J.R. 1995(a)		
18:5-8.10	Administrative hearings	22 N.J.R. 1995(a)		
18:7-1.15, 3.8	Corporation Business Tax: investment companies	22 N.J.R. 1904(a)		
18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)		
18:7-11.12, 11.15, 12.1, 12.3	Corporation Business Tax: IRC 338(h)(10) election	22 N.J.R. 2125(a)		
18:7-13.2	Administrative hearings	22 N.J.R. 1995(a)		
18:8-5.1, 5.2	Administrative hearings	22 N.J.R. 1995(a)		
18:9-6.7-6.10	Administrative hearings	22 N.J.R. 1995(a)		
18:12A-1.14	Local property tax revaluation and reassessment	22 N.J.R. 1350(a)	R.1990 d.339	22 N.J.R. 2183(b)
18:21-1	Automobile insurance premium surtax	22 N.J.R. 1351(a)		
18:22-1.3	Public utility corporations: "public street, highway, road or other public place"	22 N.J.R. 2249(a)		
18:23-1.1, 3.6, 5.6, 6.3, 7, 8.1, 8.2, 8.6, 11.2, 11.3, App.	Railroad Property Tax	22 N.J.R. 2250(a)		
18:23A-1	Tax maps	22 N.J.R. 1997(a)	R.1990 d.449	22 N.J.R. 2751(b)
18:26-9.8	Post tax amnesty: administrative correction			22 N.J.R. 2752(a)
18:37	Spill Compensation and Control Tax	22 N.J.R. 1908(a)	R.1990 d.407	22 N.J.R. 2531(a)

Most recent update to Title 18: TRANSMITTAL 1990-3 (supplement June 18, 1990)

TITLE 19—OTHER AGENCIES

19:4	Hackensack Meadowlands District zoning rules: administrative corrections			22 N.J.R. 2184(a)
19:4-6.28	Hackensack Meadowlands Development Commission: rezone sites in Ridgefield	22 N.J.R. 1699(b)		
19:6-1, 3	Hackensack Meadowlands District Building Code	22 N.J.R. 2126(a)		
19:8-1.1	Garden State Parkway: services vehicles north of interchange 105	22 N.J.R. 2128(a)		
19:8-3.2	Toll-free passage on Garden State Parkway: administrative correction			22 N.J.R. 2187(a)
19:11-6.1, 7.2, 7.3	Public Employment Relations Commission: hearing transcripts	22 N.J.R. 1910(a)	R.1990 d.406	22 N.J.R. 2531(b)
19:14-6.5, 7.2, 7.3	Public Employment Relations Commission: hearing transcripts	22 N.J.R. 1910(a)	R.1990 d.406	22 N.J.R. 2531(b)
19:25	Election Law Enforcement Commission rules	22 N.J.R. 2251(a)		
19:25-1.7, 7.8	Election Law Enforcement Commission: personal interest disclosure statement	22 N.J.R. 331(a)		
19:25-1.7, 7.8	Personal interest disclosure statement: public hearing	22 N.J.R. 1242(b)		
19:30	Economic Development Authority: organization and procedure	22 N.J.R. 1537(a)	R.1990 d.411	22 N.J.R. 2532(a)
19:31	Economic Development Authority: assistance programs	22 N.J.R. 1545(a)	R.1990 d.410	22 N.J.R. 2536(a)
19:75-1.1, 4.4, 6.2, 9.2, 9.3, 9.4, 10	Fee schedule for review of applications	22 N.J.R. 1999(a)		

