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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **November 18, 1992.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Acting Governor Donald T. DiFrancesco
Executive Order No. 64(1992)
Tribute to Millicent H. Fenwick

Issued: September 16, 1992.
Effective: September 16, 1992.
Expiration: Indefinite.

WHEREAS, Millicent H. Fenwick served the people of New Jersey as a Member of Congress from 1974 until 1978, and as the United Nations Ambassador to the United Nations Food and Agricultural Organization until 1987, and as a Member of the New Jersey General Assembly for two and one-half terms, and as the Director of the State's Division of Consumer Affairs; and

WHEREAS, during her years of public service she was a vigorous advocate for human rights which advocacy resulted in the formation of the Helsinki Commission to monitor compliance with the 1975 Helsinki accord on human rights; and indeed, for her work in this regard, people oppressed in the most remote regions of the world, who knew nothing of our distinguished colleague, owe her a debt of gratitude; and

WHEREAS, by her stature and presence she served as an example of the rightful and prominent role for women in the highest positions of public responsibility; and

WHEREAS, her characteristic wit, keen intellect and abundant charm both disarmed her critics and enlightened all of those who had occasion to hear her calls for adherence to the highest ethical standards and concern for the environment; and

WHEREAS, in spite of her significant stature among her colleagues and admirers, both in the United States Congress, the General Assembly and the international community, she was the embodiment of sincerity, and a friend to all who had the privilege to know her; and

WHEREAS, scarcely has there been a public figure whose unique mark will be so indelibly etched in the State's political landscape; and

WHEREAS, sadly, the singular likes of Millicent Fenwick we shall not see again, it is fitting and appropriate for the State of New Jersey to mark and mourn her passing;

NOW, THEREFORE, I, DONALD T. DiFRANCESCO, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-mast at all State departments, offices, agencies and instrumentalities during appropriate hours beginning on Wednesday, September 16, 1992, through and including Friday, September 18, 1992, in recognition and in mourning of the passing of a distinguished legislator and public servant.

2. This Order shall take effect immediately.

REORGANIZATION PLAN

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Notice of a Plan for the Reorganization of the Department of Law and Public Safety

Take notice that, on October 1, 1992, Governor James J. Florio hereby issues the following Reorganization Plan (No. 002-1992) providing for the reorganization of the Department of Law and Public Safety.

GENERAL STATEMENT OF PURPOSE

This Reorganization Plan is representative of ongoing efforts to streamline and downsize to the greatest extent practicable the structure and functions of the Executive Branch in furtherance of the public's interest in efficiency and economy, without quantitative or qualitative diminution of services to the public. A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap, and to promote efficiency and economy.

This Reorganization Plan is the result of comprehensive, in-depth review and analysis of the structure of the Department of Law and Public Safety with a view toward establishing an organizational framework that allows for the optimal efficiency in the management and performance of the Department's varied functions and duties. The Plan provides for reallocations of functions so as to promote the efficient and expeditious delivery of services to the public while concomitantly achieving the greatest possible economy. Additionally, the Plan provides for the elimination of advisory committees, boards or commissions whose functions or purposes are superfluous or duplicative.

This Reorganization Plan will reduce the Department of Law and Public Safety by two divisions. First, the Plan provides for the transfer of the Division of Alcoholic Beverage Control to and into the Bureau of Alcoholic Beverage Control in the Division of Consumer Affairs, with regulatory responsibilities under the Amusement Games Licensing Law transferred to the Legalized Games of Chance Control Commission. Next, under the Plan, the State Athletic Control Board will be situated in the Division of Gaming Enforcement, with the Division assuming the investigative and enforcement functions of the Board, which parallel those currently performed by the Division under the Casino Control Act.

The Plan also revises and expands the operations of the Office of Consumer Protection by transferring to it the licensing, registration and enforcement functions of the Bureau of Employment and Personnel Services. The Plan further provides for the transfer of administrative responsibilities under the Drunk Driving Enforcement Fund from the Director of the Division of Motor Vehicles to the Office of Highway Traffic Safety, which will result in a unified and coordinated approach to the Department's responsibilities with respect to highway safety and related grant programs.

Finally, in furtherance of the goal of downsizing and streamlining to the greatest extent possible while preserving a high level of public service, this Reorganization Plan provides for the elimination of the following committees, boards and commissions:

(1) the Crime Prevention Advisory Committee;
(2) the Bulk Commodities Advisory Board;
(3) the Security Advisory Committee;
(4) the Bio-Analytical Laboratory Advisory Committee;
(5) the Commission on Missing Persons;
(6) the Orthoptic Commission; and
(7) the State Law Enforcement Planning Agency.

With respect to each of the reallocations and eliminations provided for in this Reorganization Plan, I find that one or more of the following purposes will be accomplished:

(1) the better execution of the laws, the more effective management of the Executive Branch and of its agencies and functions, and the expeditious administration of the public business;

(2) a reduction of expenditures and/or an increase in economy to the fullest extent consistent with the efficient operation of the Executive Branch;

(3) an increase in the efficiency of the operations of the Executive Branch to the fullest extent practicable;

(4) the grouping, coordination and consolidation of agencies and functions of the Executive Branch as nearly as possible according to major purposes;

(5) a reduction in the number of agencies by consolidating those having similar functions under a single head, and the abolition of such agencies or functions as are not necessary for the efficient conduct of the Executive Branch; and

(6) the elimination of overlapping and duplication of effort.

For clarity, specific statements of purpose immediately precede the provisions of each reorganization contained in this Plan.

THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

A. Pursuant to present statutory authority, the Division of Alcoholic Beverage Control in the Department of Law and Public Safety has plenary regulatory authority over the alcoholic beverage industry in this State. The Director of the Division of Alcoholic Beverage Control is charged with supervising the manufacture, distribution and sale of alcoholic beverages in order to fulfill public policy as expressed by the Legislature. The Division's broadbased regulatory duties involve licensing, enforcement, rulemaking and adjudications.

The Division of Consumer Affairs in the Department of Law and Public Safety is responsible for regulating and overseeing a variety of industries, and includes such entities as the Bureau of Securities, the Office of Weights and Measures, and numerous professional and occupational licensing boards. The regulatory duties performed by the Division of Alcoholic Beverage Control parallel many of those of the Division of Consumer Affairs.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and maximize efficiency and economy. Transferring the Division of Alcoholic Beverage Control to and into the Division of Consumer Affairs will streamline the Executive Branch and enable its regulatory responsibilities to be performed more efficiently and economically.

Therefore, I hereby order the following reorganization:

1.a. There is established in the Division of Consumer Affairs in the Department of Law and Public Safety a Bureau of Alcoholic Beverage Control. All of the functions, powers and duties of the Division of Alcoholic Beverage Control, as set forth in P.L. 1948, c.439, sec. 17 (C. 52:17B-17) and Title 33 of the Revised Statutes, except as provided below, are continued and transferred to the Bureau of Alcoholic Beverage Control in the Division of Consumer Affairs in the Department of Law and Public Safety. The Bureau shall be under the immediate direction and supervision of its principal executive officer, who shall be known as the Commissioner of Alcoholic Beverage Control. The Commissioner shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve during the term of office of the Governor and until a successor is appointed and has qualified, but may be removed from office by the Governor, for cause, upon notice and opportunity to be heard. The Commissioner shall administer the work of the Bureau under the direction and supervision of the Attorney General and the Director of the Division of Consumer Affairs.

b. The powers, functions and duties of the Director of the Division of Alcoholic Beverage Control pursuant to P.L. 1948, c.439, secs. 16 and 17 (C. 52:17B-16 and -17) and Title 33 of the Revised Statutes with respect to (1) adjudicating after a hearing required by statute, (2) granting or denying any application for a license, permit, transportation insignia, or removal of a disqualification, (3) extending, transferring, suspending, revoking or reinstating any license or permit and (4) promulgating regulations, are continued and transferred to the Commissioner of Alcoholic Beverage Control. The power of the Director of the Division of Alcoholic Beverage Control pursuant to section 4 of P.L. 1985, c.76 (C. 53:1-11.6) to request that investigations be initiated relating to the enforcement of Title 33 of the Revised Statutes is continued and transferred to the Commissioner of Alcoholic Beverage Control, except that all such requests shall be made to the Attorney General or the Attorney General's designee. All other powers, functions and duties of the Director of the Division of Alcoholic Beverage Control, except as provided below, are continued and transferred to the Attorney General, who may exercise some or all of those powers, functions and duties through the Director of the Division of Consumer Affairs, the Com-

missioner of Alcoholic Beverage Control or such other employees of the Department of Law and Public Safety as the Attorney General may designate.

c. The Division of Alcoholic Beverage Control in the Department of Law and Public Safety, established by P.L. 1948, c.439, secs. 3, 15, 16, 17 and 18, as amended and supplemented (C. 52:17B-3, 52:17B-15 to 52:17B-18), is abolished. The position of Director of the Division of Alcoholic Beverage Control, created by P.L. 1948, c.439, secs. 16 and 17 (C. 52:17B-16 and 52:17B-17) is abolished and the incumbent's term of office is terminated.

d. The power of the Director of the Division of Alcoholic Beverage Control to appoint deputy directors and the position of deputy director established by R.S. 33:1-4(b) are abolished and any terms of office held pursuant to R.S. 33:1-4(b) are terminated. The Attorney General may appoint not more than three Assistant Commissioners of Alcoholic Beverage Control to assist the Commissioner in the performance of the Commissioner's duties. Such Assistant Commissioners shall serve at the pleasure of the Attorney General, and shall not be subject to the provisions of Title 11A, Civil Service. Pursuant to section 1 of P.L. 1943, c.37 (as amended and supplemented by section 2 of P.L. 1953, c.32) (C. 33:1-35), the Attorney General may designate one such Assistant Commissioner, or such other person as the Attorney General may determine, to perform all of the duties of the Commissioner in the case of the Commissioner's absence or inability to act for any cause, including death.

e. The power of the Director of the Division of Alcoholic Beverage Control to appoint investigators pursuant to R.S. 33:1-4(d) is continued and transferred to the Attorney General. Such investigators shall perform such functions and duties and exercise such powers set forth in R.S. 33:1-4(d) as the Attorney General may designate. In addition to appointing such investigators, the Attorney General may delegate some or all of the functions, powers and duties of such investigators to other employees of the Department of Law and Public Safety, pursuant to section 4 of P.L. 1971, c.134 (C. 52:17B-121).

f. The power of the Director of the Division of Alcoholic Beverage Control to appoint executive assistants established by R.S. 33:1-4(d) is continued and transferred to the Attorney General, except that the authority of executive assistants pursuant to R.S. 33:1-4(d) to investigate, and to arrest, without warrant, for violations of Title 33 of the Revised Statutes, and to exercise all the authority and powers of peace officers to enforce Title 33, is abolished.

g. The power of the Director of the Division of Alcoholic Beverage Control to appoint experts and specialists established by R.S. 33:1-4(e) is continued and transferred to the Attorney General. The power of the Director of the Division of Alcoholic Beverage Control to appoint counsel and other legal assistants established by R.S. 33:1-4(f) and the positions and powers of counsel and legal assistant to the Division of Alcoholic Beverage Control are abolished.

h. The power of the Director of the Division of Alcoholic Beverage Control to appoint a clerical force and other employees established by R.S. 33:1-4(c) is continued and transferred to the Attorney General, who may exercise this power in conjunction with the Attorney General's general authority pursuant to section 4 of P.L. 1971, c.134 (C. 52:17B-121) to organize the work of the Division of Consumer Affairs and to assign to the Division such employees of the Department of Law and Public Safety as may be necessary to assist the Director in the performance of the Director's duties.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, transfer of the Division of Alcoholic Beverage Control to and into the Division of Consumer Affairs will coordinate the general regulatory responsibilities pertaining to alcoholic beverages with those involving other regulated industries and professions in this State, resulting in a more efficient Executive Branch and an increase in economy.

2. Any unexpended funds appropriated or otherwise available to the Division of Alcoholic Beverage Control, as determined by the Attorney General, are transferred to the Bureau of Alcoholic Beverage Control in the Division of Consumer Affairs on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Division of Alcoholic Beverage Control in the Department of Law and Public Safety, the same shall mean and refer to the Bureau of Alcoholic Beverage Control in the Division of Consumer Affairs. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Director of the Division of Alcoholic Beverage Control, the same shall mean and refer to the Commissioner of Alcoholic Beverage Control in the Division of Consumer Affairs or to the Attorney General, as appropriate under the terms of this Reorganization Plan.

B. Pursuant to present statutory authority, P.L. 1959, chs. 108, 109 and 113, as supplemented and amended (C. 5:8-78 to -130), the Amusement Games Control Commissioner, who is also the Director of the Division of Alcoholic Beverage Control, has general regulatory and enforcement authority with respect to the Amusement Games Licensing Law. The responsibilities of the Amusement Games Control Commissioner involve licensing, regulatory and adjudicatory functions as well as investigatory and compliance functions under that law and the regulations promulgated thereunder.

Pursuant to P.L. 1954, c.7, as supplemented and amended, (C. 5:8-1 et seq.), the Legalized Games of Chance Control Commission in the Department of Law and Public Safety possesses parallel authority for the Bingo Licensing Law and the Raffles Licensing Law. The Commission is authorized to conduct investigations of the administration of the Bingo Licensing Law and the Raffles Licensing Law, to receive and investigate complaints as to violations and evasions of said laws in any municipality or municipalities, and to institute prosecutions for the punishment of violations of those laws.

This reorganization is part of an overall plan to consolidate within one governmental body all of the functions and duties of the Department of Law and Public Safety with respect to the Amusement Games Licensing Law, Bingo Licensing Law and Raffles Licensing Law. Transfer of the functions under the Amusement Games Licensing Law from the Amusement Games Control Commissioner to the Legalized Games of Chance Control Commission will provide for the consolidation within one agency of the similar functions related to those three statutes, and will vest similar duties in a single State agency, thereby eliminating duplication and overlap and promoting efficiency and/or economy.

Therefore, I hereby order the following reorganization:

1.a. The Office of the Amuseument Games Control Commissioner, created pursuant to P.L. 1959, c.108, sec. 1 (C. 5:8-78), is abolished and the term of office of the Amusement Games Control Commissioner is terminated.

b. All of the functions, powers and duties of the Amusement Games Control Commissioner pursuant to P.L. 1959, chs. 108, 109 and 113, as supplemented and amended (C. 5:8-78 to -130), are continued and transferred to the Legalized Games of Chance Control Commission in the Division of Consumer Affairs in the Department of Law and Public Safety, except the power granted to the Amusement Games Control Commissioner pursuant to P.L. 1959, c.108, sec. 17 (C. 5:8-94), to appoint an executive officer and any such term of office is terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, the transfers provided for herein will consolidate similar regulatory functions within one agency, resulting in the more efficient and/or economic functioning of the Executive Branch.

2. Any unexpended funds appropriated or otherwise available to the Amusement Games Control Commissioner, as determined by the Attorney General, are transferred to the Legalized Games of Chance Control Commission, on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Amusement Games Control Commissioner, the same shall mean and refer to the Legalized Games of Chance Control Commission.

C. Pursuant to present statutory authority, P.L. 1985, c.83, as supplemented and amended by P.L. 1988, c.20 (C. 5:2A-3 to -31), the State Athletic Control Board in the Department of Law and Public Safety was created to regulate and supervise events, exhibitions and other performances involving combative sports such as boxing, wrestling and kick boxing in order to protect the well-being of the participants and to promote public confidence and trust in the integrity of these events. The Board's regulatory functions involve licensing, rulemaking and oversight of compliance with the laws and regulations governing these activities.

Under the Casino Control Act, P.L. 1977, c.110, as supplemented and amended (C. 5:12-1 et seq.), the Division of Gaming Enforcement in the Department of Law and Public Safety is the investigative half of the two part regulatory structure established to regulate and oversee casinos and all persons and entities doing business therewith. Inspection functions performed by the State Athletic Control Board are largely similar in nature to those of the Division of Gaming Enforcement and,

because many boxing matches are held in casinos, the functions of these two separate agencies frequently overlap.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and maximize efficiency and economy. Transferring the State Athletic Control Board to the Division of Gaming Enforcement, and reassigning inspection and enforcement responsibilities with respect to the activities regulated by the Board to that Division, will streamline the Department and promote overall efficiency and economy by aligning similar functions within one agency.

Therefore, I hereby order the following reorganization:

1.a. The State Athletic Control Board in the Department of Law and Public Safety, created pursuant to P.L. 1985, c.83, sec. 3 (C. 5:2A-3), together with the State Athletic Control Board Medical Advisory Council, created pursuant to P.L. 1985, c.83, sec. 8 (C. 5:2A-8), and its powers, functions and duties pursuant to P.L. 1985, c.83, as supplemented and amended by P.L. 1988, c.20 (C. 5:2A-3 to -31), with respect to licensing participants and regulating the conditions under which boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests may be held; and to causing to be inspected premises, equipment or documents relevant thereto; and to conducting hearings; are continued and transferred to and into the Division of Gaming Enforcement in the Department of Law and Public Safety.

b. The position of Commissioner of the State Athletic Control Board established by section 5 of P.L. 1985, c.83 is continued, except that the Commissioner shall be appointed by the Attorney General with the concurrence of the State Athletic Control Board, shall serve at the pleasure of the Attorney General, and shall be subject to the direction and supervision of the Attorney General and the Director of the Division of Gaming Enforcement.

c. The powers granted to the State Athletic Control Board pursuant to P.L. 1985, c.83, sec. 5 (C. 5:2A-5), to appoint deputy commissioners, a chief inspector and inspectors, judges, referees and physicians, and any other personnel, are continued and transferred to the Attorney General, to be exercised through the Director of the Division of Gaming Enforcement. Judges, referees and physicians so appointed shall not be deemed to be public employees for purposes of N.J.S.A. 34:13A-1 et seq.

d. The power granted to the State Athletic Control Board pursuant to P.L. 1985, c.83, sec. 5 (C. 5:2A-5), to exchange data and receive information from the Federal Bureau of Investigation is continued and transferred to the Attorney General, to be exercised through the Division of Gaming Enforcement.

e. The functions, powers and duties of the State Athletic Control Board pursuant to P.L. 1985, c.83, as supplemented and amended by P.L. 1988, c.20 (C. 5:2A-1 et seq.) to investigate under the laws and regulations related to boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests; to conduct background checks and investigate the background of participants; and to make periodic inspections of training facilities; are continued and transferred to the Attorney General, to be exercised through the Division of Gaming Enforcement.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that transferring the State Athletic Control Board to and into the Division of Gaming Enforcement, and transferring its investigatory and enforcement functions to that Division, will align similar functions within one agency, resulting in a reduction of expenditures and/or an increase in economy, thereby promoting the overall efficiency of the Executive Branch.

2. Any unexpended balance of funds appropriated or otherwise available to the State Athletic Control Board, including funds from the State Athletic Control Board Account pursuant to P.L. 1985, c.83, sec. 19 (C. 5:2A-19), are transferred to the State Athletic Control Board in the Division of Gaming Enforcement, or to the Division of Gaming Enforcement as necessary to perform the functions transferred to the Division under this Reorganization Plan, as determined by the Attorney General.

3. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the licensing, regulatory or adjudicative authority of the State Athletic Control Board, the same shall mean and refer to the State Athletic Control Board in the Division of Gaming Enforcement. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the inspection, investigation and enforcement functions of the State Athletic Control Board, the same shall mean and refer to the Division of Gaming Enforcement, as supervised and directed by the Attorney General.

D. Pursuant to present statutory authority, P.L. 1989, c.331 (C. 52:17B-139.4 to -139.5; C. 34:8-43 et seq.), the Bureau of Employment and Personnel Services in the Division of Consumer Affairs in the Department of Law and Public Safety is charged with licensing private agencies and agents who provide employment services, registering other entities that engage in consulting, placement, or other services pertaining to the obtaining employment, and otherwise enforcing the laws of this State governing employment services. At the same time, the Office of Consumer Protection in the Division of Consumer Affairs has broad reach through its investigatory and enforcement functions with respect to a wide range of consumer protection matters.

Consolidating the functions of the Bureau of Employment and Personnel Services with those of the Office of Consumer Protection will result in a more efficient system for enforcing the laws governing employment and personnel services. The consolidation will provide for a greater coordination of functions in the Division of Consumer Affairs and will promote the efficiency and/or economy of the Executive Branch.

Therefore, I hereby order the following reorganization:

1.a. The Bureau of Employment and Personnel Services in the Division of Consumer Affairs in the Department of Law and Public Safety, created by P.L. 1989, c.331, sec. 2 (C. 52:17B-139.4), is abolished. All of the powers, functions and duties of the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, set forth in P.L. 1989, c.331 (C. 52:17B-139.4 to -139.5; C. 34:8-43 et seq.), are continued and transferred to the Office of Consumer Protection in the Division of Consumer Affairs in the Department of Law and Public Safety.

b. The position of Chief of the Bureau of Employment and Personnel Services, created by P.L. 1989, c.331, sec. 2 (C. 52:17B-139.4) is abolished and any term of office terminated. The powers vested in the Chief of the Bureau of Employment and Personnel Services are continued and transferred to the Executive Director of the Office of Consumer Protection in the Division of Consumer Affairs.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that transfer of the functions of the Bureau of Employment and Personnel Services to the Office of Consumer Protection will promote the efficient performance of those functions and of the Division of Consumer Affairs in general.

2. Any unexpended funds appropriated or otherwise available to the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, as determined by the Attorney General, are transferred to the Office of Consumer Protection in the Division of Consumer Affairs on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise reference is made to the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, the same shall mean and refer to the Office of Consumer Protection in the Division of Consumer Affairs. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding reference is made to the Chief of the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, the same shall mean and refer to the Executive Director of the Office of Consumer Protection in the Division of Consumer Affairs.

E. Pursuant to present statutory authority, P.L. 1984, c.4, sec. 1 (C. 39:4-50.8), the Director of the Division of Motor Vehicles is authorized to receive funds generated through surcharges imposed on defendants convicted of driving while intoxicated under R.S. 39:4-50. The Director is statutorily required to deposit ninety-five percent of those funds into a "Drunk Driving Enforcement Fund" which is to be used to finance a Statewide drunk driving enforcement program, supervised by the Director, and to use the remaining five percent for administrative expenses. Eligible municipal, county, State and interstate law enforcement agencies receive grants from the Fund, in amounts proportionate to the amounts collected through enforcement of R.S. 39:4-50, to be used to augment drunk driving enforcement efforts.

The Office of Highway Traffic Safety in the Department of Law and Public Safety has general responsibility for the receipt and disbursement of federal funds earmarked for traffic safety programs, and for oversight of funded traffic safety programs. Transfer of the functions of the Division of Motor Vehicles with respect to the allocation and administration of the Drunk Driving Enforcement Fund to the Office of Highway Traffic Safety will eliminate duplication of effort by the Department in administering various grant programs and will align and assign similar functions within one agency, thereby promoting overall efficiency.

Therefore, I hereby order the following reorganization:

1. The powers, functions and duties of the Director of the Division of Motor Vehicles in the Department of Law and Public Safety pursuant to P.L. 1984, c.4, sec. 1 (C. 39:4-50.8), to administer the Drunk Driving Enforcement Fund, supervise the statewide drunk driving enforcement program established thereunder, and promulgate rules and regulations, are continued and transferred to the Attorney General, to be exercised through the Office of Highway Traffic Safety in the Department of Law and Public Safety under the supervision of the Attorney General, except that the Division of Motor Vehicles shall remain the initial recipient of funds collected through assessment of surcharges on defendants convicted of violating R.S. 39:4-50, and shall be credited with twenty (20%) percent of the administrative assessment for these purposes.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that transfer of responsibility to administer the Drunk Driving Enforcement Fund from the Division of Motor Vehicles to the Office of Highway Traffic Safety will promote the efficiency of the Executive Branch by more closely aligning similar functions within agencies, thereby increasing efficiency and/or economy without reduction in services to the public.

2. Any unobligated balances of the Drunk Driving Enforcement Fund and any unexpended funds appropriated or otherwise available to the Director of the Division of Motor Vehicles with respect to functions pursuant to P.L. 1984, c.4, sec. 1 (C. 39:4-50.8) transferred by this Reorganization Plan, as determined by the Attorney General, are transferred to the Office of Highway Traffic Safety in the Department of Law and Public Safety on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Director of the Division of Motor Vehicles with respect to the administrative responsibilities under P.L. 1984, c.4, sec. 1 (C. 39:4-50.8) transferred by this Reorganization Plan, the same shall mean and refer to the Office of Highway Traffic Safety in the Department of Law and Public Safety.

F. Over the years, the Legislature has created numerous committees to advise the Department of Law and Public Safety in fulfilling its statutory missions. These committees have become luxuries we can no longer afford at a time when State Government must do more with fewer resources. The divisions and other agencies within the Department of Law and Public Safety will be able to continue to perform their duties without the input of these formal advisory bodies. Under the Administrative Procedure Act, P.L. 1968, c.410 (C. 52:14B-1 et seq.), agencies may conduct public hearings on proposed rule changes, and any person who has advice for the agency may provide it. Moreover, pursuant to that Act, any person may petition an agency to promulgate, amend, or repeal a rule.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap, reduce expenditures, and promote efficiency and economy. Abolition of the advisory committees provided for below will promote the overall efficiency of the Executive Branch without substantive reduction in services to the public.

Therefore, I hereby order the following reorganization:

1.a. The Crime Prevention Advisory Committee in the Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety, created pursuant to P.L. 1985, c.1, sec. 2 (C. 52:17B-77.1), together with its powers, functions and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that elimination of the Crime Prevention Advisory Committee will promote the overall efficiency of the Division of Criminal Justice and the Police Training Commission without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available for the Crime Prevention Advisory Committee, as determined by the Attorney General, are transferred to the Police Training Commission in the Division of Criminal Justice on the effective date of this Reorganization Plan.

c. Whenever, in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the Crime Prevention Advisory Committee, the same shall mean and refer to the Police Training Commission in the Division of Criminal Justice.

2.a. The Bulk Commodities Advisory Board in the Division of Motor Vehicles in the Department of Law and Public Safety, created pursuant to P.L. 1977, c.259, sec. 6 (C. 39:5E-6), together with its powers, functions and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that elimination of the Bulk Commodities Advisory Board will promote the overall efficiency of the Division of Motor Vehicles without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available for the Bulk Commodities Advisory Board, as determined by the Attorney General, are transferred to the Division of Motor Vehicles on the effective date of this Reorganization Plan.

c. Whenever in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the Bulk Commodities Advisory Board, the same shall mean and refer to the Division of Motor Vehicles.

3.a. The Security Advisory Committee established pursuant to P.L. 1967, c.93, sec. 27 (C. 49:3-74), together with its powers, functions and duties, is abolished and the terms of office of its members are terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that elimination of the Security Advisory Committee will promote the overall efficiency of the Bureau of Securities in the Division of Consumer Affairs, without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available to the Security Advisory Committee, as determined by the Attorney General, are transferred to the Bureau of Securities in the Division of Consumer Affairs on the effective date of this Reorganization Plan.

c. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise, reference is made to the Security Advisory Committee, the same shall mean and refer to the Bureau of Securities in the Division of Consumer Affairs.

4.a. The Bio-Analytical Laboratory Advisory Committee under the State Board of Medical Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety, created pursuant to P.L. 1989, c.153, sec. 17 (C. 45:9-1), together with its functions, powers and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that elimination of the Bio-Analytical Laboratory Advisory Committee will promote the overall efficiency of the State Board of Medical Examiners, without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available to the Bio-Analytical Laboratory Advisory Committee, as determined by the Attorney General, are transferred to the State Board of Medical Examiners in the Division of Consumer Affairs on the effective date of this Reorganization Plan.

c. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise, reference is made to the Bio-Analytical Laboratory Advisory Committee, the same shall mean and refer to the State Board of Medical Examiners.

G. The Commission on Missing Persons, created by P.L. 1983, c.467, sec. 4 (C. 52:17B-9.9), is responsible for reviewing data and statistics and preparation of a State action plan relating to the problem of missing persons and unidentified bodies, updating the plan annually, and recommending legislation that may be necessary to carry out the purpose of the Act.

That same statute created a Missing Persons Unit within the Department of Law and Public Safety in the Division of State Police. That unit and the persons assigned thereto have a commitment to carry out the provisions of the Act and perform the day-to-day operational mandates of this legislation. Consequently, this unit addresses the operational objectives of the Commission on Missing Persons. In addition, the Attorney General submits an annual report to the Legislature which, among other matters, is to contain suggestions and recommendations for the improvement of planning and coordinating functions to insure the adequate and uniform enforcement of the criminal laws of the State. The Attorney General, through the Division of Criminal Justice, is also authorized and empowered to make studies and surveys of the organization, procedures and methods of operation and administration of all law enforcement agencies within the State with a view toward preventing crime, improving the administration of criminal justice and securing the

enforcement of the criminal law. Thus, the Attorney General possesses the authority to conduct studies and recommend legislation concerning missing persons when appropriate.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and reduce expenditures, which will promote efficiency and economy. The abolition of the Commission on Missing Persons will not impair or hinder the primary objectives articulated by the Legislature, but will provide for greater economy and efficiency in the provision of those services.

Therefore, I hereby order the following reorganization:

1.a. The Commission on Missing Persons, created by P.L. 1983, c.467, sec. 4 (C. 52:17B-9.9), together with its powers, functions and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that elimination of the Commission on Missing Persons will promote the overall efficiency of the Department of Law and Public Safety, without resulting in a reduction of services to the public.

2. Any unexpended funds appropriated or otherwise available to the Commission on Missing Persons, as determined by the Attorney General, are transferred to the Division of State Police in the Department of Law and Public Safety on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise, reference is made to the Commission on Missing Persons, the same shall mean and refer to the Division of State Police in the Department of Law and Public Safety.

H. Pursuant to P.L. 1968, c.114 (C. 45:12A-1 et seq.), the Orthoptic Commission in the State Board of Medical Examiners is constituted to establish standards governing the practice of orthoptics and to register orthoptists. The State Board of Medical Examiners, which oversees the Commission, has more than sufficient expertise to regulate the practice of orthoptics. Moreover, interested individuals or groups are able to advise the Board or petition it to promulgate, amend, or repeal a rule, pursuant to the Administrative Procedure Act, P.L. 1968, c.410 (C. 52:14B-1 et seq.).

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and reduce expenditures, which will promote efficiency and economy. Elimination of the Orthoptic Commission will result in a more efficient regulatory system without reduction of service to the public.

Therefore, I hereby order the following reorganization:

1. The Orthoptic Commission within the State Board of Medical Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety, created pursuant to P.L. 1968, c.114, sec. 9 (C. 45:12A-9), is abolished and the terms of its members are terminated. All functions, powers, and duties of the Orthoptic Commission are continued and transferred to the State Board of Medical Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that elimination of the Orthoptic Commission will promote the overall efficiency of the State Board of Medical Examiners, without resulting in a reduction of services to the public.

2. Any unexpended funds appropriated or otherwise available for the Orthoptic Commission, as determined by the Attorney General, are transferred to the State Board of Medical Examiners on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the Orthoptic Commission, the same shall mean and refer to the State Board of Medical Examiners in the Division of Consumer Affairs.

I. The State Law Enforcement Planning Agency has, pursuant to P.L. 1978, c.176 (C. 52:17B-147(a)), the responsibility to "serve as the State Planning Agency pursuant to the Federal Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and other related Federal or State Acts." In recent years, the availability of federal funds for law enforcement planning purposes has decreased significantly. Over the years, there has been a coincidental reduction in the functions and responsibilities of this planning agency. At the same time, a significant portion of the staff of the Division of Criminal Justice is dedicated to the planning and coordination of the State's law enforcement functions, as well as to public education and deterrence of criminal activity.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and reduce expenditures, which will promote efficiency and economy. The State Law Enforcement Planning Agency is no longer necessary and its elimination will reduce duplication and overlap, thereby promoting efficiency and economy.

Therefore, I hereby order the following reorganization:

1. The State Law Enforcement Planning Agency, created by executive order and continued by P.L. 1978, c.176, sec. 2 (C. 52:17B-143), is abolished. All the functions, powers and duties of the State Law Enforcement Planning Agency are continued and transferred to the Division of Criminal Justice in the Department of Law and Public Safety.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, I find that elimination of the State Law Enforcement Planning Agency will promote the overall efficiency of the Executive Branch without resulting in a reduction of services to the public.

2. Any unexpended funds appropriated or otherwise available for the State Law Enforcement Planning Agency, as determined by the Attorney General, are transferred to the Division of Criminal Justice in the Department of Law and Public Safety on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the State Law Enforcement Planning Agency, the same shall mean and refer to the Division of Criminal Justice in the Department of Law and Public Safety.

GENERAL PROVISIONS

1. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies.

2. Unless otherwise specified in this Reorganization Plan, all transfers directed by this Reorganization Plan shall be effected pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 et seq.).

3. If any provisions of this Reorganization Plan or the application thereof to any person, or circumstances, or the exercise of any power or authority hereunder is held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan which can be given effect without the invalid provisions or applications, or affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Reorganization Plan are declared to be severable.

4. This Reorganization Plan is intended to protect and promote the public health, safety and welfare, and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Reorganization Plan was filed on October 1, 1992 with the Secretary of State and the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days on November 30, 1992 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than November 30, 1992, should the Governor establish such a later date for the effective date of the Plan of Reorganization, or any part thereof, by Executive Order.

TAKE NOTICE that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the pamphlet laws and in the New Jersey Register under the heading of "Reorganization Plans."

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

General Provisions
Soil Erosion and Sediment Control Act
Proposed Amendments: N.J.A.C. 2:90-1.4 and 1.5

Authorized By: Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.
Authority: N.J.S.A. 4:24-3 and 4:24-42.
Proposal Number: PRN 1992-329.

Submit comments by November 18, 1992 to:
Samuel R. Race, Executive Secretary
State Soil Conservation Committee, Room 204
CN 330
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Soil Erosion and Sediment Control Act of 1975 (N.J.S.A. 4:24-1 et seq.), as amended, requires that public agency approval of applications for development and approval to engage in certain other projects where more than 5,000 square feet of land surface area is disturbed, must be conditioned upon a plan for soil erosion and sediment control certified by the local soil conservation district. The State Soil Conservation Committee is empowered and required to promulgate technical and administrative standards for the implementation of the Act. This proposal will establish by rule standard application forms and the information required to be submitted with the application. The proposal also establishes by rule the time period for which plan certification remains valid.

A standard application form approved by the State Soil Conservation Committee (Committee) has been utilized in this program since its inception. The Committee has determined that the requirements currently contained in that form and the proposed additional requirements for submission of hydrologic and hydraulic data should be adopted as a rule. These submission requirements are described in N.J.A.C. 2:90-1.4, Application, as amended.

In addition, the Committee has previously established that district certification of a soil erosion and sediment control plan for any project shall be valid only for the duration of the initial project approval granted by the municipality or other land use approval agency not to exceed three and one half years. Municipal or other public agency renewals of the project must also be conditioned upon recertification of the plan by the district. Such limitation has been a condition of the standard application form and the certification issued by the district. The Committee has determined that this limitation should be adopted as a rule at N.J.A.C. 2:90-1.5(i).

Except for the requirement for submission of the hydraulic and hydrologic data in written and electronic format, which must be developed by the applicant in any case to demonstrate stability, no changes from the current procedure are proposed.

Social Impact

The adoption of the proposed revisions to N.J.A.C. 2:90-1.4 will further clarify by rule that standard application forms, approved by the State Soil Conservation Committee, shall be utilized for application for soil erosion and sediment control plan certification to all soil conservation districts. No additional social impact is anticipated as the standard forms have been in use since the original implementation of the Act and have specified information required for review and approval of applications. The hydrologic data required in 2:90-1.4(b)1vi will be used to evaluate the impact of stormwater released from the construction project on the receiving channels in the watershed.

Adoption of N.J.A.C. 2:90-1.5(i) will clarify by rule that certification of plans shall be valid for a maximum of 3½ years. As this provision is currently in effect as a condition of the application form no additional social impact is anticipated. It is understood that the recently adopted Permit Extension Act (P.L. 1992, c.82) will modify the applicability of this rule during the "Economic Emergency Period" and the proposed subsection will not apply during this period. See the applicable notice in this regard in the Public Notice Section of this Register.

Economic Impact

Virtually no economic impact is anticipated by the proposed amendment to N.J.A.C. 2:90-1.4 as the amendment serves only for clarification and codification of current procedures. Further, N.J.A.C. 2:90-1.4(b)1vi requires the submission of hydraulic and hydrologic data for stormwater management basins in written and electronic file format which will have already been generated by the applicant in order to demonstrate the stability of the receiving stream channels and result in no additional cost to the applicant. In some instances the utilization of this data may result in less extensive detention requirements thereby providing a positive economic impact for the applicant.

Adoption of N.J.A.C. 2:90-1.5(i) will also have virtually no economic impact as it serves only to clarify by rule those procedures already in effect.

Environmental Impact

Environmental impacts of the provisions of these amendments will continue to be beneficial. No change due solely to those amendments is anticipated. The intent of the amendments is to clarify, by rule, procedures already being implemented by policy adopted by the State Soil Conservation Committee. It is anticipated that the utilization of the hydraulic and hydrologic data will result in more effective stormwater management and improved water quality.

Regulatory Flexibility Analysis

The proposed amendments have been reviewed with regard to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., directly affects small businesses as defined by the Regulatory Flexibility Act. The amendments will clarify by rule those procedures already being implemented pursuant to policies adopted by the State Soil Conservation Committee and contractual agreement entered into by the applicant and soil conservation district.

The application submission and compliance requirements are the minimum for controlling soil erosion and sedimentation on the vastly differing site conditions in the State and therefore apply equally to all projects. Differing compliance requirements based on business size would disallow the realization of the objectives of these rules.

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

2:90-1.4 Application

(a) [Applicants shall submit their plans to the district accompanied by an application form as prescribed by the committee.] **Application for soil erosion and sediment control plan certification shall be made to the local district utilizing standard application forms adopted by the Committee.** Such application shall indicate the information required to make a decision on certification of plans. Application forms are available at locations listed [in section 3 of this subchapter] **at N.J.A.C. 2:90-1.3.**

(b) Applications for certification of soil erosion and sediment control plans shall include the following items:

1. One copy of the complete subdivision, site plan or construction permit application, including key map as submitted to the municipality (architectural drawings, plans and specifications for buildings not required) which includes the following:

i. The location of present and proposed drains and culverts with their discharge capacities and velocities and supporting computations and identification of conditions below outlets;

ii. A delineation of any area subject to flooding from the 100-year storm in compliance with the Flood Plains Act, N.J.S.A. 58:16A or applicable municipal zoning;

iii. A delineation of streams, wetlands pursuant to N.J.S.A. 13:9B and other significant natural features within the project area.

iv. The soils and other natural resource information used (delineation of the project site on soil map is desirable);

v. The land cover and use of area adjacent to the land disturbance; and

vi. All hydraulic and hydrologic data describing existing and proposed watershed conditions and a completed copy of the Hydraulic and Hydrologic Data Base Summary Form SSCC 251 HDF1. Where HEC 1 and HEC 2-U.S. Army Corps of Engineers or TR20 and WSP2-USDA Soil Conservation Service computer programs are used for modeling watershed hydrology and hydraulics, a copy of electronic input files shall be included. The Data Base Summary Forms and information regarding these computer programs are available at the locations listed at N.J.A.C. 2:90-1.3 above.

2. Four copies of the soil erosion and sediment control plan at the same scale as the site plan submitted to the municipality or other land use approval agency which includes the following information detailed on the plat:

i. The proposed sequence of development including duration of each phase in the sequence;

ii. A site grading plan delineating land areas to be disturbed including proposed cut and fill areas together with existing and proposed profiles of these areas;

iii. Contours at a two foot interval, showing present and proposed ground elevation;

iv. The locations of all streams and existing and proposed drains and culverts;

v. A stability analysis of all channels below all points of stormwater discharge which demonstrates that a stable condition will exist or there will be no degradation of the existing condition;

vi. The location and detail of all proposed erosion and sediment control structures including profiles, cross sections, appropriate notes, and supporting computations;

vii. The location and detail of all proposed nonstructural methods of soil stabilization including types and rates of lime, fertilizer, seed, and mulch to be applied;

viii. Erosion control measures for non-growing season stabilization of exposed areas where the establishment of vegetation is planned as the final control measure;

ix. For residential development, erosion control measures which apply to dwelling construction on individual lots with notation on the final plat that requirement for installation of such control measures shall apply to subsequent owners if title is conveyed; and

x. Plans for maintenance of permanent soil erosion and sediment control measures and facilities during and after construction, which include the designation of persons or entity responsible for such maintenance;

3. Appropriate fees as adopted by the individual district and approved by the Committee (see N.J.A.C. 2:90-1.8); and

4. Additional information as may be required by the district depending upon the scope, topography and complexity of the project.

(c) The applicant shall certify and agree that the applicant shall:

1. Certify that all soil erosion and sediment control measures are designed in accordance with current Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the Committee and found at N.J.A.C. 2:90-1.3 and will be installed in accordance with the plan as approved by the district;

2. Acknowledge that structural measures contained in the soil erosion and sediment control plan are reviewed for adequacy to reduce offsite soil erosion and sedimentation and not for adequacy of structural design;

3. Retain full responsibility for any damages which may result from any construction activity notwithstanding district certification of the soil erosion and sediment control plan;

4. Require that all engineering related items of the soil erosion and sediment control plan be prepared by or under the direction of and be sealed by a professional engineer or architect licensed in the State of New Jersey in accordance with N.J.A.C. 13:27-6;

5. Assure that any conveyance of the project or portion thereof is conditioned upon transfer of full responsibility for compliance with the certified plan to any subsequent owners;

6. Maintain a copy of the certified plan on the project site during construction;

7. Allow district agents to go upon project lands for inspection; and

8. Notify the district in writing at least 48 hours in advance of any land disturbance activity and upon completion of the project.

(d) If the person submitting the application is not the project owner, a notarized authorization by the owner or authorized corporate officer must be submitted with the application. For public agency projects, such authorization shall be made by the principal executive officer or elected official of the agency.

2:90-1.5 Procedure

(a)-(h) (No change.)

(i) District certification of a soil erosion and sediment control plan for any project shall be valid only for the duration of the initial project approval granted by the municipality or other land use approval agency but in no case shall exceed three and one-half years. All such municipal or other agency renewals of the project will require resubmission of the project plan and recertification approval by the district.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Overtime Compensation

Proposed Amendments: N.J.A.C. 4A:3-5.3, 5.6 and 5.9

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

Authority: N.J.S.A. 11A:2-6(d) and 11A:3-7.

Proposal Number: PRN 1992-445.

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

Thursday, November 5, 1992 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

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

Submit comments by November 18, 1992 to:

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

The agency proposal follows:

Summary

Departmental review of merit system rules on overtime compensation revealed the need for greater clarity concerning the granting and use of comparable time off. Consequently, the Merit System Board proposes amendments to N.J.A.C. 4A:3-5.3, 5.6 and 5.9 to address these problems.

Both N.J.A.C. 4A:3-5.3(d)2 and 5.6(b)2 would be amended to prohibit employees who are serving as commissioner or department head; assistant or deputy commissioner; and division director or equivalent from receiving comparable time off, generally known as "comp time," for extra work time performed. The amendments would also prohibit comp time for employees serving in positions exempt from the Fair Labor Standards Act in management titles with a salary range above Range 32, or who are in no range titles but who are receiving a salary at or above the first step of Range 32. In addition, employees serving in positions who are not eligible for cash overtime compensation would not be eligible to receive a cash payment for unused comp time upon separation from service.

Finally, an amendment to N.J.A.C. 4A:3-5.9(f) would set forth information that appointing authorities would be required to submit to the Department of Personnel upon demand concerning comp time. Such information would identify employees receiving comp time, and amounts of and justifications for such time.

It is noted that since it is within the appointing authority's discretion to grant comparable amounts of time off or flexible work patterns, an appointing authority may set policies in these areas which are more restrictive than the rules.

Social Impact

Provisions for overtime compensation, whether through cash payments or comp time, are not intended to apply to high level State government managers. The proposed amendments would ensure that comp time is granted only when justified.

Economic Impact

The proposed amendments should help the State save money, by ensuring that high-ranking and highly paid State officials do not accumulate comp time, and by preventing payouts in lieu of the use of such time. The amendments would further encourage fiscal responsibility by enhancing the Department of Personnel's monitoring capabilities over use of comp time.

Regulatory Flexibility Statement

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

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

4A:3-5.3 40 hours or less in a workweek: State service

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

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

1. (No change.)

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, **provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation.** [They shall have no] **In no event shall employees in non-limited titles have any** entitlement to cash overtime compensation.

3. (No change.)

4. Employees in non-limited (NL, NE) positions who are not eligible for cash overtime compensation shall not receive a cash payment for unused comparable time off upon separation from service.

4A:3-5.6 Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL and N4 titles: State service

(a) (No change.)

(b) Overtime compensation for employees in exempt positions shall be as follows:

1. (No change.)

2. Exempt employees in non-limited workweek titles (NL, N4) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off to a maximum of one hour for each **hour** of unusual work time, **provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation.** See N.J.A.C. 4A:3-5.7(e)2 as to special project rates.

3. Employees in exempt positions who are not eligible for cash overtime compensation shall not receive a cash payment for unused comparable time off upon separation from service.

4A:3-5.9 Appointing Authority responsibilities: State service

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

(f) Upon demand for reports of compensatory time off or comparable time off, the appointing authority shall make available to the Commissioner or his or her representative the following items:

1. The names, titles and salary ranges of employees receiving compensatory time off or comparable time off;

2. The names, titles and salary ranges of employees receiving payment for unused compensatory time off or comparable time off, the amount paid to each such employee, and the number of hours on which the payment was based;

3. The number of days on which compensatory time off or comparable time off was earned;

4. The total number of hours each employee worked beyond the normal workweek;

5. The total number of hours of compensatory time off or comparable time off earned by each employee;

6. The total number of hours of compensatory time off or comparable time off used by each employee;

7. The balance of unused compensatory time off or comparable time off for each employee; and

8. A justification for the granting of compensatory time off or comparable time off for each employee.

Recodify (f) as (g) (No change in text.)

(a)

MERIT SYSTEM BOARD

Promotional Examinations

Proposed Amendments: N.J.A.C. 4A:4-2.6 and 2.15

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

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1, 11A:4-14 and 11A:6-28.

Proposal Number: PRN 1992-444.

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

Thursday, November 5, 1992 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, 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 November 18, 1992 to:

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

The agency proposal follows:

Summary

In conjunction with a proposed readoption of N.J.A.C. 4A:6 with amendments published elsewhere in this issue of the New Jersey Register, the Merit System Board proposes amendments to the rules on promotional eligibility and on the rating of examinations with respect to use of performance ratings in those situations.

The proposed amendment to N.J.A.C. 4A:4-2.6 would require that an applicant for a promotional examination shall not have received a four (Marginally Below Standards) or a five (Significantly Below Standards) rating for the period immediately preceding the announced closing date as a condition of eligibility. N.J.A.C. 4A:4-2.15 would be amended to codify existing practice. First, candidates for promotional examinations in State service would have to receive credit for the final performance rating on file in his or her personnel office for the period immediately preceding the announced closing date. Language would also be added providing for promotional examination credit for candidates who have received a PAR rating of a three (Meets Standards) or better. In addition, amendments would state that any candidate who has no final rating on file as of the closing date would receive examination credit for a PAR rating of a three.

Finally, N.J.A.C. 4A:4-2.15 already prohibits the use of performance ratings as a scoring factor in promotional examinations when a supervisor who rates a subordinate is competing in the same examination. An amendment would prohibit the use of performance ratings as a scoring factor when a supervisor who acts as a reviewer for a subordinate's rating is competing with that subordinate in a promotional examination.

Social Impact

The proposed amendment to N.J.A.C. 4A:4-2.6 would ensure that promotional eligibility is limited to employees who have performed satisfactorily.

Most of the proposed amendments to N.J.A.C. 4A:4-2.15 would codify existing practice, thereby ensuring that State employees and appointing authorities are aware of the process for awarding promotional credit for final performance ratings. New language prohibiting use of performance ratings as a scoring factor if a supervisor who acts a reviewer for a performance rating is competing in the same promotional examination as the subordinate would further fairness in the promotional process and prevent possible obstructions to promotions based on merit.

Economic Impact

Since these amendments affect the eligibility requirements and scoring of promotional examinations, no economic impact is anticipated.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required since these proposed amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will regulate employment in the public sector.

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

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. (No change.)

2. Meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date; [and]

3. Have not received a Performance Assessment Review (PAR) rating of a Four, Marginally Below Standards, or Five, Significantly Below Standards (or equivalent in an approved local service evaluation program) for the rating period immediately preceding the announced closing date; and

Recodify 3. as **4.** (No change in text.)

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

4A:4-2.15 Rating of examinations

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

(c) [The Commissioner shall set procedures for the evaluation of seniority and performance ratings in promotional examination.] **Candidates for State service promotional examinations shall receive credit for the final Performance Assessment Review (PAR) rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.**

1. Credit shall be awarded as follows:

i. Three points for Significantly Above Standards;

ii. Two points for Exceeds Standards; or

iii. One point for Meets Standards:

2. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Meets Standards and credit shall be given for that rating.

[1.]**3.** Performance ratings shall not be used as a **scoring** factor in promotions when the supervisor who completes a performance rating for a subordinate **or acts as a reviewer for a subordinate's rating** competes in the same promotional examination as the subordinate.

(d) The Commissioner shall set procedures for the evaluation of seniority in promotional examinations.

[(d)](**e**) (No change in text.)

(a)

MERIT SYSTEM BOARD

Leaves, Hours of Work and Employee Development

Proposed Readoption with Amendments: N.J.A.C. 4A:6

Authorized By: The Merit System Board, Subchapters 1 through 5 and the New Jersey Employee Awards Committee, Subchapter 6, Anthony J. Cimino, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:6-1 through 11A:6-28, 11A:6-31, 18A:31-2, 30:4-178, 34:11B-1 et seq., 38:23-1, 38:23-2, 38:23-4, 38A:4-4, 40A:14-177, 52:14-26.2; Executive Order No. 12(1990); 29 U.S.C. 201 et seq., 42 U.S.C. 12101 et seq.

Proposal Number: PRN 1992-446.

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

Thursday, November 5, 1992 at 5:30 p.m.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, 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 November 18, 1992 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 4A:6 expires on January 4, 1993. The Merit System Board has reviewed the rules in Subchapters 1 through 5 and the New Jersey Employee Awards Committee has reviewed the rules in Subchapter 6 and, with the following exceptions, have determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, as required by the Executive Order.

Subchapter 1 concerns leaves of absence for employees in State service and employees of political subdivisions. Most of the proposed amendments to N.J.A.C. 4A:6 are found in Subchapter 1. N.J.A.C. 4A:6-1.2 would be amended to provide that, in State service, vacation leave may be granted and shall be tracked in hours. In N.J.A.C. 4A:6-1.3, Sick Leave, a cross-reference to the proposed new rule on the donated leave program in State service is added. A new N.J.A.C. 4A:6-1.4(j), concerning sick leave procedures, and a new N.J.A.C. 4A:6-1.7(i), on sick leave injury (SLI), would be added to ensure compliance with the Americans With Disabilities Act (ADA), 42 U.S.C. 12101 et seq., which requires that information obtained concerning an employee's medical condition or history be kept in separate, confidential files. This confidentiality requirement contains limited exceptions for access to information. The amendments implement these requirements by using language verbatim from the ADA and related federal regulations.

The Board also proposes amending N.J.A.C. 4A:6-1.9 to provide that administrative leave in State service may be granted and shall be tracked in hours. A number of amendments are proposed for N.J.A.C. 4A:6-1.21, Family Leave, including cross references to the new family leave rules promulgated by the Division on Civil Rights, the implementing and enforcing agency of the Family Leave Act. A new subsection (j) has been added to clarify existing policy that an employee may choose to use paid leave for family leave purposes. However, the employee must meet the requirements for the type of paid leave requested (vacation, sick or administrative).

In addition, the Board proposes to add a new N.J.A.C. 4A:6-1.22 concerning the donated leave program for State service. This program was successfully implemented as a pilot program to provide State employees in four agencies the opportunity to donate sick or vacation leave to other State employees who have had at least one year of continuous State service, are suffering from a serious health condition or injury which is expected to require a prolonged absence from work

and have exhausted all accrued leave time as well as compensatory time off. The new rule section would set forth procedures for leave donation and prohibitions against threats or coercion by one or more State employees against any other employees involving the donated leave program.

Subchapter 2 concerns hours of work in State service. The criteria for determining workweeks are set forth in N.J.A.C. 4A:6-2.2 (for fixed workweek job titles) and 4A:6-2.3 (for non-limited job titles). N.J.A.C. 4A:6-2.4 addresses holidays, while 4A:6-2.5 concerns inclement weather or emergency conditions. Finally, variations in usual work hours are addressed in N.J.A.C. 4A:6-2.6 (flexitime programs), 4A:6-2.7 (alternative workweek programs) and 4A:6-2.8 (adjusted hours of operation). The Board does not propose amendments to this subchapter.

Subchapter 5 sets the eligibility requirements and procedures for obtaining Supplemental Compensation on Retirement (SCOR). In response to a Notice of Pre-Proposal in the July 20, 1992 New Jersey Register (see 24 N.J.R. 2496(b)), the Labor Relations Counsel for the Department of Law and Public Safety suggested that N.J.A.C. 4A:6-3.1 be amended to address the SCOR eligibility of employees who opt to retire in lieu of layoff and whose retirement date occurs after layoff. In particular, she proposed a "grace period" for an employee whose retirement date is within a reasonable period following the date of layoff. In response, it is noted that N.J.S.A. 11A:6-16 is clearly intended to limit SCOR benefits to those whose separation from State service is due to retirement. Generally, upon receipt of a 45 day notice of layoff, an employee has sufficient time to apply for retirement prior to the effective date of the layoff. Individual inequities may be addressed through requests for rule relaxation. See N.J.A.C. 4A:1-1.2(c). Therefore, the Board is not proposing amendment of the rule at this time, but will take this matter into consideration for future changes if it appears that a substantial number of employees are adversely affected by the current rule.

The Board proposes a number of amendments to Subchapter 4, concerning human resource development (HRD) programs, which are necessary to implement Executive Order No. 12(1990), which consolidated staff training programs in the Department of Personnel's Human Resource Development Institute. The title of the subchapter would be changed to "Human Resource Development: Training, Education, Career Development and Employee Assistance Programs." N.J.A.C. 4A:6-4.1(b), General Provisions, would be amended to provide that in State service, instead of reviewing and approving HRD programs, the Commissioner of Personnel establishes such programs. N.J.A.C. 4A:4-4.2, concerning the Department of Personnel's functions in HRD programs, has been completely rewritten to reflect the central role of the Human Resource Development Institute (HRDI) in training, education, performance evaluation and employee assistance programs. The rule provides that other agencies can perform these functions only with the approval of the HRDI Director. The title of N.J.A.C. 4A:6-4.3 would be changed to "Training and Education Programs: State service." This rule has also been completely rewritten to provide a list of such programs. The revised rule deletes the requirement that each State agency develop its own HRD plan, since this responsibility has been transferred to the HRDI. N.J.A.C. 4A:6-4.4, which established the Human Resource Development Committee, would be deleted, since that committee is no longer necessary. The current N.J.A.C. 4A:6-4.7, concerning the Certified Public Manager (CPM) program, would be recodified to 4A:6-4.4. A number of changes are proposed to this rule, including a provision that the CPM program shall meet criteria established by the National Certified Public Managers Consortium and that each participant may be required to pay part of the cost of participation in any level of the program.

Finally, N.J.A.C. 4A:6-4.5, concerning career development programs, would be revised by clarifying the distinction between career development and other training and education programs. The amended rule would provide that State agencies may implement career development programs with the approval of the HRDI Director.

The remainder of Subchapter 4 contains rules on Tuition Aid (4A:6-4.6), Employee Interchange (4A:6-4.8), Internship Programs (4A:6-4.9) and the Employee Advisory Service (4A:6-4.10). No amendments to these rules are proposed at this time. In a pre-proposal comment, the Labor Relations Counsel for the Department of Law and Public Safety urged that N.J.A.C. 4A:6-4.6 be amended to clarify that course content will be reviewed to determine the relationship to current or planned job responsibilities. In response, the Board notes that the programs described in this subchapter, including tuition aid, are under review and rule amendments may be proposed in the near future. At this time, however, the Board has proposed only these amendments made necessary by Executive Order No. 12(1990).

The Board proposes several changes to Subchapter 5, which concerns the Performance Assessment Review (PAR) program in State service. Amendments to N.J.A.C. 4A:6-5.1(b)2 would codify the five-level rating scale, currently in use throughout State government, with a slight modification in the nomenclature for each level. Also, a number of procedural provisions would be moved to the rule which currently addresses procedures. N.J.A.C. 4A:6-5.1(b)3 would be moved to N.J.A.C. 4A:6-5.2(b). This provision concerns the proper time periods for interim and final ratings. N.J.A.C. 4A:6-5.1(b)4 would be moved to N.J.A.C. 4A:6-5.2(d)1. The provisions would now require a supervisor to prepare job performance standards before the start of an employee's working test period which identify essential tasks and emphasize training and development. Upon successful completion of the working test period, the supervisor and employee would jointly complete job performance standards.

N.J.A.C. 4A:6-5.2 would be further amended to reflect current practice. One amendment would modify the provisions for the closing out of old performance plans and preparation of new performance plans when an employee's job assignment or supervisor changes. Other proposed amendments are intended to reflect existing practice with respect to PAR ratings for a newly hired employee, an employee whose anniversary date has changed, and an employee who is at the eighth step of his or her salary range.

In addition, language is proposed concerning when a performance plan for a rating period is to be established. A significant new requirement would be that a supervisor's own PAR shall require that he or she complete the PAR's of subordinates. A new subsection (g) has been added to provide a prompt resolution mechanism for complaints that an entire agency or unit is failing to follow the PAR program. Such complaints would be submitted to the PAR coordinator, an individual who has been designated in each department to improve the effectiveness of the PAR program.

N.J.A.C. 4A:6-5.3 would be amended to reflect policy changes found necessary following departmental review. An employee receiving either a rating of a four or a five would be denied an increment, although an employee receiving a four would be eligible to have that increment restored under certain circumstances. In addition, both ratings would require a referral to the Employee Advisory Service and could be appealed through departmental non-contractual grievance procedures. Finally, language would be added to clarify that a five rating constitutes evidence of grounds for discipline.

N.J.A.C. 4A:6-6.1 contains general provisions concerning the types of award programs in State service. The rule also permits local appointing authorities to establish and administer awards programs. The rest of the rules concern State service only. N.J.A.C. 4A:6-6.2 establishes the New Jersey Employee Awards Committee (Awards Committee) in the Department of Personnel and provides procedures for the appointment of its members and requirements for meetings and other activities. That rule section also requires the establishment of departmental awards committees. N.J.A.C. 4A:6-6.3 requires the Awards Committee to maintain certain records.

N.J.A.C. 4A:6-6.4 provides for Recognition Awards; and N.J.A.C. 4A:6-6.5 through 4A:6-6.7 establish the Suggestion Award Program, its procedures and award types and amounts. N.J.A.C. 4A:6-6.8 creates a service award program. N.J.A.C. 4A:6-6.9 encourages departmental awards programs which may recognize attendance, productivity and other positive employee achievements. N.J.A.C. 4A:6-6.10 provides for appeals to the Awards Committee.

Social Impact

The changes which the Board proposes to N.J.A.C. 4A:6, upon readoption, would have many positive effects. The amendment concerning the use of vacation and administrative leave in hours would provide greater flexibility to State employees and appointing authorities, and would conform to current practice with respect to sick leave. Amendments concerning the confidentiality of medical records would implement requirements imposed by the Americans with Disabilities Act.

The proposed donated leave program would enhance State employee morale and assist seriously ill employees with no remaining leave time by allowing them to continue to receive income and attendant health benefits. This program has already proved beneficial to a number of employees under the pilot program.

The amendments to the HRD rules are necessitated by Executive Order No. 12(1990), and would enhance the coordination of training and education programs for all State employees.

Changes to the PAR provisions primarily codify or clarify existing practice. However, the proposed requirement that a supervisor prepare job performance standards prior to the start of an employee's working test period and that both jointly complete such standards following the employee's successful completion of the working test period would ensure that an employee is apprised of all job requirements and provide needed clarification of the PAR process once he or she is permanent. Also, the proposal that a supervisor's own PAR include the preparation of the PAR's of subordinates would strengthen accountability and help to ensure that subordinates do receive their PAR's.

Greater consequences are attached to an employee's receipt of a four or a five rating. These new measures would ensure that an employee is rewarded for improved performance, consistent with the statutory policy set forth in N.J.S.A. 11A:1-2(c) to encourage and reward meritorious performance, and has more of an incentive to do better.

In addition to the amendments described above, the rules in Subchapter 1 proposed for readoption without change will continue to provide guidance to State and local appointing authorities and employees concerning leaves of absence. Subchapters 2 through 5 are primarily aimed at State service, providing a clear regulatory framework in the areas of hours of work, the SCOR program, human resource development and performance evaluation.

The Awards Committee is not proposing any changes to Subchapter 6, the rules on awards. However, the various programs established by these rules will continue upon readoption to have a positive social impact on State employees who will be recognized for numerous types of meritorious achievements and therefore be encouraged to further improve and achieve.

Economic Impact

This proposed readoption with amendments would have some economic impact on State employees, appointing authorities and the public in general.

The proposed use of vacation and administrative leave in hours should enhance employee productivity by allowing them to use that time in smaller increments than they can now. Further, this change will allow greater efficiency by enabling the establishment of a uniform leave reporting system for all State agencies.

The donated leave program would be of great economic help to seriously ill employees, as observed in the Social Impact Statement above.

The consolidation of staff training programs in the HRDI, as reflected in the amendments to Subchapter 4, will result in the most efficient use of the State's resources.

Although the proposed PAR revisions may work to the economic detriment of some employees who may be denied an increment, the long term economic impact of the proposal should be beneficial to the majority of State employees and the public, by promoting increased productivity and giving employees a greater chance to improve.

As noted, the Awards Committee proposes readopting these rules as they currently exist. Nevertheless, both State appointing authorities and State employees will continue to benefit economically from the awards programs. Employees are encouraged to be achievement-oriented and innovative, which in turn enhances the productivity of State agencies and furthers cost efficiency. These employees will in some cases receive cash awards for their efforts, particularly for suggestions, and certainly will have a chance at economic betterment as a result of receiving awards.

The rules proposed for readoption without change reflect current practice and, as such, are not anticipated to result in additional economic impact to State and local appointing authorities and employees.

Regulatory Flexibility Statement

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

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:6.

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

4A:6-1.2 Vacation leave

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

(e) In State service, vacation leave may be granted and shall be recorded and tracked in hours.

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

4A:6-1.3 Sick leave

(a)-(h) (No change.)

(i) See N.J.A.C. 4A:6-1.22 for the donated sick leave program in State service.

4A:6-1.4 Sick leave procedures: State service

(a)-(i) (No change.)

(j) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

1. Such information shall be available to appropriate appointing authority representatives in connection with inquiries into the ability of an employee to perform job-related functions;

2. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

3. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

4. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request.

4A:6-1.7 Sick Leave Injury (SLI) reporting and appeal procedures: State service

(a)-(h) (No change.)

(i) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

1. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the eligibility of the employee for benefits under this section;

2. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

3. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

4. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request.

4A:6-1.9 Administrative leave: State service

(a) Full-time State employees in the career and senior executive service and those employees of Rutgers, the State University, New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey who perform services similar to those performed by employees of the New Jersey State Colleges who are in the career service shall be granted three days of administrative leave in each calendar year for personal business, including emergencies and religious observances.

1.-2. (No change.)

3. Administrative leave [may be utilized in multiples of one-half days] **may be granted and shall be recorded and tracked in hours.**

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

4A:6-1.21 Family leave

(a) This section describes leaves for which employees in State and local service may be eligible, pursuant to the Family Leave Act, L. 1989, c.261. The Division on Civil Rights, Department of Law and Public Safety, has [the authority to promulgate rules pursuant to] **promulgated rules to implement and enforce** the Family Leave Act. **See N.J.A.C. 13:14.**

(b) The following definitions are used in this section:

1.-5. (No change.)

6. "Family leave" means leave from employment so that the employee may provide care made necessary by reason of:

1. (No change.)

ii. The placement **for adoption** of a child with the employee [in connection with adoption of such child by the employee]; or

iii. (No change.)

7.-12. (No change.)

(c) An employee shall be entitled to a family leave of 12 weeks in any 24-month period, unless denied under (d) below.

1.-3. (No change.)

4. See N.J.A.C. 13:14-1.10 concerning proof of need for family leave.

(d)-(i) (No change.)

(j) An employee may, at his or her option, use paid leave for family leave purposes. An employee who chooses to use paid leave (vacation, sick or administrative) must meet the requirements set forth in this subchapter for the type of leave requested.

4A:6-1.22 Donated leave program: State service

(a) A State employee shall be eligible to receive donated sick or vacation leave if the employee:

1. Has completed at least one year of continuous State service;

2. Is suffering from a serious health condition or injury which is expected to require a prolonged absence from work by the employee; and

3. Has exhausted all accrued sick, vacation and administrative leave and all compensatory time off.

(b) A State employee may request that the appointing authority approve his or her participation in the program, as a leave recipient or leave donor. The employee's supervisor may make such a request on behalf of the employee for his or her participation in the program as a leave recipient.

1. The employee or supervisor requesting the employee's acceptance as a leave recipient shall submit to the appointing authority medical verification from a physician or other licensed health care provider concerning the nature and anticipated duration of the disability resulting from serious health condition or injury.

2. When the appointing authority has approved an employee as a leave recipient, the appointing authority shall, with the employee's consent, post or circulate the employee's name along with those of other eligible employees in a conspicuous manner to encourage the donation of leave time, and shall provide notice to all negotiations representatives in that appointing authority.

i. If the employee is unable to consent to this posting or circulation, the employee's family may consent on his or her behalf.

(c) A leave recipient must receive at least five sick days or vacation days or a combination thereof from one or more leave donors to participate in the donated leave program. A leave donor shall donate only whole sick days or whole vacation days and may not donate more than 10 such days to any one recipient.

1. A leave recipient shall receive no more than 180 sick days or vacation days, and shall not receive any such days on a retroactive basis.

2. A leave donor shall have remaining at least 20 days of accrued sick leave if donating sick leave and at least 12 days of accrued vacation leave if donating vacation leave.

3. A leave donor shall not revoke the leave donation.

(d) While using donated leave time, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work.

1. Any unused, donated leave shall be returned to the leave donor or donors on a prorated basis upon the leave recipient's return to work, except that if the proration of leave days results in less than one day per donor to be returned, that leave time shall not be returned.

2. Upon retirement, the leave recipient shall not be granted supplemental compensation on retirement for any unused sick days which he or she had received through the leave donation program.

(e) An employee shall be prohibited from threatening or coercing or attempting to threaten or coerce another employee for the purpose of interfering with rights involving donating, receiving or using donated leave time. Such prohibited acts shall include, but not be limited to, promising to confer or conferring a benefit such as an appointment or promotion or making a threat to engage in, or engaging in, an act of retaliation against an employee.

SUBCHAPTER 4. HUMAN RESOURCE DEVELOPMENT: TRAINING [AND], EDUCATION, **CAREER DEVELOPMENT AND EMPLOYEE ASSISTANCE** PROGRAMS

4A:6-4.1 General Provisions

(a) (No change.)

(b) In State Service, the Commissioner [may] **shall** establish [HRD programs and shall review and approve appointing authority programs] **training and education, performance evaluation and assistance programs for employees. The Commissioner shall also review and approve career development programs for employees. These responsibilities may be delegated to agencies other than the Department of Personnel only by written order of the Commissioner.**

4A:6-4.2 Department of Personnel functions: State service

[(a) The Commissioner shall supervise a State training center which, among other things, shall:

1. Serve as a central resource and maintain a central registry for HRD programs including types, sources, schedules and costs of such programs;

2. Provide varied training courses with fee schedules for State employees;

3. Develop and provide particular training for which State appointing authorities may be assessed such as:

i. Supervisory and management training (see N.J.A.C. 4A:6-4.7);

ii. Support staff training;

iii. Human resource management and development training and credentialing and;

iv. Other programs in consultation with the HRD Committee (see N.J.A.C. 4A:6-4.4) as determined by the Commissioner.

(b) The Department of Personnel shall:

1. Coordinate a State program for employees seeking agency, career or location changes and for employees affected by job displacement.

2. Encourage and provide assistance to State appointing authorities for employee development programs that assist employees in advancing in their current career or movement to a new career.

3. Provide guidance and consultation to agencies in the choice, implementation and evaluation of HRD programs.]

(a) The Commissioner shall administer a Human Resource Development Institute (HRDI) which is responsible for the following functions:

1. Planning, development, and delivery of all training and education programs for State employees, except for programs exempted by Executive Order 12 (1990) or delegated by the Commissioner in writing.

2. Planning, development, and delivery of all evaluation and assistance programs for State employees.

3. Review and approval of all career development programs for State employees.

4. Management of all ancillary operations, quality control efforts, facilities, and administrative support that are allocated to State Government training programs.

5. Coordination of State service programs for employees seeking agency, career, or location changes and for employees affected by job displacement.

(b) In cooperation with State agencies, the Human Resource Development Institute (Institute) shall assess State government Human Resource Development (HRD) needs and develop training and education plans and programs for each agency and for the State government as a whole. The Institute shall deliver or arrange the delivery of these programs as appropriate.

1. Neither agency employees nor outside consultants may develop or deliver training and education programs that the Institute is capable of developing or delivering without the prior written approval of the Institute director. If the Institute is not capable of developing or delivering a program of instruction that an agency needs, the Institute director may authorize the agency to assign employees temporarily to develop or deliver the program, or to hire a consultant for the same purpose. The Institute staff shall supervise and direct the delivery of any such program.

2. No State agency except the Institute may employ or retain any person whose primary duty is staff training or human resource development, except as specifically permitted by Executive Order No. 12 (1990) or by the Commissioner of Personnel in writing.

3. If an agency's needs for training and education of employees or clients exceed its allocated share of the Institute's resources, the Institute may charge the agency for the delivery of services to meet the additional needs.

(c) The Institute shall establish guidelines and procedures for career development programs, help State agencies develop these programs, and review and approve career development plans and programs.

(d) The Institute shall evaluate the results and effects of all State government HRD programs based on the following criteria:

1. Contribution to State government-wide goals and objectives.

2. Response to legitimate State government HRD needs.

3. Allocation of resources to areas of greatest need.

4. Achievement of desired changes in employee knowledge, skills, attitudes, and performance.

(e) The Institute shall maintain a comprehensive system to record the training and education experiences of its clients, including all State government employees.

(f) Each State agency may designate a customer liaison to the Institute, whose responsibilities, which shall be in addition to his or her other job assignments in the agency, shall be the following:

1. Review and approve the designation of members of the agency to participate in HRD programs, subject to eligibility criteria established by the Institute.

2. Assist the Institute in setting HRD priorities related to the agency's mission and goals.

4A:6-4.3 [Agency Human Resource Development Plan:] **Training and Education Programs:** State Service

[(a) Each State department or agency shall establish HRD programs under an HRD professional and prepare an annual plan to be submitted to, and approved by, the Department of Personnel based on a comprehensive needs analysis.

1. In developing the HRD plan, a department or agency should evaluate the results and effects of HRD programs provided to its employees to determine whether the programs are contributing to the achievement of the agency mission and goals and review:

i. The extent to which HRD programs produce desired changes in employee knowledge, skills, attitudes and performance;

ii. The extent to which HRD programs that are provided cover the areas of greatest need;

iii. Any necessary modification in the coverage or conduct of HRD programs and methods to increase the value and benefits of programs; and

iv. HRD priorities, funding and future programs.

2. The plans shall be in such form and detail and submitted according to such time schedules as prescribed by the Department of Personnel.

3. The plan shall generally include but not be limited to a listing and description of programs in the following areas:

i. Employee orientation;

ii. Performance Assessment Review (see N.J.A.C. 4A:6-5.1 et seq.);

iii. Career development (see N.J.A.C. 4A:6-4.5);

iv. Retirement planning;

v. Other programs; and

vi. Such additional categories as required by the Department of Personnel.

3. The plan shall include a listing of human resource development funds, their sources, and the distribution of such funds.

(b) Each State department or agency shall submit to the Department of Personnel for approval blanket or individual HRD requests on a designated form. Such requests shall be reviewed in accordance with the department or agency plan and such additional information as provided.

(c) The Department of Personnel may require additional reports, information or audits of a department or agency's HRD programs as it deems necessary.]

(a) State Government training and education programs include, but are not limited to, the following:

1. Employee orientation programs;

2. Agency specific technical and topical programs;

3. Programs mandated by State and Federal statutes;

4. Health and safety programs;

5. General training programs;

6. Computer and information systems training;

7. Basic literacy and remedial programs;

8. Clerical and support programs;

9. Apprenticeship programs;

10. Supervisory and management training; and

11. Executive training and development.

[4A:6-4.4 Human Resource Development Committee: State service

(a) The Commissioner shall establish and appoint a Human Resource Development Committee from among State HRD professionals to advise and assist the Department of Personnel in establishing and implementing procedures for State employee training and education and such other HRD advisory groups as the Commissioner shall deem necessary.

(b) The Department of Personnel shall provide necessary assistance to the Committee.]

4A:6-[4.7]**4A:6-4.4 Certified Public Manager Program: State service**

(a) The Human Resource Development Institute shall develop and administer the Certified Public Manager Program (CPM) for supervisors and managers. The program shall meet criteria established by the National Certified Public Managers Consortium. The Commissioner of Personnel shall be Chief Administrative Officer of the program. The Director of the HRDI shall be the Program Director.

(b) The Program shall consist of progressive levels of instruction delivered jointly by the Institute and Rutgers, the State University. The Institute shall set eligibility criteria and design the courses.

(c) Each participant may be required to pay part of the cost of participation in any level of the program, as determined by the Institute.

(d) In order to provide expert guidance to the program, the Commissioner shall appoint a CPM Policy Board consisting of representatives from State government, private sector organizations, and institutions of higher education.

4A:6-4.5 Career Development Programs: State service

[(a) State departments and agencies shall implement HRD programs that assist employees in supplementing or acquiring knowledge, skills and abilities for the performance of their work responsibilities.]

[(b)](**a**) Departments or agencies may, **with the approval of the HRDI Director and** consistent with their goals, workforce planning and technological changes, [also] implement programs that [allow] **prepare** employees to move to new assignments or career opportunities.

[(c) Career development programs] **(b) Programs in support of career development** include, but are not limited to, **the following**: tuition assistance (N.J.A.C. 4A:6-4.6), employee interchanges

(N.J.A.C. 4A:6-4.8), **and** internships (N.J.A.C. 4A:6-4.9) [and specific training or education courses].

4A:6-4.7 [Certified Public Manager Program: State service] **(Reserved)**

[(a) A Certified Public Manager Program (CPM) for supervisors and managers shall be administered by the Department of Personnel.

1. The program shall consist of progressive levels of instruction jointly conducted by the Department and Rutgers, the State University.

2. Each department or agency shall be assessed costs to be transferred to the Department of Personnel for participation of their employees for supervisory training. For that part of the program for managerial training, the employee shall be responsible for 25 percent of the cost and the department or agency for 75 percent of the cost.

(b) The Commissioner shall be the chief administrative officer and set the participation criteria, courses and costs.

(c) The Commissioner shall appoint a CPM Policy Board, consisting of representatives from State government, private industry and academia.]

4A:6-5.1 General provisions

(a) (No change.)

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career service, and those in unclassified titles as designated by particular departments or agencies.

1. While not mandated, departments and agencies are encouraged to include all unclassified titles in the PAR program.

2. The PAR program shall use a [multi-level rating scale and a] standardized form to be designated by the Department of Personnel[.] **and a five-level rating scale to include the following ratings:**

i. One, for Significantly Above Standards;

ii. Two, for Exceeds Standards;

iii. Three, for Meets Standards;

iv. Four, for Marginally Below Standards; and

v. Five, for Significantly Below Standards.

[3. Annual PAR ratings will be based on an evaluation of performance over the preceding 12-month period, with interim ratings assigned at the end of six months and final ratings assigned and recorded at the end of one year.

4. During the working test period a job performance plan should emphasize training and development. Upon successful completion of the working test period a full job performance plan shall be developed.]

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

4A:6-5.2 PAR procedure: State service

(a) (No change.)

(b) At the end of six months and at the end of one year, the employee and the supervisor shall review the employee's performance [and the]. **The** supervisor shall designate [a] **an interim** performance rating **at the end of six months and a final rating at the end of one year.**

1. [Where] **When** there is a change either in job assignment or supervisor during the evaluation period, the old performance plan shall be closed out. **The employee's performance during the portion of the rating period under the old performance plan shall be rated** and a new performance plan **shall** be prepared. The final rating shall be a proration of all ratings received during the review period.

2. When there is a change in job title during the evaluation period, the former supervisor shall assign a final rating for the former performance plan and title. A performance plan for the new title shall be developed.

3. For employees who are newly hired or whose anniversary dates have changed, the rating period shall end in accordance with the employee's new anniversary date.

4. The final PAR rating for an employee who is at the eighth step of the salary range will be based on an evaluation of performance over 18 months. Interim ratings will be assigned at the end of six months and again at the end of 12 months, and the final rating will be assigned and recorded at the end of 18 months. Once the employee reaches the ninth step of the salary range, the evaluation of the employee's performance again will be based on a 12 month period as described in (b) above.

[2.]**5.** [Where] **When** appropriate, performance improvement plans shall be set at each review.

[3.]**6.** The employee shall be entitled to a copy of the rating.

(c) Where a rating [below the mid-point on the multi-level scale] **of four or five** is received, a performance [review] **conference** shall be conducted after three months or such shorter period of time as determined by the supervisor.

(d) **A performance plan for each rating period shall be established within a reasonable time after completion of the previous rating period.** New employees shall receive a performance plan within a reasonable time after appointment.

1. The supervisor shall prepare job performance standards prior to the commencement of the working test period which identify essential tasks and emphasize training and development. Upon the employee's successful completion of the working test period the supervisor and the employee shall jointly develop complete job performance standards.

(e) A supervisor's own PAR shall provide that the supervisor shall complete the PAR of his or her subordinates.

[(e)](**f**) The Department of Personnel may require additional reports, information or audits of an agency's PAR program.

(g) A complaint that an entire agency or unit is in violation of this subchapter shall be presented to the PAR coordinator for the subject department. The PAR coordinator shall, within 30 days, investigate the complaint, respond in writing to the individual(s) presenting the complaint and implement remedial action as appropriate. If the individual(s) is (are) dissatisfied with the response of the PAR coordinator, or if no action has been taken within 30 days of the complaint, the individual(s) may appeal the matter to the PAR Program Coordinator, Human Resource Development Institute, Department of Personnel.

1. Complaints concerning an individual's PAR rating or performance standards shall be addressed through noncontractual grievance procedures. See N.J.A.C. 4A:6-5.3(b) through (d).

4A:6-5.3 PAR use and review: State service

[(a) If there is more than one level below the mid-point, an employee may not receive successive annual ratings which are immediately below the mid-point. Any employee who has failed to improve his or her performance after such rating during the next annual review period shall receive the lowest PAR rating.]

[(b)](**a**) An employee receiving an annual PAR rating [at the lowest level] **of a four or a five** shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an employee who was denied an increment **because of receiving a four rating** but whose performance has subsequently improved. If approved by the Department of Personnel, such increment shall not be effective until **a pay period beginning** at least 90 days after the employee's anniversary date.

2. An employee who receives an annual rating [at the lowest level] **of a four or five** shall be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

[(c)](**b**) An employee who has received an annual PAR rating [at the lowest level] **of a four or a five** may appeal such rating through departmental non-contractual grievance procedures. See N.J.A.C. 4A:2-3.1 [et seq.] In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

[(d)](**c**) An employee may appeal the final departmental decision to the Merit System Board within 20 days of receipt of the decision.

1.-3. (No change.)

[(e)](**d**) An employee who disagrees with his or her PAR job performance [plan] **standards** may utilize the noncontractual grievance procedures. The Department of Personnel may designate a person to aid in the resolution of such matters.

[(f)](**e**) **A rating of a five shall constitute evidence of incompetency, inefficiency or failure to perform duties.** In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

[(g)](f) Performance ratings may be used as a factor in promotion (see N.J.A.C. 4A:4-2.15) and layoff (N.J.A.C. 4A:8-2.2(c)4).

(a)

MERIT SYSTEM BOARD

Medical and Psychological Disqualification Appeals

Proposed Amendment: N.J.A.C. 4A:4-6.5

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

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1(e); 42 U.S.C. 12101 et seq.

Proposal Number: PRN 1992-447.

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

Thursday, November 5, 1992 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, 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 November 18, 1992 to:

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

The agency proposal follows:

Summary

These amendments to N.J.A.C. 4A:4-6.5 are proposed to ensure compliance with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. Currently, medical and psychological examinations are given to eligibles for numerous titles, including the title of Police Officer, following certification but prior to appointment. However, under the ADA, such examinations are only permissible following a conditional offer of employment. The ADA also requires that all eligibles, for a given title, to whom an offer of employment is made, receive such examinations if any such eligibles are subjected to them.

In addition, the ADA requires that any information obtained concerning an eligible's medical condition or history be kept in separate, confidential files. This confidentiality requirement contains limited exceptions, such as allowing supervisors and managers to have access to the information to devise a reasonable accommodation for an eligible who receives an appointment.

Finally, the ADA requires that the results of these examinations only be used in accordance with the ADA, to ascertain whether eligibles are able to perform essential job functions.

These amendments implement these requirements by using language verbatim from the ADA and related Federal regulations.

Social Impact

The proposed amendments would have an impact upon all State and local appointing authorities which require medical and psychological examinations of candidates for employment, as well as upon the candidates for these positions. It is anticipated that these amendments will have a positive social impact, by ensuring that qualified eligibles will be appointed to positions which require medical or psychological examinations and that eligibles will not be unfairly discriminated against.

Economic Impact

The proposed amendments would have a noticeable economic impact on appointing authorities, although all of the proposed changes are already required by the ADA.

The changes would require that appointing authorities engage in a longer process to fill positions. Following certification, appointing authorities would first ascertain which eligibles are interested in appointment, conduct interviews of the interested eligibles, and pursue criminal history and work history background checks. After this screening, appointing authorities would make conditional offers of employment to remaining eligibles on the certification and then could require medical or psychological examinations of these eligibles. It is noted that, prior to the passage of the ADA, appointing authorities could do all of the foregoing checks and examinations following certification.

These amendments also would result in some costs for appointing authorities in ensuring the confidentiality of eligibles' medical records and maintaining separate files of these records.

However, the amendments would have a positive economic impact on appointing authorities also, since they would enjoy the benefits of employees who are qualified to perform the essential functions of a job. Eligibles and current employees would also receive economic benefits out of enhanced career and promotional opportunities through the removal of artificial barriers to employment and promotion.

Regulatory Flexibility Statement

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

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

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) (No change.)

(b) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., an appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations, if:

1. All eligibles for the title, to whom an offer of employment is made, are subjected to such examinations;

2. Information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

i. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the ability of an applicant to perform essential job functions;

ii. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

iii. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

iv. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request; and

3. The results of such examinations are used only in accordance with the Americans with Disabilities Act.

Recodify existing (b)-(g) as (c)-(**h**) (No change in text.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Maintenance of Hotels and Multiple Dwellings Methods, Devices and Systems for Indirect Apportionment of Heating Costs in Multiple Dwellings

Proposed Amendment: N.J.A.C. 5:10-25.2

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 55:13A-7.10.
Proposal Number: PRN 1992-458.

Submit comments by November 18, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802
FAX Number (609) 633-6729

The agency proposal follows:

Summary

Pursuant to P.L. 1991, c.453, the Department has adopted rules concerning indirect apportionment of heating costs in multiple dwellings (see 24 N.J.R. 3515(b), October 5, 1992).

One of the comments submitted in response to the proposal of that rule included a recommendation that the following information should be included in bills:

1. Billing date;
2. Billing period;
3. Readings of the measurement device at the beginning and at the end of the billing period;
4. Number of measurement units recorded by the device;
5. Approximate energy usage in terms of a recognized unit of measurement for each device;
6. Per unit energy charge for each measured cost;
7. Distributed usage costs, including any additional charges or fees;
8. Total energy costs billed to the tenant;
9. A statement that the bill is not from the utility; and
10. A local or toll-free telephone number for inquiries or complaints about the billing or the energy allocation system.

The Department's response was that the proposal could not be expanded upon adoption, but that the Department would propose changes to N.J.A.C. 5:10-25.2(c)7 and 8 which, in essence, would require all items other than number 7, which would not be relevant since, as the Department noted in another response, the law does not apply to charges other than for actual energy use for heating dwelling units. The amendment also incorporates recommendations concerning tenant disclosure, billing procedures and complaint handling that were made by the National Conference on Weights and Measures Task Force on Energy Allocation in its report published in July, 1989.

Social Impact

This amendment, providing specific items which must be included in tenants' bills for apportioned heat, insures that unit occupants (including both tenants of rental units and residents of condominium, cooperative and mutual housing corporation buildings subject to the Hotel and Multiple Dwelling Law) will know when they are to receive bills, how their costs will be calculated, how their heat usage was measured, that the landlord has not "charged extra" and profited from heat apportionment, and where and to whom the tenant may direct questions or complaints. Occupants will also be told of estimated usages and billing costs for units of their size and they will be apprised of scheduled, routine maintenance procedures. Since the tenants will not be receiving a bill from a utility, a regulated entity, but instead from the landlord or from a third party, it is important that the bill be sufficiently informative and accurate to allow the tenant to understand how the charges are assessed.

Economic Impact

Since most landlords employing a system of indirect apportionment of heating costs will be using a computerized billing system, it is appropriate to notify computer service providers of what items need to be included in the billing statements. While there may be some initial cost for reprogramming a system, the items required by this amendment would all be calculated, or easily calculable, from existing information, so any additional work required should be minimal. Tenants and landlords will benefit from advance knowledge of their responsibilities and tenants will not be surprised by their heating bills if they are made aware of average usages and seasonal variations. All parties will be better able to budget on an annual basis.

Similarly, maintenance schedules and information about the proper operation of systems will allow prompt discovery and repair of any malfunctioning apparatus.

Regulatory Flexibility Analysis

This amendment to N.J.A.C. 5:10-25.2 sets forth disclosure and billing requirements for landlords and their tenants with heat apportionment systems, as detailed in the Summary and Economic Impact above. The reporting requirements are no less for small than for large businesses or landlords because even a small business or landlord cannot be allowed to bill in an inequitable way. The protection established by the statute that these rules are intended to implement applies to all tenants of multiple dwellings, regardless of whether or not the landlord is a "small business" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, the Department has provided no differential requirements based on business size in this proposal.

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

5:10-25.2 Application to the Department

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

(c) An owner of a multiple dwelling who proposes to institute a method or sytem for indirect apportionment of heating costs shall provide the following information to the Bureau:

1.-6. (No change.)

7. A copy of the billing format used or proposed to be used to bill **unit occupants** for apportioned heating costs[;], **which shall include, but not be limited to, the following:**

i. Billing date;

ii. Billing period;

iii. Measurement units and formula used for calculating energy use, the energy usage calculated from that reading, and the charge per unit for energy;

iv. A statement that the bill is not from the utility;

v. A statement that the total of the bills for the dwelling units shall not exceed the cost for the heating of all dwelling units that is paid to the utility, and the amount of that total charge; and

vi. A local or toll-free number of the landlord or the landlord's authorized agent that an occupant can call to obtain information, to request service or maintenance, or to submit complaints.

8. A copy of information concerning indirect apportionment of heating costs, **which shall be** provided to existing and prospective occupants, including: [information about complaints, maintenance requests and challenges to billing, and including the names and addresses of persons responsible for responding to any such complaints, requests or challenges; and]

i. A statement of the range of accuracy of the system when it is functioning properly;

ii. Average square foot apportioned heating cost for the building over the last heating season, if the apportionment system was already installed, or an estimate based upon manufacturer's data or information from a similar installation;

iii. For each occupant, the square footage of that occupant's unit; and

iv. A statement of the maintenance schedule for the system;

9. (No change.)

HEALTH
(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need:

Psychiatric Inpatient Beds: Adult Open Acute Psychiatric Bed Standards; Adult Closed Acute Psychiatric Bed Standards; Inpatient Screening Psychiatric Bed Standards; Child and Adolescent Acute Psychiatric Bed Standards; Intermediate and Special Psychiatric Bed Standards

Proposed Readoption with Amendments: N.J.A.C. 8:43E recodified as 8:33R

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1992-448.

Submit comments by November 18, 1992 to:

John J. Gontarski, Chief
Health Systems Review Program
New Jersey Department of Health
CN 360, Room 604
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 8:43 is scheduled to expire on December 11, 1992. In order to avoid expiration of these rules and assure the continuity of health planning policies regarding the provision of psychiatric inpatient services in the State, the Department is seeking the retention of these existing policies through a readoption with technical amendments and recodification (at N.J.A.C. 8:33R) at this time. In view of the imminent development of a State Health Plan (SHP) mental health chapter, the Department of Health is seeking a two-year extension of these rules to expire on December 11, 1994. The Department has renewed these rules because they are necessary, reasonable and proper for the purpose for which they were promulgated, with the exception of those sections being amended.

The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq. as amended) grants the State Department of Health the responsibility for establishing rules governing the planning and certificate of need review for hospitals and related health care facilities. The rules contained in this chapter address a variety of psychiatric services, with a subchapter devoted to each of four major categories of psychiatric services. These subchapters and the psychiatric service categories that are addressed by each subchapter are as follows:

Chapter 43E (N.J.A.C. 8:43E recodified as 8:33R)

Title revised to reflect the fact that the entire chapter is devoted to criteria and standards for psychiatric services and recodified into chapter 33R of Title 8.

Subchapter 1 (N.J.A.C. 8:43E-1 recodified as 8:33R-1) RESERVED

This subchapter is being reserved for the development of child intermediate psychiatric inpatient services policies and standards that are recommended by the draft Mental Health chapter of the State Health Plan.

Subchapter 2 (N.J.A.C. 8:43E-2 recodified as 8:33R-2)

This subchapter specifically addresses criteria and standards which form the basis for the review of certificate of need applications for Adult Open Acute Psychiatric Beds. The subchapter became effective on January 17, 1984 and was readopted by the Health Care Administration Board on December 10, 1987.

These rules contain a methodology (Appendices A and B) for estimating bed need on a county and Statewide basis, and establish standards and guidelines regarding standard planning concerns, such as cost effectiveness, continuity of care, accessibility, quality, competitive review, and an applicant's ability to obtain endorsements by local and State mental health authorities. Standards regarding the conversion of existing bed capacity, projected length of stay, physical environment, treatment programs and staffing patterns and submission dates are also included.

Subchapter 2 specifically outlines the standards and guidelines to be used in determining the requirements and need for beds for adult inpatients who have voluntarily committed themselves for evaluation and/or stabilization of an acute episodic psychiatric disorder.

Amendments are proposed to Subchapter 2 as follows:

1. Addition of language at N.J.A.C. 8:43E-2.1 (recodified as 8:33R-2.1) that clarifies the purpose of the standards and criteria that are contained in the subchapter.

2. Removal of the previous certificate of need batching cycle review schedule at N.J.A.C. 8:43E-2.19 (recodified as 8:33R-2.19) and substituting language consistent with the Health Care Cost Reduction Act (P.L. 1991, c.187) and the recently adopted Certificate of Need Policy Manual (N.J.A.C. 8:33; see 24 N.J.R. 2222(a), 24 N.J.R. 3104(a)).

3. Replacement of existing language at N.J.A.C. 8:43E-2.20 (recodified as 8:33R-2.20), permitting Local Advisory Board (LAB) participation in the certificate of need review process in place of the previous Health Systems Agencies.

Subchapter 3 (N.J.A.C. 8:43E-3 recodified as 8:33R-3)

This subchapter specifically addresses criteria and standards which form the basis for the review of certificate of need applications for Adult Acute Closed Psychiatric Bed services. This subchapter became effective on January 17, 1984 and was readopted with amendments on December 10, 1987 by the Health Care Administration Board.

Guidelines and descriptions of mental health service areas are outlined in Subchapter 3. The intent to designate and to provide local areas with all levels of psychiatric services is delineated as well as planning specifications for adult closed acute psychiatric beds such as emergency services, unit size, bed need methodology, admission criteria, accessibility of care, transfers to state facilities from local facilities, continuity of care, liaison services, discharge planning, appropriateness of cost, capital financing, building specifications and monitoring and sanction authority.

This subchapter contains the details and standards required for adult involuntary commitments. Involuntary commitments are characterized by a determination by a recognized psychiatric authority (screening center) of the existence of an acute episode of mental illness in the patient which is characterized by behavior potentially or actually harmful to self and/or others.

Amendments are proposed to this subchapter as follows:

1. Addition of language at N.J.A.C. 8:43E-3.1 (recodified as 8:33R-3.1) that clarifies the purpose of the standards and criteria that are contained in the subchapter.

2. Removal of the previous certificate of need batching cycle review schedule at N.J.A.C. 8:43E-3.3 (recodified as 8:33R-3.3) and substituting language consistent with the Health Care Cost Reduction Act (P.L. 1991, c.187) and the recently adopted Certificate of Need Policy Manual (N.J.A.C. 8:33).

3. Replacement of existing language at N.J.A.C. 8:43E-3.19 (recodified as 8:33R-3.19) permitting Local Advisory Board (LAB) participation in the certificate of need review process in place of the previous Health Systems Agencies.

Subchapter 4 (N.J.A.C. 8:43E-4 recodified as 8:33R-4)

This subchapter specifically addresses criteria and standards which form the basis for the review of certificate of need applications for Child and Adolescent Acute Psychiatric Beds. This subchapter became effective on January 17, 1984 and was readopted with amendments on December 10, 1987.

The standards and specifications contained in the rules consist of the criteria for establishing psychiatric inpatient services for licensed acute care or special hospitals seeking to initiate, maintain or expand child and adolescent acute psychiatric services through the certificate of need process. The rules include a definition of emergency screening mental health services, a mental health service area, unit size requirements, a bed need methodology, admissions criteria, length of stay, after care services, impact on other area psychiatric units, and establishes a system of care for this age group (persons under age of 13 and those between 13 and 18). The subchapter also contains standards for treatment programs, staffing patterns, discharge planning, appropriateness of cost, capital financing, physical environment, endorsements by State and local departments and review boards and sanction authority.

Amendments are proposed to this subchapter as follows:

1. Addition of language at N.J.A.C. 8:43E-4.1 (recodified as 8:33R-4.1) that clarifies the purpose of the standards and criteria that are contained in the subchapter.

2. Removal of the previous certificate of need batching cycle review schedule at N.J.A.C. 8:43E-4.3 (recodified as 8:33R-4.3) and substituting language consistent with the Health Care Cost Reduction Act (P.L. 1991, c.187) and the recently adopted Certificate of Need Policy Manual (N.J.A.C. 8:33).

3. Replacement of existing language at N.J.A.C. 8:43E-4.20 (recodified as 8:33R-4.20), permitting Local Advisory Board (LAB) participation in the certificate of need review process in place of the previous Health Systems Agencies.

Subchapter 5 (N.J.A.C. 8:43E-5 recodified as 8:33R-5)

This subchapter specifically addresses criteria and standards which form the basis for the review of certificate of need applications for Intermediate Adult and Special Psychiatric Beds. Subchapter 5 became effective on December 10, 1987 and was readopted on July 20, 1988.

The standards and criteria in this subchapter pertain to licensed psychiatric beds in a separate designated area in a New Jersey hospital which provides intensive psychiatric evaluation and treatment services as part of a comprehensive psychiatric and psychosocial rehabilitation program appropriate for individuals aged 18 and above. These patients require a comprehensive and specialized treatment program that cannot be fully provided within a short-term acute psychiatric setting. Admissions to an intermediate facility have a longer length of stay than generally is characteristic of patients admitted to adult open acute psychiatric units but their average stay is less than 45 days.

Special Psychiatric Beds means licensed psychiatric beds within any separate unit or section of a licensed New Jersey Hospital which are utilized for the treatment of an identified target population of any age demonstrated to require a specialized program of treatment for acute psychiatric disorders. Examples of patients served by this type of unit include persons with eating disorders, geriatric, and those with dual psychiatric/substance abuse diagnoses. The average length of stay for this type of unit is generally less than 60 days.

The specific standards addressed in this subchapter include unit size, a bed need methodology, minimum occupancy requirements, discharge planning, admission criteria, requirements for affiliation agreements, accessibility criteria, continuity of care requirements and impact on similar facilities in the area. Cost, data requirements, competitive review, clinic services, financing, State and local endorsements are also described for these types of beds.

Amendments are proposed to this subchapter as follows:

1. Addition of language at N.J.A.C. 8:43E-5.1 (recodified as 8:33R-5.1) that clarifies the purpose of the standards and criteria that are contained in the subchapter.

2. Removal of the previous certificate of need batching cycle review schedule at N.J.A.C. 8:43E-5.2 (recodified as 8:33R-5.2) and substituting language consistent with the Health Care Cost Reduction Act (P.L. 1991, c.187) and the recently adopted Certificate of Need Policy Manual (N.J.A.C. 8:33).

3. Replacement of existing language at N.J.A.C. 8:43E-5.20 (recodified as 8:33R-5.20), permitting Local Advisory Board (LAB) participation in the certificate of need review process in place of the previous Health Systems Agencies.

Social Impact

N.J.S.A. 26:2H-1 recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health ... shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs ..."

These rules were originally developed to promote the provision of inpatient psychiatric care in a cost effective manner at a level appropriate to the needs of the patient. The objectives of these amendments are to further improve the continuity and accessibility of care by assuring that providers will deliver services in a more integrated system of mental health care. The competitive review of applications will help assure the approval of applications that most closely correspond to the criteria and standards identified in this chapter.

Economic Impact

Current utilization levels of existing licensed psychiatric units in New Jersey, as well as county-based population projections, indicate the need for expansion of various categories of psychiatric services in some regions of the State. The competitive review criteria that are included in this chapter will encourage the conversion of existing underutilized hospital capacity, the prudent planning for low capital expenditures, and the assurance of improved access to services for indigent patients.

Regulatory Flexibility Statement

Since only hospitals, having by nature well over 100 employees, would be capable of qualifying for a certificate of need for Adult Open Acute Psychiatric beds or Adult Closed Acute Psychiatric beds, no recordkeeping, reporting or other compliance requirements are placed upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., by the rules proposed for readoption with amendments and, therefore, no regulatory flexibility analysis is required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43E.

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

CHAPTER [43E]**33R**
POLICY MANUAL FOR PLANNING AND CERTIFICATE OF NEED REVIEWS OF **PSYCHIATRIC** HEALTH CARE FACILITIES AND SERVICES WITHIN THE STATE OF NEW JERSEY

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. RULES GOVERNING PSYCHIATRIC INPATIENT ADULT OPEN ACUTE BEDS

[8:43E]**8:33R**-2.1 Scope **and purpose**

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds as provided in licensed general and special hospitals throughout the State. The vast majority of licensed psychiatric beds remain in use for the purpose of treating adults with acute psychiatric disorders on a voluntary basis. These rules address the addition or establishment of licensed psychiatric beds of this type, to be classified as Adult Open Acute Psychiatric Beds, in any existing or proposed licensed hospital in New Jersey.

(b) Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is continuity of care for patients upon discharge, and that a consistent level of quality services is provided in a cost effective manner.

[8:43E]**8:33R**-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

...

"Adult Closed Acute Psychiatric Unit" means a separate and locked unit of inpatient beds in a New Jersey hospital specifically designated for the provision of intensive treatment services for persons experiencing an acute episode of a primary or secondary psychiatric disorder which accepts and treats individuals under an involuntary commitment order and may also admit patients to the unit under voluntary commitment status. Admissions to the unit have an average length of stay of thirty (30) days or less. (See N.J.A.C. [8:43E-3.1 et seq.]**8:33R-3**.)

"Children's Acute Psychiatric Beds" means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility, established for the provision of intensive treatment and rehabilitation of individuals under the age of 18, who are experiencing an acute episode of a psychiatric disorder. (See N.J.A.C. [8:43E-4.1 et seq.] **8:33R-4**.)

...

[8:43E]**8:33R**-2.3 Unit size

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

(c) The Department may consider exceptions to (a) above when the applicant demonstrates compliance with one or both of the following conditions:

1. Where the closest Adult Open Acute Psychiatric Unit is further than a 20 mile radius from the proposed new unit, and the bed need as determined by the methodology contained in N.J.A.C. [8:43E] **8:33R**-2.4 indicates a need for less than 20 beds in the area. In no case may the minimum size of the unit be below 12 beds.

2. (No change.)

[8:43E]**8:33R**-2.4 Bed need

(a) (No change.)

(b) Exceptions may be considered by the Department when the applicant has demonstrated compliance with either of the following conditions:

1. (No change.)

2. When the establishment of beds is for the purpose of increasing capacity for an existing Adult Open Acute Psychiatric Unit, based upon exceeding occupancy standards as set forth in N.J.A.C. [8:43E] **8:33R**-2.12. The applicant must demonstrate compliance with all other requirements of these regulations, and provide the following additional documentation.

i.-v. (No change.)

Recodify existing 8:43E-2.5 through 2.11 as **8:33R-2.5 through 2.11** (No change in text.)

[8:43E]**8:33R**-2.12 Conversion of existing bed capacity

(a) Facilities seeking approval of new or additional Adult Open Acute Psychiatric Beds shall convert existing bed capacity when occupancy rates for other services (for example Medical-Surgical, Pediatric, Ob/Gyn) are below, for the four previous reporting quarters, those levels set as minimum by the [State Medical Facilities Plan] **Hospital Policy Manual, N.J.A.C. 8:33A**. Copies of the [State Medical Facilities Plan] **Hospital Policy Manual, N.J.A.C. 8:33A,** may be obtained by written request to:

Health Systems Review, Room 604
New Jersey Department of Health
CN 360
Trenton, NJ 08625

(b) The Department may consider exceptions when the applicant demonstrates compliance with one or more of the following conditions:

1.-2. (No change.)

3. Where conversion of existing bed capacity would result in complete discontinuance of a health care service that has been found necessary to the needs of residents of the region or State as documented by the [Health Systems Plan or] State Health Plan.

4. (No change.)

Recodify existing 8:43E-2.13 through 2.18 as **8:33R-2.13 through 2.18** (No change in text.)

[8:43E]**8:33R**-2.19 Submission of certificate of need applications

Applications for the establishment of new Adult Open Acute Psychiatric Beds will be competitively reviewed pursuant to [batching] procedures set forth in N.J.A.C. 8:33. [The following batching schedule will apply for the submission of Certificate of Need applications for Adult Open Acute Psychiatric Beds:

Deadline for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15]

[8:43E]**8:33R**-2.20 Competitive review

(a) Where the need in a service area for additional Adult Open Acute Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1.-6. (No change.)

7. The endorsement of the [Health Systems agencies] **Local Advisory Boards**, County Mental Health Board(s), and mental health providers in the proposed service area.

APPENDIX A
(No change.)

APPENDIX B

METHODOLOGY FOR ESTIMATING NEED FOR ADDITIONAL PSYCHIATRIC BEDS UNDER [8:43E]**N.J.A.C. 8:33R**-2.4

(No change in text.)

SUBCHAPTER 3. ADULT CLOSED ACUTE PSYCHIATRIC BEDS

[8:43E]**8:33R**-3.1 Scope **and purpose**

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds provided in general acute care and special hospitals throughout the State. This subchapter sets forth the criteria by which the Department of Health will review certificate of need applications for the establishment of new Adult Closed Acute Psychiatric Beds in an existing or proposed licensed hospital in New Jersey. **Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these inpatient psychiatric beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is a continuity of care for patients upon discharge, and that a consistent level of quality services is provided in a cost effective manner.**

(b) (No change.)

[8:43E]**8:33R**-3.2 (No change in text.)

[8:43E]**8:33R**-3.3 Submission of certificate of need applications

[(a)] Applications for establishment of new psychiatric adult closed acute psychiatric beds will be [under batching] **in accordance with** procedures as determined by the Department and other policies and procedures set forth in N.J.A.C. 8:33[-1.5]. [The following schedule shall be initiated upon adoption of these rules:

Deadline for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15]

[8:43E]**8:33R**-3.4 (No change in text.)

[8:43E]**8:33R**-3.5 Unit size

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

(c) The Department may consider exceptions to (b) above when the applicant demonstrates that the proposed unit is farther than 40 miles from any existing unit and the need as contained in N.J.A.C. [8:43E]**8:33R**-2.4 and 4.6 indicates a need for fewer than 20 beds.

(d) (No change.)

[8:43E]**8:33R**-3.6 Bed need

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

(c) When the application is for the purpose of increasing the total number of adult psychiatric beds (rather than conversion of existing psychiatric beds to STCF status), the applicant shall additionally demonstrate the following:

1.-2. (No change.)

3. Compliance with the Hospital Policy Manual sections on occupancy rates (N.J.A.C. [8:43I]**8:33A**-1.11) and on the addition or replacement of beds (N.J.A.C. [8:43I]**8:33A**-1.12).

(d) (No change.)

Recodify existing 8:43E-3.7 through 3.14 as **8:33R-3.7 through 3.14** (No change in text.)

[8:43E]**8:33R**-3.15 Discharge and transfer planning

(a) The applicant shall describe the discharge planning process in writing. The description shall include provisions for discharge planning to be conducted as an ongoing process, beginning at admission and involving liaison staff. The discharge planning process shall also apply to patients being transferred to another facility. The applicant shall assure that:

1. (No change.)

2. Representatives from the various disciplines in the treatment team (listed in N.J.A.C. [8:43E]**8:33R**-3.14(b)), the liaison, and a member of the patient's natural support system, when appropriate, shall meet as often as necessary to develop an appropriate discharge plan. Liaison participation shall be limited to the development of the discharge plan;

3.-4. (No change.)

[8:43E]**8:33R**-3.16 (No change in text.)

[8:43E]**8:33R**-3.17 Capital financing

Financing of hospital construction, modernization/renovation, or major moveable equipment projects require a minimum equity contribution pursuant to N.J.A.C. 8:33[-2.15(a)2].

[8:43E]**8:33R**-3.18 (No change in text.)

[8:43E]**8:33R**-3.19 County mental health board review

[(a)] The county mental health board(s) of the service area proposed to be served by the applicant shall receive a copy of the certificate of need application, for their formal action, at the time of submission to the Department. A letter of endorsement from the board(s) or its administrator reflecting action shall be considered a significant factor in assessing local need for the project. County mental health board comments should be forwarded to the Department of Health, [Health Systems Agencies] **Local Advisory Boards**, and to the Division of Mental Health and Hospitals in a timely manner, consistent with the certificate of need requirements of N.J.A.C. 8:33. Applicants are encouraged to consult with their county mental health board during the planning stages and prior to submission of the application to ensure that local needs are being met.

Recodify existing 8:43E-3.20 and 3.21 as **8:33R-3.20 and 3.21** (No change in text.)

[8:43E]**8:33R**-3.22 Competitive review

(a) In geographic areas where more than one applicant has filed a certificate of need to establish additional adult closed acute psychiatric beds, the Department may elect to approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1.-8. (No change.)

9. Projects which have the endorsement of the county mental health board(s) of the proposed service area. (See N.J.A.C. [8:14-3.19]**8:33R-3.19**); and

10. (No change.)

[8:43E]**8:33R**-3.23 (No change in text.)

SUBCHAPTER 4. CHILD AND ADOLESCENT ACUTE PSYCHIATRIC BEDS

[8:43E]**8:33R**-4.1 Scope **and purpose**

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds in licensed general and special hospitals throughout the State. These rules set forth the criteria by which the Department of Health will review Certificate of Need applications for the addition or establishment of new Child and Adolescent Acute Psychiatric Beds in any existing or proposed health care facility in New Jersey, or in any facility designated as a Children's Crisis Intervention Service by the Department of Human Services. **Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is continuity of care for patients upon discharge, and that a consistent level of quality services is provided in a cost effective manner.**

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

[8:43E]**8:33R**-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

...

"Children crisis intervention service" (**CCIS** means a regional community-based acute care inpatient psychiatric service designated by the Commissioner of the Department of Human Services to provide assessment, crisis stabilization, evaluation and treatment to children and adolescents with an average length of stay not to exceed 30 days. Children and adolescents are screened by local emergency/screening services and referred for admission if this level of inpatient care is indicated.

...

[8:43E]**8:33R**-4.3 Submission of Certificate of Need application

[(a)] Applications for establishment of new Children's Acute Psychiatric Beds will be competitively reviewed pursuant to [batching] procedures set forth in the N.J.A.C. 8:33[-1.5]. [The following schedule will apply for the submission of Certificate of Need applications for child and adolescent psychiatric beds during calendar year 1988:

Deadlines for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

(b) After calendar year 1988, the batching schedule will be established in N.J.A.C. 8:33-1.5 or if changes to the batching schedule are necessary, the changes will be announced by the Department of Health in the form of Miscellaneous Notice published in the New Jersey Register.]

[8:43E]**8:33R**-4.4 (No change in text.)

[8:43E]**8:33R**-4.5 Bed need

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

(c) Available Beds equals child and adolescent acute psychiatric inpatient beds as defined in N.J.A.C. [8:43E]**8:33R**-4.3 which have been approved through the Certificate of Need process or are in operation.

(d) (No change.)

(e) Each applicant must also justify the need for the number of Child and Adolescent Acute Psychiatric Beds proposed in the Certificate of Need application through provision of the following documentation:

1. (No change.)

2. Projected average length of stay must be demonstrated to be clinically appropriate through analysis of current length of stay data in facilities treating similar populations in New Jersey and must conform to N.J.A.C. [8:43E]**8:33R**-4.9.

3. (No change.)

(f) (No change.)

(g) Applicants seeking to establish Child and Adolescent Acute Psychiatric Beds must meet the criteria mentioned below as well as the provisions at N.J.A.C. [8:43E]**8:33R**-4.11. The applicant must directly or indirectly through Affiliation Agreements as required in N.J.A.C. [8:43E]**8:33R**-4.5(e)1, and [8:43E]**8:33R**-4.8 provide the following services:

1.-7. (No change.)

[8:43E]**8:33R**-4.6 (No change in text.)

[8:43E]**8:33R**-4.7 Accessibility of care

(a) (No change.)

(b) For facilities under the Standard Hospital Accounting and Rate Evaluation (SHARE) system at N.J.A.C. 8:31A[-1.1 et seq.], the following thresholds have been established concerning payment for services:

1.-3. (No change.)
(c)-(g) (No change.)

[8:43E]**8:33R**-4.8 Continuity of care
(a) (No change.)
(b) The purpose of the affiliation agreements is to assure a full range of community-based services to emotionally disturbed youth and to develop a formal mechanism of communication and referral between public and private providers of services to the target population. Applicants are expected to participate in a system of care by showing evidence that written agreements have been established with other general hospitals, community mental health agencies, DYFS, youth correction facilities and other parts of the juvenile justice system, local education authorities and state or county hospitals (where appropriate) in the proposed service area as outlined in N.J.A.C. [8:43E]**8:33R**-4.5(e)1. These affiliation agreements are to clarify admissions, referral, transfer, discharge, and service relationships between agencies. At a minimum, the affiliation agreements should address the following areas:
1.-5. (No change.)

[8:43E]**8:33R**-4.9 (No change in text.)

[8:43E]**8:33R**-4.10 Aftercare services
(a) The applicant shall demonstrate how all patients, regardless of the ability to pay, shall have arrangements provided for follow-up care on an outpatient basis to reduce recidivism and to prevent further deterioration which would require a more restrictive level of care. Aftercare services may be provided by the applicant directly or by referral to agencies with which the applicant has affiliated pursuant to N.J.A.C. [8:43E]**8:33R**-4.8. At a minimum, aftercare services should provide linkages for clinical case management, partial hospitalization, crisis intervention, and respite care.
(b)-(c) (No change.)

[8:43E]**8:33R**-4.11 (No change in text.)

[8:43E]**8:33R**-4.12 Treatment program, staffing pattern, and discharge planning
(a) The proposed treatment program, staffing pattern, and discharge planning process must be identified within the Certificate of Need application. All applicants for Child and Adolescent Acute Psychiatric Beds must demonstrate the ability to comply with State psychiatric licensure standards as well as the current Joint Committee on Accreditation of [Hospitals (JCAH)] **Healthcare Organizations (JCAHO)** Standards applicable to psychiatric facilities and units, Title XIX (Medicaid) licensing and staffing standards, and appropriate seclusion and restraint standards. The treatment program and staffing pattern must be fully described and their clinical appropriateness clarified.
(b)-(c) (No change.)
(d) Discharge planning consists of the following:
1.-4. (No change.)
5. Referral/affiliation agreements for follow-up care must be in evidence. Referral/affiliation agreements must address the basic areas identified in N.J.A.C. [8:43E]**8:33R**-4.8.
6. (No change.)
Recodify existing 8:43E-4.13 through 4.16 as **8:33R-4.13 through 4.16** (No change in text.)

[8:43E]**8:33R**-4.17 Standards regarding County Mental Health Board Review
The County Mental Health Board(s) of the service area proposed to be served by the applicant shall receive a copy of the Certificate of Need for their formal action at the time of submission to the Department. A letter of endorsement from the Board(s) or its Administrator reflecting Board action shall be considered a significant factor in assessing local need for the project. County Mental Health Board comments should be forwarded to the Department of Health, [Health Systems Agencies] **Local Advisory Boards,** and to the Division of Mental Health and Hospitals in a timely manner consistent with Certificate of Need procedures as identified in N.J.A.C. 8:33[-3.1 et seq].

Recodify existing 8:43E-4.18 and 4.19 as **8:33R-4.18 and 4.19** (No change in text.)

[8:43E]**8:33R**-4.20 Competitive review
(a) Where the need in a service area for additional Child and Adolescent Acute Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:
1.-3. (No change.)
4. Projects which most closely conform to bed need for Child and Adolescent Acute Psychiatric Beds in the area, as presented in N.J.A.C. [8:43E]**8:33R**-4.5;
5.-6. (No change.)
7. Projects which demonstrate the greatest local endorsement including letters of support from: Local [Health Planning Agencies] **Advisory Boards,** County Mental Health Board(s), mental health providers and other entities as outlined in N.J.A.C. [8:43E]**8:33R**-4.16 [above] in the proposed service area;
8.-9. (No change.)

[8:43E]**8:33R**-4.21 (No change in text.)

SUBCHAPTER 5. INTERMEDIATE ADULT AND SPECIAL PSYCHIATRIC BEDS

[8:43E]**8:33R**-5.1 Scope **and purpose**
(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds as provided in licensed general and special hospitals throughout the State. These rules address the addition or establishment of licensed psychiatric beds which will be classified as Intermediate Adult Psychiatric Beds or Special Psychiatric Beds in any existing or proposed licensed hospital in New Jersey. The rules do not apply to facilities proposing to establish Adults Closed Acute Psychiatric Beds or other psychiatric services for which existing planning regulations are in effect.
(b) Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is continuity of care for patients upon discharge, and that a consistent level of quality service is provided in a cost effective manner.

[8:43E]**8:33R**-5.2 Submission of certificate of need applications
Applications for establishment of new Intermediate Adult or Special Psychiatric Beds will be [under batching] **in accordance with** procedures as determined by the Department and under policies and procedures set forth in N.J.A.C. 8:33. [The schedule shall be as follows:

Deadline for Actual Submission	Cycle Begins
July 1	August 15
January 1	February 15]

[8:43E]**8:33R**-5.3 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.
...
"Adult open acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a New Jersey hospital, for the provision of intensive evaluation, stabilization, and treatment of persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have a length of stay which is generally 30 days or less. (See N.J.A.C. [8:43E]**8:33R**-2[.1 et seq.])
...
"Children's Acute Psychiatric Beds" means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility,

established for the provision of intensive treatment and rehabilitation of individuals under the age of 18, who are experiencing an acute episode of a psychiatric disorder. (See N.J.A.C. [8:43E]**8:33R**-4[.1 et seq.])

...

[8:43E]**8:33R**-5.4 Minimum size of facilities and nursing units

(a) The minimum number of beds that may be established in a single free-standing facility is 60. These may include any inpatient psychiatric service as well as residential alcohol beds, where at least 50 percent of licensed beds are psychiatric. Approval of residential alcoholism services beds shall be governed by N.J.A.C. 8:33K[-1.1 et seq.] and such beds shall be licensed as residential alcoholism services beds by the Department.

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

(e) The minimum number of total inpatient psychiatric beds in any general hospital proposing to establish Intermediate Adult or Special Psychiatric beds shall be 32 at the conclusion of the project. An exception may be considered by the Department for those applicants who demonstrate the applicant has provided a written affiliation agreement with an existing provider of adult open acute psychiatric services in its primary service area which in combined total (proposed and existing) meets the minimum 32 bed requirement. It shall be demonstrated that the current provider of adult open acute psychiatric service does not have the available licensed bed capacity to convert existing underutilized acute care beds (e.g. pediatrics, obstetrics, medical-surgical, etc.) as evidenced by occupancy levels in services below the minimum standards set within the Hospital Policy Manual (N.J.A.C. [8:43-3.1] **8:33A-1.11**, or that the affiliate hospital does not have an appropriate physical plant necessary for Intermediate Adult or Special Psychiatric Services.

(f) (No change.)

[8:43E]**8:33R**-5.5 Bed need

(a)-(j) (No change.)

(k) General Hospitals seeking to establish Intermediate Adult or Special Psychiatric Beds through conversion of existing acute care bed capacity shall meet the following criteria:

1. The hospital shall, directly or indirectly through Affiliation Agreement as required in N.J.A.C. [8:43E]**8:33R**-5.4(e) and (f), provide the following services:

i.-iii. (No change.)

2. The proposed facility shall demonstrate availability of appropriate and sufficient floor space necessary to meet Physical Plant Standards for free-standing psychiatric hospitals as defined by the Joint Commission on Accreditation of [Hospitals (JCAH)] **Healthcare Organizations (JCAHO)**. Access to outdoor or indoor facilities for phsyical exercise shall be available.

(l) No application requesting establishment of a separate designated number of beds for the provision of psychiatric inpatient services to adolescents or children shall be approved under provisions of these rules. All such requests shall be subject to the standards and criteria contained in N.J.A.C. [8:43E]**8:33R**-4[.1 et seq].

(m)-(p) (No change.)

[8:43E]**8:33R**-5.6 (No change in text.)

[8:43E]**8:33R**-5.7 Accessibility of care

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

(g) All applicants approved for Intermediate and Special Psychiatric beds shall submit an annual report documenting compliance with these accessibility requirements. The Department may assess licensure penalties for non-compliance with Certificate of Need conditions, in accordance with N.J.A.C. [8:43B-1.7(f)] **8:43G-2.1(c)**.

Recodify existing 8:43E-5.8 through 5.11 as **8:33R-5.8 through 5.11** (No change in text.)

[8:43E]**8:33R**-5.12 Treatment programs and staffing patterns

(a) The proposed treatment program and staffing pattern by service must be identified within the Certificate of Need application. All applicants for Intermediate Adult and Special Psychiatric Beds shall demonstrate the ability to comply with state psychiatric licensure standards as well as the current [JCAH]**JCAHO** Standards as applicable to psychiatric facilities and units. Applicants shall demonstrate the availability of a full range of treatment modalities and staffing disciplines with the capacity to offer a multi-disciplinary treatment planning approach.

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

Recodify existing 8:43E-5.13 through 5.16 as **8:33R-5.13 through 5.16** (No change in text.)

[8:43E]**8:33R**-5.17 Standards regarding County Mental Health Board review

The County Mental Health Board(s) of the service area proposed to be served by the applicant shall be provided with a copy of the Certificate of Need application for their formal action at the time of submission to the Department. A letter of endorsement from the Board(s) or its Administrator reflecting Board action shall be considered a significant factor in assessing local need for the project. County Mental Health Board comments shall be forwarded to the Department of Health, [Health Systems Agencies] **Local Advisory Boards**, and to the Division of Mental Health and Hospitals in a timely manner consistent with Certificate of Need procedures identified at N.J.A.C. 8:33.

Recodify existing 8:43E-5.18 and 5.19 as **8:33R-5.18 and 5.19** (No change in text.)

[8:43E]**8:33R**-5.20 Competitive Review

(a) Where the need in a service area for additional intermediate Adult and/or Special Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applications necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, most clearly demonstrate the fullest level of compliance with the following criteria:

1.-5. (No change.)

6. The endorsement of the [Health Systems Agencies] **Local Advisory Boards**, County Mental Health Board(s), and mental health providers in the proposed service area.

7. (No change.)

APPENDIX A

Guidelines for Special Psychiatric Bed Need

Need for Special Psychiatric Beds must be demonstrated under the criteria identified at N.J.A.C. [8:43E]**8:33R**-5.5(f), within an overall statewide cap based on the following methodology:

The total number of Special Psychiatric Beds that may be approved statewide shall not exceed the statewide cap except where all existing beds within a sub-category of special beds have been operating in excess of 90 percent occupancy for at least 12 months. The statewide cap shall be calculated as follows:

1.-2. (No change.)

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Request for Informal Public Input Manual of Standards for Licensure of Ambulatory Care Facilities

Take notice that the New Jersey State Department of Health is soliciting, pursuant to N.J.A.C. 1:30-3.2(a), comments on a preliminary draft of a revised Manual of Standards for Licensure of Ambulatory Care Facilities, N.J.A.C. 8:43A. The Department plans to publish a formal notice of proposal of new rules at N.J.A.C. 8:43A at a later date.

Although the Department is meeting with specific advisory groups separately, the Department is also inviting other interested persons to attend an **open public meeting** at which comments and suggestions concerning the draft rules may be expressed. The open public meeting

is to be held on Thursday, November 5, 1992, between 9:30 A.M. and 12:30 P.M. at:

Health Facilities Evaluation and Licensing
300 Whitehead Road
Trenton, New Jersey

Individuals interested in attending the meeting and commenting on the draft rules **may obtain a copy** of the draft rules by contacting the following office:

Health Facilities Standards and Quality
Assurance Program
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
(609) 588-7794

Individuals who plan to deliver a prepared statement should bring a written copy of the statement to the meeting for use by the Department. Interested persons are also invited to submit **written comments** by November 12, 1992, to:

Robert J. Fogg, Acting Director
Licensing, Certification and Standards
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

This is a Notice of Request for Informal Public Input (see N.J.A.C. 1:30-3.2(a)). Any rule proposal concerning the subject of the public meeting must still comply with rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance; Use of Symbol, Vehicle Series and Model Year Rating Programs for Physical Damage Coverages.

Proposed Amendment: N.J.A.C. 11:3-16.7

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-36.2 and 36.3, and 17:33B-31.

Proposal Number: PRN 1992-454.

Submit comments by November 18, 1992 to:

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

The agency proposal follows:

Summary

N.J.A.C. 11:3-16.7(i) permits automobile insurers to continue to use presently approved symbol, vehicle series and model year rating programs for physical damage coverages for model years 1991 and 1992 and to jointly develop symbol assignments, vehicle series and model year data and determine adjustments to symbol assignments through model year 1992.

The proposed amendment to N.J.A.C. 11:3-16.7(i) would extend such use through model year 1994 to give insurers additional time to collect their own creditable data and to develop their own ratemaking methodologies. Small samples of experience have little credibility because they are usually representative of the larger population from which they are drawn. Longer time periods allow for more data to be collected by each insurer which increases the credibility of each insurer's data. Ultimately, the Department anticipates that due largely to anti-competitive aspects of the present system, insurers will be on their own with respect to symbol, vehicle series and model year rating programs.

The Department, in Bulletin No. 92-13 which was issued May 8, 1992, stated that in order to implement N.J.S.A. 17:33B-32, it would be proposing new rules relating to personal lines rating plans including a new provision for symbol and model year rating based upon age, cost or market value of the insured automobile and applicable to physical damage coverages only. This stated intention on the part of the Department has not changed although the specifics of the new rules will reflect recent amendments to that statute. The extension through model year 1994 will permit these modified rating systems likewise to reflect the standards at N.J.S.A. 17:33B-32 as amended.

Social Impact

New Jersey automobile insurers and purchasers of private passenger auto insurance are affected by this regulation which results in greater uniformity in ratemaking and less market dislocation due to changes in symbol assignments or rate relativities.

The effect of the proposed amendment is to continue present symbol, vehicle series and model year rating programs for an additional period of two years. While having little direct impact on consumers, the amendment is expected to be favored by insurers. It permits insurers to retain their present rating systems until superseded by the significant modifications required by N.J.S.A. 17:33B-32, as amended.

Economic Impact

The proposed amendment continues present symbol vehicle series and model year automobile rating programs for physical damage coverages for an additional two years. Thus, no change is expected in the economic impact of these programs which is virtually impossible to quantify in the first place.

The Department of Insurance will incur no additional cost in the implementation of this amendment or continuation of the present rating programs.

Regulatory Flexibility Statement

The proposed amendment may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are insurance companies authorized to write private passenger automobile insurance.

Since the proposed amendment continues a rule already in effect and imposes no new reporting, recordkeeping or other compliance requirements on small businesses, a regulatory flexibility analysis is not required.

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

11:3-16.7 Jointly developed historical data

(a)-(h) (No change.)

(i) Insurers may continue to use symbol, vehicle series and model year rating programs for physical damage coverages for model years [1991 and 1992] **1993 and 1994**. Pursuant to this section, insurers may jointly develop symbol assignments, vehicle series and model year data and determine adjustments to [the] symbol assignments through model year [1992] **1994**.

(a)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor Bus Medical Expense Insurance

Proposed Amendments: N.J.A.C. 11:3-29.1, 29.2, and 29.4

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

Authority: N.J.S.A. 39:6A-4.6; as amended by P.L. 1991, c.154, section 6, enacted June 7, 1991.

Proposal Number: PRN 1992-455.

Submit comments by November 18, 1992 to:

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

The agency proposal follows:

Summary

On June 7, 1991, the New Jersey Legislature enacted P.L. 1991, c.154 ("Act"), which became effective October 5, 1991. The Act requires every owner, registered owner or operator of certain motor buses to maintain medical expense benefits insurance coverage for the payment of benefits without regard to negligence, liability or fault of any kind, to any passenger who sustained bodily injury as a result of an accident while occupying, entering into or alighting from certain types of motor buses. Specifically, the Act amends the provisions of N.J.S.A. 39:6A-4.6 so as to require the Commissioner of Insurance ("Commissioner") to promulgate medical fee schedules on a regional basis for reimbursement of health care providers who have rendered medical expense benefits for which payment is required by motor bus insurance policies. The Act further provides that the medical expenses resulting from this coverage shall be subject to the Department's medical fee schedule applicable to automobile personal injury protection (PIP) coverage set forth in N.J.A.C. 11:3-29. The Act defines "motor bus" as an omnibus, as defined in N.J.S.A. 39:1-1, which includes all motor vehicles used for the transportation of passengers for hire, except school buses if the same are not otherwise used in the transportation of passengers for hire. The Act provides that certain types of vehicles are not to be included in the definition of motor bus, such as hotel buses and taxi cab services.

In order to conform its rules to the Act, the Department proposes to amend N.J.A.C. 11:3-29.1 so that insurers of certain types of motor buses are included within the purpose and scope of subchapter 29. The Department also proposes to amend N.J.A.C. 11:3-29.2 to include the definition of "motor bus" and "motor bus insurer" within the definition of terms used in this subchapter. Finally, the Department proposes to amend N.J.A.C. 11:3-29.4 to apply the medical fee schedules to insurers of certain defined types of motor buses.

Social Impact

The proposed amendments will affect insurers of motor buses as defined by the Act, as well as motor bus insurance purchasers and providers of medical services and equipment to persons injured in motor bus accidents. The amendments will create a positive social impact by furthering the legislative purpose of controlling the cost of medical services provided to individuals who are injured in accidents involving motor buses as defined in the Act.

Economic Impact

The proposed amendments are consistent with the legislative intent of the Act to apply the Department's medical fee schedule to the reimbursement of health care providers for services rendered to persons injured in motor bus accidents. The amendments will facilitate uniform application in that it will be easier for insurers and health care providers to use a single schedule for both motor bus and automobile personal injury protection claims. The fees included on the schedule are the same as those currently utilized as upper limits of insurer liability for reimbursement of medical expense benefits where payment is mandated under the personal injury protection (PIP) coverage provided by automobile insurance policies. At first, some of the savings will be offset by the added costs to motor bus insurers necessary to implement the new fee schedules for medical expenses. Health care providers will incur the cost of incorporating the new proposed fee schedule into their billing procedures and accepting the same fee schedule currently used for PIP coverage for automobile insurance policies. The Department will monitor the effect of these schedules to determine the actual economic impact, as required by the Act.

Regulatory Flexibility Analysis

The proposed amendments will apply to some "small businesses" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, some owners, operators, lessors or registrants of motor bus carriers may be small businesses which must insure their passengers in order to provide medical expense coverage for any accidents which may occur relative to the motor bus service.

The proposed amendments do not impose reporting, recordkeeping or other compliance on small businesses beyond the statutory requirements. The medical fee schedules included in the amended rules set forth the limits of insurer liability for the medical expense benefit coverage mandated by the Act for certain motor buses. While the rules do not impose further reporting, recordkeeping and other compliance requirements, it is fully expected that all motor bus insurers, including those who qualify as small businesses, will implement the fee schedules and the amended rules in their claims adjudication processes so as to contain loss experience from medical expense benefit claims.

Some health care providers may be small businesses as defined by the Regulatory Flexibility Act. As noted above, the impact upon these providers is by statute. The rules merely provide for the application of the Department's present medical fee schedule to motor bus medical expense insurance. The impact is minimized in that health care providers will receive payment based upon the same schedule as automobile PIP insurance coverage.

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

SUBCHAPTER 29. MEDICAL FEE SCHEDULES: AUTOMOBILE INSURANCE PERSONAL INJURY PROTECTION **AND MOTOR BUS MEDICAL EXPENSE INSURANCE** COVERAGE

11:3-29.1 Purpose and Scope

(a) This subchapter implements the provisions of N.J.S.A. 39:6A-4.6 to establish medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expenses benefits for which payment is required to be made by automobile insurers under PIP coverage **and by motor bus insurers under medical expense benefits coverage.**

(b) This subchapter applies to all insurers who issue policies of automobile insurance containing PIP coverage **and policies of motor bus insurance containing medical expense benefits coverage.**

(c) These fee schedules do not apply to the following:

1. Other coverages contained in an automobile **or motor bus** insurance policy such as coverage for bodily injury liability;

2. Any other kind of insurance including health insurance, even when the health insurer may be required pursuant to its health insurance contract to pay benefits to, or on behalf of, a person who sustained bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile **or motor bus**, or as a pedestrian, caused by an automobile **or motor bus** or an object propelled by or from an automobile **or motor bus**; and

3. Medical services or equipment provided outside of the geographic boundaries of New Jersey except as set forth in N.J.A.C. 11:3-29.4(d)2.

11:3-29.2 Definitions

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

...

"Motor bus" means motor bus as defined in N.J.S.A. 17:28-1.5.

"Motor bus insurer" includes any insurer issuing a policy of insurance on a motor bus the owner, registered owner, or operator

of which is required to maintain medical expense benefits coverage pursuant to N.J.S.A. 17:28-1.6.

...

11:3-29.4 Application of Medical Fee Schedules

(a) Every policy of automobile insurance **and motor bus insurance** issued in this State shall provide that the automobile insurer's limit of liability for medically necessary expenses payable under PIP coverage**, and the motor bus insurer's limit of liability for medically necessary expenses payable under medical expense benefits coverage,** is the fee set forth in this subchapter. Nothing in this subchapter shall, however, compel a PIP insurer **or a motor bus insurer** to pay more for any service or equipment than the provider's usual, customary and reasonable fee, even if such fee is well below the automobile insurer's **or motor bus insurer's** limit of liability as set forth in the fee schedules. Insurers will not be required to pay for services or equipment which are not medically necessary.

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

(f) The following shall apply to multiple treatment procedures:

1-2. (No change.)

3. Nothing in this subchapter shall be construed to prevent PIP insurers **or motor bus insurers** from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same visit.

(g) (No change.)

(a)

DIVISION OF FRAUD

Motor Vehicle Insurance Fraud: National Automobile Theft Bureau

Proposed Amendments: N.J.A.C. 11:16-2

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e); 17:33A-1 et seq.; and 17:23-8 et seq.

Proposal Number: PRN 1992-456.

Submit comments by November 18, 1992 to:

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

The agency proposal follows:

Summary

These proposed amendments are a result of the merger between the National Automobile Theft Bureau ("NATB") and the Insurance Crime Prevention Institute ("ICPI"), into a new organization called the National Insurance Crime Bureau ("NICB"). The merger between the NATB and the ICPI combines two major data bases dealing with insurance fraud and theft. The NATB and the ICPI merged in order to more effectively combat insurance fraud and auto theft. The Department of Insurance's ("Department") proposed amendments will change the reference throughout these rules from the "NATB" to the "NICB." The proposed amendments are technical changes and do not affect the reporting, membership or record retention requirements provided for in these rules.

Social Impact

These proposed amendments will not have an affect on insureds. The proposed amendments will not affect the duties of insurers under the current provisions of these rules. The proposed amendments will only change the name of the entity as set forth in the rules to reflect the new name of the merged organization.

Economic Impact

Since the Department's proposed amendments are only technical changes, the Department does not believe the proposed amendments will have an economic impact on insureds, insurers or the Department.

Regulatory Flexibility Analysis

The proposed amendments may affect "small businesses" as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments merely change the reference from the NATB to the NICB. This change is prompted by the merger of the NATB and the ICPI.

The proposed amendments do not change the reporting, membership or record retention requirements currently required by these rules. The proposed amendments do not provide for different compliance requirements based on business size. In the interest of consistency and uniformity in reporting, membership and record retention requirements, no differentiation in compliance requirements is provided based on an insurers business size.

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

SUBCHAPTER 2. REPORTS TO THE NATIONAL [AUTOMOBILE THEFT BUREAU] **INSURANCE CRIME BUREAU**

11:16-2.1 Purpose and scope

This subchapter governs the reporting of motor vehicle theft or salvage and related transactions between insurers and the National [Automobile Theft Bureau (NATB)] **Insurance Crime Bureau ("NICB")**, in implementation of P.L.1989, c.65. This subchapter applies to all insurers transacting motor vehicle insurance in New Jersey.

11:16-2.3 [NATB] **NICB** membership or service company requirement

(a) By December 20, 1989, every insurer transacting motor vehicle insurance in New Jersey that is not already a member or a service company of the [NATB] **NICB**, shall make application to become either a member or a service company of the [NATB] **NICB.** An insurer shall pay all assessments for membership or service company status as may be required by the [NATB] **NICB** in the manner prescribed by the [NATB] **NICB**.

(b) An insurer shall become and remain either a member or a service company of the [NATB] **NICB** as a condition of maintaining its authorization to conduct the business of motor vehicle insurance in New Jersey.

(c) Applications for membership and service company status and related information can be secured from:

[NATB] **NICB**
10330 South Roberts Road—3A
Palos Hills, Illinois 60465-1998

11:16-2.4 Insurer reporting requirements

(a) Insurers shall report to the [NATB] **NICB** all motor vehicles involved in losses as follows:

1. All thefts of a motor vehicle, or any of its major component parts, shall be reported within two working days from the receipt of sufficient information from the insured. The [NATB] **NICB** shall acknowledge the receipt of each theft report received from an insurer within 10 working days. If the insurer has not received any acknowledgment or communication from the [NATB] **NICB** within 10 working days following its submission to the [NATB] **NICB** of the report, the insurer shall immediately communicate with the [NATB] **NICB** to determine the status of its report.

2. All losses involving motor vehicle salvage, however sustained, including salvage retained by either an insured or a third party claimant, shall be reported to the [NATB] **NICB** within five working days after the sale of salvage; or, if the insured is permitted to retain salvage, within five working days after the date of loss payment.

3. All insurers required to submit reports to the [NATB] **NICB** in compliance with this subchapter shall be bound by all of the reporting requirements of the [NATB] **NICB.**

11:16-2.5 Insurer cooperation with [NATB] **NICB**

Insurers shall cooperate with the [NATB] **NICB** and shall release information in their possession to the [NATB] **NICB** upon its reasonable request.

11:16-2.6 [NATB] **NICB** cooperation with insurers

The [NATB] **NICB** shall cooperate with insurers in the resolution of errors and the investigation of claims suspected to be fraudulent.

11:16-2.7 Deferred claim processing and payment

(a) Notwithstanding any provision of Title 11 of the New Jersey Administrative Code to the contrary, an insurer shall defer the processing and payment of a claim filed under comprehensive or other coverage in accordance with the following:

1. No insurer shall pay a claim filed by an insured under comprehensive or other coverage for theft of a motor vehicle or its major component parts unless said claim has first been reported to and acknowledged by the [NATB] **NICB.**

2. An insurer shall defer the payment of a claim for five calendar days following receipt of the acknowledgment from the [NATB] **NICB** of the insurer's report. If no further communication is received from the [NATB] **NICB** during this five-day period indicating unresolved questionable circumstances, the insurer shall continue with the processing of the claim in accordance with the provisions of this section and other provisions of Title 11 of the New Jersey Administrative Code.

3. If the [NATB] **NICB** indicates in its response to the insurer that coverage is in effect by more than one insurer for the same motor vehicle or that the motor vehicle has been previously reported as stolen and unrecovered, or that previous claims on the vehicle have been reported, the insurer shall promptly investigate and resolve such discrepancy.

4. If the [NATB] **NICB** discovers an erroneous vehicle identification number (VIN) and the [NATB] **NICB** is unable to clear up such discrepancy internally, the [NATB] **NICB** shall send a questionnaire to the insurer. This questionnaire shall be returned within five working days of receipt by the insurer. If the [NATB] **NICB** and insurer are unsuccessful, after due diligence, in resolving the VIN error after a 30-day period from the date of the receipt by the insurer of sufficient information from the insured, the insurer shall proceed with the processing of the loss claim.

5. If the [NATB] **NICB** indicates in its response to the insurer or the insurer finds that it has reasonable cause to believe that the loss may have been caused by the criminal or fraudulent act of any person, the insurer shall suspend the processing of the claim and promptly begin an investigation. The insurer shall promptly provide such information to the [NATB] **NICB** and shall cooperate fully with the [NATB] **NICB** in its investigation of criminal or fraudulent acts.

11:16-2.8 [NATB] **NICB** record retention

Such reports as may be required to be filed with the [NATB] **NICB** by an insurer pursuant to P.L.1989, c.65, this subchapter and the operating procedures of the [NATB] **NICB,** shall be maintained by the [NATB] **NICB** for at least a period of five years from the date of entry into the [NATB] **NICB** system, except that in the case of motor vehicle salvage, such reports shall be maintained for a period of at least two years from such entry.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Notice of Extension of Comment Period Prevailing Wages for Public Works

Proposed Amendments: N.J.A.C. 12:60-3.2 and 4.2

Take notice that the Commissioner of the New Jersey Department of Labor is extending until November 2, 1992 the period for public comment on the proposed amendments to N.J.A.C. 12:60-3.2 and 4.2 which were published in the August 3, 1992 New Jersey Register at 24 N.J.R. 2689(a). The comment period for this proposal has previously been extended to October 2, 1992 (see 24 N.J.R. 3015(b)).

The Department received requests for an extension of time in which to submit written comments regarding the proposed amendments to the rules on prevailing wages for public works. To ensure that interested persons are able to submit comments, the Department is hereby notifying the public that the comment period will be extended for 31 days.

Please submit written comments by November 2, 1992 to:

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

(b)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Occupational Exposure to Bloodborne Pathogens

Proposed Amendment: N.J.A.C. 12:100-4.2

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

Authority: N.J.S.A. 34:1-20, 31:1A-3(e) and 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1992-462.

Submit written comments by November 18, 1992 to:

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

The agency proposal follows:

Summary

The Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees.

On November 5, 1984, rules were promulgated by the Commissioner of Labor which adopted the Federal Occupational Safety and Health Administration (OSHA) standards by reference in N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

The Federal Occupational Safety and Health Administration issued in the December 6, 1991 Federal Register, Volume 56 No. 235 page 64004, a final rule, 29 CFR Part 1910.1030, on Occupational Exposure to Bloodborne Pathogens effective March 6, 1992. This final standard provides for the protection of all employees who could reasonably be expected to come into contact with human blood and other potentially infectious materials in the course of their work. Bloodborne pathogens are micro-organisms in human blood that can cause disease in humans, such as those caused by the Hepatitis B and AIDS viruses.

The greatest risk from bloodborne pathogens that workers face is infection with the Hepatitis B virus (HBV) which causes a serious liver disease. OSHA estimates that occupational exposures account for approximately 9,000 cases of Hepatitis B infections annually in the work force resulting in over 200 fatalities each year. The infected worker also can transmit such infections to their family members and others with whom they may come in contact.

Voluntary vaccination of workers, at the employers' expense, could prevent most of these HBV infections in the workforce. This in turn would reduce the risk of workers' transmitting HBV infections to others.

A vaccine has not yet been developed against transmission of the human immunodeficiency virus (HIV), the virus which causes the disease Acquired Immunodeficiency Syndrome (AIDS). Occupational transmission of HIV is relatively rare, but the lethal nature of the virus requires that every possible measure be taken to prevent workers from exposure to HIV.

On November 27, 1987, OSHA announced the initiation of the rulemaking process in the Federal Register at 52 Fed. Reg. 4536 and requested comments on the modes of controlling exposure, personal protective equipment, vaccination programs, management of exposure incidents, medical surveillance, training and education, generic standards, advances in hazard control, effectiveness of alternative approaches and environmental effects.

The Federal OSHA published the proposed regulation on May 30, 1989 in the Federal Register at 54 Fed. Reg. 23042 and held public

hearings in five cities throughout the nation. More than 400 participants gave testimony at the hearings. OSHA received comments from employers, unions, health professionals, trade representatives, professional associations, manufacturers, and government agencies.

The final standard is based upon full consideration of expert opinions, comments from affected parties and scientific findings, all of which are part of the rule making record generated by OSHA in the development of the standard. 56 Fed. Reg. 64008. The standard requires more abatement methods than those required by the General Duty Clause and the General Industry Standards now found at N.J.A.C. 12:100-4.2. The standard gives employers and employees more guidance in carrying out the goal of reducing the risk of occupational exposure to bloodborne pathogens.

The standard requires employers to establish a written exposure control plan which identifies those workers they reasonably anticipate will be exposed to blood or other potentially infectious materials in the performance of their tasks and which specifies the means by which those workers will be protected and trained in precautionary measures.

It also calls for engineering controls, such as puncture resistant containers for used needles, work practices, such as hand washing to reduce contamination, and appropriate personal protection equipment, such as gowns and gloves.

The standard also has housekeeping requirements which include the handling of contaminated laundry and regulated waste; the use of appropriate labels and warning signs; recordkeeping; medical follow-ups; and counselling after an exposure incident.

Under the standard, employers must offer free hepatitis B vaccinations to all exposed employees. An employee who declines a vaccination must sign a declination form acknowledging his or her refusal to take the vaccination. Nonetheless, an employee may change his or her mind at any time and the employer must then provide the vaccination at no cost to the employee.

The final standard consists of the following paragraphs and appendix:

a. Scope and application
b. Definitions
c. Exposure control
d. Methods of compliance
e. HIV and HBV research laboratories and production facilities
f. Hepatitis B vaccination and post exposure evaluation
g. Communication of hazards to employees
h. Recordkeeping
i. Dates—effectivity
Appendix A—Hepatitis B vaccine declination (mandatory)

Pursuant to N.J.S.A. 34:6A-30, the Commissioner shall provide, at a minimum, for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the Secretary under the authority of the Occupational Safety and Health Act of 1970.

This final Federal rule, 29 CFR Part 1910.1030, is a new rule as described above and is the rule which the Division of Workplace Standards of the Department of Labor proposes for adoption by the State by reference. This new Federal rule, 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, can be adopted by reference by amending N.J.A.C. 12:100-4.2(a).

Paragraph (i) of 29 CFR Part 1910.1030 addresses the effective date for the Federal OSHA program. The operative date of the proposed standard on occupational exposure to bloodborne pathogens will be 90 days after the adoption notice is published in the New Jersey Register. Also the exposure control plan required by paragraph (c)2 of the standard shall be completed on or before 150 days after the adoption notice date. The information and training required by paragraph (g)2 and the recordkeeping required by paragraph (h) shall become operative six calendar months after the adoption notice date. The following paragraphs:

(d)2—Engineering and work practice controls;
(d)3—Personal protective equipment;
(d)4—Housekeeping;
(e)—HIV and HBV research laboratories and production facilities;
(f)—Hepatitis B vaccination and post exposure evaluation; and
(g)—Labels and signs

shall become operative seven calendar months after the adoption notice dates.

Depending on the comments received, the Department may adopt an even more staggered implementation schedule. Whether or not a staggered implementation schedule, including a phased-in approach to categories of employees, is adopted, will be based upon both information on hand and information submitted by the public in response to this proposal, and further study of the issue.

Social Impact

The proposed amendment will prevent illnesses and fatalities in those segments of the public work force which deliver services in the form of medical care, health and rescue services, law enforcement, correctional facilities, and schools. Such benefits will potentially increase the efficiency of health care providers and avoid much of the anguish they suffer as well as their families.

Economic Impact

The costs of compliance with the Bloodborne Pathogens Standard include expenditures for engineering controls, work practices, personal protective equipment, training, vaccination, post-exposure follow-up, and other areas of risk reduction. Such expenditures are necessary because of existing working conditions which have not adequately protected health care providers and other workers in the workplace. The regulatory action places a cost on the employers, whereas non-action imposes the cost and non-monetary burdens of inadequate safety and health protection on the workers and the general public.

Regulatory Flexibility Statement

Since only public employers in the State of New Jersey will be affected by the proposed amendment, the proposed amendment does not have an impact upon small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, with amendments published in the Federal Register through [March 6, 1989] **December 6, 1991** with certain exceptions noted in (b) and (c) below are adopted **and are incorporated herein by reference** as occupational health standards **for the protection of public employees engaged in general operations** and shall include:

1.-18. (No change.)

19. Subpart Z—Toxic and Hazardous Substances.

i. As incorporated herein by reference, 29 CFR Part 1910.1030 shall become operative (90 days after the effective date of this amendment), with the following exceptions:

(1) The exposure control plan required by 29 CFR Part 1910.1030(c)2 shall be completed on or before (150 days after the effective date of this amendment);

(2) The information and training required by 29 CFR Part 1910.1030(g)2 and the recordkeeping required by 29 CFR Part 1910.1030(h) shall become operative (six calendar months after the effective date of this amendment); and

(3) 29 CFR Part 1910.1030(d)2, (d)3, (d)4, (e), (f) and (g) shall become operative (seven calendar months after the effective date of this amendment).

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

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF POLLUTION PREVENTION

Pollution Prevention Program Requirements

Proposed New Rules: N.J.A.C. 7:1K

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1B-1 et seq.; 13:1D-9; 13:1D-35 et seq.; and 34:5A-1 et seq.

DEPE Docket Number: 43-92-09.

Proposal Number: PRN 1992-459.

A **public hearing** concerning this proposal will be held on:
Monday, November 9, 1992, beginning at 1:00 P.M.
Public Hearing Room, 1st floor East
Department of Environmental Protection and Energy
401 E. State Street
Trenton, New Jersey

An **informal meeting** will take place at the above location from 9:00 A.M. to noon for those persons interested in discussing issues in this proposal with staff from the Office of Pollution Prevention. A formal hearing on this proposal will begin at 1:00 P.M. to afford interested persons the opportunity to testify on the record. The formal hearing will conclude at 7:00 P.M. unless members of the public are present at that time to testify.

Pre-registration for both the informal meeting and formal public hearing is strongly encouraged to enable the Department to determine how many people wish to discuss the proposal and/or formally testify on the proposal. Those persons wishing to testify at the public hearing will be required to sign in on the day of the hearing and will be provided at least five minutes in which to testify. More time may be provided to individuals depending on the number of persons wishing to testify. To pre-register, please call Deborah Milecofsky, Office of Pollution Prevention, at (609) 777-0518.

Submit, in writing, comments on this proposal by Friday, December 4, 1992 to:
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) proposes a new chapter, N.J.A.C. 7:1K, to implement the provisions of the Pollution Prevention Act (Act), P.L. 1991, c.235 (codified at N.J.S.A. 13:1D-35 et seq. and 34:5A-1 et seq.) The Act, which authorizes the Department to implement a comprehensive program for making pollution prevention a primary technique in the control of hazardous substances and their environmental and health effects throughout the State, was signed on August 1, 1991 by Governor Jim Florio. The goals of the Act include: reduction in the use of hazardous substances, reduction in the generation of hazardous substances as nonproduct output, and reduction in the multi-media environmental release of hazardous substances. N.J.S.A. 13:1D-36. Among other mandates, Section 6(a) of the Act requires the Department to adopt, within 18 months of its enactment, rules and regulations necessary for the implementation of the Act. See N.J.S.A. 13:1D-40(a).

In passing the Pollution Prevention Act, the Legislature determined that it is in the interest of the environment and public and occupational health, and in the general public interest of all residents of the State, to transform the State's current system of pollution control into a system of pollution prevention. N.J.S.A. 13:1D-36. Inherent in the form and function of the Act was the understanding that the traditional "command and control" single-media end-of-pipe approach to environmental protection has been limited in reducing the impact on the environment of using and generating hazardous substances. Specifically, the Legislature recognized that the traditional system of separately regulating air pollution, water pollution, and hazardous waste management has constituted a fragmented approach to environmental protection and potentially allows pollution to be shifted from one environmental medium to another. In addition, the Legislature determined that while the traditional system of environmental regulation has produced palpable improvements in the State's environmental quality, it does not adequately address the impact of the use of hazardous substances upon occupational health in pollution-generating industrial processes.

The Act established the Office of Pollution Prevention, which is charged with implementing the Act and coordinating all pollution prevention policies within the Department. The Office of Pollution Prevention is responsible for implementing the pollution prevention program that is the subject of this proposal. In particular, the Office of Pollution Prevention is charged with monitoring progress Statewide toward the Act's public policy goal of a 50 percent reduction over five years in the generation of hazardous substances as nonproduct output and a significant reduction in the use of hazardous substances.

A key provision of the Act requires owners or operators of priority industrial facilities to prepare Pollution Prevention Plans, which will typically be maintained at the facility for inspection by the Department. Pollution Prevention Plans are the fundamental mechanism to be used by priority industrial facilities to make pollution prevention a primary technique in the control of hazardous substances and their environmental and health effects and to achieve the goals of the Act. The Act defines a priority industrial facility as any industrial facility required to prepare and submit a Federal Toxic Release Inventory form pursuant to the Federal Emergency Planning and Community Right to Know Act, 42 U.S.C. §11023 (also known as SARA Section 313). N.J.S.A. 13:1D-37. Similarly, the list of hazardous substances regulated under the Act is equivalent to the list of substances established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. §11023. N.J.S.A. 13:1D-37. The Act does, however, give the Department the authority to expand the universe of priority facilities, N.J.S.A. 13:1D-40(c), or regulated substances, N.J.S.A. 13:1D-42(i), through rulemaking.

Pollution Prevention Plans are to be prepared in two parts. Part I of a Pollution Prevention Plan consists of a comprehensive inventory of the use, generation and release of hazardous substances and the generation of hazardous waste and nonproduct output for each source and production process at an industrial facility. Part II of a Pollution Prevention Plan consists of a detailed analysis of targeted production processes and sources, including, but not limited to: an identification of available pollution prevention options; a technical and economic feasibility analysis of potential pollution prevention options; goals for reduction of use and generation of nonproduct output per unit of production; and descriptions of the methods to be used to achieve stated goals for reductions in the use and generation of hazardous substances and nonproduct output. The Act requires the owners and operators of priority industrial facilities to complete an initial Pollution Prevention Plan by either July 1, 1994 or July 1, 1996 (depending on the facility's SIC code classification), to annually update certain Part I information, and to completely revise the Plan every five years after completion of the initial plan.

The Act also requires priority industrial facilities to prepare and submit to the Department Pollution Prevention Plan Summaries (prepared every five years to summarize the facility's most recent Pollution Prevention Plan) and Pollution Prevention Plan Progress Reports (prepared each year to document the facility's progress towards its five-year pollution prevention goals).

The Department has drafted these rules to incorporate maximum flexibility for industrial facilities. If industries are able to use this flexibility to develop innovative, creative, and aggressive approaches to pollution prevention, the Department believes this program can mark the beginning of a move away from command and control types of program requirements. Historically, conventional environmental regulations have been drafted with the goal of providing the regulated community with clarification and direction but, in reality, have at least been viewed as providing government with the tools necessary to direct detals of facilities' operations. The proposed rules take a different approach—although they establish general objectives, performance standards, and a system for verification, they do not specifically dictate how facilities must achieve their stipulated objectives. In the proposed chapter, the Department has assumed that facilities will act in good faith as they conduct pollution prevention planning because pollution prevention is good for the public, the environment, and industry. While a command and control structure is still necessary for many environmental programs, the unique nature of the pollution prevention program lends itself to the innovative approaches contained in the proposed rules. In general,

the rules contain a flexible approach to pollution prevention planning that gives facilities all possible discretion consistent with the Act.

In addition, the Department has conducted an unprecedented public participation process and has considered the comments and needs of the regulated community to the maximum extent possible in developing the proposed chapter. This proposal is the third step in an extensive public participation process undertaken by the Department as part of its rulemaking responsibilities under the Act. The Department has issued two pre-proposals and conducted several public workshops to encourage public participation in developing the Pollution Prevention Program requirements. The first pre-proposal, issued on January 21, 1992, discussed seven key issues concerning the scope of the Act and development of the program. See 24 N.J.R. 178(b) (January 21, 1992.) Based on the comments received from written responses and statements at the public workshop, some of which raised issues not specifically discussed in the pre-proposal, the Department issued a second pre-proposal on June 1, 1992 to obtain further comments prior to developing and issuing a formal rule proposal. See 24 N.J.R. 1968(a) (June 1, 1992).

The second pre-proposal contained two distinct sections. Section I provided a description of the Department's overall plans for implementing the pollution prevention program. The intent of this section was to describe the Departmental policies that were being developed in order to shape the new pollution prevention program. Section II of the second pre-proposal contained substantive discussions on specific issues pertaining to Pollution Prevention Plans, reporting, incentives, definitions and other related matters. On June 15, 1992, the Department held a public workshop to discuss the second pre-proposal. In addition, the Department has met and consulted extensively with interest group representatives throughout the pre-proposal process.

The Department's response to comments received on the second pre-proposal follows. The table of contents, below, outlines the issues, comments and the Department's responses and recommendations relating to the second pre-proposal.

I. Pollution Prevention Plans
- A. Grouping Sources and Processes
- B. Targeting Sources and Production Processes
- C. Goals
- D. Plan Review Criteria
- E. Part I Data Gathering Requirements

II. Reporting Issues
- A. Reporting for Non-Targeted Processes
- B. Reporting: Nomenclature and Interface with Existing Release and Source Reduction Report (Form DEQ-114)

III. Criteria for Adding New Hazardous Substances

IV. Criteria for Identification of New Production Processes Requiring Plan Revisions

V. Definitions
- A. Nonproduct Output (NPO)
- B. Out-of-process Recycling
- C. In-process Recycling
- D. Intermediate Products
- E. Co-products

VI. Input-Use Exemption/Raw Material Substitution Certification

VII. Incentives

VIII. Confidentiality

IX. Reporting Threshold

X. Broad Issues
- A. Move Away From Command and Control Regulation
- B. Pre-Construction Approval for Air Permits
- C. Emissions Reductions vs. Pollution Prevention
- D. Economic Considerations
- E. Pre-Existing Pollution Treatment Equipment
- F. Impact on Specialty Chemical Customers
- G. Public Hearing Format
- H. Small Businesses

I. POLLUTION PREVENTION PLANS

A. GROUPING SOURCES AND PROCESSES

a. Summary of Issue

N.J.S.A. 13:1D-41(k) requires the Department to develop criteria for considering sources or production processes that use similar ingredients to produce one or more similar products as a single source or production process for the purposes of reporting information in a Pollution Prevention Plan, Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report. This provision is known as "grouping," and offers the potential for significant flexibility in Pollution Prevention Planning for many "batch" and other operations. The Department expects that under appropriate circumstances, the grouping of processes and/or sources will reduce the time and resources spent on materials tracking without reducing the effectiveness of the Pollution Prevention Plan.

In the second pre-proposal, the Department stated that it intended to provide facilities with significant flexibility for grouping their sources and processes. To allow for such flexibility, the Department suggested that facilities be allowed to define the terms "similar ingredients" and "similar products" as appropriate for each facility. The Department also stated that it would allow facilities to group based on "any other characteristics that are similar." The Department further suggested additonal criteria for grouping which included the function of the chemical within the process and the function of the equipment within the process, plus an overall approach to grouping that was summarized in a schematic showing how the grouping criteria could be applied.

b. Comments, Responses, and Department Recommendations

1. Comments on grouping flexibility

All commenters agreed with the Department's goal of providing significant flexibility to facilities for grouping their sources and processes. Many commenters commended the inclusion of an "other" category for facilities to develop their own criteria for grouping as a good technique to incorporate flexibility for grouping. Also, all commenters generally agreed with the Department's approach to grouping as described in the schematic in the pre-proposal. However, one commenter suggested that other approaches were possible.

Response and Department Recommendation

The Department proposes to maintain the same flexible approach to grouping contained in the second pre-proposal. This includes establishing an "other" category to allow a facility to develop its own criteria to suit site-specific circumstances. Also, the overall approach to grouping, as described in the schematic in the second pre-proposal, will be offered as guidance with one modification. The Department has not included the criterion of "same role, can be dissimilar chemistry" (from the batch chemical manufacturing criteria in the schematic) in the proposed rules since this is contrary to and inconsistent with the grouping concept of "similar ingredients, similar products." See proposed N.J.A.C. 7:1K-4.2. Facilities may follow this proposed approach to grouping or they may develop other approaches to meet their individual needs.

2. Comments on grouping guidance

Some commenters suggested that the Department provide examples of appropriate and inappropriate grouping in the Pollution Prevention Plan Guidance Document being developed by the Department. These commenters referred to guidelines issued by the Massachusetts Toxic Use Reduction Program, dated May 1991, entitled "Guidelines for Classifying Production Units," as a resource in developing these examples.

Response and Department Recommendation

Examples of appropriate and inappropriate grouping will be included in the Department's Pollution Prevention Plan guidance document. As part of the development of the guidance document, the Department reviewed the "Guidelines for Classifying Production Units" issued by the Massachusetts Toxic Use Reduction program in May, 1991, and discussed the contents of this document with staff from the Massachusetts program. This review indicates that the guidelines may not provide the degree of flexibility needed for successful grouping. For example, the guidelines included a "statistical significance" criterion for grouping. A similar criterion was suggested by the Department in the first pre-proposal issued in January 1992. However, based on comments received on this pre-proposal, the Department did not retain this criterion in its subsequent discussions of grouping criteria. In addition, the Massachusetts guidelines have been superseded by new program rules. The

Massachusetts program's new rules follow a more flexible approach for grouping that is similar to the Department's proposed approach. Therefore, the Department has determined that the Massachusetts program's original guidelines would be an inappropriate resource for developing examples for New Jersey's Pollution Prevention Planning Guidance Document.

3. Comment on Department review of grouping decisions

One commenter noted that while the Department has offered guidance on grouping, it has not developed review criteria to be used to disapprove a facility's grouping decision. This commenter agreed that the Department should not require facilities to submit demonstrations to justify their grouping criteria. This commenter also recognized that, in the future, the Department may elect to develop specific review criteria and suggested that any review criteria be published for public comment.

Response and Department Recommendation

Consistent with the discussion in the second pre-proposal, the Department has not proposed to require a facility to submit written justification of its grouping decisions to the Department for review or approval. The Pollution Prevention Plan, to be kept on site at the facility, must contain a description of the groups of processes and sources at the facility and an explanation of the facility's grouping decisions. The groups described in the Pollution Prevention Plan must be the same as those included in the facility's Pollution Prevention Plan Summary and Progress Report.

The Department plans to review a certain number of Pollution Prevention Plans, including facilities' grouping decisions, as part of a "spot check" program. While the Department will use this program as a learning process for pollution prevention planning in general, the Department has also proposed three review criteria that can be used to require facilities to modify their Pollution Prevention Plans. These review criteria are found at proposed N.J.A.C. 7:1K-3.9(d).

With the exception of precluding the grouping of pollution treatment and control systems and out-of-process recycling systems within manufacturing operations (see next comment below), the proposed plan review criteria do not apply to a facility's grouping decisions. In the future the Department may expand the proposed review criteria. If additional criteria are developed, the Department will afford interested persons the opportunity for public comment through rulemaking proceedings. Unless and until additional plan review criteria are developed, the Department intends its review of grouping decisions to be part of a learning process to evaluate how grouping affects facilities, Pollution Prevention Plans and pollution prevention progress statewide.

4. Comments on grouping pollution treatment or control systems

The only restriction on grouping suggested by the commenters was that pollution treatment or control systems not be grouped within a manufacturing operation.

Response and Department Recommendation

The Department agrees that it is inappropriate to group pollution treatment or control systems or out-of-process recycling systems within manufacturing operations. This would obscure use and nonproduct output data reported for the manufacturing operation so that reductions could not be attributed specifically to pollution prevention techniques. Therefore, pollution treatment or control systems and out-of-process recycling systems must be reported as separate production processes and cannot be grouped within another production process.

The Department has proposed a plan review criterion to preclude grouping pollution treatment or control systems or out-of-process recycling systems within manufacturing processes. See proposed N.J.A.C. 7:1K-3.9. If adopted, the proposed criterion will be an enforceable condition with the potential for the assessment of civil and administrative penalties. See proposed N.J.A.C. 7:1K-12.7.

5. Comment on grouping sources

One commenter agreed that the Department should allow grouping of sources as well as processes. The commenter offered examples of potential sources to be grouped, including: emissions from tanks; fugitive emissions from valves, flanges and pumps; and emissions from process vents, including releases to flares.

Response and Department Recommendation

N.J.S.A. 13:1D-41(k) requires the Department to develop criteria for considering "... sources or production processes that use similar ingredients to produce one or more, similar products as a single source or and production process ..." Therefore, the Act specifically allows grouping of sources. The Department has included grouping criteria for sources at proposed N.J.A.C. 7:1K-4.2, and will discuss grouping of sources in the Pollution Prevention Plan Guidance Document.

The examples of grouping suggested by the commenter are acceptable with the following clarifications: Sources should only be grouped within a single production process. If sources are not considered part of the manufacturing operation, they should be reported as processes in Pollution Prevention Plan Summaries and Pollution Prevention Plan Progress Reports. For sources of fugitive emissions, only similar equipment should be grouped. For example, valves should not be grouped together with pumps.

6. Comment on grouping by equipment

One commenter suggested that the Department allow industries to use equipment as a consideration in grouping processes and sources.

Response and Department Recommendation

The grouping criteria proposed at N.J.A.C. 7:1K-4.2 include "similar equipment" as a criterion for grouping sources and processes.

B. TARGETING SOURCES AND PRODUCTION PROCESSES

a. Summary of Issue

N.J.S.A. 13:1D-41(d) requires the Department to develop criteria to be used by priority industrial facilities to identify targeted production processes and targeted sources for the purpose of focusing pollution prevention strategies on those targeted production processes and targeted sources. This provision offers flexibility for a facility to focus its time and resources on processes where significant progress in pollution prevention can be made.

In the June pre-proposal, the Department attempted to provide flexibility to the regulated community by suggesting a fairly complicated method of targeting that would have allowed targeting in both Part I and Part II of a Pollution Prevention Plan. For Part I, the Department suggested a two-step procedure for targeting whereby the facility would have first targeted sources and processes using available facility-level information and estimates of the "new" process-level data required by N.J.S.A. 13:1D-41(b)6. The process-level data to be estimated in this first step would have included nonproduct output generation and quantities of hazardous substances consumed.

The second step of the Part I procedure would have included a detailed mass balance analysis to obtain additional data needed to identify pollution prevention options. This detailed analysis would only have been conducted on targeted sources and processes identified by the facility. The Department stated that it intended to require this detailed informaton to be obtained for sources and processes comprising at least 90 percent of the hazardous substances used at the facility and 90 percent of the hazardous substances released at the facility.

At the public workshop held on June 15, 1992, the Department presented a "modified targeting procedure" that was slightly different from the procedure discussed in the June pre-proposal. Under the modified approach, the Department stated that it would not allow facilities to target in Part I. Instead, the Part I analysis would be conducted for all sources and processes using estimates from best engineering judgment on the basis of a materials accounting approach. The Department believed, and commenters agreed, that the estimate approach was simpler and provided as much or more flexibility for facilities capable of identifying in advance those processes they wished to target. Under this approach, facilities would have been allowed to opt to conduct a more detailed analysis, such as a process-level mass balance, for any source or process at any point in time based on the facility's discretion. The Department would not have established any criteria dictating how many processes or sources require a detailed mass balance analysis beyond the materials accounting approach.

In the Department's modified approach, targeting during Part II was presented as a menu of options. The Department suggested that a menu of as many options as possible would be established and that it would allow facilities to select a targeting option from this menu. The Department suggested three options for the menu and requested that interested parties suggest additional options. Under the modified approach, the Department suggested that the approach for Part II targeting remain the same as the approach discussed in the June pre-proposal.

Many of the comments received pertained to the Department's original proposal for targeting as it appeared in the June pre-proposal. A few of these comments are addressed by the modified approach and therefore are no longer an issue. The responses below show how these commenters' concerns are addressed through the Department's modified approach.

b. Comments and Responses

1. Comments on Part I targeting

Most commenters agreed with the Department's suggested two-step approach to obtaining Part I information. Several commenters were encouraged by the emphasis on using estimates and calculations based on good engineering judgment in the first step. Also, several commenters agreed that detailed mass balance data collection should only be performed on targeted production processes or sources identified by the facility.

Response

The Department has proposed that the two-step procedure discussed at the workshop on June 15, 1992 and in the issue Pollution Prevention Plan summary above be incorporated into the Pollution Prevention Program Rules. See proposed N.J.A.C. 7:1K-4.3 and 4.5. This procedure allows facilities to use available information to calculate the Part I information for each process and source at the facility without first conducting a detailed analysis for each process and source. The estimated information will be used by the facility to identify targeted processes or sources. The facility will then be able to identify which targeted processes or sources, if any, require detailed mass balance analysis and the facility may determine that detailed analysis is not necessary to identify pollution prevention opportunities. The facility may, alternatively, decide that a detailed analysis is appropriate prior to identifying targeted processes or sources, and may conduct the analysis on all or most of its processes and sources.

2. Comments on non-targeted processes

Several commenters were concerned with what they perceived as the Department's plans to require all non-targeted processes and sources to be targeted in the next five-year revision of a facility's Pollution Prevention Plan. These commenters suggested that the five-year plan revision be used as an opportunity to allow the facility to again look at its overall operations to identify a new set of priorities. These commenters felt that the Plan revision process might identify higher priorities among targeted processes than those identified in the original Plan and that the facility should be able to focus on these before looking at lower priority non-targeted processes and sources.

Response

The Department's suggestion to require non-targeted processes and sources to be targeted in the next five-year revision of the Pollution Prevention Plan pertained only to Part I of the Plan. The Department never intended to require a Part II technical and economic analysis of pollution prevention options to be conducted for non-targeted processes and sources. The Department merely intended to require that the second step of the Part I data gathering procedure, the detailed analysis described in the June pre-proposal, be conducted for the non-targeted processes and sources at the facility as part of the five-year revision of its Pollution Prevention Plan. However, this approach is now moot since the Department is proposing a different approach to targeting than that which appeared in the June pre-proposal.

With the modified two-step procedure in proposed N.J.A.C. 7:1K-4.3 and 4.5, a facility will not be required to do a detailed mass balance analysis on any process or source, targeted or non-targeted, unless the facility determines that it is necessary for identifying pollution prevention opportunities. Under the Department's proposed procedure, the facility will be able to review all its sources and processes as part of the five-year revision of its Pollution Prevention Plan and identify a new set of targeted processes or sources. Processes or sources which were targeted in the original plan could be targeted again. In addition, the facility could choose to postpone the Part II analysis for non-targeted processes and sources.

3. Comments on reporting for non-targeted processes and sources

Many commenters took issue with the Department's plan for requiring information on non-targeted sources and processes to be submitted in Pollution Prevention Plan Summaries and Progress Reports. The commenters stressed that the Plan Summaries and Progress Reports were intended to provide information on pollution prevention progress only within targeted processes or sources. These commenters felt that requiring facilities to report information for non-targeted processes and sources would only take time and resources away from implementing pollution prevention techniques and would not contribute to a facility's pollution prevention efforts.

Response

The Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report are intended to provide the public, industry and government with an overall perspective of a facility's pollution prevention activities. As such, the Department will require all facilities to identify and describe in the Pollution Preventon Plan Summary all processes and sources at the facility. To reduce the reporting burden, the Department will not require facilities to report data on reductions or increases in the use of hazardous substances, generation of non-product output, or releases associated with non-targeted processes or sources. Instead, facilities will only be required to report Progress Report data on targeted production processes or sources. The Department reserves its authority to require facilities to submit data on any production processes or sources it otherwise identifies. In addition, the Department notes that facilities are still required to report data on reductions or increases in the use and generation of hazardous substances in non-targeted processes or sources on an aggregate facility-level basis in State and Federal Right-to-Know reporting.

4. Comments on Part II targeting

In the June pre-proposal, the Department's targeting criteria for the "maximum" approach included 90 percent of the use and 90 percent of the release of hazardous substances. Many commenters suggested that the "and" between the use and release criteria be changed to an "or." The commenters stressed that the "and" was too restrictive and did not allow the facility any flexibility to target priority processes or sources. Several commenters suggested that targeting for both use and release criteria would essentially require the facility to target all its processes and sources.

Response

The Department has proposed to use "or" as the connecting conjunction in the targeting phrase "use, nonproduct output generation or release of hazardous substances." See proposed N.J.A.C. 7:1K-4.4. This is intended to allow a facility to choose which alternative criterion best suits its facility. Facilities are encouraged to focus on each of the three criteria, but the final targeting decision need only ensure that 90 percent of one of either use, nonproduct output generation or release is targeted. However, the Department specifically reserves the authority to revise its rules in the future to require chemical-specific targeting for Part II of a Pollution Prevention Plan.

5. Comments on chemical-specific targeting

A few commenters took issue with the chemical-specific targeting criteria suggested in the second pre-proposal and contended that these criteria should apply to total hazardous substances at the facility and not individual chemicals. These commenters claimed that if the Department requires 90 percent of each chemical to be targeted, this would prevent facilities from focusing their efforts on known priorities where significant progress could be made. A few commenters countered these views and were concerned that a facility could target only one process or source which uses a large volume of a low toxicity chemical. Under this scenario, processes or sources which use smaller quantities of highly toxic substances might be completely ignored, even if they were less efficient processes or sources where pollution prevention opportunities exist.

Response

After further review of this issue, the Department has decided to base the targeting criteria on total hazardous substances at the facility and not individual hazardous substances. See proposed N.J.A.C. 7:1K-4.4. The Department believes that it has the authority to require chemical-specific targeting and targeting based on toxicity of specific chemicals, but it has decided to focus on total hazardous substances in the first five year planning phase of the pollution prevention program.

Pursuant to proposed N.J.A.C. 7:1K-4.4, a facility must target sources and processes comprising 90 percent of the use, nonproduct output generation or release of total hazardous substances at the facility, not 90 percent of each individual chemical. Once a source or process is targeted, the facility must conduct a Part II analysis which includes each covered hazardous substance used or generated in the source or process.

6. Comments on targeting for toxicity

One commenter agreed with the Department's suggestion to eliminate a facility's option of targeting on the basis of toxicity.

Response

As discussed in the second pre-proposal, the Department has not proposed a criterion for targeting based solely on risk.

7. Comments on "minimum" approach to targeting

In the June pre-proposal the Department responded to comments which suggested that the "minimum" approach be removed from the menu of targeting options. In the response, the Department stated that the minimum approach would remain a valid option and welcomed additional comments on the issue. Several commenters requested that the Department propose a complete menu of targeting options, including the minimum approach. These commenters contended that the minimum approach was a valid targeting option and should remain in the menu. The commenters suggested that the Department should not be concerned about any "loopholes" created by this approach. However, some commenters suggested that the Department eliminate the "minimum" approach from the menu of targeting options. These commenters were concerned that a facility would be able to escape planning and reporting requirements by dividing its operations up into numerous small processes, each falling below the proposed 10 percent threshold.

Response

After further review of this issue, the Department has not proposed to include the minimum approach as a targeting option. Rather, the Department has proposed that the only criterion to be used in targeting will be the 90 percent criterion, which is applied to the whole facility. See proposed N.J.A.C. 7:1K-4.4. There will be no specific process-level threshold criterion below which a process or source can be eliminated from the Part II analysis.

8. Comments on combined approach to targeting

A few commenters requested that the "combined" approach to targeting suggested by the Department in the second pre-proposal, which included targeting 100 percent of carcinogens, TCPA chemicals and ozone depleters, be deleted from the menu of targeting options. Some commenters suggested that the targeted chemicals be limited to those carcinogens, TCPA chemicals and ozone depleters which appear on the SARA Section 313 list, to be consistent with the definition of "hazardous substances" in the Act.

Response

The Department has not included this option in the menu of targeting options at proposed N.J.A.C. 7:1K-4.4. When the Department suggested the combined approach in the second pre-proposal, it did not intend to expand the Act's definition of hazardous substances through this targeting option. Although the Department has not formally proposed the combined approach as a targeting option, a facility is free to go beyond the list of hazardous substances as defined in Act or go beyond the targeting criteria developed by the Department in developing its Pollution Prevention Plan.

9. Comments on one targeting option per facility

Many commenters did not agree with the Department's plan to only allow one targeting option to be used at a facility. The commenters contended that facilities may have significantly different operations (that is, batch and continuous) requiring different targeting options. These commenters suggested that the targeting options be closely aligned with the grouping criteria, which recognize the need to treat batch operations differently than continuous and chemical manufacturing differently than article manufacturing. Also, many commenters wanted the menu options to include an "other" option similar to the grouping criteria. One commenter suggested that the Department was purposely taking away flexibility provided in grouping by having strict targeting criteria.

Response

The Department has reviewed the options in its suggested targeting menu in light of its decisions on the other targeting issues and has developed a new approach to targeting which does not involve a menu of options. Instead, the Department has proposed the targeting criteria as "sources and processes comprising 90 percent of the use, generation as nonproduct output or release of total hazardous substances at the facility." See proposed N.J.A.C. 7:1K-4.4. The facility will be able to identify these sources or processes using any procedure or option it feels is appropriate for its operations.

10. Comments on targeting percentages

A few commenters suggested that percentages other than the suggested 90 percent be used to define "significant." Alternate percentages suggested included a 75 percent use and 25 percent waste cutoff.

Response

After reviewing alternate percentages and the other decisions for targeting discussed above, the Department has proposed that 90 percent be used to define "significant contribution" for targeting purposes. See proposed N.J.A.C. 7:1K-4.4. The Department expects that the 90 percent level will ensure that facilities will target their most significant processes and sources first and that this percentage, in conjunction with the other decisions on targeting, offers sufficient flexibility for facilities to identify their own priorities.

c. Department Recommendation

Based on the comments received on the June pre-proposal, the Department has decided to take what is essentially a new approach to targeting. The original approach suggested in the pre-proposal would have incorporated flexibility into targeting by means of a menu of options and would have allowed facilities to choose from the menu to fit their specific situation. However, since very few options were suggested, the menu was not extensive enough to offer sufficient flexibility. Nonetheless, a common element in each option considered by the Department was that a cap or threshold, or what was commonly referred to as "backstop," was specified to define "significant contribution" as used by N.J.S.A. 13:1D-41(d).

The Department has not proposed a targeting approach based on a menu of options. In place of the menu, the Department has proposed broad targeting criteria to include "sources and processes comprising 90 percent of the use, generation as non-product output or release of total hazardous substances at the facility." See proposed N.J.A.C. 7:1K-4.4. Once a source or process is targeted, the Department is proposing that each covered hazardous substance used or generated in the targeted source or targeted process be included the Part II of the facility's Pollution Prevention Plan. See proposed N.J.A.C. 7:1K-4.5. The proposed criteria will provide as much, if not greater, flexibility than a menu for facilities to target their operations. At the same time, this approach will ensure that the Pollution Prevention Plan will encompass a sufficient portion of a facility's operations.

C. GOALS

a. Setting a Zero Goal

1. Summary of Issue

There has been a great deal of confusion regarding the establishment of a facility's goals for reducing its use of hazardous substances and reducing its generation of non-product output as required by N.J.S.A. 13:1D-41. This confusion has been evident in comments the Department received in response to its first pre-proposal, at the workshops held to discuss the first and second pre-proposals, and, again, in comments received in response to the second pre-proposal. While confusion regarding new regulatory programs is typical prior to rulemaking, the confusion is even more pronounced in this case due to the innovative nature of the pollution prevention program.

2. Comment

One industry trade association commented that it is not inconsistent with the Act for a facility to have a pollution prevention goal of "zero."

3. Response and Department Recommendation

It is quite clear in the Act that the objective of Pollution Prevention Planning is for the facility itself to identify pollution prevention options that are technically and economically feasible. The Act is based on a premise that requiring mandatory Pollution Prevention Planning without mandatory goals will prompt businesses to realize how pollution prevention options are beneficial to the facility in terms of reducing costs associated with raw material purchases, disposal, pollution treatment systems, liability, and regulatory compliance. Therefore, a company may certainly set zero pollution prevention goals. Nothing in either of the Department's pre-proposals presented options to the contrary.

D. PLAN REVIEW CRITERIA

a. Summary of Issue

Some commenters have raised the issue of the importance of Pollution Prevention Plan review and approval criteria to successful implementa-

tion of the Act. These criteria will help guide industrial facilities when they are preparing their Pollution Prevention Plans to determine how much information and what kinds of information need to be included in their Pollution Prevention Plans. The Department agrees that review criteria are an integral part of the Pollution Prevention Planning process.

b. Comment

Several commenters highlighted the importance of plan review and approval criteria and expressed their opinion that such criteria should be adopted through regulation rather than informal policy.

c. Response and Department Recommendation

The Department wholeheartedly agrees that plan review criteria are a significant part of the pollution prevention planning process. Their significance has become more and more apparent as the pre-proposal process has proceeded. Therefore, these criteria have been included as part of the proposed program rules (see proposed N.J.A.C. 7:1K-3.9) and will be subject to public comment as part of the rulemaking process.

The Department has proposed review criteria to be used to determine if a facility should modify its Pollution Prevention Plan and has proposed a procedure for requiring facilities to correct Plan deficiencies. Under this procedure, the Department would issue an administrative order requiring a facility to make any modifications necessary to correct Plan deficiencies identified under the review criteria. If a facility does not modify its Plan as directed by the Department, it may be liable for civil administrative penalties for its failure to comply with the Department's administrative order.

The Department has proposed review criteria to guide its review of the following: grouping of pollution treatment or control systems or out-of-process recycling systems with production processes; administrative incompleteness of a Pollution Prevention Plan; or pollution prevention options that do not meet the statutory definition of "pollution prevention." See proposed N.J.A.C. 7:1K-3.9(d) and 7:1K-12.7.

E. PART I DATA GATHERING REQUIREMENTS

a. Summary of Issue

The Act, at N.J.S.A. 13:1D-41(b), requires facilities conducting Pollution Prevention Planning to conduct a "comprehensive inventory and analysis of the use and release of hazardous substances and the generation of hazardous waste and non-product output" at the industrial facility. The Act requires facilities to complete this inventory and analysis at both a facility level and process level.

The Department interprets the facility-level inventory and analysis mandated by the Act to require a "materials accounting" approach. Materials accounting is a term which is used in much of the pollution prevention literature to refer to a method for tracking hazardous substance inputs and outputs that identifies sources of non-product output generation. The materials accounting method generally relies on available data and the use of best engineering judgment to quantify separate inputs and outputs.

The Department also believes that the process-level inventory and analysis required by the Act should be based on the materials accounting approach. However, the Department has included an optional step in Part II of a Pollution Prevention Plan to allow a facility to choose a more in-depth quantification of inputs and outputs via a "mass balance" approach. See proposed N.J.A.C. 7:1K-4.5(a)4.

Many commenters were confused about the distinction between the terms "materials accounting" and "mass balance" as used in the second pre-proposal and as related to the requirements of the Act.

b. Comments and Response

Several commenters were concerned about gathering mass balance information on all processes at a facility in Part I of a Pollution Prevention Plan. The commenters felt that most of the data-gathering requirements of the Act contribute little or nothing to the identification of pollution prevention opportunities. To support this contention, the commenters directed the Department's attention to the report issued by the National Research Council's Committee to Evaluate Mass Balance Information for Facilities Handling Toxic Substances.

Response

Under Part I of a Pollution Prevention Plan, the Department will be requiring facilities to conduct a materials accounting using best engineering estimates for every process at the facility. See proposed N.J.A.C. 7:1K-4.3(b). This is being required, not only because of the dictates of the Act, but also because there is convincing evidence that this information will help a facility in identifying pollution prevention opportunities.

In fact, the practical experiences of pollution prevention consultants and many industrial facilities who have implemented successful pollution prevention programs have shown that process-level materials accounting information is critical for identifying pollution prevention opportunities. These findings are well documented in the pollution prevention literature. In national meetings, time and time again, company representatives have recounted how they were reluctant to conduct full materials accounting inventories of their processes, yet after completion, were amazed at what this information reveals on facilities' generation of non-product output. Typically, a facility is unaware of the amount of non-product output or multimedia waste that is generated by individual processes. With materials accounting information, a company can effectively target the most inefficient operations and generate the largest savings through pollution prevention. Without this data, targeting the right processes or sources can often be a game of hit or miss.

In the article, "Measuring Pollution Prevention Progress," authors Pojasek and Cali note that "a key element in any viable pollution prevention program is a loss tracking system that enables management to identify in a timely manner the location and circumstances for each process loss." The authors identified several steps needed to accomplish this loss tracking system. One of those steps was for the facility to establish a materials accounting system to show what materials are associated with each process unit. In addition, materials accounting provides a facility with the information it needs to assess the total costs associated with production processes, including environmental protection costs. A recent study by INFORM, Inc., entitled "Environmental Dividends: Cutting More Chemical Wastes," reported a statistically significant correlation between facilities with successful source reduction programs and those having a cost accounting program. Almost every cost accounting program studied by INFORM had implemented materials accounting since it is very "difficult to do accurate and thorough cost accounting back to the source of waste generation without knowing where the source was in the first place."

It is important to note that a materials accounting is different than a mass balance calculation. The former tracks the inputs and outputs of a hazardous substance using best engineering estimates. The latter is a more rigorous analysis than a materials accounting in that it uses measurement techniques to quantitatively account for minute amounts of the hazardous substance. The Department's proposed rules would require a material accounting for every production process in Part I of a Pollution Prevention Plan but would allow facilities the discretion, at any time, to conduct a mass balance calculation.

Several commenters cited the findings of the National Research Council's (NRC's) Committee to Evaluate Mass Balance Information for Facilities Handling Toxic Substances. These commenters cited the committee's statement that "neither the engineering mass balance nor materials accounting is generally useful for strict determination of waste-reduction efficiency or progress in waste-reduction." Taken out of context, this could mistakenly be interpreted as a reason for not requiring Part I materials accounting data gathering. But the NRC report was designed to analyze completely different data issues that are not related to pollution planning techniques, and therefore, the committee's conclusions are not relevant to the Department's data gathering requirements for Part I.