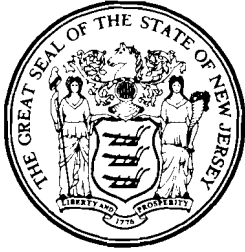
Most recent update to Title 19: TRANSMITTAL 1990-5 (supplement May 21, 1990)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:41-1.3	Casino employees license display	22 N.J.R. 1911(a)	R.1990 d.448	22 N.J.R. 2752(b)
19:41-7.14	Personal history disclosure forms	22 N.J.R. 1551(a)		
19:45-1.1, 1.26, 1.26A	Redemption of checks	22 N.J.R. 1911(b)		
19:45-1.1, 1.34, 1.35, 1.46, 1.46A	Automated coupon redemption machine: 90-day experiment	Expires 11-25-90		22 N.J.R. 2542(a)
19:45-1.11A	Casino licensees and applicants: jobs compendium submissions	22 N.J.R. 2253(a)		
19:45-1.12	Gaming supervision	21 N.J.R. 3080(a)	R.1990 d.323	22 N.J.R. 2039(a)
19:45-1.24A	Wire transfer of funds	22 N.J.R. 1700(a)		
19:45-1.27	Bank verification services	22 N.J.R. 162(a)	R.1990 d.362	22 N.J.R. 2342(d)
19:45-1.39	Progressive slot machines: resetting of meters	22 N.J.R. 2253(b)		
19:46-1.10	Double-spot blackjack layout: 90-day experiment	Expires 11-11-90		22 N.J.R. 2343(a)
19:47-1.6	Five times odds at craps: 90-day experiment	Expires 10-21-90		22 N.J.R. 2187(b)
19:47-1.6	Five times odds at craps	22 N.J.R. 2254(a)		
19:47-2.14	Double-spot blackjack layout: 90-day experiment	Expires 11-11-90		22 N.J.R. 2343(a)
19:47-8.2	Minimum and maximum wagers: administrative correction			22 N.J.R. 2343(b)

Most recent update to Title 19K: TRANSMITTAL 1990-6 (supplement June 18, 1990)

NOTES



OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

NEW JERSEY ADMINISTRATIVE CODE

☐ **FULL SET (INCLUDES ALL TITLES BELOW) \$1500**
INDIVIDUAL TITLES

1. Administrative Law	\$ 65
2. Agriculture	\$ 65
3. Banking	\$ 65
4A. Personnel (formerly Civil Service)	\$ 65
5. Community Affairs (two volumes)	\$130
5A. Military and Veterans' Affairs	\$ 65
6. Education (two volumes)	\$130
7. Environmental Protection (six volumes)	\$390
8. Health (four volumes)	\$260
9. Higher Education	\$ 65
10. Human Services (four volumes)	\$260
10A. Corrections	\$ 65
11. Insurance (two volumes)	\$130
12. Labor (two volumes)	\$130
12A. Commerce, Energy and Economic Development	\$ 65
13. Law and Public Safety (four volumes)	\$260
Alcoholic Beverage Control and Amusement Games Control only	\$ 65
14/14A. Public Utilities/Energy	\$ 65
15. State	\$ 65
15A. Public Advocate	\$ 65
16. Transportation (two volumes)	\$130
17. Treasury-General	\$ 65
18. Treasury-Taxation (two volumes)	\$130
19. Expressway Authority, Hackensack Meadowlands Commission, Highway Authority, Turnpike Authority, Public Employment Relations Commission, Sports and Exposition Authority, Election Law Enforcement Commission, Economic Development Authority, Public Broadcasting Authority, Executive Commission on Ethical Standards, Atlantic County Transportation Authority (two volumes)	\$130
19K. Casino Control Commission	\$ 65
Gubernatorial Executive Orders	\$ 65
Full Code Index	\$ 65

(Prices include first year of Update Service. Thereafter,
Annual Update Service, \$35 per volume. Full Set, \$650.)

New Jersey Register (one year, 24 issues)

By second class mail, \$90 ☐

By first class mail, \$180 ☐

NEW JERSEY ADMINISTRATIVE REPORTS

I. Full Set of NJAR. Eleven hardbound volumes and quarterly update service for one year. Hardbound volumes include a table of contents for the volume. Quarterly looseleaf update service includes a cumulative listing of statutes cited; cumulative listing of rules cited; cumulative topical index, and cumulative listing of cases reported \$400 ☐

II. Looseleaf Update Service Only: Quarterly update service and bound volume(s) of decisions issued in quarterly service for one year. Cumulative indices \$200/year ☐

III. Individual Hardbound Volumes (1-11) can be purchased separately. Each volume has a table of contents \$45/volume (specify volume or volumes desired) ☐

Prepayment is required
for all subscriptions.

Please return form with your payment to:

OAL Publications
9 Quakerbridge Plaza
CN 049
Trenton, New Jersey 08625

Name and Delivery Address:

Billing Address, if different:

Telephone Number _____

Amount Enclosed _____

If you want multiple copies of a Title, please specify on the
"Amount Enclosed" line. Example: \$130 (two copies,
Title 1).