The purpose of the NRC study was to address the usefulness of facility-wide information as a tool for government to measure waste reduction efficiency among different facilities. This study was conducted in response to a request from Congress to investigate whether such information should be collected as part of the U.S. Environmental Protection Agency's Form R on environmental releases. This study **does not** address, nor was it designed to evaluate, whether **process-level** information is helpful to a facility for pollution prevention planning purposes. The issue of what data a company should collect to help it identify and target processes and sources for pollution prevention planning is very different than the issue of what type of information the public needs to determine if one facility, versus another, is achieving pollution prevention.

c. Department Recommendation

As discussed in the two pre-proposals, the Department has proposed that all priority industrial facilities conduct a full inventory, using estimates for materials accounting, of all processes and sources for Part I of a Pollution Prevention Plan. See proposed N.J.A.C. 7:1K-4.3(b).

II. REPORTING ISSUES

A. REPORTING FOR NON-TARGETED PROCESSES

a. Summary of Issue

N.J.S.A. 13:1D-41(d) requires the Department to develop criteria to be used by priority industrial facilities to identify targeted production processes and targeted sources for the purpose of focusing pollution prevention strategies on those targeted production processes and targeted sources. Through the pre-proposal process, the Department has developed targeting procedures that offer flexibility in the level of analysis that must be conducted on all of the facility's production processes. However, it will still be necessary for the Department to ensure that facilities gather adequate process-level information on both targeted and non-targeted processes. To that end, the Department stated in the second pre-proposal that "for each non-targeted process, process descriptions and changes in [non-product output] per unit of product must be reported in Pollution Prevention Plan Summaries and Progress Reports."

b. Comment

Several commenters raised the issue that targeting already identifies significant processes at the facility, thereby negating the need for pollution prevention data on non-targeted processes. On the other hand, these commenters noted that it should be necessary to submit data on previously non-targeted processes if there are changes at the facility which cause those items to become significant. In addition, some noted that the Act does not require reporting in Pollution Prevention Plan Summaries or Progress Reports for changes in non-product output per unit of production for non-targeted processes. Further, one commenter claimed that reporting this data would serve no purpose and that valuable resources would be expended gathering useless data.

c. Response and Department Recommendation

The Department has determined that at this stage, the only information it will require to be reported for non-targeted processes will be an identification and description of these processes in the Pollution Prevention Plan Summary. See proposed N.J.A.C. 7:1K-5.1. The Department will not require data on reductions or increases in the use, generation of non-product output, or releases of hazardous substances in non-targeted processes. The Department reserves its authority to require these and other pollution prevention data items to be reported on Pollution Prevention Plan Summaries and Progress Reports if it determines this data is necessary. See N.J.S.A. 13:1D-41(g) and 13:1D-41(h).

B. REPORTING: NOMENCLATURE AND INTERFACE WITH EXISTING RELEASE AND SOURCE REDUCTION REPORT (Form DEQ-114)

a. Summary of Issue

In the second pre-proposal, the Department stated its commitment to developing nomenclature for Pollution Plan Summaries and Progress Reports in order to facilitate the collection of information which is consistent enough among facilities to provide a basis for the trend analyses which N.J.S.A. 13:1D-45 directs the Department to perform. The Department also reiterated that it planned to make pollution prevention reporting requirements and forms as consistent as possible with the Department's existing Release and Source Reduction Report (Form DEQ-114).

b. Comments and Responses

1. Comments on interface with DEQ-114 Form

Several commenters supported the concept of linking as much pollution prevention reporting as possible with the existing DEQ-114 form, and eliminating redundancies between the Pollution Prevention Plan Summary, Progress Report, and the DEQ-114 form. One commenter pointed out that this coordination may cause some confusion, since the DEQ-114 form is a chemical-driven report, whereas the Pollution Prevention Plan Summaries and Progress Reports will be process-driven reports.

Response

It is true that the DEQ-114 form is a chemical-driven report, in that a separate form must be submitted for each reportable substance manufactured, processed, or otherwise used above threshold quantities at a facility. However, the Department believes it should be fairly straightforward to coordinate the chemical-by-chemical reporting pattern of the DEQ-114 form with the reporting requirements for Pollution Prevention Plan Summaries and Progress Reports. In the reporting protocol envisioned by the Department, processes, pollution prevention-related efforts, calculations, and other information associated with the use of a particular chemical will follow the facility-wide data for that chemical such as is currently reported on the DEQ-114 form.

2. Comments on reporting for targeted processes

One commenter stated that items (f) through (m) of the Department's pre-proposed Pollution Prevention Plan Progress Report elements (Section I.D., Table B) can only be required for targeted processes, and reminded the Department that the Pollution Prevention Plan Summary is due only every five years.

Response

Under N.J.S.A. 13:1D-42, the Pollution Prevention Plan Summary is due only every five years. Items (f) through (m) of the Pollution Prevention Plan Progress Report elements are required to be reported on an annual basis for each targeted process.

3. Comment on reporting pollution prevention goals

One commenter suggested that pollution prevention goals should be reported by process because an aggregated production measure would not be meaningful.

Response

The Act, at N.J.S.A. 13:1D-41(h)(1) and (2), requires facilities to set a five-year numeric goal for reducing the use of each hazardous substance and for reducing the generation of each non-product output for both the industrial facility and each targeted process. The Act also requires calculations, on a unit of production basis, for the industrial facility as a whole, each targeted production process, and any other production process identified by the Department. See N.J.S.A. 13:1D-41(g).

The Department recognizes that the Federal government, under the auspices of the Federal Pollution Prevention Act of 1990, 42 U.S.C. §13101 et seq., will be requiring facilities to report a ratio of production in the reporting year to production in the previous year for the facility as a whole. It is clear that such a ratio must be based on an aggregated production measure as calculated by the facility.

Given the requirements of the New Jersey statute, the understanding that it may not be possible for a single "unit" of production to be applied to the collective output of entire facility, and the knowledge that facilities will be calculating and reporting a production ratio in order to comply with Federal law, the Department considers it appropriate and efficient to use the same unit or aggregated unit of production used to calculate the production ratio as described in the instructions for the Federal Form R.

Without such a measure, it will be impossible to normalize pollution prevention measures to production. Such normalization is necessary in order to provide a fair picture of the actual progress a facility is making towards pollution prevention goals. Without normalization, for instance, a facility's total non-product output might appear to be increasing merely because its production increased, even if its actual overall non-product output per product, on the average, declined.

5. Comment on data collected by Department

One commenter recommended that the amount of data the Department collects should be extremely small, and that only data which will be actually used by the Department should be collected by the pollution prevention program.

Response

The Department concurs that it is pointless to collect unnecesary data and intends to collect no more information than is necessary according to the Act. However, the regulated community must realize that in order for information to be meaningful and useful, the information must accurately reflect its subject. Since the subject of the information to be collected, industrial processes and related pollution prevention efforts, can be multi-faceted and complex, there is a limit to how simple the Department's information gathering requirements can be without fostering the collection of information which is simplistic, and thus useless.

6. Comment on reporting pollution prevention progress

One commenter expressed concern that the calculation method selected for measuring a facility's percent reduction in use, non-product output and releases will not provide the Department with meaningful

data on progress towards pollution prevention goals if the annual reports are compared to the previous year. The commenter stated that the most meaningful reporting method is a comparison to a baseline period, such as the year prior to submittal of the facility's Pollution Prevention Plan. The commenter also stated that since the Pollution Prevention Plans must contain a five year reduction goal, a better measurement of progress would be a comparison to the baseline period used to establish the facility's five-year goal.

Response

The Department agrees that comparison to a baseline year would provide the most useful information for determining progress toward pollution prevention goals, and it intends to collect such information. The Act requires Pollution Prevention Plan Progress Reports to contain a numerical statement demonstrating the industrial facility's progress towards achieving each of its five year goals. See N.J.S.A. 13:1D-41(g). These goals must be stated in the facility's Pollution Prevention Plan Summary Report pursuant to N.J.S.A. 13:1D-41(h). However, according to N.J.S.A. 13:1D-41(g), the progress reports must also contain information on use, non-product output, and releases in comparison to the previous year.

Since the Department agrees that baseline comparisons will be one of the most useful approaches for measuring pollution prevention progress, a definition for "base year" has been proposed in the pollution prevention program rules. See proposed N.J.A.C. 7:1K-1.5. The "base year" will represent the calendar year prior to the facility's submittal of a Pollution Prevention Plan Summary. For example, a priority industrial facility in SIC code 28 that must submit its first Pollution Prevention Plan Summary on July 1, 1994, must report in its Plan Pollution Prevention Plan Summary on the facility's use, generation of non-product output, releases, and any other required pollution prevention information for a base year of calendar year 1993.

7. Comment on comparison of pollution prevention reporting

One commenter urged caution in developing and drawing comparisons of apparently comparable processes or facilities, as the similarities may be only superficial.

Response

The Department shares the commenter's concerns on the danger of inappropriate comparisons among facilities and processes. It is hoped that the report forms being developed will enable the Department to identify any similarities which may exist between facilities and processes while at the same time clarifying and documenting differences among those of New Jersey's industrial processes and facilities which defy comparison. In addition, the Department intends to use such data to also study the possible limitations to the use of Standard Industrial Classification (SIC) codes in such analyses.

8. Comment on reporting unit of production

One commenter expressed concern that facilities will misunderstand the concept of "non-product output generation per unit of production" as referenced in the Act.

Response

The Department shares this concern. It is clear that in some cases, the "unit" chosen by the facility to reflect production may not actually represent the degree, or type, of work which generated pollution. However, since the facility will select the unit which it reports, it should be possible to maximize the appropriateness of this measure of production in a manner consistent with the Act.

c. Department Recommendation

At a minimum, the Act requires the Department to collect the information listed at N.J.S.A. 13:1D-41(g) and (h) through Pollution Prevention Plan Summaries and Progress Reports. These reporting elements have been incorporated into the proposed rules at N.J.A.C. 7:1K-5.1 and 6.1. In accordance with its authority under the Act, the Department has transferred one of the pre-proposed reporting requirements, the identification of each production process, from the list of Pollution Prevention Plan Progress Report elements to the list of Pollution Prevention Plan Summary elements. This change will mean that facilities need only describe each process periodically in the Pollution Prevention Plan Summary Report, not each year in the Progress Report.

Draft Pollution Prevention Plan Summary and Progress Report forms will be available for public comment. The public may request copies of the draft forms through the Department's Office of Pollution Prevention. The Department is currently undertaking a pre-test of the forms with volunteer facilities and members of the public to assess the completeness of the drafts as well as their clarity. The Department's intent is to issue final versions of the forms concurrently with the publication of the final pollution prevention rule.

In addition to reporting on use and non-product output generation, facilities will also be required to describe in their Pollution Prevention Plan Summaries and Progress Reports what pollution prevention techniques were implemented at the facility during the reporting period. See proposed N.J.A.C. 7:1K-5.1 and 6.1.

Proposed N.J.A.C. 7:1K-1.4 and 6.1(b) address the relationship of Community Right-to-Know reporting to pollution prevention reporting. The proposed sections state as follows: "The Department may combine the reporting elements of this chapter with those required for Right-to-Know Reporting pursuant to N.J.S.A. 34:5A-1 et seq. which will allow the submittal of a combined reporting form to satisfy the requirements of N.J.A.C. 7:1G and N.J.A.C. 7:1K." The details and format of this combined reporting are being developed by both programs within the Department, and information on combined reporting will be circulated to affected industrial facilities prior to the first combined reporting deadline.

III. CRITERIA FOR ADDING NEW HAZARDOUS SUBSTANCES

a. Summary of Issue

The definition of "hazardous substance" at N.J.S.A. 13:1D-37 defines the universe of hazardous substances regulated by the Act and the pollution prevention planning program as (1) those substances regulated under Section 313 of the Federal Emergency Planning and Community Right to Know Act (SARA Section 313), and (2) any other substance which the Department defines as a hazardous substance for pollution prevention planning purposes through the authority at N.J.S.A. 13:1D-42(i). In accordance with N.J.S.A. 13:1D-42(i), the Department may designate additional hazardous substances for which pollution prevention is required by establishing designation criteria through rulemaking.

In the January pre-proposal, the Department stated that it intended to promulgate criteria for designating additional hazardous substances, and that it intended to use these criteria in order to add to the list of hazardous substances covered by the Act several substances which are currently regulated under the New Jersey Worker and Community Right-to-Know Act but not regulated under the SARA Section 313 list. Several commenters on the January pre-proposal were extremely concerned about this suggestion. These commenters pointed out that there was extensive discussion during the Legislative deliberations on the Act over which of several thousand chemicals should be subject to pollution prevention planning, and although they did not dispute the Department's authority to add substances pursuant to N.J.S.A. 13:1D-42(i), they believed that the Legislature wanted the Department to begin the program with a relatively small list.

The Department believes that the discrepancy between the pollution prevention planning list and the Community Right-to-Know list was an oversight, and the Act clearly authorizes the Department to expand the pollution prevention planning list to eliminate this discrepancy or to require pollution prevention planning for other substances as appropriate. However, in response to industry's concerns, the Department recommended in the second pre-proposal that the list of covered hazardous substances under the Act remain identical to the list of hazardous substances regulated under SARA Section 313 (42 U.S.C. §11023) at the present time. The Department stated that in the future it would consider adding the four chemicals which are covered under the New Jersey Worker and Community Right-to-Know Act but not listed on under SARA Section 313 in order to achieve consistency between these programs.

The second pre-proposal contained three criteria for the future addition of hazardous substances to the list of substances regulated under the Act pursuant to N.J.S.A. 13:1D-42(i):

(1) Prior regulation as a hazardous substance pursuant to 42 U.S.C. §11023; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Section 4 of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-9 et seq.; or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601;

(2) Consideration of the toxicity of a hazardous substance; and

(3) Evidence of the production of the substance in commercial quantities.

B. Comments and Responses

a. Comments on addition of four New Jersey Right-to-Know chemicals

Commenters representing industry endorsed the Department's recommendation in the second pre-proposal to not add the four chemicals to the list of hazardous substances covered by the Act at this stage. Most of these commenters argued that the list of hazardous substances covered under the Act should be identical to the SARA Section 313 list. Public interest representatives, on the other hand, agreed with the Department's earlier suggestion that the omission of the four New Jersey Right to Know substances from the list covered under the Act was an oversight that should be remedied. These commenters argued that the Legislature intended for reporting under the Act to be fully coordinated with reporting under the New Jersey Right-to-Know program.

Response

At this time, the Department will keep the list of hazardous substances covered under the act identical to the Federal list of hazardous substances regulated under SARA Section 313 (42 U.S.C. §11023). The Department reserves the right to add these four chemicals or any other chemicals, on the basis of promulgated criteria, to the list of hazardous substances covered by the Act under its authority at N.J.S.A. 13:1D-42(i) and proposed N.J.A.C. 7:1K-3.5. The Department also notes that by definition, the list of hazardous substances covered under the Act is automatically expanded whenever the Federal list of hazardous substances regulated under SARA Section 313 is expanded by the U.S. Environmental Protection Agency.

b. Comments on timing of plan revision for newly covered substances

Several commenters suggested that if the list of hazardous substances covered under the Act is expanded, either through expansion of the SARA Section 313 list or addition of hazardous substances by the Department, a facility should not be required to report on the additional covered substances until the next revision of the facility's Pollution Prevention Plan.

Response

The Department is proposing that facilities be provided a minimum of 12 months to update their Pollution Prevention Plans to include reporting for newly covered substances. Specifically, proposed N.J.A.C. 7:1K-3.5(c) would require a facility to develop a revised Pollution Prevention Plan and Pollution Prevention Plan Summary no later than July 1 of the calendar year following the date that the new substances are added to the list of additional hazardous substances for which pollution prevention planning is required.

c. Comments on criteria for hazardous substance list expansion

Several commenters requested that the Department establish specific criteria for adding a hazardous substance to the list of hazardous substances covered under the Act through regulation and not merely through Department policy. The commenters made several specific suggestions with regard to the three criteria suggested by the Department in the second pre-proposal, as follows:

(1) Consider prior regulation of the hazardous substance under the Toxic Catastrophe Prevention Act (TCPA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), but not under 42 U.S.C. §11023 or the Spill Compensation and Control Act because only the TCPA and the CERCLA lists are toxicologically based;

(2) Consider the toxicity of a hazardous substance based explicitly on risk, using broadly recognized data and methodologies;

(3) Further develop the third criterion, "evidence of the production of the substance in commercial quantities," to require:

- number of manufacturers/users in the State ≥ 3;
- volume ≥ 10,000 lbs/year per manufacturer or user;
- use exclusive of experimental or developmental purposes; and
- use as a commodity in trade in the channels of commerce by the general public.

Response

After considering the commenters' requests for greater specificity, the Department believes that only slight modifications are necessary to the critera originally recommended for expansion of the Act's hazardous substance list.

In terms of the commenters' suggestions for limiting the scope of the first criterion, the Act specifically designates prior regulation of a hazardous substance under the four laws, TCPA (Section 4 of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-9 et seq.), CERCLA (Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601), the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), and SARA Section 313 (42 U.S.C. §11023), as a consideration for regulation of a hazardous substance under the Act. See N.J.S.A. 13:1D-42(i). As such, the Department has proposed that the first criterion include all four references. See proposed N.J.A.C. 7:1K-3.5(a).

In response to the commenters' suggestions that the second criterion be based explicitly on risk, the Department has modified this criterion to read: "The risk to human health or the environment due to the toxicity of the hazardous substance." See proposed N.J.A.C. 7:1K-3.5(a)2. This proposal does not incorporate a risk approach, but rather, is based on the chemical's toxicity. This approach is consistent with the U.S. Environmental Protection Agency's basis for inclusion of chemicals on the Toxic Release Inventory (TRI) list. At this stage of implementing the Act, the Department believes that it is not necessary to specify risk assessment procedures for this criterion.

With regard to the commenters' requests for greater specificity on commercial use as part of the third criterion, the Department has altered this criterion to reflect that the hazardous substance must be used as a commodity in trade in the channels of commerce by the general public. See proposed N.J.A.C. 7:1K-3.5(a)3. However, the Department believes that the other types of specificity suggested by the commenters are unnecessary for the following reasons:

- At this stage of program development, a specific quantifier for the number of manufacturers/users in the State is likely to be arbitrary and hard to verify.
- A specification that production must be above 10,000 lbs/year is not needed since proposed N.J.A.C. 7:1K-3.4 will establish a 10,000 lb/year threshold for reporting for each facility;
- An exemption for substances produced only for experimental or developmental purposes is unnecessary since all research and development operations, along with pilot facilities, are exempt from Pollution Prevention Planning requirements. See N.J.S.A. 13:1D-41(i) and (j) and proposed N.J.A.C. 7:1K-3.3(b). Substances used in these types of operations are already excluded from pollution prevention reporting.

C. Department Recommendation

Consistent with N.J.S.A. 13:1D-42(i) and the recommendations in the second pre-proposal, the Department has proposed three criteria to be used for adding a hazardous substance to the list of hazardous substances covered under the Act. See proposed N.J.A.C. 7:1K-3.5(a). These three criteria are:

(1) Prior regulation as a hazardous substance pursuant to 42 U.S.C. §11023; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Section 4 of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-9 et seq.; or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601;

(2) Consideration of the hazardous substance's risk to human health or the environment; and

(3) Evidence of the production of the substance in commercial quantities that are used as a commodity in trade in the channels of commerce by the general public.

Under proposed N.J.A.C. 7:1K-3.5, additions to the list of hazardous substances for which pollution prevention planning is required will be made through rulemaking. As discussed above, the Department does not plan to expand the list of regulated substances at this time, but has proposed these criteria and this procedure for future use.

IV. CRITERIA FOR IDENTIFICATION OF PRODUCTION PROCESSES REQUIRING PLAN REVISIONS

A. Summary of Issue

In the June pre-proposal, the Department requested comments on the development of criteria for the identification of production processes that are established after January 1, 1992, for which owners or operators will not be required to report information pertaining to improvements in pollution prevention until the first five-year revision of their Pollution Prevention Plan. See N.J.S.A. 13:1D-40(f). The Department suggested language designed to differentiate between (1) processes that are altered after January 1, 1992 and are labeled as new processes, and (2) processes which did not exist prior to January 1, 1992 and are, in fact, new processes. The suggested language included criteria to identify "modified processes" and criteria to identify "new processes."

B. Comments and Responses

a. Comments on "New Processes" Criteria

Two commenters felt that the suggested criteria for new processes should apply to new intermediates as well as new products.

Response

The Department agrees that the suggested criteria for new processes should apply to new intermediates as well as new products and has incorporated this suggestion into proposed N.J.A.C. 7:1K-3.8(c)1ii.

b. Comments on "Modified Processes" Criteria

1. Comments on measuring releases from modified processes

Several commenters suggested that the criteria for modified processes should allow releases to be measured on a per unit of production basis.

Response

The Department agrees that releases, as well as most pollution prevention reporting, should be measured on a per unit of production basis. In the Pollution Prevention Plan Progress Report, facilities will be reporting on a unit of production basis for each targeted production process and on the facility-wide quantities, reported in pounds, of the reduction or increase in multi-media releases by medium in comparison to the previous year. See proposed N.J.A.C. 7:1K-6.1(b)4.

2. Comments on classifying modified processes as new processes

Two commenters suggested that a decrease in releases to environmental media (criterion 1) and a decrease in the generation of non-product output per unit of product (criterion 2) should not both have to occur to enable the facility to classify a modified process as a "new process."

Response

The Department recommendation for this issue presented below does not include either of these criteria because another section of the Act has been determined to address how to define a modified process.

3. Comments on criteria for capital facilities and recycling

One commenter suggested that the Department make criterion 3(c) (production of a product not identified in most recent Pollution Prevention Plan) and criterion 3(e) (greater than 50 percent replacement of capital facilities) mandatory, and that recycling and pollution treatment systems be excluded from criteria 1 and 3(e).

Response

If criterion 3(c) is made mandatory, a modified process would have to produce a new product which was not identified in the facility's Pollution Prevention Plan in order to be classified as a new process. The Department believes that modified processes can be classified as new processes consistent with N.J.S.A. 13:1D-40(f) by the application of the other suggested criteria without requiring the modified process to produce a new product. Criterion 3(e) has not been proposed as part of the Department's pollution prevention program rules. The Department considers recycling and pollution control to be included within criterion 1 since the addition of recycling or pollution control equipment would not normally constitute a new process.

4. Comment on reporting Part I inventory information for new processes

One commenter strongly disagreed with the Department's position of requiring industrial facilities to report Part I inventory information for new processes, on the basis that this information is highly confidential.

Response

There are several reasons why the Department does not agree that maintaining the confidentiality of Part I inventory information for new production processes will be a problem. First, the legislative intent of N.J.S.A. 13:1D-40(f) appears to be to exempt industrial facilities from the Pollution Prevention Planning requirements for "information pertaining to improvements in pollution prevention" for new production processes because a new production process will already be subject to "state-of-the-art" reviews by the facility and various regulatory programs prior to its implementation. Therefore, there is an expectation that pollution prevention methods will already be incorporated into a new production process. Regardless of whether this expectation proves to be true, the logical application of the assumption would be to exempt industrial facilities from the Part II planning requirements in which the new production process would be subject to a feasibility analysis of pollution prevention options.

Second, the Department agrees and acknowledges that there are many concerns regarding confidentiality of information to be submitted under the Act (see the discussion of confidentiality in Section VIII below.) However, the Act contains criteria for classifying information as confidential as well as a precedure for industrial facilities to follow to keep such information confidential. Based on the criteria found at N.J.S.A. 13:1D-47, confidentiality or trade secret claims can be made equally for new or existing production processes.

Finally, as the Department stated in the second pre-proposal, the Part I inventory information will be necessary to allow the Department to perform the trend analysis required by N.J.S.A. 13:1D-45.

C. Department Recommendation

Based on the comments received on both pre-proposals and on a reevaluation of N.J.S.A. 13:1D-40(f) and 13:1D-42(d), the Department has decided not to propose the "modified processes" portion of the pre-proposed criteria for new processes and to modify the "new processes" portion of the pre-proposal to (1) incorporate comments regarding the exclusion of recycling and pollution treatment systems from capital facilities, and (2) include new intermediates as well as new products. See proposed N.J.A.C. 7:1K-3.8(c). The Department believes that N.J.S.A. 13:1D-42(d) was intended to instruct industrial facilities on the issue of what constitutes a change in operations significant enough to require revision of a Pollution Prevention Plan, which is the same situation that the Department was trying to address by the criteria for "modified processes" in the second pre-proposal. See proposed N.J.A.C. 7:1K-3.8(b) for guidance on modified processes. In addition, the Department is proposing that facilities that do meet the criteria for new processes will be exempt from preparing Part II of a Pollution Prevention Plan for five years but will be required to conduct a Part I analysis and submit a Pollution Prevention Plan Summary to the Department incorporating information on the new process. See proposed N.J.A.C. 7:1K-3.8(c)3.

V. DEFINITIONS

A. NON-PRODUCT OUTPUT

a. Summary of Issue

Non-product output is defined at N.J.S.A. 13:1D-37 as "all hazardous substances or hazardous wastes that are generated prior to storage, recycling, pollution treatment, control, or disposal and that are not intended for use as a product." This definition is closely related to other prevention pollution terms, some of which are not specifically defined in the Act, including product, co-product, intermediate product, in-process-recycling and out-of-process recycling. Read together, these definitions establish the basic framework for measuring pollution prevention reductions and progress towards achieving pollution prevention goals.

In the June pre-proposal, each of these terms and definitions was discussed separately. However, during the June workshop, the Department referred to these terms as the "definition continuum" because of their inherent relationship to each other. This response document discusses these terms separately for ease of responding to the comments received. Nonetheless, the Department reminds commenters of the inherent relationship of these terms to each other.

In the June pre-proposal, the Department also suggested that the phrase "... prior to storage, recycling, pollution treatment systems, control or disposal ..." in the non-product output definition be clarified to as "... prior to storage, **out-of-process** (emphasis added) recycling, pollution treatment systems, control or disposal." This suggestion was made in response to comments on the first pre-proposal contending that, based on the definition of "pollution prevention" at N.J.S.A. 13:1D-37, in-process recycling could be considered pollution prevention, but that the Act's reporting requirements would not reveal this because non-product output data submitted in Plan Summaries and Plan Progress Reports would not show any reductions which are achieved through in-process recycling.

b. Comments and Responses

1. Comment on non-product output definition

The Department did not receive any comments on its suggestion to clarify the reference to recycling in the non-product output definition.

Response

The definition of non-product output at proposed N.J.A.C. 7:1K-1.5 clarifies that the term "recycling" within the definition refers to out-of-process recycling.

2. Comments on reporting non-product output data

Several commenters expressed concern that the non-product output data reported by facilities under the Act would be misleading to the public because the non-product output numbers may, in some cases, be much larger than the release data currently made public through the Federal and State right-to-know programs. One commenter stated that the non-product output data reporting requirements are an attempt to make industry look bad in the public eye and to force facilities to do more pollution prevention.

Response

The Act envisions that non-product output data will be used to measure a facility's pollution prevention progress. This requires quantities of hazardous substances to be measured prior to storage, out-of-process recycling, and pollution treatment systems. Information which is currently available to the public is for releases into the environment after storage, recycling and pollution treatment systems. Since the non-product output data will be measured prior to recycling and pollution treatment systems, the non-product output numbers will be larger than the release numbers currently available to the public.

However, the Department does not expect these numbers to be misleading to the public. The combined reporting under the Federal right-to-know program and New Jersey's pollution prevention program will show a complete picture of how the facility manages non-product output at a facility level. The quantities of hazardous substances recycled and treated will be reported along with the raw non-product output data. Overall, the combined data will show how the "new" non-product output data relates to the facility's releases and should not be misleading.

The Act's non-product output data reporting requirements are not intended to make a facility "look bad." Rather, they are intended to provide facilities, the Department, and the public with the means to distinguish pollution prevention activities from pollution treatment systems and recycling activities and to track pollution prevention progress at a facility.

3. Comments on non-product output as "waste"

Several commenters stressed that non-product output is not waste and that requiring facilities to identify materials that are recycled and re-used throughout the facility will falsely inflate non-product output numbers and reduce reduction alternatives otherwise available to facilities.

Response

The Department agrees that non-product output is not "waste." This was recognized in the second pre-proposal, where the Department indicated that identifying a material as non-product output will not affect the status of the material under the State's solid and hazardous waste statutes or regulations. Rather, non-product output is a new data element for measuring pollution prevention progress. As such, the definition of non-product output will not impact a facility's ability to implement environmental management options other than pollution prevention, such as recycling or pollution treatment systems. However, to maintain consistency with the Act, reductions achieved by these other options cannot be counted as non-product output reductions in a facility's Pollution Prevention Plan Progress Report.

4. Comments on non-product output reduction vs. release reduction

A few commenters suggested that non-product output is an inappropriate measuring stick for tracking the pollution prevention progress of facilities and urged the Department to focus on tracking releases instead. However, these commenters did recognize that the Act focuses on use and non-product output reduction goals, and not on release reduction.

Response

The Department's position is that, technically, non-product output is the appropriate measurement for identifying and tracking pollution prevention progress under the Act. The Department also agrees with the commenters that the Act is clear on goal setting and tracking progress toward those goals. For example, N.J.S.A. 13:1D-41(c)1 and 2 and (h)1 and 2 require industrial facilities to develop use reduction and non-product output reduction goals but do not require release reduction goals to be established.

The Act, at N.J.S.A. 13:1D-41(c)9 and 13:1D-41(g)1, does require industrial facilities to quantify and report on the impact of pollution prevention techniques on multimedia releases. Also, the targeting criteria at N.J.S.A. 13:1D-41(d) allow facilities to target sources and processes based on their contribution to releases at the facility. Therefore, in addition to the emphasis on non-product output, the Act provides facilities the opportunity to focus on releases as they develop their pollution prevention goals and to report on progress made in reducing releases.

5. Comments on process shutdowns as non-product output

One commenter suggested that the Department count process shutdowns as pollution prevention and as progress toward meeting non-product output reduction goals.

Response

Process shutdowns and other reductions in the quantities of products produced at the facility will not count as pollution prevention or as progress toward meeting non-product output reduction goals. Process shutdowns do not meet the Act's definition of pollution prevention, which links pollution prevention reductions to production. If production is decreased, there will be no changes in use of hazardous substances per unit of product or the generation of non-product output per unit of product.

6. Comments on broad definition of non-product output

A few commenters favored a broad definition of non-product output because they felt it was the only way to meet the Act's Statewide public policy goal of a 50 percent reduction in the generation of hazardous substances as non-product output, N.J.S.A. 13:1D-36. These commenters contended that facilities will not have significant opportunities to reduce non-product output if a restrictive definition of non-product output is adopted, and that the facilities and the Department will look bad as a result because the 50 percent goal will not be achieved.

Response

The Department cannot substantively modify, but can merely clarify, the Act's statutory definitions through promulgation of implementing regulations. The Department has suggested clarifying the reference to recycling in the statutory definition of non-product output because of an obvious conflict between this definition, the statutory definition of pollution prevention, and the Act's data reporting requirements for non-product output. However, the Department cannot substantively modify the non-product output definition in order to alter the types of activities that count toward non-product output reductions. Likewise, it would be inappropriate for the Department to modify the non-product output definition to essentially "change the target" as a means of meeting the 50 percent Statewide goal set by the Act.

The 50 percent goal for Statewide reduction in the generation of hazardous substances as non-product output is contained in the Legislative findings section of the Act, N.J.S.A. 13:1D-36, and is not expressed as a mandatory requirement for individual industrial facilities. Since pollution prevention opportunities will vary widely by facility, a facility will develop its own goals in its Pollution Prevention Plan and will not necessarily set a 50 percent goal for non-product output reduction. The Department will track Statewide progress in non-product output reduction, and is scheduled to report its findings to the Legislature in 1996. If the 50 percent goal is not met by 1996, the Department may propose changes to the State's pollution prevention program to facilitate progress towards this goal. These changes may include: increased financial incentives such as tax credits or reduced fees; changes to permitting procedures; or increased enforcement within the Pollution Prevention Planning regulations. If the Department determines that the Statewide goal has been met or is infeasible, it will propose a different set of policy options to the Legislature. The Department expects that the first several years of Pollution Prevention Planning in New Jersey will provide insight into whether additional policies or programs are needed to facilitate pollution prevention throughout the State.

c. Department Recommendation

As discussed in the second pre-proposal, the Department has proposed to clarify the statutory definition of non-product output by including the language "... prior to storage, **out-of-process** recycling, pollution treatment systems, control or disposal ..." See proposed N.J.A.C. 7:1K-1.5 (emphasis added.) This clarification is being proposed to address an obvious inconsistency between the definitions of non-product output and pollution prevention at N.J.S.A. 13:1D-37.

The Department has not proposed to expand the scope of the non-product output definition to include environmental management options other than pollution prevention. Although this type of change was re-

quested by the commenters, the Department does not believe such changes would be warranted or authorized by the Act.

B. OUT-OF-PROCESS RECYCLING

a. Summary of Issue

As stated above, the Department did not receive any comments on its suggestion in the second pre-proposal to clarify that the type of recycling to which the Act's non-product output definition refers is out-of-process recycling. However, the Department did receive several comments on out-of-process recycling as it relates to the Act's definitions of pollution prevention and non-product output.

The issue of out-of-process recycling was not discussed specifically by the Department in the first or second pre-proposal. Rather, this is a new issue raised by commenters responding to the second pre-proposal.

b. Comments and Responses

1. Comments on out-of-process recycling authorization

Several commenters claimed that out-of-process recycling should qualify as pollution prevention and should count as progress towards meeting pollution prevention goals. These commenters reasoned that since out-of-process recycling reduces the use and purchase of raw materials, it should be counted as pollution prevention. These commenters also stated that facilities will look to recycling first before looking to pollution prevention options.

Response

N.J.S.A. 13:1D-37 defines "use" as "to process or otherwise use a hazardous substance." This definition does not limit or equate use to quantities of raw materials purchased by the facility. Use also includes materials reintroduced into a production process after recycling, reprocessing or pollution treatment systems. Recycling activities can reduce the quantity of raw materials purchased by a facility. However, recycling does not reduce the need for hazardous substances within production processes because the quantities recycled only replace raw material purchases and are still counted as quantities used.

The definition of pollution prevention at N.J.S.A. 13:1D-37 specifically excludes out-of-process recycling. The definition states, in part: "Pollution prevention ... shall not include pollution treatment systems, increased pollution control, **out-of-process recycling** (emphasis added) or incineration, except as otherwise provided in Section 7f of this Act [N.J.S.A. 13:1D-41(f)]." Therefore, N.J.S.A. 13:1D-41(f) is the only provision in the Act under which out-of-process recycling activities may possibly be considered pollution prevention.

The out-of-process recycling authorization at N.J.S.A. 13:1D-41(f) allows the owner or operator of an industrial facility to include out-of-process recycling in a Pollution Prevention Plan **only if the Department determines that pollution prevention strategies are not reasonably available to the facility.** Therefore, the Department must specifically grant the owner or operator this authorization. However, this would only allow a facility to list relevant out-of-process recycling activities in the Pollution Prevention Plan; this post-generation activity still may not be included in a facility's pollution prevention goals or progress reports since it will still not fall under the definition of pollution prevention.

Contrary to the commenters' assertions, the N.J.S.A. 13:1D-41(f) authorization clearly requires the facility to exhaust all of its pollution prevention options before considering the out-of-process recycling authorization option. Therefore, a facility must look at true source reduction and pollution prevention options first before it considers out-of-process recycling as part of its Pollution Prevention Plan. Pollution prevention is the first and preferred step in a recognized environmental management hierarchy which consists of: (1) pollution prevention, (2) recycling, (3) treatment, and (4) disposal. In order to request the N.J.S.A. 13:1D-41(f) out-of-process recycling authorization, the facility must start at the top of the environmental management hierarchy and work down the hierarchy. It cannot start in the middle or consider pollution prevention and recycling activities at the same time.

2. Comments on U.S. EPA policy on recycling

A few commenters referred to a policy statement on the definition of pollution prevention issued by F. Henry Habicht II, Deputy Administrator of the U.S. Environmental Protection Agency, to highlight why out-of-process recycling should be considered pollution prevention. These commenters stressed that the pollution prevention hierarchy should acknowledge all technologies that reduce impacts on the environment and noted that recycling has the ability to reduce use of virgin raw materials and the quantities of hazardous substances released to the environment.

Response

The policy statement issued by the U.S. EPA discusses an environmental management hierarchy and **not** a pollution prevention hierarchy. The important distinction between the two is that each step in the U.S. EPA's environmental management hierarchy is not pollution prevention. Nonetheless, the U.S. EPA's policy statement clearly makes pollution prevention its top priority, and clearly states that out-of-process recycling is not pollution prevention but in-process recycling is pollution prevention. Although out-of-process recycling may share many of the same advantages as pollution prevention, the U.S. EPA's policy clearly states that out-of-process recycling is not pollution prevention.

3. Comment on role of recycling in other state programs

One commenter summarized pollution prevention laws passed by other states and concluded that 27 other states include out-of-process recycling in their definition of pollution prevention. This commenter emphasized that these other states recognize release reduction as the goal of pollution prevention, and suggested that out-of-process recycling is a necessary step toward meeting this goal.

Response

The comparison of state pollution prevention laws submitted by the commenter oversimplifies the issue of the role of out-of-process recycling in the New Jersey pollution prevention program. State laws have many different goals and objectives. Some state programs are limited to regulating hazardous wastes, others are multimedia in scope, and others are designed to provide technical assistance. It is misleading to attempt to compare these state laws and programs using out-of-process recycling as the sole criterion.

Indeed, the data provided by this commenter actually indicate that only 19 other states, not 27, acknowledge out-of-process recycling as an option under their pollution prevention-like programs. The commenter overlooked data indicating that the other eight states count only in-process recycling as pollution prevention, just as under the New Jersey law. For a more accurate and in-depth comparison of state laws and programs, the Department recommends the National Roundtable of State Pollution Prevention Program's "Directory of State and Local Pollution Prevention Programs" or the Ohio Environmental Protection Agency's analysis of state pollution prevention laws. These resources provide a more complete picture of the various state pollution prevention programs.

c. Department Recommendation

The Department has not proposed to modify the definition of pollution prevention or non-product output to include out-of-process recycling. The Act clearly excludes out-of-process recycling from the definition of pollution prevention. This is consistent with the Federal definition of pollution prevention as well as with the definition in eight other states including Massachusetts (whose Toxic Use Reduction Law closely parallels the New Jersey Act).

The intent of the Act is to advance pollution prevention as the preferred course of environmental protection. Such a policy does not slight the importance of other methods of environmental protection, such as out-of-process recycling. It simply puts pollution prevention first within the context of the environmental hierarchy.

The Department is proposing a procedure for implementing the out-of-process recycling authorization which will require facilities to submit their pollution prevention plan to the Department for review. If the Department determines that pollution prevention strategies are not reasonably available, on-site, out-of-process recycling activities may be included in the pollution prevention plan. However, these activities will not count towards use reduction or non-product output reduction goals. See proposed N.J.A.C. 7:1K-4.7.

C. IN-PROCESS RECYCLING

a. Summary of Issue

N.J.S.A. 13:1D-37 does not specifically define the term "in-process recycling." Rather, this term is used within the definition of pollution prevention at N.J.S.A. 13:1D-37 which states, in part: "Pollution prevention shall include, but need not be limited to, raw material substitution, product reformulation, production process redesign or modification, **in-process recycling** and improved operation and maintenance of production process equipment." (emphasis added) Thus, since in-process recycl-

ing is considered to be pollution prevention but other forms of recycling are not, developing a regulatory definition of in-process recycling is an extremely important issue.

In the June pre-proposal, the Department suggested three potential options for defining the term "in-process recycling" and requested comments on each option. The three options included: (1) adopting a very strict definition of in-process recycling that would disallow any type of recycling other than closed-loop recycling; (2) adopting a very broad definition of in-process recycling that would allow re-use of raw materials within the same or similar process to count as in-process recycling; or (3) adopting a "compromise" approach which would include a strict definition of in-process recycling but would also provide for facility self-certification for the class of recycling described in option 2, thereby allowing a facility to self-certify that it qualifies for the out-of-process recycling exemption authorized by N.J.S.A. 13:1D-41(f).

b. Comments and Responses

1. Comment on broad definition of in-process recycling

One commenter expressed concern that a broad definition of in-process recycling would discourage facilities from looking at "true" source reduction.

Response

The Department does not agree with the commenter's concern. Since in-process recycling qualifies as pollution prevention under the Act, any practice that meets the definition of in-process recycling will constitute "true" pollution prevention.

2. Comments on self-certification of out-of-process recycling

Some commenters suggested that the Department should require facilities to obtain prior approval before receiving the out-of-process recycling exemption authorized by N.J.S.A. 13:1D-41(f). These commenters opposed adoption of the self-certification element of the compromise approach suggested by the Department in the second pre-proposal. The commenters indicated that if it was difficult to receive the exemption, fewer facilities would seek the exemption and facilities would look at source reduction options more extensively.

Response

Based on further review of this issue, the Department has decided not to incorporate a self-certification procedure into the proposed rules governing the N.J.S.A. 13:1D-41(f) out-of-process recycling authorization. A facility seeking this authorization will be required to submit its Pollution Prevention Plan to the Department for review and approval, and to obtain the Department's written approval prior to including out-of-process recycling activities in its Plan. See proposed N.J.A.C. 7:1K-4.7.

3. Comments on batch operations

Several commenters argued that a strict definition of in-process recycling would discriminate against "batch" operations because the only pollution prevention options available to these operations would not meet qualify as pollution prevention under a strict definition. These commenters noted that the inherent nature of batch operations requires that materials be stored in between batches prior to being re-used. Another commenter countered these arguments with case studies done for batch operations in New Jersey which show that there are source reduction options besides in-process recycling for batch operations.

Response

The Department has proposed a strict definition of in-process recycling which may preclude certain activities at batch operations from qualifying as pollution prevention. See proposed N.J.A.C. 7:1K-1.5. However, the Department recognizes that the inherent nature of batch operations typically does not typically allow for closed-loop, in-process recycling. Therefore, the Department encourages batch operations facilities to re-use in the same batch process hazardous substances that have been generated as non-product output. While this material will still be non-product output even if it is re-used in this manner, the Department will acknowledge the importance of batch re-use by providing a special section for reporting batch re-use on Pollution Prevention Plan Progress Reports.

4. Comments on time limit for recycling activities

A few commenters requested that the Department establish a time limit for recycling similar to the time limits included in the Department's Hazardous Waste Regulations definitions, N.J.A.C. 7:26. This would allow a facility to consider certain recycling activities that would otherwise constitute out-of-process recycling as "in-process" recycling if the materials were recycled within the established time frame.

Response

The Department considered allowing limited forms of non-closed loop re-use of a hazardous substance to fall within the definition of in-process recycling but found that the definition of non-product output prevented this flexibility. The Department reviewed numerous industry comments requesting that the re-use of materials stored anywhere from 90 days to a year or more be considered pollution prevention. While the Department may have been able to provide some flexibility by allowing the handling of materials outside the process for a limited time period, that is, a few hours up to a few days, the Department felt that any time beyond one day would constitute storage.

The definition of non-product output at N.J.S.A. 13:1D-37 encompasses "all hazardous substances or hazardous wastes that are generated **prior to storage,** recycling, pollution treatment systems, control, or disposal ..." (emphasis added). Because batch re-use will almost always involve some storage prior to re-use of the hazardous substance, it would be inconsistent with the statutory definition of non-product output for the Department to count batch re-use as pollution prevention.

In order to recognize the efforts and specialized needs of batch operations, the Department has proposed to allow batch operations facilities to report in their Pollution Prevention Plan Progress Reports on batch re-use activities involving a maximum of 90 days of storage. See proposed N.J.A.C. 7:1K-6.1(c). Therefore, batch re-use activities involving 90 days or less storage will be credited in pollution prevention reporting, but will still not constitute pollution prevention.

5. Comments on reducing raw material use

Several commenters identified recycling activities which would not meet a strict "in-process" definition, but which would reduce raw material use and, therefore, should count as pollution prevention.

Response

As discussed above, hazardous substance use should not be equated with raw material purchases. Out-of-process recycling may reduce the amount of raw material purchased, but will not reduce the demand for a hazardous substance in a process. Since demand for hazardous substances is not reduced, out-of-process recycling cannot be considered pollution prevention as that concept is used in the Act.

6. Comment on capital investments in recycling

One commenter indicated that a broad definition of in-process recycling could affect management decisions on capital investments. This commenter stressed that a large capital investment may be more likely to receive management approval if it counted towards the facility's pollution prevention goal.

Response

One premise of pollution prevention planning is that it will identify pollution prevention opportunities that save money for the facility. If the facility saves money, there should be no need for the Department to influence a facility's choice of pollution prevention options or to require pollution prevention options to be implemented.

The Department intends to more fully develop and refine the concept of the total cost assessment method of analyzing production costs as a means of identifying cost-effective pollution prevention options at facilities. The guidance document being developed by the Department discusses how facilities can quantify some of the longer term and less tangible costs of using and generating hazardous substances. Once the Department and industrial facilities learn more about total cost assessment approaches, this should lead to the implementation of additional pollution prevention techniques.

c. Department Recommendation

After lengthy consideration of the issue, the Department has developed a definition of in-process recycling that will be applied to determine which recycling activities will be considered pollution prevention. This proposed definition reads as follows: "In-process recycling" means returning a hazardous substance to its original production process using dedicated equipment that is directly connected to and physically integrated with a production process or production processes and is operated in manner that prevents the generation of non-product output or the multi-media release of hazardous substances. See proposed N.J.A.C. 7:1K-1.5.

The proposed definition will limit in-process recycling to closed-looped recycling systems. This is likely to eliminate certain activities at batch operations, including re-use of materials which require storage between batches, from being considered pollution prevention. However, the Department has developed a special reporting section in the Pollution Prevention Plan Progress Report to allow facilities to highlight and report on these batch re-use activities. See proposed N.J.A.C. 7:1K-6.1(c).

D. INTERMEDIATE PRODUCTS

a. Summary of Issue

The definition of "product" at N.J.S.A. 13:1D-37 requires a product to be "used as a commodity in trade in the channels of commerce by the general public." However, it is unclear whether this definition allows an isolated intermediate from one process in a facility to be processed in subsequent processes without identifying the intermediate as non-product output resulting from the first process.

To address issues raised by commenters on the first pre-proposal, the Department suggested the following definition of "intermediate product" in the second pre-proposal:

"Intermediate product" means a desired result of a production process that must be further processed in a subsequent production process at the same industrial facility before it is used as a commodity in trade in the channels of commerce by the general public. An intermediate product shall not be considered non-product output.

b. Comments and Responses

Several commenters expressed concern that the scope of the suggested intermediate product definition was limited to a single facility and did not allow transfer of the intermediate to a separate facility for additional processing. These commenters requested that the phrase "at the same facility" be taken out of the suggested definition.

Response

The Department did not intend to require intermediates that are the planned result of production processes but which must be processed at different facilities to be counted as non-product output. Intermediates transferred between facilities can be considered "products" rather than intermediate products consistent with the Act. The Department has clarified the definition of product to include these intermediates. See proposed N.J.A.C. 7:1K-1.5.

c. Department Recommendation

The Department has decided to modify the definition of "intermediate product" based on the comments received on the second pre-proposal. The proposed definition reads as follows: "Intermediate product" means a desired result of a production process that is made into a product in a subsequent processing step at the same facility, without the need for pollution treatment prior to its being made into a product. An intermediate product is not considered non-product output; however, increases in quantities of intermediate products do not count towards use reduction or non-product output reduction goals. See proposed N.J.A.C. 7:1K-1.5.

This definition is limited to "on-site" intermediates that must be added to or modified to make a final product that is used as a commodity in trade in the channels of commerce by the general public. It does not cover materials that are "otherwise used" in a subsequent production process such as a solvent used for cleaning, a catalyst which is re-used in several processes, or carrier fluid used to carry other raw materials through the process.

The proposed definition of product clarifies that the Department considers intermediates which must be further processed at other off-site facilities owned by the same company to be products. See proposed N.J.A.C. 7:1K-1.5.

E. CO-PRODUCTS

a. Summary of Issue

In response to the first pre-proposal issued by the Department in January 1992, many commenters suggested that "secondary products" or "co-products" which are not the primary aim of a production process be excluded from the definition of non-product output and be counted as part of the product output of the process. This would allow quantities of co-products and secondary products sold in secondary markets to count toward pollution prevention goals and non-product output reductions.

In the June pre-proposal the Department stated that these secondary products would be identified and counted as non-product output. The Department further suggested that materials sold in secondary markets be counted as a form of re-use or recycling, depending on the specific circumstances.

b. Comments and Responses

1. Comments on secondary products

Many commenters expressed concern over the Department's statement in the second pre-proposal that it would only allow one product to be identified for each process. These commenters stated that many processes have more than one product.

Response

Based on further review of this issue, the Department has proposed a definition of "secondary product" that would allow more than one product to be identified for each process. In addition to allowing more than one product, the Department has proposed to include a definition of "co-product" in the Pollution Prevention Program Rules. The intent of this definition is to allow a facility to reduce the quantities of non-product output generated for products which are products one day and non-product outputs another, but not to allow the quantities of co-products sold to be considered as pollution prevention or as progress toward meeting the facility's pollution prevention goals. See proposed N.J.A.C. 7:1K-1.5.

Under this scenario, co-products must be identified in the facility's original Pollution Prevention Plan and Pollution Prevention Plan Summary. See proposed N.J.A.C. 7:1K-4.3 and 5.1.

2. Comments on market-based product definitions

Several commenters favored a market-based approach to defining products, co-products and non-product outputs in order to account for market fluctuations whereby a material may be a product one day and non-product output the next. These commenters stressed that many processes produce useful materials that, depending on market conditions, may represent valid products, and urged the Department to recognize that industry actively pursues secondary markets for these materials.

Response

The Department has proposed a definition of "co-product" in the program rules that will allow for such market fluctuations. See proposed N.J.A.C. 7:1K-1.5. This definition will allow facilities to reduce their aggregate quantities of non-product output by considering sales of co-products, but will not allow sales of co-products to count as progress towards the facility's pollution prevention goals.

To ensure that data in Pollution Prevention Progress Reports reflect this intention, the Department has proposed to require facilities to indicate on their Pollution Prevention Plan Progress Reports the quantity of non-product output reductions or increases attributable to the changes in the sale of products or co-products. See proposed N.J.A.C. 7:1K-6.1(c).

c. Department Recommendation

The Department has modified the recommendation in the second pre-proposal and has developed a definition of "co-product" under which co-products will not count as non-product output. The proposed definition reads as follows: "Co-product" means an incidental result of a production process that is not a primary product of the production process and that is sold in trade in the channels of commerce to the general public in the same form as it is produced, for any purpose except the purpose of energy recovery. A co-product is not considered non-product output. Increases in quantities of co-products do not count towards use reduction or non-product output reduction goals. See proposed N.J.A.C. 7:1K-1.5.

Co-products are materials that are not the primary, intended results of a process, but which can still be sold in their present form. The co-product definition was developed to address changing market conditions whereby materials may be products one day but not another. While co-products are not classified as non-product output, increased sales of co-products, or converting a non-product output to a co-product, would not be considered pollution prevention and would not count towards achieving use reduction and non-product output reduction goals.

A similar clarification has been proposed for "products." The Department has proposed a definition of product that would allow a process to have more than one intended product. As discussed for co-products, increased sales of products or conversion of non-product outputs to products would not be considered pollution prevention and would not

count towards achieving use reduction and non-product output reduction goals.

VI. INPUT USE EXEMPTION/RAW MATERIAL SUBSTITUTION CERTIFICATION

A. Summary of Issue

The Act does not specifically require a facility to reduce the amount of hazardous substances used. Nor is it the intent of the Act to direct a facility to use an alternative raw material, particularly if it is an ingredient that is essential to a production process. The Act does, however, require a facility to consider and identify any combination of five categories of pollution prevention techniques within a targeted production process, as follows: improved housekeeping, in-process recycling, equipment modification, product reformulation, and raw material substitution. To emphasize that raw material substitution is not required, the Legislature authorized the Department to allow an owner or operator to list the hazardous substances in specific production processes, the use of which the company has determined, through Pollution Prevention Planning, cannot be reduced. See N.J.S.A. 13:1D-40(f).

In the first pre-proposal, the Department labeled this statutory provision as the "input-use exemption" and discussed possible methods of its application to covered facilities. To eliminate any confusion about the scope of the exemption, the Department refers to the input-use exemption as the "Raw Material Substitution Certification" in the proposed rules.

In the second pre-proposal, the Department suggested that for targeted production processes, a facility should be required to complete Part I through to Part II's feasibility analysis section of a Pollution Prevention Plan for those processes for which it files a raw material substitution certification. This would require a facility, at a minimum, as per N.J.S.A. 13:1D-41(c)(3), (4), and (5), to:

i. Describe each targeted production process and targeted source;

ii. Identify for each targeted production process and targeted source, the available reduction options, including procedures, technologies and equipment, that may substantially reduce the use and generation of hazardous substances; and

iii. Conduct a feasibility analysis for each targeted production process and targeted source, of reduction options identified above, including, but not limited to, a full-cost accounting of the options, and an identification of any technological obstacles to adopting the options.

The Department noted that after completing these steps, a facility would then be able to determine that a raw material substitution certification is necessary because it has found that it is neither technologically nor economically feasible, in a specific process, to substitute a raw material with another alternative substance. However, the facility would then be required to complete all other sections of Part II of the Pollution Prevention Planning requirements for all other pollution prevention options for that process.

In addition, the Department stated that it would require the facility to provide documentation within its Pollution Prevention Plan on the infeasibility of substituting this raw material, including, but not limited to, chemical name, a description of the appropriate process, a description of why substitutes are not available, and an explanation of why substitutes are not economically viable. This information would not be submitted separately to the Department for approval. Instead, the facility's plant manager or owner/operator would be required in its Pollution Prevention Plan Summary to certify that the company has:

(1) Completed Part I through to the feasibility analysis step of Part II of its Pollution Prevention Plan for the hazardous substance for which a raw material substitution certification has been filed. (See suggested sequence of pollution prevention planning steps listed at proposed N.J.A.C. 7:1K-4.1);

(2) Determined that there are no reasonably available and economically viable alternatives to the use of the hazardous substance; and

(3) Conducted complete Pollution Prevention Planning for the hazardous substance for which a raw material substitution certification has been filed, including examining all pollution prevention techniques within all targeted processes.

The Department also stated that it would require a raw material substitution certification to include a brief description of a facility's findings that it is not technologically or economically feasible to substitute alternative materials for the hazardous substances in question.

B. Comments and Responses

a. Comments on certification

Several commenters requested that the Department modify its suggested Criterion 3 for the Pollution Prevention Plan Summary's certification for an input-use exemption, which would require "examining all pollution prevention techniques within all processes." One commenter reasoned that since only targeted processes are considered in a Part II analysis, if a process that utilizes the material for which an input-use exemption is available does not fall within the targeting criteria, it should be exempt from further analysis.

Response

As required by the Act, a facility must determine that a material substitution for a specific process is not possible through Pollution Prevention Planning. The Department agrees that after conducting a complete inventory on all processes in Part I, only processes targeted by the facility are to be further evaluated in Part II. If a process is not targeted, then a raw material substitution certification is not applicable since the process does not have to be analyzed for **any** pollution peven-tion opportunities. A raw material substitution certification is determined only after a process has been evaluated for its pollution prevention potential and it has been found through the Part II feasibility section that raw material substitution is neither economically nor technically feasible.

b. Comments on feasibility assessment documentation

Some commenters questioned what the Department meant by its statement in the second pre-proposal that it would require a facility to conduct a feasibility assessment prior to claiming an input-use exemption.

Response

Based on the language and intent of the Act, the raw material substitution certification must be determined through Pollution Prevention Planning. As such, the Department can only allow a raw material substitution certification to be claimed by a facility after the hazardous substance in a targeted process has been evaluated for all pollution prevention opportunities in the feasibility analysis section of Part II of a Pollution Prevention Plan. See N.J.S.A. 13:1D-41(c)(5).

As stated above in the summary of issue, this requires a facility, at a minimum, as per N.J.S.A. 13:1D-41(c)(3), (4), and (5), to:

i. Describe each targeted production process and targeted source;

ii. Identify for each targeted production process and targeted source the available reduction options, including procedures, technologies and equipment, that may substantially reduce the use and generation of hazardous substances; and

iii. Conduct a feasibility analysis for each targeted production process and targeted source, of the reduction options identified above, including, but not limited to, a full-cost accounting of the options, and an identification of any technological obstacles to adopting the options.

After completing this analysis, a facility may determine that a raw material substitution certification is necessary because it has found that it is neither technologically nor economically feasible, in a specific process, to substitute a raw material with another alternative substance. The facility should include in its Pollution Prevention Plan, within this feasibility analysis section, any appropriate documentation on the economic and technologic infeasibility of a raw material substitution if it intends to file a raw material substitution certification. The facility must then complete all other sections of Part II of the Pollution Prevention Planning requirements for all other pollution prevention options for that process. See proposed N.J.A.C. 7:1K-4.6.

c. Comments on pre-approval for input-use exemption

Commenters representing industry supported the Department's suggestions to not require approvals for an input-use exemption list and to have the information built into the on-site Pollution Prevention Plan. Several commenters from environmental organizations stated that a written application and approval process was necessary for an input-use exemption in order to ensure adequate oversight, tracking, and evaluation of the exemption, and to discourage unsound or frivolous exemption claims.

Response

The Department has decided not to require separate applications or approval for raw material substitution certifications. Since a raw material substitution certification does not exempt the facility from Pollution Prevention Planning or from reporting use reduction goals for that

process, a pre-approval procedure does not appear necessary. Documentation on the technical and economic infeasibility of a raw material substitution in a specific process must be included as part of the Pollution Prevention Plan. In addition, the facility will be required to complete the appropriate certification, as outlined in the summary of issue, as part of its Pollution Prevention Plan Summary. See proposed N.J.A.C. 7:1K-4.6. These requirements should provide adequate oversight and tracking, and should discourage unsound or frivolous exemption claims.

d. Comments on input-use vs. raw material substitution

Some commenters were concerned that the Department's emphasis on raw material substitution as equivalent to input use might mislead facilities, since all pollution prevention techniques may reduce input use. The commenters recommended that the Department should only allow a facility to file an input-use exemption after the facility demonstrates that no use reduction can be achieved using any pollution prevention technique, including in-process recycling, improved housekeeping, process modifications, etc.

Response

The Department agrees that the application of any pollution prevention technique may have an impact on reducing overall use of a hazardous substance through increased process efficiency. As such, a facility implementing pollution prevention will almost always have related use reductions.

In the second pre-proposal, the Department stated that "for those processes where an input-use exemption is being claimed for a substance, the facility may report that the use reduction goal is zero" since the current use levels are not anticipated to be reduced from raw material substitution. However, since the facility must still consider this process for other pollution prevention techniques, it is possible that a use reduction goal may still be established. Therefore, the Department is proposing that a facility must report a use reduction goal for all targeted production processes, regardless of whether it has filed a raw material substitution certification for those processes. See proposed N.J.A.C. 7:1K-5.1(b)5. For a process for which the facility has claimed a raw material substitution certification, it is understood that process's use reduction goal and any subsequent progress report calculations on use reduction will not include contributions from a raw material substitution. Should other pollution prevention methods still yield no reductions in use, then it will be possible and appropriate for the facility to report a zero use reduction goal.

e. Comments on product exclusion

One commenter noted since products are excluded from pollution prevention planning requirements, if a product is derived from an impure or crude mixture its presence in the raw material should be automatically granted an input-use exemption and should be exempt from Pollution Prevention Planning throughout the process.

Response

The Department agrees that pursuant to N.J.S.A. 13:1D-41(b)(17), hazardous substances in raw material mixtures, in which the hazardous substance is an intended final product, are not subject to Pollution Prevention Planning requirements.

f. Comment on unified proposals for input-use exemption

One commenter recommended that the Department allow trade associations or groups of facilities to jointly apply for input-use exemptions.

Response

Raw material substitution certifications do not apply categorically to a hazardous substance. The exemption applies only to a specific hazardous substance in a specific process at an industrial facility. See N.J.S.A. 13:1D-40(e). For example, a facility may determine in the Part II feasibility analysis section that for both economic and technological reasons it cannot substitute benzene as a raw material in its chlorobenzene production process. The facility may then file a raw material substitution certification for benzene in that specific production process. This is not a blanket exemption for benzene. In fact, all other pollution prevention methods must still be considered for that targeted production process. In addition, benzene in any other targeted production process must be fully evaluated for **all** pollution prevention techniques.

C. Department Recommendation

To address the confusion over the use of the term "input-use exemption," the Department has referred to the N.J.S.A. 13:1D-40(e) exclusion as the "raw material substitution certification" in the proposed pollution prevention program rules. After considering comments received during the workshops and the written comments on the two pre-proposals, the Department has decided to follow the procedure outlined in the second pre-proposal for the filing of raw material substitution certifications. See proposed N.J.A.C. 7:1K-4.6.

VII. INCENTIVES

A. Summary of Issue

In the first two pre-proposals, the Department solicited feedback on incentives that exist or could be developed to encourage industrial facilities to set ambitious goals for reducing the use and generation of hazardous substances as outlined in their plans and to aggressively implement pollution prevention techniques.

B. Comments and Responses

a. Comments on incorporating Plans into permits and ratcheting down on limits

Several commenters argued in favor of keeping pollution prevention goals voluntary and urged the Department to refrain from integrating these goals in single-media permits. If pollution prevention goals are written into permit limits, commenters argued, the "ratcheted" limits will become enforceable and facilities will be liable for permit violations if limits are not attained. The commenters believed that this scenario would discourage facilities from setting aggressive reduction goals.

Response

As the Department discussed in the second pre-proposal, the Legislature created a potentially conflicting situation by providing the Department with several enforcement mechanisms in the Act but at the same time intending the economic and environmental incentives provided by pollution prevention techniques to serve as the primary motivation for industrial facilities to adopt such strategies.

After weighing these considerations, the Department has decided to voluntarily postpone, until 1996, unilaterally implementing its authority to incorporate Pollution Prevention Plan requirements into an industrial facility's single media permits as enforceable permit conditions. See N.J.S.A. 13:1D-43(c). In 1996, the Department is required to report to the Legislature and the Governor on the successes and shortcomings of the facility-wide permit program as well as on the Department's trend analysis efforts. At that time, the Department will have collected Pollution Prevention Plan Summaries and one year of Progress Reports from priority industrial facilities, and will have completed its statutorily mandated trend analysis. The Department expects to perform this trend analysis with an eye toward how best to exercise its authority under N.J.S.A. 13:1D-43(c) and (d), as well as how and whether to expand the applicability of the facility-wide permit program. By 1996, the Department will also have completed its pre-pilot facility-wide permitting program, which currently includes three industrial facilities.

In keeping with the spirit of the Act, the Department has also decided to use volunteer facilities as candidates for the 10 to 15 facility-wide permits whose issuance is required by the Act. See N.J.S.A. 13:1D-48 and proposed N.J.A.C. 7:1K-7.2. Provided that 10 to 15 suitable facilities step forward to volunteer to be a part of this innovative effort, thereby enabling the Department to fulfill its legislative mandate, the Department does not intend to unilaterally convert Pollution Prevention Plan requirements into enforceable permit conditions through issuance of a facility-wide permit. The Department expects this policy to remove another identified potential disincentive to setting aggressive goals for reducing the use and generation of hazardous substances.

The Department believes that with the temporary removal of the disincentives posed by these sections of the Act, facilities will choose to set aggressive goals for pollution prevention.

b. Comment on air rule revision

One commenter expressed support of the Department's suggested revisions to N.J.A.C. 7:27-8.1, which were developed in response to the concerns of the three facilities participating in the pre-pilot facility-wide permitting project. The commenter suggested that this revision be applied to all facility-wide pilot facilities when the 10 to 15 candidates are selected as required by N.J.S.A. 13:1D-48.

Response

The Department's revision to the air rule, N.J.A.C. 7:27-8.1, is intended to apply to all facilities regulated by a facility-wide permit, including the 10 to 15 future facility-wide permit facilities to be selected under the Act.

c. Comments on financial incentives

A number of commenters highlighted financial incentives for facilities to do good Pollution Prevention Plans. A couple of these commenters indicated that reduced or waived permit fees would serve as incentives for Pollution Prevention Planning. Several other commenters indicated that tax credits for businesses implementing pollution prevention measures would also serve as incentives.

Response

As discussed in the second pre-proposal, the Department believes that financial incentives will be a facility's primary consideration in deciding whether to implement pollution prevention options that require significant amounts of capital, particularly for small businesses. The Department is currently performing research to identify the disincentives to pollution prevention that exist in New Jersey's tax structure and to develop a system of tax incentives that would reflect the Department's preferred waste management hierarchy (where pollution prevention is the preferred option for waste management, followed by recycling, then pollution treatment, then secure disposal).

Regarding fee waivers, the Department has begun to explore the feasibility of changing existing permit fee structures and will continue to do so. In some instances, it will not be possible for the Department to change permit fee structures without statutory changes. If the Department determines that statutory fee changes are necessary and desirable policy tools for encouraging the adoption of pollution prevention measures by industry, the Department will recommend such proposed changes in the report to the Legislature required by N.J.S.A. 13:1D-45.

d. Comments on definition of in-process recycling

A few commenters expressed their belief that a broad definition of in-process recycling would serve as an incentive for aggressive goal-setting in Pollution Prevention Planning.

Response

The Act is designed to encourage companies to explore pollution prevention opportunities at their facilities. Changing the definition of in-process recycling to include activities which are incompatible with the definition of pollution prevention and non-product output will not create an incentive for implementing pollution prevention techniques, and would be antithetical to the goals and objectives of the Act. See Section V above for further discussion of the in-process recycling definition.

e. Comment on bubble concept

One commenter argued in favor of incorporating the "bubble concept" into the pollution prevention program as an incentive for facilities to address permit limits.

Response

While several of the Department's regulatory programs have incorporated facility-level bubble concepts into their single-media permit requirements (for example, the air pollution control rules at N.J.A.C. 7:27 include Subchapter 18 for emission offsets and Subchapter 16 for surface coating operations), the Department does not favor this approach as a means of providing incentives for pollution prevention. A bubble concept potentially encourages emissions trading between processes and sources within a facility, with the result that emissions reductions in one area could allow for higher releases in another. Pollution prevention, on the other hand, encourages facilities to look for pollution prevention opportunities at all of their sources or processes. The bubble concept could be used to not only exclude certain processes from pollution prevention analysis, but also to avoid existing requirements which are currently process- or source-specific.

As a long term goal, the Department intends to incorporate a pollution prevention focus into its existing permit programs. After a pollution prevention focus is established, and there are assurances that each permit process encourages facilities to look for pollution prevention opportunities at all of its processes, a bubble concept could be part of the next step in the evolutionary permit development process.

f. Comment on cross-media transfers

One commenter supported allowing cross-media transfers of pollution, in situations where the receiving medium is "more able to assimilate impacts" than the transferring medium, as an incentive to implementing pollution prevention measures.

Response

This comment essentially extends the single media "bubble" concept to include a multimedia focus. The Department has the same concern, as expressed above, that this approach would not provide incentives for facilities to investigate pollution prevention opportunities within all their sources or processes.

The facility-wide permit program authorized by the Act will be the Department's first attempt at considering cross-media transfer-related issues. In this program, cross-media transfers will be considered only for pollution prevention techniques in individual production processes, such as raw material substitutions or process changes involving phase changes. In these instances, the transfer will be considered pollution prevention only if a determination is made that the transfer represents a reduction in risk. The Department is presently determining how such a risk reduction assessment will be conducted.

It is not the intent of this program to allow cross-media shifts between media that are contrary to existing single-media regulatory requirements. However, if a pollution prevention technique meets the risk reduction criteria currently being developed, the Department will evaluate potential changes to the rules, if warranted. Cross-media transfers associated with less preferable environmental management techniques, such as recycling, pollution treatment systems or transfers that are based on facility level emissions trading between sources or process, will not be considered. The Department may reconsider these issues in the future as the facility-wide permit program is further developed.

g. Comment on automatic permit approval

One commenter stated that automatic permit approvals for any non-product output reduction activity would be an incentive to more rigorous Pollution Prevention Planning.

Response

The Department is considering developing an automatic approval process for pollution prevention activities which meet strict criteria for not shifting risk or non-product output across media. The Department has already incorporated an automatic approval process for certain pollution prevention measures into the proposed revisions to the N.J.A.C. 7:27-8.1 air pollution control permit procedures applicable to facility-wide permittees.

h. Comment on reporting post-1987 pollution prevention achievements

One commenter suggested that the Department allow facilities to include in their Pollution Prevention Plans information on pollution prevention measures implemented by the facility after 1987, in order to acknowledge and document achievements in release reductions from the 1987 measurement baseline.

Response

The Department agrees with the commenter's suggestion, and has proposed to allow facilities the opportunity to report and receive credit for pollution prevention activities implemented at the facility after 1987 but prior to the mandatory completion of a Pollution Prevention Plan. See proposed N.J.A.C. 7:1K-4.8. These reductions may be factored into a facility-wide goal separately from the facility's five-year goal if the Department has information, through the New Jersey Release and Source Reduction Report (Form DEQ 100/114), on the use and release of the appropriate hazardous substance in these previous years.

i. Comments on expedited permits

Two commenters argued that expedited permit approvals for the implementation of pollution prevention measures would serve as an incentive to more rigorous Pollution Prevention Planning.

Response

In some instances, it may be necessary for facilities to obtain modifications of their existing single-media permits in order to meet the goals set forth in their Pollution Prevention Plans. To the extent possible, the Department plans to develop procedures to ensure that all permit modifications necessary for implementing pollution prevention measures are addressed as priority items. This would alleviate long waiting periods that might otherwise prevent a facility from moving ahead with pollution prevention initiatives.

The Department is aware that disincentives to aggressive pollution prevention do exist within certain media-specific permit regulations that have been promulgated pursuant to media-specific laws. The Department is involved in an on-going review of its regulations in order to identify and correct some of these disincentives. For example, the air pollution control permitting rules, particularly N.J.A.C. 7:27-8.1, are currently being re-written to remove a recognized disincentive to implementing pollution prevention measures.

j. Comment on reporting for new processes

One commenter stated that "burdensome" reporting for new processes serves as a disincentive to setting high goals for Pollution Prevention Planning.

Response

The only information for new processes that the facility must report to the Department in a Pollution Prevention Plan Progress Report or in a modified Pollution Prevention Plan Summary is an identification and description of the process. See proposed N.J.A.C. 7:1K-3.8(c). Unless the process is targeted, no further process-level information is required. This level of reporting should not discourage aggressive pollution prevention planning.

k. Comment on restrictive targeting

One commenter argued that a restrictive set of options for targeting processes would serve as a disincentive to Pollution Prevention Planning. This commenter supported a broad menu of options for targeting production processes as a component of pollution prevention planning.

Response

In response to this concern, the Department has proposed targeting criteria which provide facilities with flexibility in their targeting decisions. See proposed N.J.A.C. 7:1K-4.4. However, the Department has not proposed a menu of options for targeting because the proposed modified approach to targeting provides sufficient flexibility by another means. See Section I-B above for a detailed discussion on targeting.

l. Comment on delaying imposition of new emissions requirements

One commenter argued that delaying the imposition of the Federal Clean Air Act's new emissions requirements would serve as an incentive to Pollution Prevention Planning.

Response

The Department does not have the authority to alter emissons requirements mandated by the Federal Clean Air Act as a means of promoting pollution prevention planning.

m. Comment on penalties

One commenter recommended that the Department not include a penalty schedule in its proposed pollution prevention program rules in order to encourage aggressive pollution prevention planning.

Response

The Department has proposed a penalty schedule as part of the pollution prevention program requirements (see proposed N.J.A.C. 7:1K-12.4 through 12.8), but does not intend to apply its penalty authority as a disincentive to aggressive Pollution Prevention Planning and goal setting. In particular, the Department does not plan to review Pollution Prevention Plans for the purposes of approving or penalizing goal levels. Instead, the penalty matrix is based on basic administrative review criteria. This will allow the Department to assess penalties only if: (1) the facility has not done a Pollution Prevention Plan; (2) the facility's Plan is administratively incomplete; or (3) the pollution prevention options identified in the Plan do not comply with the Act's definition of pollution prevention. In general, a facility will not be penalized for its pollution prevention planning decisions. Therefore, the proposed penalty structure should not serve as a pollution prevention disincentive.

C. Department Recommendation

Several excellent suggestions were received on incentives, all of which the Department intends to investigate. The majority of these recommendations involve significant policy and regulatory changes, such as modifying existing tax credit structures or revising permitting fees. Among other tasks, the Department plans to develop a White Paper on State Government Incentives for Achieving Industrial Pollution Prevention. This document will investigate a menu of incentive proposals and will contain recommendations for the Department and other appropriate state entities for implementing a pollution prevention incentive strategy. The Department intends to issue this white paper within one year of adopting the proposed pollution prevention program rules.

VIII. CONFIDENTIALITY

A. Summary of Issue

Pollution Prevention Plans will contain detailed technical information on the manufacturing processes of covered facilities. Since Pollution Prevention Plans will typically remain on-site at the facility, the information contained in these plans will generally remain confidential. However, under some circumstances facilities will be required to submit their Pollution Prevention Plans for review by the Department. In addition, the Pollution Prevention Plan Summaries and Progress Reports to be routinely submitted to the Department may also contain confidential information.

The Act requires the owner or operator of a facility omitting confidential information from a Pollution Prevention Plan or Pollution Prevention Plan Summary to submit a trade secret claim to the Commissioner. See N.J.S.A. 13:1D-47. Comments received on the first pre-proposal issued in January 1992, revealed that there was disagreement concerning what information should or should not be considered confidential.

In the June pre-proposal the Department offered to establish a Confidentiality Task Force to further discuss the issue of confidentiality. Commenters at the workshop supported this suggestion and a small task force was formed from volunteers who expressed interest at the workshop.

a. Activities of the Confidentiality Task Force

The task force met in person on July 9, 1992 and by conference call on July 17, 1992 to discuss which issues would be most important for the task force to address. It was agreed that there are both short-term and long-term issues relating to confidentiality that must be addressed under the Act.

As a short-term issue, the task force determined that concerns about the confidentiality of Pollution Prevention Plan Summaries and Progress Reports must be addressed before their submission dates of July 1, 1994 and July 1, 1995, respectively. The task force agreed that it would be useful to review the actual reporting forms and data elements being developed by the Department for submitting Pollution Prevention Plan Summaries and Progress Reports before making any final recommendations. Therefore, the task force decided to review these forms concurrently with the "pretest" work group. A preliminary review of the information required by N.J.S.A. 13:1D-41(g) and (h) indicated that the process descriptions required in the Pollution Prevention Plan Summary may have important implications for confidentiality.

The task force also reviewed the procedures in N.J.S.A. 13:1D-47 for filing trade secret claims and identified the different scenarios where these procedures would need to be followed to ensure that information remains confidential. The task force identified four different scenarios, as follows: (1) submission of Pollution Prevention Plan Summaries and Progress Reports to the Department which will become public information; (2) the on-site review of a Pollution Prevention Plan by a Department inspector; (3) submission of a Pollution Prevention Plan to the Department for review and approval; and (4) submission of a Pollution Prevention Plan to the Department as part of a facility-wide permit application.

The statutory procedures for filing pollution prevention trade secret claims specify that claims must be filed if the facility wants to omit any information from a Pollution Prevention Plan or Pollution Prevention Plan Summary. These procedures imply that the trade secret claim is to be filed at the time each document is prepared. For example, in order for a facility to omit information from its Pollution Prevention Plan which will be kept on site, a claim would need to be developed as the plan was being prepared and would need to be filed with the Department at the time the plan was required to be completed.

The task force discussed the idea of incorporating a "notification period" into this procedure to enable facilities to develop and file their trade secret claims after the Department notifies the facility that it will be reviewing their Pollution Prevention Plan. This would save time and resources at the time the Pollution Prevention Plan is prepared and would allow both the Department and the facility to focus their attention on pollution prevention instead of confidentiality concerns.

B. Task Force Recommendations

The task force developed the following recommendations on confidentiality. The recommendations are presented for each scenario where the confidentiality procedures will need to be used.

Scenario 1: Submission of Plan Summaries and Progress Reports

Require facilities to file trade secret claims at the time their Plan Summaries and Progress Reports are submitted. Allow the task force to review the draft Pollution Prevention Plan Summary and Progress Report reporting forms as part of the pretest work group to address confidentiality issues associated with the forms.

Scenario 2: On site inspection of a Plan by the Department

Allow the Department to make unannounced inspections of a facility's Pollution Prevention Plan. Do not provide a notification period for filing trade secret claims prior to on-site inspections. Treat all information in a Pollution Prevention Plan as confidential during and after an on-site inspection. Include language in the pollution prevention program rules to ensure that Department inspectors are held to confidentiality standards if they review confidential information during an inspection.

Scenario 3: Submission of a Plan to the Department

Include a notification period in the procedures for filing trade secret claims for facilities submitting plans to the Department for review. Require the Department to give a facility 30 days prior notice to develop and file their trade secret claims before the plan must be submitted to the Department. Adopt confidentiality procedures in the pollution prevention program rules for handling confidential information submitted to the Department.

Scenario 4: Submission of a Plan as part of a Facility-Wide Permit Application

Allow the same notification period discussed in Scenario 3 for facilities participating in the pilot program in facility-wide permitting. The potential conflict between trade secret information and the administrative record requirements for the single media permit rules is an issue which must be addressed in the future.

C. Department Recommendation

The Department has modified the confidentiality procedures currently used under its Spill Act rules, N.J.A.C. 7:1E, for use in the Pollution Prevention Program and to address the concerns and recommendations of the Task Force. See proposed N.J.A.C. 7:1K-8 through 11. Under the proposed procedures, facilities must file confidentiality claims for Pollution Prevention Plan Summaries and Progress Reports concurrently with submission of the reports to the Department. The proposed procedures would allow the Department to make unannounced, on-site inspections of Pollution Prevention Plans even if a facility has not filed a confidentiality claim for its Plan. However, Department inspectors will be precluded by N.J.S.A. 13:1D-46 from disclosing trade secret information obtained during these inspections. If the Department decides to require a facility to submit its Pollution Prevention Plan for review pursuant to proposed N.J.A.C. 7:1K-3.9, the facility will have 30 days to file a confidentiality claim prior to submitting the Pollution Prevention Plan to the Department. See proposed N.J.A.C. 7:1K-3.9(c) and 8.2.

IX. REPORTING THRESHOLD

A. Summary of Issue

Under N.J.S.A 13:1D-40(d), the Department has the authority to establish for any hazardous substance a facility-wide threshold of up to 10,000 pounds. In the second pre-proposal, the Department stated that it intended to establish a facility-wide threshold of 10,000 pounds for each covered hazardous substance used and/or manufactured at an industrial facility. If the facility uses or manufactures a hazardous substance on a facility-wide basis in a quantity below the threshold, then information on the substance would not have to be included in the facility's Pollution Prevention Plan, Pollution Prevention Plan Summary, or Pollution Prevention Plan Progress Report.

B. Comments, Responses and Department Recommendations

a. Comments on establishing a 10,000 pound threshold

While the majority of those commenters attending the workshop and submitting written comments supported the Department's recommendation to establish a 10,000 pound threshold for each covered hazardous substance, a few commenters noted the discrepancy between this threshold and the reporting levels under Section 313 of the Federal Emergency Planning and Community Right to Know Act of 1986 and urged an approach that would raise thresholds to the Federal level. Another comment was received recommending that the Department establish thresholds below 10,000 pounds for "particularly egregious substances" such as known carcinogens, ozone depleters, some heavy metals, and extraordinarily hazardous substances.

Response and Department Recommendation

As recommended earlier, the Department has proposed to establish a facility-wide threshold of 10,000 pounds for each covered hazardous substance used and/or manufactured at an industrial facility. See proposed N.J.A.C. 7:1K-3.3 and 3.4. The Act does not authorize the Department to establish a threshold above this level. See N.J.S.A. 13:1D-40(d). Under this proposal, information on hazardous substances used or manufactured on a facility-wide basis in quantities below the threshold would not have to be included in a facility's Pollution Prevention Plan, Pollution Prevention Plan Summary, or Pollution Prevention Plan Progress Report. The Department reserves the authority to establish thresholds below the 10,000 pound level in the future pursuant to N.J.S.A. 13:1D-40(d) and the procedure at proposed N.J.A.C. 7:1K-3.4.

b. Comments on a de minimus threshold approach

One commenter requested that the Department allow a "de minimus" threshold approach for groups of processes so that facilities can focus their technological investigations on those groups of processes or products that have the greatest impact on the environment. The commenter stated that the rules should recognize that industry cannot complete the detailed investigations and process modifications required by law on all impacted processes at once and should give the regulated community the opportunity to conduct this work over an extended period of time.

Response and Department Recommendation

The Department does not have specific authority to establish process-level thresholds in order to enable facilities to automatically exclude from pollution prevention evaluation a process that uses de minimus levels of hazardous substances. The Department does recognize that for some facilities, it may be a difficult task to fully evaluate all production processes. This is partly why the Department has offered facilities flexibility, through Part II targeting, in identifying those processes for which they will conduct a full pollution prevention evaluation in Part II of their Pollution Prevention Plan. See discussion on targeting, Section I-B above, which further addresses these issues.

X. BROAD ISSUES

A. MOVE AWAY FROM COMMAND AND CONTROL REGULATION

a. Summary of Issue

In its two pollution prevention pre-proposals as well as in the workshops held to discuss those pre-proposals, the Department expressed its intention to implement the pollution prevention program based on a "good actor" philosophy. That is, the Department is assuming that facilities will act in good faith as they conduct Pollution Prevention Planning under the Act. The Department is basing the program on this philosophy because it believes that pollution prevention is financially beneficial for business and that incentives exist for facilities to conduct good Pollution Prevention Planning of their own accord. As a result, the Department has expressed its intention to develop the pollution prevention program in a way that moves away from traditional "command and control" regulatory approaches and, instead, relies on incentives and regulatory flexibility.

b. Comments

One facility and one industry trade association commented that the Department was demonstrating an unwillingness to work with the industrial community in developing a pollution prevention program that moves away from traditional command and control regulatory structures.

c. Response and Department Recommendation

The Department believes that it has demonstrated a dedicated willingness to work with the industrial community in developing the pollution prevention program. Within the confines of a statutory deadline for rulemaking, the Department has issued an unprecedented two pre-proposals followed by interactive workshops and has held numerous additional meetings with industrial and environmental representatives. While the Department's intent is to implement the Act through innovative policies and regulations, it must do so within the confines of the statute and is obligated to honor the spirit of the Act. To this end, the Department can provide regulatory flexibility as long as it does not negate the language and intent of the statute. Similarly, the Department has no choice but to reject suggestions that are clearly contrary to the authority provided to the Department by the Act. Therefore, the Department will continue to develop the pollution prevention program based on innovative policies and procedures and will continue to welcome public input and constructive recommendations into the process provided that they fit within the legal confines of the Act.

B. PRE-CONSTRUCTION APPROVAL FOR AIR PERMITS

a. Summary of Issue

Current New Jersey rules governing the Department's air pollution control permitting program require a facility to receive Departmental approval of changes to its air pollution control permit before the facility undertakes any modifications to its equipment or operations. See N.J.A.C. 7:27-8. Industry has identified this requirement as a serious disincentive to pollution prevention because a facility must seek Departmental approval and wait until such approval is granted even for changes that result in pollution prevention. This has been a major policy issue under study as part of the Department's pre-pilot facility-wide permit program.

b. Comment

The Department received a comment from one facility stating that the commenter's previous discussion of this issue at one of the pre-proposal workshops was not addressed in the Department's response to comments document on the first pre-proposal.

c. Response and Department Recommendation

The issue raised by the commenter is being addressed through another avenue. As part of the Department's pre-pilot facility-wide permit program, the Department plans to amend N.J.A.C. 7:27-8 to waive the air pollution control permitting pre-approval requirement under certain circumstances for facilities taking part in the Department's facility-wide permit program. The Department is proposing this approach because it will provide a discrete opportunity to test the advantages and disadvantages of eliminating the pre-approval requirement. Further expansion of the exemption or application of the exemption to other permit programs may be considered based on the results of the facility-wide permit program.

C. EMISSIONS REDUCTION VERSUS POLLUTION PREVENTION

a. Summary of Issue

There has been a great deal of debate nationally over the relationship of pollution prevention and emissions reduction programs; this debate was a key component in the legislative deliberations leading up to the passage of the Act. Simply put, emissions reductions programs allow for the use of pollution treatment systems and recycling techniques as viable methods to reduce the quantity of pollutants entering the environment. Pollution prevention programs, while certainly striving for emissions reductions, stipulate that only pollution prevention measures may be considered. The New Jersey Pollution Prevention Act clearly adopts a pollution prevention focus. Its goals include reduction in the use of hazardous substances and the reduction of non-product output prior to pollution treatment systems, storage, recycling and disposal.

b. Comments

The Department has received many comments from the industrial community on this issue in response to the passage of the Act and the issuance of the two pre-proposals. Several facilities commenting on the second pre-proposal argued that the Act is based on an "emissions reductions" philosophy and that the Department should base the pollution prevention program on this philosophy. One commenter noted that if the Department adopted a pollution prevention approach, the means to achieve the desired end (emissions reduction) would, by definition, become the end itself.

c. Response and Department Recommendation

The Department believes that emissions reduction was one of the Legislature's goals in enacting the New Jersey Pollution Prevention Plan Act. However, the Department also believes that the Legislature intended to achieve emissions reductions via pollution prevention measures. Pollution prevention contributes towards improving industry's competitive advantage and strives to consider occupational and consumer health, along with the environment, as media of potential exposure to hazardous substances. This philosophy is evident in the statutory definition of "pollution prevention" at N.J.S.A. 13:1D-37, which notes that pollution prevention consists, in part, of changes to production processes "that reduce, or eliminate, without shifting, the risks that the use of hazardous substances at an industrial facility pose to employees, consumers, and the environment and human health." As such, the Department believes that the Legislative intent regarding the pollution prevention basis of the program is clear and that to implement the Act based solely on an emissions reduction philosophy would be contrary to the intent, purposes, and conditions of the Act.

D. ECONOMIC CONSIDERATIONS

a. Summary of Issue and Comment

One commenter expressed concern that industry will not be able to meet the 50 percent reduction goal for non-product output as it is currently defined and that facilities need to be protected from impractical regulations designed to meet this goal which may be forced upon them. The commenter stressed that economics must be considered before any pollution prevention strategies are mandated.

b. Response and Department Recommendation

As discussed above in Section V-A, the Act does not require each facility to meet a 50 percent goal for reduction of non-product output. Rather, a facility will develop its own goals through preparation of a Pollution Prevention Plan. A detailed economic analysis will be a key part of the facility's decisions in Part II of its Plan. The Department will not be mandating that facilities implement any specific pollution prevention strategies. Instead, facilities will develop their own strategies to meet individual needs.

E. PRE-EXISTING POLLUTION TREATMENT EQUIPMENT

a. Summary of Issue and Comment

One commenter questioned whether the Act prohibits or requires modifications to pollution treatment and control equipment that has been installed to comply with the Federal Clean Air Act or the U.S. Environmental Protection Agency's 33/50 program.

b. Response and Department Recommendation

The Act does not restrict, in any manner, a facility's choice or required use of pollution control devices under any existing environmental laws or regulations. Likewise, the Act does not require facilities to abandon previously installed control devices in order to adopt new pollution prevention techniques. Rather, the Act encourages facilities to explore pollution prevention techniques within their production process instead of solely relying on expensive, end-of-the-pipe pollution control strategies. This philosophy is not in conflict with either the Federal Clean Air Act or the U.S. EPA's 33/50 program. In fact, the U.S. EPA's 33/50 voluntary program for release reductions stresses that pollution prevention, and not release abatement equipment, is the preferred release reduction technique.

F. IMPACT ON SPECIALTY CHEMICAL CUSTOMERS

a. Summary of Issue and Comment

One commenter urged the Department to consider the impacts of the Act on businesses that manufacture specialty chemicals which are specifically formulated to meet an individual customer's needs. The commenter stated that these formulas often use hazardous substances as raw materials even though the resulting products are nonhazardous. This commenter was concerned that if New Jersey companies were forced to use fewer hazardous ingredients and to formulate new products, their specialty chemical customers would buy their products from out-of-State suppliers.

b. Response and Department Recommendation

The Pollution Prevention Act does not force companies to use fewer hazardous ingredients. It is the facility's decision, based on its own technical and economic situation, to develop goals for reducing the use of hazardous substances. If the consumer's product specifications do not allow the use of alternative materials, the facility does not have to modify its products. There are two provisions in the Act relating to this issue. The first is the input-use exemption, now referred to as the raw material substitution certification, which is discussed in detail in Section VI above. To summarize this issue, a facility may determine, through Pollution Prevention Planning, that it is technically or economically infeasible to substitute alternative raw materials in place of those currently used. The facility still must look into the other forms of pollution prevention such as improved housekeeping, process modifications and in-process recycling.

Second, N.J.S.A. 13:1D-41(d)17 states in part that "... the product of a production process need not be [included] in the [facility's] reduction goal ...." Therefore, a facility is not required to propose goals for reducing the products it manufactures.

G. PUBLIC HEARING FORMAT

a. Summary of Issue and Comments

One commenter urged the Department to schedule one or more formal public hearings on the proposed rules rather than relying on the informal public meeting format used to discuss the two pre-proposals. Another commenter commended the Department for its utilization of the informal public meeting to share ideas and information, yet suggested that at least one formal public hearing be scheduled for speakers to identify themselves and go on the record with their testimony. This commenter suggested that the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., may not recognize the informal format and that this could result in legal challenges which may delay effective implementation of the objectives of the statute.

b. Response and Department Recommendation

The Department has scheduled one day for public comment on the proposed rules. The morning will be reserved for an informal discussion format and the afternoon and evening (if necessary) will be reserved for formal public testimony.

A recent analysis of public hearing rules indicates that while public hearings are required of many programs, the format of the hearing is not prescribed by the Administrative Procedure Act as long as the dictates of N.J.S.A. 52:14B-4 are met. Therefore, for uncontested case hearings, the Department may use any number of hearing formats in place of the traditional courtroom arrangement to gather input from the public. The Department felt that it would be appropriate to accommodate both those who favor an informal discussion setting and those who prefer the opportunity for formal remarks.

H. SMALL BUSINESSES

a. Summary of Issue and Comment

One commenter expressed concern that small businesses lack the resources to comply with the new rules mandated by the Act. The commenter stated that most small businesses cannot afford to hire consultants to develop Pollution Prevention Plans.

b. Response and Department Recommendation

The Department is aware that over 50 percent of the regulated businesses under the Act are small businesses, as defined by N.J.S.A. 52:14B-16, with under 100 full-time employees. Accordingly, the Department has convened a small business task force to develop a small business initiative with the input of representatives from the small business community. The initiative will be released in February 1993 along with the final adoption of the Pollution Prevention Program Rules. The initiative will address non-regulatory technical assistance, administrative assistance in complying with the Act, and a hotline set up specifically for pollution prevention assistance. The Department invites all interested parties from the small business community to participate in the small business task force.

Pollution Prevention Program Requirements

Based upon the above recommendations, the policy discussions in the first pre-proposal (see 24 N.J.R. 178(b) and 1968(a)), and the analysis and discussion conducted throughout the pre-proposal process, the Department has now developed the proposed Pollution Prevention Program Requirements, N.J.A.C. 7:1K. A summary of each subchapter and significant sections of the proposed new chapter follows:

Subchapter 1, General Provisions, outlines the scope and purpose of the Pollution Prevention Program Requirements, N.J.A.C. 7:1K, and contains definitions of terms that are used throughout the rules.

The significant sections of proposed N.J.A.C. 7:1K-1 are as follows:

Proposed N.J.A.C. 7:1K-1.3 specifies that the pollution prevention policies of this chapter apply to all Department actions involving the issuance of permits, certificates, registrations or any other relevant Departmental approvals to industrial facilities under single-media programs. The purpose of this section is to encourage all programs in the Department to consider pollution prevention as the method of choice for environmental protection, unless the program is prevented from doing so by another statute.

The definitions section at proposed N.J.A.C. 7:1K-1.5 provides the meanings of the key words and terms used in this chapter, some of which are derived from the Act. As discussed in the June pre-proposal, the Act's definition of non-product output, N.J.S.A. 13:1D-37, has been clarified by the addition of the phrase "out-of-process" to modify the use of the word "recycling" in the definition. As a result, non-product output is defined as "all hazardous substances or hazardous wastes that are generated prior to storage, **out-of-process** recycling, pollution treatment systems, control or disposal, and that are not intended for use as a product." The Department also believed that it was necessary to clarify that the use of the term "disposal" in this definition includes multi-media releases, regardless of whether they are disposed of through releases to air (including fugitive releases,) to water, or to land. Therefore, the proposed definition of "non-product output" notes that the Department interprets the statutory definition of this term to include fugitive releases.

Proposed N.J.A.C. 7:1K-1.5 includes a definition of "in-process recycling" intended to clarify what recycling efforts will be considered pollution prevention under the Act. This clarification was necessary because the Act's definition of "pollution prevention" specifically excludes out-of-process recycling, but includes in-process recycling. See N.J.S.A. 13:1D-37. Industrial facilities re-use hazardous substances in all phases of their manufacturing operations. Some processes lend themselves to re-use activities like closed-loop recycling where hazardous substances are not stored and have little if any risk to occupational health from exposure. These activities can be considered pollution prevention because they meet the statutory definition of pollution prevention and are not prohibited by the statutory definition of non-product output. Storage of hazardous substances for re-use is prohibited indirectly by the Act because all pollution prevention activities must reduce non-product output, and as such, must not conflict with the definition of non-product output, which prohibits storage. Increased risks are addressed directly in the statutory definition of pollution prevention because pollution prevention must "reduce or eliminate, without shifting, the risks that the use of hazardous substances at an industrial facility pose to employees, consumers, and the environment and human health." Other processes (primarily batch manufacturing operations) re-use hazardous substances within the process, but because the re-use activities are not closed-loop, there is some form of storage associated with the activity and there may be some risk to occupational health from exposure to the hazardous substances through the storage or transfer activities that accompany the re-use of the materials. Such activities cannot be considered pollution prevention if they include storage or increased risks because both are prohibited by the Act. Therefore, the Department does not consider the collection and storage of hazardous substances generated from a batch process for future re-use in that operation to be pollution prevention.

The proposed definition was derived after lengthy consideration of the issues involving industrial facilities' re-use of hazardous substances within similar processes. In order for the Department to distinguish between these two types of re-use activities, it would have had to set a time limit for the re-use of hazardous substances so that the re-use activity did not constitute storage, and it would have had to develop criteria that would have assured the public that there was no increased risk to occupational health from exposure. As explained below, the Department is currently unable to draw such distinctions.

The primary concern in developing the in-process recycling definition at proposed N.J.A.C. 7:1K-1.5 was that it is infeasible for most batch operations to incorporate closed-loop recycling into their processes. Therefore, to address the concerns of batch operators, the Department considered allowing limited forms of non-closed loop re-use of a hazardous substance to fall within the definition of in-process recycling. The limited forms of non-closed loop recycling that the Department considered as possible candidates for "in-process recycling" were limited to re-use of the material, with no pollution treatment or additional processing, in the same process. However, the Department concluded that the statutory definition of non-product output, which includes all hazardous substances or hazardous wastes that are generated prior to storage or recycling, prevented this flexibility.

For example, the Department reviewed numerous industry comments requesting that the re-use of materials stored anywhere from 90 days to a year or more should be considered in-process recycling, and therefore, pollution prevention. While the Department may have been able to provide flexibility by allowing storage of materials for a limited time period, that is, a few hours up to a few days, it is the Department's position that any longer time period would constitute "storage" under the Act.

As discussed above, batch re-use of hazardous substances does not qualify as in-process recycling (and, by definition, does not qualify as pollution prevention) under the Act, since it does not reduce the demand for hazardous substances in the facility's production processes. However, the Department considers re-use of the material in the same process, with no pollution treatment or further processing, to be the second most

preferred approach to environmental management for batch operations. This type of activity is encouraged because of its value both to the facility in terms of reduced costs of raw materials and reduced disposal costs, and because in some cases it eliminates the need for disposal. Accordingly, the Department will provide a special section on the Pollution Prevention Plan Progresss Report for reporting on batch re-use activities. This special section will give businesses the option of reporting on re-use activities at their facilities but will not allow such activities to be reported as pollution prevention. The Department's intent is to provide businesses with the opportunity to publicly report on innovative environmental practices other than pollution prevention.

While the Department did receive written and verbal comments recommending the inclusion of out-of-process recycling within the definition of pollution prevention, the Department felt that such inclusion was neither appropriate nor allowed by the Act. The Act's definition of the term "pollution prevention" clearly prohibits the inclusion of out-of-process recycling as a pollution prevention activity. This is consistent with the Federal definition of pollution prevention as well as with the definition used by pollution prevention programs in eight other states, including Massachusetts (whose Toxic Use Reduction Law closely parallels the New Jersey Act). The intent of the Act is to advocate pollution prevention as the preferred course of environmental protection. Such a policy does not slight the importance of other methods of environmental protection, such as out-of-process recycling, but simply puts pollution prevention first within the context of the environmental management hierarchy.

Proposed N.J.A.C. 7:1K-1.5 contains definitions of the terms "product" and "co-product." These definitions are intended to account for the production of more than one product from a production process. Under these definitions, products must be intended results from a production process, but co-products can include unintended or incidental materials resulting from a manufacturing process. These definitions are designed to take into account market fluctuations for materials which may be products one day but not another. In addition, while the proposed definitions would not classify co-products and products as non-product output, increased sales of co-products or products, or converting a non-product output to a co-product or product would not be considered a form of pollution prevention and would not count towards achieving use reduction or non-product output reduction goals.

Proposed N.J.A.C. 7:1K-1.5 also contains a definition of the term "intermediate product." This definition is intended to clarify the statutory definition of "product" which requires that products be "... used as a commodity in trade in the channels of commerce by the general public." The clarification in this rule would allow certain materials which are the intended results of one production process to be made into a final product in a subsequent production process at the same facility. These materials would not be considered a non-product output for the first production process even though they are not "sold." In addition, the proposed definition of "product" clarifies that materials meeting the definiton of "intermediate product" which are made into a product at another facility owned by the same company are considered to be products.

Subchapter 2, Pollution Prevention Advisory Board, governs the operation of the Pollution Prevention Advisory Board established by N.J.S.A. 13:1D-39. The duties of the Board include: advising the Department on the interpretation of information submitted in pollution prevention planning and reporting; reviewing the scientific literature and advising the Department on matters related to occupational, public health, and environmental risks from exposures to hazardous substances; and reviewing the expenditure by the Department of monies deposited in the Pollution Prevention Fund established by N.J.S.A. 13:1D-50.

Subchapter 3, Pollution Prevention Planning requirements, establishes the general framework for determining which hazardous substances are subject to pollution prevention planning and whether a particular industrial facility is required to conduct pollution prevention planning under the Act. The provisions of this subchapter include: deadlines for the preparation and submission of pollution prevention planning documents by priority industrial facilities; the procedure for Department directives designating former non-priority facilities as priority industrial facilities for pollution prevention planning purposes; guidelines on the scope of activities at an industrial facility required to be reported in pollution prevention planning documents; the procedure by which the Department may lower the pollution prevention planning threshold for a regulated hazardous substance; and the procedure for designating additional hazardous substances not on the Federal Toxic Release Inventory (TRI) list to the list of substances for which pollution prevention planning is required. This subchapter also contains requirements for revising, updating and modifying Pollution Prevention Plans, Plan Summaries, and Plan Progress Reports, as well as a procedure for submitting Pollution Prevention Plans to the Department for review.

The significant sections of proposed N.J.A.C. 7:1K-3 are as follows:

Proposed N.J.A.C. 7:1K-3.3 contains the criteria by which new production processes may qualify for the N.J.S.A. 13:1D-40(f) exemption from Part II pollution prevention planning. As discussed in Section IV above, these criteria are based on the premise that new production processes will have met state-of-the-art design and single-media permit requirements.

Proposed N.J.A.C. 7:1K-3.4 establishes a pollution prevention planning threshold of 10,000 pounds per year of each hazardous substance used or manufactured at a facility. While many aspects of the Pollution Prevention Program Requirments are modeled after the Federal Emergency Planning and Community Right-to-Know Act (EPCRA) and EPCRA Toxic Release Inventory (TRI) reporting requirements, the Act allows for the establishment of a 10,000 pound threshold for both use or manufacture of hazardous substances, whereas EPCRA has a 10,000 pound threshold for use and a 25,000 pound threshold for manufacture. This section also describes the circumstances under which and the method by which the Department may lower the 10,000 pound threshold for a particular hazardous substance.

Proposed N.J.A.C. 7:1K-3.5 establishes the criteria that the Department may consider prior to designating additional hazardous substances to the list of hazardous substances for which pollution prevention planning is required. Under proposed N.J.A.C. 7:1K-3.5, additions to the list of hazardous substances for which pollution prevention planning is required would be made through rulemaking. As discussed in Section III above, the Department does not plan to expand the list of regulated substances at this time, but has proposed those criteria and this procedure for future use.

Proposed N.J.A.C. 7:1K-3.6 requires the owner or operator of a priority industrial facility to prepare a complete revision of the facility's Pollution Prevention Plan every five years following initial preparation of a Pollution Prevention Plan, in accordance with N.J.S.A. 13:1D-42(g).

Proposed N.J.A.C. 7:1K-3.7 and 3.8 establish the conditions under which owners or operators of priority industrial facilities must update or modify their Pollution Prevention Plans and Pollution Prevention Plan Summaries during the course of the five-year planning period.

Proposed N.J.A.C. 7:1K-3.9 implements N.J.S.A. 13:1D-43, which authorizes the Department to review, modify and approve pollution prevention planning documents and to require any revisions or modifications necessary for compliance with the Act or these proposed rules. Although Pollution Prevention Plans will routinely be kept on-site at an industrial facility, N.J.S.A. 13:1D-43 authorizes the Department to require facilities to submit their Plans for review and modification. This section establishes the procedure for Departmental review of Pollution Prevention Plans, and contains proposed criteria for disapproval of Pollution Prevention Plans. At this time, the only two substantive disapproval criteria the Department has chosen to propose are whether a facility's grouping decision has excluded pollution treatment systems from production processes as required by proposed N.J.A.C. 7:1K-4.2, and whether a facility's use of the term "pollution prevention" meets the definition found at proposed N.J.A.C. 7:1K-1.5. The Department has also included in this section a review criterion for administrative completeness.

Subchapter 4, Pollution Prevention Plans, outlines the sequence of pollution prevention planning steps recommended by the Department for facilities conducting pollution prevention planning, and lists detailed substantive and procedural requirements for the preparation of a Pollution Prevention Plan. This subchapter contains the procedure to be followed by facilities in grouping and targeting sources or production processes for detailed pollution prevention analysis in Part II of a Pollution Prevention Plan. This subchapter also contains guidance and procedures for filing a Raw Material Subtitution Certification as authorized by N.J.S.A. 13:1D-40(e), or obtaining an out-of-process rcycling authorization pursuant to N.J.S.A. 13:1D-41(f).

The significant sections of proposed N.J.A.C. 7:1K-4 are as follows:

The criteria for grouping of sources or production processes are found at proposed N.J.A.C. 7:1K-4.2. This section implements N.J.S.A. 13:1D-41(k), which requires the Department to develop criteria for considering sources or production processes that use similar ingredients to produce one or more similar products as a single source or production

process for pollution prevention planning purposes. This provision, known as "grouping," offers industrial facilities significant flexibility to group production processes and allow for consolidated reporting and recordkeeping.

During the pre-proposal process, the Department received considerable comment emphasizing the importance of flexibility in several key areas, including grouping. Although the Department agrees that it is important to provide grouping flexibility, it has proposed to prohibit facilities from grouping hazardous substance pollution treatment or control systems with production processes for pollution prevention planning purposes. See proposed N.J.A.C. 7:1K-4.2(d). Grouping pollution treatment or control systems with production processes would result in the consolidated reporting of hazardous substance use and non-product output data, from which the public and the Department would not be able to differentiate between reductions in use or non-product output due to pollution prevention and reductions due to pollution treatment or control. As discussed above, the prohibition on grouping pollution treatment or control systems or out-of-process recycling systems with production processes has been proposed as an enforceable plan review criterion. See proposed N.J.A.C. 7:1K-3.9(d) and 12.7.

N.J.A.C. 7:1K-4.3 outlines the minimum substantive requirements for a Pollution Prevention Plan. Part IA of a Pollution Prevention Plan will consist of basic administrative information about the facility such as: the name and telephone number of facility contacts; a certification by the highest corporate official with direct operating responsibility that he or she has read the Pollution Prevention Plan; a certification that the Plan is true and accurate; and a certification that it is the corporate policy of the facility to achieve the goals of the Pollution Prevention Plan. Part IB of the Pollution Prevention Plan will include basic process-level and facility-level calculations of reduction or increases in the amounts of hazardous substances used and non-product output generated per unit of product in comparison to the previous reporting year. In addition, Part IB will contain a reassessment of the facility's five year goals for reductions in use and generation of hazardous substances as non-product output.

The second area of pollution prevention planning which offers significant flexibility to regulated facilities is the targeting of production processes or sources, to be conducted pursuant to the procedures in proposed N.J.A.C. 7:1K-4.4. In accordance with N.J.S.A. 13:1D-41(d), the Department is required to develop criteria to be used by industrial facilities to identify targeted production processes and targeted sources for the purpose of focusing pollution prevention strategies on those targeted production processes and targeted sources. A facility is required to complete Part II of a Pollution Prevention Plan only for targeted sources or processes. Under the proposed section, industrial facilities may target any sources or production processes that contribute, solely or when combined, 90 percent or more of the facility's use of hazardous substances, or 90 percent of the facility's generation of hazardous substances as non-product output, or 90 percent of the facility's multimedia release of hazardous substances.

In developing these criteria, the Department debated about the amount of flexibility to provide facilities through the targeting mechanism. While there was concern that targeting based on total chemical use has the potential to allow important releases to escape evaluation in the pollution prevention planning process, the Department determined that consistent with the "good actor" focus of this program it should allow a facility to self-select use, generation, or release of a facility's total hazardous substances as the most applicable targeting criteria. In balancing the options, the Department decided that, at least for the initial implementation of the program, facilities should be given significant flexibility to identify the sources and processes on which to target its pollution prevention resources.

The Department hopes that such flexibility will prompt facilities to develop comprehensive Pollution Prevention Plans that are used primarily as tools in corporate decision-making. The Department plans to involve itself in a major educational effort during the first few years of the pollution prevention program to evaluate, among other goals, whether flexible Part II targeting has led to comprehensive pollution prevention planning. Based on the results of its educational analyses, the Department may, in the future, require facilities to target on a chemical-specific basis (for example, to target production processes that contribute 90 percent or more of the generation of benzene as non-product output at the industrial facility) or to target based on a combination of the use, generation, and release of hazardous substances.

The Department believes that the 90 percent approach at proposed N.J.A.C. 7:1K-4.4 is consistent with the N.J.S.A. 13:1D-41(d) requirement that targeting consider sources or production processes that make "a significant contribution to the use and release of hazardous substances, the generation of hazardous waste, and the generation of non-product output" at an industrial facility. The Department also believes that all of the hazardous substances covered by the Act (that is, any substance on the SARA Section 313 list and any other substance which the Department designates as a hazardous substance pursuant to proposed N.J.A.C. 7:1K-3.5) are sufficiently toxic to meet the N.J.S.A. 13:1D-41(d) requirement that the Department consider toxicity as a criteria for targeting. However, based on its experience in implementing this program, the Department may decide in the future to promulgate targeting criteria that require facilities to weigh the relative toxicities of hazardous substances in making their targeting decisions.

Proposed N.J.A.C. 7:1K-4.5 contains the substantive requirements for the preparation of Part II of a Pollution Prevention Plan. These requirements include the identification of available pollution prevention options for each targeted source or production process, and a technical and economic feasibility analysis of those options.

Referred to as "full cost accounting" in the Act, the economic feasibility analysis is one of the foundations of the pollution prevention program. The pollution prevention program is largely a self-implementing program; facilities will choose their own use and non-product output goals, choose the sources or production processses they want to target, and choose the methods used to reach those goals. The requirements for the economic analysis are designed to help facilities realize when pollution prevention options not considered previously are likely to yield long-term savings.

The term "full cost accounting" is not used in the proposed rules because it proved to not be descriptive. Instead, the rule outlines a number of costs that priority industrial facilities must include in their economic feasibility analysis and also outlines several other optional costs that priority industrial facilities may consider it their economic feasibility analysis. In addition, the rule refers to a recommended approach to performing the economic feasibility analysis that will appear in the Department's Pollution Prevention Planning Guidance Document. The recommended approach uses a total cost assessment methodology to conduct the economic feasibility analysis and provides a step-by-step guide to implementing such an optional approach.

Proposed N.J.A.C. 7:1K-4.6 establishes the procedure for development of a Raw Material Substitution Certification pursuant to N.J.S.A. 13:1D-40(e). This section of the Act allows an owner or operator of an industrial facility to include in a Pollution Prevention Plan, Plan Summary, and Plan Progress Report a list of hazardous substances, the input-use of which he or she has determined through pollution prevention planning (that is, through completion of the recommended sequence of pollution prevention planning including Part II of a Plan) cannot be reduced below current levels. Under proposed N.J.A.C. 7:1K-4.6, industrial facilities may choose to develop a Raw Material Subtitution Certification for specific combinations of raw materials and production processes for which they have determined by completion of a Pollution Prevention Plan that raw material substitution methods cannot reduce the input-use of that raw material below the current level because it is neither technically nor economically feasible to do so.

The Raw Material Substitution Certification will be prepared by the industrial facility, signed by the highest ranking corporate official with direct operating responsibility at the facility, and submitted to the Department as part of the facility's Pollution Prevention Plan Summary. See proposed N.J.A.C. 7:1K-5.1(b)5. Industrial facilities who develop Raw Material Substitution Certifications may report use and non-product output goals of zero for the specific combinations of hazardous substances and production processes listed in their Certification only where they have exhausted all other pollution prevention options, including product reformulation, production process redesign or modification, in-process recycling, and improved operation and maintenance of production process equipment.

Proposed N.J.A.C. 7:1K-4.7 provides a procedure for owners or operators of industrial facilities to include on-site, out-of-process recycling in their Pollution Prevention Plans and Pollution Prevention Plan Summaries, as authorized by N.J.S.A. 13:1D-41(f), if the Department determines that pollution prevention strategies are not reasonably available to the owner or operator. This procedure requires the owner or operator to submit the facility's Pollution Prevention Plan to the Department for review in order to enable the Department to determine whether pollution prevention strategies are reasonably available for the process in question. Under this section, out-of-process recycling information authorized by the Department for inclusion in a facility's Pollution

Prevention Plan may not be counted as pollution prevention. Therefore, reductions in use of hazardous substances or production of non-product output attributable to out-of-process recycling techniques cannot be included in the facility's use reduction or non-product output goals.

The distinction between out-of-process recycling and pollution prevention is similar to the distinction between batch re-use and in-process recycling (see discussion above): while out-of-process recycling reduces the total quantities of raw materials purchased by a facility, it does not reduce the use of hazardous substances or the generation of non-product output per unit of product at the facility. Therefore, it does not reduce the demand for hazardous substances per unit of product, which is required to meet the statutory definition of pollution prevention.

Subchapters 5 and 6 set forth substantive and procedural requirements for the preparation and submittal of Pollution Prevention Plan Summaries and Pollution Prevention Plan Progress Reports, respectively. The Department has included nomenclature in Apepndix C that facilities will be required to use in describing production processes in the Pollution Prevention Plan Summary. The Department notes that the Pollution Prevention Plan Progress Report elements proposed in Subchapter 6 include the elements that currently appear on the Department's Community Right-to-Know (Form DEQ-114) survey. Accordingly, the Department intends to develop a single form to be used by priority industrial facilities to complete their reporting for both the Community Right-to-Know Program (Form DEQ-114) and the Pollution Prevention Plan Progress Report. See proposed N.J.A.C. 7:1K-1.4 and 6.1(b).

In addition, proposed N.J.A.C. 7:1K-5.2 and 6.2 contain the procedures and criteria for Department review of Pollution Prevention Plan Summaries and Pollution Prevention Plan Progress Reports, respectively. These sections are modeled after the procedure for reviewing Pollution Prevention Plans at proposed N.J.A.C. 7:1K-3.9, and implement N.J.S.A. 13:1D-43, which authorizes the Department to review, modify and approve pollution prevention planning documents and to require any revisions or modifications necessary for compliance with the Act or these proposed rules. At this time, the only two substantive disapproval criteria the Department has chosen to propose are whether a facility's grouping decision has excluded pollution treatment systems from production processes as required by proposed N.J.A.C. 7:1K-4.2, and whether a facility's use of the term " pollution prevention" meets the definition found at proposed N.J.A.C. 7:1K-1.5. The Department has also included in this section a review criterion for administrative completeness.

Subchapter 7, Facility-Wide Permits, establishes the Department's policies and procedures for the issuance of facility-wide permits as required by N.J.S.A. 13:1D-48. In accordance with the Act, the fundamental focus of the Department's facility-wide permit program will be pollution prevention. By definition, a facility-wide permit will incorporate the appropriate provisions of a facility's Pollution Prevention Plan. See N.J.S.A. 13:1D-37.

The Department plans to implement the facility-wide permit program as a means of applying the pollution prevention program's environmental management hierarchy to the Department's single-media permit programs. This process will require facilities to fully explore pollution prevention options first, prior to considering recycling, pollution treatment systems and disposal options which place further down the hierarchy. Basing the facility-wide permit program on pollution prevention is a concerted decision on the part of the Department based on the requirements of the Act and its Legislative findings.

Proposed N.J.A.C. 7:1K-7.1 discusses and implements the general authority of the Department to issue facility-wide permits under the pilot program established by the Act. In particular, this section contains the criteria to be used by the Department to designate 10 to 15 individual priority industrial facilities to participate in the facility-wide permit program. Within 36 months of the effective date of these rules, the Department is required to recommend to the Governor and the Legislature whether to continue or expand the facility-wide permit program.

At this time, the Department has chosen not to propose rules implementing its authority to include pollution prevention strategies in single media permits or other approvals issued to industrial facilities, as would otherwise be authorized by N.J.S.A. 13:1D-43(c). Likewise, the Department has not proposed a procedure for revoking, issuing, reissuing or modifying permits or other approvals issued to industrial facilities for the purpose of requiring more stringent emission or effluent levels derived from the facility's pollution prevention planning, as would otherwise be authorized by N.J.S.A. 13:1D-43(d). As discussed in detail in Section VII of the response to comments on the second pre-proposal above, the Department believes that by postponing its unilateral use of these particular authorities until 1996, it will remove a perceived disincentive for industrial facilities to set ambitious pollution prevention goals. The Department suggested this approach in the June pre-proposal, and the comments received were largely supportive of this incentive strategy.

As an additional incentive, the Department plans to use volunteer facilities to fill the quota of 10 to 15 facility-wide permits required to be issued by N.J.S.A. 13:1D-48(a). Provided that 10 to 15 facilities step forward to volunteer to be part of this innovative effort, thereby enabling the Department to fulfill its legislative mandate, the Department does not intend to unilaterally convert Pollution Prevention Plan requirements into enforceable permit conditions through issuance of a facility-wide permit. This would remove another identified potential disincentive to conducting aggressive pollution prevention planning. In the event that not enough facilities volunteer for this project, the Department expects to use its authority under proposed N.J.A.C. 7:1K-7.1(c) and 7.2(d) to designate additional facilities to participate in the facility-wide permit program. Using the criteria found at proposed N.J.A.C. 7:1K-7.2(d), the Department would select facilities with the potential to: serve as a Statewide model for multimedia pollution prevention programs; meet industry-wide pollution prevention goals through a facility-wide permit; or meet use and non-product output goals through a facility-wide permit.

In 1996, the Department is required to report to the Legislature and Governor on the successes or shortcomings of the facility-wide permit program as well as on the Department's trend analysis efforts. At that time, the Department will have collected Pollution Prevention Plan Summaries and one year of Pollution Prevention Plan Progress Reports and completed the trend analysis required by N.J.S.A. 13:1D-45. The Department expects to perform this trend analysis with an eye toward how best to exercise its authority under N.J.S.A. 13:1D-43, as well as how and whether to expand the applicability of the facility-wide permit program.

Subchapters 8 through 11, Confidentiality, contain the criteria that will be used to determine whether information in Pollution Prevention Plans, Pollution Prevention Plan Summaries, and Pollution Prevention Plan Progress Reports is confidential information, and sets forth the limitations that will apply once the Department determines that information meets the criteria for confidentiality. The proposed confidentiality requirements are based on those contained in the Department's Spill Act rules, N.J.A.C. 7:1E.

The confidentiality subchapters found at proposed N.J.A.C. 7:1K-8 through 11 establish procedures whereby a Pollution Prevention Plan is treated as confidential and is kept at the facility until and unless the Department requires that the Pollution Prevention Plan be submitted for review pursuant to proposed N.J.A.C. 7:1K-3.9. Although the Department has the authority to inspect the Pollution Prevention Plan, including information claimed to be confidential, on the site of the facility, its inspectors are restricted by N.J.S.A. 13:1D-46 from disclosing trade secret information contained in the Pollution Prevention Plan and are subject to dismissal, suspension, fine, or conviction of a third degree crime for disclosing trade secret information to unauthorized persons. The Department believes that these actions provide an adequate safeguard for confidential information obtained during on-site inspections.

These subchapters would also allow the Department to postpone its determination on the confidentiality of information contained in a Pollution Prevention Plan, Pollution Prevention Plan Summary, or Pollution Prevention Plan Progress Report until such time as the Department receives a request for disclosure of the information from a person not authorized to see it, or the Department determines a confidentiality evaluation is appropriate. This procedure is intended to reduce the administrative burden of confidentiality determinations for both the Department and industrial facilities.

During the pre-proposal process, the Department convened a confidentiality task force comprised of industry representatives to provide input and assistance in resolving some of the complex confidentiality issues raised by the Act. The Department intends to continue this informal task force in order to address confidentiality issues as they arise in practice.

Subchapter 12, Assessment of Civil Administrative Penalties, contains the penalty provisions that will be applied for violations of the Act or the proposed chapter.

Proposed N.J.A.C. 7:1K-12 establishes the Department's procedures for assessing civil administrative penalties under the Act. Under the proposed procedures, the Department expects that most penalties assessed will be for violations that are generally considered "paper"

violations, such as failure to prepare a Pollution Prevention Plan or failure to submit a Pollution Prevention Plan Summary on time. However, the Department will have the authority under proposed N.J.A.C. 7:1K-3.9, 5.2 and 6.2 and proposed N.J.A.C. 7:1K-12.7 to penalize facilities for grouping pollution treatment systems with other processes, or for including activities in their Pollution Prevention Plans, Plan Summaries, or Plan Progress Reports that do not qualify as pollution prevention. The Department has also proposed civil administrative penalties for submitting false or inaccurate information, N.J.A.C. 7:1K-12.5; failure to allow unlawful entry or inspection of industrial facilities, N.J.A.C. 7:1K-12.6, failure to submit a Pollution Prevention Plan for review, N.J.A.C. 7:1K-12.8; and untimely submittal of Pollution Prevention Plan Summaries or Progress Reports, N.J.A.C. 7:1K-12.8.

Social Impact

In modern day society, people have come to expect a range of conveniences and products whose production requires the use of hazardous chemicals. Typically, the use of chemicals to produce commodities yields hazardous waste that must be disposed of either through burial in the ground, discharge to a waterway, or incineration resulting in emissions to the air we breathe. The sight of a hazardous waste site surrounded by chain link fences and skull and crossbone warning signs may leave one feeling scared, but relieved that it is in someone else's back yard. Yet a basic law of thermodynamics establishes that matter is neither created nor destroyed, but is just shifted from place to place in different forms. What then is the safest way to function in society without sacrificing conveniences that we have come to expect and enjoy?

Many would agree that the easiest way to solve a problem is to, if possible, prevent it from occurring in the first place. The Pollution Prevention Act and the proposed rules embody this concept and place the responsibility on industry to find ways of reducing or preventing the use and generation of hazardous chemicals. The Act mandates that those who have manufacturing operations in the State must examine how it is they are producing their products and determine whether there are alternative ways to produce the same products in a manner that yields less waste and fewer multi-media releases.

Another premise of the Act and the proposed rules is that using chemicals more efficiently translates into monetary savings because fewer raw materials are then needed to produce the same amount of a product. Diminishing chemical use may come, for example, in the form of ridding production processes of fugitive emissions that volatilize into the air or by redesigning a product to require a lower chemical input. One positive social impact associated with this trend is less occupational exposure for workers and fewer or less toxic releases to the environment, thereby protecting the air we breathe and the water we drink. Health risks will also be diminished when fewer and less toxic hazardous substances are contained in products used by consumers.

Pollution prevention is not a new concept for some businesses. In fact, some businesses instituted pollution prevention measures long before the Pollution Prevention Act was even proposed. Nonetheless, the Act and the proposed chapter are designed to encourage businesses, many of whom have not maximized their pollution prevention opportunities, to examine their manufacturing operations closely to identify areas suitable for putting prevention opportunities into place. The planning process embodied in the Act and the proposed rules places an emphasis on identifying areas where pollution prevention may occur in place of, or as a precursor to, applying pollution treatment and control systems. While the Act places a time demand on businesses in moving through the planning process, the vast majority of businesses should find that pollution prevention opportunities exist in areas not previously identified. Establishing planning goals and moving toward implementing them will afford industry the full range of benefits commonly associated with hazardous substance pollution prevention.

In addition, the proposed rules should have a beneficial impact on occupational health. Through the mandatory pollution prevention planning requirements contained in the proposed rules, facilities will be required to inventory all manufacturing production processes using hazardous substances and focus their pollution prevention efforts on those targeted processes or sources that account for a significant portion of the facility's total hazardous substance use, generation of non-product output, or environmental releases. By reducing the use of hazardous substances through increased efficiency, raw material substitution, process changes or improved housekeeping (for example, worker spill prevention training), the risk of worker exposure to hazardous substances at industrial facilities should be reduced. The potential risks associated with accidents and spills due to handling or processing operations involving highly acute toxins can be minimized through pollution prevention planning. Furthermore, worker exposures to chronic toxicants, such as carcinogens, from fugitive releases should also be reduced through pollution prevention measures identified through the planning process in the proposed rules.

The facility-wide permitting program is expected to have all the positive social impacts associated with pollution prevention planning, as well as the benefits to the public from the environmental and administrative efficiencies that facility-wide permitting should produce. For example, existing single-media permit programs may inadvertently allow risks from release of hazardous substances to be shifted from one medium to another. Ideally, facility-wide permitting will reduce those risks by reducing the use of hazardous substances and the generation of non-product output, and will prevent shifting of risks across media.

Economic Impact

The proposed N.J.A.C. 7:1K Pollution Prevention Program Requirements are expected to increase the costs of doing business for priority industrial facilities in the short term (during the next two years), but should decrease the costs of doing business for these same facilities in the long term (over the next five years and longer.) The increased costs to industrial facilities will include the cost of preparing a Pollution Prevention Plan and Pollution Prevention Plan Summary and reporting annually on pollution prevention planning progress to the Department in a Pollution Prevention Plan Progress Report. However, these facilities are expected to accrue direct savings from implementing pollution prevention measures, and should indirectly benefit from the decreased costs to employees and society in general from reduced use of and exposure to hazardous substances.

The Pollution Prevention Program is a fundamentally different regulatory approach to environmental protection. While the proposed rules require priority industrial facilities to prepare Pollution Prevention Plans, the goals and methods contained in the Plans are not mandatory and will not be enforceable unless they are incorporated into a permit, facility-wide permit, or other approval issued to the facility. Therefore, the mandatory regulatory costs imposed on industrial facilities as a consequence of these rules will only include the costs associated with preparation of the Pollution Prevention Plan, and not the costs associated with implementation of the Pollution Prevention Plan.

The preparation of Pollution Prevention Plans is expected to cost industrial facilities anywhere from several hundred dollars for a small facility to several thousand dollars for the largest industrial manufacturing facilities. The data required to be included in Pollution Prevention Plans may be readily available or easily obtainable for some industrial facilities, particularly for small to medium sized facilities. Therefore, the Department expects that these facilities will not require the assistance of paid consultants or contractors to comply with the proposed rules, provided that they have access to sufficient guidance documents or advice from other sources.

In order to provide as much free assistance as possible, the Department has developed a guidance document to explain to industrial facilities the various methods that can be used to prepare Pollution Prevention Plans. A copy of this guidance document will be available from the Pollution Prevention Program free of charge to priority industrial facilities. Draft copies of this guidance document and pollution prevention reporting forms are currently available for review and comment, and the Department invites interested parties to review and pretest these documents. The Department will also be conducting outreach for priority industrial facilities beginning in February of 1993 to provide specific guidance to facilities and answer any individual questions they may have regarding pollution planning. In addition, priority industrial facilities (as well as any facility in the State) will have access to free pollution prevention technical assistance through the New Jersey Technical Assistance Program located at the New Jersey Institute of Technology in Newark.

The cost to larger industrial facilities to prepare Pollution Prevention Plans may be as much as several thousand dollars because these facilities will need to inventory all sources and production processes that use, generate, or release hazardous substances. For industrial facilities that choose to use a detailed method of analysis, such as a mass balance, to analyze their hazardous substance use, generation, and release, this cost will depend on the amount of sampling needed to complete a mass balance to 90, 95, or 98 percent closure. However, the Department expects that most industrial facilities will not use such a detailed method unless the nature of their operations lends itself to that level of detail.

Once industrial facilities have completed Pollution Prevention Plans, the costs of implementing pollution prevention measures will be highly facility-specific and may depend on how aggressive the facility's pollution prevention goals are. These costs will vary depending on how much impact the chosen pollution prevention methods will have on the production processes and the length of time it will take the industrial facility to implement the methods.

The implementation of pollution prevention measures such as raw material substitution, product reformulation, production process redesign or modification, in-process recycling, and improved operation and maintenance of production process equipment, is likely to reduce the industrial facilities' operating costs in several ways. These measures are likely to reduce the quantities of raw materials used to make a unit of product; the amounts of wastes, including hazardous wastes, that facilities must pay to dispose of; the insurance costs associated with handling and disposing of these hazardous substances; and the costs of pollution treatment and control of these hazardous substances.

A recent study by INFORM, entitled "Environmental Dividends: Cutting More Chemical Wastes," found that most pollution prevention investments have a payback period of about 18 months. Therefore, the Department anticipates that the overall economic effect of the proposed Pollution Prevention Program Requirements on regulated facilities and on the public will be a positive one.

The economic impact of the proposed chapter on the Department will consist largely of the costs necessary to administer the pollution prevention program. Pursuant to Section 20 of P.L. 1991, c.235, these costs will be funded by a $2.00 per employee fee for the implementation of the Act assessed by the Department of Labor and credited to the Pollution Prevention Fund established by N.J.S.A. 13:1D-50. Therefore, priority industrial facilities who are required to conduct pollution prevention planning under the proposed chapter will not be charged a separate fee for the Department's administration of the pollution prevention program.

Finally, because the fundamental nature of the pollution prevention program is to use incentives as the means of achieving compliance rather than "command and control" regulation, the Department anticipates that the costs of administering and implementing this program will be an environmental protection bargain to society and to regulated industries.

Environmental Impact

The proposed rules are expected to have a positive environmental impact throughout the State. The potential risk to human health and the environment arising from the use and manufacture of hazardous substances will be reduced because industrial facilities will be encouraged to identify and implement pollution prevention techniques at their manufacturing operations. This analysis is expected to result in a reduction in the quantity of the hazardous substances used and released into the environment, workplaces and consumer products throughout the State. In particular, the proposed rules should have a beneficial environmental impact by promoting the Act's Statewide public policy goal of significantly reducing the use of toxic substances and reducing the generation of non-product output and environmental releases by 50 percent in five years.

In 1988, New Jersey facilities reported that a total of 179,013,998 pounds of hazardous substances were transferred among environmental media and released into the environment. These substances, which are covered under the proposed rules, are also listed under the Federal Emergency Planning and Community Right-to-Know Act (EPCRA) based on the U.S. Environmental Protection Agency's determination that these chemicals are toxic to humans or the environment. In fact, 123 of the 303 hazardous substances and 30 chemical groups regulated by the Act and the proposed rules are carcinogens. Other known environmental and health effects associated with these hazardous substances include ozone depletion and adverse reproductive effects. Significant reductions of the use, generation of non-product output and environmental releases of these hazardous substances to the environment through pollution prevention measures will significantly improve the quality of New Jersey's environment and public health.

Under current State and Federal law regulating the discharge of pollutants into the air, water and land, thousands of tons of hazardous substances are legally discharged into the environment under permits issued by the Department and the Federal government. Although permitted levels of discharges into the air, water and land are allowable under current law, many believe that these levels of pollution can and should be lowered to diminish risks to the environment and to occupational and public health.

For over two decades, environmental statutes and regulations have focused on treating and controlling pollutants after they have been created. This scenario has resulted in the shifting of pollutants from one medium to another, with the receiving medium being the one deemed burdensome, consciously or unconsciously, to the discharger. The structure of regulating hazardous substances at the end of the pipe has yielded real results in environmental protection by permitting fewer pollutants to enter the environment, but has achieved little in **preventing** the creation of pollutants produced by industry.

The Pollution Prevention Act is an attempt to redirect environmental protection efforts to focus on the top of the environmental management hierarchy, where pollution prevention is emphasized as the preferred choice to pollution treatment, control and disposal measures. Wherever possible and economically desirable, regulated businesses will now be allowed to identify where improved chemical use efficiency will produce the same amount of a product with fewer chemicals. Improvements in chemical use efficiency may be achieved through, for example, redesigning products, processes and procedures to reduce the creation of pollution, in-process recycling, or the use of less toxic or non-toxic substances.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed chapter may impose recordkeeping and compliance requirements on approximately 450 small businesses as defined by that Act. The proposed rules will apply to all facilities that are required to report under the federal Emergency Planning and Community Right to Know Act (EPCRA). Facilities are covered under EPCRA if they: (1) employ greater than or equal to 10 full-time employees; (2) have Standard Industrial Classification (SIC) code in group numbers 20 to 39; and (3) manufacture or process in excess of 25,000 pounds per yaer of a listed chemical or use in excess of 10,000 pounds of a listed chemical per year. It is estimated that of 800 facilities initially covered under the Pollution Prevention Act, approximately 450 are small businesses as defined by the New Jersey Regulatory Flexibility Act.

The Pollution Prevention Act requires businesses to examine their operations and develop Pollution Prevention Plans outlining how they will reduce the use, generation and release of hazardous substances as defined under the Act. Preparing a Pollution Prevention Plan will require a business to inventory all processes that involve a hazardous substance as defined under the Act and to report how much of the substance is used and released to the air, water and land both before and after pollution treatment systems are applied. A facility will then be required to target production processes for doing pollution prevention using those criteria established in the rules. Once processes are targeted, a business will include in a Pollution Prevention Plan the methods which will be used to achieve reductions in the use and/or generation of hazardous substances under the Act.

Since a Pollution Prevention Plan is intended for regular use and reference by the facility, it will not routinely be submitted to the Department for review. Instead, a Pollution Prevention Plan Summary will be submitted to the Department every five years, and the facility will submit Pollution Prevention Plan Progress Reports annually. The Pollution Prevention Plan Summary will include various data elements, such as: five-year numeric goals for reducing the use and/or generation of hazardous substances as nonproduct output at both a facility and process level; an identification and description of each production process using a unique identification number; and a schedule for the implementation of pollution prevention techniques the owner or operator intends to use over a five-year planning period.

Facilities are also required to prepare and submit Pollution Prevention Plan Progress Reports to the Department annually following submittal of the Pollution Prevention Plan Summary. The information to be included in a Pollution Prevention Plan Progress Report includes: (1) the quantity of the reduction or increase in use and generation of hazardous substances per facility-wide unit of production in comparison to the previous year; (2) quantities of the reduction or increase in generation of nonproduct output per facility-wide unit of production in comparison to the previous year; (3) quantities of the reduction or increase in multimedia releases following recycling and pollution treatment systems in comparison to the previous year; and (4) a numerical statement demonstrating progress towards achieving each of the facility level five-year goals reported in the Pollution Prevention Plan Summary. The Pollution Prevention Plan Progress Report will also include data elements related to the use and multi-media release of hazardous substances, including inventory figures, amount stored, manufactured

recycled and consumed. In addition, facilities will be required to provide information on the percent reduction or increase for each targeted production process in the use or generation of hazardous substances as nonproduct output per unit of production at the facility in comparison to the previous year.

Preparing a Pollution Prevention Plan and complying with the proposed reporting requirements for Pollution Prevention Plan Summaries and Plan Progress Reports will entail some degree of technical skill. However, there are several mechanisms upon which the Department intends to rely to minimize the reporting, recordkeeping and compliance burdens on small businesses under the Act and the proposed rules. First, the New Jersey Technical Assistance Program (TAP) is uniquely qualified to provide this sort of assistance to New Jersey's small businesses. Located at the New Jersey Institute of Technology, the TAP provides confidential assistance to any small business seeking ways of implementing pollution prevention measures within their operating procedures. Under this program, representatives will be available to travel to facilities for an in-depth examination of their operations. These representatives will follow up their site visit with a report that includes recommendations on, for example, altering processes or substituting less toxic materials to yield immediate and long term pollution prevention gains as well as cost savings. The TAP is funded through the Pollution Prevention Fund established in the Act and its services are provided free of charge to small businesses located in the State.

Second, in response to small businesses' concerns about finding the technical and financial resources to comply with the Act, the Department has established a Small Business Workgroup comprised of owners and representatives from small businesses covered under the Act. The purpose of the workgroup is for the Department to hear the unique concerns of small businesses in preparing Pollution Prevention Plans, Pollution Prevention Plan Summaries and Pollution Prevention Plan Progress Reports and to respond to these concerns by providing administrative, financial and technical assistance when requested. The Department invites all small business owners to participate in this workgroup, to speak with staff in the Office of Pollution Prevention, and to share their concerns about implementing the Act in a way that considers the needs of small businesses.

In developing the proposed new rules, the Department has sought to minimize the costs of compliance for all affected businesses, while meeting the requirements of the Pollution Prevention Act. The Act itself does not provide for exemptions or lesser requirements based upon business size. As discussed above, small businesses do have resources available to them to provide compliance assistance. In furtherance of the objective of the Act and these rules to prevent pollution, thus promoting the public health and welfare, no lesser requirements or exemptions have been provided for small businesses.

Full text of the proposal follows:

CHAPTER 1K
POLLUTION PREVENTION PROGRAM RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1K-1.1 Scope

This chapter constitutes the rules of the Department for the administration and implementation of the Pollution Prevention Program established by the Pollution Prevention Act, P.L. 1991, c. 235, codified at N.J.S.A. 13:1D-35 et seq. and 34:5A-1 et seq. This chapter applies to the use and release of hazardous substances and the generation of hazardous substances as nonproduct output by industrial facilities and sets forth guidelines and procedures to be followed by priority industrial facilities in the development of Pollution Prevention Plans, Pollution Prevention Plan Summaries and Pollution Prevention Plan Progress Reports as required by the Act. This chapter also provides for the issuance of facility-wide permits to certain priority industrial facilities under the pilot program established by N.J.S.A. 13:1D-48.

7:1K-1.2 Purpose

(a) It is the purpose of this chapter to promote pollution prevention by:

1. Encouraging the reduction of:

i. The use of hazardous substances in industrial and manufacturing processes;

ii. The generation of hazardous substances as nonproduct output; and

iii. The multimedia environmental releases of hazardous substances; and

2. Developing a facility-level and process-level accounting system for identifying the use, generation, and release of hazardous substances so that industrial facilities can identify pollution prevention opportunities and implement pollution prevention techniques.

7:1K-1.3 Jurisdiction

(a) This chapter shall apply, to the extent statutorily permissible, to the following Department management actions affecting industrial facilities:

1. Permits, certificates, registrations, or any other relevant Departmental approvals issued to the owner or operator of the industrial facility pursuant to N.J.S.A. 13:1E-1 et seq., 58:10A-1 et seq., or 26:2C-1 et seq.

(b) The pollution prevention concepts and requirements contained in this chapter shall be incorporated, to the extent statutorily permissible, in the Department's policies, procedures and permits.

7:1K-1.4 Relationship of Community Right-to-Know Reporting to Pollution Prevention Reporting

The Department may combine the reporting elements of this chapter with those required for Community Right-to-Know reporting pursuant to N.J.S.A. 34:5A-1 et seq. in order to allow a priority industrial facility to submit a combined reporting form to satisfy the requirements of N.J.A.C. 7:1G and 7:1K.

7:1K-1.5 Definitions

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

"Act" means the Pollution Prevention Act, N.J.S.A. 13:1D-35 et seq.

"Assertedly confidential information" means information for which a claimant has filed a confidentiality claim in accordance with N.J.A.C. 7:1K-8.2, but for which the Department has not made a final confidentiality determination pursuant to N.J.A.C. 7:1K-9.5.

"Assistant Commissioner" means the Assistant Commissioner for Environmental Regulation or his or her designated representative.

"Base year" means the calendar year prior to the year of the submittal of an industrial facility's Pollution Prevention Plan Summary to the Department.

"Board" means the Pollution Prevention Advisory Board established by N.J.S.A. 13:1D-39.

"Claimant" means any person who submits a confidentiality claim under this chapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:1K-9.9, for a class of information.

"Commissioner" means the Commissioner of the Department of Environmental Protection and Energy or his or her designated representative.

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information, including trade secret information, which the Department determines to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:1K-8.2, and such confidentiality claim has not expired by its terms, been waived or withdrawn;

2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;

3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;

4. The information is not, and has not been, available or otherwise disclosed to other persons either by the claimant (except in a manner which protects the confidentiality of the information) or without the

consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding, arbitration, or other proceeding in which the claimant was required to disclose the information to other persons, as long as the information has not been available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation, administrative rule (including, without limitation, N.J.A.C. 7:1K-10 or any other administrative rule of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department, or allow the Department to obtain, a written request by such person that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

"Contract" means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.

"Co-product" means an incidental result of a production process that is not a primary product of the production process and that is sold in trade in the channels of commerce to the general public in the same form as it is produced, for any purpose except the purpose of energy recovery. A co-product is not considered nonproduct output. Increases in quantities of co-products do not count towards use reduction or nonproduct output reduction goals.

"Consume" means to change or alter the molecular structure of a hazardous substance within a production process.

"Department" means the Department of Environmental Protection and Energy, its successors and assigns.

"Facility" means all buildings, equipment, structures, and other property that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person.

"Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42.

"Facility-wide unit of product" means a unit, or aggregated unit, capable of measuring the total quantity of product(s) co-product(s) and/or intermediate product(s) produced at an industrial facility, which is used in calculating the Production Ratio or Activity Index reported to the U.S. Environmental Protection Agency by a priority industrial facility on Form R for compliance with 42 U.S.C. §11023, and which is not changed by the industrial facility from year to year.

"Hazardous substance" means any substance on the list established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. §11023, and any other substance which the Department defines as a hazardous substance for the purposes of the Act pursuant to N.J.A.C. 7:1K-3.5.

"Hazardous waste" means any solid waste defined as hazardous waste by the Department pursuant to N.J.S.A. 13:1E-1 et seq.

"Industrial facility" means any facility having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the Major Group Numbers, Group Numbers, or Industry Numbers listed in N.J.S.A. 34:5A-3 and which is subject to the regulatory requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., or the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.

"In-process recycling" means returning a hazardous substance to a production process using dedicated equipment that is directly connected to and physically integrated with a production process or production processes and is operated in a manner that prevents the generation of nonproduct output or the multi-media release of hazardous substances.

"Intermediate product" means a desired result of a production process that is made into a product in a subsequent processing step at the same industrial facility, without the need for treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals.

"Manufacture" means to produce, prepare, import, or compound a hazardous substance.

"Multimedia release" means the release of a hazardous substance to any environmental medium, or any combination of media, including the air, water or land, and includes any release into workplaces.

"Nonproduct output" or "NPO" means all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal, and that are not intended for use as a product. Nonproduct output includes fugitive releases.

"Offense" means each individual violation of the Act or of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto. Subsequent offenses are not conditioned upon a prior conviction, final order, or entry of judgment. In addition, a single administrative order and notice of civil administrative penalty assessment may relate to more than one offense.

"Office" means the Office of Pollution Prevention established in the Department pursuant to N.J.S.A. 13:1D-38.

"Operator" means any person in control of, or exercising responsibility for, the daily operation of an industrial facility or a priority industrial facility.

"Owner" means any person who owns an industrial facility or a priority industrial facility.

"Person" means any individual, partnership, company, corporation, society, firm, consortium, joint venture, or any commercial or other legal entity.

"Pilot facility" means a facility or designated area of a facility used for pilot-scale development of products or processes not primarily involved in the production of goods for commercial sale.

"Pollution prevention" means: changes in production technologies, raw materials or products, that result in the reduction of the demand for hazardous substances per unit of product manufactured and the creation of hazardous products or nonproduct outputs; or changes in the use of raw materials, products, or production technologies that result in the reduction of the input use of hazardous substances and the creation of hazardous by-products or destructive results; or on-site facility changes in production processes, products, or the use of substitute raw materials that result in the reduction of the amount of hazardous waste generated and disposed of on the land of hazardous substances discharged into the air or water per unit of product manufactured prior to treatment and that reduce or eliminate, without shifting, the risks that the use of hazardous substances at an industrial facility pose to employees, consumers, and the environment and human health. "Pollution prevention" includes, but is not limited to, raw material substitution, product reformulation, production process redesign or modification, in-process recycling, and improved operation and maintenance of production process equipment. "Pollution prevention" does not include any action or change entailing a substitution of one hazardous substance, product or nonproduct output for another that results in

the creation of substantial new risk, and does not include treatment, increased pollution control, out-of-process recycling, or incineration.

"Pollution Prevention Assessment" means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5.

"Pollution Prevention Planning Guidance Document" means a document prepared by the Department pursuant to N.J.S.A. 13:1D-40(b), setting forth the administrative and regulatory requirements for preparing Pollution Prevention Plans, Pollution Prevention Plan Summaries, and Pollution Prevention Plan Progress Reports, and providing additional information which may be used by industrial facilities for pollution prevention planning.

"Pollution Prevention Plan" means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42 and N.J.A.C. 7:1K-3 and 4.

"Pollution prevention planning" means the preparation by a priority industrial facility of a Pollution Prevention Plan, Plan Summary, and Plan Progress Report pursuant to this chapter, and includes any reporting of information to the Department required by this chapter as part of the preparation or submittal of pollution prevention planning documents.

"Pollution Prevention Plan Progress Report" or "Plan Progress Report" means a report required to be submitted annually to the Department by the owner or operator of an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42 and N.J.A.C. 7:1K-3 and 6.

"Pollution Prevention Plan Summary" or "Plan Summary" means a summary of a Pollution Prevention Plan required to be prepared by an industrial facility and submitted to the Department pursuant to N.J.S.A. 13:1D-41 and 42 and N.J.A.C. 7:1K-3 and 5.

"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Priority industrial facility" means:

1. Any industrial facility required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023; or

2. Any other industrial facility designated by the Department as a priority industrial facility pursuant to the criteria and procedure at N.J.A.C. 7:1K-3.2.

"Product" means a desired result of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator.

"Production process" means a process, line, method, activity or technique, or a series or combination of processes, lines, methods or techniques used to produce a product or reach a planned result.

"Raw Material Substitution Certification" means a list of individual hazardous substances used in specific targeted production processes at a priority industrial facility, for which the owner or operator of the industrial facility has determined through preparation and completion of a Pollution Prevention Plan and has certified to the Department that it is not technically or economically feasible to reduce the input-use of the hazardous substance below current levels by replacing the hazardous substance with a different raw material in the specific production process.

"Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved and from which information can be retrieved and copied.

"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

"Research and development laboratory" means a facility or a specially designated area of a facility used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which hazardous substances are used by, or under, the direct supervision of a technically qualified person.

"Source" means a point or location in a production process at which a nonproduct output is generated or released, provided, however, that similar, related or identical kinds of sources may be considered a single source for the purposes of the Act pursuant to the criteria at N.J.A.C. 7:1K-4.2.

"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:1K-9.3.

"Targeted production process" means any production process which significantly contributes to the use or release of hazardous substances or the generation of nonproduct output, as determined by the owner or operator of a priority industrial facility pursuant to criteria established by the Department at N.J.A.C. 7:1K-4.4.

"Targeted source" means any source which significantly contributes to the generation of nonproduct output, as determined by the owner or operator of a priority industrial facility pursuant to criteria established by the Department at N.J.A.C. 7:1K-4.4.

"Unit of product" means a unit used to measure the total quantity of product(s), co-product(s) and/or intermediate product(s) produced by a production process, and which is not changed by an industrial facility from year to year.

"Violation" means a violation of any provision of the Act, or any rule or regulation, administrative order, or facility-wide permit adopted or issued pursuant to the Act.

7:1K-1.6 Construction

These rules shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

7:1K-1.7 Severability

If any subchapter, section, subsection, paragraph, subparagraph, 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 and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:1K-1.8 Access to public information

Interested persons may obtain information on the pollution prevention program, copies of pollution prevention reporting forms, and copies of the Pollution Prevention Planning Guidance Document by contacting:

Office of Pollution Prevention
Department of Environmental Protection and Energy
CN 423
Trenton, New Jersey 08625-0423
(609) 777-0518

SUBCHAPTER 2. POLLUTION PREVENTION ADVISORY BOARD

7:1K-2.1 Pollution Prevention Advisory Board

(a) The Pollution Prevention Advisory Board shall advise the Department in matters related to the administration of the Act and shall monitor the expenditure of money in the Pollution Prevention Fund established by N.J.S.A. 13:1D-50.

(b) The appointment and membership of the Board shall be as provided at N.J.S.A. 13:1D-39. A majority of the membership of the Board shall constitute a quorum for the transaction of board business. Action may be taken and motions adopted by the Board at any meeting thereof by the affirmative vote of a majority of the members of the Board present and voting. Members of the Board shall serve without compensation but the Board may, within the limits of funds appropriated or otherwise made available to it for such purposes, reimburse its members for reasonable and necessary expenses incurred in the discharge of their official duties.

(c) The Board may:

1. Review any matters submitted to it by the Department concerning any aspect of the provisions or implementation of the Act and report its recommendations to the Department;

2. Conduct an ongoing review of the implementation of the Act and submit any recommendations for administrative or legislative changes it deems necessary to the Department;

3. Investigate techniques to develop standardized classifications of production processes employed by industrial facilities, and investigate the feasibility of utilizing such techniques in the development and implementation of Pollution Prevention Plans;

4. Advise the Department on the interpretation of information submitted in Pollution Prevention Plan Summaries and Pollution Prevention Plan Progress Reports and on the content of Pollution Prevention Plans, Plan Summaries, and Plan Progress Reports;

5. Review the scientific literature concerning the occupational, public health, and environmental risks presented by exposures to specific hazardous substances, evaluate scientific interpretations of these risks, and assess the risks of the discharge of these hazardous substances into different environmental media;

6. Review and evaluate the impact of reductions in the use or discharge of specific hazardous substances on employment levels;

7. Conduct periodic reviews of the criteria adopted by the Department for the preparation of Pollution Prevention Plans, Plan Summaries, and Plan Progress Reports and, if deemed necessary, make recommendations to the Department for administrative changes;

8. Study and evaluate the practicability and feasibility of achieving hazardous substance pollution prevention without reductions in employment levels through the use of substitute substances, alternative procedures or processes, or other means;

9. Conduct research, or hold public hearings concerning the continued use, production, manufacture, discharge, or disposal of any hazardous substance in the State and the threat that this use, production, manufacture, discharge, or disposal poses to human health or the environment, and, if warranted, make a written recommendation to the Governor and the Legislature concerning the prohibition of, or restrictions on, the continued use, production, manufacture, discharge, or disposal of the hazardous substance in the State, except that the Board shall not conduct research or hold public hearings concerning the siting of hazardous waste facilities; and

10. Review the expenditure by the Department of monies deposited in the Pollution Prevention Fund established pursuant to N.J.S.A. 13:1D-50.

SUBCHAPTER 3. POLLUTION PREVENTION PLANNING REQUIREMENTS

7:1K-3.1 Preparation and submission of pollution prevention planning documents by priority industrial facilities

(a) The owner or operator of a priority industrial facility required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023 and having a Standard Industrial Classification, as designated by the Federal Office of Management and Budget, within Major Group Numbers 26, 28, 30, 33 and 34, shall:

1. Prepare Parts IA and II of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(b) and 4.5 and submit a Pollution Prevention Plan Summary to the Department in accordance with N.J.A.C. 7:1K-5.1 on or before July 1, 1994;

2. Prepare Part IB of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(c) and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by July 1, 1995;

3. Update Part IB of the Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-3.7 and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by each July 1 thereafter; and

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6 and 3.8.

(b) The owner or operator of a priority industrial facility required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023 and having a Standard Industrial Classification other than those enumerated in (a) above shall:

1. Prepare Parts IA and II of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(b) and 4.5 and submit a Pollution Prevention Plan Summary to the Department in accordance with N.J.A.C. 7:1K-5.1 on or before July 1, 1996;

2. Prepare Part IB of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(c) and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by July 1, 1997;

3. Update Part IB of the Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-3.7 and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by each July 1 thereafter; and

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6 and 3.8.

(c) The owner or operator of an industrial facility that is not required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023, but which is designated as a priority industrial facility for pollution prevention planning purposes pursuant to N.J.A.C. 7:1K-3.2, shall:

1. Prepare Parts IA and II of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(b) and 4.5 and submit a Pollution Prevention Plan Summary to the Department in accordance with N.J.A.C. 7:1K-5.1 within 18 months of receipt of the Department's final directive designating the industrial facility as a priority industrial facility;

2. Prepare Part IB of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(c) and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by July 1 of the year following the submittal of the industrial facility's first Pollution Prevention Plan Summary to the Department;

3. Update Part IB of the Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-3.7 and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by each July 1 thereafter; and

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6 and 3.8.

7:1K-3.2 Designation of industrial facilities not subject to 42 U.S.C. §11023 as priority industrial facilities

(a) The Department may issue a directive to an owner or operator of an industrial facility which is not required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023 designating the industrial facility as a priority industrial facility for pollution prevention planning purposes in accordance with the criteria and procedures in this section.

(b) The Department may issue a directive designating an industrial facility which is not required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023 as a priority industrial facility for pollution prevention planning purposes if it determines that the industrial facility meets one or more of the following criteria:

1. The industrial facility uses or manufactures a hazardous substance determined by the Department to pose a significant risk to human health or the environment in quantities less than 10,000 pounds per year;

2. The volume of hazardous substances or hazardous wastes used, generated or released at the industrial facility contributes more than 10 percent to the total amount of hazardous substances used, generated or released in the State or region of the State;

3. The industrial facility has a history of unpermitted releases or non-compliance with the terms of any permit, certificate, registration, or any other relevant Department approval issued to the owner or operator of the industrial facility pursuant to N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 58:10A-1 et seq., or 26:2C-1; or

4. The industrial facility is the subject of emergency or non-emergency management actions taken by the Department under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; or the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.; including, but not limited to, actions pertaining to landfill capacity, improvement of sludge quality or attainment of ambient environmental standards.

(c) The procedure for issuing a draft directive designating an industrial facility as a priority industrial facility for pollution prevention planning purposes is as follows:

1. The Department shall prepare a draft directive containing a written finding that, based on one or more of the criteria at (b) above, requiring the industrial facility to conduct pollution prevention planning is likely to result in a reduction in the use or release of hazardous substances or the generation of hazardous waste or nonproduct output at the industrial facility and a reduction in the threat posed to the environment or public health by the use or release of hazardous substances or the generation of hazardous waste or nonproduct output at the industrial facility;

2. The draft directive shall be signed by the Director of the Office of Pollution Prevention or his or her designee;

3. The draft directive shall be mailed by the Department to the industrial facility by certified mail; and

4. The Department shall notify the public of the issuance of the draft directive by commonly available public notice mechanisms.

(d) The procedure for the issuance of a final directive designating an industrial facility as a priority industrial facility for pollution prevention planning purposes is as follows:

1. If the owner or operator of an industrial facility designated as a priority industrial facility for pollution prevention planning purposes believes that the written findings contained in the draft directive are incomplete or inaccurate, or otherwise disagrees with the Department's written findings, he or she may appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft directive. Such appeal shall identify the specific written finding(s) the owner or operator believes to be incomplete or inaccurate or with which the owner or operator disagrees and shall include any documentation necessary to support the owner or operator's claims;

2. The Assistant Commissioner shall review all appeals of draft directives under (d)1 above, and shall issue a final determination or final directive within 30 calendar days following receipt of the owner or operator's appeal. This shall constitute the final agency action of the Department on the directive; and

3. If the owner or operator of an industrial facility designated as a priority industrial facility for pollution prevention planning purposes does not appeal the issuance of the draft directive pursuant to (d)1 above, the draft directive becomes a final directive on the 30th day following receipt of the draft directive by the owner or operator.

(e) The owner or operator of an industrial facility designated as a priority industrial facility for pollution prevention planning purposes shall prepare a Pollution Prevention Plan and submit to the Department a Pollution Prevention Plan Summary within 18 months of receipt of the Department's final directive, and shall submit to the Department a Pollution Prevention Plan Progress Report each July 1 thereafter.

7:1K-3.3 Scope of pollution prevention planning documents

(a) The owner or operator of a priority industrial facility is required to include in the industrial facility's Pollution Prevention Plans, Pollution Prevention Plan Summaries, and Pollution Prevention Plan Progress Reports information on any hazardous substance which is used or manufactured at the industrial facility in quantities above 10,000 pounds per year, or in quantities exceeding a lower threshold for the hazardous substance set by the Department in accordance with N.J.A.C. 7:1K-3.4(b), measured on a facility-wide basis, and which is listed on either:

1. The Toxic Release Inventory (TRI) list established by the United States Environmental Protection Agency for reporting of hazardous substances pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11023; or

2. The list of additional hazardous substances designated by the Department for pollution prevention planning purposes pursuant to N.J.A.C. 7:1K-3.5 and appearing at Appendix A.

(b) The owner or operator of a priority industrial facility is not required to include in a Pollution Prevention Plan, Plan Summary or Plan Progress Report the following:

1. Information concerning a research and development laboratory, as defined at N.J.A.C. 7:1K-1.5, located at the industrial facility;

2. Information concerning a pilot facility, as defined at N.J.A.C. 7:1K-1.5; or

3. Information concerning non-hazardous substances or product formulas for mixtures that include non-hazardous substances.

(c) The owner or operator of a priority industrial facility is not required to include in Part II of a Pollution Prevention Plan or in a Pollution Prevention Progress Report information pertaining to improvements in pollution prevention for production processes established after January 1, 1992, until the first five-year revision of the Pollution Prevention Plan and Pollution Prevention Plan Summary is prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever is later. See N.J.A.C. 7:1K-3.8(c).

7:1K-3.4 Threshold quantities for pollution prevention planning

(a) Except as otherwise provided by (b) below, the owner or operator of a priority industrial facility is required to include in a Pollution Prevention Plan, Pollution Prevention Plan Summary, and Pollution Prevention Plan Progress Report information on any hazardous substance which is used or manufactured by the industrial facility in quantities above 10,000 pounds per year, measured on a facility-wide basis.

(b) If the Department determines that the use or manufacture of a particular hazardous substance in quantities less than 10,000 pounds poses a significant risk to human health, including risks to occupational and consumer health, or the environment, it may require the owners or operators of priority industrial facilities to incorporate pollution prevention planning for the substance in quantities less than 10,000 pounds into their Pollution Prevention Plans, Plan Summaries, and Plan Progress Reports, as follows:

1. The Department may lower the pollution prevention planning threshold for a hazardous substance by adding the hazardous substance to Appendix B, Pollution Prevention Planning Thresholds Less Than 10,000 Pounds, incorporated herein by reference through rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. A proposal to lower the pollution prevention planning threshold for a hazardous substance shall specifically include, in addition to the requirements of N.J.A.C. 1:30:

i. The chemical identity and Chemical Abstract Service (CAS) number of the hazardous substance;

ii. A brief basis and background for the Department's determination that the use or manufacture of a particular hazardous substance in quantities less than 10,000 pounds poses a significant risk to human health, including risks to occupational and consumer health, or the environment; and

iii. The new threshold planning quantity for the hazardous substance, in pounds.

(c) The owner or operator of a priority industrial facility which uses or manufactures a substance for which the Department has lowered the pollution prevention planning threshold shall revise the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary to incorporate information consistent with the new threshold for that substance. The revised Pollution Prevention Plan Summary shall be submitted to the Department no later than July 1 of the calendar year following the adoption of a lower pollution prevention planning threshold for the hazardous substance, and Pollution Prevention Progress Reports reflecting reporting for the revised threshold shall be submitted to the Department each July 1 thereafter.

7:1K-3.5 Additional hazardous substances for which pollution prevention planning is required

(a) The Department may designate a hazardous substance not on the TRI list to Appendix A, Additional Hazardous Substances For Pollution Prevention Planning, through rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., upon consideration of all of the following criteria:

1. Prior regulation as a hazardous substance pursuant to 42 U.S.C. §11023; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Section 4 of the Toxic Catastrophe Prevention

Act, N.J.S.A. 13:1K-9 et seq.; or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601;

2. The risk to human health or the environment due to the toxicity of the hazardous substance; and

3. Evidence of the production of the hazardous substance in commercial quantities that are used as a commodity in trade in the channels of commerce by the general public.

(b) A rule proposal to designate a hazardous substance not on the TRI list to Appendix A, Additional Hazardous Substances For Pollution Prevention Planning, incorporated herein by reference, shall specifically include, in addition to the requirements of N.J.A.C. 1:30:

1. The chemical identity and Chemical Abstract Service (CAS) number of the hazardous substance;

2. A brief basis and background for the Department's determination that, considering the criteria in (a) above, the toxicity of the hazardous substance justifies its designation to Appendix A, Additional Substances For Pollution Prevention Planning; and

3. The proposed threshold planning quantity for the hazardous substance, in pounds. If the proposed threshold planning quantity is less than 10,000 pounds, the proposal shall also contain the information required by N.J.A.C. 7:1K-3.4(b).

(c) The owner or operator of a priority industrial facility that uses or manufactures a substance designated by the Department to Appendix A as an additional hazardous substance for which pollution prevention planning is required shall revise the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary to include reporting on the newly added substance. The revised Pollution Prevention Plan Summary shall be submitted to the Department no later than July 1 of the calendar year following the adoption of this listing, and Pollution Prevention Progress Reports reflecting reporting for the newly added substance shall be submitted to the Department each July 1 thereafter.

7:1K-3.6 Five-year revision of Pollution Prevention Plans and Pollution Prevention Plan Summaries

The owner or operator of a priority industrial facility is required to prepare a complete revision of the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary by July 1 of the fifth year after the year of the initial completion of Part IA of the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary, and by July 1 of each fifth year thereafter.

7:1K-3.7 Annual Pollution Prevention Plan updates

The owner or operator of a priority industrial facility is required to annually update the information required to be recorded in Part IB of a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-3.1 and 4.3(c).

7:1K-3.8 Pollution Prevention Plan and Pollution Prevention Plan Summary modifications

(a) The owner or operator of a priority industrial facility is required to modify the information required to be recorded in Part IA of a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b) within 90 days of:

1. A significant modification in the operation of the industrial facility, including the cessation or major expansion of a production process or the installation or removal of primary components of a production process; or

2. Using a hazardous substance, or generating or releasing a nonproduct output or hazardous waste which was not used, released, or generated when the industrial facility's current Pollution Prevention Plan was completed.

(b) The owner or operator of a priority industrial facility shall modify the information required to be recorded or reported in a Pollution Prevention Plan or Pollution Prevention Plan Summary within 90 days, and shall submit Pollution Prevention Plan Progress Reports reflecting the modified Pollution Prevention Plan and Plan Summary on July 1 annually thereafter, if the owner or operator:

1. Reclassifies an existing nonproduct output to a product, co-product or intermediate product;

2. Modifies the industrial facility's groupings of sources or production processes pursuant to N.J.A.C. 7:1K-4.2;

3. Receives a final Department directive to modify the industrial facility's Pollution Prevention Plan, Pollution Prevention Plan Summary, or Pollution Prevention Plan Progress Report pursuant to N.J.A.C. 7:1K-3.9(g), 5.2(e), or 6.2(e); or

4. Changes the industrial facility's targeting decision pursuant to N.J.A.C. 7:1K-4.4.

(c) The owner or operator of a priority industrial facility is not required to include in Part II of a Pollution Prevention Plan or a Pollution Prevention Plan Progress Report information pertaining to improvements in pollution prevention for a production process established after January 1, 1992 until the first five-year revision of the Pollution Prevention Plan and Plan Summary is prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever is later, subject to the following:

1. For the purposes of this subsection, a production process shall be considered to be established after January 1, 1992, if it meets any one of the following criteria:

i. The production process results in production of a new product, new co-product, or new intermediate product after January 1, 1992 which was not identified in the industrial facility's most recent Pollution Prevention Plan;

ii. The production process results in production after January 1, 1992 of a product whose new active ingredient is chemically different from other products made at the industrial facility; or

iii. The production process results in production after January 1, 1992 of a product which is made by a different chemical route from other products made at the industrial facility, except for an improvement in the established chemistry such as a more efficient catalyst.

2. If an existing production process generates nonproduct output which is subsequently sold as a product, co-product, or intermediate product, it shall not be considered a production process established after January 1, 1992.

3. For production processes established after January 1, 1992, the owner or operator of a priority industrial facility is required to complete all pollution prevention planning requirements for Part I of a Pollution Prevention Plan, N.J.A.C. 7:1K-4.3, not less than one year but no more than two years after establishing the new production process. This requirement shall be included as part of an annual update or five-year revision of the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-3.6 or 3.7.

(d) In the event that one or more hazardous substances are added to the Toxic Release Inventory (TRI) list established by the United States Environmental Protection Agency for reporting of hazardous substances pursuant to 42 U.S.C. §11023, the owner or operator of a priority industrial facility shall modify the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary to include information on the newly listed substances. The modified Pollution Prevention Plan Summary shall be submitted to the Department no later than July 1 of the calendar year following the date that the new substances are required to be included in the priority industrial facility's annual TRI reporting, and Pollution Prevention Progess Reports reflecting reporting for the newly listed substance shall be submitted on July 1 annually thereafter.

7:1K-3.9 Department review of Pollution Prevention Plans

(a) The owner or operator of a priority industrial facility shall maintain a copy of the Pollution Prevention Plan for the industrial facility at the industrial facility, where it shall be available for inspection by the Department.

(b) The Department may require the owner or operator of a priority industrial facility to submit a copy of the industrial facility's Pollution Prevention Plan to the Department for review.

(c) The Department shall provide the owner or operator of a priority industrial facility with at least 30 days advance notice by certified mail before requiring submission of its Pollution Prevention Plan for review, in order to enable the industrial facility to assert a confidentiality claim pursuant to N.J.A.C. 7:1K-8.2, if applicable.

(d) The Department shall use the following review criteria for determining the compliance of Pollution Prevention Plans with the provisions of this chapter:

1. A determination of whether the Pollution Prevention Plan is administratively complete. Administrative completeness review shall consist of a review by the Department to determine whether the items identified in N.J.A.C. 7:1K-4.3 and 4.5 have been included in the Pollution Prevention Plan;

2. A determination as to whether an industrial facility's grouping decision includes a pollution treatment or control system or out-of-process recycling system as prohibited by N.J.A.C. 7:1K-4.2(d); and

3. A determination of whether the pollution prevention methods contained in the Pollution Prevention Plan are consistent with the definition of pollution prevention found at N.J.A.C. 7:1K-1.5. Pollution prevention methods include, but are not limited to:

i. Pollution prevention methods considered by the industrial facility for targeted sources or production processes pursuant to N.J.A.C. 7:1K-4.5(a)3;

ii. Pollution prevention methods proposed by the industrial facility to achieve its use reduction and nonproduct output reduction goals pursuant to N.J.A.C. 7:1K-4.5(a)5; and

iii. Pollution prevention activities that occurred prior to 1987 and which are recorded in a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b)2v.

(e) The Department may require the owner or operator of a priority industrial facility to make any revisions or modifications to a Pollution Prevention Plan necessary for compliance with the provisions of the Act or this chapter.

(f) If the Department determines that a Pollution Prevention Plan submitted by a priority industrial facility is deficient under criterion (d)1, 2 or 3, above, it shall issue a draft administrative order directing the owner or operator to modify the industrial facility's Pollution Prevention Plan, as follows:

1. The Department shall prepare a draft administrative order containing a written finding that, based on one or more of the criteria at (d) above, the industrial facility's Pollution Prevention Plan does not comply with the provisions of the Act or this chapter. The draft administrative order shall:

i. Identify the section(s) of the Act or this chapter under which the industrial facility's Pollution Prevention Plan is deficient;

ii. Concisely describe the deficiencies identified by the Department through its review of the industrial facility's Pollution Prevention Plan and the measures that must be taken to correct such deficiencies;

iii. Set forth a timetable for the industrial facility's modification of its Pollution Prevention Plan;

iv. Advise the industrial facility of its right to seek informal review of the findings in the draft administrative order or the financial impact of the administrative order pursuant to (g)1 below;

2. The draft administrative order shall be signed by the Director of the office of pollution prevention or his or her designee; and

3. The draft administrative order shall be mailed by the Department to the industrial facility by certified mail.

(g) The procedure for the issuance of a final administrative order directing the owner or operator of a priority industrial facility to modify the industrial facility's Pollution Prevention Plan is as follows:

1. If the owner or operator of an industrial facility directed to modify its Pollution Prevention Plan believes that the written findings contained in the draft administrative order are incomplete or inaccurate, otherwise disagrees with the Department's written findings, or believes that the ordered modifications will have an adverse financial impact on the industrial facility, he or she may informally appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft administrative order. Such appeal shall identify the specific written finding(s) the owner or operator believes to be incomplete or inaccurate or with which the owner or operator disagrees, and shall include any documentation necessary to support the owner's or operator's claims. If the owner or operator is seeking informal review of the financial impact of the draft administrative order, he or she shall include all financial information necessary for the Department to evaluate the impact of the ordered modifications;

2. The Assistant Commissioner shall review all appeals of draft administrative orders under (g)1 above, and shall either withdraw the draft administrative order, modify and reissue the draft administrative order, or issue a final administrative order within 30 calendar days following receipt of the owner's or operator's appeal; and

3. If the owner or operator of an industrial facility does not appeal the issuance of a draft administrative order directing the industrial facility to modify its Pollution Prevention Plan, the draft administrative order becomes a final administrative order on the 30th day following receipt of the draft administrative order by the owner or operator.

(h) All appeals of final administrative orders issued under this section shall be taken in accordance with the procedures at N.J.A.C. 7:1K-12.3. An industrial facility's failure to comply with a final administrative order issued under this section requiring modification of its Pollution Prevention Plan is grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12.2 and 12.7.

SUBCHAPTER 4. POLLUTION PREVENTION PLANS

7:1K-4.1 Sequence of pollution prevention planning

(a) The Department recommends that industrial facilities conduct pollution prevention planning steps in the following order:

1. Identify all sources and production processes in accordance with N.J.A.C. 7:1K-4.3(b)3;

2. Group sources or production processes in accordance with N.J.A.C. 7:1K-4.2;

3. Complete Part IA of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(b) except for the identification of production processes in accordance with N.J.A.C. 7:1K-4.3(b)3;

4. Target sources or production processes in accordance with N.J.A.C. 7:1K-4.4;

5. Complete Part II of a Pollution Prevention Plan, including setting use reduction and NPO reduction goals, in accordance with N.J.A.C. 7:1K-4.5;

6. Develop a Raw Material Substitution Certification, if applicable, in accordance with N.J.A.C. 7:1K-4.6;

7. Complete and submit a Pollution Prevention Plan Summary in accordance with N.J.A.C. 7:1K-5;

8. Request an out-of-process recycling authorization, if applicable, in accordance with N.J.A.C. 7:1K-4.7; and

9. Complete Part IB of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(c) and submit a Pollution Prevention Plan Progress Report in accordance with N.J.A.C. 7:1K-6.

7:1K-4.2 Grouping of production processes or sources for pollution prevention planning purposes

(a) An owner or operator of a priority industrial facility may choose to group sources or production processes that use similar ingredients to produce one or more similar products so that the grouped sources or production processes are considered a single source or production process for pollution prevention planning purposes.

(b) An owner or operator of a priority industrial facility who chooses to group may consider any of the following criteria to determine whether sources or production processes that use similar ingredients to produce one or more similar products should be considered a single source or production process for pollution prevention planning purposes:

1. The function of the hazardous substance in the development of a product, that is, how is the hazardous substance used in the production process? This criterion is intended to aid industrial facilities in distinguishing between basic types or classes of products manufactured, for example, chemicals or articles;

2. The function of the equipment. This criterion is intended to aid industrial facilities in distinguishing between different modes of operation for production processes, for example, batch operations or continuous operations;

3. Whether the sources or processes use similar ingredients;

4. Whether the sources or processes produce similar products; and

5. Whether the sources or processes have any other characteristics that are similar.

(c) An owner or operator of a priority industrial facility who chooses to group shall describe grouped sources and production processes in Part I of the industrial facility's Pollution Prevention Plan and shall identify grouped sources and production processes in the industrial facility's Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report. The grouping of sources and production processes selected by the industrial facility shall not change throughout the pollution prevention planning process, including the preparation of Part II of a Pollution Prevention Plan, a Pollution Prevention Plan Summary or a Pollution Prevention Plan Progress Report, unless the industrial facility's pollution prevention planning documents are modified to reflect the new grouping as required by N.J.A.C. 7:1K-3.8(c).

(d) If hazardous substances are used, generated, treated or released in a pollution treatment or control system or out-of-process recycling system, those systems shall not be grouped with production processes for the purposes of including information in a Pollution Prevention Plan, Plan Summary, or Plan Progress Report. Pollution treatment or control systems or out-of-process recycling systems must be considered as separate sources or production processes for pollution prevention planning purposes.

(e) If the owner or operator of a priority industrial facility decides to modify the industrial facility's groupings of sources or production processes following the completion of the industrial facility's Pollution Prevention Plan and Plan Summary, the owner or operator shall modify the industrial facility's Pollution Prevention Plan and Plan Summary to reflect the new groupings, and shall submit the modified Pollution Prevention Plan Summary to the Department within 90 days of making such modifications, as required by N.J.A.C. 7:1K-3.8.

7:1K-4.3 Contents of Part I of a Pollution Prevention Plan

(a) Part I of a Pollution Prevention Plan shall consist of the following two components:

1. Part IA of the Pollution Prevention Plan, containing administrative information about the facility; process-level and facility-level data about the use, generation and release of hazardous substances at the facility; information on the total costs of using and generating hazardous substances; and certifications by officials of the industrial facility; as required by N.J.S.A. 13:1D-41(b)1 through 12; and

2. Part IB of the Pollution Prevention Plan, containing information on the reduction in use of hazardous substances and the generation of hazardous substances as nonproduct output at the industrial facility, as required by N.J.S.A. 13:1D-41(b)13 through 17.

(b) Part IA of a Pollution Prevention Plan shall contain, at a minimum, the following:

1. Personnel Information and Certifications:

i. A written certification, signed by the highest ranking corporate official with direct operating responsibility at the industrial facility, that reads as follows:

"I certify under penalty of law that I have read the Pollution Prevention Plan and that the Pollution Prevention Plan is true, accurate and complete to the best of my knowledge. I am aware that there are significant civil and criminal penalties, including fines and/or imprisonment, for including false, inaccurate, or incomplete information in a Pollution Prevention Plan.";

ii. A written certification, signed by the highest ranking corporate official at the industrial facility, that reads as follows:

"I certify under penalty of law that I am familiar with the Pollution Prevention Plan and that it is the corporate policy of this industrial facility to achieve the goals of the Pollution Prevention Plan. I am aware that I am liable for significant civil or criminal penalties for false certification.";

iii. The name and business telephone number of the owner or operator of the industrial facility, and of the highest ranking corporate official at the industrial facility; and

iv. The name and business telephone number of a non-management employee representative at the industrial facility;

2. Facility-level information:

i. The chemical identity and Chemical Abstract Service (CAS) number of each hazardous substance manufactured, stored or used at the industrial facility;

ii. Inventory data, in pounds, for the annual inputs, either in pure form or contained in a mixture, determined by direct measurement or by calculations and estimates using best engineering judgment, of each hazardous substance:

(1) Stored at the industrial facility on the first day of the reporting year;

(2) Brought into the industrial facility as a non-recycled material during the reporting year;

(3) Manufactured as a product, co-product or intermediate product at the facility; and

(4) Recycled outside of a production process on-site or off-site and used as an input at the industrial facility;

iii. Inventory data, in pounds, for the annual output, either in pure form or contained in a mixture, determined by direct measurement or by calculations and estimates using best engineering judgment, of each hazardous substance:

(1) Stored at the industrial facility on the last day of the reporting year;

(2) Consumed at the industrial facility;

(3) Shipped off-site as a product or co-product; and

(4) Generated as nonproduct output;

iv. Recycling data, in pounds, for the quantities, measured as nonproduct output, of each hazardous substance:

(1) Recycled outside of a production process on-site; and

(2) Recycled outside of a production process off-site;

v. Release data, in pounds, for the quantities of each hazardous substance:

(1) Released to air through stack emissions;

(2) Released to air through fugitive emissions;

(3) Discharged to the waters of the State; and

(4) Generated as other waste streams;

vi. Quantities of each hazardous substance used at the industrial facility, in pounds, determined by subtracting ending inventory (quantity reported under (b)2iii(1) above) from total inputs (total of quantities reported under (b)2ii(1) through (4) above) for the facility; and

vii. Optional: The owner or operator of a priority industrial facility may include a description of pollution prevention strategies implemented at the priority industrial facility prior to 1987;

3. Process-level information:

i. An identification of production processes, using a unique identification number assigned by the industrial facility, and indicating whether each process is a grouped process as authorized by N.J.A.C. 7:1K-4.2. The unique identification number assigned to a process cannot be assigned to any other production process;

ii. For each production process, an identification of the product(s), co-product(s) and/or intermediate product(s) produced, the unit used by the industrial facility for measuring production, and the total units of production produced during the year;

iii. A description of the owner or operator's grouping decision, if any;

4. Process-level inventory data:

i. Inventory data, in pounds, for the annual quantities, either in pure form or contained in a mixture, determined by direct measurement or calculations and estimates using best engineering judgment, of each hazardous substance:

(1) Contained in the products, co-products or intermediate products produced in each production process;

(2) Consumed within each production process;

(3) Used in each production process;

(4) Generated as nonproduct output at each production process;

(5) Generated as nonproduct at each source within each production process;

(6) Released from each production process; and

(7) Recycled outside of each production process;

5. Information and data on hazardous waste generation, treatment, storage and disposal activities:

i. Facility-level data for each hazardous waste generated, including, but not limited to:

(1) Amount generated at the industrial facility;

(2) Amount treated outside of a production process;

(3) Amount stored outside of a production process;
(4) Amount disposed outside of a production process;
(5) Address of off-site treatment, storage or disposal facilities (TSD's); and
(6) Description of type of treatment at each treatment, storage or disposal facility (TSD);
ii. Facility-level recycling data for each hazardous waste, including:
(1) Amount recycled on site; and
(2) Amount recycled off site; and
iii. The amounts of each hazardous waste generated at each production process at the industrial facility; and
6. Cost data:
i. A comprehensive financial analysis for each source or production process, of the costs of using hazardous substances, generating hazardous substances as nonproduct output, and releasing hazardous substances, including:
(1) Storage and handling costs;
(2) Monitoring, tracking and reporting costs;
(3) Treatment costs;
(4) Transportation and disposal;
(5) Manifesting and labeling costs;
(6) Permit fees;
(7) Liability insurance costs, if the industrial facility is covered by liability insurance; and
(8) Optional: Additional costs which may be considered are found in the Pollution Prevention Planning Guidance Document published by the Department. The Pollution Prevention Planning Guidance Document describes the total cost assessment method of capital budgeting for industrial facilities who choose to apply total cost assessment to their sources and production processes.
(c) Part IB of a Pollution Prevention Plan shall contain information on the reduction in use of hazardous substances and the generation of hazardous substances as nonproduct output, including, but not limited to, the following:
1. Facility-level information on pollution prevention reductions:
i. Calculations of the reduction or increase in use of each hazardous substance per facility-wide unit of product as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;
ii. Calculations of the reduction or increase in use of each hazardous substance in comparison to the previous year;
iii. Calculations of the reduction or increase in the generation of each hazardous substance as nonproduct output per facility-wide unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;
iv. Calculations of the reduction or increase in the generation of each hazardous substance as nonproduct output, in comparison to the previous year;
v. Calculations of the reduction or increase in use and use per unit of product, as defined in N.J.A.C. 7:1K-1.5, attributed to the sale of co-products or production of intermediate products which are not the result of pollution prevention techniques, in comparison to the previous year;
vi. Calculation of the reduction or increase in generation of nonproduct output and nonproduct output per unit of product, as defined in N.J.A.C. 7:1K-1.5, attributed to the sale of co-products or production of intermediate products which are not the result of pollution prevention techniques, in comparison to the previous year;
vii. Calculations of the reduction or increase in multimedia releases, by medium, after recycling and treatment, in comparison to the previous year;
viii. A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the facility-level five-year goals reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)3. Quantities of co-products sold or intermediate products produced by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving pollution prevention goals; and
ix. An identification of the pollution prevention techniques used to achieve each reduction reported under (c)1i through iv above.
2. Information on Targeted Production Processes:
i. An identification of targeted production processes, using a unique identification number assigned by the industrial facility, and indicating whether each process is a grouped process as authorized by N.J.A.C. 7:1K-4.2. The unique identification number assigned to a targeted process cannot be assigned to any other process; and
ii. Process-level information on pollution prevention reductions for each hazardous substance within each targeted production process, including, but not limited to:
(1) Calculations of the reduction or increase in use of each hazardous substance within each targeted production process per unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;
(2) Calculations of the reduction or increase in the generation of nonproduct output for each targeted production process per unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;
(3) Calculations of the reduction or increase in use of each hazardous substance and use of each hazardous substance per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products or production of intermediate products from each targeted production process, which are not the result of pollution prevention techniques, in comparison to the previous year;
(4) Calculations of the reduction or increase in nonproduct output generation per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products or the production of intermediate products from each targeted production process, which are not the result of pollution prevention techniques, in comparison to the previous year;
(5) Calculations of the reduction or increase in multimedia releases from each targeted production process, by medium, after recycling and treatment, in comparison the previous year;
(6) A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the process-level five-year goals for each targeted production process reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)5. Quantities of co-products sold or intermediate products produced by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving use reduction of nonproduct output reduction goals; and
(7) An identification of the pollution prevention techniques used to achieve each reduction reported under (c)2ii(1) through (5) above; and
3. A reassessment of the industrial facility's five-year goals for reductions reported in the facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)3 and 5, if applicable.

7:1K-4.4 Targeting of sources or production processes
(a) The owner or operator of a priority industrial facility may choose to focus the industrial facility's pollution prevention planning resources and reduce the number of sources or production processes that must be examined in Part II of a Pollution Prevention Plan by targeting for Part II pollution prevention planning those sources or production processes where significant progress can be made in the reduction of hazardous substances used, generated as nonproduct output, or released at the industrial facility.
(b) After preparing Part I of a Pollution Prevention Plan but prior to preparing Part II of a Pollution Prevention Plan, the owner or operator of a priority industrial facility may identify, for targeting purposes, sources or production processes which contribute:
1. Ninety percent or more of the total use of all hazardous substances at the industrial facility; or
2. Ninety percent or more of the total nonproduct output generated at the industrial facility; or
3. Ninety percent or more of the total multi-media environmental releases at the industrial facility; or
4. (Reserved)
(b) Once an industrial facility has identified the sources or production processes that meet the targeting criteria in (a) above, the industrial facility shall complete Part II of a Pollution Prevention Plan for each hazardous substance used, generated as nonproduct output, or released at the targeted source or production process.

(c) If an industrial facility does not identify targeted production processes using the criteria above, the industrial facility must complete the requirements for Part II of a Pollution Prevention Plan for all sources and production processes at the industrial facility.

(d) If the owner or operator of a priority industrial facility decide to modify the industrial facility's targeting decision following the completion of the industrial facility's Pollution Prevention Plan and Plan Summary, the owner or operator shall modify the industrial facility's Pollution Prevention Plan and Plan Summary to reflect the new targeted sources and processes and shall submit the modified Pollution Prevention Plan Summary to the Department within 90 days of making such modifications, as required by N.J.A.C. 7:1K-3.8(b).

7:1K-4.5 Part II of a Pollution Prevention Plan

(a) Part II of a Pollution Prevention Plan shall contain, at a minimum, the following information:

1. A narrative description of each targeted production process, and of each targeted source that is not grouped within a targeted production process, including a description of the process, lines, methods, activities or techniques used in the process or source;

2. If determined to be necessary by the industrial facility, detailed process-level inventory data for each targeted production process or specific targeted production processes;

3. An identification, for each targeted production process and targeted source, of available pollution prevention options, including procedures, technologies and equipment, that may substantially reduce the use and generation of hazardous substances;

4. A feasibility analysis of pollution prevention options identified under (a)3 above, including:

i. A technical analysis of specific pollution prevention options identified under (a)3 above; and

ii. A comprehensive financial analysis of the costs or savings realized by investments in pollution prevention options compared to the costs of using hazardous substances, generating hazardous substances as nonproduct output, and releasing hazardous substances as determined in N.J.A.C. 7:1K-4.3(b)6, including:

(1) Storage and handling costs;

(2) Monitoring, tracking and reporting costs;

(3) Treatment costs;

(4) Transportation and disposal;

(5) Manifesting and labeling costs;

(6) Permit fees;

(7) Liability insurance costs, if the industrial facility is covered by liability insurance;

(8) Cost savings due to more efficient use of raw materials; and

(9) Optional: Additional costs which may be considered are found in the Pollution Prevention Planning Guidance Document published by the Department. The Pollution Prevention Planning Guidance Document describes the total cost assessment method of capital budgeting for industrial facilities who choose to apply total cost assessment to their sources and production processes;

5. For each targeted production process, a description of pollution prevention options the owner or operator of the industrial facility intends to implement during the next five years;

6. For the industrial facility, the five-year numeric goal for reducing the use of each hazardous substance per facility-wide unit of product, as defined in N.J.A.C. 7:1K-1.5;

7. For the industrial facility, the five-year numeric goal for reducing the use of each hazardous substance;

8. For the industrial facility, the five-year numeric goal for reducing the generation of each hazardous substance as nonproduct output per facility-wide unit of product, as defined in N.J.A.C. 7:1K-1.5;

9. For the industrial facility, the five-year numeric goal for reducing the generation of each hazardous substance as nonproduct output;

10. For each targeted production process, the five-year numeric goal for reducing the use of each hazardous substance per unit of product, as defined in N.J.A.C. 7:1K-1.5;

11. For each targeted production process, the five-year numeric goal for reducing the generation of each hazardous substance as nonproduct output per unit of product, as defined in N.J.A.C. 7:1K-1.5;

12. A schedule for implementing the pollution prevention options identified in (a)5 above, including at a minimum:

i. Start date for construction or other activities which may require pre-approval from the Department through the issuance of permits or other approvals, if applicable; and

ii. Completion date for implementing the pollution prevention options identified under (a)5 above;

13. A quantitative description of the impact that the industrial facility's implementation of individual pollution prevention techniques is expected to have on post-treatment multimedia releases of hazardous substances by the industrial facility, reported by medium;

14. A description of the valuation methods used by the owner or operator of the industrial facility to determine not to install or utilize each option, identified under (a)3 above, that would have resulted in a greater percentage reduction in the use of hazardous substances per unit of product or the generation of nonproduct output per unit of product than the options identified a (1)5 above; and

15. For industrial facilities that have obtained prior written authorization from the Department to include out-of-process recycling in a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.7, an assessment and schedule for implementing on-site out-of-process recycling.

(b) An industrial facility is not required to include information on the product, co-product or intermediate product of a production process in developing the industrial facility's use reduction and NPO reduction goals pursuant to (a) above.

(c) An industrial facility filing a Raw Material Substitution Certification with the Department as part of the industrial facility's Pollution Prevention Plan Summary is not required to include information on hazardous substances listed on the Raw Material Substitution Certification in developing the industrial facility's use reduction goals pursuant to (a) above. See N.J.A.C. 7:1K-4.6.

7:1K-4.6 Procedure for development of a Raw Material Substitution Certification

(a) Following completion of a Parts I and II of a Pollution Prevention Plan, an owner or operator of a priority industrial facility may choose to file with the Department a Raw Material Substitution Certification listing the individual hazardous substances used in specific targeted production processes at the facility for which the owner or operator of the industrial facility has determined through preparation and completion of a Pollution Prevention Plan that it is not technically or economically feasible to reduce the input use of the hazardous substance below current levels by replacing the substance with a different raw material in the specific production process.

(b) The procedure for developing and filing a Raw Material Substitution Certification is as follows:

1. A Raw Material Substitution Certification shall consist of:

i. A list of the individual hazardous substances used in specific targeted production processes at the facility for which the owner or operator of the priority industrial facility has determined through preparation and completion of a Pollution Prevention Plan that it is not technically or economically feasible to reduce the input use of the hazardous substance below current levels by replacing the substance with a different raw material in the specific production process;

ii. A certification by the highest ranking corporate official with direct operating responsibility at the industrial facility that reads as follows:

> "I certify that Parts I and II of the Pollution Prevention Plan have been completed for the specific combination of hazardous substances and production processes for which this Raw Material Substitution Certification is being claimed and that through completion of the Pollution Prevention Plan this industrial facility has determined that it is not technically or economically feasible to reduce the input use of the hazardous substance below current levels

by replacing the substance with a different raw material in the specific production process.";

iii. A description of whether pollution prevention methods other than raw material substitution, have been considered for that specific combination of hazardous substances and production processes listed under to (b)1i above. Examples of other pollution prevention methods include: product reformulation, production process redesign or modification, in-process recycling, and improved operation and maintenance; and

iv. A brief narrative summary of the technical and economic analysis conducted by the industrial facility in Part II of the Pollution Prevention Plan showing that the hazardous substances listed under (b)1i above cannot be substituted within the targeted production processes listed under (b)1i above; and

2. The owner or operator of the industrial facility shall file a Raw Material Substitution Certification with the Department as part of the industrial facility's Pollution Prevention Plan Summary.

(c) An industrial facility filing a Raw Material Substitution Certification with the Department as part of the industrial facility's Pollution Prevention Plan Summary is not required to include information on hazardous substances listed on the Raw Material Substitution Certification in developing the industrial facility's use reduction goals pursuant to N.J.A.C. 7:1K-4.5(a)6, 7 and 10.

7:1K-4.7 Out-of-process recycling authorization

(a) The Department may authorize the owner or operator of a priority industrial facility to include a description of on-site, out-of-process recycling activities in the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary if the Department determines that pollution prevention strategies are not reasonably available to the industrial facility for specific hazardous substance(s) in specific production process(es).

(b) The owner or operator of a priority industrial facility seeking an out-of-process recycling authorization pursuant to this section shall submit the following information to the Department for review:

1. The industrial facility's most recent Pollution Prevention Plan;

2. An identification of the specific hazardous substance(s) in specific production process(es) for which the industrial facility is seeking an out-of-process recycling authorization; and

3. A brief technical and economic analysis of whether pollution prevention strategies are reasonably available to the industrial facility for the specific hazardous substance(s) in specific production processes identified under (b)2 above.

(c) The Department shall review a facility's request for an out-of-process recycling authorization by reviewing the information submitted under (b) above and any other relevant materials available, and shall make a determination of whether or not pollution prevention strategies are reasonably available to the owner or operator for the specific hazardous substance(s) in specific production process(es) for which the facility is seeking an out-of-process recycling authorization. Within 120 days of receiving a complete request for an out-of-process recycling authorization pursuant to (b) above, the Department shall notify the requesting facility by certified letter of its determination to grant or deny the industrial facility's out-of-process recycling authorization request.

(d) If the Department grants the industrial facility's request for an out-of-process recycling authorization, the owner or operator of the industrial facility may include in the industrial facility's Pollution Prevention Plan and Pollution Prevention Plan Summary an assessment and schedule for implementing on-site, out-of-process recycling activities for the specific hazardous substances in specific production process(es) covered by the out-of-process recycling authorization. However, any out-of-process recycling activities reported by the industrial facility in its Pollution Prevention Plan or Pollution Prevention Plan Summary pursuant to this section shall not be included in the industrial facility's use reduction or nonproduct output reduction goals.

7:1K-4.8 Description of pollution prevention activities prior to 1987

The owner or operator of a priority industrial facility may include in a Pollution Prevention Plan and Pollution Prevention Plan Summary a description of any pollution prevention strategies implemented at the industrial facility prior to 1987, provided that such strategies are consistent with the definition of pollution prevention at N.J.A.C. 7:1K-1.5.

7:1K-4.9 Departmental access to Pollution Prevention Plans

The owner or operator of a priority industrial facility shall maintain a copy of the Pollution Prevention Plan for the industrial facility at the industrial facility, where it shall be available for inspection by the Department.

SUBCHAPTER 5. POLLUTION PREVENTION PLAN SUMMARY

7:1K-5.1 Pollution Prevention Plan Summary reporting requirements

(a) The owner or operator of a priority industrial facility is required to prepare and submit to the Department, on forms provided by the Department, by the deadline at N.J.A.C. 7:1K-3.1, a Pollution Prevention Plan Summary summarizing the facility's Pollution Prevention Plan, and must revise or modify the facility's Pollution Prevention Plan Summary thereafter in accordance with N.J.A.C. 7:1K-3.6 and 3.8.

(b) A Pollution Prevention Plan Summary shall consist, at a minimum, of the following:

1. Administrative information:

i. The name of the industrial facility;

ii. The address of the industrial facility;

iii. The location of the industrial facility, using the industrial facility's centroid coordinate in New Jersey State Plane Feet; and

iv. Relevant facility identification numbers assigned to the industrial facility by any State or Federal agency;

2. Certification:

i. A written certification, signed by the owner or operator of the industrial facility that reads as follows:

"I certify under penalty of law that a Pollution Prevention Plan has been prepared for this industrial facility and that the Plan is available at the facility for inspection by the Department. I further certify that the information submitted in this Pollution Prevention Plan Summary is true, accurate and complete to the best of my knowledge. I am aware that there are significant civil and criminal penalties, including fines and/or imprisonment, for including or submitting false, inaccurate, or incomplete information in a Pollution Prevention Plan or Plan Summary.";

3. Facility-level information:

i. Five-year numeric goals for reducing the use of each hazardous substance per facility-wide unit of product, as defined by N.J.A.C. 7:1K-1.5;

ii. Five-year numeric goals for reducing the use of each hazardous substance;

iii. Five-year numeric goals for reducing the generation of each hazardous substance as nonproduct output per facility-wide unit of product, as defined by N.J.A.C. 7:1K-1.5;

iv. Five-year numeric goals for reducing the generation of each hazardous substance as nonproduct output;

v. A list of permits issued by the Department to the industrial facility for the use or multimedia release of hazardous substances, the discharge of pollutants, and the emission of pollutants or air contaminants including, but not limited to, permits issued pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Environmental Cleanup and Responsibility Act, N.J.S.A. 13:1K-6 et seq.; the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.; the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; or the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; and

vi. Optional: A priority industrial facility may include information on pollution prevention progress that occurred at the facility between 1987 and the base year for any hazardous substance by listing the following for each hazardous substance:

(1) The data and information reported on the hazardous substance by the industrial facility to the U.S. Environmental Protection Agency on federal Form R pursuant to 42 U.S.C. §11023 for

each year during the period in which pollution prevention progress is being reported;

(2) The data and information reported on the hazardous substance by the industrial facility to the Department on Form DEQ-100 or Form DEQ-114 pursuant to N.J.S.A. 34:5A-1 et seq. for each year during the period in which pollution prevention progress is being reported;

(3) Quantity of use reduced for each hazardous substance per facility-wide unit of product;

(4) Quantity of nonproduct output generation reduced per facility-wide unit of product for each hazardous substance; and

(5) Identification of pollution prevention techniques used to achieve the reductions listed pursuant to (b)3vi(3) and (4) above;

4. Process-level information:

i. An identification of each production process, using a unique identification number assigned by the facility, and indicating whether each process is a grouped process as authorized by N.J.A.C. 7:1K-4.2. The unique identification number assigned to a process cannot be assigned to any other production process;

ii. A description of each production process using the nomenclature provided by the Department in Appendix C, incorporated herein by reference; and

iii. (Reserved); and

5. Information on targeted production processes:

i. An identification of each targeted production process, using a unique identification number assigned by the facility, and indicating whether each process is a grouped process as authorized by N.J.A.C. 7:1K-4.2. The unique identification number assigned to a targeted process cannot be assigned to any other process;

ii. Five-year numeric goals for reducing the use of each hazardous substance per unit of product, as defined by N.J.A.C. 7:1K-1.5, for each targeted production process;

iii. Five-year numeric goals for reducing the generation of nonproduct output per unit of product, as defined by N.J.A.C. 7:1K-1.5, for each hazardous substance in each targeted production process;

iv. A description of the pollution prevention techniques the owner or operator of the industrial facility intends to implement during the five-year planning period to achieve the five-year reduction goals listed under (c)5ii and iii above; and

v. A schedule for implementing the pollution prevention techniques identified in (c)5iv above, including:

(1) Start date for construction or other activities which may require pre-approval from the Department through the issuance of permits or other approvals, if applicable; and

(2) Completion date for implementing the pollution prevention techniques identified in (c)5v above;

vi. An indication, for each hazardous substance used in a targeted production process, of whether the hazardous substance is used by the facility on an annual basis in a quantity of zero to 5,000 pounds, 5,000 to 10,000 pounds, or greater than 10,000 pounds; and

vii. If applicable: A Raw Material Substitution Certification for individual hazardous substances used in specific targeted production processes at the facility, completed in accordance with N.J.A.C. 7:1K-4.6.

7:1K-5.2 Department review of Pollution Prevention Plan Summaries

(a) The owner or operator of a priority industrial facility shall submit a copy of the industrial facility's Pollution Prevention Plan Summary to the Department as required by N.J.A.C. 7:1K-3.1, 3.6 or 3.8, and shall maintain a copy of the current Pollution Prevention Plan Summary for the industrial facility at the industrial facility, where it shall be available for inspection by the Department.

(b) The Department shall use the following review criteria for determining the compliance of Pollution Prevention Plan Summaries with the provisions of this chapter:

1. A determination of whether the Pollution Prevention Plan Summary is administratively complete. Administrative completeness review shall consist of a review by the Department to determine whether the items identified in N.J.A.C. 7:1K-5.1 have been included in the Pollution Prevention Plan Summary; and

2. A determination of whether the pollution prevention methods contained in the Pollution Prevention Plan Summary are consistent with the definition of pollution prevention found at N.J.A.C. 7:1K-1.5. Pollution prevention methods include, but are not limited to:

i. Pollution prevention methods proposed by the industrial facility to achieve its use reduction and nonproduct output reduction goals pursuant to N.J.A.C. 7:1K-5.1(b)5iv; and

ii. Pollution prevention activities that occurred prior to the industrial facility's base year for reporting and which are reported in a Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)3vi(5).

(c) The Department may require the owner or operator of a priority industrial facility to make any revisions or modifications to a Pollution Prevention Plan Summary necessary for compliance with the provisions of the Act or this chapter.

(d) If the Department determines that a Pollution Prevention Plan Summary submitted by a priority industrial facility is deficient under criterion (b)1 or 2 above, it shall issue a draft administrative order directing the owner or operator to modify the industrial facility's Pollution Prevention Plan Summary, as follows:

1. The Department shall prepare a draft administrative order containing a written finding that, based on one or more of the criteria at (b) above, the industrial facility's Pollution Prevention Plan Summary does not comply with the provisions of the Act or this chapter. The draft administrative order shall:

i. Identify the section(s) of the Act or this chapter under which the industrial facility's Pollution Prevention Plan Summary is deficient;

ii. Concisely describe the deficiencies identified by the Department through its review of the industrial facility's Pollution Prevention Plan Summary and the measures that must be taken to correct such deficiencies;

iii. Set forth a timetable for the industrial facility's modification of its Pollution Prevention Plan Summary; and

iv. Advise the industrial facility of its right to seek informal review of the findings in the draft administrative order or the financial impact of the administrative order pursuant to N.J.A.C. 7:1K-5.2(e)1;

2. The draft administrative order shall be signed by the Director of the Office of Pollution Prevention or his or her designee; and

3. The draft administrative order shall be mailed by the Department to the industrial facility by certified mail.

(e) The procedure for the issuance of a final administrative order directing the owner or operator of a priority industrial facility to modify the industrial facility's Pollution Prevention Plan Summary is as follows:

1. If the owner or operator of an industrial facility directed to modify its Pollution Prevention Plan Summary believes that the written findings contained in the draft administrative order are incomplete or inaccurate, otherwise disagrees with the Department's written findings, or believes that the ordered modifications will have an adverse financial impact on the industrial facility, he or she may informally appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft administrative order. Such appeal shall identify the specific written finding(s) the owner or operator believes to be incomplete or inaccurate or with which the owner or operator disagrees, and shall include any documentation necessary to support the owner's or operator's claim that the Department's findings are incomplete or inaccurate. If the owner or operator is seeking informal review of the financial impact of the draft administrative order, he or she shall include all financial information necessary for the Department to evaluate the impact of the ordered modifications;

2. The Assistant Commissioner shall review all appeals of draft administrative orders under (e)1 above, and shall either withdraw the draft administrative order, modify and reissue the draft administrative order, or issue a final administrative order within 30 calendar days following receipt of the owner's or operator's appeal; and

3. If the owner or operator of an industrial facility does not appeal the issuance of a draft administrative order directing the industrial facility to modify its Pollution Prevention Plan Summary, the draft administrative order becomes a final administrative order on the 30th

day following receipt of the draft administrative order by the owner or operator.

(f) All appeals of final administrative orders issued under this section shall be taken in accordance with the procedures at N.J.A.C. 7:1K-12.3. An industrial facility's failure to comply with a final administrative order issued under this section requiring modification of its Pollution Prevention Plan Summary is grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12.2 and 12.7.

SUBCHAPTER 6. POLLUTION PREVENTION PLAN PROGRESS REPORT

7:1K-6.1 Pollution Prevention Plan progress reporting requirements

(a) The owner or operator of a priority industrial facility is required to prepare and submit to the Department, on forms provided by the Department, by July 1 of each year after the completion of the facility's initial Pollution Prevention Plan, a Pollution Prevention Plan Progress Report that indicates the progress made in the previous year in achieving the use reduction and NPO reduction goals set forth in the facility's current Pollution Prevention Plan.

(b) The Department may combine the reporting elements of this section with those required for Community Right-to-Know Reporting pursuant to N.J.S.A. 34:5A-1 et seq. in order to allow a priority industrial facility to submit a combined reporting form to satisfy the requirements of N.J.A.C. 7:1G and N.J.A.C. 7:1K.

(c) A Pollution Prevention Plan Progress Report shall consist, at a minimum, of the following:

1. Administrative information:

i. The name of the industrial facility;

ii. The address of the industrial facility;

iii. The Location of the industrial facility, using the industrial facility's centroid coordinate in New Jersey State Plane Feet; and

iv. Relevant facility identification numbers assigned to the industrial facility by any State or Federal agency;

2. Certification:

i. A written certification, signed by the owner or operator of the industrial facility, that reads as follows:

"I certify under penalty of law that the information submitted in this Pollution Prevention Plan Progress Report is true, accurate and complete to the best of my knowledge. I am aware that there are significant civil and criminal penalties, including fines and/or imprisonment, for submitting false, inaccurate, or incomplete information in a Pollution Prevention Plan Progress Report.";

3. Facility-level inventory and release data:

i. The chemical identity and Chemical Abstract Service (CAS) number of each hazardous substance manufactured, stored or used at the industrial facility;

ii. Inventory data, in pounds, for the annual inputs, either in pure form or contained in a mixture, determined by direct measurement or by calculations and estimates using best engineering judgment, of each hazardous substance:

(1) Stored at the industrial facility on the first day of the reporting year;

(2) Brought into the industrial facility as a non-recycled material during the reporting year;

(3) Manufactured as a product, co-product or intermediate product at the industrial facility; and

(4) Recycled outside of a production process on-site or off-site and used as an input at the industrial facility;

iii. Inventory data, in pounds, for the annual output, either in pure form or contained in a mixture, determined by direct measurement or calculations, using best engineering judgment, of each hazardous substance:

(1) Stored at the industrial facility on the last day of the reporting year;

(2) Consumed at the industrial facility;

(3) Shipped off-site as a product or co-product; and

(4) Generated as nonproduct output;

iv. Recycling data, in pounds, for the quantities, measured as nonproduct output, of each hazardous substance:

(1) Recycled outside of a production process on-site; and

(2) Recycled outside of a production process off-site;

v. Release data, in pounds, for the quantities of each hazardous substance:

(1) Released to air through stack emissions;

(2) Released to air through fugitive emissions;

(3) Discharged to the waters of the State; and

(4) Generated as other waste streams; and

vi. Quantities of each hazardous substance used at the industrial facility, in pounds, determined by subtracting ending inventory (quantity reported under (c)3iii(1) above) from total inputs (total of quantities reported under (c)3ii(1) through (4) above) for the facility;

4. Facility-level information on pollution prevention reductions:

i. Calculations of the reduction or increase in use of each hazardous substance per facility-wide unit of product as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;

ii. Calculations of the reduction or increase in use of each hazardous substance in comparison to the previous year;

iii. Calculations of the reduction or increase in the generation of each hazardous substance as nonproduct output per facility-wide unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;

iv. Calculations of the reduction or increase in the generation of each hazardous substance as nonproduct output, in comparison to the previous year;

v. Calculations of the reduction or increase in use and use per unit of product, as defined in N.J.A.C. 7:1K-1.5, attributed to the sale of co-products or production of intermediate products which are not the result of pollution prevention techniques, in comparison to the previous year;

vi. Calculations of the reduction or increase in generation of nonproduct output and nonproduct output per unit of product attributed to the sale of co-products or production of intermediate products which are not the result of pollution prevention techniques, in comparison to the previous year;

vii. Calculations of the reduction or increase in multimedia releases, by medium, after recycling and treatment, in comparison to the previous year;

viii. A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the facility-level five-year goals reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)3. Quantities of co-products sold or intermediate products produced by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving pollution prevention goals; and

ix. An identification of the pollution prevention techniques used to achieve each reduction reported under (c)4i through iv above;

5. Information on targeted production processes:

i. An identification of targeted production processes, using a unique identification number assigned by the industrial facility, and indicating whether each process is a grouped process as authorized by N.J.A.C. 7:1K-4.2. The unique identification number assigned to a targeted process cannot be assigned to any other process;

ii. Process-level information on pollution prevention reductions for each hazardous substance within each targeted production process, including, but not limited to:

(1) Calculations of the reduction or increase in use of each hazardous substance within each targeted production process per unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;

(2) Calculations of the reduction or increase in the generation of nonproduct output for each targeted production process per unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;

(3) Calculations of the reduction or increase in use of each hazardous substance and use of each hazardous substance per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products or production of intermediate products from each

targeted production process, which are not the result of pollution prevention techniques, in comparison to the previous year;

(4) Calculations of the reduction or increase in nonproduct output generation per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products or production of intermediate products from each targeted production process, which are not the result of pollution prevention techniques, in comparison to the previous year;

(5) Calculations of the reduction or increase in multimedia releases from each targeted production process, by medium, after recycling and treatment, in comparison the previous year;

(6) A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the process-level five-year goals for each targeted production process reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)5. Quantities of co-products sold or intermediate products produced by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving use reduction or nonproduct output reduction goals;

(7) An identification of the pollution prevention techniques used to achieve each reduction reported under (c)5ii(1) through (5) above;

(8) An indication of whether a Raw Material Substitution Certification was filed as part of the industrial facility's current Pollution Prevention Plan Summary; and

(9) A description of the pollution prevention techniques the owner or operator of the industrial facility intends to implement for each targeted production process during the forthcoming year in order to achieve the use reduction and nonproduct output reduction goals and implementation schedule reported in the facility's current Pollution Prevention Plan Summary;

6. Information on progress which is less than anticipated:

i. If applicable, an explanation of why the facility's annual progress was less than that anticipated in the use reduction and nonproduct output reduction goals and implementation schedule reported in the facility's current Pollution Prevention Plan Summary; and

7. Community Right-to-Know Reporting elements:

i. All information required by N.J.A.C. 7:1G to be reported to the Department on Form DEQ-114 that is not otherwise specifically listed at (c)1 through 6 above.

7:1K-6.2 Department review of Pollution Prevention Plan Progress Reports

(a) The owner or operator of a priority industrial facility shall submit a copy of the industrial facility's Pollution Prevention Plan Progress Report to the Department as required by N.J.A.C. 7:1K-3.1, and shall maintain a copy of the current Pollution Prevention Plan Progress Report for the industrial facility at the industrial facility, where it shall be available for inspection by the Department.

(b) The Department shall use the following review criteria for determining the compliance of Pollution Prevention Plan Progress Report with the provisions of this chapter:

1. A determination of whether the Pollution Prevention Plan Progress Report is administratively complete. Administrative completeness review shall consist of a review by the Department to determine whether the items identified in N.J.A.C. 7:1K-6.1 have been included in the Pollution Prevention Plan Progress Report; and

2. A determination of whether the pollution prevention methods contained in the Pollution Prevention Plan Progress Report pursuant to N.J.A.C. 7:1K-6.1(a)4ix and 6.1(a)5ii(7) and (9) are consistent with the definition of pollution prevention found at N.J.A.C. 7:1K-1.5.

(c) The Department may require the owner or operator of a priority industrial facility to make any revisions or modifications to a Pollution Prevention Plan Progress Report necessary for compliance with the provisions of the Act or this chapter.

(d) If the Department determines that a Pollution Prevention Plan Progress Report submitted by a priority industrial facility is deficient under criterion (b)1 or 2 above, it shall issue a draft administrative order directing the owner or operator to modify the industrial facility's Pollution Prevention Plan Progress Report, as follows:

1. The Department shall prepare a draft administrative order containing a written finding that, based on one or more of the criteria at (b) above, the industrial facility's Pollution Prevention Plan Progress Report does not comply with the provisions of the Act or this chapter. The draft administrative order shall:

i. Identify the section(s) of the Act or this chapter under which the industrial facility's Pollution Prevention Plan Progress Report is deficient;

ii. Concisely describe the deficiencies identified by the Department through its review of the industrial facility's Pollution Prevention Plan Progress Report;

iii. Set forth a timetable for the industrial facility's modification of its Pollution Prevention Plan Progress Report; and

iv. Advise the industrial facility of its right to seek informal review of the findings in the draft administrative order or the financial impact of the draft administrative order pursuant to N.J.A.C. 7:1K-5.2(e)1;

2. The draft administrative order shall be signed by the Director of the Office of Pollution Prevention or his or her designee; and

3. The draft administrative order shall be mailed by the Department to the industrial facility by certified mail.

(e) The procedure for the issuance of a final administrative order directing the owner or operator of a priority industrial facility to modify the industrial facility's Pollution Prevention Plan Progress Report is as follows:

1. If the owner or operator of an industrial facility directed to modify its Pollution Prevention Plan Progress Report believes that the written findings contained in the draft administrative order are incomplete or inaccurate, otherwise disagrees with the Department's written findings, or believes that the ordered modifications will have an adverse financial impact on the industrial facility, he or she may informally appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft administrative order. Such appeal shall identify the specific written finding(s) the owner or operator believes to be incomplete or inaccurate or with which the owner or operator disagrees, and shall include any documentation necessary to support the owner's or operator's claims. If the owner or operator is seeking informal review of the financial impact of the draft administrative order, he or she shall include all financial information necessary for the Department to evaluate the impact of the ordered modifications;

2. The Assistant Commissioner shall review all appeals of draft administrative orders under (e)1 above, and shall either withdraw the draft administrative order, modify and reissue the draft administrative order, or issue a final administrative order within 30 calendar days following receipt of the owner's or operator's appeal; and

3. If the owner or operator of an industrial facility does not appeal the issuance of a draft administrative order directing the industrial facility to modify its Pollution Prevention Plan Progress Report, the draft administrative order becomes a final administrative order on the 30th day following receipt of the draft administrative order by the owner or operator.

(f) All appeals of final administrative orders issued under this section shall be taken in accordance with the procedures at N.J.A.C. 7:1K-12.3. An industrial facility's failure to comply with a final administrative order issued under this section requiring modification of its Pollution Prevention Plan Progress Report is grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12.2 and 12.7.

SUBCHAPTER 7. FACILITY-WIDE PERMITS

7:1K-7.1 Scope and authority

(a) This subchapter constitutes the Department's requirements and procedures for implementing a pilot program for issuing facility-wide permits, as required by N.J.S.A. 13:1D-48.

(b) This subchapter shall apply, to the extent statutorily permissible, to:

1. Incorporating pollution prevention planning by industrial facilities as an element of the Department's permit programs;

2. Establishing permitted release limits using pollution prevention techniques;

3. Consolidating the Department's administrative and procedural requirements for issuing single-media permits;

4. Consolidating the administrative and technical information required by the Department in permit applications; and

5. Developing an integrated data system for tracking use, non-product output and releases from industrial facilities and documenting compliance or non-compliance with the terms and conditions of permits.

(c) The Department may revoke, issue, reissue or modify any permit, certificate, registration, or any other relevant approval issued to the owner or operator of a priority industrial facility by the Department pursuant to N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; or the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. for the purpose of issuing a facility-wide permit.

(d) Any action taken by the Department pursuant to this subchapter to revoke, issue, reissue or modify any permit, certificate, registration or other Departmental approval may be appealed pursuant to the provisions of N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; or the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. as appropriate.

(e) The Department shall use applicable regulatory requirements in developing facility-wide permit conditions. Upon the priority industrial facility's request, the Department may undertake a voluntary, joint effort with the priority industrial facility to develop facility-wide permit conditions that are more stringent than applicable regulatory requirements.

7:1K-7.2 Designation of priority industrial facilities for participation in facility-wide permit program

(a) Within 18 months of the effective date of this subchapter, the Department shall designate no fewer than 10 but not more than 15 individual priority industrial facilities to participate in the facility-wide permit program and to receive a facility-wide permit. Preference for participation in the facility-wide permit program shall be given to facilities that voluntarily participate in the program.

(b) The owner or operator of a priority industrial facility volunteering to participate in the pilot program for facility-wide permitting shall notify the Commissioner of the facility's commitment to volunteer within six months of the effective date of this subchapter. The facility's commitment to volunteer shall be irrevocable, shall be submitted to the Commissioner in writing, and shall be signed by the highest corporate officer with direct operating responsibility for the facility.

(c) Upon receiving a priority industrial facility's commitment to volunteer to participate in the facility-wide permit program, the Department shall evaluate the facility's suitability for receiving a facility-wide permit and shall accept or reject the facility's volunteer commitment. Within one year of the effective date of this subchapter, the Department shall notify the facility of its decision to either designate the facility for participation in the facility-wide permit program or reject the facility's volunteer commitment. This notice shall be in writing by certified mail. The Department's evaluation of a facility's commitment to volunteer in the facility-wide permit program shall be based, at a minimum, on the following considerations:

1. The potential for the priority industrial facility to serve as a Statewide model for multi-media pollution prevention programs;

2. The potential for a priority industrial facility that does not meet industry-wide pollution prevention goals to meet those goals through a facility-wide permit;

3. The potential for a priority industrial facility that has not met the use reduction and NPO reduction goals set forth in its Pollution Prevention Plan to meet those goals through a facility-wide permit;

4. The priority industrial facility's history of compliance or non-compliance with the terms of any permit, certificate, registration or any other relevant Department approval issued to the priority industrial facility;

5. The number and type of permits, certificates, registrations or any other relevant approvals issued by the Department and currently held by the priority industrial facility;

6. The effective date and expiration date of permits currently held by the priority industrial facility;

7. The number and quantity of hazardous substances used, generated or released by the priority industrial facility;

8. Whether anticipated changes in production activities at the priority industrial facility may best be addressed through a facility-wide permit; and

9. The nature of current and future State or Federal statutory and regulatory requirements affecting the priority industrial facility.

(d) If within one year of the effective date of this subchapter, the Department designates fewer than 15 facilities to participate in the facility-wide permit program from those facilities volunteering under (b) above, the Department may designate additional priority industrial facilities to participate in the facility-wide permit program and to receive a facility-wide permit. The Department's designation of additional facilities shall be based on the following considerations:

1. The potential for the priority industrial facility to serve as a State-wide model for multi-media pollution prevention programs;

2. The potential for a priority industrial facility that does not meet industry-wide pollution prevention goals to meet those goals through a facility-wide permit;

3. The potential for a priority industrial facility that has not met the use reduction and NPO reduction goals set forth in its Pollution Prevention Plan to meet those goals through a facility-wide permit;

4. The priority industrial facility's history of compliance or non-compliance with the terms of any permit, certificate, registration or any other relevant Department approval issued to the priority industrial facility;

5. The number and type of permits, certificates, registrations or any other relevant approvals issued by the Department and currently held by the priority industrial facility;

6. The effective date and expiration date of permits currently held by the priority industrial facility;

7. The number and quantity of hazardous substances used, generated or released by the priority industrial facility;

8. Whether anticipated changes in production activities at the priority industrial facility may best be addressed through a facility-wide permit; and

9. The nature of current and future State or Federal statutory and regulatory requirements affecting the priority industrial facility.

(e) Within 18 months of the effective date of this subchapter, the Department shall notify each priority industrial facility which has not volunteered to participate in the facility-wide program pursuant to (b) and (c) above, but which has been designated to receive a facility-wide permit pursuant to (d) above. This notice shall be in writing, by certified mail.

(f) After each priority industrial facility participating in the facility-wide permit program has received notification of its designation to the program, the Department shall prepare and submit to the Legislature a report summarizing the designation process and the progress made to date in establishing a facility-wide permitting program.

7:1K-7.3 Procedures for issuing facility-wide permits

(a) The owner or operator of a priority industrial facility designated to participate in the facility-wide permit program pursuant to N.J.A.C. 7:1K-7.2 shall submit the following to the Department:

1. A complete copy of the most recent Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility, subject to the confidentiality provisions of N.J.A.C. 7:1K-8 through 11; and

2. A facility-wide permit application consisting of information and data, on forms provided by or approved by the Department, for all emissions and discharges from the facility and the management of solid and hazardous wastes, including all information needed to prepare and issue permits, certificates and approvals issued by the Department pursuant to the provisions of N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq; the Water

Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; and the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., as applicable.

(b) The Department shall review the facility's Pollution Prevention Plan and facility-wide permit application to ensure compliance with all applicable requirements of N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; and the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., as applicable.

(c) After the Department determines that the facility's Pollution Prevention Plan and facility-wide permit application are administratively complete, the Department will conduct a technical review and, if necessary, provide comments to the owner or operator of the priority industrial facility within approximately 60 calendar days.

(d) The owner or operator of the priority industrial facility will have approximately 60 calendar days to submit a revised Pollution Prevention Plan and facility-wide permit application addressing the Department's technical comments.

(e) Within approximately 90 calendar days of receiving the revised Pollution Prevention Plan and facility-wide permit application from a facility under (d) above, the Department shall conduct a final administrative review of the facility-wide permit application and shall either:

1. Issue a draft facility-wide permit and a combined public notice in accordance with N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; and the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., as applicable; or

2. Notify the industrial facility that its facility-wide permit application has been denied.

(f) The Department shall provide a minimum 45 day public comment period to receive comments from interested parties on the terms and conditions of the draft facility-wide permit.

(g) The Department may conduct a public hearing on the draft facility-wide permit if it determines that a hearing is required pursuant to N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; or the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., as applicable, or if significant public comments are received requesting that a public hearing be held.

(h) The Department will respond to all significant public comments on the draft facility-wide permit and shall issue a final facility-wide permit, if warranted, within approximately 90 calendar days after the close of the public comment period, and no later than 30 months after the effective date of this subchapter.

(i) The owner or operator of the priority industrial facility may appeal the issuance of the final facility-wide permit pursuant to the provisions of N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; or the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., as applicable.

(j) If, for any reason, the Department does not issue a draft or final facility-wide permit to the owner or operator of the priority industrial facility, the existing permits issued to the owner or operator of the priority industrial facility shall remain in full force and effect pursuant to applicable law.

7:1K-7.4 Reporting findings of the pilot program; potential for expanding the program

(a) Within 36 months of the effective date of this subchapter, the Department shall prepare and submit to the Governor and the Legislature a report analyzing the facility-wide permit program, evaluating the ability of the Department to conduct and expand the facility-wide permit program, and proposing, if warranted, a schedule to expand the applicability of the facility-wide permit program.

(b) The Department shall not issue more than 15 facility-wide permits without specific authorization by law.

SUBCHAPTER 8. CONFIDENTIALITY CLAIMS

7:1K-8.1 Confidentiality of Pollution Prevention Plans

(a) The owner or operator of a priority industrial facility required to prepare a Pollution Prevention Plan under this chapter shall maintain a confidential copy of the industrial facility's Pollution Prevention Plan at the industrial facility for inspection by the Department. Employees of the Department are required to handle confidential information, including the confidential copy of an industrial facility's Pollution Prevention Plan, in accordance with N.J.A.C. 7:1K-11.

(b) If the Department requires a Pollution Prevention Plan to be submitted for review pursuant to N.J.A.C. 7:1K-3.9, the owner or operator of the industrial facility may assert a confidentiality claim for information which he or she believes in good faith to be confidential information by filing a confidentiality claim in accordance with the procedure at N.J.A.C. 7:1K-8.2.

7:1K-8.2 Procedure for making a claim for information contained in Pollution Prevention Plans, Pollution Prevention Plan Summaries, and Pollution Prevention Plan Progress Reports

(a) Any person required to submit information to the Department under this chapter, or to allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department, at the address provided in N.J.A.C. 7:1K-8.4(b), a confidential copy and, upon the Department's request, a preliminary public copy of a Pollution Prevention Plan, Pollution Prevention Plan Summary, or Pollution Prevention Plan Progress Report containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL". The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:1K-8.3.

7:1K-8.3 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:1K-8 through 11. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:1K-8.4(a), be directed to the designee.

7:1K-8.4 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices relating to confidentiality claims under N.J.A.C. 7:1K-8 through 11 to the person designated by the claimant pursuant to N.J.A.C. 7:1K-8.3, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:1K-9.2(a)1ii;

2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:1K-9.5(a);

3. Notices of disclosure under N.J.A.C. 7:1K-10.3; and

4. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:1K-10.6.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following address:

Office of Pollution Prevention
New Jersey Department of Environmental Protection and Energy
CN 423
Trenton, New Jersey 08625-0423

SUBCHAPTER 9. CONFIDENTIALITY DETERMINATIONS

7:1K-9.1 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:1K-11, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or

2. Before taking any action which is inconsistent with the requirements for treatment of confidential information set forth in N.J.A.C. 7:1K-11.

(b) The Department may, in its discretion, make a confidentiality determination at any time.

7:1K-9.2 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:

i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;

ii. That the claimant is required to substantiate the claim in accordance with N.J.A.C. 7:1K-9.3;

iii. The address of the office to which the claimant's substantiation must be addressed;

iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:1K-9.4(a);

v. The method for requesting a time extension under N.J.A.C. 7:1K-9.4(b); and

vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:1K-9.4 shall operate as a waiver of the claimant's claim.

2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:

i. The information which is the subject of the request may be confidential information;

ii. The Department must undertake further inquiry before granting or denying the requester's request; and

iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.

(b) The Department shall send the notice required by (a)1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1K-9.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1K-9.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1K-9.5.

7:1K-9.3 Substantiation of confidentiality claims

(a) If the Department has determined that any assertedly confidential information may be confidential information, and notified the claimant pursuant to N.J.A.C. 7:1K-9.2(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted N.J.A.C. 7:1K-9.4:

1. Measures taken by the claimant to prevent disclosure of the information to others;

2. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;

3. If the Department, the United States Environmental Protection Agency, or any other State or Federal agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;

4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

5. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and

6. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.

(b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this subsection. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

7:1K-9.4 Time for submission of substantiation

(a) The claimant shall submit substantiation within 30 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:1K-9.2(a)1.

(b) The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to (a) above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time, provided, however, that except in extraordinary circumstances, the Department shall not approve such an extension of time in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq. without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.

(c) If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:1K-9.5 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:1K-9.3, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1. The Department shall so notify the claimant 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 claimant of the written notice. The notice shall include a copy of the final public copy to be made available to the public.

2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:1K-9.3, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:1K-11. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state

the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:1K-9.6 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:1K-9.7 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:1K-9.5(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

7:1K-9.8 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:1K-9.9 Class confidentiality determinations

(a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which characteristics would cause the Department to determine consistently that such information is or is not confidential information.

(b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.

(c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

7:1K-9.10 Classes of information which are not confidential information

(a) Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, the following types of information are not confidential information:

1. The name, address and business telephone number of the owner or operator of a transmission pipeline, or of the registered agent of such owner or operator;

2. The name, address and business telephone number of a facility and of its owner or operator and the registered agent of such owner or operator;

3. The types and quantities of hazardous substances present at a facility;

4. Information contained in an administrative order or notice of civil administrative penalty assessment issued under N.J.A.C. 7:1K-3.9 or 7:1K-12;

5. Any other information required to be publicly disclosed pursuant to any other act, administrative rule, or regulation; and

6. Any information for which a trade secret claim is prohibited by N.J.A.C. 7:1G-6.5.

SUBCHAPTER 10. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION OR ASSERTEDLY CONFIDENTIAL INFORMATION

7:1K-10.1 Disclosure of confidential information or assertedly confidential information to other public agencies

(a) The Department may disclose confidential information or assertedly confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;

2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;

3. The other agency has furnished to the Department a written 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 (or allowed the Department to obtain such information) to disclose such information to the requesting agency;

4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information or assertedly confidential information from unauthorized disclosure, and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:1K-11.1 and 11.2, unless:

i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or

ii. The claimant has consented to disclosure of the information by the requesting agency; and

5. The requesting agency agrees not to disclose the information further unless:

i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The claimant has consented to disclosure of the information by the requesting agency.

7:1K-10.2 Disclosure of confidential information or assertedly confidential information to contractors

(a) The Department may disclose confidential information or assertedly confidential information to a contractor, if it complies with the procedure established under (b) below, and if:

1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;

2. The contract provides that the contractor and the contractor's employees shall use the information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, shall not duplicate the information, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and

3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the information.

(b) Before disclosing confidential information or assertedly confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause substantial damage either to the claimant's competitive position or to national security, the Department shall refrain from making the disclosure.

7:1K-10.3 Disclosure of confidential information or assertedly confidential information to physicians or osteopaths

(a) The Department may disclose confidential information or assertedly confidential information to a physician or osteopath when such information is needed for medical diagnosis or treatment if:

1. The physician or osteopath seeking disclosure of confidential information or assertedly confidential information for the purposes of medical diagnosis or treatment makes a written request for disclosure of the information. The written request shall concisely describe the need for the information and shall certify that the information is not available from other sources;

2. The physician or osteopath signs a written agreement with the Department providing that the physician or osteopath and his or her employees shall use the information only for the purpose of medical diagnosis or treatment, shall refrain from disclosing the information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, shall not duplicate the information, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the information) when the confidential information is no longer necessary for medical diagnosis or treatment; and

3. If the claimant so requests, the physician or osteopath signs a written agreement with the claimant to refrain from further disclosure of the information.

(b) Before disclosing confidential information or assertedly confidential information to a physician or osteopath under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the physician or osteopath, and the scheduled date of disclosure.

7:1K-10.4 Disclosure of confidential information or assertedly confidential information for the protection of public health

(a) Notwithstanding any other provision of this chapter, the Department may disclose confidential information or assertedly confidential information to an officer or employee of the State in connection with the official duties of the officer or employee under any law for the protection of public health.

(b) The following procedure shall apply to the disclosure of information by the Department to officers or employees of the State under any law for the protection of public health:

1. The Department shall inform the claimant that the Department is considering using the information in connection with the law for the protection of public health and shall afford the claimant a reasonable time for comment;

2. The claimant shall submit comments concerning the proposed use of the information to the Department within the time alloted pursuant to (b)1 above, including comments which may support a determination that the information is not relevant to the proceeding, or that the disclosure of the information in the proceeding is not necessary to protect the public health;

3. The Department may disclose the confidential information in connection with any law for the protection of public health if, upon consideration of the comments submitted pursuant to (b)1 above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will protect the public health, and that it materially impairs the protection of the public health to limit the use of the information to a manner which preserves its confidentiality.

7:1K-10.5 Notice to claimants of disclosure of confidential information or assertedly confidential information

(a) Promptly after the Department discloses confidential information or assertedly confidential information pursuant to N.J.A.C. 7:1K-10.1 through 10.4, the Department shall notify any claimant from whom the Department has obtained the information of the disclosure. Such notice shall be in writing, and shall contain the following information:

1. The date on which disclosure was made;

2. The name of the agency or other person to which the Department disclosed the information; and

3. A description of the information disclosed.

7:1K-10.6 Disclosure by consent

(a) The Department may disclose confidential information or assertedly confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

7:1K-10.7 Incorporation of confidential information or assertedly confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information or assertedly confidential information into general compilations of information based on industry groups or classifications of hazardous substances which may be subject to disclosure as public records, or for conducting research and preparing reports pursuant to N.J.S.A. 13:1D-45, provided that after consultation with the claimant, the Department has determined 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 confidential information or the identity of the person who supplied it to the Department.

7:1K-10.8 Hearing before disclosure of information for which a confidentiality claim has been made

(a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:1K-12.3.

(b) The Department may deny a request for an adjudicatory hearing under (a) above if:

1. The claimant fails to provide all information required under N.J.A.C. 7:1K-12.3(b);

2. The Department receives the request after disclosure of the assertedly confidential information occurs; or

3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure.

(c) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this N.J.A.C. 7:1K.

(e) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless the Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure.

SUBCHAPTER 11. TREATMENT OF CONFIDENTIAL INFORMATION

7:1K-11.1 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, statute, administrative rule, regulation, order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:1K-10.

7:1K-11.2 Safeguarding of confidential information

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) The Department shall maintain a record of all persons obtaining access to confidential information, including the date and time of, and the reasons for, the access.

(e) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(f) 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.

(g) Department employees, representatives and contractors are prohibited from duplicating confidential information.

7:1K-11.3 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or non-disclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or non-disclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

7:1K-11.4 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential 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. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.

(c) 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; and/or

2. Pursue any other remedy available at law or equity.

(d) 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.

(e) In addition to any other penalty that may be sought by the Department, any officer or employee of the State or contractor of the State who has access to any confidential information, and who willingly and knowingly discloses the confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

SUBCHAPTER 12. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:1K-12.1 Authority, scope and purpose

(a) This subchapter governs the Department's issuance of administrative orders and the assessment and settlement of civil administrative penalties for violations of the Act. In particular, this subchapter establishes ranges of civil administrative penalties for violations of similar type, seriousness, and duration, as required by N.J.S.A. 13:1D-49(d). This subchapter also sets forth the procedures for persons requesting an adjudicatory hearing on an administrative order, notice of civil administrative penalty assessment or confidentiality determination issued under the Act or this chapter.

(b) The Department may assess a civil administrative penalty of not more than $15,000 for each violation of the Act.

(c) Each day during which a violation of the Act continues constitutes an additional, separate, and distinct offense.

(d) Neither the issuance of an administrative order, the assessment of a civil administrative penalty, nor the payment of any civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by the Act, or any other statute or administrative regulation, in connection with the violation of the Act for which the order is issued or the assessment is levied.

7:1K-12.2 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for a violation of the Act, the Department shall, by means of an administrative order and notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single administrative order and notice of civil administrative penalty assessment or in multiple administrative orders and notices of civil administrative penalty assessment. The administrative order and notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, administrative order, or permit violated;

2. Concisely state the facts that constitute the violation of the Act;

3. Specify the amount of the civil administrative penalty assessed; and

4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:1K-12.3.

(b) A notice of assessment of a civil administrative penalty may be issued separately or as part of an administrative order issued pursuant to N.J.S.A. 13:1D-49(b) requiring the alleged violator to take affirmative action to comply with the Pollution Prevention Act or a rule or regulation issued pursuant to the Act.

(c) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case, or when a notice of civil administrative penalty assessment bcomes a Final Order, as follows:

1. If an adjudicatory hearing is not requested pursuant to the procedures in N.J.A.C. 7:1K-12.3, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. If an adjudicatory hearing is requested pursuant to the procedures in N.J.A.C. 7:1K-12.3 but the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or

3. If an adjudicatory hearing is requested pursuant to the procedures in N.J.A.C. 7:1K-12.3 and the Department grants the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

7:1K-12.3 Procedures for requesting and conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, notice of civil administrative penalty assessment or confidentiality determination issued pursuant to the Act or this chapter, the violator or claimant shall submit the information required by (b) below to the following address:

Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Pollution Prevention Program
Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625

(b) To request an adjudicatory hearing to contest an administrative order, notice of civil administrative penalty assessment, or confidentiality determination, the violator or claimant shall submit the following information to the Department:

1. The name, address, and telephone number of the violator or claimant and its authorized representative;

2. If an administrative order or notice of civil penalty assessment is being appealed:

i. The violator's defenses to each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment stated in short and plain terms; and

ii. An admission or denial of each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment. If the alleged violator is without knowledge or

information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends in good faith to deny only a part or a qualification of a finding, the alleged violator shall specify so much of it as is true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the alleged violator denies, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;

3. If a confidentiality determination is being appealed:

i. A concise statement of each factual or legal question alleged to be at issue and its relevance to the Department's confidentiality determination; and

ii. A concise statement of the claimant's or applicant's position on each factual or legal question alleged to be at issue;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

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 physically disabled persons.

(c) If the Department does not receive the hearing request within 20 days after receipt by the violator of an administrative order or notice of civil administrative penalty assessment being challenged, or within 14 days after receipt by the claimant of a confidentiality determination, the Department shall deny the hearing request.

(d) If the violator or claimant fails to include all the information required by (d) above, the Department may deny the hearing request. The Department may grant the violator or claimant an additional 10 days to correct deficiencies in an incomplete adjudicatory hearing request.

(e) All adjudicatory hearings granted under the Act shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:1K-12.4 Civil administrative penalty determination—general

(a) The Department may assess a civil administrative penalty of not more than $5,000 for the first offense, not more than $10,000 for the second offense and not more than $15,000 for the third and each subsequent offense against each violator for each violation of the Act.

(b) Each violation of the Act constitutes a distinct and separate offense.

(c) Each day during which a violation continues constitutes an additional, separate, and distinct offense.

(d) The Department may, in its discretion, assess a civil administrative penalty on the basis of one or more of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the offense(s);

3. The measures taken by the violator to mitigate or remediate the effects of the current offense or to prevent future offenses;

4. The deterrent effect of the penalty; or

5. Other specific mitigating or extenuating circumstances of the violator or offense.

(e) Notwithstanding the provisions of N.J.A.C. 7:1K-12.5 through 12.7, the Department may compromise the amount of a civil administrative penalty assessed under this subchapter on the basis of one or more of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the offense(s);

3. The measures taken by the violator to mitigate or remediate the effects of the current offense and to prevent future offenses; or

4. Other mitigating or extenuating circumstances of the violator or the offense, documented in a manner acceptable to the Department;

5. Any other terms or conditions acceptable to the Commissioner.

(f) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

7:1K-12.5 Civil administrative penalties for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, registration, record or other document submitted or maintained under the Act or any rule, administrative order, or permit issued pursuant to the Act.

(b) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, per act or omission, shall be in an amount of $5,000 for the first offense, $10,000 for the second offense, and $15,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of $1,000 for the first offense, $2,500 for the second offense, and $5,000 for the third and each subsequent offense.

(c) Penalties for false certification or false reporting may include the criminal penalties set forth at N.J.S.A. 2C:28-3.

7:1K-12.6 Civil administrative penalties for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any industrial facility by any authorized Department representative.

(b) The amount of the civil administrative penalty for offenses described in this section shall be $5,000 for the first offense, $10,000 for the second offense, and $15,000 for the third and each subsequent offense.

7:1K-12.7 Civil administrative penalties for failure to comply with final administrative order requiring modification of Pollution Prevention Plan, Plan Summary, or Plan Progress Report

(a) The Department may assess a civil administrative penalty for failure to comply with a final administrative order, issued pursuant to N.J.A.C. 7:1K-3.9, 5.2 or 6.2, requiring modification of a Pollution Prevention Plan, Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report.

(b) The Department shall determine the amount of the civil administrative penalty for offenses described in this section as follows:

1. For failure to comply with a final administrative order requiring an industrial facility to modify its Pollution Prevention Plan, Plan Summary or Plan Progress Report for the purpose of correcting administrative deficiencies, the range of civil administrative penalties shall be $500.00 to $5,000 for the first offense, $1,000 to $10,000 for the second offense, and $5,000 to $15,000 for the third and each subsequent offense, depending on the extent and seriousness of the violation;

2. For failure to comply with a final administrative order requiring an industrial facility modify its Pollution Prevention Plan, Plan Summary or Plan Progress Report to correct its grouping decisions or alter its definition of pollution prevention methods, the civil administrative penalty shall be $100.00 for the first offense, $500.00 for the second offense, and $1,000 for the third and each subsequent offense.

7:1K-12.8 Civil administrative penalties for failure to submit Pollution Prevention Plan for review or untimely submission of Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report

(a) The Department may assess a civil administrative penalty for the following:

i. Failure to comply with the Department's notice under N.J.A.C. 7:1K-3.9 requiring submittal of a Pollution Prevention Plan for review; and

ii. Failure to meet the deadline at N.J.A.C. 7:1K-3.1, as applicable, for submitting a Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Reports to the Department.

(b) The amount of the civil administrative penalty offenses described in this section shall be $500.00 for the first offense, $2,500 for the second offense, and $5,000 for the third and each subsequent offense.

7:1K-12.9 Records of assessments

(a) In order to promote consistency in the application of this subchapter, the Department shall collect and maintain a record of each assessment made pursuant to this subchapter. Such record shall be a public record and shall be kept available for public inspection pursuant to N.J.S.A. 47:1A-1 et seq.

(b) The record shall, at a minimum, include a copy of each notice and all final orders issued pursuant to N.J.A.C. 7:1K-12.2, and the terms of any compromise agreed to pursuant to N.J.A.C. 7:1K-12.4.

7:1K-12.10 Pollution Prevention Fund

The Department shall deposit all penalties collected pursuant to this subchapter into the Pollution Prevention Fund established by N.J.S.A. 13:1D-50.

APPENDIX A

ADDITIONAL HAZARDOUS SUBSTANCES FOR WHICH POLLUTION PREVENTION PLANNING IS REQUIRED

(Reserved)

APPENDIX B

THRESHOLDS FOR POLLUTION PREVENTION PLANNING

(Reserved)

APPENDIX C

NOMENCLATURE

PROCESS DESCRIPTORS

AM-ARTICLE MANUFACTURING PROCESS

Bleaching	Metal treatment (other than plating)
Cleaning—of metal	Painting
Cleaning—paint stripping	Paper manufacturing
Cleaning—of equipment	Paper treatment
Cleaning—other	Photographic film
Coating—adhesive application	manufacturing & processing
Coating—paint application	Plastics molding/casting/extrusion
Coating—other	Printing
Degreasing	Soldering
Dyeing	Stripping
Electroless plating	Tanning
Electroplating	Welding
Etching	Wood pulping
Metal casting	Wood treatment
Metal machining	Similar to
	Other (list)

CP-CHEMICAL PROCESS

Purification	Chemical breakdown
Separation	Chemical conversion
Formulation/blending	Similar
Chemical synthesis	Other

SH-STORAGE AND HANDLING

Above ground tank	Bag
Below ground tank (steel)	Box
Below ground tank (fiberglass)	Cylinder
Tank inside building	Bottles or jugs (glass)
Steel drum	Bottles or jugs (plastic)
Plastic drum	Tote bin
Fiber drum	Tank wagon
Can	Rail car
Carboy	Other (list)
Silo	

DESCRIPTOR MODIFIERS

RT-REACTION TYPE

No reaction	Fermentation
Acylation	Friedel-Crafts
Alkylation	Halogenation
Amination	Hydroformylation
Ammonolysis	Hydrogenation
Aromatization	Hydrolysis
Calcination	Ion exchange
Carboxylation	Isomerization
Causticization	Neutralization
Combustion	Nitration
Condensation	Oxidation
Dehydration	Polymerization
Dehydrogenation	Pyrolysis/cracking
Desulfurization	Reduction
Diazotination & Coupling	Silicate formation
Double decomposition	Sulfonation
Electrolysis	Other (list)
Esterification	

UO-UNIT OPERATIONS

Absorption/adsorption	Ion Exchange
Centrifugation	Melting
Classification	Mixing
Cleaning/degreasing	Packaging
Condensation	Pressurizing
Crystalization	Reaction
Desalting	Screening
Disintegration	Scrubbing
Distillation	Sedimentation
Drying	Separation
Dust Collection	Settling
Evaporation	Soaking/Wetting
Fermentation	Solvent Extraction
Filtration	Spraying/Coating
Grinding/Milling	Stripping
Heat Exchange	Similar to
Humidification	Other (List)

EQ-EQUIPMENT

Adsorption Column	Flash Drum
Aerator Blower	Fractionating Tower
Boiler	Furnace
Centrifuge	Heat Exchanger
Compressor	Holding Tank
Condenser	Mill/Grinder
Cooler	Mixer
Crystalizer	Reactor Vessel
Digester	Refrigeration Unit
Distillation Column	Rinse Tank
Dryer	Scrubber
Evaporator	Separator
Extraction Tower	Settling Tank
Extruder	Stripper
Filter	Other (List)

PF-PHASE/FORM

Gas
Liquid (Coherent)
Solid
Aqueous Solution
Organic Solution
Slurry
Sludge
Emulsion
Powder Fines
Aqueous Acid
Aqueous Base
Metal Product
Polymer Mixer
Crude Petroleum
Refined Fuel/Mixed Hydrocarbon
Unrefined Ore/Minerals
Clay/Cement
Animal Byproducts
Vegetable Byproducts
Wood Chips/Pulp/Byproducts
Similar to
Other (List)

(a)

WATER MONITORING MANAGEMENT
BUREAU OF MARINE WATER CLASSIFICATION AND ANALYSIS

Shellfish Growing Water Classifications

Proposed Readoption With Amendments: N.J.A.C. 7:12

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.
DEPE Docket Number: 45-92-09.
Proposal Number: PRN 1992-460.

Submit written comments, identified by the DEPE docket number above, by November 18, 1992 to:

Richard J. McManus, Esq., Director
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 492
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The rules governing classification of shellfish growing waters, N.J.A.C. 7:12, are scheduled to expire on April 11, 1993 pursuant to Executive Order No. 66(1978). As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed these rules and determined that they remain necessary, reasonable and proper for the purpose for which they were originally promulgated.

N.J.S.A. 58:24-1 requires the Department to inspect places within the State's jurisdiction from which oysters, clams or other shellfish are taken to be distributed or sold for use as food. In conducting these inspections, the Department's purpose is to ascertain the sanitary conditions of these shellfish beds, and to determine whether shellfish from those beds are suitable for use as food. N.J.S.A. 58:24-3 requires the Department to prohibit the taking of shellfish from places in which pollution or other conditions may make the shellfish dangerous to health.

The Department implements these statutory mandates through its Shellfish Growing Water Classification rules, currently codified at N.J.A.C. 7:12. N.J.A.C. 7:12 delineates the areas from which shellfish pose a danger to health. Since 1961, the Department has amended these rules nearly every year, to reclassify shellfish growing waters based upon changes in their conditions.

The rules prohibit the use of shellfish from those areas for the purpose of human consumption, or impose specific conditions on harvesting for that use in order to avoid the danger to health. The Department notes that under the statute, distributing shellfish, selling it, offering it for sale, or having it in possession with the intent to distribute or sell, is prima facie evidence that such shellfish was intended for use as food. N.J.S.A. 58:24-4.

The rule also establishes special permit programs to allow some limited use of shellfish from waters in which the harvest is restricted. The Department made significant changes to the special permit rules in 1990, adding provisions governing hard clam and soft clam depuration (that is, the process that uses a controlled aquatic environment to reduce the levels of bacteria and viruses), and revising other existing provisions of the rules.

A description of the purposes of each subchapter of N.J.A.C. 7:12 follows:

N.J.A.C. 7:12-1 establishes general provisions under which the rules operate, and defines words and terms used throughout N.J.A.C. 7:12.

N.J.A.C. 7:12-2 delineates those waters that are classified as Prohibited. Shellfish from waters classified as Prohibited cannot be harvested for human consumption.

N.J.A.C. 7:12-3 delineates those waters that are classified as Special Restricted. Shellfish from waters classified as Special Restricted may be utilized for human consumption only through one of the Special Permit Programs under N.J.A.C. 7:12-9, which are discussed in more detail below.

N.J.A.C. 7:12-4 delineates those waters that are classified as Approved for the harvest of shellfish for part of the year and classified as Special Restricted for the remainder of the year. Under N.J.A.C. 7:12-4.1, certain waters are classified as Approved from November 1 through the following April 30 of each year. Under N.J.A.C. 7:12-4.2, certain other waters are classified as Approved from January 1 through April 30 of each year. The Department has established these different periods during which waters are classified as Approved based on pollution loadings in the waters.

N.J.A.C. 7:12-5 delineates those waters that are classified as Seasonal Special Restricted for the harvest of shellfish May 1 through September 30 and Prohibited October 1 through April 30 yearly.

N.J.A.C. 7:12-6 is reserved.

N.J.A.C. 7:12-7 allows the Department to establish areas to be utilized for research purposes such as shellfish spawner areas. Spawner sanctuaries are areas to which a large number of adult shellfish have been moved with the expectation that natural repopulation will occur. When the shellfish are moved to a sanctuary from an area classified as Prohibited or Special Restricted, the sanctuary becomes classified in that same category as well.

N.J.A.C. 7:12-8 is reserved.

N.J.A.C. 7:12-9 establishes the Special Permit programs. These programs allow the utilization of shellfish from waters classified Prohibited or otherwise Restricted. Under these programs, the Department issues permits allowing certain uses of shellfish from Special Restricted waters. Those uses may include transplanting, relaying (that is, taking market size shellfish for replanting in approved areas for purification before marketing), depuration, bait harvesting, or scientific research. The premise underlying the transplanting, relaying and depuration special permits is that placing bacterially contaminated shellfish in a clean environment enables them to purge contaminants.

The Department proposes to readopt N.J.A.C. 7:12 with amendments. The proposed amendments revise the classification of certain shellfish beds as the result of surveys conducted by the Bureau of Marine Water Classification and Analysis in the Department.

In conducting these surveys, the Bureau collects and analyzes water samples, inventories actual and potential sources of pollution, and performs hydrographic studies of flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA)) guidelines and regulations as described in the National Shellfish Sanitation Program Manual of Operations (Part I—Sanitation of Shellfish Growing Areas). The FDA further requires that each state annually appraise the quality of those waters classified as "Approved" for the harvest of shellfish. New Jersey conducts scientific investigatory work and research and, pursuant to N.J.S.A. 58:24-1 et seq., revises the rules annually. The reclassifications reflect changes in water quality, and enhanced monitoring.

The proposed amendments will result in the reclassification of approximately 2,031 acres, of which approximately 1,680 acres are to be upgraded, resulting in a net upgrade of approximately 1,329 acres. The majority of this gain is a consequence of improved water quality resulting from a new regional waste water treatment facility coming on-line and the elimination of several back bay discharges. The names of the waterways and number of acres to be reclassified are listed below in general terms (Note: Approved means waters meeting the sanitary requirements to allow year round shellfish harvesting; Seasonal means waters meeting the sanitary requirements for harvesting part of the year; Special Restricted means waters not meeting the sanitary requirements to harvest except by special permit; and Prohibited means waters not meeting the sanitary requirements for shellfish harvesting).

Chart #	Area	Action	Acres
4	Atlantic Ocean	Prohibited to Approved	1,585
8	Strathmere-Ludlam Bay Area	Approved to Seasonal	283
8	Avalon Area	Approved to Special Restricted	68
		Special Restricted to Approved	95

The reclassifications described above continue the general trend of improvement in shellfish water quality. The following table illustrates that trend, listing the increase in acreage under each classification from year to year since 1977 (with decreases in acreage listed in parentheses):

Year	Approved	Seasonal	Special Restricted	Prohibited
1977	(113)	0	0	113
1978	(5,400)	1,280	(524)	4,644
1979	2,733	4,260	0	(6,993)
1980	8,719	5,613	(1,582)	(12,750)
1981	5,080	(1,925)	(206)	(2,949)
1982	150	(346)	(15)	211
1983	2,240	4,460	(273)	(6,427)
1984	5,226	(3,063)	(680)	(1,483)
1985	242	93	(80)	(255)
1986	(853)	(582)	(92)	1,527
1987	(153)	(35)	31,464	(31,276)
1988	(1,405)	1,250	(725)	880
1989	1,411	(766)	(580)	(65)
1990	2,700	3,270	(350)	(5,620)
1991	13,137	(934)	343	(12,546)
1992*	1,329	283	(27)	(1,585)

*Under proposed amendments

In addition to the reclassifications described above, the proposed amendments update the reference to the editions of the charts used to delineate the classification, and also revise the definition of the word "shellfish" to be consistent with the statutory language found at N.J.S.A. 58:24-1 et seq. The proposed amendments also add N.J.A.C. 7:12-2.2, to clarify that shellfish grown in waters classified as Prohibited may not be used for human consumption. Finally, the proposed amendments correct a typographical error and terminology in N.J.A.C. 7:12-5.1.

Social Impact

For the reasons discussed below, the Department believes that N.J.A.C. 7:12 has had a positive social impact. Readopting the chapter will continue that positive impact, and the amendments will enhance the positive impact.

History has shown a direct connection between the consumption of shellfish harvested from contaminated areas and human illness. However, the last major incidence of a shellfish-related illness from New Jersey waters was in 1966. Since then greater emphasis has been placed on the classification of shellfish-producing waters. The National Shellfish Sanitation Program developed a manual of operations that became the guiding document in the sanitary control of shellfish harvest areas. New Jersey expanded the use of the special permit programs in the early 1970s. These programs capitalized on the natural ability of shellfish to purge bacterial contamination when moved from a contaminated site to a clean site. Revisions to the rules governing these programs have been implemented over the years as technology has changed.

Increased public awareness of the extensive shellfish water quality testing and the intensive surveys that comprise the basis for these rules continues to reveal a high regard for New Jersey shellfish quality.

In addition to the more than 13,000 persons licensed to harvest shellfish, the adoption of these amendments would benefit the far greater number of consumers who utilize the shellfish harvested from New Jersey waters. While the downgrading of specific waters may, in limited cases, reduce localized recreational opportunities, the net effect of adopting the amendments will be to increase such opportunities by making more waters available for harvest. The continued monitoring efforts undertaken by the Department insure that the State's shellfish resource remains a wholesome food product, available to both recreational and commercial harvesters.

Economic Impact

For several years, there has been a general trend of improvement in shellfish water quality. In each of the last four years, more acreage has been classified as Approved as a result of improved water quality. Much of the improved water quality has been in areas that have been off limits to shellfishing for several years. The resulting reclassifications have made available a new shellfish resource for harvest and direct marketing.

The shellfish growing water reclassification contained in these amendments represent an increase in the availability of harvest water to shellfishermen. The overall economic impact of these regulatory changes is favorable to the shellfish industry while allowing the Department to fulfill its statutory responsibility to protect the public health.

Environmental Impact

The continuous monitoring of New Jersey's shellfish growing waters benefits the State not only by affording protection from shellfish related disease, but also by serving as an environmental yardstick by which the progress of pollution abatement programs can be measured.

In addition, the demand for increased recreational, residential and commercial facilities in New Jersey's coastal zone continues to present a dilemma to environmental planners. The level of discord associated with the conflicting interests that depend upon publicly owned and managed natural resources can only be expected to increase. Therefore, the need for an objective method of evaluating the impact of man's activities upon complex estuarine and marine systems is increasing. The criteria associated with the National Shellfish Sanitation Program, which forms the basis for these water quality classifications, are but one suggested method that can be utilized to quantify the impact of development.

The proposed amendments represent a tangible measurement of the quality of New Jersey's surface waters as well as providing a historical record for future comparison. The proposed amendments will have a positive environmental impact by sanctioning the extensive monitoring efforts upon which the specific changes herein are based.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments govern the harvesting of shellfish in New Jersey waters. As such, they impose compliance requirements on the more than 13,000 persons licensed to harvest shellfish, the majority of whom could be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These compliance requirements, in large part, concern where and when shellfish can be harvested; in Special Restricted waters, a permit is required.

Under N.J.A.C. 7:12-9.7, reporting, recordkeeping and compliance requirements are imposed on owners/operators of soft clam and hard clam depuration plants. These requirements include notifying the Department of the names of designated harvesters, the areas to be worked and the number of containers issued to each harvester; weekly reporting to the Department concerning purchases from harvesters; and compliance with the depuration requirements at N.J.A.C. 8:13-2.4 and certain container tagging requirements.

Recordkeeping requirements as to daily catches are imposed upon those harvesters participating in bait programs under N.J.A.C. 7:12-9.4

and 9.5. Reports and recordkeeping concerning the number of shellfish involved, and various process requirements, are imposed on persons participating as permittees in the relay, transfer and transplant programs, and the possession and/or plant programs under N.J.A.C. 7:12-9.8 through 9.12.

The costs of these various requirements are largely administrative in nature, and must be incurred by permittees in order for the Department to be able to monitor certain aspects of the shellfish harvest. The need for professional services to be employed to maintain compliance is not anticipated. In developing these rules and the proposed amendments, the Department has balanced the economic impact of the rules against the need to protect the environment, public health and public safety. Since to decrease the economic impact would increase the risks protected against, no lesser requirements or exemptions have been provided based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:12.

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

7:12-1.1 General provisions

(a)-(h) (No change.)

(i) Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Classification and Analysis Offices, Marine Police Stations and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, [81st Edition, March 15, 1986;] **84th Edition, December 7, 1991**; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, [24th Edition, November 1986;] **25th Edition, June 1990**; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, [23rd Edition, January 1987;] **24th Edition, January 1991**; and Number 12304 Delaware Bay, [30th Edition, March 16, 1985.] **33rd Edition, August 10, 1991**. The Department of Environmental Protection **and Energy** hereby condemns all shellfish growing waters as described in this chapter and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year, except when otherwise noted in N.J.A.C. 7:12-4 and 5.

(j) (No change.)

7:12-1.2 Definitions

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

...

"Shellfish" means all [edible] species of oysters, clams or mussels, either shucked or in the shell that are fresh or fresh frozen and whole or in part.

...

7:12-2.1 Shellfish growing water classification—Prohibited

(a) The following shellfish growing waters are classified Prohibited:

1.-19. (No change.)

20. Atlantic Ocean

i.-ii. (No change.)

iii. All of the ocean waters inshore of a line beginning at the three story wood frame building on the beach between Tuna Way and Kittiwake Avenue in the Ocean Beach section of Dover Township with coordinates of latitude 39 degrees 59.3 minutes N., longitude 74 degrees 3.8 minutes W., and bearing approximately 100 degrees T for approximately one nautical mile from the shoreline to a point with coordinates of 39 degrees 59.1 minutes N., longitude 74 degrees 2.5 nautical minutes W., then continuing in a southerly direction one nautical mile offshore **for approximately 4.5 nautical miles** until it intersects a line bearing approximately [132 degrees T from the water tank located on 127 Decatur Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 56.1 minutes N., longitude 74 degrees 04.7 minutes W., then proceeding in a southeasterly direction along that line for approximately 0.6 nautical miles until it intersects a line bearing approximately] 096 degrees T from the water tank located on the corner of Barnegat Avenue and 12th Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 54.9 minutes N., longitude 74 degrees 05.0 minutes West. This point of intersecting lines is approximately [1.5] **one** nautical [miles] **mile** from the shoreline and has coordinates of latitude 39 degrees [54.7] **54.8** minutes N., longitude 74 degrees [0.27] **03.3** minutes West. **Then proceeding in an easterly direction along that line beginning at the water tank for approximately 0.5 nautical miles to a point approximately 1.5 nautical miles from the shoreline with coordinates of latitude 39 degrees 54.7 minutes N., longitude 74 degrees 02.7 minutes West.** The line continues from this point [along] **parallel to** the shoreline in a southerly direction 1.5 nautical miles offshore [until it intersects a line bearing approximately 096 degrees T from] **for approximately 1.1 nautical miles to a point with coordinates of latitude 39 degrees 53.6 minutes N., longitude 74 degrees 02.9 minutes W., then bearing approximately 276 degrees T (reciprocal 096 degrees T) for approximately 1.6 nautical miles to** the cupola located on top of Island Beach State Park's Maintenance Center (the old Coast Guard Station 110), with coordinates of latitude 39 degrees 53.7 minutes N., longitude 74 degrees 04.9 minutes [West. This point of intersecting lines has coordinates of latitude 39 degrees 53.6 minutes N., longitude 74 degrees 02.9 minutes West. The line continues from this point bearing approximately 218 degrees T (reciprocal 038 degrees T) to the first ocean bath house and concession building from the entrance of Island Beach State Park (approximately 3.3 statute miles south of the park's entrance) with coordinates of latitude 39 degrees 51.2 minutes N., longitude 74 degrees 05.2 minutes] W., and terminating.

iv.-xii. (No change.)

7:12-2.2 Use of shellfish grown in waters classified as Prohibited for human consumption

Shellfish grown in waters classified as Prohibited may not be utilized for human consumption.

7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted.

1.-28. (No change.)

29. Avalon area: [i.] That portion of Ingram Thorofare lying south from a line across Ingram Thorofare beginning at [a small ditch on the west side of Ingram Thorofare just north of the 21st Street Bridge and bearing approximately 105 degrees T across the northern tip of a small island to] **the easternmost tip of an unnamed island on the northwest side of Ingram Thorofare and bearing approximately 072 degrees T to** the opposite shore of Ingram Thorofare, then to another line across Ingram Thorofare beginning on the south bank of a small unnamed creek bearing approximately 119 degrees T through Flashing Green light (F1 G 8 ft. "11") and terminating on the opposite shore.

[ii. All of South Channel from a straight line beginning at the easternmost tip of the unnamed island at the confluence of South Channel and North Channel and bearing approximately 115 degrees T to the opposite shore of South Channel to a line that begins at the northernmost point of the unnamed island on the north side of the western entrance to South Channel and bearing approximately 246 degrees T and terminating on the western bank of the entrance to Leonard Thorofare; and

iii. All of Leonard Thorofare.]

30.-33. (No change.)

7:12-4.1 Seasonally Approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1.-7. (No change.)

8. Strathmere Area: Seasonal—Special Restricted May 1 through October 31 yearly. Approved November 1 through April 30 yearly; All that portion of Main Channel and Whale Creek within the area enclosed by a straight line from the north end of the Ocean Drive Bridge, along the western side of the bridge to the portion that opens, then bearing approximately 212 degrees T to the boat ramp located at the end of Bayview Avenue, Strathmere, then along that shoreline to the mouth of Whale Creek, then along the eastern bank of Whale Creek (excluding unnamed tributary) [to the Department maintained marker at the junction with Ludlam Bay, then bearing approximately 305 Degrees T to another Department maintained marker on the opposite bank, then along that shoreline in a northeasterly direction to the mouth of the creek, then along a straight line across Main Channel bearing approximately 026 degrees T to a small ditch on the opposite shore] **and along the eastern shore of Ludlam Bay, across the mouth of Swimming Creek to a Department maintained marker on the western side of the mouth of Swimming Creek and bearing approximately 027 degrees T to a Department maintained marker located on the western side of the mouth of Whale Creek, then across the mouth of Burroughs Hole and along the western shore of Whale Creek to its junction with Flat Creek, then along the southern shore of Flat Creek in a southwesterly direction to a Department maintained marker on the southwest side of the mouth of Burroughs Hole then bearing approximately 309 degrees T to another Department maintained marker on the northern shore of Flat Creek, then along that shoreline in a northeasterly direction to the junction of Flat Creek and Main Channel then in a northwesterly direction to a Department maintained marker on the south side of Main Channel, then bearing approximately 344 degrees T to another Department maintained marker on the eastern side of the mouth of Ben Hands Thorofare,** then along [that] **the** shoreline **of Main Channel** to its point of origin at the Ocean Drive Bridge and terminating.

9.-11. (No change.)

7:12-5.1 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, [Condemned] **Prohibited** Area: October 1 through April 30 yearly)

The Seasonal Special Restricted waters described below shall be [Condemned] **Prohibited** for the harvest of shellfish from October 1 through April [20] **30** yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-9 [and N.J.A.C. 7:17,] during the period of May 1 through September 30 yearly. These waters will not be utilized, that is, will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metal are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by the Department from analyses of ongoing studies.

(a)

DIVISION OF FISH, GAME AND WILDLIFE MARINE FISHERIES ADMINISTRATION

Introduction of Imported or Non-Native Shellfish and Finfish

Proposed New Rules: N.J.A.C. 7:25-11

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 23:2B-6 and 50:1-5.
DEPE Docket Number: 44-92-09.
Proposal Number: PRN 1992-461.

Submit written comments by November 18, 1992 to:
Richard J. McManus
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rules will require anyone wishing to transplant, introduce or lodge shellfish or finfish from another state or country into New Jersey's marine waters to acquire a special mariculture permit from the Commissioner for such importation. The permit process is designed to ensure, to the greatest extent possible, that such introductions will not harm the ecosystem by introduction of disease, parasites or predators, or by overwhelming competition with native organisms. History contains many examples of such harm, from the importation of starlings to the New World for esthetic purposes, to the introduction of gypsy moths for silk production, African bees for honey or MSX with imported oysters.

The permit process established in the proposed new rules will enable the Department to screen proposed introductions and prevent those introductions which risk harm to the ecosystem. Under the proposed new rules at N.J.A.C. 7:25-11.6, persons subject to the permit requirement are required to submit a permit application containing basic information identifying the applicant and the species to be introduced. The proposed new rules also stipulate that if the information provided in the application does not provide a sufficient basis for a determination, the Department may require a detailed impact statement and proposed plan of introduction.

In addition, the applicant is required to submit proof that it has notified the marine resources management agencies of the jurisdiction from which the species is to be imported. The permit will not be issued unless the Commissioner is satisfied that the proposed introduction is suitable.

Permits will expire one year from date of issue. A person may reapply at any time.

N.J.A.C. 7:25-11.9 provides that persons who violate any provision of N.J.A.C. 7:25-11 or any term of a special mariculture permit are liable for penalties under N.J.S.A. 23:2B-14. Such violations would also be grounds for suspension or revocation of a permit.

Social Impact

The proposed new rules are not expected to have a significant social impact. There are very few people who are interested in transplanting, introducing or lodging imported or non-native fish or shellfish in New Jersey marine waters, and most of those who do are already accustomed to consulting with State biologists.

Economic Impact

The proposed new rules may have a significant negative economic impact upon the relatively few persons who transplant, introduce or lodge imported or non-native fish or shellfish into New Jersey's marine waters. The principal cost of complying with the proposed new rules is the cost of preparing the application. Supplying the basic information about the applicant and the species to be introduced will not involve any significant cost; however, the cost of preparing an impact statement and plan of introduction, if required, may involve considerable expense. Costs will vary depending on the species to be introduced, the location from which it comes, the magnitude of the introduction, and the biological complexity of the impact of the introduction.

Protection of the fishing and shellfishing industries from degradation of the marine ecosystem which could result from the improper or unregulated introduction of imported or non-native shellfish and finfish will have a long term positive economic effect. The cost of any necessary remediation associated with introduction gone awry would likely be well in excess of any aforementioned costs associated with the application.

Environmental Impact

These rules will have a positive environmental impact in that they will protect the marine ecosystem from introductions of organisms which can directly destroy native species or can indirectly harm them through more efficacious use of limited food and space resources. The harm that could result from such introductions, from degradation of the water quality to destruction of a resource, is incalculable, and in many instances would be irreversible.

Regulatory Flexibility Analysis

The proposed new rules will apply to anyone seeking to introduce, transplant or lodge imported or non-native shellfish and finfish in New Jersey marine waters. Some of those affected by these rules may be "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these rules, the small business would have to submit an application for a special mariculture permit. In so doing, it is possible that the small businesses would need the services of biologists. It is expected that initial capital costs and annual costs of compliance will be minimal in most, but not all, cases.

The environmental harm risked by the introduction of imported or non-native species is not related to the size of the business which is introducing the species. For this reason, the need to analyze the life cycle, habitat, associated epifauna and the results of any prior introductions of the species remains the same whether the business involved is large or small. Therefore, the Department cannot establish different compliance requirements for small businesses without substantially increasing the risk to the environment.

Full text of the proposed new rules follows:

SUBCHAPTER 11. INTRODUCTION OF IMPORTED OR NON-NATIVE SHELLFISH OR FINFISH

7:25-11.1 Scope

This subchapter constitutes the rules of the Department governing the transplanting, introduction or lodging of imported or non-native fish, as defined at N.J.A.C. 7:25-11.5, into the State's marine waters.

7:25-11.2 Purpose

The purpose of this subchapter is to provide a means to control the introduction of fish and to prevent the introduction of imported or non-native fish (or their pests, pathogens or diseases) into the marine waters of the State, if the introduction may harm the ecosystem through disease, parasites, predators or competition with native organisms.

7:25-11.3 Construction

This subchapter shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5 et seq. and N.J.S.A. 23:2B-1 et seq.

7:25-11.4 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person or entity is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion or application directly involved in the controversy in which such judgment shall have been rendered, and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:25-11.5 Definitions

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

"Applicant" means a person applying for a special mariculture permit under N.J.A.C. 7:25-11.6.

"Council" means the Marine Fisheries Council, established at N.J.S.A. 23:2B-4.

"Fish" means any marine or anadromous animal or plant, or part thereof excepting mammals and birds as defined in N.J.S.A. 23:2B-3.

"Import" means introduce, transplant or lodge from another state or country.

"Mariculture" means the cultivation of fish in a marine environment.

"Marine waters" means all the salt waters of this State as defined in N.J.S.A. 23:2B-3.

"Person" includes, but is not limited to, corporations, companies, associations, societies including non-profit organizations, firms, partnerships, joint stock companies, individuals and government entities.

7:25-11.6 Application for special mariculture permit

(a) A person shall not plant, lodge, introduce or otherwise place in or allow to enter the marine waters of this State any non-native fish or any fish brought directly or indirectly from any other state, Federal zone or foreign nation without a special mariculture permit issued by the Commissioner.

(b) Application for a special mariculture permit shall be made in writing on a form available from the Division which shall include the following:

1. The applicant's name and mailing address;
2. The species of such fish;
3. The location from which they were grown, or are to be immediately taken;
4. The location in which they are to be transplanted, introduced or lodged;
5. The state, zone or country to which their species is native;
6. The source from which they were originally obtained; and
7. Proof of notification, by certified mail, of the proposed introduction to the marine resources management agency of the state, states, Federal zone or nation from which the species is to be taken, no less than 14 days before permit application.

(c) The Commissioner may further require a detailed impact statement and proposed plan of introduction including a description of the organism's life cycle, habitat, associated epifauna, results of any prior introductions of the same species of fish proposed to be introduced and an explanation of the purpose and expected result of the proposed introduction, if the information listed in (b) above does not provide a sufficient basis for the determination required under N.J.A.C. 7:25-11.7(a).

7:25-11.7 Special mariculture permits

(a) In deciding whether to grant or deny the permit required under N.J.A.C. 7:25-11.6, the Commissioner shall consider the following:

1. The application submitted under N.J.A.C. 7:25-11.6(b);
2. The impact statement, if any, submitted under N.J.A.C. 7:25-11.6(c); and
3. Any comments submitted by the state or nation from which the fish is to be imported.

(b) In deciding whether to grant or deny the permit required under N.J.A.C. 7:25-11.6, the Commissioner may consider any other information concerning the species proposed to be introduced, the proposed means of introduction, and ecosystem of the State.

(c) Based on the information considered under (a) and (b) above, and the compliance history of the applicant, the Commissioner shall grant the permit required under N.J.A.C. 7:25-11.6 if he or she determines that there is no reasonable basis to expect that the proposed introduction will:

1. Cause the introduction of disease, predator, competitor, or pest into the marine ecosystem of the State; or
2. Otherwise harm the marine ecosystem of the State.

(d) The special mariculture permit will specify the nature, species, quantity, and location of planting, lodging, introduction, placement or entry of the fish.

(e) The Commissioner may attach to the permit any conditions, including but not limited to the size, time or frequency of the introduction, restrictions on the species or variant or the source thereof, and any special inspection, disease free certification, or quarantine requirements that are reasonably necessary to ensure protection of the marine ecosystem of this State.

(f) Permits shall expire one year from date of issuance.

(g) The containers in which fish to be introduced, planted or lodged in the marine waters of the State are transported shall be tagged to indicate their origin and the special mariculture permit which refers to them.

7:25-11.8 Embargo

In the event that the Commissioner makes a finding that a particular state, Federal zone or foreign nation, or geographical area is so infested with a particular disease or diseases, pest or predator, as to render any importation from that area dangerous to the marine ecosystem of the State, he or she may immediately prohibit all introduction, planting, lodging, placing, or entry of any marine life or of a particular species from that area into this State by providing mail notice to any permittee, at the address provided in accordance with N.J.A.C. 7:25-11.6(b)1 above, who might be affected by such embargo or by any other means reasonably calculated to reach that permittee. In addition, the Commissioner will publish notice of this embargo in the New Jersey Register.

7:25-11.9 Penalties

(a) Any person who plants, lodges, or introduces fish into the marine waters of the State without a special mariculture permit, who otherwise violates any provision of this subchapter, or who violates the terms of such a permit, is liable for penalties prescribed under N.J.S.A. 23:2B-14.

(b) The Department may suspend or revoke a special mariculture permit issued under this subchapter, if the permittee violates any term of the permit or any provision of this subchapter.

7:25-11.10 Hearings

(a) Except as provided in (b) below, prior to the suspension or revocation of any permit, the permittee has the right to a hearing, upon the permittee's request to the Department. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and 52:14F and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) When necessary to protect the public health, safety or welfare, the Department may immediately suspend a permit without a suspension hearing. In that case the hearing shall be conducted on an expedited basis.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Standards for Motor Vehicles With Modified Chassis Height

Proposed Amendment: N.J.A.C. 13:20-37

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:3-5, 39:3-43, 39:5-30 and 39:8-2.

Proposal Number: PRN 1992-463.

Submit written comments by November 18, 1992 to:

Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
25 South Montgomery Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

N.J.A.C. 13:20-37, regarding standards for motor vehicles with modified chassis height, is proposed for amendment. The subchapter being amended was originally adopted by the Division of Motor Vehicles in 1985 (see 16 N.J.R. 2501(a) and 17 N.J.R. 603(a)).

The Division has conducted comprehensive examinations of more than 10,000 vehicles with modified chassis height during the last seven years. More than 60 percent of these vehicles were rejected for serious safety problems involving steering, suspension and/or brake systems. Some of the problems detected were so serious that failure of the equipment in question was imminent. Many of these safety problems were stress related and were caused by the additional loads placed upon the vehicle frames, suspension and steering systems by the use of oversized tires, wheels with offset centerlines and certain lift kit components. In most cases, the degree of the lift and oversizing of tires was directly proportioned to the seriousness and number of safety deficiencies. A 1985 report prepared by the Virginia Department of Motor Vehicles Crash Investigation Team (Special Report Number 4-1985) also indicated that the degree of the lift and the oversizing of the tires is a determining factor as to how the modification will affect braking, handling, override, underride and driver visibility.

In an effort to address the above referenced safety concerns, the test set forth in N.J.A.C. 13:20-37.4 as amended sets forth a mathematical formula by which maximum mechanical lift is calculated for vehicles with modified chassis height. The formula is intended to assure vehicle stability while allowing a reasonable amount of vehicle lift. Three factors are used in the formula: wheel base, wheel track, and a safety factor of 2200. Wheel base and wheel track are key factors in determining vehicle handling characteristics. Assuming all other factors are equal, vehicles with longer wheel bases and wider wheel tracks will be more resistant to rollover. The safety factor of 2200 was chosen to effectuate the purpose of these amendments, that is, highway safety, by limiting vehicle chassis lift to a point that it is unlikely to create vehicle safety problems. Calculations and measurements made during stability tests of thousands of vehicles with modified chassis height indicate that a vehicle which complies with N.J.A.C. 13:20-37.4 as amended would have a lateral stability factor of greater than 1.1 gravitational force. A study conducted by the University of Michigan (UM-HSRI-80-14) in 1980 indicated that stock utility vehicles having a stability factor of 1.1 gravitational force or less turn over at least twice as often as stock utility vehicles having a greater gravitational force. The study also indicated that stock utility vehicles turn over five to 11½ times more often than passenger cars.

The establishment of minimum and maximum bumper heights is being included in these amendments, in N.J.A.C. 13:20-37.3(a)6 as amended, since these standards are critical to assuring that these vehicles do not pose a substantial safety hazard to other members of the monitoring public. Customarily, the raising or lowering of chassis height significantly impacts on the bumper height of these vehicles. In the case of an accident, these modified bumper heights can pose a serious threat to the bodily welfare of occupants of other vehicles. For example, in an accident involving one of these vehicles that occurred on April 1, 1991 on Route 1 in North Brunswick, the Division found that the modified bumper height of a vehicle was the direct cause for the fatality that resulted to the passenger struck by the modified vehicle.

A section-by-section overview of the proposed amendments follows:

A new N.J.A.C. 13:20-37.1 is proposed (the previous provision having been recodified to N.J.A.C. 13:20-37.2 by this proposal). The new section defines various terms which are used in N.J.A.C. 13:20-37.

The proposal recodifies N.J.A.C. 13:20-37.1 to N.J.A.C. 13:20-37.2 and amends that section, which restricts the modification of the original height of motor vehicles, requires the written approval of the Director of the Division of Motor Vehicles with regard to such modification and provides for the possession and exhibition of said written approval by the operators of such modified vehicles. Subsection (a) of the rule as amended provides that no person shall operate on any highway of this State a motor vehicle whose original height has been altered, modified or changed by elevating or lowering the chassis or body from the manufacturer's specifications by use of "shackle lift kits" for leaf springs or by use of lift kits for coil springs or by use of blocks or by an other device or means without the prior written approval of the Director. Proposed subsection (b) of the rule provides that tests to ascertain whether a motor vehicle whose original height has been altered, modified or changed by elevating or lowering the chassis or body from the manufacturer's specifications meets the requirement set forth in N.J.A.C. 13:20-37 shall be conducted by the Division of Motor Vehicles at a site or sites designated by the Director. Proposed subsection (c) of the rule provides that the written approval of the Director must be in the possession of the vehicle operator while the vehicle is being operated on any highway of this State and must be exhibited upon request to any law enforcement officer or employee of the Division of Motor Vehicles.

The proposal recodifies N.J.A.C. 13:20-37.2 to N.J.A.C. 13:20-37.3 and amends that section, which sets forth requirements for motor vehicle approval pursuant to N.J.A.C. 13:20-37. N.J.A.C. 13:20-37.3(a)2 is amended with regard to steering gear ratios, vehicle steering wheel rotation and vehicle turning radius. Paragraph (a)2 as amended provides that vehicle steering gear ratios and the number of turns necessary to rotate the steering wheel from the left stop position to the right stop position shall be in accordance with the original manufacturer's specifications. Paragraph (a)2 as amended also provides that the number of turns of the steering wheel from a straight ahead front tire position to right stop shall be equal to the number of turns of the steering wheel from a straight ahead front tire position to left stop within a tolerance of one-quarter turn. Paragraph (a)2 as amended also provides that no modification of the motor vehicle shall obstruct or limit the turning radius of the motor vehicle.

N.J.A.C. 13:20-37.3(a)3 is amended with regard to the mounting of headlights and taillights. Paragraph (a)3 as amended provides that headlights shall be not less than 22 inches nor more than 54 inches from the level surface upon which the vehicle stands to the center of the lamp. Paragraph (a)3 as amended also provides that taillights shall be not less than 15 inches nor more than 72 inches from the level surface upon which the vehicle stands to the center of the lamp. All lighting equipment must meet the standards of the Society of Automotive Engineers. Stylistic changes are proposed to N.J.A.C. 13:20-37.3(a)4, which pertains to the mounting of license plates. N.J.A.C. 13:20-37.3(a)5 is amended with regard to brake lines and hoses. Paragraph (a)5 as amended provides that brake lines and hoses shall conform to 49 CFR §571.106 and shall be protected from excessive heat and vibration and be installed so as to prevent chafing and undue wear, stress, or unintentional disconnection during operation of the motor vehicle.

N.J.A.C. 13:20-37.3(a)6 is amended with regard to vehicle bumper requirements, and establishes minimum and maximum bumper height standards. Paragraph (a)6 as amended provides that horizontal bumpers are required on the front and rear of the motor vehicle. Paragraph (a)6 as amended also provides that bumpers shall be at least four and one half inches in vertical height, centered on the vehicle's centerline and extend no less than the width of the respective wheel track distances. Bumpers must be securely mounted and be horizontal load bearing bumpers of continuous and substantial construction, attached to the vehicle frame to effectively transfer impact when engaged without buckling. Bumpers shall not have sharp edges or dangerous configurations. Paragraph (a)6 as amended also provides that minimum bumper height from the level surface the vehicle is resting on to the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, shall be no less than 16 inches with the vehicle unladen. Paragraph (a)6 as amended also provides that maximum bumper height from the level surface the vehicle is resting on to the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, shall be no more than 22 inches with the vehicle unladen. Subsection (a)7 of the rule is amended with regard to tires.

N.J.A.C. 13:20-37.3(a)7 as amended provides that all tires on the same axle or on axles less than six feet apart shall be of the same tire size with respect to diameter and width. Each tire shall have a load carrying capacity specified by the tire manufacturer in excess of the intended maximum axle load divided by the number of tires on the axle. Each front tire shall measure a minimum of 60 percent of the tread width of the rear tires. Paragraph (a)7 as amended also provides that tires shall have a sufficient vertical and horizontal clearance so as not to rub on the chassis, body, suspension or other part of the vehicle while being operated.

N.J.A.C. 13:20-37.3(a)8 is amended with regard to the installation of metal protectors or flexible flaps on vehicles. Paragraph (a)8 as amended provides that fenders shall extend the full width of the tires and, for vehicles which have been raised, the vehicle must be equipped with suitable metal protectors or substantial flexible flaps so as to prevent the throwing of dirt, water or other debris on following vehicles. Paragraph (a)8 as amended also provides that the metal protectors or flexible flaps shall be a standard type or design and installed in a manner which complies with the Society of Automotive Engineers Standard J682.

A stylistic change is proposed to N.J.A.C. 13:20-37.3(a)12, which pertains to vehicle turning radius. N.J.A.C. 13:20-37.3(a)13 is amended to establish the maximum permissible increase of vehicle wheel track. Paragraph (a)13 as amended provides that vehicle wheel track may be increased by the use of tires and rims for a maximum total increase of four inches beyond the original manufacturer's specification. Paragraph (a)13 as amended also provides that the use of spacers to increase wheel track is prohibited.

The provision previously contained at N.J.A.C. 13:20-37.3, standards for vehicles with modified height, is proposed for repeal.

The provision previously contained at N.J.A.C. 13:20-37.4, testing, is proposed for repeal.

A new rule at N.J.A.C. 13:20-37.4 is proposed which pertains to maximum combined mechanical and tire lift. The new rule establishes a formula to be used to calculate the maximum mechanical lift for motor vehicles with modified height, and also provides that the outside diameter of the largest tire size available from the original manufacturer as standard or optional equipment for the particular motor vehicle may be increased up to an amount equal to the maximum mechanical lift calculated. The new rule provides that the maximum combined mechanical and tire lift shall be no greater than the sum of the maximum mechanical lift and the lift created by the increased tire size calculated for the particular vehicle. The new rule sets forth that vehicles with modified height will be limited to the maximum combined mechanical and tire lift allowed for the particular chassis used, in accordance with the applicable provisions of the rule, to within a tolerance of one inch. The new rule also provides that in doubtful cases or when the original manufacturer's specified height is unknown or unavailable or when a motor vehicle is assembled without using a particular body and/or chassis, the Director shall determine the allowable maximum height and may issue a permit authorizing the operation of the motor vehicle.

The provision previously contained at N.J.A.C. 13:20-37.5, procedures for testing modified vehicles, is proposed for repeal.

A new rule at N.J.A.C. 13:20-37.5 which pertains to the inspection of motor vehicles with modified height. The new rule sets forth that in addition to the annual motor vehicle inspection required by N.J.S.A. 39:8-1 et seq., each motor vehicle whose original height has been altered, modified or changed by elevating or lowering the chassis or body from the manufacturer's specifications shall be annually inspected to determine the vehicle's continuing compliance with the requirements set forth in N.J.A.C. 13:20-37 at a site or sites designated by the Director as capable of performing inspections to ascertain compliance with N.J.A.C. 13:20-37.

N.J.A.C. 13:20-37.6 is proposed for amendment with regard to certificates of approval. Subsection (a) as amended provides that the Director of the Division of Motor Vehicles may issue a certificate of approval upon the motor vehicle's compliance with the requirements set forth in N.J.A.C. 13:20-37. Proposed subsection (b) provides that motor vehicles with modified height which have been issued a certificate of approval by the Director pursuant to N.J.A.C. 13:20-37 prior to the date on which the amendments to N.J.A.C. 13:20-37 which are embodied in this proposal become effective need not comply with N.J.A.C. 13:20-37.4 (maximum combined mechanical and tire lift); however, such vehicles must comply with all other requirements set forth in N.J.A.C. 13:20-37, including, but not limited to, the requirements imposed by N.J.A.C. 13:20-37.3, no later than 90 days after the date on which the amendments to N.J.A.C. 13:20-37 which are embodied in this proposal become effective.

N.J.A.C. 13:20-37.7, which pertains to denial, revocation or suspension of certificates of approval, is proposed for amendment. The rule as amended provides that upon notice and an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and N.J.A.C. 13:19-1, the Director shall deny any application for a certificate of approval or revoke or suspend any certificate of approval issued pursuant to N.J.A.C. 13:20-37 for any failure to comply with or failure to continuously remain in compliance with any of the standards or requirements set forth in N.J.A.C. 13:20-37.

A new rule N.J.A.C. 13:20-37.8 is proposed which pertains to vehicle registration and driving privilege suspensions imposed as a result of noncompliance with the requirements set forth in N.J.A.C. 13:20-37. Proposed subsection (a) provides that any person who owns a motor vehicle which has been altered, modified or changed from its original height by elevating or lowering the chassis or body from the manufacturer's specifications without meeting the requirements set forth in N.J.A.C. 13:20-37 shall be subject, upon notice and an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and N.J.A.C. 13:19-1, to a suspension of said vehicle's registration. Subsection (a) also provides that a registration suspension imposed pursuant to N.J.A.C. 13:20-37.8(a) shall remain in effect until such time

as the Director ascertains that the vehicle meets the requirements set forth in N.J.A.C. 13:20-37. Proposed subsection (b) provides that any person who owns a motor vehicle which has been altered, modified or changed from its original height by elevating or lowering the chassis or body from the manufacturer's specifications without meeting the requirements set forth in N.J.A.C. 13:20-37 shall be subject, upon notice and an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and N.J.A.C. 13:19-1, to a suspension of his or her driving privileges for a period not to exceed six months.

Social Impact

The proposed amendments will have a beneficial social impact in that the rules contained in N.J.A.C. 13:20-37 as amended enhance highway safety. The standards for motor vehicles with modified chassis height, as amended, are intended to ensure that such vehicles are properly equipped and inspected so that they may be operated on the public roadways in a safe manner. The requirements set forth in N.J.A.C. 13:20-37 as amended are designed to ensure that the center of gravity of a motor vehicle with modified chassis height is not raised to such a height as to cause the vehicle to be unstable or roll over while being operated on the public roadways. The requirement set forth in N.J.A.C. 13:20-37.3(a)6 as amended, which mandates that a motor vehicle with modified chassis height be equipped with front and rear bumpers no less than 16 inches nor more than 22 inches in height from the level surface the vehicle is resting on, is intended to reduce the possibility of vehicle "override" (that is, where a modified chassis height vehicle comes to rest on top of a non-modified vehicle as a result of a motor vehicle accident), and is also intended to reduce the possibility of vehicle "underride" (that is, where a non-modified vehicle comes to rest beneath a modified chassis height vehicle as a result of a motor vehicle accident). The proposed amendments have no social impact upon the Division of Motor Vehicles.

Economic Impact

The proposed amendments have an economic impact upon persons who own motor vehicles with modified chassis height which do not conform to the requirements set forth in N.J.A.C. 13:20-37 as amended. Such persons will incur the expense of placing the vehicle in compliance with the requirements of N.J.A.C. 13:20-37. The Division anticipates that the most common expense that the owners of such non-conforming vehicles will incur will involve bumper modification in order to comply with the bumper requirements (including minimum and maximum height of same) imposed by N.J.A.C. 13:20-37.3(a)6 as amended.

Pursuant to N.J.A.C. 13:20-37.6(b), motor vehicles with modified height which have been issued a certificate of approval by the Director pursuant to N.J.A.C. 13:20-37 prior to the date on which the amendments to N.J.A.C. 13:20-37 which are embodied in these amendments become effective need not comply with N.J.A.C. 13:20-37.4 (maximum combined mechanical and tire lift); however, such vehicles must comply with all other requirements set forth in N.J.A.C. 13:20-37, including, but not limited to, the requirements imposed by N.J.A.C. 13:20-37.3, no later than 90 days after the date on which the amendments to N.J.A.C. 13:20-37 which are embodied in this proposal become effective. The owners of such vehicles which do not conform to such requirements will incur the expense of placing the vehicles in compliance.

The Division of Motor Vehicles will continue to incur expenses in connection with testing motor vehicles with modified chassis height to ascertain compliance with the requirements set forth in N.J.A.C. 13:20-37. However, the testing expenses incurred by the Division should decrease as a result of the amendments, since less time will be required to conduct such testing due to the fact that vehicle stability will be ascertained through simple measurements of the vehicle as opposed to the previously utilized time consuming stability test. The Division should also realize a cost savings with reference to the maintenance, calibration and repair of vehicle weighing equipment, since such equipment will no longer be needed to test vehicles with modified chassis height as a result of the proposal. The Division will incur costs in connection with undertaking vehicle registration and driver license suspension action against persons who own motor vehicles with modified chassis height which fail to comply with the requirements set forth in N.J.A.C. 13:20-37.

Regulatory Flexibility Statement

The proposed amendments will impact small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., if such businesses own and operate motor vehicles with modified chassis height. Such motor vehicles will be required to comply with the requirements set forth in N.J.A.C. 13:20-37 as amended, and a small business which owns and operates such a vehicle which does not comply with those requirements will presumably incur costs in connection with modifying the vehicle so as to place it in compliance. The Division of Motor Vehicles does not know the cost small businesses will incur to bring non-complying motor vehicles with modified chassis height into compliance with N.J.A.C. 13:20-37 as amended, nor does the Division know whether professional services will be required to facilitate compliance. Such costs and the need for professional services will be dictated by the extent to which the vehicle fails to comply with the requirements set forth in N.J.A.C. 13:20-37 as amended, and the extent to which the vehicle must be modified to bring it into compliance. Since the purpose of the standards for motor vehicles with modified chassis height as amended herein and of the testing conducted by the Division to ensure compliance with those standards is to foster highway safety in regard to the operation of such vehicles, a differentiation in the requirements imposed by N.J.A.C. 13:20-37 predicated upon size of business cannot be provided. The amendments do not impose recordkeeping requirements.

The amendments will impact small businesses which manufacture "after-market" motor vehicle parts which are used to modify motor vehicle chassis height only if such parts cannot be utilized on vehicles without placing them in non-compliance with the requirements set forth in N.J.A.C. 13:20-37. The sales of after-market motor vehicle parts will presumably be impacted if such parts cannot be used on a vehicle without placing the vehicle in non-compliance with N.J.A.C. 13:20-37. However, it is anticipated that most affected small businesses also produce parts which may be used by owners of vehicles with modified chassis height in lieu of the non-complying parts, thereby reducing or negating a reduction in parts sales. The purpose of the amendments is to promote highway safety by establishing requirements for motor vehicles with modified chassis height which will ensure vehicle stability during operation, decrease the likelihood of vehicle roll over and reduce the possibility of premature degradation of vehicle steering and suspension components. Notwithstanding the potential negative impact which the amendments will have on the sales of certain motor vehicle after-market parts, the interest of the public in terms of highway safety reflected by the amendments far outweighs the potential negative impact on after-market parts sales which may affect certain small businesses. Accordingly, an exemption from the requirements of N.J.A.C. 13:20-37 with regard to "after-market" parts manufactured by small businesses for motor vehicles with modified chassis height is neither warranted nor appropriate.

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

SUBCHAPTER 37. STANDARDS FOR MOTOR VEHICLES WITH MODIFIED CHASSIS HEIGHT

13:20-37.1 Definitions

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

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Mechanical lift" means a modification or alteration of the chassis, suspension or body, which affects the height of a motor vehicle, by any means exclusive of tires, rims, and load.

"Original equipment" means any items of motor vehicle equipment, inclusive of tires, which were installed in or on a motor vehicle or available by option for the particular vehicle from the original manufacturer at the time of its delivery to the first purchaser.

"Original height" means the highest distance inclusive of the largest tires and highest suspension available as standard or optional equipment for the particular vehicle from the original manufacturer. The distance shall be measured between the lowest edge of the centerline of the operator's door with the door closed, or to the lowest point where the door would meet the body on vehicles without doors, or to the lowest point on the floor panel directly below the operator's position on vehicles designed without doors, and the level surface on which the unladen vehicle rests.

"Original manufacturer" means any company engaged in the manufacture or assemblage of motor vehicles which comply with all

applicable United States Department of Transportation regulations for delivery to the first purchaser.

"Tire lift" means the lift created by any tires mounted on a motor vehicle in excess of the largest tire size available from the original manufacturer as standard or optional equipment for the particular motor vehicle.

"Wheel base" means the shortest distance between the center of the front axle and the center of the rear axle.

"Wheel track" means the shortest distance between the centers of the tire treads on the same axle. The widest distance shall be calculated on vehicles having dissimilar track widths.

13:20-[37.1]**37.2** Modification of **original** height of motor vehicle restricted; **written** approval of the [director] **Director; possession and exhibition of written approval**

(a) No person shall operate on any highway of this State any motor vehicle whose **original** height has been altered, modified or changed by elevating or lowering the chassis or body from the manufacturer's specifications by use of "shackle lift kits" for leaf springs or by use of lift kits for coil springs or **by use of** blocks or **by** any other device **or means** without the prior written approval of the [director] **Director**.

(b) Tests to ascertain whether a motor vehicle whose original height has been altered, modified or changed by elevating or lowering the chassis or body from the manufacturer's specifications meets the requirements set forth in this subchapter shall be conducted by the Division of Motor Vehicles at a site or sites designated by the Director.

(c) The written approval of the Director required by this section shall be in the possession of the vehicle operator while the vehicle is being operated on any highway of this State and shall be exhibited to any law enforcement officer or employee of the Division of Motor Vehicles upon request.

13:20-[37.2]**37.3** Requirements for motor vehicle approval

(a) To be approved **pursuant to this subchapter,** a **motor** vehicle shall meet the following standards:

1. (No change.)

2. [The steering wheel shall move not less than two turns nor more than six turns, and shall remain unobstructed when turning from stop to stop.] **Steering gear ratios and the number of turns necessary to rotate the steering wheel from the left stop position to the right stop position shall be in accordance with the original manufacturer's specifications.** The number of turns **of the steering wheel from a straight ahead front tire position** to right stop shall be equal to the number of turns **of the steering wheel from a straight ahead front tire position** to left stop[.] **within** [A] **a** tolerance of one-quarter turn [is permitted]. **No modification of the motor vehicle shall obstruct or limit the turning radius of the motor vehicle.**

3. Headlights shall be [no lower] **not less** than [24] **22** inches nor [higher] **more** than 54 inches from the [ground] **level surface upon which the vehicle stands** to the center of the lamp. Taillights shall be [no lower] **not less** than 15 inches nor more than 72 inches from the [ground] **level surface upon which the vehicle stands** to the center [line] of the lamp. All lighting equipment must meet the standards of the Society of Automotive Engineers.

4. License plates shall be [no lower] **not less** than 12 inches nor [higher] **more** than 48 inches from the ground. N.J.S.A. 39:3-33.

5. Brake lines and hoses shall conform to 49 C.F.R. §571.106 and shall be protected from excessive heat and vibration and be installed so as to prevent chafing **and undue wear, stress, or unintentional disconnection during operation of the motor vehicle**.

6. **Horizontal bumpers are required on the front and rear of the motor vehicle. Bumpers shall be at least four and one half inches in vertical height, centered on the vehicle's centerline and extend no less than the width of the respective wheel track distances.** [Where the vehicle was originally equipped by the manufacturer with bumpers, all] **All** bumpers must be securely mounted [, extend across the full width of the vehicle] and be horizontal load bearing bumpers **of continuous and substantial construction,** attached to the vehicle frame to effectively transfer impact when engaged **without buckling.** Bumpers shall not have sharp edges or dangerous configurations. [Bumpers shall be mounted to be no lower than 16 inches from the ground to the bottom of the bumper.] **Minimum bumper height from the level surface the vehicle is resting on to the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, shall be no less than 16 inches with the vehicle unladen. Maximum bumper height from the level surface the vehicle is resting on to the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, shall be no more than 22 inches with the vehicle unladen.**

7. All tires on the same axle or on axles less than six feet apart shall be of the same tire size with respect to diameter and width. Each tire shall have a load carrying capacity specified by the tire manufacturer in excess of the intended maximum axle load divided by the number of tires on the axle. Each front tire shall measure a minimum of 60 percent of the tread width of the rear tires. Tires shall have a [minimum four inch] **sufficient** vertical [clearance] and [two inch] horizontal clearance so as not to rub on the chassis, body, suspension or other part of the vehicle while being operated.

8. Fenders shall extend the full width of the tires [or] **and, for vehicles which have been raised,** the vehicle must be equipped with suitable metal protectors or substantial flexible flaps so as to prevent the throwing of dirt, water or other debris on following vehicles. The metal protectors or flexible flaps shall be [of such] **a** standard type or design and installed in [such] **a** manner [as shall be approved by the director and shall conform substantially to any requirement of the Interstate Commerce Commission governing similar subject matter] **which complies with the Society of Automotive Engineers Standard J682, incorporated herein by reference.**

9.-11. (No change.)

12. Release of the steering wheel while the vehicle is in a sharp turn at a speed of between five to [ten] **10** miles per hour [will] **must** result in a distinct tendency for the vehicle to increase its turning radius.

13. [The weight distribution between the two sides of an empty vehicle on level ground shall not exceed 45 percent/55 percent.] **The wheel track may be increased by the use of tires and rims for a maximum total increase of four inches beyond the original manufacturer's specification. The use of spacers to increase wheel track is prohibited.**

[13:20-37.3 Standards for vehicles with modified height

(a) If a motor vehicle has been raised more than four inches beyond the manufacturer's specifications, it must be tested to verify that it can withstand the lateral standard established by the Director of the Division of Motor Vehicles.

(b) For testing passenger or utility type vehicles the standard is 1.1 gravitational force or more.

(c) For testing pickup trucks the standard is 1.1 gravitational force or more.

(d) Vehicles that have not been raised more than four inches may be approved provided they comply with the standards set forth at N.J.A.C. 13:20-37.2.

13:20-37.4 Testing

Tests shall be conducted by the Division of Motor Vehicles at sites to be designated by the Director using the procedures and equation set forth at N.J.A.C. 13:20-37.5]

13:20-37.4 Maximum combined mechanical and tire lift

(a) The maximum mechanical lift for motor vehicles with modified height shall be calculated by multiplying the wheel base times the wheel track, and dividing the product by a safety factor of 2200 (for example, 88 inch wheel base × 50 inch wheel track = 4400; 4400 divided by 2200 = 2 inch maximum mechanical lift). The outside diameter of the largest tire size available from the original manufacturer as standard or optional equipment for the particular motor vehicle may also be increased up to an amount equal to the maximum mechanical lift calculated.

(b) The maximum combined mechanical and tire lift shall be no greater than the sum of the maximum mechanical lift and the lift created by the increased tire size calculated for the particular vehicle.

(c) Vehicles with modified height shall be limited to the maximum combined mechanical and tire lift allowed for the particular chassis used, in accordance with the applicable provisions of (a) and (b) above, to within a tolerance of one inch (for example, a vehicle having a 65 inch wheel track, 105 inch wheel base, and an original manufacturer's door height of 21 inches is allowed a maximum combined mechanical and tire lift of four inches above the original manufacturer's door height: accordingly, the lowest edge of the centerline of the operator's door with the door closed, or the lowest point where the door would meet the body on vehicles without doors, or the lowest point on the floor panel directly below the operator's position on vehicles designed without doors may not exceed 25 inches above the level surface upon which the unladen vehicle rests to within a tolerance of one inch). Fractions shall be excluded in all measurements and final calculations.

(d) In doubtful cases, or in any case where the original manufacturer's specified height is unknown or unavailable, or where a motor vehicle is assembled without using a particular body and/or chassis (for example, homemade), the Director of Motor Vehicles shall determine the allowable maximum height and may issue a permit authorizing the operation of the motor vehicle.

[13:20-37.5 Procedure for testing modified vehicles

(a) The track width of the front and rear axles shall be measured from the centers of the tread of the outermost tires on the same axle. The front track width shall be added to the rear track width and the sum shall be divided by two to give the average track width.

(b) The side to side weight distribution shall be calculated with the vehicle empty on level ground. The distribution shall not exceed 45 percent/55 percent as set forth in N.J.A.C. 13:20-37.2.

(c) One side of the vehicle should be raised to a static relative angle of 15 degrees ± 1/2 degrees from horizontal.

(d) The weight of the vehicle shall be measured on the unraised side.

(e) The maximum permissible weight on the unraised side is 62.4 percent of the total vehicle weight multiplied by twice the unraised side's weight percentage as determined in (b) above.]

13:20-37.5 Inspection of motor vehicles with modified height

In addition to the annual motor vehicle inspection required by N.J.S.A. 39:8-1 et seq., each motor vehicle whose original height has been altered, modified or changed by elevating or lowering the chassis or body from the manufacturer's specifications shall be annually inspected to determine the vehicle's continuing compliance with the requirements set forth in this subchapter at a site or sites designated by the Director as capable of performing inspections to ascertain compliance with this subchapter.

13:20-37.6 Certificate of approval; **compliance requirements**

(a) The Director may issue a certificate of approval upon the motor vehicle's compliance with the requirements set forth in this subchapter.

(b) Motor vehicles with modified height which have been issued a certificate of approval by the Director pursuant to this subchapter prior to the effective date of the amendment of this subchapter need not comply with N.J.A.C. 13:20-37.4 (maximum combined mechanical and tire lift). However, such vehicles must comply with all other requirements set forth in this subchapter, including but not limited to the requirements imposed by N.J.A.C. 13:20-37.3, no later than 90 days after the effective date of the amendment of this subchapter.

13:20-37.7 [Denied or] **Denial,** revocation **or suspension** of **certificate of** approval

Upon notice and an opportunity [for a hearing] **to be heard** pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., [and] the Uniform Administrative **Procedure** Rules [of Practice], N.J.A.C. 1:1[-1 et seq.], **and N.J.A.C. 13:19-1**, the [director] **Director** shall deny any application for a certificate of approval or revoke or suspend any certificate of approval issued [under] **pursuant to** this subchapter for any failure to comply with or failure to continuously remain in compliance with any of the standards or requirements set forth in this subchapter.

13:20-37.8 Noncompliance; suspension of vehicle registration; suspension of driving privileges

(a) Any person who owns a motor vehicle which has been altered, modified or changed from its original height by elevating or lowering the chassis or body from the manufacturer's specifications without meeting the requirements set forth in this subchapter shall be subject, upon notice and an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and N.J.A.C. 13:19-1, to a suspension of said vehicle's registration. A registration suspension imposed pursuant to this subsection shall remain in effect until such time as the Director ascertains that the vehicle meets the requirements set forth in this subchapter.

(b) Any person who owns a motor vehicle which has been altered, modified or changed from its original height by elevating or lowering the chassis or body from the manufacturer's specifications without meeting the requirements set forth in this subchapter shall be subject, upon notice and an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and N.J.A.C. 13:19-1, to a suspension of his or her driving privileges for a period not to exceed six months.

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
Notice of Comment Period Extension
Toy and Bicycle Safety
Proposed New Rules: N.J.A.C. 13:45A-24

Take notice that the Division of Consumer Affairs has extended the public comment period for the proposed new rules regarding toy and bicycle safety, N.J.A.C. 13:45A-24, published in the September 8, 1992 New Jersey Register at 24 N.J.R. 3019(b), from October 8, 1992 to November 2, 1992.

Submit written comments by November 2, 1992 to:

Emma N. Byrne, Director
Division of Consumer Affairs
P.O. Box 45027
Newark, New Jersey 07101

(b)

NEW JERSEY RACING COMMISSION
Casino Simulcasting
Proposed New Rules: N.J.A.C. 13:72

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Authority: Casino Simulcasting Act, P.L.1992, c.19; N.J.S.A. 5:5-30.

Proposal Number: PRN 1992-457.

Submit written comments by November 18, 1992 to:

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The agency proposal follows:

Summary

The primary objective of this proposal is to establish the rules and regulations necessary for casino licensees and sending racetracks to implement casino simulcasting which was authorized by the Casino Simulcasting Act, P.L.1992, c.19, approved June 12, 1992. Section 20 of the Casino Simulcasting Act, N.J.S.A. 5:12-210, provides that the Racing Commission and the Casino Control Commission ("Casino Control Commission" or "Commission") shall individually and jointly promulgate and adopt any rules and regulations which are required to effectuate the purposes of the Casino Simulcasting Act.

This proposal creates a new chapter, N.J.A.C. 13:72, which generally establishes the rules governing casino simulcasting. This chapter is being jointly proposed by the Commission elsewhere in this issue of the New Jersey Register as N.J.A.C. 19:55. In addition to N.J.A.C. 19:55, the Commission is individually proposing amendments to existing chapters of its rules necessary for casino licensees to: implement casino simulcasting; to permit the conduct of authorized games other than slot machines in casino simulcasting facilities; and to require the equal employment officer of each casino licensee which conducts casino simulcasting to undertake good faith efforts to comply with the requirement in the Casino Simulcasting Act to accord first preference for employment, in comparable positions available in casino simulcasting facilities, to any eligible employees at the Atlantic City Racetrack who may lose employment as a result of implementation of casino simulcasting. The latter amendments, which the Commission is proposing in the Register simultaneous with the joint proposal, reflects the joint efforts of the Commission and the Division of Gaming Enforcement. The rules being proposed jointly, N.J.A.C. 13:72 as concerns the Racing Commission and N.J.A.C. 19:55 as concerns the Commission, reflect the joint efforts of the Racing Commission and Commission.

N.J.A.C. 13:72 contains nine subchapters. Subchapter 1 sets forth definitions and generally provides that, except as provided therein and as otherwise provided in the Casino Simulcasting Act, the rules of racing and conduct of pari-mutuel wagering in casino simulcasting facilities and hub facilities shall be subject to the regulations of the Racing Commission.

Subchapter 2 addresses the conduct of casino simulcasting. N.J.A.C. 13:72-2.2 requires that unless permission is obtained from the Racing Commission and Commission to do otherwise, casino simulcasting shall be conducted through a hub facility, which is defined in N.J.A.C. 13:72-1.1. N.J.A.C. 13:72-2.3 and 2.4 concern the receipt of races from in-State and out-of-State sending tracks, and N.J.A.C. 13:72-2.5 addresses agreements between casino licensees and sending tracks. The latter section expressly provides that such agreements may be negotiated by an entity jointly established by casino licensees. It further requires that all such agreements provide for manual merging (as defined in N.J.A.C. 13:72-1.1) in the event of a systems or communications failure and that such agreements additionally set forth a procedure, acceptable to the Racing Commission and Commission, which shall be followed in the event manual merging is not possible. N.J.A.C. 13:72-2.7 provides that a casino simulcasting facility may be open during permitted hours of casino operation. While there is no requirement that casino simulcasting be conducted on a given day in order for a casino simulcasting facility to be open, N.J.A.C. 13:72-2.3 requires that a casino simulcasting facility accept all races which New Jersey racetracks elect to send to them as a condition of continued operation of casino simulcasting. These requirements, together with N.J.S.A. 5:12-195, which requires in-State racetracks to conduct a minimum number of live racing programs in order to participate in casino simulcasting, will ensure that casino simulcasting is conducted in casino simulcasting facilities on most days, even if the casino licensees operating the facilities elect to receive races only from the in-State racetrack. A casino licensee may conduct authorized games other than slot machines in the simulcasting facility after casino simulcasting has ceased during permitted hours of casino operations.

Subchapter 2 further provides that a winning pari-mutuel ticket purchased at a casino simulcasting facility may be presented for cashing at a pari-mutuel window at that facility or any in-State racetrack which conducted pari-mutuel wagering on the same race. Similarly, a winning pari-mutuel ticket purchased at an in-State racetrack may be cashed at any casino simulcasting facility which conducted pari-mutuel wagering on the same race. N.J.A.C. 13:72-2.12 provides that a pari-mutuel ticket expires six months from the date of its sale, after which it becomes an outstanding pari-mutuel ticket to be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund for distribution in accordance with the provisions of the Casino Simulcasting Act.

Subchapter 3 concerns the casino simulcasting facility. It provides that the casino simulcasting facility shall be comprised of a contiguous area which may be adjacent to, but which shall not be part of, the casino room. Barriers within the facility may be constructed, subject to Commission approval, to maximize efficiency in operations and patron comfort. N.J.A.C. 13:72-3.1 requires that the facility be of sufficient square footage to permit optimum security and surveillance, as well as viewing of simulcast races in a manner which is not obtrusive to the conduct of authorized games.

Subchapter 4 concerns pari-mutuel pool and related matters. N.J.A.C. 13:72-4.1 and 4.2 provide for the commingling of simulcast wagers with in-State and out-State sending tracks. N.J.A.C. 13:72-4.2 further provides that, with the prior approval of the Racing Commission and the concurrence of an out-of-State sending track, a casino licensee may form an interstate common pool with receiving tracks or entities in other states other than the state in which the sending track is located. N.J.A.C. 13:72-4.3 requires that, absent prior approval of the Racing Commission and Commission, a transmission line be a dedicated line. N.J.A.C. 13:72-4.7 and 4.9 require that wagering cease and pari-mutuel machines lock at off-time, as defined in N.J.A.C. 13:72-1.1, and N.J.A.C. 13:72-4.8 provides that no ticket may be issued after the totalisator has been locked or wagering has ceased, whichever occurs first.

N.J.A.C. 13:72-4.13 sets forth procedures to be followed in the event pari-mutuel machines are closed before off-time. N.J.A.C. 13:72-4.14 provides that overpays resulting from a totalisator error shall be borne by the operator of the totalisator causing the error, and N.J.A.C. 13:72-4.15(b) permits an operator of a totalisator which is required, due to a malfunction of the totalisator, to purchase "lost" tickets to credit any losing tickets it is required to purchase to the extent of any winning tickets similarly purchased. Any "profit" from the tickets "lost" in the totalisator is to be paid to the Racing Commission for deposit in the Casino Simulcasting Special Fund.

N.J.A.C. 13:72-4.15(a) provides that, in the event of an irreparable breakdown of the totalisator during wagering on a race, wagering on the race shall be declared closed and pay-offs shall be calculated based upon the amounts wagered at the time of the breakdown. N.J.A.C. 13:72-4.17 provides that, in the event of a transmission failure, casino simulcasting facilities and sending tracks shall attempt to manually merge any wagers which have been accepted but not transmitted. Notice to patrons of manual merging and commingling procedures is required by N.J.A.C. 13:72-4.17 and 4.18.

Subchapter 5, N.J.A.C. 13:72-5.1, requires that all employees of casino simulcasting facilities, including those persons engaged in wagering-related activities, as mandated by the Casino Simulcasting Act, be licensed or registered in accordance with Commission regulations.

Subchapter 6 concerns the licensing and registration of casino service industries. N.J.A.C. 13:55-6.1 requires that all sending tracks be licensed, or be determined to be exempt from licensure, in accordance with N.J.S.A. 5:12-92(c). N.J.A.C. 13:72-6.2 provides that all manufacturers, suppliers and repairers of simulcast wagering equipment, including totalisators, pari-mutuel machines and self service pari-mutuel machines who transact business with casino licensees or a hub facility, shall be licensed in accordance with N.J.S.A. 5:12-92(a).

N.J.A.C. 13:72-6.3 states that a hub facility shall be licensed in accordance with N.J.S.A. 5:12-92(a), requires all employees of the hub facility to be licensed or registered with the Commission, and requires a hub facility to submit for Commission approval a jobs compendium and descriptions of its security procedures and accounting controls. This provision further provides that the hub facility, its employees and vendors thereof (other than casino licensees), shall further be subject to the licensure jurisdiction of the Racing Commission.

Subchapter 7 prescribes time frames for the reconciliation of simulcast wagers between casino licensees and sending tracks and for payments by casino licensees to the Racing Commission in accord with the provisions of the Casino Simulcast Act. N.J.A.C. 13:72-7.2 requires casino licensees engaging in simulcast activity to deposit all funds for outstanding tickets in a separate account and to maintain an ongoing, daily record of such tickets.

Subchapter 8 sets forth information which casino simulcasting facilities shall make available to its patrons. The information is consistent with that generally contained in programs at racetracks. Casino licensees are permitted to charge patrons a fee for providing such information.

Subchapter 9 requires that, for a period of at least one year from the commencement of casino simulcasting, there shall be assigned to a hub facility certain officials (that is, Supervisor of Mutuels and Verifiers), who shall be employees or designees of the Racing Commission but whose compensation shall be paid by the hub facility. N.J.A.C. 13:72-9.2 and 9.4 set forth the duties of these officials, which include the Supervisor of Mutuels' oversight of the pari-mutuel related activities of the hub facility and his or her reporting of any discrepancies and irregularities to the regulatory bodies. N.J.A.C. 13:72-9.2 through 9.5 provide that, unless otherwise determined by the Commission and Racing Commission that a longer period is necessary, those duties may be assumed by qualified employees of the hub facility not less than one year after the commencement of casino simulcasting. Notwithstanding such a determination, however, the Racing Commission may, at its own cost, elect

to continue to have its employees or designees perform some or all of the duties of said officials.

Social Impact

The implementation of casino simulcasting and the conduct of authorized games other than slot machines in casino simulcasting facilities are expected to increase the number of persons who choose to participate in legalized gambling in Atlantic City, as well as the amount of money that is wagered thereon. Casino simulcasting is also likely to result in a net increase in the amount of wagering on horse racing in this State. It would be highly speculative to attempt to estimate the degree to which any of these increases may occur, particularly since all casino licensees may not choose to engage in casino simulcasting, and as to those who do, the extent to which they will elect to conduct other permitted gaming in their casino simulcasting facilities is unknown. In any event, any resultant social impact is due to the Legislative decision to authorize the described activities and not the promulgation of these rules.

Regardless of the amount of increase on horse racing in this State resulting from casino simulcasting, casino simulcasting will result in the depositing of funds in the Casino Simulcasting Fund to be appropriated for the benefit of horse breeding and development in New Jersey. Additionally, one half of one percent of all moneys wagered on casino simulcasting will be deposited in the Casino Simulcasting Fund to be appropriated exclusively for services to benefit eligible senior citizens. All gross revenues from authorized games which are conducted in casino simulcasting facilities are, like existing gross revenues from casino gaming, subject to an eight percent tax for deposit in the Casino Revenue Fund to be appropriated exclusively for programs to benefit eligible senior citizens and disabled residents of New Jersey. Thus, to the extent the implementation of these rules generates moneys for such purposes, there will be a beneficial social impact.

Economic Impact

For the reasons noted above, it is impossible to estimate the economic impact of these proposed new rules. However, assuming that at least some casino licensees choose to conduct casino simulcasting, several economic consequences should result to some degree.

Although a casino licensee may choose to construct a casino simulcasting facility by expanding its approved hotel, it is expected that, at least initially, casino licensees will convert existing portions of their establishments into such facilities. The conversion of such space will involve substantial costs, both in construction and the purchase of new equipment, thereby benefiting the affected construction companies and equipment suppliers. The rules should also result in increased business for the ancillary industries which service the new facilities.

The conduct of casino simulcasting and other permissible gaming in these facilities can be expected to generate more revenue for casino licensees. The rules should also result in a net increase in jobs, since the number of employees required to staff a casino simulcasting facility should exceed the number of persons whose employment is tied to the current use of the portions of approved hotels which will be converted to casino simulcasting facilities.

The rules should also benefit New Jersey racetracks and horsemen's groups, which will directly share in the revenue from casino simulcasting, and indirectly benefit from increased moneys for purses that should result at live race meetings.

Finally, as noted above, the rules can be expected to generate additional funds for eligible senior citizens and disabled residents of New Jersey.

Regulatory Flexibility Analysis

With respect to casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., no regulatory flexibility statement is required. In any event, any impact on such small businesses which may result from these rules is due to the Legislature's decision to authorize these activities, and not the promulgation of these rules.

The rules require that New Jersey racetracks which choose to participate in casino simulcasting be licensed as non-gaming related casino service industries or receive exemptions from such licensure. Even if exemptions are granted, the racetracks are required to have on file with the Casino Control Commission a vendor registration form, and to update same within 10 days of the occurrence of any changes. This requirement is mandated by the Casino Simulcasting Act and the Casino Control Commission's rules, and is also consistent with the legislative mandate to scrutinize ancillary industries set forth in the Casino Control Act. N.J.S.A. 5:12-1(b)(6) and (12).

The rules require that suppliers, manufacturers and repairers of simulcast wagering equipment to casino licensees or hub facilities be licensed as gaming related casino service industries. This requirement is also mandated in the Casino Simulcasting Act. The Casino Control Commission and Racing Commission are unaware of any small business, as defined in N.J.S.A. 52:14B-17, which currently would be affected by this. However, even if there were, such licensure is required by the Casino Simulcasting Act and is consistent with the policies of the Casino Control Act cited above. The rules may further result in some small businesses being required to have vendor registration forms filed with the Casino Control Commission on their behalf and, in a significantly lesser number, being required to file non-gaming related casino service industry applications if they transact regular or continuing business with casino licensees.

The rules would require a hub facility to be licensed as a gaming related casino service industry, to submit for Casino Control Commission approval a jobs compendium and descriptions of its security procedures and accounting controls, and have all of its employees licensed as if it were itself a casino licensee. The hub facility, its employees, and vendors of a hub facility other than casino licensees, are further subject to the licensure jurisdiction of the Racing Commission. In addition, a hub facility would be responsible for paying the compensation of supervisors of mutuels and verifiers for at least one year. The rules require that a hub facility be located in New Jersey, and it is likely that it would be a small business.

A hub facility will house the totalisator and generate the reports which are to be utilized to reconcile simulcast wagers with sending tracks and calculate payments due to the Racing Commission. It will also perform other integral functions, such as locking the totalisator and conducting manual merges with sending tracks in the event of a transmission failure. For these reasons, the licensing requirements and other controls imposed upon a hub facility and as to its vendors are not only amply warranted, but vitally necessary to the integrity of casino simulcasting and racing.

Full text of the proposed new rules follows:

CHAPTER 72
CASINO SIMULCASTING

SUBCHAPTER 1. GENERAL PROVISIONS

13:72-1.1 Definitions

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

"Breakage" means the odd cents over a multiple of five or 10 cents arising from the computation of odds and payouts on amounts wagered on a simulcast horse race, as determined by the law governing the sending track.

"Casino Control Act" means the State of New Jersey Casino Control Act approved June 2, 1977, as amended.

"Casino pari-mutuel cashier" means a casino employee who sells pari-mutuel tickets representing simulcast wagers, sells credit vouchers for simulcast wagering in self-service pari-mutuel machines, pays cash for credit vouchers, and makes payouts for winning or refundable pari-mutuel tickets in a casino simulcasting facility.

"Casino simulcasting" means the simultaneous transmission by picture of running or harness horse races conducted at racetracks to casino licensees and pari-mutuel wagering at casino simulcasting facilities operated by casino licensees on the results of those races.

"Casino Simulcasting Act" means the State of New Jersey Casino Simulcasting Act, P.L.1992, c.19, approved June 12, 1992.

"Casino simulcasting facility" means a facility in an approved hotel operated by a casino licensee which conforms to the provisions of this chapter.

"Commission" means the New Jersey Casino Control Commission.

"Credit voucher" means a ticket issued by a casino pari-mutuel cashier in exchange for cash, gaming chips, slot tokens or coin coupons or by a self-service pari-mutuel machine for currency, as payment for a winning or refunded pari-mutuel ticket, or as the balance returnable after a simulcast wager has been placed.

"Dedicated line" means a telephone line which is reserved for the exclusive use of transmitting pari-mutuel wagering data between a simulcasting facility and a sending track.

"Delay period" means the time between off-time and the start of a simulcast horse race.

"Dial-up line" means a telephone line between a casino simulcasting facility and a sending track which is not reserved for the exclusive use of transmitting pari-mutuel wagering data.

"Division" means the Division of Gaming Enforcement of the New Jersey Department of Law and Public Safety.

"Hub facility" means a facility located in this State which acts as an intermediary between a casino simulcasting facility and a sending track with respect to the transmission of pari-mutuel wagering data and which is responsible for generating all reports necessary for the reconciliation of payments between casino licensees, sending tracks and the Racing Commission. The hub facility may also, but is not required to, perform other functions, including the transmission of pictures of simulcast horse races and pari-mutuel non-wagering data.

"In-State sending track" means a racetrack within the State of New Jersey which is operated by a permit holder and is equipped to conduct casino simulcasting.

"Manual merge" means the process used in the event of a systems or communications failure by which a casino simulcasting facility transmits to a sending track through telephone, facsimile machine, cellular telephone or other means of communication, the casino simulcasting facility's pari-mutuel wagering information and the process by which the sending track includes such pari-mutuel wagers in the common pari-mutuel pool in such event.

"Minus pari-mutuel pool" means a pari-mutuel pool in which insufficient monies have been wagered to permit the minimum payoffs of winning wagers required by the rules of pari-mutuel wagering governing the race.

"Off-time," for the purposes of this chapter, means when the first horse is loaded into the starting gate in a running race and when the starting gate reaches the recall pole in a harness race. In a race, such as a steeplechase, where there is no starting gate, off-time shall mean approximately 15 seconds before the anticipated start of the race.

"Out-of-State sending track" means a racetrack in a jurisdiction other than the State of New Jersey which is equipped to conduct casino simulcasting and the operator of which is lawfully permitted to conduct a horse race meeting and to provide simulcast races to a casino licensee.

"Outstanding pari-mutuel ticket" means a winning or refundable pari-mutuel ticket which is not claimed within six months of the date of its sale.

"Pari-mutuel machine" means a mechanical, electrical or other device which is connected to a totalisator and which generates pari-mutuel tickets and credit vouchers, reads pari-mutuel tickets and receives from the totalisator the amount to be paid for winning, cancelled or refunded pari-mutuel tickets, and reads credit vouchers and calculates the amount to be paid therefor.

"Pari-mutuel ticket" means a ticket issued by a pari-mutuel machine or a self service pari-mutuel machine which represents a wager on a simulcast horse race.

"Permit holder" means the holder of an annual permit issued by the Racing Commission to conduct a horse race meeting.

"Pool definition" means a computer generated printout, itself generated by a sending track, of the pari-mutuel wagering format and scratch runner information for that day's racing program.

"Racing Commission" means the New Jersey Racing Commission.

"Receiving track" means a racetrack which is equipped to receive simulcast horse races and to conduct intertrack wagering on those races.

"Scratch" means the withdrawal of an entered horse from a race after the closing of overnight entries.

"Self service pari-mutuel machine" means a mechanical, electrical or other device connected to a totalisator which, upon the insertion of a credit voucher, coupon or currency, or any combination thereof, and the selection of a permissible simulcast wager automatically issues a pari-mutuel ticket together with a credit voucher for any balance which may be due and which, upon the insertion of a winning or refunded pari-mutuel ticket, reads the ticket and automatically issues a credit voucher in the amount of the correct payout.

"Sending track" means an in-State or out-of-State sending track.

"Simulcast horse race" means a running or harness horse race conducted at a racetrack which is simultaneously transmitted by picture to a casino licensee.

"Totalisator" means a computer which, among other things, directly or indirectly through one or more other totalisators, receives pari-mutuel wagering information and calculates pay-offs for winning pari-mutuel tickets, and generates reports with respect to such information.

13:72-1.2 Rules of Racing Commission

Except as otherwise provided in the Casino Simulcasting Act or this chapter, the rules of racing and conduct of pari-mutuel wagering in casino simulcasting facilities and hub facilities shall be subject to the rules of the Racing Commission.

SUBCHAPTER 2. CONDUCT OF CASINO SIMULCASTING

13:72-2.1 Conduct of casino simulcasting

A casino licensee may conduct casino simulcasting in a casino simulcasting facility in accordance with the provisions of the Casino Simulcasting Act and this chapter.

13:72-2.2 Hub facility

A casino licensee which conducts casino simulcasting shall absent approval from the Commission and the Racing Commission to do otherwise, utilize a hub facility.

13:72-2.3 Receipt of races from in-State sending tracks

A casino licensee which conducts casino simulcasting shall, as a condition of continued operation of casino simulcasting, receive all live races which are transmitted by in-State sending tracks. A permit holder which is authorized by the Racing Commission to conduct casino simulcasting shall have discretion to transmit all or some of the live horse races conducted at the race track to casino simulcasting facilities; provided, however, any race which is transmitted from an in-State sending track shall be transmitted to all casino simulcasting facilities. A permit holder which wishes to transmit some, but not all, of its live horse races to casino simulcasting facilities shall do so only with the prior approval of the Racing Commission.

13:72-2.4 Receipt of races from out-of-State sending tracks

A casino licensee may, with the approval of the Commission and Racing Commission and subject to the provisions of the Casino Control Act, the Casino Simulcasting Act and this chapter, conduct casino simulcasting on races from an out-of-State sending track which has been approved by the Racing Commission to participate in casino simulcasting. An out-of-State sending track which transmits any race to a casino simulcasting facility shall offer to transmit such race to all casino simulcasting facilities on the same terms.

13:72-2.5 Agreements with sending tracks

(a) Agreements for casino simulcasting between a casino licensee and a sending track shall be in writing and shall be filed with the Racing Commission, and with the Commission in accordance with the provisions of N.J.S.A. 5:12-104. Such agreements may be negotiated on behalf of casino licensees by an entity jointly established by casino licensees.

(b) Every agreement between a casino licensee and a sending track shall, in a manner consistent with the provisions of the Casino Simulcasting Act and this chapter, define, and provide for the distribution of, outstanding pari-mutuel tickets, and define, and provide for the allocation of losses in the event of, a minus pari-mutuel pool. Every such agreement shall also provide for manual merging in the event of a systems or communications failure and shall further set forth a procedure, acceptable to the Commission and Racing Commission, which shall be followed in the event that manual merging is not possible.

13:72-2.6 Conduct of authorized games in a simulcasting facility

A casino license may, subject to the rules of the Commission, conduct any authorized game as defined by N.J.S.A. 5:12-5 or by

rule of the Commission, other than slot machines, in a casino simulcasting facility.

13:72-2.7 Hours of operation

A casino simulcasting facility may be open during permitted hours of casino operation, and shall be open and operated during such hours whenever simulcast horse races are being transmitted to a casino licensee.

13:72-2.8 Gaming and simulcast wagering by certain persons prohibited

It shall be unlawful for any person who is prohibited from wagering at a game in a casino in this State pursuant to N.J.S.A. 5:12-100n to wager in a casino simulcasting facility on either an authorized game or on casino simulcasting.

13:72-2.9 Wagering limited to simulcasting facility

Wagering on simulcast horse races within the premises of a casino licensee shall be conducted only in a casino simulcasting facility. However, pictures of simulcast horse races may be shown on non-casino public areas of the establishment as approved by the Commission.

13:72-2.10 No fee to be charged

No fee shall be charged for placing a wager on a simulcast horse race in addition to the amount wagered.

13:72-2.11 Ticket claims

(a) Subject to the time limitations imposed by N.J.A.C. 13:72-2.12, a winning pari-mutuel ticket purchased at a casino simulcasting facility may be presented for cashing at a pari-mutuel window at that facility or at any permit holder which conducted pari-mutuel wagering on the same race, and a winning pari-mutuel ticket purchased at a permit holder may be presented for cashing at a pari-mutuel window at the permit holder or at any casino simulcasting facility which conducted pari-mutuel wagering on the same race.

(b) Any claim by a patron that he or she has been issued an incorrect ticket shall be made before leaving the pari-mutuel window at which it was purchased. No claim shall be considered thereafter, and no claim shall be considered for tickets which have been discarded, lost, altered, destroyed or mutilated beyond identification.

(c) Payment of wagers will be made only upon presentation of appropriate pari-mutuel tickets.

13:72-2.12 Expiration of pari-mutuel tickets

A pari-mutuel ticket shall be claimed within six months of the date of its sale, after which it becomes an outstanding pari-mutuel ticket to be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund for distribution in accordance with the provisions of the Casino Simulcasting Act. Notice of this expiration provision shall be prominently posted in a casino simulcasting facility or printed on the pari-mutuel tickets sold at the casino simulcasting facility.

SUBCHAPTER 3. CASINO SIMULCASTING FACILITY

13:72-3.1 Location

A casino simulcasting facility shall be a contiguous area located within an approved hotel operated by a casino licensee and may be adjacent to, but shall not be part of, the room in which casino gaming is conducted pursuant to the provisions of the Casino Control Act. Notwithstanding the above, a casino licensee may construct barriers within the room for the purposes of permitting the conduct of authorized games and simulcast wagering in a manner maximizing patron comfort and the efficient operation of the facility, provided that such barriers are approved by the Commission and do not interfere with security or surveillance within the facility.

13:72-3.2 Space not to reduce space authorized for casino gaming

The space required to establish and maintain a casino simulcasting facility shall not reduce the space authorized for casino gaming pursuant to N.J.S.A. 5:12-83.

13:72-3.3 Square footage requirements

(a) A casino licensee which wishes to conduct casino simulcasting shall establish and maintain a casino simulcasting facility of sufficient square footage to promote:

1. Maximum comfort for patrons and efficient operation of the facility;

2. Viewing of simulcast horse races by patrons in a comfortable manner which is not obtrusive to the conduct of authorized games within the facility; and

3. Optimum security of the facility, which shall include the installation and maintenance of security and surveillance equipment, including closed circuit television equipment, according to specifications approved by the Commission. The Commission and Division shall have direct access to the system or its signal.

13:72-3.4 Satellite cage

A casino licensee which wishes to conduct casino simulcasting shall, unless otherwise approved by the Commission, establish and maintain a satellite cage in, or immediately adjacent to, its casino simulcasting facility.

SUBCHAPTER 4. PARI-MUTUEL POOLS

13:72-4.1 Horse races from in-State sending tracks

Sums wagered in a casino simulcasting facility on horse races at an in-State sending track shall be included in the appropriate pari-mutuel pool generated at the in-State sending track for the race being transmitted, and the pari-mutuel pool shall be divided in accordance with the provisions of the Casino Simulcasting Act. Pari-mutuel pay-offs at casino simulcasting facilities shall be made in accordance with the odds generated at the in-State sending track.

13:72-4.2 Horse races from out-of-State sending tracks

(a) Except as provided in this section, sums wagered in a casino simulcasting facility on horse races at an out-of-State sending track shall be combined with comparable pari-mutuel pools at the out-of-State sending track, and the types of wagering, takeout, distribution of winnings, rules of racing and percentage of deposits remaining undistributed from pari-mutuel pools after payment is made to winning ticket holders shall be determined in accordance with the law or policy applicable to the out-of-State sending track.

(b) With the prior approval of the Racing Commission and the concurrence of an out-of-State sending track, a casino licensee may form an interstate common pool with receiving tracks or entities in other states other than the state in which the sending track is located.

(c) In any event, however, monies resulting from breakage on amounts wagered on horse races in a casino simulcasting facility and outstanding pari-mutuel tickets sold at a casino simulcasting facility shall in all instances be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund for distribution in accordance with the provisions of the Casino Simulcasting Act.

13:72-4.3 Transmission data line

A transmission data line shall be a dedicated line. There shall be a minimum of one back-up line, which may be a dial-up line. In addition, each out-of-State sending track shall maintain a cellular phone in its totalisator room. These requirements may be waived only in exceptional cases for good cause shown with the prior written approval of the Commission and Racing Commission. Any application for such waiver shall be supported by documentation of the precautions which will be taken to assure that the alternative method of transmitting data, which may include the use of cellular phones, will be secure.

13:72-4.4 Facsimile machines and telephone lines

A casino simulcasting facility, hub facility and the totalisator room at a sending track shall each contain a facsimile machine and a direct dial-up telephone line, the numbers of which shall be provided to the Commission, Division and Racing Commission.

13:72-4.5 Pool definition

Prior to the opening of wagering on a simulcast horse race, a sending track shall transmit a pari-mutuel pool definition to a casino simulcasting facility. Upon receipt of the pool definition, pari-mutuel

machines at a casino simulcasting facility may be opened for wagering.

13:72-4.6 Scratches

A sending track shall at all times inform a casino simulcasting facility of scratches and pool change information, and any scratch from a simulcast horse race after wagering has commenced shall be verified immediately by facsimile from the sending track to the casino simulcasting facility.

13:72-4.7 Locking of pari-mutuel machines

All pari-mutuel machines in a simulcasting facility shall be locked at off-time.

13:72-4.8 Ticket sales

No ticket may be issued after the totalisator has been locked or wagering has ceased, whichever occurs first.

13:72-4.9 Cease wagering

Wagering shall cease not later than off-time.

13:72-4.10 Cancellation of tickets

(a) Except as provided in this section, no pari-mutuel ticket on a current race shall be cancelled once a patron has left the pari-mutuel window where the ticket was purchased.

(b) Pari-mutuel tickets on wagers such as trifectas where probable pay-offs or odds are not displayed to the public may be cancelled at any time prior to off-time.

(c) No pari-mutuel ticket purchased at a self-service pari-mutuel machine on a current race shall be cancelled.

(d) Pari-mutuel tickets on advance races, whether purchased from a casino pari-mutuel cashier or a self-service pari-mutuel machine, may be cancelled by any casino pari-mutuel cashier until the race immediately preceding the race for which the cancellation has been requested has been declared official.

(e) A casino pari-mutuel cashier may cancel a pari-mutuel ticket on a current race during the delay period provided the ticket was purchased in the final transaction at the pari-mutuel window before off-time, and further provided that the ticket was incorrectly issued by the cashier or that the patron who ordered the ticket left the pari-mutuel window without paying for or accepting the ticket.

13:72-4.11 Refunds

A pari-mutuel ticket on a horse that is scratched may be refunded. Pari-mutuel tickets representing wagers where a patron must select more than one horse may be refunded only as to the combinations including the scratched horse.

13:72-4.12 Odds display

A casino licensee which conducts casino simulcasting shall prominently display in its casino simulcasting facility the approximate odds for each horse in a simulcast race for the purpose of informing patrons of the actual wagering on each horse.

13:72-4.13 Pari-mutuel machines closed

(a) If, for any reason, pari-mutuel machines are closed during the wagering on a simulcast race before off-time, they shall remain closed until after the race. Wagering shall cease on that race, and the pay-offs for that race shall be computed on the sums then wagered in each pari-mutuel pool.

(b) In the event that pari-mutuel ticket issuing machines are inadvertently closed for any reason, said machines shall be opened only by the Supervisor of Mutuels at the hub facility, or such person at the hub facility who has assumed his or her duties pursuant to N.J.A.C. 13:72-9.3.

13:72-4.14 Overpays caused by totalisator

Overpays caused by totalisator error shall be borne by the operator of the totalisator equipment causing the error.

13:72-4.15 Mechanical breakdowns

(a) In the event of an irreparable breakdown of the totalisator or all pari-mutuel and self-service pari-mutuel machines during the wagering on a race, the wagering on that race shall be declared closed, and the pay-off for that race shall be computed on the sums wager in each pari-mutuel pool at the time of the breakdown.

(b) In the event of a totalisator malfunction requiring the operator of the totalisator equipment to purchase any non-issued ticket "lost" in the totalisator computer, the operator of the totalisator equipment shall be permitted to credit losing tickets so purchased to the extent of winning tickets similarly purchased. The proceeds of such winning tickets which exceed any credit for losing tickets shall be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund for distribution in accordance with the provisions of the Casino Simulcasting Act. For example, if the "lost" tickets on a race cost $1,000 and pay off $800.00, the operator of the totalisator equipment must pay $200.00. However, if the "lost" tickets cost $1,000 and pay off $1,200, the operator of the totalisator equipment need pay nothing and $200.00 shall be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund.

13:72-4.16 Emergencies not covered by this chapter

In the event that an emergency arises with respect to simulcast wagering in a casino simulcasting facility which is not covered by this chapter and an immediate decision is necessary, the simulcast shift supervisor or above shall make a good faith effort to contact and consult with the Supervisor of Mutuels or such person who has assumed to his or her duties pursuant to the provisions of N.J.A.C. 13:72-9.3 prior to taking action, and shall promptly render a written report regarding the incident to the Commission, Division and Racing Commission.

13:72-4.17 Transmission failure

In the event of failure to transmit pari-mutuel information to a sending track, no further wagers shall be accepted in a casino simulcasting facility until and unless the failure has been corrected. The casino simulcasting facility and sending track shall attempt to manually merge any wagers which have already been accepted but which have not been transmitted to the sending track due to the failure. Notice of this procedure and any backup procedure established in accordance with N.J.A.C. 13:72-2.5(b) shall be posted in a prominent location in the casino simulcasting facility. In any instance where manual merging or recourse to the backup procedure is required, actual notice thereof shall be publicly announced in the casino simulcasting facility.

13:72-4.18 Commingling notice

A casino licensee shall display prominently in its casino simulcasting facility notice that it is commingling wagers as required by the Casino Simulcasting Act. Such notice shall further provide that this procedure may result in changes in pools and pari-mutuel odds during the running of a simulcast race.

SUBCHAPTER 5. LICENSING OF EMPLOYEES

13:72-5.1 Employees of a simulcasting facility

All employees of a casino simulcasting facility shall be licensed or registered in accordance with the rules of the Commission.

SUBCHAPTER 6. LICENSING AND REGISTRATION OF CASINO SERVICE INDUSTRIES

13:72-6.1 Sending tracks

All sending tracks shall be licensed, or determined to be exempt from licensure, in accordance with the provisions of N.J.S.A. 5:12-92c. Any exemption of a sending track shall be subject to the conditions set forth in N.J.S.A. 5:12-92c, and each sending track shall have on file with the Commission a vendor registration form, any updates to which shall be filed with the Commission within 10 days of the occurrence of any changes.

13:72-6.2 Simulcast wagering equipment

All manufacturers, suppliers and repairers of simulcast wagering equipment, including totalisators, pari-mutuel machines and self-service pari-mutuel machines, to casino licensees or hub facilities shall be licensed in accordance with the provisions of N.J.S.A. 5:12-92a.

13:72-6.3 Hub facility

A hub facility shall be licensed in accordance with the provisions of N.J.S.A. 5:12-92a, and all employees of the hub facility shall be

licensed or registered with the Commission as if the hub facility were itself a casino licensee. Additionally, a hub facility shall submit for Commission approval a jobs compedium and descriptions of its security procedures and accounting controls. A hub facility and its employees, and vendors of a hub facility other than casino licensees, shall further be subject to the licensure jurisdiction of the Racing Commission.

13:72-6.4 Other enterprises

Any other enterprise transacting business with a casino licensee or hub facility with respect to casino simulcasting shall be subject to the vendor registration and casino service industry licensing requirements applicable to any enterprise which transacts business with a casino licensee.

SUBCHAPTER 7. RECONCILIATION WITH SENDING TRACKS AND PAYMENTS TO RACING COMMISSION

13:72-7.1 Reconciliation with sending tracks

Each casino licensee which conducts casino simulcasting shall, in conformance with information provided by the hub facility, reconcile all simulcasting wagers with sending tracks on at least a weekly basis.

13:72-7.2 Outstanding pari-mutuel tickets

Each casino licensee which conducts casino simulcasting shall deposit all funds for outstanding pari-mutuel tickets in a separate account and maintain an ongoing, daily record of such tickets.

13:72-7.3 Payments to Racing Commission

Each casino licensee which conducts casino simulcasting shall, after the reconciliation of wagers, payment of fees to sending tracks, and retention of monies to which it is entitled under the provisions of the Casino Simulcasting Act, transmit to the Racing Commission all underpays and moneys due it pursuant to this chapter and in accordance with the provisions of the Casino Simulcasting Act.

SUBCHAPTER 8. RACE INFORMATION

13:72-8.1 Race information availability

A casino licensee which conducts casino simulcasting shall make available to patrons of its casino simulcasting facility the following information for each simulcast race: the names of entrants, their sires, dams and grandsires, their wagering numbers, post positions, jockeys, morning line odds, owner and owners' colors, trainers, sex, color, year of birth; the distance and number of the race; amount of purse; and conditions and claiming price, if any. For harness races, the performance lines for at least the last six races of each entrant shall also be available. The availability of such information, and the procedures for obtaining same, shall prominently be displayed in the casino simulcasting facility. Nothing in this chapter shall preclude a casino licensee from charging patrons a fee for providing such information.

SUBCHAPTER 9. SUPERVISORS OF MUTUELS AND VERIFIERS

13:72-9.1 Supervisor of Mutuels

A Supervisor of Mutuels shall be present at a hub facility at all times when casino simulcasting is being conducted. Unless determined by the Commission and Racing Commission that a longer period is necessary, for a period of one year from the date of commencement of casino simulcasting the Supervisor of Mutuels shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. If a Supervisor of Mutuels is not an employee of the Racing Commission, he or she shall be licensed as a casino key employee.

13:72-9.2 Duties of Supervisor of Mutuels

(a) The duties of a Supervisor of Mutuels at the hub facility shall include:

1. Overseeing the pari-mutuel related activities of the hub facility;
2. Determining calculations, overpays, underpays and directing any necessary adjustments to race totals;
3. Verify machine computation of all daily double, exacta and other multiple wagering pools;
4. Reviewing all necessary computer sheets and test checking the machine calculations of payouts, breakage, and commissions of each pool;
5. Verifying cancellation reports as transmitted from casino simulcasting facilities;
6. Preparing and submitting to the Racing Commission a daily summary result of the pari-mutuel operations, with copies to the Commission and Division;
7. Preparing and submitting to the Racing Commission a seven-day financial report and a seven-day comparative statistic report, with copies of the Commission and Division;
8. Daily reconciliation of the daily pari-mutuel sales with the hub facility's daily statement thereof and the Racing Commission's daily summary of results from pari-mutuel wagering; and
9. Reporting all discrepancies and irregularities to the Racing Commission, Division and Commission.

13:72-9.3 Assumption of duties of Supervisor of Mutuels

Subject to the provisions N.J.A.C. 13:72-9.1, not less than one year after the commencement of casino simulcasting the duties of a Supervisor of Mutuels set forth in N.J.A.C. 13:72-9.2 may be assumed by qualified employees of the hub facility, who shall be licensed as casino key employees and as may otherwise be required pursuant to N.J.A.C. 13:72-6.3. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of the Supervisor of Mutuels as set forth in N.J.A.C. 13:72-9.2.

13:72-9.4 Verifier

There shall be assigned to each Supervisor of Mutuels in a hub facility a Verifier, who shall be present at a hub facility at all times when casino simulcasting is being conducted. Unless determined by the Commission and Racing Commission that a longer period of time is necessary, for a period of one year from the date of commencement of casino simulcasting the Verifier shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. It shall be the duty of a Verifier to assist a Supervisor of Mutuels in carrying out the duties set forth in N.J.A.C. 13:72-9.2. If a Verifier is not an employee of the Racing Commission, he or she shall be licensed as a gaming-related casino employee.

13:72-9.5 Assumption of duties of Verifier

Subject to the provisions of N.J.A.C. 13:72-9.4, not less than one year after the commencement or casino simulcasting the duties of a Verifier may be assumed by qualified employees of the hub facility, who shall be licensed as gaming-related casino employees and as may be otherwise required pursuant to N.J.A.C. 13:72-6.3. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of the verifier as set forth in N.J.A.C. 13:72-9.4.

13:72-9.6 Continued access to hub facility by Racing Commission

The Racing Commission, its employees and agents shall at all times have access to the hub facility in order to maintain the integrity of horse racing and, together with the Commission and Division, to effectuate the purposes of the Casino Simulcasting Act. Such access shall in no way be affected by the replacement of Supervisors of Mutuels and Verifiers by employees of the hub facility, as provided in N.J.A.C. 13:72-9.3 and 13:72-9.5.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Stopping and Parking Routes N.J. 5, U.S. 9W and N.J. 67 in Bergen County Proposed Amendments: N.J.A.C. 16:28A-1.5, 1.61 and 1.71

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1992-443.

Submit comments by November 18, 1992 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 proposed amendments will establish revised "no parking bus stop" zones along Routes N.J. 5, U.S. 9W and N.J. 67 in the Borough of Fort Lee, Bergen County, for the efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers at established bus stops, and the well-being of the populace.

The amendments effect the following changes in the Code:

N.J.A.C. 16:28A-1.5: adds the far side bus stop at Bridle Way along the northbound and southbound sides along Route N.J. 5 (Palisade Avenue).

N.J.A.C. 16:28A-1.61: adds a near side bus stop at Washington Avenue, a far side bus stop at Myrtle Avenue along Route U.S. 9W (Fletcher Avenue), northbound; and near side bus stops at Washington and Myrtle Avenues and a far side bus stop at Linwood Avenue along Route U.S. 9W (Fletcher Avenue), southbound.

N.J.A.C. 16:28A-1.71: adds a near side bus stop at Horizon Road along Route N.J. 67 (Palisade Avenue) on the southbound side.

Additionally, the amendments recodify the rules in compliance with the Department's format for clarity, by placing specific bus stops by direction of travel within the respective municipalities along major avenues, and require signs notifying the motorists of the restrictions.

Based upon requests from the local governments, in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of the revised "no parking and bus stop" zones along Routes N.J. 5, U.S. 9W and N.J. 67 in the Borough of Fort Lee, Bergen County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.5, 1.61 and 1.71 based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendments will establish revised "no parking bus stop" zones along Routes N.J. 5, U.S. 9W and N.J. 67 in the Borough of Fort Lee, Bergen County, for the efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers at established bus stops and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for the installation of "no parking bus stop" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules. Therefore, a regulatory flexibility analysis is not required.

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

16:28A-1.5 Route 5

(a) The certain parts of State highway Route 5 described in [(a) of this section] **this subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. **In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.**

1.-4. (No change.)

(b) The certain parts of State highway Route 5 described in this subsection shall be designated and established as "no parking **bus stop**" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

[1. Along the southernly (eastbound) side in the Borough of Edgewater, Bergen County:

i. Mid-block bus stop:

(1) Grant Avenue—Beginning 775 feet west of the westerly curb line of Grand Avenue and extending 135 feet westerly therefrom.

2. Along Palisade Avenue, northbound on the easterly side in Fort Lee Borough, Bergen County:

i. Far side bus stop:

(1) Bluff Road—Beginning at the northerly curb line of Bluff Road and extending 155 feet northerly therefrom.

3. Along Palisade Avenue, southbound on the westerly side in Fort Lee Borough, Bergen County:

i. Far side bus stop:

(1) Bluff Road—Beginning at the southerly curb line of Bluff Road and extending 155 feet southerly therefrom.]

1. No parking bus stops in the Borough of Edgewater, Bergen County:

i. Along the southerly (eastbound) side:

(1) Mid-block bus stop:

(A) Grant Avenue—Beginning 775 feet west of the westerly curb line of Grant Avenue and extending 135 feet westerly therefrom.

2. No parking bus stops in the Borough of Fort Lee, Bergen County:

i. Along Palisade Avenue, northbound on the easterly side thereof at:

(1) Far side bus stops:

(A) Bridle Way—Beginning at the northerly curb line of Bridle Way and extending 164 feet northerly therefrom.

(B) Bluff Road—Beginning at the northerly curb line of Bluff Road and extending 155 feet northerly therefrom.

ii. Along Palisade Avenue, southbound on the westerly side thereof at:

(1) Far side bus stops:

(A) Bridle Way—Beginning at the southerly curb line of Bridle Way and extending 160 feet southerly therefrom.

(B) Bluff Road—Beginning at the southerly curb line of Bluff Road and extending 155 feet southerly therefrom.

16:28A-1.61 Route **U.S. 9W**

(a) The certain parts of State highway [U.S.] **Route U.S. 9W** described in this subsection shall be designated and established as "no parking bus stop" 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. Within Fort Lee Borough, Bergen County:

i. Along the easterly (northbound) side:

(1) Linwood Avenue (near side; 140 feet).]

5. No parking bus stops in the Borough of Fort Lee, Bergen County:

i. Along Fletcher Avenue, northbound on the easterly side thereof at:

(1) Near side bus stops:

(A) Linwood Avenue—Beginning at the southerly curb line of Linwood Avenue and extending 155 feet southerly therefrom.

(B) Washington Avenue—Beginning at the southerly curb line of Washington Avenue and extending 155 feet southerly therefrom.

2. Far side bus stop:

(A) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 155 feet northerly therefrom.

ii. Along Fletcher Avenue, southbound on the westerly side thereof at:

(1) Near side bus stops:

(A) Washington Avenue—Beginning at the northerly curb line of Washington Avenue and extending 155 feet northerly therefrom.

(B) Myrtle—Beginning at the northerly curb line of Myrtle Avenue and extending 155 feet northerly therefrom.

(2) Far side bus stop:

(A) Linwood Avenue—Beginning at the southerly curb line of Linwood Avenue and extending 155 feet southerly therefrom.

6.-8. (No change.)

(b) (No change.)

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this subsection shall be designated and established as "no parking **bus stop**" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. (No change.)

ii. Along Palisade Avenue:

(1) (No change.)

(2) Near side bus stop:

(A) Horizon Road—Beginning at a point 30 feet north of the prolongation of the northerly curb line of Horizon Road and extending 125 feet northerly therefrom.

2.-3. (No change.)

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

(a)

NEW JERSEY TRANSIT CORPORATION

Conduct and Safety of the Public in the Use of NJ TRANSIT Equipment and Facilities

Proposed New Rules: N.J.A.C. 16:83

Authorized By: New Jersey Transit Corporation, Shirley A. DiLibero, Executive Director.

Authority: N.J.S.A. 27:25-5(e), (k) and (l).

Proposal Number: PRN 1992-359.

Submit comments by November 18, 1992 to:

Albert R. Hasbrouck, Esq., Assistant Executive Director
NJ TRANSIT
One Penn Plaza East
Newark, New Jersey 07105-2246

The agency proposal follows:

Summary

The New Jersey Transit Corporation (NJ TRANSIT) and its subsidiaries are responsible for the provision of rail and bus services in the State of New Jersey. NJ TRANSIT's major stations and terminals are centers of activity through which many people pass each day. Two areas of concern have arisen in these major stations and terminals; one, how the safe and efficient passage of large numbers of people through the system may be accomplished, and, two, how the public may effectively gain access to use of a part of the facilities as a forum to exercise their constitutional rights of expression. After a study of the relevant case law and the individual circumstances of the facilities and equipment under its jurisdiction, NJ TRANSIT believes that the promulgation of specific and clear requirements which will have the force and effect of law is needed to address these areas of concern in a manner which is beneficial to both the traveling public and to those members of the public who would like to exercise their constitutional rights of expression in certain of the public areas of the NJ TRANSIT facilities.

Accordingly, NJ TRANSIT hereby proposes new rules at N.J.A.C. 16:83, as follows:

N.J.A.C. 16:83-1.1 contains the purpose and scope of the rules, that is, the provision of safe and efficient rail and bus service in the State of New Jersey, while taking into account the rights of expression of the public granted by the Constitution. This rule specifies the stations and terminals in which one is required to possess a certificate of registration prior to the exercise of that expression, and specifies the rules governing general behavior in all of the facilities and equipment of the NJ TRANSIT corporation.

N.J.A.C. 16:83-1.2 contains the definitions of words and terms used in the rules, so that the meanings designated by NJ TRANSIT may be commonly understood by the public.

N.J.A.C. 16:83-1.3 contains the requirements for commercial expression, which are governed by individual contracts with NJ TRANSIT.

N.J.A.C. 16:83-1.4 contains the general requirements for non-commercial expression, which is governed by the provisions of this chapter.

N.J.A.C. 16:83-1.5 contains an NJ TRANSIT disclaimer of any responsibility for the views or ideas expressed by anyone during the exercise of non-commercial expression, and notes that the corporation may post signs, issue announcements or personally express through members of the staff, such a disclaimer.

N.J.A.C. 16:83-1.6 contains enforcement provisions for the chapter, for both the certificate rules and the rules governing prohibited activities.

N.J.A.C. 16:83-2.1 contains general requirements governing the certificate of non-commercial expression.

N.J.A.C. 16:83-2.2 contains the application requirements for the certificate which will be required for all those persons choosing to exercise their rights of expression in the public areas of the NJ TRANSIT facilities designated in this chapter.

N.J.A.C. 16:83-2.3 contains the NJ TRANSIT action to be taken on an application and the provisions for appeal which are available to an applicant who is denied a certificate. The Executive Director of NJ TRANSIT will conduct a review of the appeal within two days of receipt, and will render a decision within one day of the review, which decision shall include the factual or legal basis for the Executive Director's decision.

N.J.A.C. 16:83-2.4 contains specification of the times of day, the length of time, and the number of persons for whom the certificate will be valid, as well as a prohibition of such activity on any equipment of NJ TRANSIT, whether it is moving or stationary.

N.J.A.C. 16:83-2.5 contains limitations of the certificate in the event of an emergency, at which time NJ TRANSIT may consider either a dangerous condition, or the disruption of service cause to amend any certificates granted to defer them to another time period or to modify the terms.

N.J.A.C. 16:83-2.6 contains noise restrictions placed upon certificate holders.

N.J.A.C. 16:83-2.7 contains placard location and size specifications.

N.J.A.C. 16:83-2.8 contains requirements placed on the use of tables as a part of the expressive activity.

N.J.A.C. 16:83-2.9 contains requirements placed on the certificate holders for the maintenance of the area they use.

N.J.A.C. 16:83-2.10 specifies that anyone engaged in the exercise of non-commercial expression must have the certificate available upon his or her person, and must show the certificate to any authorized NJ TRANSIT staff person or local official who requests to see it.

N.J.A.C. 16:83-2.11 contains a specification of the liability assumed by certificate of registration holders when they accept the certificate.

Subchapter 3 contains the list of activities which are prohibited on the facilities and/or equipment of the NJ TRANSIT.

While many of these requirements have been applied previously by NJ TRANSIT, in an exercise of the authority granted by N.J.S.A. 27:25-5(l), NJ TRANSIT believes that the promulgation of these standards will be a benefit to the public, in that the requirements will be open for public comment, and, once adopted, will have the force and effect of law. These standards specify what behaviors will not be allowed on the facilities or the equipment of NJ TRANSIT, for example, cigarette smoking must be done in a designated area; the use of drugs and alcohol is prohibited; all cabs and luggage carriers must be licensed by NJ

TRANSIT; spitting, threatening others and vandalism is prohibited; and all animals must be restrained or be specifically designated companion dogs to handicapped individuals. Other prohibited activities are also designated.

Social Impact

The social impact of the rules regarding the certification of registration for non-commercial expression is based on the structuring of the process of application to allow those who apply first to be served first, and to allow for an orderly exercise of the public's rights of expression. The process balances the concerns of those members of the public who are interested in the use of the facility as a means to move from place to place and those who are interested in the use of the facility as a forum for public expression. The process has been made as accessible as possible. For example, a person or charitable group may apply to the stationmaster at the designated stations, and, if a simple form is completed, may immediately receive a certificate granting them the opportunity for non-commercial expression in a designated area of the affected stations. Certain changes will come about as a result of these rules; for example, only those individuals associated with recognized charitable organizations will be able to solicit funds in NJ TRANSIT areas. Additionally, the form of expression is structured to prohibit a specified noise level, placards over a certain size, and disruption of the normal course of business at these transportation centers. The rules have not addressed certification at any transit facilities other than those specified in this chapter, since the functioning of the facilities has not been disrupted, nor is it expected to be disrupted, by any exercise of non-commercial expression. The chapter has addressed, however, the regulation of behavior of other kinds in all the facilities, through the provisions of Subchapter 3. These requirements, or prohibitions, can be expected to have a significant impact on anyone who may have engaged in the prohibited behaviors in the past, since this will no longer be possible. The promulgation of these prohibitions as rules will benefit the public in several ways. All facilities will impose the same requirements on the public, making application of standards uniform throughout the State. Activities generally considered incompatible with the primary purpose of the facilities and equipment of the NJ TRANSIT (such as the obstruction of a passageway, vandalism of equipment, dumping of garbage, or the use of bathroom or other areas for activities generally conducted in one's home or residence) will not be allowed, and the primary purpose of the agency, that is, transportation, will be enhanced. These rules could impact upon everyone who utilizes the facilities of NJ TRANSIT, as well as the taxpayers who contribute to the maintenance of the facilities.

Economic Impact

The economic impact on the public will vary, depending upon the point of their interaction with the NJ TRANSIT system. Those who choose to apply for a certificate of non-commercial expression will be able to do so at no cost. There is no fee, and the forms are provided at each affected station for the use of the public. Those who may have used the NJ TRANSIT facilities as a source of income, but who are not able to be registered as a charity or enter into a commercial contract with NJ TRANSIT, would lose that source of income. Those who may have used NJ TRANSIT facilities as a residence, contrary to local ordinances, will have additional reason to seek alternative shelter. Those who may have used the facilities or equipment as a place of assembly for recreational purposes, such as skateboarding or rollerskating, will not be able to engage in those activities. Those who may have used the facilities or equipment for certain illegal activities will have additional reason not to do so. Costs relative to these prohibitions will depend upon the alternative choices made by the public.

Regulatory Flexibility Analysis

The rules in this chapter accomplish two things: they provide a means whereby the orderly non-commercial expression of the public may take place, and they prohibit a number of activities generally considered incompatible with the primary purpose of the NJ TRANSIT facilities and equipment. The process for obtaining a certificate of non-commercial expression is expeditious, without cost to the applicant, and is available on a first-come, first-served basis. Some charitable organizations may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, there is no reason to discriminate in the application of these provisions on a basis of business (that is, charitable organization) size. The prohibitions which are also part of this chapter are prohibitions on the behavior of individuals, not on small businesses per se.

Full text of the proposed new rules follows:

CHAPTER 83
CONDUCT AND SAFETY OF THE PUBLIC IN THE USE OF NJ TRANSIT EQUIPMENT AND FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

16:83-1.1 Purpose; scope

The New Jersey Transit Corporation (NJ TRANSIT) and its subsidiaries are responsible for the provision of rail and bus services in the State of New Jersey. NJ TRANSIT owns and operates equipment (railcars and buses) and facilities. The facilities include, but are not limited to, rail and bus stations or terminals. NJ TRANSIT's major stations and terminals are centers of activity through which large numbers of people pass each day. NJ TRANSIT receives requests from the public for permission to exercise their constitutional rights of expressions at such stations and terminals. NJ TRANSIT, through this chapter, informs the public of how they can exercise their rights on or about NJ TRANSIT facilities and the procedures to be followed in exercising such rights. NJ TRANSIT also delineates, in this chapter, the standards of behavior to be followed at all facilities and in regard to all equipment of the NJ TRANSIT corporation.

16:83-1.2 Definitions

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

"Block" means to interfere with free passage or to hinder the usage of so as to deny availability or application of purpose of a portion of property, real estate, facility or equipment.

"Certificate of Registration" means the document authorized by a designated NJ TRANSIT official which delineates the restrictions as to specific times, specific locations, and certain conditions under which a person may carry out noncommercial, public expression at the specified NJ TRANSIT facility (see Appendix A, incorporated herein by reference).

"Certificate of Registration holder" means a person who holds a valid daily Certificate of Registration.

"Commercial expression" means any public expressive conduct that solely proposes a commercial transaction including, but not limited to, the sale, offer, promotion, peddling, vending, advertisement or display of goods and/or services.

"Controlled Dangerous Substances" means a drug, substance or immediate precursor as defined in Schedule I through V of the New Jersey Criminal Justice Code, N.J.S.A. 2C:35-2. The term "controlled dangerous substance" shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in N.J.S.A. 33:1-1 et seq., or tobacco products. The term "controlled dangerous substance" shall include controlled substance analogues.

"Disrupt" means to act to hinder, interfere, upset, impede or otherwise oppose the orderly accomplishment or pursuit of a task, duty or objective or to interrupt the proper and normal course of any independent lawful activity.

"Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance or controlled substance analogue, in violation of the provisions of these rules or of Chapter 35 of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:35-1 et seq. and as more particularly defined in N.J.S.A. 2C:36-1.

"Equipment" means any railroad, NJ TRANSIT locomotive, engine, passenger car, coach, trolley, street railway car, bus, motor coach, crane, construction or emergency device or other passenger conveyance. Additionally, "equipment" as used in this chapter, unless a different meaning is clearly applicable, means and includes

any NJ TRANSIT "Motor Vehicle" as defined under Title 39, Motor Vehicle and Traffic Laws of New Jersey.

"Expressive area" means designated portions of specific NJ TRANSIT facilities where a Certificate of Registration holder may locate and may exercise non-commercial public expression.

"Facilities" means all stations, and/or terminals owned or operated by NJ TRANSIT under contract, lease or other agreements or arrangements, including joint service arrangements. Further, the term "facilities" shall mean rights of way and related trackage and sidings, rails, catenary systems, depots, yards, tunnels, bridges, structures, storage areas, parking areas, offices, buildings, signal and communications systems and networks, dispensing machines, signal power, fuels, power plants, emergency exits, ventilation systems, signage, lighting, repair and maintenance shops and other real estate operated, used, owned, leased, held or occupied by NJ TRANSIT for or incidental to the operations, rehabilitation or improvement of rail and/or bus operations in the State of New Jersey.

"Knowingly" means that with the knowledge or the awareness of one's conduct, or of the existing circumstances, that a certain result will occur from such conduct or as a result of such circumstances.

"Non-commercial expression" means the public exercise of rights which concern political, social, religious or other issues to the extent that such expression is protected by the United States or State Constitutions, as applicable. Non-commercial public expression includes, but is not limited to, leafletting, public speaking and solicitation of contributions for religious, political or charitable causes. This definition is not intended to apply, and does not apply, to talking, reading, wearing political buttons or other forms of private expressions which are permitted throughout the public areas of facilities and equipment. Any advertisement or solicitation that solely proposes a commercial transaction is expressly excluded.

"Obstruct" means to walk, run, stand, sit, lie, drive or place an object in such a manner as to block passage by another person or by a vehicle or to require another person or vehicle to take evasive action to avoid physical contact.

"Official" means any person or persons designated by NJ TRANSIT to have supervisory and/or operational authority and responsibility for NJ TRANSIT facilities and/or equipment, or any portion thereof.

"Person" means any person, individual or individuals, corporation, society, organization, company, association, partnership, firm, or other entity.

"Personal notice" means an oral, or spoken, communication directed to an individual or a group of individuals from an NJ TRANSIT official.

"Police officer" means any member of the NJ TRANSIT Police Department, or any other law enforcement officer who has jurisdiction in the facility or on the equipment in which a violation of these rules shall occur.

"Possess" means to have or to exercise control or command over any item, device, tool, product or matter.

"Public area" means such portions of NJ TRANSIT facilities and equipment which are routinely and normally accessible to members of the public and are adapted to provide for the convenience of persons utilizing the incidental services of NJ TRANSIT.

"Purposely" means intentionally, deliberately or with the objective, design or plan to participate in such conduct which is known or expected to or is likely to cause a certain or specific result.

"Restrict" means to confine or set limits or to hold within bounds and limitations. Additionally, the term "restrict" shall include the exclusion of designated persons or groups.

"Restricted area" means such portions or portion of NJ TRANSIT facilities and equipment which are separately secured, locked, fenced, posted or otherwise adapted so as to put persons on notice that unauthorized entry is not permitted. Additionally, "restricted area" shall include portions of NJ TRANSIT facilities which are the subject of notification by personal communication, public announcement or appropriate signs that such areas are temporarily not to be entered and/or remained upon.

16:83-1.3 Commercial expression

(a) A contract with NJ TRANSIT shall be required of any person or organization seeking to engage in commercial expression at any facility.

(b) Information concerning contracts for commercial expression is available by contacting the following:

NJ TRANSIT
Real Estate Department
One Penn Plaza East
Newark, New Jersey 07105-2246

(c) Personal access to vehicles or equipment, whether stationary or mobile, for the purpose of conducting commercial expressive activities, shall be prohibited.

(d) Nothing in this chapter shall be construed as impairing or expanding any right which NJ TRANSIT lessees or licensees may otherwise have to regulate access to those areas under their control by virtue of their interest in the premises.

16:83-1.4 Non-commercial expression

(a) NJ TRANSIT, in this chapter, sets forth limitations on the times, places and manner of non-commercial expression at the passenger facilities specified at N.J.A.C. 16:83-2.2(d), to ensure that the orderly and safe flow of pedestrians and vehicles is not obstructed and that the normal operations of business are not unduly disrupted. These limitations are not intended to apply, nor do they apply, to talking, reading, wearing political buttons or other similar private forms of expression, all of which are permitted throughout the public areas of NJ TRANSIT facilities and/or equipment.

16:83-1.5 NJ TRANSIT disclaimer

NJ TRANSIT is not responsible for the views and ideas expressed in the conduct of non-commercial expression by a person or organization holding a certificate of registration. Through signs, public announcements and/or personal communication, NJ TRANSIT may advise the public of the presence of a person or organization and may disclaim responsibility for, and/or sponsorship of, that person or organization's cause.

16:83-1.6 Enforcement

If NJ TRANSIT determines that any person's conduct violates any of these regulations, NJ TRANSIT shall notify the violator to stop the wrongful conduct, or to leave the facility and/or equipment. If the violator fails to cease the wrongful conduct or to leave the property when so notified, the wrongful conduct, if done purposely, shall constitute trespass and the violator is subject to arrest, to fine and/or to imprisonment pursuant to the applicable laws and/or ordinance.

SUBCHAPTER 2. CERTIFICATE OF REGISTRATION FOR NON-COMMERCIAL EXPRESSION

16:83-2.1 Non-commercial expression; generally

(a) To accommodate persons and organizations who desire to engage in non-commercial expression at the specified NJ TRANSIT facilities, the Manager of Stations and Facilities or his or her designee will issue Certificates of Registration (Certificates) on a first-come, first-serve basis, to conduct non-commercial expression in the specified areas (as designated on the map attached to the Certificate and on Appendices B-1 through B-10) of the particular NJ TRANSIT facility to persons or organizations who complete the application. If the application is being made on behalf of an organization, the application must state the number of persons requesting a Certificate. These Certificates will be issued without charge, when fully completed and consistent with these regulations subject to availability and limitations of space. These Certificates will be issued immediately upon application in person or by telefax, and within one day of receipt of the completed application by mail.

(b) Applications for Certificates of Registration, and the Certificates of Registration, may be obtained on weekdays between 9:00 A.M. to 5:00 P.M.:

1. For Newark Penn Station, Trenton Station, Westfield Station and Atlantic City Rail Terminal, from:

The Office of the Manager of Revenue
and Facilities
Penn Station Newark
Raymond Plaza West
Newark, N.J. 07102; or

2. For Newark Broad St. Station, Dover Station, Hoboken Terminal, and Summit Station, from:

The Office of the Manager of Revenue
and Facilities
Hoboken Terminal
One Hudson Place
Hoboken, N.J. 07030, or

3. For Lakewood Bus Garage from:

Supervisor
Lakewood Bus Garage
First and Lexington Aves.
Lakewood, N.J. 08701

(c) During other hours, the applications and Certificates may be obtained from:

The New Jersey Transit Police Department
Broad Street Station
25 University Avenue
Newark, N.J. 07104

16:83-2.2 Application for Certificate of Registration

(a) The application for a Certificate of Registration, signed by the applicant, shall contain the following:

1. The applicant's name and telephone number;

2. If applicable, the name of the organization which the applicant represents;

3. If more than one Certificate is requested, the name(s) and title(s) of the person(s) who will have supervision of and responsibility for the expressive conduct at the specified facility during the term of the Certificate; and

4. If applicable, a statement that the proposed solicitation or sale of printed matter is for a non-commercial purpose, that is, for contributions which will be used:

i. By a religious group;

ii. By a political organization;

iii. By an organization that has received an Internal Revenue Service determination that it is tax exempt under 20 U.S.C.A. 501(c)(3), (c)(4), or by (i)(5); or

iv. By an organization duly registered with the State of New Jersey as a charitable organization, in accordance with N.J.S.A. 45:17A-1 et seq.

(b) At the option of the applicant, the applicant's address and/or telephone number may be listed on the application. No applicant shall be required to list an address or telephone number on an application for a certificate of registration for non-commercial expression.

16:83-2.3 Disposition of application; appeal of denial

(a) Upon receipt of the completed application, the appropriate NJ TRANSIT official or designee shall immediately give, telefax or mail the applicant the requested number of Certificates, if available.

(b) If the applicant is denied a Certificate after completing the application, the applicant may immediately appeal this denial by contacting:

Executive Director
New Jersey Transit Corporation
One Penn Plaza East
Newark, New Jersey 07105-2246

(c) An appeal shall be made in writing and shall include a statement describing the nature of the appeal and what factual issues, if any, shall be in dispute. Within two business days after receipt of such appeal, the Executive Director or his or her designee shall conduct a review, if any factual dispute exists, and render a decision within one business day thereafter. The decision of the Executive Director or his or her designee shall be made in writing and shall set forth the legal and/or factual basis for the decision.

16:83-2.4 Validity of Certificate of Registration

(a) A Certificate of Registration is valid for up to, but not more than, five days. Each certificate is valid up until closing time of the facility. If the facility does not close, the Certificate is valid up to 12:00 midnight of the date(s) appearing on the Certificate, and, if valid the following day, is valid beginning at 6:00 A.M.

(b) Each certificate shall be valid only for the person or organization designated by NJ TRANSIT on that certificate. Certificates shall not be transferred or assigned to another person(s) or organization(s).

(c) NJ TRANSIT may limit the number of valid continuous Certificates of Registration to the maximum number of persons established for the particular facility, as shown on the maps in Appendix B, incorporated herein by reference. The maximum number of persons shall be indicated on the map attached to each Certificate of Registration. If the number of applicants or persons covered by an application of an organization exceeds the maximum number of Certificate of Registration holders indicated on the map of the specified facility, NJ TRANSIT will distribute the maximum number of Certificates on a "first-come, first-served" basis.

(d) Certificates of Registration issued in accordance with this chapter shall be valid only at the facility specified on the Certificate. These facilities are the Newark Broad Street Station, Dover Station, Hoboken Terminal, Newark Penn Station, Summit Station, Trenton Station and Westfield Station and the Atlantic Rail Terminal and Lakewood Garage.

16:83-2.5 Limitation of Certificate; access during emergency

(a) NJ TRANSIT may temporarily defer or modify the Certificate for emergent public health, welfare or safety reasons including extraordinary weather, power failures, accidents, disasters, strikes, riot, fire, civil disorder, service disruptions, special NJ TRANSIT-sponsored customer service events or other events which create a dangerous condition in the relevant expressive area or which substantially interfere with the transportation related activities of the facility.

(b) NJ TRANSIT may temporarily grant or restrict public access to its facilities and equipment, or to portions thereof, at its discretion for emergent public health, safety or welfare reasons without prior notice. When there is threat to the public health, safety or welfare, NJ TRANSIT facilities and equipment, or portions thereof, may be closed by any NJ TRANSIT official who has the authority to do so upon personal communication, public announcement or conspicuous signage.

16:83-2.6 Noise

Certificate of Registration holders shall at no time shout, make outcries, use devices for voice and/or sound amplification, or other devices that substantially disrupt transportation-related activities.

16:83-2.7 Placards

Only placards made of cloth, heavy paper, cardboard or similar light weight materials shall be used by Certificate holders. Such placards shall be no larger than 48 inches by 24 inches. Placards shall be exhibited no higher than nine feet from the floor and shall not be affixed to any wall, door, window, canopy or any other interior or exterior portion of the facility.

16:83-2.8 Tables

No Certificate of Registration holder shall use a table, unless the map attached to the Certificate expressly provides for this use in the designated expressive area.

16:83-2.9 Maintenance of area

Certificate of Registration holders shall not leave materials unattended and shall remove the same at the end of each daily session. Certificate of Registration holders shall at all times keep the area in a reasonably clean, neat, and uncluttered condition.

16:83-2.10 Inspection of Certificate

A Certificate of Registration holder who is exercising non-commercial expression in an NJ TRANSIT facility shall have a valid Certificate of Registration available at all times, on his or her person, for inspection by an authorized NJ TRANSIT representative or local official.

16:83-2.11 Liability

Certificate of Registration holders assume all liability for any and all damage or injury arising out of the Certificate holder's non-commercial expressive activity, on or about NJ TRANSIT's facilities and, by accepting the Certificate of Registration, agree to release the State of New Jersey, NJ TRANSIT and its subsidiaries, and any of their servants, employees or agents from any liability or damages resulting from the Certificate holder's use or occupancy of NJ TRANSIT's facilities in connection with the Certificate of Registration.

SUBCHAPTER 3. RESTRICTIONS AND PROHIBITIONS FOR ALL NJ TRANSIT FACILITIES AND EQUIPMENT

16:83-3.1 Prohibited acts

(a) Except as otherwise provided for in this chapter, the following conduct is prohibited in NJ TRANSIT facilities and equipment, as set forth below:

1. No person shall disrupt or obstruct passage to or from a loading area, information booth, emergency or fire exit, restroom, hallway, stair, staircase, landing, escalator, elevator, ticket machine, ticket counter, concession counter, bench, seat, chair, platform, door or other walkway of a facility or equipment.

2. No person shall enter or remain in any area of a NJ TRANSIT facility or equipment upon notification by personal communication from an authorized NJ TRANSIT employee, public announcement, or sign that access to such area is conditional unless such person complies with the specified condition(s).

3. No person shall throw, drop, shoot, project, propel, cast or otherwise strike in, into or place upon any facility or equipment any projectile, stick, stone or other foreign matter or object.

4. No person shall dump, discard, unload, reject, throw out, scrap, abandon, dispose or otherwise rid themselves of any junk, refuse, trash, rubbish, waste, garbage, rubble, debris or other litter and unused matter into or upon any NJ TRANSIT facility or equipment without the authorization of NJ TRANSIT. This prohibition does not apply to refuse incidental to normal and routine usage of the facilities and equipment.

5. No person shall climb or attempt to climb into or upon any NJ TRANSIT facility or equipment without the express authority of NJ TRANSIT.

6. No person shall knowingly obtain, possess or use any Controlled Dangerous Substance, as defined in these rules, unless the substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner (as defined in N.J.S.A. 24:21-2), while acting in the course of his or her professional practice, except as otherwise authorized by N.J.S.A. 24:21-1 et seq.

7. No person shall knowingly possess or use any drug paraphernalia as defined in these rules unless obtained directly, or pursuant to a valid prescription or order form, from a practitioner, (as defined in N.J.S.A. 24:21-2) while acting in the course of his or her professional practice, or except as otherwise authorized by N.J.S.A. 24:21-1 et seq.

8. No person may consume or possess any alcoholic beverage, distilled spirits, wine, beer or malt nor shall any person possess an open, unsealed container of these beverages within the confine of NJ TRANSIT facilities or equipment except in such areas and at such times as designated by NJ TRANSIT as permitting the sale and/or consumption of these beverages.

9. No person shall ride, roll, skate or coast upon any bicycle, skate, skateboard, roller blades, scooter or other device propelled by physical exertion or mechanical means within NJ TRANSIT facilities or equipment other than parking areas, with the exception of devices utilized by disabled persons.

10. No person shall ignite, light, kindle or otherwise create, burn, maintain, preserve or sustain any fire except where expressly authorized by NJ TRANSIT.

11. No person shall light, smoke, or carry any lighted tobacco or tobacco product in any area of NJ TRANSIT facilities or equipment with the exception of those portions thereof designated and specially marked by NJ TRANSIT for smoking and using tobacco products.

12. No person, without an appropriate license from NJ TRANSIT or without prior agreement with NJ TRANSIT, may offer or agree to carry baggage, parcels, or belongings of others for personal pecuniary gain.

13. No person without an appropriate license from NJ TRANSIT or other appropriate authority, shall hire, attempt to hire, flag, hawk or otherwise provide cab services for personal pecuniary gain.

14. No person shall engage in, attempt to engage in or participate in any conduct which purposely and unlawfully disrupts, interferes with, or otherwise interrupts the commercial activities and pursuits of lessees, tenants and customers operating within NJ TRANSIT facilities and/or equipment and which serves no legitimate purpose of the person.

15. No person shall subject other persons, patrons, employees, tenants or tenants' employees to any or all of the following unlawful conduct:

i. Engaging in, or threatening, fighting or other violent or tumultuous behavior;

ii. Creating a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor;

iii. Subjecting another to striking, kicking, shoving, spitting, punching or other offensive touching, or threatening to do so; or

iv. Engaging in any course of alarming conduct or of repeatedly committed acts with the purpose to alarm or seriously annoy such other person.

16. No person shall cause damage, injury or harm by vandalizing, defacing, marking, marring, scratching, gouging, tearing, burning, moving, altering or writing upon NJ TRANSIT facilities and equipment.

17. No person shall, while in or about NJ TRANSIT facilities or equipment, create, cause, maintain or sustain any noise that disrupts the transportation operations of the facility or equipment.

18. No person shall solicit funds (without first obtaining a Certificate of Registration in accordance with the requirements of this chapter, or shall panhandle, or beg within the confines of NJ TRANSIT facilities or equipment for any reason whatsoever.

19. No person shall spit into or upon any public or restricted area except in appropriate receptacles designed for such purpose.

20. No person shall urinate or defecate in any public or non-public area other than in urinals or toilets expressly provided for that purpose.

21. No person shall jointly occupy with one or more persons any single urinal, toilet booth or stall with the exception of those persons granting assistance to disabled or incompetent persons or to small children.

22. No person shall utilize public lavatories for the purpose of bathing, changing clothes, laundering clothes or personal belongings, and all washing activities shall be limited to the immediate needs of personal hygiene.

23. No person shall refuse to tender or display compensation in the form of fare, currency, ticket, token or pass for the available transportation services, nor shall any person take actions with the purpose of avoiding this obligation.

24. No person shall bring, escort, carry or otherwise accompany any animal except seeing eye/hearing dogs appropriately restrained and charged, or other domestic animals restrained in appropriate carriers.

25. No person may engage in protected expression without complying with the terms and conditions of a valid Certificate of Registration or with a valid contract.

26. No person shall be allowed access to any NJ TRANSIT equipment, whether stationary or mobile, for the purpose of conducting any public expression.

27. No person shall erect any permanent or temporary structure on NJ TRANSIT property without the authorization of NJ TRANSIT.

28. No person shall operate any vehicle nor shall any vehicle be parked upon NJ TRANSIT facilities in such a manner as is in violation of the provisions of Title 39, Motor Vehicle and Traffic Laws of New Jersey.

APPENDIX A

CERTIFICATE OF REGISTRATION

Name: _____

Name of Organization (if applicable): _____

Address (Optional): _____

Telephone Number (Optional): _____

Facility: _____

Date(s) of Non-Commercial Public Expression: _____

Time(s) of Non-Commercial Public Expression: _____

Purpose of Non-Commercial Public Expression: _____

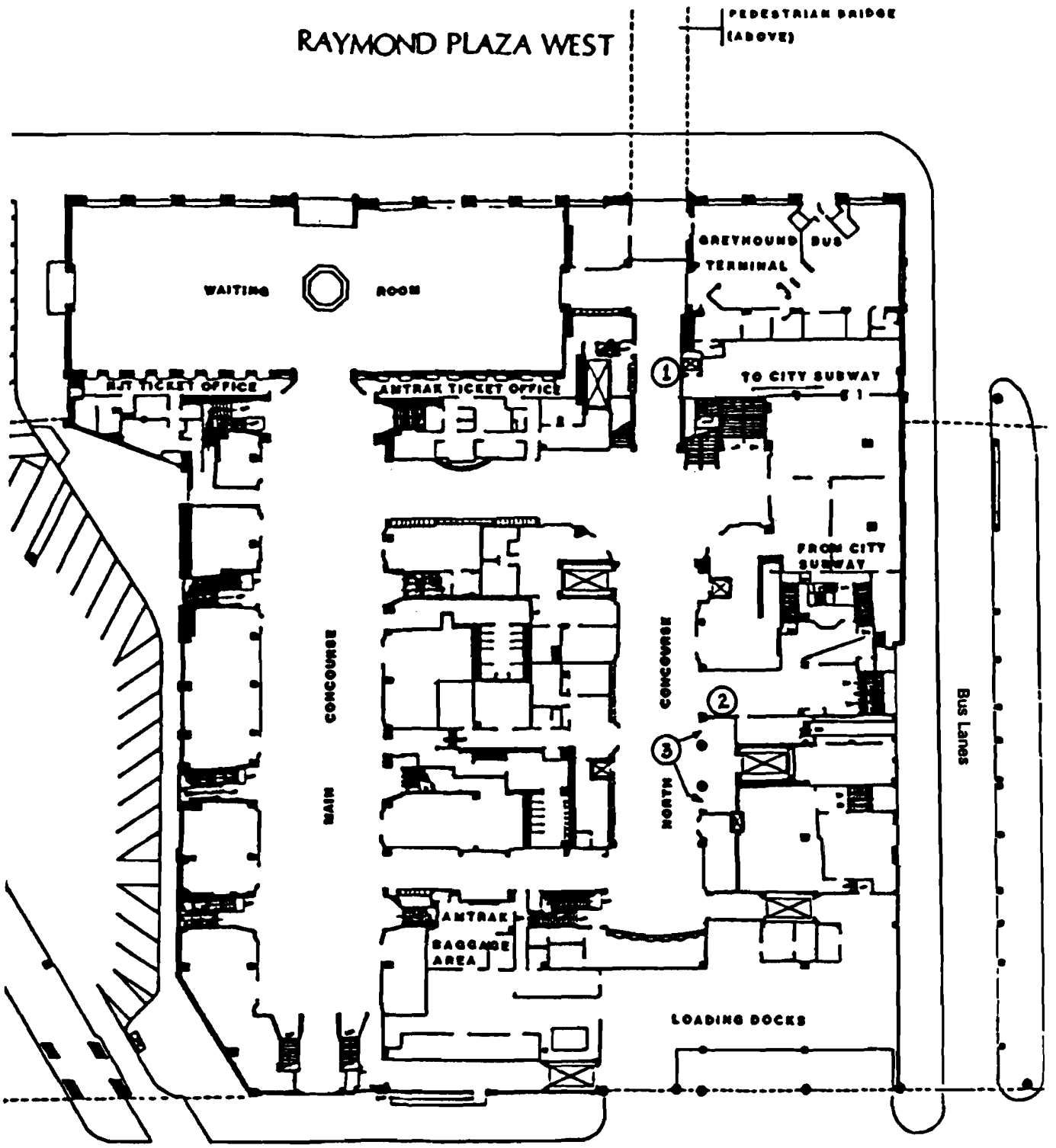
You are hereby permitted to engage in non-commercial public expression in the designated area (as shown on the map attached hereto and made a part hereof) of the NJ TRANSIT Facility stated above, on the date(s) and during the time(s) set forth above, subject to the terms and conditions of N.J.A.C. 16:83, a copy of which is attached hereto and made a part hereof.

Authorized by: _____
(Name and Title of NJ TRANSIT Official)

The undersigned agrees to comply with all of the terms and conditions of this Certificate of Registration.

_____
(Signature of Certificate Holder)

APPENDIX B



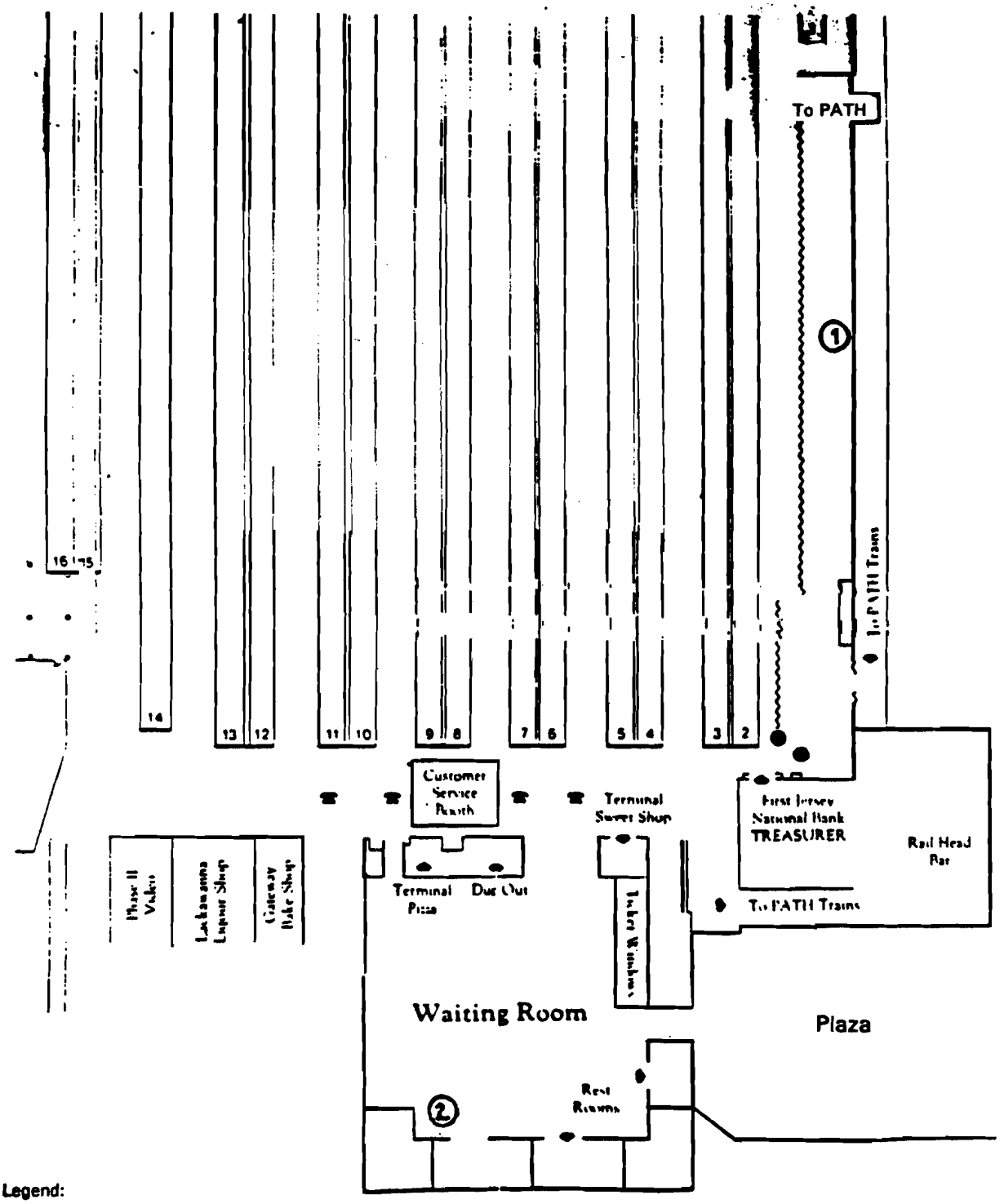
Legend:

Location 1 = 3 persons

Location 2 = 2 persons

Location 3 = 4 persons

Pennsylvania Station

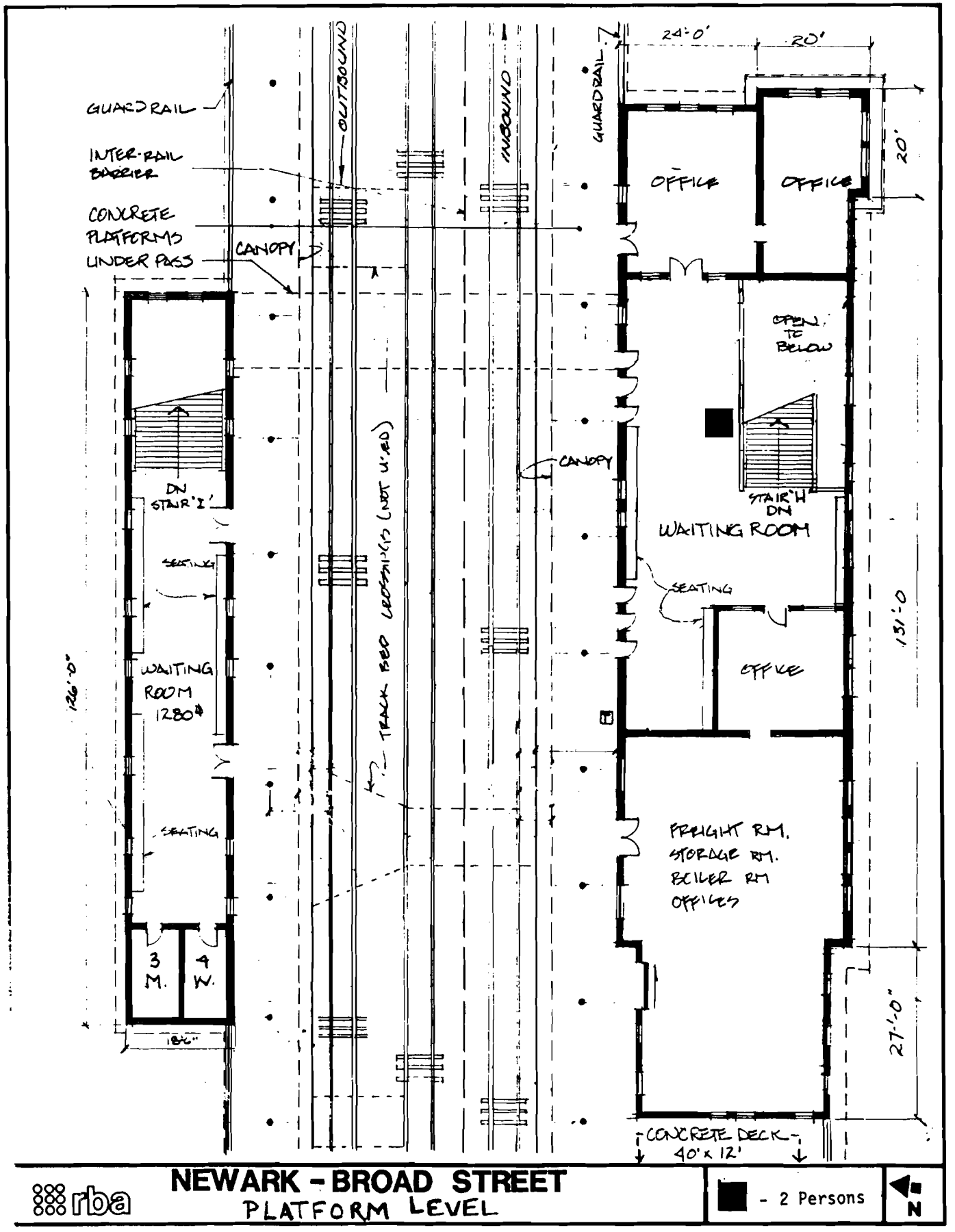


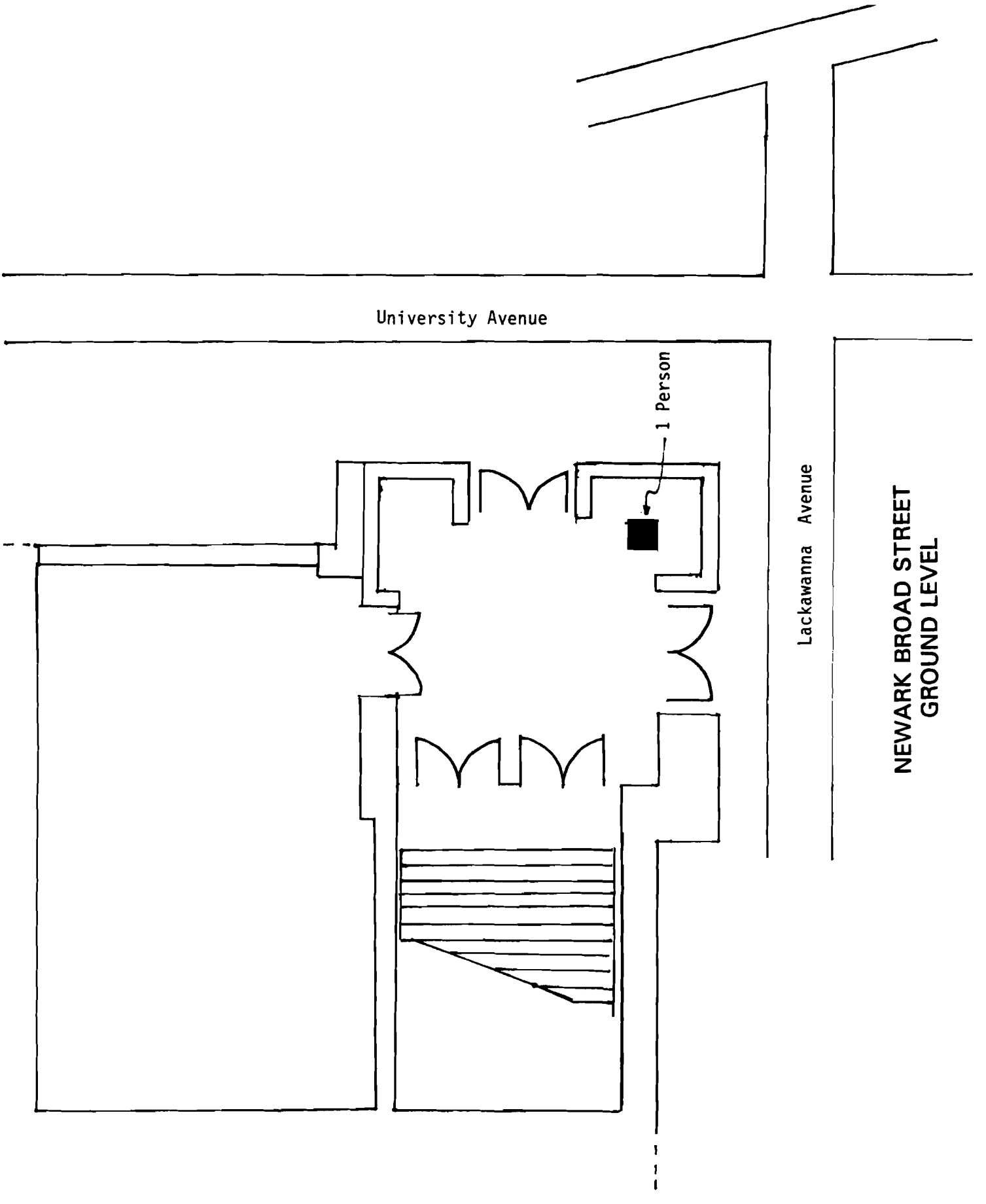
Legend:

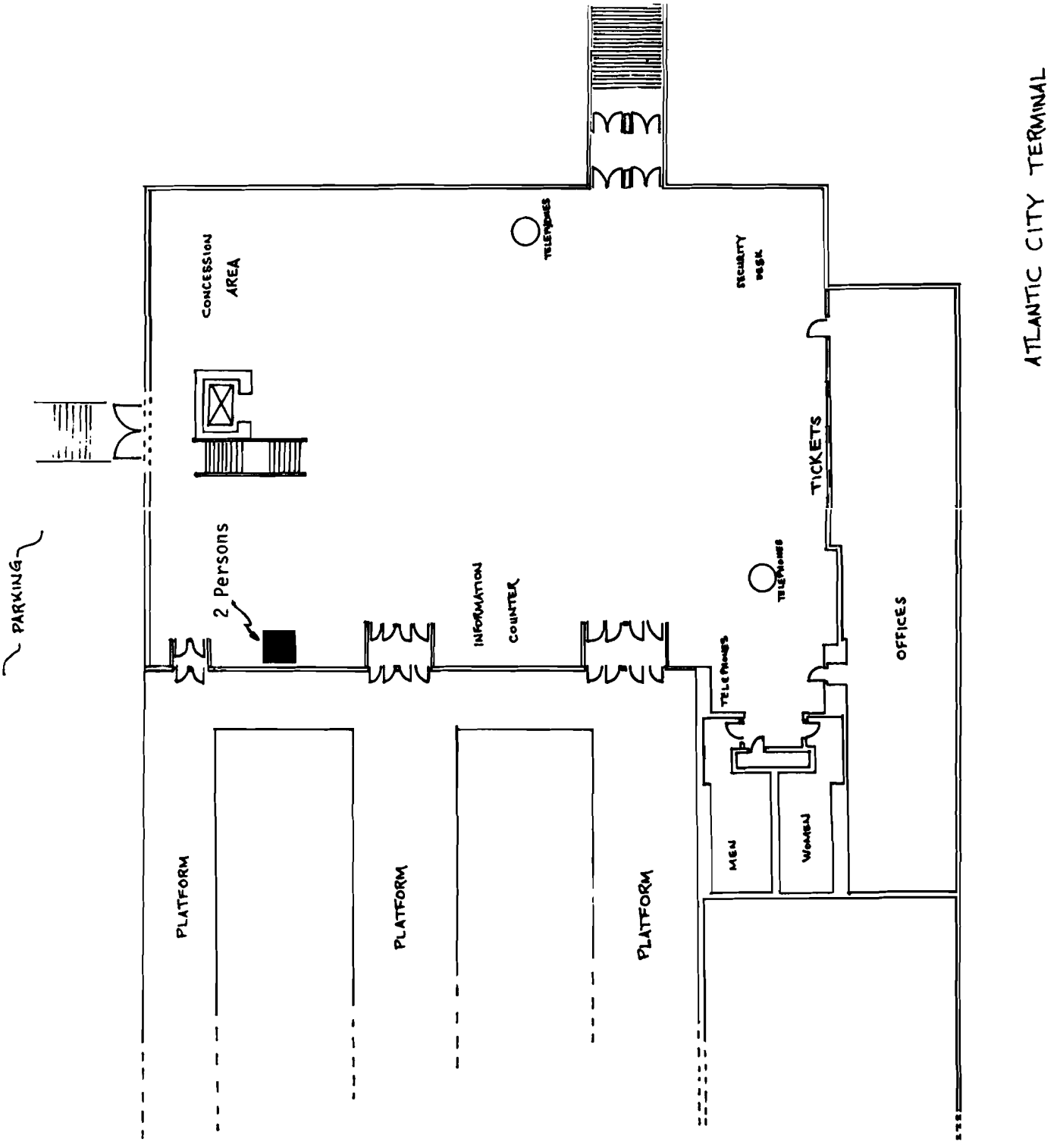
Location 1 = 5 persons

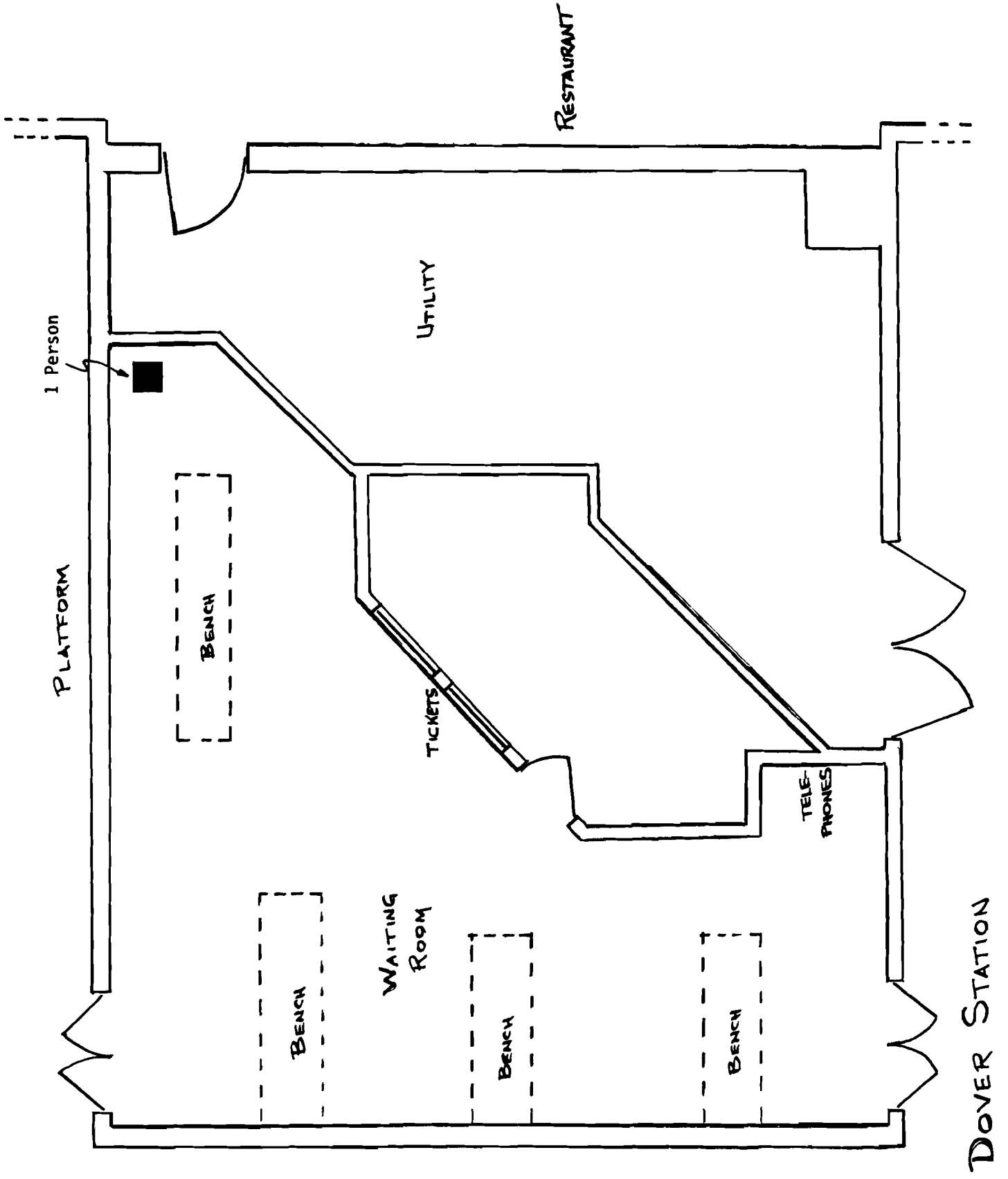
Location 2 = 2 persons

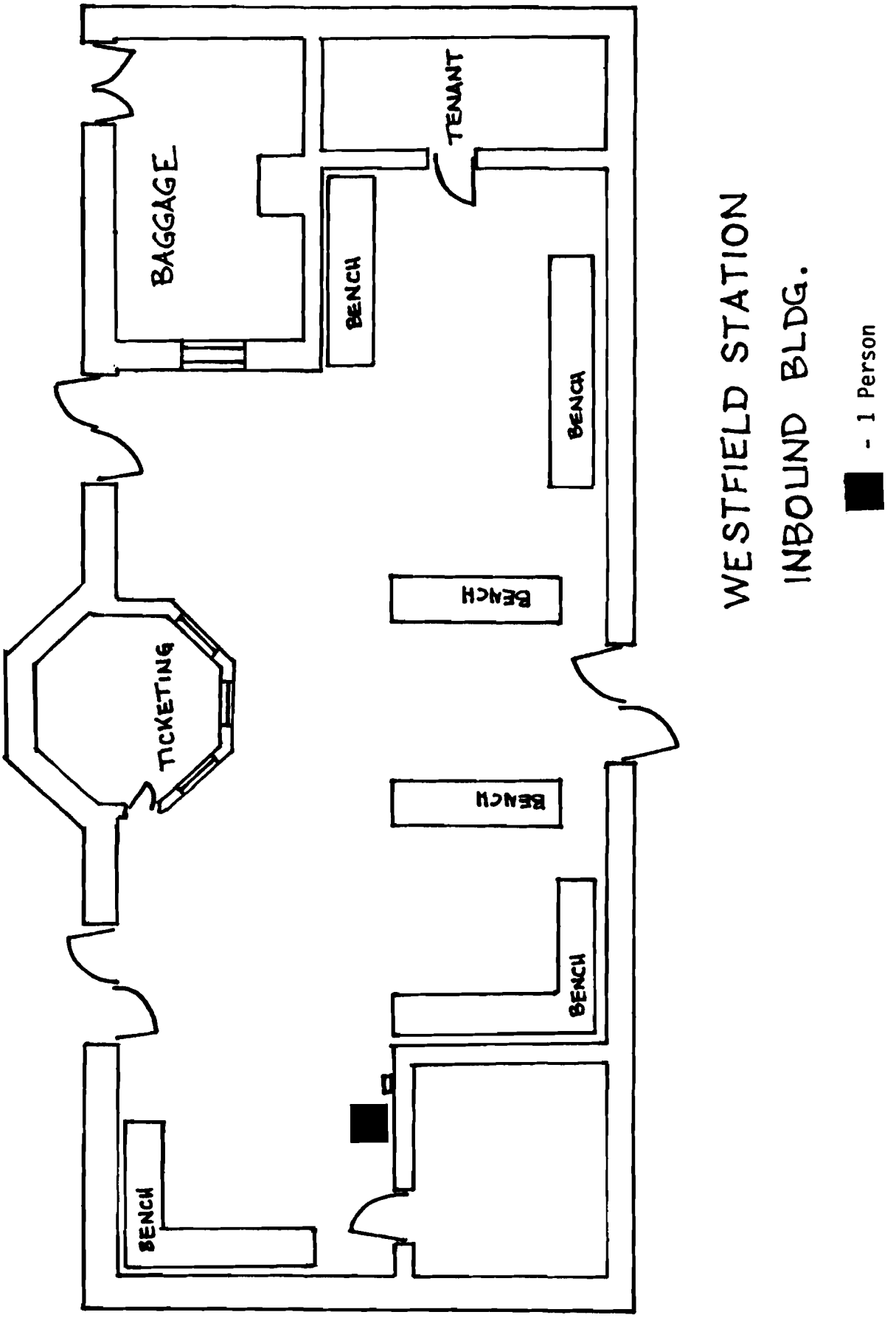
Hoboken Terminal

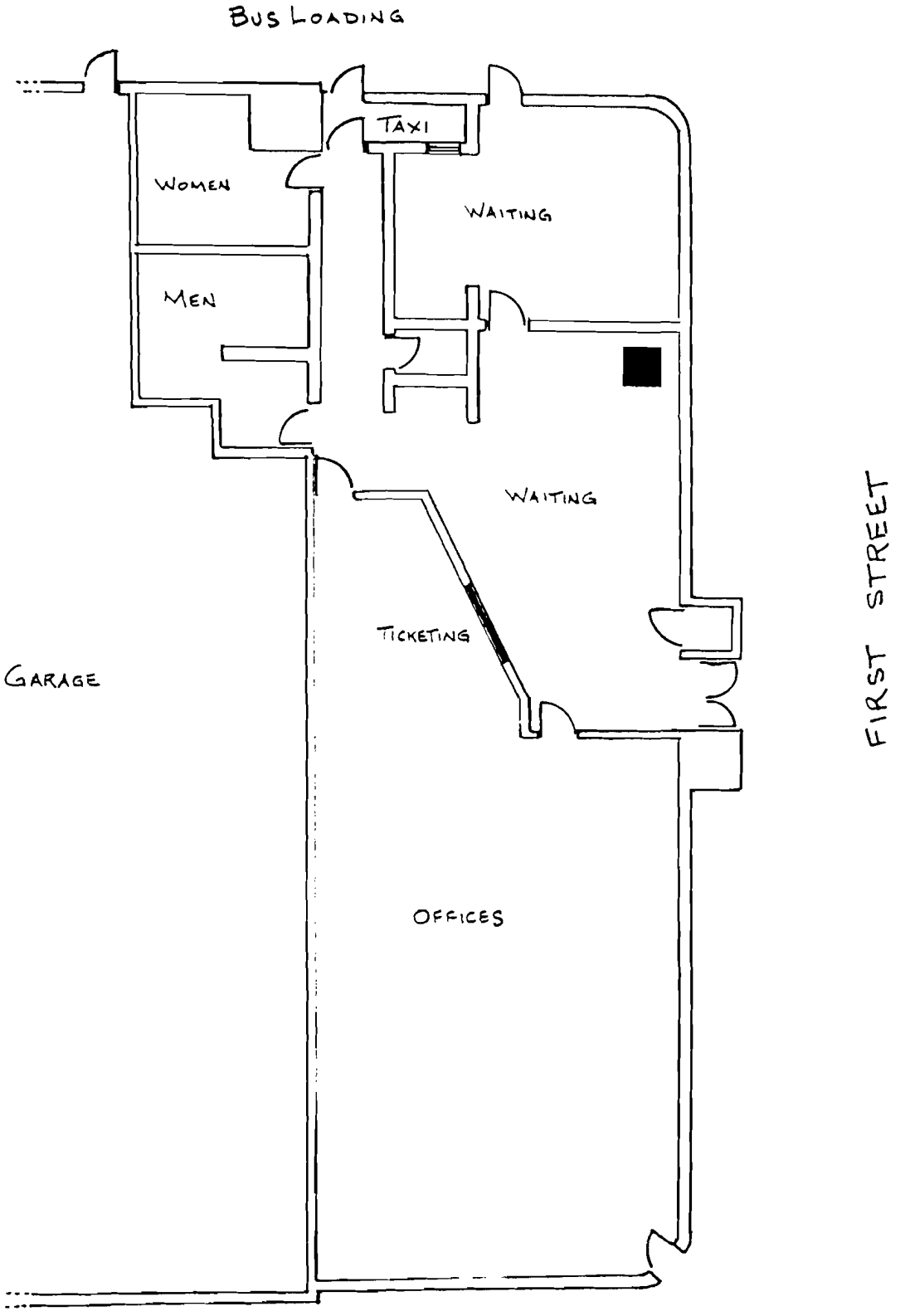

GUARD RAIL
INTER-RAIL BARRIER
CONCRETE PLATFORMS UNDER PASS
CANOPY
OUTBOUND
INBOUND
TRACK BED (ABANDONED) (NOT USED)
GUARD RAIL
24'-0"
20'
OFFICE
OFFICE
20'
OPEN TO BELOW
CANOPY
STAIR'H DN
WAITING ROOM
SEATING
DN STAIR'H
SEATING
WAITING ROOM 1280#
126'-0"
OFFICE
131'-0"
SEATING
FREIGHT RM.
STORAGE RM.
BOILER RM
OFFICES
3 M.
4 W.
18'6"
27'-0"
CONCRETE DECK 40' x 12'
NEWARK - BROAD STREET
PLATFORM LEVEL
rba
- 2 Persons
N

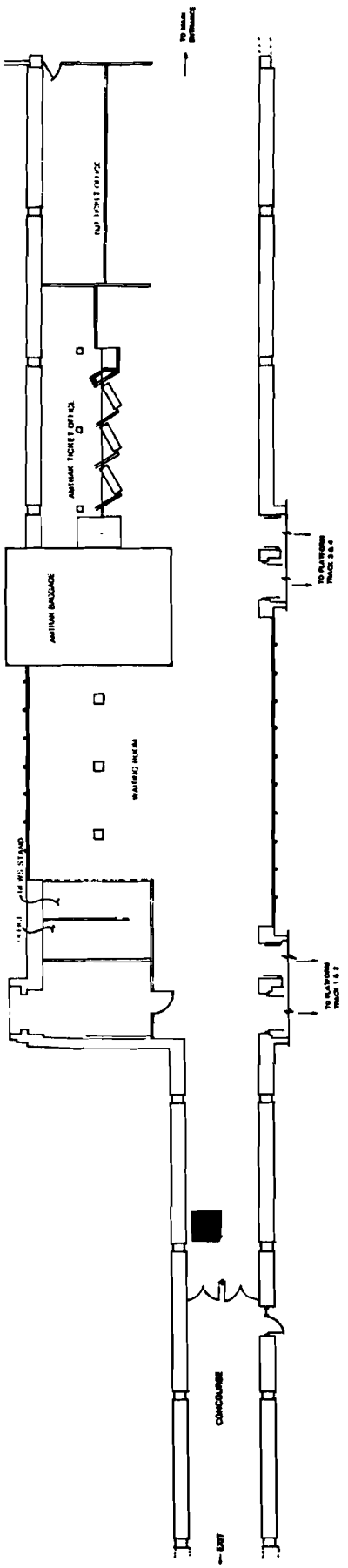

University Avenue
1 Person
Lackawanna Avenue
NEWARK BROAD STREET
GROUND LEVEL

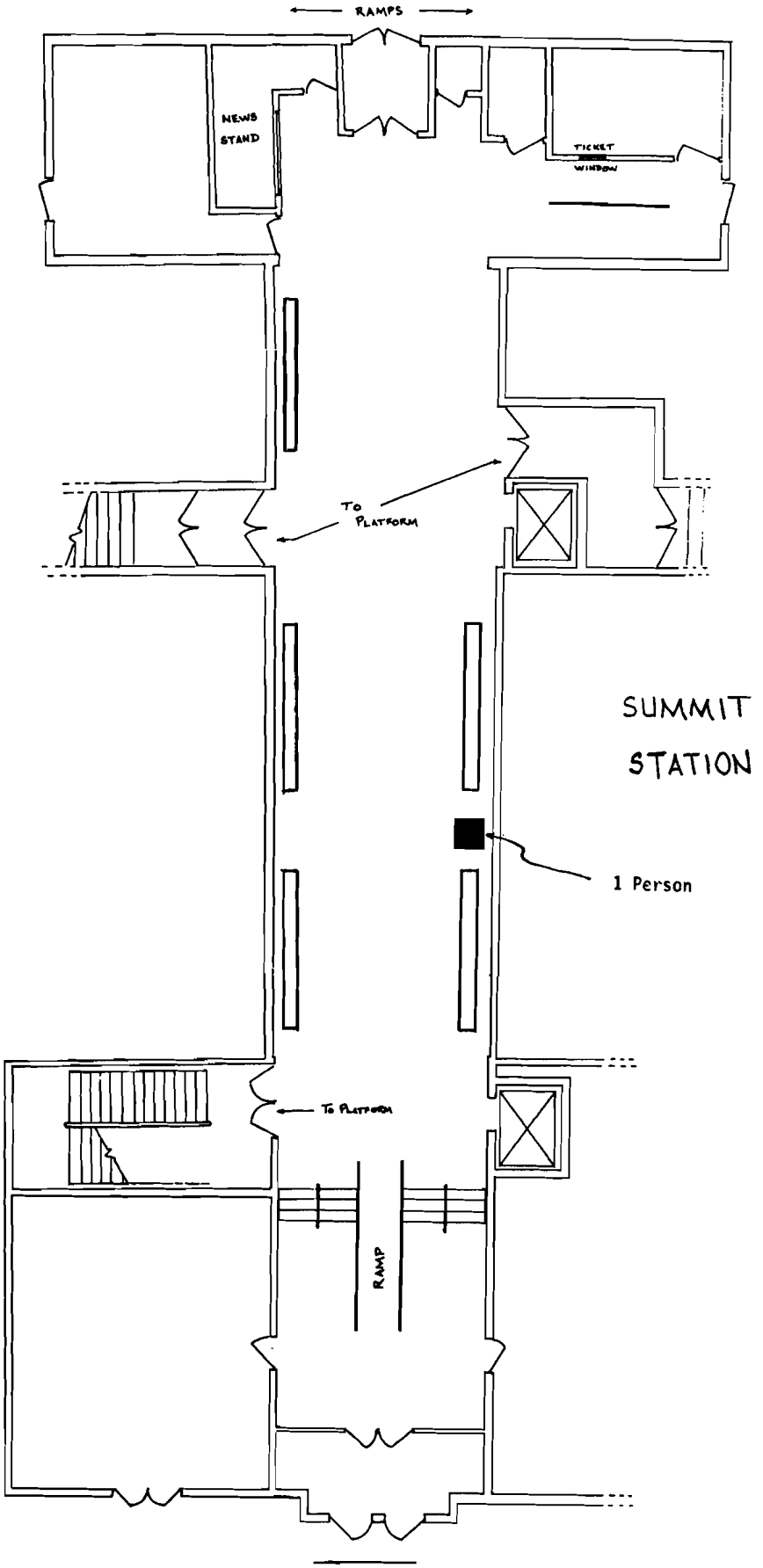

ATLANTIC CITY TERMINAL
CONCESSION AREA
TELEPHONES
SECURITY DESK
TICKETS
PARKING
2 Persons
INFORMATION COUNTER
TELEPHONES
OFFICES
TELEPHONES
MEN
WOMEN
PLATFORM
PLATFORM
PLATFORM


RESTAURANT
UTILITY
1 Person
PLATFORM
BENCH
TICKETS
TELE-PHONES
BENCH
WAITING ROOM
BENCH
BENCH
DOVER STATION


BAGGAGE
TENANT
BENCH
BENCH
BENCH
TICKETING
BENCH
BENCH
BENCH
WESTFIELD STATION
INBOUND BLDG.
- 1 Person


BUS LOADING
TAXI
WOMEN
WAITING
MEN
WAITING
TICKETING
GARAGE
FIRST STREET
OFFICES
LEXINGTON AVENUE
LAKEWOOD GARAGE
- 2 Persons


TRENTON STATION
- 2 Persons
CONCOURSE
EXIT


RAMPS
NEWS STAND
TICKET WINDOW
TO PLATFORM
SUMMIT STATION
1 Person
TO PLATFORM
RAMP

TREASURY-GENERAL
(a)

DIVISION OF PENSIONS AND BENEFITS

Public Employees' Retirement System Election of Member-Trustee

Proposed Amendment: N.J.A.C. 17:2-1.4

Authorized By: Public Employees' Retirement System, Edmond McDowell, Acting Secretary.
Authority: N.J.S.A. 43:15A-17.
Proposal Number: PRN 1992-442.

Submit comments by November 18, 1992 to:
Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will permit the runner-up in the election for trustee of the Board of Trustees of the Public Employees' Retirement System to be selected to serve as such trustee if the winner of the formal election dies prior to the start of his or her term as trustee and there were at least three candidates running in the election. There presently are no guidelines regarding the selection of a replacement for such deceased election winner.

Social Impact

This proposed amendment will affect candidates for the PERS Board of Trustees. The amendment would provide for the selection of the runner-up as trustee, should the winner die prior to the beginning of the trusteeship. This provision would allow the appointment of a representative who has the demonstrated support of the constituency, in a timely manner, without the need to hold another election.

Economic Impact

It does not appear that this proposed amendment will have any economic effect upon the persons affected by this amendment or the Public Employees' Retirement System, beyond the elimination of any costs of holding another election.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed 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. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or employees, this amendment will not have any adverse effect upon small business or private industry in general.

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

17:2-1.4 Election of member-trustee

(a)-(h) (No change.)

(i) If there are at least three candidates in an election for a member-trustee and the victorious candidate dies prior to the beginning of his or her term as trustee, the candidate who obtained the next highest number of votes in that election (that is, the first runner-up) may be selected, at the Board's discretion, to fill the Board vacancy caused by the death of the successful candidate.

OTHER AGENCIES
(b)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of Primary Election for Governor

Proposed Amendments: N.J.A.C. 19:25-16.3, 16.6, 16.8, 16.9, 16.10, 16.11, 16.12, 16.14, 16.18, 16.21, 16.22, 16.31, 16.33, 16.35, 16.37 and 16.38

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Authority: N.J.S.A. 19:44A-38.
Proposal Number: PRN 1992-449.

A **public hearing** concerning this proposal will be conducted on Wednesday, October 21, 1992 at 10:00 A.M. at:
Election Law Enforcement Commission
28 West State Street, 12th Floor
Trenton, New Jersey

To reserve time to speak, telephone the Commission offices at (609) 292-8700 by Monday, October 19, 1992.

Submit written comments by November 18, 1992 to:
Nedda Gold Massar, Esq.
Election Law Enforcement Commission
CN 185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The New Jersey Election Law Enforcement Commission (hereafter, the Commission) proposes to amend its rules concerning the public financing of primary election candidates for Governor (N.J.A.C. 19:25-16). These amendments concern statutorily mandated adjustments for inflation to various limits and thresholds in the public financing provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-27 et seq.).

Statutory changes enacted in January, 1989, require that the Commission "establish an index reflecting the changes occurring in the general level of prices of particular goods and services ... directly affecting the overall costs of election campaigning in this State" (N.J.S.A. 19:44A-7.1b). The Commission must then use that index to adjust on a quadrennial basis the following primary election components of public financing: the contribution limit; the threshold for candidate qualification to receive public matching funds; the threshold amount of contributions for which no public matching funds are awarded; the expenditure limit; and the maximum public funds that may be given to a candidate (see N.J.S.A. 19:44A-7.1, as amended by P.L. 1989, c.4, effective January 21, 1989).

Applying methodology first described in the Commission's June, 1988 "Gubernatorial Cost Analysis Report," the Commission has determined that costs relevant to campaigning in New Jersey have risen in the period following the 1989 gubernatorial election and has applied an index of 17.91 percent to the gubernatorial public financing limits and thresholds required to be adjusted.

Determination of the index for 1993 first required analysis of the campaign expenditures of the 1989 publicly-financed gubernatorial general election campaigns because N.J.S.A. 19:44A-7.1 requires that the index be weighted according to the "impact in the preceding general election for the office of Governor" of the various categories of campaign expenditures. In its study of the 1989 gubernatorial public financing program, "New Jersey Gubernatorial Public Financing Revised: 1989 and Beyond," using data provided by the 1989 gubernatorial general election campaigns, the Commission concluded that 82 percent of 1989 gubernatorial general election expenditures were associated with communication of the candidates' message to voters. The remaining 18 percent of 1989 general election expenditures included all other campaign costs such as transportation, personnel, compliance, and fundraising costs.

As it did in its 1988 calculation of campaign cost changes, the Commission used established, available indices to evaluate the change in costs during the period between the 1989 and 1993 elections in these two expenditure categories, mass communication costs and other campaign costs. The change in mass communication costs was measured by the

change in the McCann-Erickson Media Cost-Per-Thousand Index which reflects changes in the cost to reach an audience of 1,000 in each of eight media categories. The McCann-Erickson Cost-Per-Thousand Composite Index increased by 17.4 percent during the past four years (see McCann-Erickson Cost Indexes, Table III, Media Cost-Per-Thousand Indexes, May, 1992).

The level of change in all other campaign costs during the same period of time was calculated using United States Bureau of Labor Statistics Consumer Price Index (CPI) data relevant to New Jersey. An increase of 20.2 percent occurred (see United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, Monthly Index Numbers, as compiled by the New Jersey Department of Commerce).

The 17.4 percent increase in communication costs was multiplied by the proportion of 1989 campaign expenditures for mass communications, or 82 percent, resulting in a communication component of 14.27. The 20.2 percent increase in other campaign costs was multiplied by the proportion of 1989 campaign expenditures on such items or 18 percent, which resulted in a component of 3.64. The 14.27 percent increase in communication costs was then combined with the 3.64 percent increase in other costs to yield a total New Jersey Campaign Cost Index (NJCCI) of 17.91 percent.

Applying the NJCCI to the limits and thresholds and rounding the results as required by N.J.S.A. 19:44A-7.1 mandates the following amendments to Commission rules:

1. References to the gubernatorial primary election contribution limit contained in Subchapter 16 (Public Financing of Primary Election for Governor) have been amended to increase the limit on contributions to a publicly-financed candidate from $1,500 to the 1993 adjusted amount of $1,800. These references include: N.J.A.C. 19:25-16.3 (Definitions); N.J.A.C. 19:25-16.6(a) (Contribution limits; applicability); N.J.A.C. 19:25-16.8(a) and (b) (Non-participating candidates; generally); N.J.A.C. 19:25-16.9(a)4 (Limitations on participating candidates); N.J.A.C. 19:25-16.10(a) and (c) (Who may or may not contribute; generally); N.J.A.C. 19:25-16.11(b) and (c) (Contributions eligible for match; generally); N.J.A.C. 19:25-16.12(a)3 (Contributions and loans prior to candidacy); N.J.A.C. 19:25-16.14(a) and (b) (Limitation on contributions eligible for match); N.J.A.C. 19:25-16.18(c) (Matching of funds); N.J.A.C. 19:25-16.31 (Borrowing of funds; repayment); and N.J.A.C. 19:25-16.33(a) (Postelection contributions; postelection payment of expenses).

2. References to the qualification threshold for candidates applying to receive public matching funds have been amended to increase the qualification threshold from the 1989 threshold of $150,000 to the 1993 threshold of $177,000. The Commission proposes that the following sections and subsections be amended to include the adjusted qualification threshold: N.J.A.C. 19:25-16.3 (Definitions); N.J.A.C. 19:25-16.18(c) and (g) (Matching of funds); N.J.A.C. 19:25-16.37(a) (Candidate statement of qualification before participation in public financing); and N.J.A.C. 19:25-16.38(a) (Statement of candidates electing to participate in debates).

3. N.J.A.C. 19:25-16.9(a) (Limitations on participating candidates) has been amended to reflect that the 1993 gubernatorial primary election expenditure limit for candidates receiving public matching funds has been adjusted and increased from $2,200,000 to $2,600,000.

4. N.J.A.C. 19:25-16.21 (Receipt of public funds; generally) has been amended to adjust and revise upward from $50,000 to $59,000 the threshold amount in contributions for which 1993 gubernatorial primary election candidates may not receive public matching funds.

5. N.J.A.C. 19:25-16.22 (Receipt of public funds; limitation) has been amended to adjust upward the maximum amount of public matching funds which may be received by a 1993 gubernatorial primary election candidate to $1,600,000. The 1989 primary election public fund cap was $1,350,000.

6. N.J.A.C. 19:25-16.35(a) (Computation of value of goods and services) has been amended to revise the two examples of computation of the value of goods and services to account for the increase of the contribution limit from $1,500 to $1,800.

Social Impact

The Commission's proposed amendments will affect individuals contemplating a 1993 gubernatorial primary election candidacy who must comply with the statutory limits and thresholds contained within the gubernatorial public financing provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act. The amendments will implement the public policy of New Jersey's gubernatorial public financing program which aims to provide "financing adequate in amount so that candidates for election to the office of Governor may conduct their campaigns free from improper influence and so that persons of limited financial means may seek election to the State's highest office" (see N.J.S.A. 19:44-27).

To ensure that candidates elect to participate in the gubernatorial public financing program and therefore to ensure that the two-fold statutory purpose of the program is met, the Commission has been given the authority to adjust for inflation various statutory limits and thresholds contained within the law. The statutorily directed adjustments contained in the Commission's proposal for the 1993 primary election make the New Jersey law responsive to changes in the economy during the past four years.

Because the amendments adjust the key elements of the program to keep pace with changes in the economy, the Commission believes that the gubernatorial public financing program will remain a viable option for candidates, and therefore will have a positive social impact on candidates and the public.

Economic Impact

The principal parties to be affected by the statutorily required adjustments to the limits and thresholds applicable to public financing of primary elections will be 1993 gubernatorial primary election candidates and their treasurers. The Commission anticipates that the Gubernatorial Public Financing Program will operate as it has in past elections, but with adjustment for inflation in the costs of campaigning contained in these amendments.

Regulatory Flexibility Statement

The Commission's proposed amendments do not impose any recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While it is conceivable that small businesses may be employed to provide goods or services to 1993 gubernatorial primary election candidates, the reporting, recordkeeping and other compliance requirements generated by the proposed amendments are solely on the gubernatorial candidates purchasing such goods and services. Therefore, a regulatory flexibility analysis is not required.

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

19:25-16.3 Definitions for this subchapter

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

...

"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to section 15 of P.L. 1980, c.74 (N.J.S.A. 19:44A-44), no amount of the candidate's own funds in the aggregate in excess of [$1,500] **$1,800**, no in-kind contribution and no other moneys received by the candidate, his or her campaign treasurer, or deputy campaign treasurer, except those contributions described in subsection (a) of section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29(a)), shall be deemed contributions eligible for match. Funds received by an individual who is testing the waters may be matched when the individual becomes a candidate, if such contributions meet all the requirements of the regulation.

...

"Qualified candidate" means:

1. Any candidate for nomination for election to the office of Governor whose name appears on the primary election ballot and who has deposited and expended [$150,000] **$177,000** pursuant to N.J.S.A. 19:44A-32; and who, not later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for primary election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial primary election debates; or

2. Any candidate for nomination for election to the office of Governor whose name does not appear on the primary election ballot, but who has deposited and expended [$150,000] **$177,000** pursuant to N.J.S.A. 19:44A-32 and who, not later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for primary election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial primary election debates.

...

19:25-16.6 Contribution limits; applicability

(a) Each candidate, whether or not intending to participate in public funding, and each campaign treasurer or deputy campaign treasurer of such candidate shall not knowingly accept from any person, candidate of political committee any contribution in aid of the candidacy of or in behalf of such candidate in the aggregate in excess of [$1,500] **$1,800** in any primary election.

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

19:25-16.8 Non-participating candidates; generally

(a) A non-participating candidate is subject to the [$1,500] **$1,800** limitation on contributions from a person or political committee, pursuant to section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29).

(b) A non-participating candidate is subject to the [$1,500] **$1,800** limit on guarantors of bank loans, except if the guarantor is the non-participating candidate himself or herself.

(c) (No change.)

19:25-16.9 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the act (N.J.S.A. 19:44A-1 et seq.) or these regulations, is subject to the following limitations:

1.-2. (No change.)

3. The amount which any qualified candidate may spend in aid [to] **of** his or her candidacy shall not exceed [$2,200,000] **$2,600,000,** which amount shall include all expenditures for testing the waters activity prior to candidacy. Such amount shall not include expenditures listed in N.J.A.C. 19:25-16.27.

4. Contributions by any candidate in excess of [$1,500] **$1,800** from his or her own funds in aid of his or her candidacy shall not be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified candidate eligible for public matching funds.

19:25-16.10 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person of committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for nomination for election to the office of Governor in a primary election, in the aggregate in excess of [$1,500] **$1,800**. Any such contribution in excess of [$1,500] **$1,800** must be promptly returned to the contributor, and evidence of the repayment shall be submitted to the Commission. Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding "continuing political committees" from the meaning of "political committees", the term "political committee" as it appears in N.J.S.A. 19:44A-29(a) and this subsection shall include "continuing political committees" as defined in N.J.S.A. 19:44A-3(n)(2).

(b) (No change.)

(c) A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to or on behalf of a candidate which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds [$1,500] **$1,800** in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contribution and the degree to which the decisions whether to contribute, to what candidate and in what amount are independent decisions.

19:25-16.11 Contributions eligible for match; generally

(a) (No change.)

(b) Only contributions in cash or by check, money order or negotiable instruments shall be contributions eligible for match. Loans shall not be eligible for match. In-kind contributions shall not be eligible for match, but will count toward the individual contribution limit of [$1,500] **$1,800** and the overall expenditure limit contained in section 2 of P.L.1980, c.74 (N.J.S.A. 19:44A-7) except for expenses not subject to expenditure limits pursuant to N.J.A.C. 19:25-16.27. The total of all contributions eligible for match from any person or political committee shall not exceed [$1,500] **$1,800** in the aggregate.

(c) A maximum of [$1,500] **$1,800** in the aggregate of a candidate's own funds may be deposited in the matching fund account.

(d)-(e) (No change.)

19:25-16.12 Contributions and loans prior to candidacy

(a) Each candidate, whether or not intending to participate in public funding, shall certify to the Commission in writing within 10 days after the date of commencement of his or her candidacy that:

1.-2. (No change.)

3. No contribution in excess of [$1,500] **$1,800** in the aggregate from a person or political committee had theretofore been received for pre-candidacy "testing the waters" activity; or contributions in excess of [$1,500] **$1,800** in the aggregate have been received for that purpose, and the amount of each contribution in excess of [$1,500] **$1,800** in the aggregate has been returned to the contributor. The certification shall include:

i. A list of all contributors who contributed more than [$1,500] **$1,800** and the dates and amounts of all such contributions; and

ii. (No change.)

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

19:25-16.14 Limitation on contributions eligible for match

(a) Any contribution in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the [$1,500] **$1,800** contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a dinner or testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the [$1,500] **$1,800** limitation.

(c) (No change.)

19:25-16.18 Matching of funds

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

(c) A candidate seeking to become eligible to receive matching funds shall certify to the Commission in a written statement signed by the candidate that he or she is a candidate for Governor in a primary election and that he or she has received and deposited into his or her matching fund account contributions eligible for match of at least [$150,000] **$177,000** from persons or political committees each of whose contributions in the aggregate do not exceed [$1,500] **$1,800**, and that at least [$150,000] **$177,000** of such contributions has been expended. "Expended" for this purpose shall mean disbursed or irrevocably committed by a legally binding commitment for expenditure in the campaign and ultimately disbursed.

(d)-(f) (No change.)

(g) The initial certification shall include two photocopies of checks, receipted bills, contracts or the like, as proof of the expenditure of at least [$150,000] **$177,000.**

(h)-(j) (No change.)

19:25-16.21 Receipt of public funds; generally

The campaign treasurer or deputy campaign treasurer of any qualified candidate for election to the office of Governor in a primary election shall promptly receive in behalf of such qualified candidate from the funds for primary election campaign expenses moneys in an amount equal to twice the amount of each contribution eligible for match and deposited in such qualified candidate's matching fund account, described in N.J.S.A. 19:44A-32 except that no payment shall be made to any candidate from such fund for primary election campaign purposes for the first [$50,000] **$59,000** deposited in such qualified candidate's matching fund account.

19:25-16.22 Receipt of public funds; limitation

(a) (No change.)

(b) The maximum amount which any qualified candidate may receive from public funds shall not exceed [$1,350,000] **$1,600,000**.

19:25-16.31 Borrowing of funds; repayment

Any candidate, his or her campaign treasurer or deputy campaign treasurer may borrow funds from any national or State bank, provided that no person or political committee other than the candidate may in any way endorse or guarantee such loan in the aggregate in excess of the [$1,500] **$1,800** contribution limit. Except for a non-participating candidate guaranteeing a loan to his or her campaign, the amount so borrowed shall not at any one time in the aggregate exceed $50,000 and must be repaid in full by such candidate or his or her campaign treasurer or deputy campaign treasurer from moneys accepted or allocated pursuant to section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29) not later than 20 days prior to the primary election. Certification of such repayment shall be made by the borrower to the Commission not later than 15 days prior to the date of primary election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the Commission, all payment of public funds to such candidate shall promptly cease and the Commission shall take action as directed by the act to prohibit the expenditure by the candidate of moneys received from the fund and any other moneys received by him or her in aid of his or her candidacy in such primary election.

19:25-16.33 Post-election contributions; post-election payment of expenses

(a) Any person or political committee otherwise eligible to make political contributions to a candidate may make a contribution in aid of the candidacy of such candidate after the date of such primary provided such person or political committee does not exceed [$1,500] **$1,800** in the aggregate for such primary.

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

19:25-16.35 Computation of value of goods and services

(a) Goods and services shall, for purposes of the reports required to be filed under the act and for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7) where applicable, be valued by the reasonable commercial value of such goods and services to the candidate, whether or not the cost or value of such goods or services to the contributor or other provider of those services is higher or lower than such reasonable commercial value.

1. Example 1: Candidate Y, a candidate for the office of Governor who has chosen to accept public funding, obtains the use of a helicopter for travel of the candidate for campaign purposes. By agreement with the owner of the helicopter, the campaign committee for the candidate will pay [$500.00 per day] **$200.00 per hour,** which represents the cost to the owner of the maintenance and operation of the helicopter. The reasonable commercial value of the use of the helicopter is [$1,000 per day] **$400.00 per hour.** In this example, the amount of [$500.00] **$200.00 per hour** paid by the campaign committee of the candidate to the owner for use of the helicopter is not includable as an expenditure for purposes of the expenditure limitations contained in section 7 of the act (N.J.S.A. 19:44A-7). The difference between the [$500.00] **$200.00 per hour** actually paid for use of the helicopter and the reasonable commercial value normally charged by the owner for the use of the helicopter, represents a contribution from the owner of the helicopter to the candidate in the amount of [$500.00] **$200.00 per hour.** The candidate could obtain the use of the helicopter under this arrangement from a lawful contributor for campaign purposes for not more than [three days] **nine hours.** If the candidate obtained the use of the helicopter for [four days] **10 hours** under this arrangement, the owner of the helicopter would have made an unlawful contribution to the candidacy of the candidate, since the aggregate of the contributions ($2,000) from that contributor in this instance would have exceeded [$1,500] **$1,800.**

2. Example 2: Candidate Y in example 1, wishes to obtain the use of the helicopter from the owner for [three days] **15 hours,** and the campaign committee for the candidate pays to the owner the reasonable commercial value of [$1,000] **$400.00** for each [day] **hour,** or a total of [$3,000] **$6,000.00.** The amount paid to the owner is not an expenditure within the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7). On these facts the owner has made no contribution to the candidate.

3. (No change.)

(b) (No change.)

19:25-16.37 Candidate statement of qualification before participation in public financing

(a) A candidate who intends to apply to the Commission for public matching funds on a date later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for the office of Governor must on or before the last day for filing petitions to nominate candidates in a primary election for Governor file:

1. A certified statement of qualification containing evidence that [$150,000] **$177,000** has been deposited and expended pursuant to N.J.S.A. 19:44A-32 for gubernatorial primary election campaign expenses. Evidence that [$150,000] **$177,000** has been deposited and expended shall be filed with the Commission on the last day for filing petitions in the primary election to nominate candidates for the office of Governor and in a form to be prescribed by the Commission.

2. Each contribution submitted in the report required by (a)1 above as evidence that [$150,000] **$177,000** in contributions has been deposited must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order for, or specially endorsed without qualification to, the candidate or to his or her campaign committee, if such check, money order or instrument contains all of the foregoing information.

3. Each disbursement submitted in the report required by (a)1 above as evidence that [$150,000] **$177,000** has been expended for primary election expenses shall include two photocopies of checks, receipted bills, contracts, or similar documents as evidence of the expenditure of at least [$150,000] **$177,000.**

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

19:25-16.38 Statement of candidates electing to participate in debates

(a) A candidate who has not by the last day for filing petitions to nominate candidates to be voted upon in a primary election applied to the Commission for public matching funds may elect to participate in the series of interactive gubernatorial primary election debates by:

1. (No change.)

2. Filing a statement of qualification containing evidence that [$150,000] **$177,000** has been deposited and expended pursuant to N.J.S.A. 19:44-32 for gubernatorial primary election expenses. The statement of qualification shall contain the same information as that required at N.J.A.C. 19:25-16.37(a).

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

(a)

CASINO CONTROL COMMISSION

Applications

Agreements to do Business with Casino Licensees

Presentation of the Agreement

Proposed Amendment: N.J.A.C. 19:41-11.1

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63, 69, 70, 92 and 104.
Proposal Number: PRN 1992-450.

Submit comments by November 18, 1992 to:
Robert H. Barney, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

N.J.A.C. 19:43-1.2 establishes license requirements for casino service industries. Subsection (d) provides, with respect to the dollar value of business transacted between an enterprise and a casino licensee or applicant, that an enterprise must apply for a license as a casino service industry when it does $75,000 of business with a single casino licensee or applicant, or $225,000 with two or more casino licensees or applicants within any 12-month period. Enterprises providing bus transportation to casino patrons are, by customary practice, wholly or partially compensated for their services on an indirect basis. The casino patron purchases a bus ticket from the bus company. The bus company has an agreement with a casino licensee pursuant to which the bus company agrees to bring its passengers to the casino hotel of the casino licensee in exchange for the casino licensee providing complimentary services or items to the bus passengers upon arrival. Typically, a meal and various amounts of coins or tokens for slot machine play have been offered to such patrons.

The Commission has rejected proposals which would deem the combined value of all patron complimentaries as the equivalent of casino business with the bus company for purposes of measurement against the dollar threshold standards. In view of the substantial sums of casino licensee funds expended on complimentary bus programs, however, the proposed amendment clarifies and codifies that a casino licensee or applicant is required to file a vendor registration form with the Commission for each bus company with which the licensee maintains an agreement to provide the bus company's passengers with complimentary services or items upon arrival.

The proposed amendment will provide reasonable amounts of data to the Commission, provide information on trends in use of complimentary bus promotion programs, and alert the Commission to changes which may require closer scrutiny without subjecting bus businesses, including a number of single bus owner-operator entities, to the complexities and costs of licensing.

Social Impact

Complimentary bus transportation programs have had a beneficial business impact on Atlantic City by aiding casino licensees to expand their markets and have afforded an important recreational opportunity for literally millions of people. Access to the bus transportation business has also been a stimulus for numerous small and minority-owned businesses. The proposed amendment resolves questions concerning the most workable approach to licensing for bus companies, and it results in an adequate information flow to the Commission.

Economic Impact

The proposed amendment will have a positive impact on controlling the cost of doing business with casino licensees for certain small businesses, and encourage more small businesses to compete for casino bus business.

Regulatory Flexibility Statement

The proposed amendment reduces the difficulty of doing business with casino licensees for bus businesses. The required vendor registration form is compiled by the casino licensee, thus, according to the proposed amendment, a bus company would only be required to apply for a casino service industry license when its direct income from casino licensees reached the threshold amounts set by regulation. A bus business receiving $75,000 or more in direct payments from casino licensees should not find the license application process excessively burdensome.

Full text of the proposed amendments follows (additions indicated in boldface **thus**):

19:41-11.1 Presentation of the agreement

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

(c) Except as otherwise provided in (d) below, each casino licensee or applicant for a casino license shall file with the Commission no later than 20 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. **Vendor registration shall be required for any enterprise which has entered an agreement which the Commission has determined is governed by subsection 104(b) of the Act and this section, regardless of whether any direct compensation is exchanged by the parties as a result of the agreement. Such agreements shall include, without limitation, any agreement pursuant to which a bus owner or operator agrees to transport passengers to the casino hotel facility of a casino licensee in exchange for an agreement by the casino licensee to provide the passengers with complimentary services or items upon arrival.** Notwithstanding the foregoing, an incomplete vendor registration form shall be considered timely filed by the licensee or applicant in accordance with this subsection if:

1.-2. (No change.)

(d)-(h) (No change.)

(b)

CASINO CONTROL COMMISSION

Internal Controls

Retention, Storage and Destruction of Books, Records and Documents

Proposed Amendment: N.J.A.C. 19:45-1.8

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-96(e).
Proposal Number: PRN 1992-451.

Submit written comments by November 18, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission recently amended its standards and procedures for records retention and destruction, set forth at N.J.A.C. 19:45-1.8 (see 24 N.J.R. 3332(a)). Among other things, the amendments codified the records retention schedule for various types of documents. Upon expiration of the requisite retention period, casino licensees must provide at least 15 days prior written notice of any records destruction to the Commission and Division. Destruction may then proceed unless the licensee is otherwise notified in writing by either agency.

At present, all coupons entitling patrons to cash or slot tokens must be retained for a minimum period of six months. N.J.A.C. 19:45-1.8(c)4i. The amendment proposed herein would allow a casino licensee to destroy such coupons after a period of 30 days following completion of the casino licensee's reconciliation and recordation procedures as set forth in the licensee's internal control submission.

The current rule requires surveillance department visitor logs, complimentary settled guest checks, card and dice transaction and inventory reports and returned check aging (except for year end) reports to be retained for at least three years. The proposed amendment would reduce the minimum retention period to one year.

The current rule also requires that all hotel income audit documents be retained for at least three years. The proposed amendment would

set a six-month minimum retention period for the following documents: cashier reports; room tally reports; telephone call records and charges; over/short reports; rate variations; and missing check reports.

Finally, the proposed amendment would allow ongoing destruction of register tapes, currently subject to a three-year retention period, N.J.A.C. 19:45-1.8(c)3i, provided that the information contained thereon is otherwise maintained.

Social Impact

The proposed amendment should benefit both the casino industry and the regulatory agencies by eliminating unnecessarily lengthy records retention periods, while ensuring that such retention schedules are adequate for investigatory and regulatory purposes.

Economic Impact

The proposed amendment should minimize costs incurred by the casino industry by reducing, where appropriate, certain records retention periods.

Regulatory Flexibility Statement

The proposed amendment affects only casino licensees, none of which qualifies as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:45-1.8 Retention, storage and destruction of books, records and documents

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

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1.-2. (No change.)

3. The following original books, records and documents shall be retained by a casino licensee for a minimum of three years:

i. Hotel income audit documents, including, without limitation, [cashier reports, room tally reports, telephone call records and charges,] register tapes, room service checks[,] **and** laundry charges[, over/short reports, rate variations and missing check reports];

ii.-vi. (No change.)

[vii. Returned check aging reports, except for year-end reports;

viii. Card and dice transaction and inventory reports;

ix. Surveillance department visitor logs;

x. Complimentary settled guest checks;]

Recodify xi.-xiv. as **vii.-x.** (No change in text.)

4. The following original books, records and documents shall be retained by a casino licensee for a minimum of one year:

i. Surveillance department visitor logs;

ii. Complimentary settled guest checks;

iii. Card and dice transaction and inventory reports; and

iv. Returned check aging reports, except for year-end reports.

[4.]**5.** The following original books, records and documents shall be retained by a casino licensee for a minimum of six months:

i. [Coupons entitling patrons to cash or slot tokens, including unused, voided, and redeemed coupons] **Cashier reports, room tally reports, telephone call records and charges, over/short reports, rate variations and missing check reports;**

ii.-xi. (No change.)

6. Coupons entitling patrons to cash or slot tokens, including unused, voided and redeemed coupons, shall be retained by a casino licensee for a minimum of 30 days following completion of the casino licensee's reconciliation and recordation procedures as set forth in the casino licensee's internal control submission.

[5.]**7.** The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, and may be destroyed without notice otherwise required by (f) below:

i.-xiii. (No change.)

xiv. Communication department records; [and]

xv. Unsolicited resumes or letters requesting employment[.]; **and**

xvi. Register tapes, provided that the information contained thereon is duplicative or less than that recorded on another document retained in accordance with (c)3 above.

(d)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Casino Simulcasting
Accounting and Internal Controls
Satellite Cages
Gaming Equipment
Advertising

Proposed New Rules: N.J.A.C. 19:45-1.14A and 1.15A; 19:50-3.6; and 19:55

Proposed Amendments: N.J.A.C. 19:40-1.2; 19:41-1.3; 19:42-5.9 and 5.10; 19:43-1.2; 19:45-1.1, 1.2, 1.7, 1.8, 1.10 through 1.16, 1.19, 1.20, 1.25, 1.27, 1.33, 1.46; 19:46-1.2, 1.3, 1.5, 1.6, 1.9 through 1.20 and 1.27; 19:47-1.3 through 1.6, 2.3, 5.1, 5.6 and 8.2; 19:50-1.4; 19:51-1.2; 19:52-1.2; and 19:53-1.13

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

Authority: N.J.S.A. 5:12-5, 7, 9, 21, 24, 44.1, 69(e), 79(a)(1), 92, 99, 100, 101, 103, 104, 119 and 191 through 210.

Proposal Number: PRN 1992-452.

Submit comments by November 18, 1992 to:

E. Dennis Kell
Senior Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The primary objective of this proposal is to establish the rules and procedures necessary for casino licensees to implement casino simulcasting, which was authorized by the Casino Simulcasting Act, P.L. 1992, c.19, approved June 12, 1992. Section 20 of the Casino Simulcasting Act, N.J.S.A. 5:12-210, provides that the Casino Control Commission (Commission) and the Racing Commission shall individually and jointly promulgate and adopt any rules and regulations which are required to effectuate the purposes of the Casino Simulcasting Act.

This proposal creates a new chapter, N.J.A.C. 19:55, which generally establishes the rules governing casino simulcasting. This chapter is being jointly proposed by the Racing Commission elsewhere in this issue of the New Jersey Register as N.J.A.C. 13:72. This proposal also contains proposed amendments to existing chapters of the Commission's rules necessary for casino licensees to implement casino simulcasting as well as to permit the conduct of authorized games other than slot machines in casino simulcasting facilities. The proposal reflects the joint efforts of the staffs of the Commission, the Division of Gaming Enforcement and, as to N.J.A.C. 19:55, the Racing Commission.

The Casino Simulcasting Act provides that casino simulcasting be conducted in a facility within the premises of an approved hotel which may be adjacent to, but not part of, the casino room, and provides that a casino licensee may conduct any authorized game with the exception of slot machines in the facility. The proposed amendment at N.J.A.C. 19:46-1.27(k) codifies this prohibition of slot machines. The latter provision required numerous amendments to the Commission's rules to permit such gaming to occur not only in the casino room, but also in the "casino simulcasting facility." Additional amendments extend to the casino simulcasting facility the prohibition against entry by underage persons and the unauthorized possession of firearms.

The proposal also contains amendments to rules governing advertising, entertainment, gaming equipment and accounting and internal controls. These amendments are required to extend regulatory requirements to

casino simulcasting facilities that are currently limited to casino rooms. For example, N.J.A.C. 19:45-1.11(b)1iii adds to the responsibilities of the surveillance department the clandestine surveillance of the casino simulcasting facility, and N.J.A.C. 19:45-1.19(c) and (d) establish pooling procedures for gratuities received by casino pari-mutuel cashiers similar to those presently applicable to dealers.

The proposal also contains amendments necessary to conform existing definitions to those in the Casino Control Act, as amended not only by the Casino Simulcasting Act, but also by P.L. 1992, c.9, enacted May 19, 1992. Examples of such definitional changes are "authorized game," "casino employee," "casino key employee," "casino service industry" and "gross revenue," all contained in N.J.A.C. 19:40-1.2. The proposal also defines new terms specific to the conduct of casino simulcasting, such as "casino simulcasting facility," "hub facility" and "simulcast counter."

It should also be noted that amendments are proposed to N.J.A.C. 19:46 to permit a casino licensee to place its trade name on certain gaming equipment. The affected rules currently require the equipment to bear the name of the casino licensee itself. This proposed amendment is intended to conform the rules to practice and to permit casino licensees such as GNOC, CORP (Bally's Grand), Boardwalk Regency Corporation (Caesars Atlantic City), Greate Bay Hotel and Casino, Inc. (Sands), Adamar of New Jersey, Inc. (TropWorld) and Marina Associates (Harrah's Marina) to identify their gaming equipment with the name by which they are commonly known.

Proposed new rule N.J.A.C. 19:45-1.14A provides that simulcast wagering be conducted in an area of the casino simulcasting facility designated as the simulcast counter. The simulcast counter shall contain pari-mutuel windows where wagers may be placed and winning wagers collected from casino pari-mutuel cashiers or self-service pari-mutuel machines. The simulcast counter shall also house a simulcast vault and contain a work area and a remote management console where pari-mutuel reports may be generated from the totalisator.

A proposed amendment to N.J.A.C. 19:45-1.11(b)8 provides that the simulcast counter shall be controlled and supervised by the casino accounting department, and N.J.A.C. 19:45-1.12(h), a new subsection, provides that the personnel operating the simulcast counter shall be, at a minimum, casino pari-mutuel cashiers, simulcast counter shift supervisors and a simulcast counter manager.

Proposed new rule N.J.A.C. 19:45-1.15A sets forth accounting controls which shall be followed within a simulcast counter, and N.J.A.C. 19:45-1.2(c)10 requires that casino licensees maintain accounting records upon which they reconcile payments with sending tracks and calculate outstanding pari-mutuel tickets and required payments to the Racing Commission. A proposed amendment to N.J.A.C. 19:45-1.8 sets forth the retention schedules for simulcasting records, which are one year for certain accounting records and totalisator reports and 30 days for cashed pari-mutuel tickets and credit vouchers.

Proposed amendments to N.J.A.C. 19:50 create a Type VI location for the authorization of the service of alcoholic beverages in the casino simulcasting facility, and a new rule, N.J.A.C. 19:50-3.6, applies the same restrictions with respect to such service as are currently applicable to Type I (casino) locations. N.J.A.C. 19:50-3.6(e) provides that no alcoholic beverages may be served in a Type VI location later than 15 minutes prior to the closing of the casino room. If a casino simulcasting facility closes more than 15 minutes prior to the closing of the casino room, alcoholic beverages may be served up until the time the casino simulcasting facility closes.

A proposed amendment to N.J.A.C. 19:53-1.13(b) provides that a casino licensee's equal employment officer shall have the responsibility to undertake good faith efforts to comply with the requirement in the Casino Simulcasting Act that certain employees of Atlantic City Racetrack who lose their employment with that racetrack as a result of casino simulcasting receive first preference in hiring in casino simulcasting facilities under specified circumstances.

N.J.A.C. 19:45-1.14(h) provides that a casino licensee may have, separate and apart from its cashiers' cage, one or more "satellite cages." Subject to Commission approval, a satellite cage may perform some, but need not perform all, of the functions of the cashiers' cage. To the extent that this section expressly permits the existence of a satellite cage in the casino room, it codifies existing practice. A proposed amendment to N.J.A.C. 19:45-1.11(b)9 would require casino licensees which conduct casino simulcasting to maintain a satellite cage in, or immediately adjacent to, the casino simulcasting facility absent permission to the contrary from the Commission.

The proposal permits casino licensees to issue coupons redeemable for simulcast wagers, and a proposed amendment to N.J.A.C. 19:45-1.46(i) sets forth procedures and controls for the acceptance and cancellation of coupons so issued, which are similar to those applicable to other coupon redemption programs.

This proposal does not provide for the issuance of credit by casino licensees for simulcast wagering. However, the Commission does not oppose the issuance of such credit, provided it is governed by rules and approved procedures to ensure that it is readily segregated from credit issued for gaming purposes. Such segregation is necessary because, subject to limitations, bad debts can be deducted from gaming or "gross revenue" before the calculation of the gross revenue tax. The Casino Simulcasting Act expressly amends the definition of "gross revenue" to exclude therefrom revenue from casino simulcasting. Accordingly, bad debts which result from credit issued for simulcast wagering must not be permitted to be deducted from gross revenue.

Accordingly, any rules permitting and governing the issuance of credit for simulcast wagering will be somewhat complex. Moreover, it is unclear whether casino licensees will wish to issue credit for simulcast wagering. For these reasons, the Commission has elected not to promulgate rules permitting the issuance of such credit at this time.

N.J.A.C. 19:55 contains nine subchapters. Subchapter 1 sets forth definitions and generally provides that, except as provided in the Commission's rules, the rules of racing and conduct of pari-mutuel wagering in casino simulcasting facilities shall be subject to the rules of the Racing Commission. Subchapter 2 addresses the conduct of casino simulcasting. N.J.A.C. 19:55-2.2 requires that unless permission is obtained from the Commission and Racing Commission to do otherwise, casino simulcasting shall be conducted through a hub facility, which is defined in N.J.A.C. 19:55-1.1. N.J.A.C. 19:55-2.3 and 2.4 concern the receipt of races from in-State and out-of-State sending tracks, and N.J.A.C. 19:55-2.5 addresses agreements between casino licensees and sending tracks. The latter section expressly provides that such agreements may be negotiated by an entity jointly established by casino licensees. N.J.A.C. 19:55-2.7 provides that a casino simulcasting facility may be open during permitted hours of casino operation. While there is no requirement that casino simulcasting be conducted on a given day in order for a casino simulcasting facility to be open, N.J.A.C. 19:55-2.3 requires that a casino simulcasting facility accept all races which New Jersey tracks elect to send to them as a condition of continued operation of casino simulcasting. The Commission believes that this requirement, together with N.J.S.A. 5:12-195, which requires in-State racetracks to conduct minimum numbers of live racing programs in order to participate in casino simulcasting, will ensure that casino simulcasting is conducted in casino simulcasting facilities on most days, even if the casino licensees operating the facilities elect to receive races only from in-state racetracks. A casino licensee may conduct authorized games other than slot machines in the facility during permitted hours of casino operations irrespective of whether casino simulcasting is being conducted.

Subchapter 3 concerns the casino simulcasting facility. It provides that the casino simulcasting facility shall be comprised of a contiguous area which may be adjacent to, but which shall not be part of, the casino room. Barriers within the facility may be constructed, subject to Commission approval, to maximize efficiency in operations and patron comfort. N.J.A.C. 19:55-3.3 requires that the facility be of sufficient square footage to permit optimum security and surveillance, as well as viewing of simulcast races in a manner which is not obtrusive to the conduct of authorized games.

Subchapter 4 concerns pari-mutuel pools and related matters. N.J.A.C. 19:55-4.1 and 4.2 provide for the commingling of simulcast wagers with sending tracks, and N.J.A.C. 19:55-4.3 requires that, absent prior approval of the Commission and Racing Commission, a transmission line be a dedicated line. N.J.A.C. 19:55-4.7 and 4.9 require that wagering cease and pari-mutuel machines lock at off-time, as defined in N.J.A.C. 19:55-1.1 and N.J.A.C. 19:55-4.8 provides that no ticket may be issued after the totalisator has been locked or wagering has ceased, whichever occurs first.

N.J.A.C. 19:55-4.13 sets forth procedures to be followed in the event pari-mutuel machines are closed before off-time. N.J.A.C. 19:55-4.14 provides that overpays resulting from a totalisator error shall be borne by the operator of the totalisator causing the error, and N.J.A.C. 19:55-4.15(b) permits an operator of a totalisator which is required, due to a malfunction of the totalisator, to purchase "lost" tickets to credit any losing tickets it is required to purchase to the extent of any winning tickets similarly purchased. Any "profit" from the tickets "lost" in the

totalisator, shall be paid to the Racing Commission for deposit in the Casino Simulcasting Special Fund.

N.J.A.C. 19:55-4.15(a) provides that, in the event of an irreparable breakdown of the totalisator during wagering on a race, wagering on the race shall be declared closed and pay-offs shall be calculated based upon the amounts wagered at the time of the breakdown. N.J.A.C. 19:55-4.17 provides that, in the event of a transmission failure, casino simulcasting facilities and sending tracks shall attempt to manually merge any wagers which have been accepted but not transmitted. Notice to patrons of manual merging and commingling procedures is required by N.J.A.C. 19:55-4.17 and 4.18.

N.J.A.C. 19:55-5.1 requires that all employees of casino simulcasting facilities be licensed or registered in accordance with Commission regulations.

Subchapter 6 concerns the licensing and registration of casino service industries. N.J.A.C. 19:55-6.1 requires that all sending tracks be licensed, or be determined to be exempt from licensure, in accordance with N.J.S.A. 5:12-92(c). N.J.A.C. 19:55-6.2 provides that all manufacturers, suppliers and repairers of simulcast wagering equipment, including totalisators, pari-mutuel machines and self-service pari-mutuel machines who transact business with casino licensees or a hub facility, shall be licensed in accordance with N.J.S.A. 5:12-92(a).

N.J.A.C. 19:55-6.3 states that a hub facility shall be licensed in accordance with N.J.S.A. 5:12-92(a), requires all employees of the hub facility to be licensed or registered with the Commission, and requires a hub facility to submit for Commission approval a jobs compendium and descriptions of its security procedures and accounting controls.

Subchapter 7 prescribes timeframes for the reconciliation of simulcast wagers between casino licensees and sending tracks and for payments by casino licensees to the Racing Commission. N.J.A.C. 19:55-7.2 requires casino licensees to deposit all funds for outstanding tickets in a separate account and to maintain an ongoing, daily record of such tickets.

N.J.A.C. 19:55-8.1 sets forth information which casino simulcasting facilities shall make available to its patrons. The information is consistent with that generally contained in programs at racetracks. Casino licensees are permitted to charge patrons a fee for providing such information.

Subchapter 9 provides that there shall be assigned to a hub facility certain officials, who shall be employees or designees of the Racing Commission, but whose compensation shall be paid by the hub facility. N.J.A.C. 19:55-9.2 and 9.4 set forth the duties of these officials, and N.J.A.C. 19:55-9.2 through 9.5 provide that, unless determined by the Commission and Racing Commission that a longer period is necessary, such duties shall be assumed by qualified employees of the hub facility one year after the commencement of casino simulcasting unless the Racing Commission determines, at its own cost, to maintain the presence of such officials.

Social Impact

The implementation of casino simulcasting and the conduct of authorized games other than slot machines in casino simulcasting facilities are expected to increase the number of persons who choose to participate in legalized gambling in Atlantic City, as well as the amount of money that is wagered thereon. Casino simulcasting is also likely to result in a net increase in the amount of wagering on horse racing in this State. It would be highly speculative to attempt to estimate the degree to which any of these increases may occur, particularly since all casino licensees may not choose to engage in casino simulcasting and as to those who do, the extent to which they will elect to conduct other permitted gaming in their casino simulcasting facilities is unknown. In any event, any resultant social impact is due to the Legislature's decision to authorize the described activities and not the promulgation of these rules.

One half of one percent of all moneys wagered on casino simulcasting will be deposited in the Casino Simulcasting Fund to be appropriated exclusively for services to benefit eligible senior citizens. All gross revenues from authorized games which are conducted in casino simulcasting facilities are, like existing gross revenues from casino gaming, subject to an eight percent tax for deposit in the Casino Revenue Fund to be appropriated exclusively for programs to benefit eligible senior citizens and disabled residents of New Jersey. Thus, to the extent that the implementation of these rules generate moneys from the Casino Simulcasting Fund and additional moneys for the Casino Revenue Fund, there will be a beneficial social impact.

Economic Impact

For the reasons noted above, it is impossible to estimate the economic impact of the proposed new rules and amendments. However, assuming that at least some casino licensees choose to conduct casino simulcasting, several economic consequences should result to some degree.

Although a casino licensee may choose to construct a casino simulcasting facility by expanding its approved hotel, it is expected that, at least initially, casino licensees will convert existing portions of their establishments into such facilities. The conversion of such space will involve substantial costs, both in construction and the purchase of new equipment, thereby benefitting the affected construction companies and equipment suppliers. The rules should also result in increased business for the ancillary industries which service the new facilities.

The conduct of casino simulcasting and other permissible gaming in these facilities can be expected to generate significantly more revenue for casino licensees than the current use of such space and should, accordingly, have a beneficial economic impact on casino licensees.

The rules should also result in a net increase in jobs, since the number of employees required to staff a casino simulcasting facility should exceed the number of persons whose employment is tied to the current use of the portions of approved hotels which will be converted to casino simulcasting facilities.

The rules should also benefit New Jersey racetracks and horsemen's groups, which will directly share in the revenue from casino simulcasting, and indirectly benefit from increased moneys for purses that should result at live race meetings.

Finally, as noted above, the rules can be expected to generate additional funds for eligible senior citizens and disabled residents of New Jersey.

Regulatory Flexibility Analysis

With respect to casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., no regulatory flexibility statement is required. In any event, any impact on such small businesses which may result from this proposal is due to the Legislature's decision to authorize these activities, and not the promulgation of these rules.

The proposed amendments and new rules require that New Jersey racetracks which choose to participate in casino simulcasting be licensed as non-gaming related casino service industries or receive exemptions from such licensure. Even if exemptions are granted, the racetracks are required to have on file with the Commission a vendor registration form, and to update same within 10 days. This requirement is mandated by the Casino Simulcasting Act and the Commission's regulations, and is also consistent with the legislative mandate to scrutinize ancillary industries set forth in the Casino Control Act. N.J.S.A. 5:12-1(b)(6) and (12).

The amendments and new rules require that suppliers, manufacturers and repairers of simulcast wagering equipment to casino licensees or hub facilities be licensed as gaming related casino service industries. This requirement is also mandated in the Casino Simulcasting Act. The Commission is unaware of any small business, as defined in N.J.S.A. 52:14B-17, which currently would be affected by this. However, even if there were, such licensure is required by the Casino Simulcasting Act and is consistent with the policies of the Casino Control Act cited above.

The proposed amendments and new rules would require a hub facility to be licensed as a gaming related casino service industry, to submit for Commission approval a jobs compendium and descriptions of its security procedures and accounting controls, and have all of its employees licensed as if it were itself a casino licensee. In addition, a hub facility would be responsible for paying the compensation of supervisors of mutuels and verifiers for at least one year. The rules require that a hub facility be located in New Jersey, and it is likely that it would be a small business.

A hub facility will house the totalisator and generate the reports upon which casino licensees reconcile simulcast wagers with sending tracks and calculate payments due to the Racing Commission. It will also perform other integral functions, such as locking the totalisator and conducting manual merges with sending tracks in the event of a transmission failure. For these reasons, the licensing requirements and other controls imposed upon a hub facility are not only amply warranted, but vitally necessary to the integrity of casino simulcasting and racing.

The proposed amendments and new rules may result in some small businesses being required to have vendor registration forms filed with the Commission on their behalf and in a significantly lesser number being required to file non-gaming related casino service industry applications if they transact regular or continuing business with casino licensees. Again, the filing of such forms and applications is consistent with the

Commission's rules and justified by the cited policies of the Casino Control Act requiring the strict regulation of ancillary industries.

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

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules and regulations as defined in that Act. The following words and terms, when used in these rules and regulations, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Authorized game" or "authorized gambling game" means roulette, baccarat, blackjack, craps, big six wheel slot machines, mini-baccarat and any variations or composites of such games, provided that such variations or composites are found by the Commission suitable for **use in the** casino **or casino simulcasting facility** [use] after an appropriate test or experimental period under such terms and conditions as the Commission may deem appropriate**; and any other game which is determined by the Commission to be compatible with the public interest and to be suitable for use in the casino or casino simulcasting facility after such appropriate test or experimental period as the Commission may deem appropriate. "Authorized game" or "authorized gambling game" includes gaming tournaments in which players compete against one another in one or more of the games listed herein or in approved variations or composites thereof if the tournaments are authorized by the Commission.**

...

"Casino employee" means any natural person employed in the operation of a licensed casino **or a casino simulcasting facility**, including, without limitation, boxmen; dealers or croupiers; floormen; machine mechanics; casino security employees; count room personnel; cage personnel; slot machine and slot booth personnel; collection personnel; casino surveillance personnel; **casino simulcasting facility personnel involved in wagering-related activities in a casino simulcasting facility;** and data processing personnel; or any other natural person whose employment duties [require or authorize access to restricted casino areas, including, without limitation, appropriate maintenace personnel; waiters and waitresses; and secretaries] **predominantly involve the maintenance or operation of gaming activity or equipment and assets associated therewith or who, in the judgment of the Commission, is so regularly required to work in a restricted casino area that licensure as a casino employee is appropriate.**

...

"Casino key employee" means any natural person employed in the operation of a licensed casino **or a casino simulcasting facility** in a supervisory capacity or empowered to make discretionary decisions which regulate casino [operation] **or casino simulcasting facility operations**, including without limitation, pit bosses; shift bosses; credit executives; casino cashier supervisors; casino **or casino simulcasting facility** managers and assistant managers; managers or supervisors of casino security employees; or any other natural person empowered to make discretionary decisions which regulate the management of an approved hotel, including, with limitation, hotel managers; entertainment directors; and food and beverage directors; or any other employee so designated by the [Casino Control] Commission for reasons consistent with the policies of the Act.

...

"Casino service industry" means any form of enterprise which provides casino applicants or licensees with goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility on a regular or continuing basis, including, without limitation, **junket enterprises,** security businesses, gaming schools, manufacturers, distributors and servicers of gaming **and casino simulcasting** devices or equipment, **hub facilities, in-State and out-of-State sending tracks as defined in N.J.S.A. 5:12-192,** garbage haulers, maintenance companies, good purveyors, and construction companies. Notwithstanding the foregoing, any form of enterprise engaged in the manufacture, sale, distribution or repair of slot machines within New Jersey, other than antique slot machines as defined in N.J.S.A. 2C:37-7, shall be considered a casino service industry for the purposes of the Casino Control Act regardless of the nature of its business relationship, if any, with licensed casinos in this State. For purposes of this section, "casino applicant" includes any person required to hold a casino license pursuant to section 82 of the Act who has applied to the Commission for a casino license or any approval required under the Act.

"Casino simulcasting" is defined in N.J.A.C. 19:55-1.1.

"Casino simulcasting facility" is defined in N.J.A.C. 19:55-3.1 through 3.4.

...

"Game" or "gambling game" means any banking or percentage game located [exclusively] within the casino **or casino simulcasting facility** played with cards, dice or any electronic, electrical, or mechanical device or machine for money, property, or any representative of value.

...

"Gross revenue" means the total of all sums, including checks received by a casino licensee pursuant to section 101 of the Act, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and a deduction for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or four percent of the total of all sums including checks, whether collected or not, less the amount paid out as winnings to patrons. **"Gross revenue" shall not include any amount received by a casino licensee from casino simulcasting pursuant to the Casino Simulcasting Act.** For purposes of this section, any check which is invalid and unenforceable pursuant to subsection 101(f) of the Act shall be treated as cash received by the casino licensee from gaming operations.

...

"Hub facility" is defined in N.J.A.C. 19:55-1.1.

...

"Pari-mutuel ticket" is defined in N.J.A.C. 19:55-1.1.

"Pari-mutuel window" is defined in N.J.A.C. 19:45-1.14A(d)1.

...

"Satellite cage" is defined in N.J.A.C. 19:45-1.14.

...

"Simulcast counter" is defined in N.J.A.C. 19:45-1.14A(c).

"Simulcast horse race" is defined in N.J.A.C. 19:55-1.1.

"Simulcast payout" means the money paid to a patron in exchange for a credit voucher or a winning, cancelled or refunded pari-mutuel ticket.

...

19:41-1.3 Employee licenses

(a) No natural person shall be employed in the operation of a licensed casino **or a casino simulcasting facility** in a supervisory capacity or be empowered to make discretionary decisions which regulate casino **or casino simulcasting facility** operations or the management of an approved hotel unless he or she is over 18 years of age and holds a current and valid casino key employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino key employee license:

1.-11. (No change.)

(b) No natural person shall be employed in the operation of a licensed casino **or a casino simulcasting facility** or in a position whose employment duties require or authorize access to restricted casino areas unless he or she is over 18 years of age and holds a current and valid casino employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino employee license:

1.-5. (No change.)

6. Any natural person employed by a casino or its agent to provide physical security in a casino hotel; [and]

7. Casino simulcasting facility personnel involved in wagering-related activities in a casino simulcasting facility; and

[7.]**8.** (No change in text.)

(c) (No change.)

(d) Every casino key employee and casino employee, except those approved by the Chairman, shall wear in a conspicuous manner their license credential issued by the Commission at all times while employed in the casino **and casino simulcasting facility** areas which includes without limitation, the casino **and casino simulcasting facility** floors, [cashier's] **cashiers'** cage, **satellite cages,** countrooms, eye-in-the-sky and closed circuit television monitoring.

(e) No casino licensee shall permit any casino key employee or casino employee, except those approved by the Chairman, to work in the casino **or casino simulcasting facility** areas without the wearing of their license credential as required herein.

(f) (No change.)

(g) In those situations where a license credential is lost or destroyed, a casino key employee or casino employee may be authorized to enter the casino **and casino simulcasting facility** areas to perform employment duties so long as:

1.-3. (No change.)

(h) (No change.)

19:42-5.9 Underage gaming-violations

(a) No casino licensee or agent or employee thereof, shall allow, permit or suffer any person under the age at which a person is authorized to purchase and consume alcoholic beverages in this State ("underage person") to:

1. Enter a casino **or casino simulcasting facility**, except to pass directly to another room, unless the underage person is licensed under the Act and is acting in the regular course of his or her licensed activities;

2. Remain in a casino **or casino simulcasting facility**, unless the underage person is licensed under the Act and is acting in the regular course of his or her licensed activities;

3. [Gamble in a casino] **Wager at any game or at casino simulcasting in a casino or casino simulcasting facility**;

4.-6. (No change.)

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

19:42-5.10 Underage gaming violations—affirmative defenses

(a) (No change.)

(b) For purposes of establishing an affirmative defense to a violation of N.J.S.A. 5:12-119 and N.J.A.C. 19:42-5.9, the term "writing" in N.J.S.A. 5:12-119(b) shall include the following:

1.-2. (No change.)

3. A writing which is made and signed by the underage person, and which contains, at a minimum, the following information:

i. (No change.)

ii. A statement that the representation of age is being made to induce the licensee to permit the person to enter, remain or [gamble] **wager at a game or at casino simulcasting** in a casino **or casino simulcasting facility**, to be rated, receive complimentaries, obtain approval of a credit limit, or to utilize credit.

19:43-1.2 License requirements

(a) No enterprise shall provide goods or services directly related to casino, **simulcast wagering** or gaming activity to, or otherwise transact business directly related to casino or gaming activity with, a casino applicant or licensee, its employees or agents unless licensed in accordance with subsections 92a and b of the Act; provided, however, that upon a showing of good cause by a casino applicant or licensee for each business transaction, the Commission may permit an applicant for a casino service industry license to conduct business transactions with such casino applicant or licensee prior to the licensure of the casino service industry license applicant pursuant to N.J.S.A. 5:12-92a.

1. The following enterprises shall be required to be licensed as casino service industry enterprises in accordance with subsections 92a and b of the Act:

i. Any form of enterprise which manufactures, supplies or distributes devices, machines, equipment, items or articles specifically designed for use in the operation of a casino **or casino simulcasting facility** or needed to conduct a game including, but not limited to, roulette wheels, roulette tables, big six wheels, craps tables, tables for card games, layouts, slot machines, cards, dice, gaming chips, gaming plaques, slot tokens, card dealing shoes and drop boxes; and

ii. Any form of enterprise which provides maintenance, service or repair pertaining to **simulcast wagering equipment,** devices, machines, equipment, items, or articles specifically designed for use in the operation of a casino **or casino simulcasting facility** or needed to conduct a game; and

iii. Any form of enterprise which provides service directly related to the operation, regulation or management of a casino **or casino simulcasting facility** including, but not limited to, **hub facilities,** schools teaching gaming and either playing or dealing techniques, casino security enterprises, casino credit collection enterprises; and

iv. Any form of enterprise which provides such other goods or services determined by the Commission to be so utilized in or incident to gaming [or], casino **or simulcast wagering** activity as to require licensing in order to contribute to the integrity of the gaming industry in New Jersey.

(b) Unless otherwise licensed in accordance with (a) above, no enterprise shall, on a regular or continuing basis, provide goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to a casino applicant or licensee, its employees or agents unless such enterprise is licensed or exempted in accordance with subsections 92c and d and the Act or authorized to do so pursuant to N.J.A.C. 19:41-11.3(g). In determining whether an enterprise is subject to the requirements of this subsection, it shall not matter whether the casino applicant or licensee is a party to any agreement pursuant to which said goods or services are being provided. Enterprises subject to the provisions of this subsection shall include, without limitation, suppliers of alcoholic beverages, food and nonalcoholic beverages, garbage handlers, vending machine providers, linen suppliers, maintenance companies, **in-State and out-of-State sending tracks,** shopkeepers located within the approved hotel, limousine services and construction companies contracting with casino applicants or licensees or their employees or agents.

(c)-(g) (No change.)

19:43-1.14 Casino service industry licenses

(a) No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have been established in accordance with all provisions including those cited, of the Act and of the regulations of the Commission.

(b) (No change.)

1. In the case of casino service industry licenses issued in accordance with subsections 92a and b of the Act:

i.-v. (No change.)

vi. Each officer of the enterprise who is significantly involved in or has authority over the conduct of business directly related to casino [or], gaming **or simulcast wagering** activity and each officer whom the Commission may consider appropriate for qualification in order to insure the good character, honesty and integrity of the enterprise;

vii.-x. (No change.)

2. (No change.)

19:45-1.1 Definitions

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

...

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b) [or], for winnings from slot machine **or simulcast wagering** payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine **or simulcast wagering** payoffs.

...

"Casino licensee" means a holder of any license [or permit] issued pursuant to the Casino Control Act, that authorizes the ownership or operation of a casino **or casino simulcasting facility**.

"Casino supervisor" means a person employed in the operation of a casino **or of the authorized games in a casino simulcasting facility** in a supervisory capacity or empowered to make discretionary decisions which regulate casino operations, including but not limited to, boxmen, floormen, pit bosses, casino shift managers, the assistant casino manager, and the casino manager.

...

"Pari-mutuel window net" means the total amount of credit vouchers issued and wagers placed on simulcast horse races at a pari-mutuel window less the total amount of simulcast payouts at the same pari-mutuel window. Pari-mutuel window net shall be calculated by the totalisator.

...

"Shift" means the regular, daily work period of a group of employees administering and supervising the operation of table games, slot machines, **simulcast counter,** and cashiers' cage, working in relay with another such succeeding or preceding group of employees or specific times, as approved by the Commission, during the day that all drop boxes attached to gaming tables are removed, expeditiously transported to the count room, and replaced with empty ones.

...

"Simulcast count sheet" is defined in N.J.A.C. 19:45-1.15A(b).

"Simulcast handle" means the amount of currency, coin, gaming chips, slot tokens and coupons wagered by patrons on a simulcast horse race.

...

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

1.-2. (No change.)

3. Records supporting the accumulation of the costs and number of persons, by category of service, for regulated complimentary services. Such records shall include, on a daily basis, the name of each person provided with complimentary services, the category of services provided, the retail value of the aggregate of each category of service provided to such person, and the person authorizing the receipt of such service. A copy of this record shall be submitted to the Division of Gaming Enforcement's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary tickets for theatre or other entertainment events with a face value of less than $25.00, parking, beverages served in bars [and], the casino **and casino simulcasting facility** or complimentary services or items, including cash or slot tokens, issued pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.

4.-9. (No change.)

10. Records used by the casino licensee to reconcile simulcast wagers with sending tracks pursuant to N.J.A.C. 19:55-7.1, calculate outstanding pari-mutuel tickets pursuant to N.J.A.C. 19:55-7.2 and calculate payments to the Racing Commission pursuant to N.J.A.C. 19:55-7.3.

19:45-1.7 Annual audit and other reports

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

(c) The financial statements required by this section shall include a footnote reconciling and explaining any differences between the financial statements included in the casino licensee's annual report, filed in conformity with N.J.A.C. 19:45-1.6, and the audited financial statements. Such footnote shall, at a minimum, disclose the effect of such adjustments on:

1. [Casino revenues] **Revenues from the casino and authorized games in the casino simulcasting facility;**

2. Casino simulcasting revenues;

Recodify existing 2.-5. as **3.-6.** (No change in text.)

(d)-(i) (No change.)

19:45-1.8 Retention, storage and destruction of books, records and documents

(a) (No change.)

(b) For the purposes of this section, "books, records and documents" shall be defined as any book, record of document pertaining to, prepared in or generated by the operation of a casino, **a casino simulcasting facility** or an approved hotel including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records. This definition shall apply without regard to the medium through which the record is generated or maintained, for example, paper, magnetic media or encoded disk.

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1.-3. (No change.)

4. With the exception of cashed pari-mutuel tickets and credit vouchers, the original books, records and documents related to the revenues and expenses of casino simulcasting, including but not limited to all reports generated by the totalisator and all records maintained in accordance with N.J.A.C. 19:45-1.2(c)10, shall be retained by a casino licensee or a hub facility for a minimum of one year.

[4.]**5.** The following original books, records and documents shall be retained by a casino licensee for a minimum of six months.

i. Coupons entitling patrons to cash, [or] slot tokens **or simulcast wagers**, including unused, voided and redeemed coupons;

ii.-xi. (No change.)

6. Cashed pari-mutuel tickets and credit vouchers shall be retained by a casino licensee for a minimum of 30 days from the date on which they are cashed, cancelled or refunded in the casino licensee's casino simulcasting facility.

Recodify existing 5. as **7.** (No change in text.)

(d)-(i) (No change.)

19:45-1.10 Closed circuit television system; surveillance department control; surveillance department restrictions

(a) (No change.)

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i. The gaming conducted at each gaming table in the casino **and casino simulcasting facility** and the activities in the casino **and casino simulcasting facility** pits;

ii.-iv. (No change.)

v. The operations conducted in the simulcast counter.

Recodify existing v.-vi. as **vi.-vii.** (No change in text.)

[vii.]**viii.** The entrances and exits to the casino, **casino simulcasting facility** and the count rooms; and

Recodify existing viii. as **ix.** (No change in text.)

2.-3. (No change.)

4. One or more monitoring rooms in the establishment which shall be in use at all times by the employees or agents of the surveillance department of the licensee assigned to monitor the activities in the casino **and casino simulcasting facility** and to be used as necessary by the inspectors and agents of the Commission and Division.

5. (No change.)

(c)-(g) (No change.)

(h) Entrances to the closed circuit television monitoring rooms shall not be visible from the casino area **or casino simulcasting facility**.

19:45-1.11 Casino licensee's organization

(a) Each casino licensee's system of internal controls shall, in accordance with the provisions of N.J.A.C. 19:45-1.11A, include tables of organization. Each casino licensee shall be permitted, except as otherwise provided in this section and N.J.A.C. 19:53-1.13, to tailor its organizational structure to meet the needs or policies

of its own particular management philosophy. The proposed organizational structure of each casino licensee shall be approved by the Commission in the absence of a conflict between the organizational structure and the criteria listed below, which criteria are designed to maintain the integrity of casino **and casino simulcasting facility** operations. Each casino licensee's tables of organization shall provide for:

1.-4. (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-ii. (No change.)

iii. The clandestine surveillance of the operation of the casino simulcasting facility;

Recodify existing iii.-iv. as **iv.-v.** (No change in text.)

[v.]**vi.** The detection of cheating, theft, embezzlement, and other illegal activities in the casino, **casino simulcasting facility,** count rooms, slot booths, and cashiers' cage;

Recodify existing vi.-viii. as **vii.-ix.** (No change in text.)

2. (No change.)

3. A management information system ("MIS") department supervised by a casino key employee holding a license endorsed with the position of executive employee. The MIS department shall be responsible for the quality, reliability and accuracy of all computer systems used by the casino licensee in the conduct of casino **and casino simulcasting facility** operations including, without limitation, specification of appropriate computer software, hardware, and procedures for security, physical integrity, audit, and maintenance of:

i.-iii. (No change.)

4.-5. (No change.)

6. A credit department supervised by a casino key employee holding a license endorsed with the position of credit manager. The credit department shall be responsible for the credit function including, without limitation, the following:

i.-iii. (No change.)

iv. The communication in writing of the names and addresses of [casino] patrons with newly approved credit limits to the supervisors of the security and surveillance departments on a daily basis in accordance with the casino licensee's approved procedures.

7. A security department supervised by a casino key employee holding a license endorsed with the position of director of security. The security department shall be responsible for the overall security of the establishment including, without limitation, the following:

i.-iii. (No change.)

iv. The physical safeguarding of assets transported to and from the casino, **casino simulcasting facility,** slot, and cashiers' cage departments;

v.-vii. (No change.)

viii. The recordation of any and all unusual occurrences within the casino **and casino simulcasting facility** for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and, at a minimum, the following information shall be recorded in indelible ink in a bound, laboratory-type notebook from which pages cannot be removed and each side of each page of which is sequentially numbered:

1.-6. (No change.)

ix. (No change.)

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department shall also be responsible for the control and supervision of the [cashier's] **cashiers' cage, any satellite cages and simulcast counter.** The casino accounting department shall be responsible for, without limitation, the following:

i. (No change.)

ii. The preparation and control of records and data; and

iii. The control of stored data, the supply of unused forms, and the accounting for and comparing of forms used in operating the casino **and casino simulcasting facility.**

9. A [cashier's] **cashiers'** cage supervised by a casino key employee holding a license endorsed with the position of cage manager. The supervisor of the cashiers' cage shall report to the supervisor of the casino accounting department and shall be responsible for the control and supervision of cage and slot cashiers, change persons and casino clerks. The cashiers' cage may be separated into independent operations for table games and slot machines. If a casino licensee elects to operate both a table games cage and a slot machine cage, each independent cage operation shall be supervised by a casino key employee holding a license endorsed with the position of cage manager. **If a casino licensee elects to operate one or more satellite cages, each satellite cage shall be supervised by a casino key employee holding a license whose endorsement shall depend upon the functions performed by the satellite cage.** The cashiers' cage shall be responsible for, without limitation, the following:

i.-iv. (No change.)

10. A casino licensee which elects to conduct casino simulcasting shall operate a simulcast counter supervised by a casino key employee holding a license endorsed with the position of simulcast counter manager.

(c)-(f) (No change.)

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) Each casino licensee shall be required to employ the personnel herein described in the operation of its casino **and casino simulcasting facility,** regardless of the position titles assigned to such personnel by the casino licensee in its approved jobs compendium. Functions described in this section shall be performed only by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to perform such functions, or by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to supervise persons performing such functions, subject to the limitations imposed by N.J.A.C. 19:45-1.11(a). Each casino licensee shall at all times maintain a level of staffing which ensures the proper operation and effective supervision of all table games in the casino **and casino simulcasting facility.**

(b) The following personnel shall be used to operate the table games in an establishment:

1.-6. (No change.)

7. Casino shift manager shall be the supervisor assigned to each shift with the responsibility for the supervision of table games conducted in the casino **and casino simulcasting facility.** In the absence of the casino manager and the assistant casino manager, should the establishment have an assistant casino manager, the casino shift manager shall have the authority of a casino manager.

8. (No change.)

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

(e) The casino manager or shift manager shall notify the Commission and the Division no later than 24 hours in advance of implementing or changing any plan for revised supervision, provided, however, that notice may be provided less than 24 hours in advance in circumstances which are emergent or may otherwise not reasonably be anticipated. Such notice shall include, without limitation, the following information:

1.-4. (No change.)

5. The basis for the decision to revise the number of supervisory personnel, which shall include any relevant factors which demonstrate that proper operation and effective supervision of the affected gaming tables will be maintained, including, as applicable, a showing:

i. That the revised supervision is justified by a reduced volume of [casino] play at the specified times and gaming tables **in the casino or casino simulcasting facility**;

ii.-iv. (No change.)

(f)-(g) (No change.)

(h) The following personnel of the casino accounting department shall, at a minimum, be used to operate a simulcast counter in a casino simulcasting facility:

1. Casino pari-mutuel cashiers shall be licensed as casino employees and shall be assigned the responsibility of generating, and issuing to patrons, pari-mutuel tickets and credit vouchers, making simulcast payouts to patrons, and redeeming credit vouchers for patrons;

2. Simulcast counter shift supervisor shall be licensed as a casino key employee and shall be the first level supervisor assigned the responsibility for directly supervising the operation and conduct of the simulcast counter;

3. Simulcast counter manager shall be licensed as a casino key employee and shall be the executive assigned the responsibility and authority for the supervision and management of the overall operations of the simulcast counter, including without limitation, the hiring and termination of all simulcast counter personnel and the creation of high employee morale and good customer relations, all in accordance with the policies and practices established by the casino licensee's board of directors or non-corporate equivalent.

Recodify existing (h) as (i) (No change in text.)

19:45-1.12A Personnel assigned to the operation and conduct of low limit table games

(a) (No change.)

(b) Each casino licensee may request Commission approval to operate low limit table games pursuant to this section by filing a submission at least 30 days before the operation of such table games is to commence or before changes in a previous submission are to become effective, unless otherwise permitted by the Commission. Each such submission shall contain, without limitation, the following information:

1. A floor plan of the casino **and casino simulcasting facility** showing the type, location and configuration of all low limit table games proposed by the casino licensee and all other table games located within the same pit as a low limit table game;

2.-3. (No change.)

(c) In explaining why a reduced staffing requirement is sufficient for its low limit table games, a casino licensee may justify its proposal in any way it deems appropriate including, without limitation, the elimination of the availability of [casino] credit at such tables.

19:45-1.13 Firearms; possession within casino **or casino simulcasting facility**

(a) No person, including the security department members, shall possess or be permitted to possess any pistol or firearm within a casino **or casino simulcasting facility** without the express written approval of the Commission provided that employees and agents of the Division may possess such pistols or firearms at the discretion of the director of the Division.

(b) To obtain approval for the possession of a pistol or firearm within a casino **or casino simulcasting facility**, a person shall be required to demonstrate that:

1.-2. (No change.)

3. There is a compelling need for the possession of such pistol or firearm within the casino **or casino simulcasting facility**.

(c) Each casino licensee shall cause to be posted in a conspicuous location at each entrance to the casino **and casino simulcasting facility** a sign that may be easily read stating: "By law, no person shall possess any pistol or firearm within the casino **or casino simulcasting facility** without the express written permission of the Casino Control Commission."

19:45-1.14 Cashiers' cage; **satellite cages;** master coin bank; coin vaults

(a) Each establishment shall have on or immediately adjacent to the gaming floor a physical structure known as a cashiers' cage ("cage") to house the cashiers and to serve as the central location in the casino for the following:

1. The custody of the cage inventory comprising currency including [patrons,] **patrons'** deposits, coin, patron checks, gaming chips and plaques, and of forms, documents, and records normally associated with the operation of a cage;

2.-4. (No change.)

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

(g) Each establishment may also have one or more "satellite cages" separate and apart from the cashiers' cage, but in or adjacent to the casino or casino simulcasting facility, established to maximize security, efficient operations, or patron convenience and comfort and designed and constructed in accordance with N.J.A.C. 19:45-1.14(c). Subject to Commission approval, a satellite cage may perform any or all of the functions of the cashiers' cage. The functions which are conducted in a satellite cage shall be subject to the applicable accounting controls set forth in this chapter.

[(g)](**h**) Each casino licensee shall file with the Commission and Division the names of all persons authorized to enter the cage, **any satellite cages,** the master coin bank and any coin vaults; all persons possessing the combination or keys to the locks securing the entrance to the cage, **any satellite cages,** master coin bank and coin vaults; as well as all persons possessing the ability to operate alarm systems for the cage, **any satellite cages,** master coin bank and coin vaults.

19:45-1.14A Simulcast counter

(a) The casino simulcasting facility shall contain a physical structure known as a simulcast counter to house the casino pari-mutuel cashiers and to serve as the central location in the casino simulcasting facility for the following:

1. The custody of the simulcast counter inventory including, without limitation, currency and coin and the forms and documents normally associated with the operation of a simulcast counter;

2. The receipt of currency, coin, gaming chips, coupons and slot tokens for simulcast wagering; and

3. Such other functions normally associated with the operation of a simulcast counter.

(b) The simulcast counter shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall, at a minimum, include the following:

1. One or more numbered pari-mutuel windows, each of which shall contain a pari-mutuel machine and a cashier's drawer, in which shall be deposited all currency, coins, gaming chips, slot tokens, coupons and duplicate slips evidencing exchanges with the cashiers' cage, satellite cage or simulcast vault, or a self-service pari-mutuel machine;

2. A work area containing at least one remote management console ("RMC") and terminal to generate reports on pari-mutuel wagering, which shall be used only by the simulcast shift supervisor or above, and casino pari-mutuel cashiers, who shall only be allowed access under the direct supervision of the simulcast supervisor or above; and

3. A simulcast vault, which shall be secured by a lock, the key to which shall be maintained and controlled by the simulcast shift supervisor or above, and which shall contain a supply of currency and coin under the control of a simulcast shift supervisor or above to be utilized for the pari-mutuel window inventories and to replenish the pari-mutuel window inventories, when necessary.

19:45-1.15 Accounting controls for the cashiers' cage, **satellite cages,** master coin bank, and coin valuts

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

(c) The cashiers' cage **and any satellite cage** shall be physically segregated by personnel and function as follows:

1.-2. (No change.)

3. Chip bank cashiers shall not have access to currency or cash equivalents, but shall operate with a limited inventory of $0.50 and $0.25 cent coins which may only be used to facilitate odds payoffs or vigorish bets. Such cashiers' functions shall be, but are not limited to, the following:

i.-iii. (No change.)

iv. Receive **gaming** chips from the general cashiers and main bank cashiers in exchange for proper documentation; and

v. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall be, but are not limited to, the following:

i.-v. (No change.)

vi. Receive from general, chip and check bank cashiers, documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage; [and]

vii. Be responsible for the reserve cash bankroll[.]; **and**

viii. Receive gaming chips, slot tokens and coupons from the simulcast vault or casino pari-mutuel cashiers;

5. Master coin bank cashiers' functions shall be, but not limited to, the following:

i.-v. (No change.)

(d)-(f) (No change in text.)

19:45-1.15A Accounting controls within the simulcast counter

(a) Whenever a casino pari-mutuel cashier begins a shift, he or she shall commence with an amount of currency and coin to be known as the "simulcast inventory," and no casino simulcasting facility shall cause or permit currency, coin, gaming chips, slot tokens or coupons to be added to, or removed from, such simulcast inventory during such shift except:

1. In collection of simulcast wagers;

2. In collection for the issuance of credit vouchers;

3. In payment of winning or properly cancelled or refunded pari-mutuel tickets;

4. In payment for credit vouchers; or

5. In exchanges with the cashiers' cage, a satellite cage or simulcast vault.

(b) A "simulcast count sheet" shall be completed and signed by the simulcast shift supervisor at the simulcast vault and the following information, at a minimum, shall be recorded thereon at the commencement of a shift:

1. The date, time and shift of preparation;

2. The denomination of currency and coin in the simulcast inventory issued to the casino pari-mutuel cashier;

3. The total amount of each denomination of currency and coin in the simulcast inventory issued to the casino pari-mutuel cashier;

4. The pari-mutuel window number to which the casino pari-mutuel cashier is assigned; and

5. The signature of the simulcast shift supervisor in the simulcast vault.

(c) The casino pari-mutuel cashier assigned to the pari-mutuel window shall count the simulcast inventory in the presence of the simulcast shift supervisor at the simulcast vault and shall agree the count to the simulcast count sheet. The casino pari-mutuel cashier shall sign the count sheet attesting to the accuracy of the information recorded thereon.

(d) The simulcast inventory shall be placed in a cashier's drawer and transported directly from the simulcast vault to the appropriate pari-mutuel window by the casino pari-mutuel cashier.

(e) At the conclusion of a casino pari-mutuel cashier's shift, the cashier's drawer and its contents shall be transported directly to a designated area in the simulcast counter, where the casino pari-mutuel cashier shall count the contents of the drawer and record the following information, at a minimum, on the simulcast count sheet:

1. The date, time and shift of preparation;

2. The denomination of currency, coin, gaming chips, slot tokens and coupons in the drawer;

3. The total amount of each denomination of currency, coin, gaming chips, slot tokens and coupons in the drawer;

4. The total of any exchanges;

5. The total amount in the drawer; and

6. The signature of the casino pari-mutuel cashier;

(g) The simulcast shift supervisor shall compare the pari-mutuel window net for the shift as generated by the terminal and if it agrees with the simulcast count sheet total plus the simulcast inventory, shall agree the count to the simulcast count sheet and sign the simulcast count sheet attesting to the accuracy.

(h) If the pari-mutuel window net for the shift as generated by the RMC does not agree with the simulcast count sheet total plus the simulcast inventory, the simulcast shift supervisor shall record any overage or shortage. If the count does not agree, the casino pari-mutuel cashier and the simulcast shift supervisor shall attempt to determine the cause of the discrepancy in the count. If the discrepancy cannot be resolved by the casino pari-mutuel cashier and the simulcast shift supervisor, such discrepancy shall immediately be reported to the simulcast counter manager, or casino accounting department supervisor in charge at such time, the security department and the Commission verbally. A security department member will then complete the standard security report in writing, as approved by the Division, and immediately forward a copy to the Commission and the Division.

19:45-1.16 Drop boxes and slot cash storage boxes

(a) Each gaming table in a casino **or casino simulcasting facility** shall have attached to it a metal container known as a "drop box" in which shall be deposited all cash, issuance copies of Counter Checks exchanged at the gaming table for gaming chips and plaques, duplicate Fill and Credit Slips, Requests for Credit forms, Requests for Fill forms and Table Inventory forms. Each drop box shall have:

1.-4. (No change.)

5. Permanently imprinted or impressed thereon, and clearly visible from a distance of 20 feet, a number corresponding to a permanent number on the gaming table to which it is attached and a marking to indicate game and shift, except that emergency drop boxes may be maintained without such number or marking, provided the word "emergency" is permanently imprinted or impressed thereon and, when put into use, are temporarily marked with the number of the gaming table and identification of the game and shift, and provided further, that the casino **licensee** obtains the express written approval of a Commission inspector before placing an emergency drop box into use.

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

19:45-1.19 Acceptance of tips or gratuities from patrons

(a) No casino key employee or boxperson, floorperson, or any other casino employee who serves in a supervisory position shall solicit or accept, and no other casino employee shall solicit, any tip or gratuity from any player or patron of the casino **or casino simulcasting facility** where he **or she** is employed. The casino licensee shall not permit any practices prohibited by (a) of this section.

(b) (No change.)

(c) All tips and gratuities allowed casino pari-mutuel cashiers shall be:

1. Immediately deposited in a transparent locked box reserved for that purpose;

2. Accounted for; and

3. Placed in a pool for distribution pro rata among the casino pari-mutuel cashiers on a weekly basis with the distribution based upon the number of hours each cashier has worked.

[(c)]**(d)** Upon receipt from a patron of a tip or gratuity, a dealer **or casino pari-mutuel cashier** assigned to the gaming table **or pari-mutuel window** shall extend his **or her** arm in an overt motion, and deposit such tip or gratuity in the locked box reserved for such purpose.

19:45-1.20 Table inventories

(a) Whenever a gaming table in a casino **or casino simulcasting facility** is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino **licensee** shall cause or permit gaming chips, coins or plaques to be added to or removed from such table inventory during the gaming day except:

1.-5. (No change.)

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

19:45-1.25 Procedure for exchange of checks submitted by gaming **or simulcast wagering** patrons

(a) Except as otherwise provided in this section, no casino licensee or any person licensed under the Casino Control Act, and no person

acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Casino Control Act, shall:

1. Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming **or simulcast wagering** activity as a player; or

2. Release or discharge any debt which is uncollectible, either in whole or in part, which represents any losses incurred by any player in gaming **or simulcast wagering** activity without maintaining a written record of the deposit, check return and collection efforts as required by sections 19:45-1.28 and 19:45-1.29; or

3. Make any loan which represents any losses incurred by any player in gaming **or simulcast wagering** activity without receiving from said player in exchange therefore, a check in the amount of said loan, which check shall conform with the Casino Control Act and these regulations.

(b) No casino licensee or any person licensed under the Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, may accept a check, other than a recognized travelers' check or other cash equivalent, from any person to enable such person to take part in gaming **or simulcast wagering** activity as a player, or may give cash or cash equivalents in exchange for such check unless the requirements of this section and 19:45-1.26, 19:45-1.27, 19:45-1.28, and 19:45-1.29 concerning check cashing, redeeming, consolidating, collecting and recording procedures are observed by the casino licensee and its employees and agents. For purposes of this chapter, the term "check" when used in connection with an exchange, redemption, substitution or consolidation by a patron shall mean any draft drawn by the patron which is a "cash item" as defined in Regulation J of the Board of Governors of the Federal Reserve System, 12 C.F.R. 210.2(e), and which is drawn on an account maintained in a "depository institution" as defined in Section 19(b) of the Federal Reserve Act, 12 U.S.C. §461(b), including share drafts and drafts drawn on negotiable order of withdrawal accounts or similar accounts; the term "checking account" shall mean any account on which a "check" is drawn; and the term "bank" shall include any "depository institution" as defined in 12 U.S.C. §461(b). For purposes of this chapter, a check received from a person by cage cashiers may be presumed by the casino licensee not to be exchanged to enable such person to take part in gaming activity as a player, if the casino licensee shall cause to be posted at each general cashier station in the cashiers' cage a conspicuous sign that reads:

"By law, personal checks cannot be exchanged for currency or coin to be used for gaming **or simulcasting wagering** purposes."

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

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino **licensee** which issued the check and shall verify the following information:

1.-4. (No change.)

5. That the check represents:

i. (No change.)

ii. The redemption of the [casino's] **casino licensee's** gaming chips; [or]

iii. The winnings from slot machine payoffs[.]; **or**

iv. The winnings from simulcast wagering.

(g) (No change.)

(h) A general cashier of the New Jersey casino which issued the casino check shall provide such information, as required by (f) above, to the casino licensee accepting such check and shall indicate that verification was requested by notating in a log the following information:

1.-6. (No change.)

7. The reason for the check as either:

i. (No change.)

ii. The redemption of the [casino's] **casino licensee's** gaming chips; [or]

iii. The winnings from slot machine payoffs[.]; **or**

iv. The winnings from simulcast wagering.

(i)-(n) (No change.)

(o) If the total amount of chips or plaques possessed by a patron exceeds $500, the casino licensee shall request the patron to apply all chips or plaques in his possession to the redemption of Counter Checks or Slot Counter Checks exchanged for purposes of gaming prior to exchanging such chips or plaques for cash or prior to departing from the casino **or casino simulcasting facility** areas.

(p) (No change.)

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(c) Prior to the casino licensee's approval of the patron's credit limit, a credit department representative with no incompatible functions shall:

1. (No change.)

2. Verify the patron's current casino credit limits and outstanding balances which shall include the following:

i.-ii. (No change.)

iii. The current balance and status of the patron's credit account at each casino including checks deposited by New Jersey casino[s] **licensees** that have not yet cleared the bank and derogatory information. ("Derogatory" is defined as patron credit accounts partially or completely uncollectible, checks returned unpaid by the patron's bank, settlements, liens, judgments, and any other credit problems of the patron);

3.-5. (No change.)

(d)-(f) (No change.)

(g) Prior to approving a credit limit increase, a representative of the casino licensee's credit department shall:

1.-5. (No change.)

6. For slot play, the information for the patron's player rating shall be recorded on a player rating form by slot department supervisors, or put directly into the **casino** licensee's computer system pursuant to an approved submission, or generated by insertion of a card, by a patron, into a card reader attached to a slot machine. Such ratings shall include, but not be limited to, the following:

i.-v. (No change.)

7. (No change.)

(h)-(i) (No change.)

(j) Any patron having a check returned to any casino unpaid by the patron's bank shall have his credit privileges suspended at all New Jersey casino[s] **licensees** until such time as the returned check has been paid in full or the reason for the derogatory information has been satisfactorily explained. All derogatory information concerning a patron's credit account shall be reported by each casino licensee on a daily basis to a casino credit bureau used by New Jersey casino[s] **licensees**. Each New Jersey casino licensee shall request written documentation of any derogatory information pertaining to its patrons to be reported to that casino **licensee** on a daily basis by a casino credit bureau used by the New Jersey casino[s] **licensees**. All documentation obtained from the casino credit bureau shall be maintained in the patron's credit file. Any casino licensee desiring to continue the patron's credit privileges on the basis of a satisfactory explanation having been obtained for the returned check may do so if the licensee records the explanation for its decision in the credit file before accepting any further checks from the patron along with the signature of the credit department representative accepting the explanation.

(k)-(o) (No change.)

19:45-1.32 Count room; characteristics

(a) Each casino **licensee** shall have immediately adjacent to the cashiers' cage a room specifically designated for counting the contents of drop boxes and slot cash storage boxes which shall be known as the "count room."

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption programs which entitle patrons to redeem coupons for complimentary cash [or], slot tokens **or simulcast wagers** including, but not limited to, complimen-

tary cash or slot tokens issued in connection with bus programs. No complimentary cash or slot tokens may be distributed, **or complimentary simulcast wagers accepted,** by a casino licensee under any coupon redemption program that does not comply with the requirements of this section.

(b) Detailed procedures controlling all programs entitling patrons to complimentary cash [or], slot tokens **or simulcast wagering** not regulated by (a) above shall be submitted by the casino licensee to the Commission and Division at least 15 days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all programs entitling patrons to complimentary items or services other than cash [or], slot tokens **or simulcast wagers** shall be prepared prior to implementation of the programs and shall be maintained as an accounting record by the casino licensee. Complimentary items or services, including cash [or], slot tokens **or simulcast wagers,** distributed through programs and regulated by this subsection shall be reported in accordance with the procedures contained in (l) and (n) below.

(c) Each coupon, or part thereof, issued by a casino licensee shall only be redeemable for a specific amount of cash [or], slot tokens **or simulcast wagers.**

(d)-(h) (No change.)

(i) Coupons redeemable for cash or slot tokens shall only be redeemed by changepersons or at the slot change booths or the cashiers' cage located on the casino floor. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. Cancellation of coupons by changepersons shall be in a manner that will permit subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained by the slot or general cashier and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum. Changepersons shall exchange redeemed coupons with slot booths for a like amount of cash at the conclusion of each shift, at a minimum. Notwithstanding the above, an automated coupon redemption machine may be utilized to accept coupons, provided that, the acceptance of coupons by an automated coupon redemption machine complies with the procedures and requirements established by this section and N.J.A.C. 19:45-1.46A. **Coupons redeemable for simulcast wagers shall only be accepted by casino pari-mutuel cashiers at the simulcast counter in exchange for the simulcast wagers stated on the coupons. Cancellation of coupons by casino pari-mutuel cashiers shall be in a manner that permits subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained by the casino pari-mutuel cashier, or in the simulcast vault, and shall be exchanged with the Main Bank for a like amount of cash not less frequently than at the conclusion of each day.**

(j)-(k) (No change.)

(l) Each licensee shall file a monthly report with the Commission and Division which shall include the following information:

1. For all programs regulated by (a) above, each licensee shall list by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash [or], slot tokens **or simulcast wagers** given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; and

2. (No change.)

(m) (No change.)

(n) In addition to the monthly report required to be filed in (l) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons pursuant to (a) above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including cash [and], slot tokens **and simulcast wagers,** distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-1.2.

19:46-1.1 Gaming chips; value and non-value; physical characteristics

(a) (No change.)

(b) Value chips may be issued by a casino licensee in denominations of $.50, $1.00, $2.50, $5.00, $20.00, $25.00, $100.00, $500, $1,000 and $5,000. It, however, shall be within the discretion of the casino licensee to determine which of these denominations will be utilized in its casino **or casino simulcasting facility** and what amount of each denomination will be necessary for the conduct of gaming operations [in the casino].

(c) Each denomination of value chip shall have a different primary color from every other denomination of value chip. The primary color to be utilized by each casino licensee for each denomination of value chip shall be:

1.-10. (No change.)

11. Chip colors shall fall within the above tolerances when such chips are viewed both in daylight and under incandescent light. In conjunction with the aforementioned primary colors, each casino licensee shall utilize contrasting secondary colors for the edge spots on each denomination of value chip. Unless otherwise approved by the Commission, no casino **licensee** shall use a secondary color on a specific denomination of chip identical to the secondary color used by another casino **licensee** on that same denomination of chip.

(d) Each denomination of value chip utilized in a casino **or casino simulcasting facility** shall, unless otherwise authorized by the Commission.

1. Have its center portion, which contains the value of the chip and the name **or trade name** of the casino **licensee** issuing it, of a different shape for each denomination of chip;

2. Have the name, **trade name,** or other approved identification of the casino **licensee** issuing it and the denomination of such chip molded into the outer rim of the chip;

3.-4. (No change.)

(e) (No change.)

(f) Each non-value chip utilized in a casino **or casino simulcasting facility** shall be issued solely for the purpose of gaming at roulette. The non-value chips at each roulette table shall:

1. Have the name **or trade name** of the casino **licensee** issuing them molded into the center of such chip;

2. Contain a design, insert or symbol differentiating those chips from the non-value chips being used at every other roulette table in the casino **or casino simulcasting facility**;

3.-4. (No change.)

(g) (No change.)

(h) Non-value chips issued at a roulette table shall only be used for gaming at that table and shall not be used for gaming at any other table in the casino **or casino simulcasting facility** nor shall any casino licensee or its employees allow any [casino] patron to remove non-value chips from the table from which they were issued.

(i) (No change.)

(j) Non-value chips shall only be presented for redemption at the table from which they were issued and shall not be redeemed or exchanged at any other location in the casino **or casino simulcasting facility**. When so presented, the dealer at such table shall exchange them for an equivalent amount of value chips which may then be used by the patron in gaming or redeemed as any other value chips.

(k)-(n) (No change.)

(o) No casino licensee shall issue or cause to be utilized in its casino **or casino simulcasting facility** any value or non-value chips unless and until such chips are approved by the Casino Control Commission. In requesting approval of such chips, a casino licensee, prior to having any such chips manufactured, shall first submit to the Commission a detailed schematic of its proposed chips which shall show the front, back and edge of each denomination of value chip and each non-value chip and the design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear both as to size and location, on the actual chip. Once the design schematics are approved by the Commission, no value or non-value chip shall be issued or utilized until and unless

a sample of each denomination of value chip and each color of non-value chip is also submitted to and approved by the Commission.

(p) No casino licensee or other person licensed by the Commission shall manufacture for, sell to, distribute to or use in any casino outside of Atlantic City, any value or non-value gaming chips having the same edge design as those approved for use in Atlantic City casinos **and casino simulcasting facilities.**

19:46-1.2 Gaming plaques; physical characteristics

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

(d) No casino licensee shall issue or cause to be utilized in its casino **or casino simulcasting facility** any gaming plaques unless and until such plaques are approved by the Casino Control Commission or its authorized designee. In requesting approval of such plaques, a casino licensee, prior to having any such plaques manufactured, shall first submit to the Commission a detailed schematic of its proposed plaques which shall show the front, back and edge of each denomination of plaque and the design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear, both as to size and location, on the actual plaque. Once the design schematics are approved by the Commission, no plaque shall be issued or utilized until and unless a sample of each denomination of plaque is also submitted to and approved by the Commission or its authorized designee.

(e) (No change.)

19:46-1.3 Primary, secondary and reserve sets of gaming chips

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

(c) Each casino licensee shall have a reserve non-value chip for each color utilized in the casino **or casino simulcasting facility** with a design insert or symbol different from those non-value chips comprising the primary set.

(d) The casino licensee shall remove the primary set of gaming chips from active play whenever it is believed the casino **or casino simulcasting facility** is taking on counterfeit chips or whenever any other impropriety or defect in the utilization of the primary set of chips makes removal of the primary set necessary or whenever the Commission or its designee so directs. An approved secondary set of value chips and a reserve non-value chip shall be placed into active play whenever the primary set is removed.

(e) (No change.)

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques

(a) All [gaming] **wagering on authorized games** in a casino **or casino simulcasting facility** shall be conducted with gaming chips or plaques, provided, however, that slot tokens or coins shall be permitted for use in slot machines **or simulcast wagering.**

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be redeemed at the cashers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths for coin or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 to play the slot machines **and may be used for simulcast wagering.**

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

(f) Each casino **licensee** shall redeem promptly its own genuine gaming chips and plaques by cash or by check dated the day of such redemption on an account of the casino licensee as requested by the patron, except when the gaming chips or plaques were obtained or being used unlawfully. Slot tokens shall be redeemed or exchanged in the following manner:

1. (No change.)

2. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchangeable for a coupon which is redeemable for goods or services offered by, or on behalf of, the casino licensee; provided, however, that a casino **licensee** shall require that the amount of tokens exchangeable be equal to the face value of the coupon, the denomination of which shall be approved by the Commission.

(g) Each casino **licensee** shall have the right to demand the redemption of its gaming chips, slot tokens or plaques from any person in possession of them and such person shall redeem said chips, slot tokens or plaques upon presentation of an equivalent amount of cash by the casino; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchanged in accordance with (f)2 above.

(h) (No change.)

(i) A casino licensee shall redeem promptly its own genuine gaming chips, tokens and plaques from other legally operated casino[s] **licensees** upon the representation that such chips, tokens and plaques were received or accepted unknowingly, inadvertently or in error, were unavoidably received in slot machines through patron play or were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange of foreign gaming chips, tokens and plaques.

(j) Each casino licensee shall cause to be posted and remain posted in a prominent place on the front of the cashiers' cage **and any satellite cages** a sign that reads as follows:

"By law, gaming chips or plaques issued by another casino may not be used, exchanged or redeemed in this casino **or casino simulcasting facility.**"

(k) (No change.)

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

(a) When gaming chips, tokens or plaques are received from the manufacturer or distributor thereof, they shall be opened and checked by at least three people, one of whom shall be from the accounting or auditing department of the casino **licensee.** Any deviation between the invoice accompanying the chips, tokens and plaques and the actual chips, tokens or plaques received or any defects found in such chips, tokens or plaques shall be reported promptly to the Commission and Division.

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

(d) Any gaming chips received that are part of the secondary set of chips [of the casino] shall be recorded in the chip inventory ledger as such and shall be stored in a locked compartment in the casino vault separate from the reserve chips.

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

19:46-1.9 Roulette; inspection procedures; security procedures

(a) (No change.)

(b) If a casino licensee uses a roulette wheel which has external movable parts, any adjustments to the movable parts shall be made by a casino supervisor or a member of the casino maintenance department, in the presence of a security department member. Adjustments to the movable parts of a roulette wheel that is located on the casino floor**, or in a casino simulcasting facility,** shall only be made:

1. When the casino **or casino simulcasting facility** is not open to the public; or

2. If the roulette wheel is moved to a secure location [off] **outside** the casino [floor] **or casino simulcasting facility** as approved by the Commission.

(c)-(f) (No change.)

19:46-1.10 Blackjack table; physical characteristics

(a) (No change.)

(b) The cloth covering the blackjack table shall have imprinted thereon the name **or trade name** of the casino **licensee** and shall have specific areas designated for the placement of wagers. Such betting areas shall not exceed seven in number.

(c)-(f) (No change.)

19:46-1.11 Craps table; physical characteristics

Craps shall be played on a table oblong in shape with rounded corners and high walled sides. The cloth of the table shall have the name **or trade name** of the casino **licensee** imprinted thereon and shall be marked as depicted in the following diagram except that the payout odds contained on the following diagram shall be modified to reflect the actual payout odds utilized by the casino licensee in accordance with the payout odds provisions in the rules on craps.

Editor's Note: (No change.)

19:46-1.12 Baccarat and minibaccarat table; physical characteristics

(a) Baccarat-Punto Banco shall be played on a table having numbered places 10 to 14. The cloth covering the table shall have imprinted thereon the name **or trade name** of the casino **licensee** and shall be marked in a manner similar to that depicted in the following diagram.

Editor's Note: (No change.)

(b) Baccarat-Chem de Fer shall be played on a table having numbered places for 9 to 14 seated players. The cloth covering the table shall also have the name **or trade name** of the casino **licensee** imprinted thereon.

(c) Minibaccarat shall be played at a table having on one side places for the participants, and on the opposite side a place for the dealer.

1. The cloth covering the minibaccarat table shall have imprinted thereon the name **or trade name** of the casino **licensee.**

2.-6. (No change.)

19:46-1.13 Big six wheel; physical characteristics

(a) (No change.)

(b) Each Big Six Wheel Table shall have the name **or trade name** of the casino **licensee** imprinted on the cloth covering it and shall have a drop box and a tip box attached to it at the locations depicted in the following diagram.

(c) (No change.)

Editor's Note: Diagrams regarding the Bix Six Wheel were adopted with these rules but are not reproduced herein. Information on these diagrams may be obtained from the Casino Control Commission, [Building 5, 3131 Princeton Pike Office Park, Trenton, New Jersey 08625] **Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey 08401.**

19:46-1.13A Sic bo table; sic bo shaker; physical characteristics

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

(d) Sic bo shall be played with a sealed container, to be known as a "sic bo shaker," which shall be used to shake the dice in order to arrive at the winning combinations. The sic bo shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:

1.-2. (No change.)

3. The sic bo shaker shall have the name **or trade name** of the casino **licensee** or identifying logo imprinted or impressed thereon; and

4. (No change.)

19:46-1.14 Red dog table; physical characteristics

(a) (No change.)

(b) The cloth covering the red dog table shall have imprinted thereon the name **or trade name** of the casino **licensee.**

(c)-(f) (No change.)

19:46-1.15 Dice; physical characteristics

(a) Each die used in gaming at craps or sic bo shall:

1.-2. (No change.)

3. Be transparent and made exclusively of cellulose except for the spots, name **or trade name** of the casino **licensee** and serial numbers or letters contained thereon;

4.-9. (No change.)

10. Have the name **or trade name** of the casino **licensee** in which the die is being used imprinted or impressed thereon.

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

19:46-1.16 Dice; receipt, storage, inspections and removal from use

(a) When dice for use in the casino **or casino simulcasting facility** are received from the manufacturer or distributor thereof, they shall immediately following their receipt be inspected by a member of the security department and a casino supervisor to assure that the seals on each box are intact, unbroken and free from tampering. Boxes that do not satisfy these criteria shall be inspected at this time to assure that the die conform to commission standards and are completed in a condition to assure fair play. Boxes satisfying these criteria together with boxes having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet or storage area. The cabinet or primary storage area shall be located in the cashiers' cage or in another secure place in or immediately adjacent to the casino, the location and physical characteristics of which shall be approved by the Commission or its authorized designee. The secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission or its authorized designee.

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

(d) All envelopes and containers used to hold or transport preinspected dice to the casino floor **or casino simulcasting facility** and those collected by security at the end of each shift or gaming day shall be transparent.

1.-2. (No change.)

(e)-(l) (No change.)

19:46-1.17 Cards; physical characteristics

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

(f) The design to be placed on the backs of cards used by casino **licensees** shall be submitted to the chairman for approval prior to use of such cards in gaming activity.

(g) (No change.)

(h) Nothing in this section shall prohibit a manufacturer from manufacturing decks of cards with jokers contained therein provided such jokers are not used by the casino **licensee** in the play of the games.

19:46-1.18 Cards; receipt, storage, inspections and removal from use

(a) When decks of cards are received for use in the casino **or casino simulcasting facility** from the manufacturer or distributor thereof, they shall be placed for storage in a locked cabinet area by at least two individuals, one of whom shall be from the casino department and the other from the security department. The cabinet or primary storage area shall be located in the cashiers' cage or in another secure place in or immediately adjacent to the casino, the location and physical characteristics of which shall be approved by the Commission or its authorized designee. Any secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission or its authorized designee.

(b)-(p) (No change.)

19:46-1.19 Dealing shoes

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

(f) All dealing shoes and shuffling devices in the casino **and casino simulcasting facility** shall be inspected at the beginning of each gaming day by a [floorman] **floorperson** prior to cards being placed in them. The purpose of this inspection shall be to assure that there is no contrivance with or through the shoe or shuffling device.

19:46-1.20 Approval of gaming **and simulcast wagering** equipment; retention by Commission or Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming **and simulcast wagering** equipment and other devices used in a casino, **casino simulcasting facility or hub facility** as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, locking devices [and], data processing equipment, **pari-mutuel machines, self-service pari-mutuel machines and totalisators.**

(b) The [commission] **Commission** shall have the discretion to require a prototype or sample of any model of gaming **and simulcast wagering** equipment or of other device used in a casino, **casino simulcasting facility or hub facility** to be placed in its custody and retained by it or the [division] **Division** as a control for comparison purposes.

(c) Any evidence that gaming equipment or other devices used in a casino, **casino simulcasting facility or hub facility** including, without limitation, gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical

devices, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens [and], slot machines, **pari-mutuel machines, self-service pari-mutuel machines and totalisators** have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other devices for use in a casino, **casino simulcasting facility or hub facility** shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice and cards may be found at N.J.A.C. 19:46-1.16(g) and 19:46-1.18(n), respectively.

19:46-1.27 Slot machine areas; density; arrangement; floor plans; slot stools

(a)-(j) (No change.)

(k) Slot machines shall not be permissible in casino simulcasting facilities.

19:46-1.33 Issuance and use of tokens for gaming in slot machines

(a) A casino licensee may, with the approval of the Casino Control Commission, issue metal tokens designed for gaming use in its slot machines provided that such tokens:

1. Clearly identify the name **or trade name** and location of the casino issuing them;

2.-9. (No change.)

(b) (No change.)

(c) Slot tokens approved for issuance by a casino licensee pursuant to this section shall either be:

1. Issued to a patron upon request or in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46 and:

i. (No change.)

ii. Available as a payout from the payout reserve container (hopper) of such slot machines; [and]

iii. Available for use in simulcast wagering; and

Recodify existing [iii.] as **iv.** (No change in text.)

2. (No change.)

19:47-1.3 Making and removal of wagers; approval of minimum wagers

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

(f) Each casino licensee shall submit to the Commission for its review and approval in accordance with N.J.A.C 19:47-8.2 the proposed minimum wagers to be permitted at each craps table in the casino **and the casino simulcasting facility**. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each craps table.

19:47-1.4 Payout odds

(a) (No change.)

(b) No casino licensee[, his employees or agents] **or any employee or agent thereof** shall pay off winning wagers at the game of craps at less than the odds listed below. A casino licensee may pay off winning wagers at higher odds than those listed below provided that such odds are uniform within the casino **and the casino simulcasting facility**.

WAGER	PAYOUT ODDS
Pass Bet	1 to 1
Don't Pass Bet	1 to 1
Come Bet	1 to 1
Don't Come Bet	1 to 1
Place Bet 4 to Win	9 to 5
Place Bet 5 to Win	7 to 5
Place Bet 6 to Win	7 to 6
Place Bet 8 to Win	7 to 6
Place Bet 9 to Win	7 to 5
Place Bet 10 to Win	9 to 5
Place Bet 4 to Lose	5 to 11
Place Bet 5 to Lose	5 to 8
Place Bet 6 to Lose	4 to 5
Place Bet 8 to Lose	4 to 5
Place Bet 9 to Lose	5 to 8
Place Bet 10 to Lose	5 to 11
Four the Hardway	7 to 1
Six the Hardway	9 to 1
Eight the Hardway	9 to 1
Ten the Hardway	7 to 1
Field Bet	1 to 1 on 3, 4, 9, 10, 11
	2 to 1 on 2
	2 to 1 on 12
Any Seven	4 to 1
Any Craps	7 to 1
Craps 2	30 to 1
Craps 3	15 to 1
Craps 12	30 to 1
11 in one roll	15 to 1

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

19:47-1.5 True odds on place bets (buy and lay bets); vigorish prohibited

(a) Buy Bets: In addition to the payout odds set forth in N.J.A.C. 19:47-1.4 for place bets to win on 4, 5, 6, 8, 9 and 10, a casino licensee may offer a player the option of receiving true odds on these bets in return for the player paying to the casino **licensee**, at the time of making the bet, a percentage of the amount wagered which in no event shall exceed five percent of such water. Under such circumstances, a casino licensee shall conform to the odds listed below in paying off winning wagers on these bets:

BET	ODDS
4 to Win	2 to1
5 to Win	3 to 2
6 to Win	6 to 5
8 to Win	6 to 5
9 to Win	3 to 2
10 to Win	2 to 1

(b) Lay Bets: In addiiton to or in lieu of the payout odds set forth in N.J.A.C. 19:47-1.4 for place bets to lose on 4, 5, 6, 8, 9 and 10, a casino licensee may offer a player true odds on these bets in return for the player paying to the casino **licensee**, at the time of making the bet, a percentage of the amount the player could win on such bet which in no event shall exceed 5 percent of such wager. Under such circumstances, a casino licensee shall conform to the odds listed below in paying off winning wagers on these bets:

BET	ODDS
4 to Lose	1 to 2
5 to Lose	2 to 3
6 to Lose	5 to 6
8 to Lose	5 to 6
9 to Lose	2 to 3
10 to Lose	1 to 2

(c) (No change.)

19:47-1.6 Supplemental wagers made after come out roll in support of pass; don't pass; come and don't come bets (making and laying odds)

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

(e) A casino **licensee** may allow an additional wager in support of a Pass or Come Bet in an amount up to five times the amount of the original Pass or Come Bet. A casino **licensee** may allow an additional wager in support of a Don't Pass or Don't Come Bet in an amount so calculated as to provide winnings not in excess of up to five times the amount originally wagered on the Don't Pass or Don't Come Bet. The original Pass, Don't Pass, Come or Don't Come Bet and any additional wager allowed pursuant to this subsection shall be paid at the same odds as the original and supplemental wagers are paid under (a) through (d) above. The amount of the additional wager accepted from the patron may exceed the maximum additional wager otherwise allowed and posted pursuant to (f) below,

to the extent that a wager in excess of the maximum is necessary to facilitate the payout permitted herein.

(f) Any casino **licensee** offering additional wagers greater than the additional wagers authorized under (a) through (d) above shall advise patrons of the maximum additional wager being offered by complying with the notice requirements set forth in N.J.A.C. 19:47-8.3.

19:47-2.3 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each blackjack table in the casino **and the casino simulcasting facility**. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each blackjack table.

(f)-(l) (No change.)

19:47-5.1 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each roulette table in the casino **and the casino simulcasting facility**. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each roulette table.

19:47-5.6 Big six wheel; wagers and rotation of wheel

(a) Each casino licensee shall submit to the Commission for review and approval in accordance with N.J.A.C. 19:47-8.2 the minimum wagers permitted at each big six wheel in the casino **and the casino simulcasting facility**. Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each big six table.

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

19:47-8.2 Minimum and maximum wagers

(a) Each casino licensee or applicant shall submit to the Commission a proposal specifying the minimum wagers and any other limitations at all authorized table games in its casino **or casino simulcasting facility**. Such submission shall be made at least 30 days before gaming operations are to commence or before changes in a previously submitted proposal are to become effective, unless otherwise permitted by the Commission. Each such submission shall contain, but not be limited to the following information.

1. A floor plan of the casino **and the casino simulcasting facility** showing the location and configuration of all table games authorized by the Commission or proposed by the licensee or applicant for authorization;

2. The number of such table games, by game, authorized by the Commission or proposed by the licensee or applicant for such authorization in the licensee's or applicant's casino **or casino simulcasting facility**;

3.-4. (No change.)

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

19:50-1.4 Classification of authorized locations

(a) Authorized locations shall be classified as follows:

1.-5. (No change.)

6. All locations authorized pursuant to N.J.S.A 5:12-103(g)(6) shall be classified as Type VI (casino simulcasting facility) locations.

(b) The activities permitted in each type of authorized location, subject to applicable laws, rules, and regulations, are as follows:

1.-5. (No change.)

6. In a Type VI location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle, but not in an original container, for on-premises consumption within a casino simulcasting facility.

(c) (No change.)

(d) The Commission may, consistent with the requirements of (b) above, issue two or more types of authorizations for the same authorized location, or different types of authorizations for different areas of the same authorized location. This subsection shall not apply to Type I [or], Type V **or Type VI** authorized locations.

19:50-1.5 Standards for qualification

(a) (No change.)

(b) No CHAB license which authorizes the sale of alcoholic beverages within a casino **or casino simulcasting facility** shall issue to any applicant who does not hold a casino license issued pursuant to the Act.

(c) No CHAB license which authorizes the possession, sale or storage of alcoholic beverages within any part of the premises, other than a casino **or casino simulcasting facility**, shall issue to any applicant who would not qualify under the standards for licensure of a non-gaming related casino service industry pursuant to N.J.S.A. 5:12-92(c).

(d)-(f) (No change.)

19:50-2.2 Additional operating conditions of CHAB licensees

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

(f) No CHAB licensee shall sell or offer to sell alcoholic beverages at a price below "cost," as defined by the Division of Alcoholic Beverage Control, except that CHAB licensees may serve complimentary alcoholic beverages:

1. (No change.)

2. In Type II (hotel), Type III (package goods) [or], Type IV (room service) **or Type VI (casino simulcasting facility)** authorized locations, pursuant to sections 99 and 102 of the Act and the Commission's regulations concerning complimentaries;

3.-4. (No change.)

19:50-3.6 Conditions of operation in Type VI (casino simulcasting facility) locations

(a) No alcoholic beverage shall be sold, given or be available for consumption, offered, delivered or otherwise brought to a patron within a casino simulcasting facility unless requested by the patron.

(b) No alcoholic beverage in an original container shall be brought into a Type VI location except by the CHAB licensee authorized to sell alcoholic beverages in that Type VI location.

(c) No CHAB licensee shall serve any alcoholic beverage in a Type VI location except by the glass or other open receptacle, but not in an original container, for on-premises consumption within the authorized location.

(d) No alcoholic beverage shall be displayed in a Type VI location except incidental to delivery or consumption by a patron.

(e) Alcoholic beverages may be served in a Type VI location only when the casino simulcasting facility is open, but shall not be served later than 15 minutes prior to the closing of the casino room.

19:51-1.1 Applicability of advertising regulations

(a) (No change.)

(b) The following notices and communications shall not be deemed advertisements for purposes of this chapter, but shall be subject to any review and approval by the Commission otherwise required by the Act or by regulation:

1. (No change.)

2. Any signage or other directional devices contained in a casino [room] **or casino simulcasting facility** for the purpose of identifying the location of approved games; and

3. (No change.)

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

19:51-1.2 Criteria governing advertising

(a) (No change.)

(b) Any on-site advertising of [a] casino **or casino simulcasting facility** operations shall contain the phrase "Bet With Your Head, Not Over It," **or some comparable language approved by the Commission.**

(c) All advertising which appears in print, or on a billboard or sign[, including electronic signage,] shall contain the words "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER[.]" **or some comparable language approved by the Commission, which contains the words "gambling problem" and "call 1-800-GAMBLER" to appear legibly on all print.**

(d)-(e) (No change.)

(f) The use or statement of the following information shall be permissible with respect to all advertisements:

1. Descriptions of the games available at a licensed casino **or casino simulcasting facility**, or of any variation thereof which is permitted by regulation, including, but not limited to, types of wagers offered, provided, however, that no advertisement may contain information which is prohibited by [(d)3] **(e)3** above;

2. (No change.)

3. The location of the casino **or the casino simulcasting facility**;

4. The hours of a casino's **or the casino simulcasting facility's** operation; or

5. Descriptions of any amenities available at a casino **or casino simulcasting facility**.

(g) (No change.)

19:52-1.2 Entertainment within the casino room **and casino simulcasting facility**

(a) No entertainment shall be offered within the casino room **or the casino simulcasting facility** itself, unless the casino licensee receives approval from the Commission to provide such entertainment. The casino licensee shall file a written submission with the Commission and the Division at leave five days prior to the commencement of such entertainment, which submission shall include, at a minimum, the following information:

1.-3. (No change.)

4. The exact location of the entertainment on the casino floor **and casino simulcasting facility**;

5.-6. (No change.)

(b) The submission in (a) above shall be deemed approved by the Commission unless the casino **licensee** is notified in writing to the contrary within three days of filing.

(c) The Commission may at any time after the granting of approval require the licensee to immediately cease any entertainment offered within the casino room **or casino simulcasting facility** if the entertainment provided is in any material manner different from the description contained in the submission filed pursuant to (a) above, or in any way compromises the integrity of gaming operations.

(d) In reviewing the suitability of an entertainment proposal, the Commission shall consider the extent to which the entertainment proposal:

1. (No change.)

2. May unduly interfere with the security of the casino room **or casino simulcasting facility** or any of the games therein or any restricted casino area; or

3. (No change.)

19:53-1.13 Designation, authority and responsibility of equal employment officer; responsibility of applicant or licensee and chief executive officer

(a) (No change.)

(b) The authority and responsibilities of the equal employment officer required pursuant to (a) above shall include, without limitation, the following:

1.-3. (No change.)

4. The responsibility to undertake good faith efforts to ensure that any employee at the Atlantic City Racetrack on or after June 12, 1992, who loses employment with that racetrack as a direct result of the implementation of casino simulcasting and who has been licensed by the New Jersey Racing Commission for five consecutive years immediately preceding the loss of employment, shall be given first preference for employment whenever any comparable position becomes available in any casino simulcasting facility, provided the person is qualified pursuant to the standards set forth in the Act.

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

CHAPTER 55 CASINO SIMULCASTING

SUBCHAPTER 1. GENERAL PROVISIONS

19:55-1.1 Definitions

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

"Breakage" means the odd cents over a multiple of five or 10 cents arising from the computation of odds and payouts on amounts wagered on a simulcast horse race, as determined by the law governing the sending track.

"Casino Control Act" means the State of New Jersey Casino Control Act approved June 2, 1977, as amended.

"Casino pari-mutuel cashier" means a casino employee who sells pari-mutuel tickets representing simulcast wagers, sells credit vouchers for simulcast wagering in self-service pari-mutuel machines, pays cash for credit vouchers, and makes payouts for winning or refundable pari-mutuel tickets in a casino simulcasting facility.

"Casino simulcasting" means the simultaneous transmission by picture of running or harness horse races conducted at racetracks to casino licensees and pari-mutuel wagering at casino simulcasting facilities operated by casino licensees on the results of those races.

"Casino Simulcasting Act" means the State of New Jersey Casino Simulcasting Act, P.L. 1992, c.19, approved June 12, 1992.

"Casino simulcasting facility" means a facility in an approved hotel operated by a casino licensee which conforms to the provisions of this chapter.

"Commission" means the New Jersey Casino Control Commission.

"Credit voucher" means a ticket issued by a casino pari-mutuel cashier in exchange for cash, gaming chips, slot tokens or coupons or by a self-service pari-mutuel machine for currency, as payment for a winning or refunded pari-mutuel ticket, or as the balance returnable after a simulcast wager has been placed.

"Dedicated line" means a telephone line which is reserved for the exclusive use of transmitting pari-mutuel wagering data between a casino simulcasting facility and a sending track.

"Delay period" means the time between off-time and the start of a simulcast horse race.

"Dial-up line" means a telephone line between a casino simulcasting facility and a sending track which is not reserved for the exclusive use of transmitting pari-mutuel wagering data.

"Division" means the Division of Gaming Enforcement of the New Jersey Department of Law and Public Safety.

"Hub facility" means a facility located in this State which acts as an intermediary between a casino simulcasting facility and a sending track with respect to the transmission of pari-mutuel wagering data and which is responsible for generating all reports necessary for the reconciliation of payments between casino licensees, sending tracks and the Racing Commission. The hub facility may also, but is not required to, perform other functions, including the transmission of pictures of simulcast horse races and pari-mutuel non-wagering data.

"In-State sending track" means a racetrack within the State of New Jersey which is operated by a permit holder and is equipped to conduct casino simulcasting.

"Manual merge" means the process used in the event of a systems or communications failure by which a casino simulcasting facility transmits to a sending track through telephone, facsimile machine, cellular telephone or other means of communication, the casino simulcasting facility's pari-mutuel wagering information and the process by which the sending track includes such pari-mutuel wagers in the common pari-mutuel pool in such event.

"Minus pari-mutuel pool" means a pari-mutuel pool in which insufficient monies have been wagered to permit the minimum payoffs of winning wagers required by the rules of pari-mutuel wagering governing the race.

"Off-time," for the purposes of this chapter, means when the first horse is loaded into the starting gate in a running race and when the starting gate reaches the recall pole in a harness race. In a race, such as a steeplechase, where there is no starting gate, off-time shall mean approximately 15 seconds before the anticipated start of the race.

"Out-of-State sending track" means a racetrack in a jurisdiction other than the State of New Jersey which is equipped to conduct casino simulcasting and the operator of which is lawfully permitted to conduct a horse race meeting and to provide simulcast horse races to a casino licensee.

"Outstanding pari-mutuel ticket" means a winning or refundable pari-mutuel ticket which is not claimed within six months of the date of its sale.

"Pari-mutuel machine" means a mechanical, electrical or other device which is connected to a totalisator and which generates pari-mutuel tickets and credit vouchers, reads pari-mutuel tickets and receives from the totalisator the amount to be paid for winning, cancelled or refunded pari-mutuel tickets, and reads credit vouchers and calculates the amount to be paid therefor.

"Pari-mutuel ticket" means a ticket issued by a pari-mutuel machine or a self service pari-mutuel machine which represents a wager on a simulcast horse race.

"Permit holder" means the holder of an annual permit issued by the Racing Commission to conduct a horse race meeting.

"Pool definition" means a computer-generated printout, itself generated by a sending track, of the pari-mutuel wagering format and scratch information for that day's racing program.

"Racing Commission" means the New Jersey Racing Commission.

"Receiving track" means a racetrack which is equipped to receive simulcast horse races and to conduct intertrack wagering on those races.

"Scratch" means the withdrawal of an entered horse from a race after the closing of overnight entries.

"Self-service pari-mutuel machine" means a mechanical, electrical or other device connected to a totalisator which, upon the insertion of a credit voucher, coupon or currency, or any combination thereof, and the selection of a permissible simulcast wager automatically issues a pari-mutuel ticket together with a credit voucher for any balance which may be due and which, upon the insertion of a winning or refunded pari-mutuel ticket, reads the ticket and automatically issues a credit voucher in the amount of the correct payout.

"Sending track" means an in-State or out-of-State sending track.

"Simulcast horse race" means a running or harness horse race conducted at a racetrack which is simultaneously transmitted by picture to a casino licensee.

"Totalisator" means a computer, which, among other things, directly or indirectly through one or more other totalisators, receives pari-mutuel wagering information, calculates payoffs for winning pari-mutuel tickets, and generates reports with respect to such information.

19:55-1.2 Rules of Racing Commission

Except as otherwise provided in the Casino Simulcasting Act or this chapter, the rules of racing and conduct of pari-mutuel wagering in casino simulcasting facilities and hub facilities shall be subject to the rules of the Racing Commission.

SUBCHAPTER 2. CONDUCT OF CASINO SIMULCASTING

19:55-2.1 Conduct of casino simulcasting

A casino licensee may conduct casino simulcasting in a casino simulcasting facility in accordance with the provisions of the Casino Simulcasting Act and this chapter.

19:55-2.2 Hub facility

A casino licensee which conducts casino simulcasting shall, absent approval from the Commission and the Racing Commission to do otherwise, utilize a hub facility.

19:55-2.3 Receipt of races from in-State sending tracks

A casino licensee which conducts casino simulcasting shall, as a condition of continued operation of casino simulcasting, receive all live races which are transmitted by in-State sending tracks. A permit holder which is authorized by the Racing Commission to conduct casino simulcasting shall have discretion to transmit all or some of the live horse races conducted at the racetrack to casino simulcasting facilities; provided, however, any race which is transmitted from an in-State sending track shall be transmitted to all casino simulcasting facilities. A permit holder which wishes to transmit some, but not all, of its live horse races to casino simulcasting facilities shall do so only with the prior approval of the Racing Commission.

19:55-2.4 Receipt of races from out-of-State sending tracks

A casino licensee may, with the approval of the Commission and Racing Commission and subject to the provisions of the Casino Control Act, the Casino Simulcasting Act and this chapter, conduct casino simulcasting on races from an out-of-State sending track which has been approved by the Racing Commission to participate in casino simulcasting. An out-of-State sending track which transmits any race to a casino simulcasting facility shall offer to transmit such race to all casino simulcasting facilities on the same terms.

19:55-2.5 Agreements with sending tracks

(a) Agreements for casino simulcasting between a casino licensee and a sending track shall be in writing and shall be filed with the Racing Commission, and with the Commission in accordance with the provisions of N.J.S.A. 5:12-104. Such agreements may be negotiated on behalf of casino licensees by an entity jointly established by casino licensees.

(b) Every agreement between a casino licensee and a sending track shall, in a manner consistent with the provisions of the Casino Simulcasting Act and this chapter, define, and provide for the distribution of, outstanding pari-mutuel tickets, and define, and provide for the allocation of losses in the event of, a minus pari-mutuel pool. Every such agreement shall also provide for manual merging in the event of a systems or communications failure and shall further set forth a procedure, acceptable to the Commission and Racing Commission, which shall be followed in the event that manual merging is not possible.

19:55-2.6 Conduct of authorized games in a casino simulcasting facility

A casino licensee may, subject to the rules of the Commission, conduct any authorized game as defined by N.J.S.A. 5:12-5 or by rule of the Commission, other than slot machines, in a casino simulcasting facility.

19:55-2.7 Hours of operation

A casino simulcasting facility may be open during permitted hours of casino operation, and shall be open and operated during such hours whenever simulcast horse races are being transmitted to a casino licensee.

19:55-2.8 Gaming and simulcast wagering by certain persons prohibited

It shall be unlawful for any person who is prohibited from wagering at a game in a casino in this State pursuant to N.J.S.A. 5:12-100n to wager in a casino simulcasting facility on either an authorized game or on casino simulcasting.

19:55-2.9 Wagering limited to casino simulcasting facility

Wagering on simulcast horse races within the premises of a casino licensee shall be conducted only in a casino simulcasting facility. However, pictures of simulcast horse races may be shown in non-casino public areas of the establishment as approved by the Commission.

19:55-2.10 No fee to be charged

No fee shall be charged for placing a wager on a simulcast horse race in addition to the amount wagered.

19:55-2.11 Ticket claims

(a) Subject to the time limitations imposed by N.J.A.C. 19:55-2.12, a winning pari-mutuel ticket purchased at a casino simulcasting facility may be presented for cashing at a pari-mutuel window at that facility or at any permit holder which conducted pari-mutuel wagering on the same race, and a winning pari-mutuel ticket purchased at a permit holder may be presented for cashing at a pari-mutuel window at the permit holder or at any casino simulcasting facility which conducted pari-mutuel wagering on the same race.

(b) Any claim by a patron that he or she has been issued an incorrect ticket shall be made before leaving the pari-mutuel window at which it was purchased. No claim shall be considered thereafter, and no claim shall be considered for tickets which have been discarded, lost, altered, destroyed or mutilated beyond identification.

(c) Payment of wagers shall be made only upon presentation of appropriate pari-mutuel tickets.

19:55-2.12 Expiration of pari-mutuel tickets

A pari-mutuel ticket shall be claimed within six months of the date of its sale, after which it becomes an outstanding pari-mutuel ticket to be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund for distribution in accordance with the provisions of the Casino Simulcasting Act. Notice of this expiration provision shall be prominently posted in a casino simulcasting facility or printed on the pari-mutuel tickets sold at the casino simulcasting facility.

SUBCHAPTER 3. CASINO SIMULCASTING FACILITY

19:55-3.1 Location

A casino simulcasting facility shall be a contiguous area located within an approved hotel operated by a casino licensee and may be adjacent to, but shall not be part of, the room in which casino gaming is conducted pursuant to the provisions of the Casino Control Act. Notwithstanding the above, a casino licensee may construct barriers within the room for the purposes of permitting the conduct of authorized games and simulcast wagering in a manner maximizing patron comfort and the efficient operation of the facility, provided that such barriers are approved by the Commission and do not interfere with security or surveillance within the facility.

19:55-3.2 Space not to reduce space authorized for casino gaming

The space required to establish and maintain a casino simulcasting facility shall not reduce the space authorized for casino gaming pursuant to N.J.S.A. 5:12-83.

19:55-3.3 Square footage requirements

(a) A casino licensee which wishes to conduct casino simulcasting shall establish and maintain a casino simulcasting facility of sufficient square footage to promote:

1. Maximum comfort for patrons and efficient operation of the facility;

2. Viewing of simulcast horse races by patrons in a comfortable manner which is not obtrusive to the conduct of authorized games within the facility; and

3. Optimum security of the facility, which shall include the installation and maintenance of security and surveillance equipment, including closed circuit television equipment, according to specifications approved by the Commission. The Commission and Division shall have direct access to the system or its signal.

19:55-3.4 Satellite cage

A casino licensee which wishes to conduct casino simulcasting shall, unless otherwise approved by the Commission, establish and maintain a satellite cage in, or immediately adjacent to, its casino simulcasting facility.

SUBCHAPTER 4. PARI-MUTUEL POOLS

19:55-4.1 Horse races from in-State sending tracks

Sums wagered in a casino simulcasting facility on horse races at an in-State sending track shall be included in the appropriate pari-mutuel pool generated at the in-State sending track for the race being transmitted, and the pari-mutuel pool shall be divided in accordance with the provisions of the Casino Simulcasting Act. Pari-mutuel pay-offs at casino simulcasting facilities shall be made in accordance with the odds generated at the in-State sending track.

19:55-4.2 Horse races from out-of-State sending tracks

(a) Except as provided in this section, sums wagered in a casino simulcasting facility on horse races at an out-of-State sending track shall be combined with comparable pari-mutuel pools at the out-of-State sending track, and the types of wagering, takeout, distribution of winnings, rules of racing and percentage of deposits remaining undistributed from pari-mutuel pools after payment is made to winning ticket holders shall be determined in accordance with the law or policy applicable to the out-of-State sending track.

(b) With the prior approval of the Racing Commission and the concurrence of an out-of-State sending track, a casino licensee may form an interstate common pool with receiving tracks or entities in other states other than the state in which the sending track is located.

(c) In any event, however, monies resulting from breakage on amounts wagered on horse races in a casino simulcasting facility and outstanding pari-mutuel tickets sold at a casino simulcasting facility shall in all instances be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund for distribution in accordance with the provisions of the Casino Simulcasting Act.

19:55-4.3 Transmission data line

A transmission data line shall be a dedicated line. There shall be a minimum of one back-up line, which may be a dial-up line. In addition, each out-of-State sending track shall maintain a cellular phone in its totalisator room. These requirements may be waived only in exceptional cases for good cause shown with the prior written approval of the Commission and Racing Commission. Any application for such waiver shall be supported by documentation of the precautions which will be taken to assure that the alternative method of transmitting data, which may include the use of cellular phones, will be secure.

19:55-4.4 Facsimile machines and telephone lines

A casino simulcasting facility, hub facility and the totalisator room at a sending track shall each contain a facsimile machine and a direct dial-up telephone line, the numbers of which shall be provided to the Commission, Division and Racing Commission.

19:55-4.5 Pool definition

Prior to the opening of wagering on a simulcast horse race, a sending track shall transmit a pari-mutuel pool definition to a casino simulcasting facility. Upon receipt of the pool definition, pari-mutuel machines at a casino simulcasting facility may be opened for wagering.

19:55-4.6 Scratches

A sending track shall at all times inform a casino simulcasting facility of scratches and pool change information, and any scratch from a simulcast horse race after wagering has commenced shall be verified immediately by facsimile from the sending track to the casino simulcasting facility.

19:55-4.7 Locking of pari-mutuel machines

All pari-mutuel machines in a casino simulcasting facility shall be locked at off-time.

19:55-4.8 Ticket sales

No ticket may be issued after the totalisator has been locked or wagering has ceased, whichever occurs first.

19:55-4.9 Cease wagering

Wagering shall cease not later than off-time.

19:55-4.10 Cancellation of tickets

(a) Except as provided in this section, no pari-mutuel ticket on a current race shall be cancelled once a patron has left the pari-mutuel window at which the ticket was purchased.

(b) Pari-mutuel tickets on wagers such as trifectas where probable pay-offs or odds are not displayed to the public may be cancelled at any time prior to off-time.

(c) No pari-mutuel ticket purchased at a self-service pari-mutuel machine on a current race shall be cancelled.

(d) Pari-mutuel tickets on advance races, whether purchased from a casino pari-mutuel cashier or a self-service pari-mutuel machine, may be cancelled by any casino pari-mutuel cashier until the race immediately preceding the race for which the cancellation has been requested has been declared official.

(e) A casino pari-mutuel cashier may cancel a pari-mutuel ticket on a current race during the delay period provided the ticket was purchased in the final transaction at the pari-mutuel window before off-time, and further provided that the ticket was incorrectly issued by the cashier or that the patron who ordered the ticket left the pari-mutuel window without paying for or accepting the ticket.

19:55-4.11 Refunds

A pari-mutuel ticket on a horse that is scratched may be refunded. Pari-mutuel tickets representing wagers where a patron must select more than one horse may be refunded only as to the combinations including the scratched horse.

19:55-4.12 Odds display

A casino licensee which conducts casino simulcasting shall prominently display in its casino simulcasting facility the approximate odds for each horse in a simulcast horse race for the purpose of informing patrons of the actual wagering on each horse.

19:55-4.13 Pari-mutuel machines closed

(a) If, for any reason, pari-mutuel machines are closed during the wagering on a simulcast race before off-time, they shall remain closed until after the race. Wagering shall cease on that race, and the pay-offs for that race shall be computed on the sums then wagered in each pari-mutuel pool.

(b) In the event that pari-mutuel ticket issuing machines are inadvertently closed for any reason, said machines shall be opened only by the Supervisor of Mutuels at the hub facility, or such person at the hub facility who has assumed his or her duties pursuant to N.J.A.C. 19:55-9.3.

19:55-4.14 Overpays caused by totalisator errors

Overpays caused by totalisator error shall be borne by the operator of the totalisator equipment causing the error.

19:55-4.15 Mechanical breakdowns

(a) In the event of an irreparable breakdown of the totalisator or all pari-mutuel and self-service pari-mutuel machines during the wagering on a race, the wagering on that race shall be declared closed, and the pay-off for that race shall be computed on the sums wagered in each pari-mutuel pool at the time of the breakdown.

(b) In the event of a totalisator malfunction requiring the operator of the totalisator equipment to purchase any non-issued ticket "lost" in the totalisator computer, the operator of the totalisator equipment shall be permitted to credit losing tickets so purchased to the extent of winning tickets similarly purchased. The proceeds of such winning tickets which exceed any credit for losing tickets shall be paid to the Racing Commission and deposited in the Casino Special Simulcasting Fund for distribution in accordance with the provisions of the Casino Simulcasting Act. For example, if the "lost" tickets on a race cost $1,000 and pay off $800.00, the operator of the totalisator equipment must pay $200.00. However, if the "lost" tickets cost $1,000 and pay off $1,200, the operator of the totalisator equipment need pay nothing and $200.00 shall be paid to the Racing Commission and deposited in the Casino Simulcasting Special Fund.

19:55-4.16 Emergencies not covered by this chapter

In the event that an emergency arises with respect to simulcast wagering in a casino simulcasting facility which is not covered by this chapter and an immediate decision is necessary, the simulcast shift supervisor or above shall make a good faith effort to contact and consult with the Supervisor of Mutuels or such person who has assumed his or her duties pursuant to the provisions of N.J.A.C. 19:55-9.3 prior to taking action, and shall promptly render a written report regarding the incident to the Commission, Division and Racing Commission.

19:55-4.17 Transmission failure

In the event of failure to transmit pari-mutuel information to a sending track, no further wagers shall be accepted in a casino simulcasting facility until and unless the failure has been corrected. The casino simulcasting facility and sending track shall attempt to manually merge any wagers which have already been accepted but which have not been transmitted to the sending track due to the failure. Notice of this procedure and any backup procedure established in accordance with N.J.A.C. 19:55-2.5(b) shall be posted in a prominent location in the casino simulcasting facility. In any instance where manual merging or recourse to the backup procedure is required, actual notice thereof shall be publicly announced in the casino simulcasting facility.

19:55-4.18 Commingling notice

A casino licensee shall display prominently in its casino simulcasting facility notice that it is commingling wagers as required by the Casino Simulcasting Act. Such notice shall further provide that this procedure may result in changes in pools and pari-mutuel odds during the running of a simulcast race.

SUBCHAPTER 5. LICENSING OF EMPLOYEES

19:55-5.1 Employees of casino simulcasting facilities

All employees of a casino simulcasting facility shall be licensed or registered in accordance with the rules of the Commission.

SUBCHAPTER 6. LICENSING AND REGISTRATION OF CASINO SERVICE INDUSTRIES

19:55-6.1 Sending tracks

All sending tracks shall be licensed, or determined to be exempt from licensure, in accordance with the provisions of N.J.S.A. 5:12-92c. Any exemption of a sending track shall be subject to the conditions set forth in N.J.S.A. 5:12-92c, and each sending track shall have on file with the Commission a vendor registration form, any updates to which shall be filed with the Commission within 10 days of the occurrence of any changes.

19:55-6.2 Simulcast wagering equipment

All manufacturers, suppliers and repairers of simulcast wagering equipment, including totalisators, pari-mutuel machines and self-service pari-mutuel machines, to casino licensees or hub facilitites shall be licensed in accordance with the provisions of N.J.S.A. 5:12-92a.

19:55-6.3 Hub facility

A hub facility shall be licensed in accordance with the provisions of N.J.S.A. 5:12-92a, and all employees of the hub facility shall be licensed or registered with the Commission as if the hub facility were itself a casino licensee. Additionally, a hub facility shall submit for Commission approval a jobs compendium and descriptions of its security procedures and accounting controls. A hub facility and its employees, and vendors of a hub facility other than casino licensees, shall further be subject to the licensure jurisdiction of the Racing Commission.

19:55-6.4 Other enterprises

Any other enterprise transacting business with a casino licensee or hub facility with respect to casino simulcasting shall be subject to the vendor registration and casino service industry licensing requirements applicable to any enterprise which transacts business with a casino licensee.

SUBCHAPTER 7. RECONCILIATION WITH SENDING TRACKS AND PAYMENTS TO RACING COMMISSION

19:55-7.1 Reconciliation with sending tracks

Each casino licensee which conducts casino simulcasting shall, in conformance with information provided by the hub facility, reconcile all simulcast wagers with sending tracks on at least a weekly basis.

19:55-7.2 Outstanding pari-mutuel tickets

Each casino licensee which conducts casino simulcasting shall deposit all funds for outstanding pari-mutuel tickets in a separate account and maintain an ongoing, daily record of such tickets.

19:55-7.3 Payments to Racing Commission

Each casino licensee which conducts casino simulcasting shall, after the reconciliation of wagers, payment of fees to sending tracks, and retention of monies to which it is entitled under the provisions of the Casino Simulcasting Act, transmit to the Racing Commission all underpays and moneys due it pursuant to this chapter and in accordance with the provisions of the Casino Simulcasting Act.

SUBCHAPTER 8. RACE INFORMATION

19:55-8.1 Race information availability

A casino licensee which conducts casino simulcasting shall make available to patrons of its casino simulcasting facility the following information for each simulcast race: the names of entrants, their sires, dams and grandsires, their wagering numbers, post positions, jockeys, morning line odds, owners and owners' colors, trainers, sex, color, year of birth; the distance and number of the race; amount of purse; and conditions and claiming price, if any. For harness

races, the performance lines for at least the last six races of each entrant shall also be available. The availability of such information, and the procedures for obtaining same, shall prominently be displayed in the casino simulcasting facility. Nothing in this chapter shall preclude a casino licensee from charging patrons a fee for providing such information.

SUBCHAPTER 9. SUPERVISORS OF MUTUELS AND VERIFIERS

19:55-9.1 Supervisor of Mutuels

A Supervisor of Mutuels shall be present at a hub facility at all times when casino simulcasting is being conducted. Unless determined by the Commission and Racing Commission that a longer period is necessary, for a period of one year from the date of commencement of casino simulcasting the Supervisor of Mutuels shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. If a Supervisor of Mutuels is not an employee of the Racing Commission, he or she shall be licensed as a casino key employee.

19:55-9.2 Duties of Supervisor of Mutuels

(a) The duties of a Supervisor of Mutuels at the hub facility shall include:

1. Overseeing the pari-mutuel-related activities of the hub facility;
2. Determining calculations, overpays, underpays and directing any necessary adjustments to race totals;
3. Verifying machine computation of all daily double, exacta and other multiple wagering pools;
4. Reviewing all necessary computer sheets and test checking the machine calculations of payouts, breakage, and commissons of each pool;
5. Verifying cancellation reports as transmitted from casino simulcasting facilities;
6. Preparing and submitting to the Racing Commission a daily summary result of the pari-mutuel operations, with copies to the Commission and Division;
7. Preparing and submitting to the Racing Commission a seven-day financial report and a seven-day comparative statistic report, with copies to the Commission and Division;
8. Daily reconciliation of the daily pari-mutuel sale with the hub facility's daily statement thereof and the Racing Commission's daily summary of results from pari-mutuel wagering; and
9. Reporting all discrepancies and irregularities to the Racing Commission, Division and Commission.

19:55-9.3 Assumption of duties of Supervisor of Mutuels

Subject to the provisions of N.J.A.C. 19:55-9.1, not less than one year after the commencement of casino simulcasting the duties of a Supervisor of Mutuels as set forth in N.J.A.C. 19:55-9.2 may be assumed by qualified employees of the hub facility, who shall be licensed as casino key employees and as may otherwise be required by N.J.A.C. 19:55-6.3. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of a Supervisor of Mutuels set forth in N.J.A.C 19:55-9.2.

19:55-9.4 Verifier

There shall be assigned to each Supervisor of Mutuels in a hub facility a Verifier, who shall be present at a hub facility at all times when casino simulcasting is being conducted. Unless determined by the Commission and Racing Commission that a longer period of time is necessary, for a period of one year from the date of commencement of casino simulcasting the Verifier shall be an employee or designee of the Racing Commission whose compensation shall be reimbursed to the Racing Commission by the hub facility, or, if a designee, paid directly by the hub facility. It shall be the duty of a Verifier to assist a Supervisor of Mutuels in carrying out the duties set forth in N.J.A.C. 19:55-9.2. If a Verifier is not an employee of the Racing Commission, he or she shall be licensed as a gaming-related casino employee.

19:55-9.5 Assumption of duties of Verifier

Subject to the provisions of N.J.A.C. 19:55-9.4, not less than one year after the commencement of casino simulcasting the duties of a Verifier may be assumed by qualified employees of the hub facility, who shall be licensed as gaming-related casino employees and as may otherwise be required by N.J.A.C. 19:55-6.3. Notwithstanding the above, the Racing Commission may determine, at its own cost, to continue to have its employees or designees perform some or all of the duties of a Verifier set forth in N.J.A.C. 19:55-9.4.

19:55-9.6 Continued access to hub facility by Racing Commission

The Racing Commission, its employees and agents shall at all times have access to the hub facility in order to maintain the integrity of horse racing and, together with the Commission and Division, to effectuate the purposes of the Casino Simulcasting Act. Such access shall in no way be affected by the replacement of Supervisors of Mutuels and Verifiers by employees of the hub facility, as provided in N.J.A.C. 19:55-9.3 and 9.5.

RULE ADOPTIONS

PERSONNEL

(a)

MERIT SYSTEM BOARD

General Rules and Department Organization

Readoption with Amendments: N.J.A.C. 4A:1

Proposed: July 20, 1992 at 24 N.J.R. 2490(a).
Adopted: September 18, 1992 by the Merit System Board;
Anthony J. Cimino, Commissioner, Department of Personnel.
Filed: September 22, 1992 as R.1992 d.416, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 11A:1-2, 11A:2-1, 11A:2-3, 11A:2-6, 11A:2-7, 11A:2-11, 11A:2-12, 11A:3-1, 11A:3-6, 11A:4-13, 11A:10-1, 11A:10-3, 11A:10-4, 11A:11-2, 47:1A-2, 52:14B-3(1), 52:14B-3(3), 52:14B-4(f), Executive Order No. 11(1974).

Effective Date: September 22, 1992, Readoption.
October 19, 1992, Amendments.
Expiration Date: September 22, 1997.

Public hearings on the proposed readoption were held on August 6, 10 and 12, 1992. Henry Maurer served as hearing officer. No one presented comments on N.J.A.C. 4A:1 at the hearings. Written comments were submitted by Stacey Rosenberg, an attorney representing Morris Council No. 6, New Jersey Civil Service Association, IFPTE.

Summary of Public Comments and Agency Responses:

COMMENT: The commenter supported the proposed change in the definition of "demotion" in N.J.A.C. 4A:1-1.3, stating that the amendment would provide greater protection to permanent employees in local service.

RESPONSE: Further Departmental review, including discussions with the Labor Advisory Board, have led to questions concerning the effects of amending the definition of "demotion" to include a change from full time to part time. In particular, concerns have been raised as to the impact on the rule on voluntary demotions, N.J.A.C. 4A:4-7.8. Therefore, the Board has decided to not adopt this proposed change at this time, but to reconsider the issue in the context of the readoption of N.J.A.C. 4A:4, Selection and Appointment, which includes the rule on voluntary demotions. However, in situations where a permanent or probationary employee in State or local service is involuntarily changed from full time to part time, the Department of Personnel will continue to require that the protections set forth in N.J.A.C. 4A:2-2, Major Discipline, and 4A:8, Layoffs, be made applicable to such an employee. The Board is adopting the amendment providing that, in local service, demotion includes a reduction in pay scale.

COMMENT: The commenter stated that the proposed amendment to N.J.A.C. 4A:1-4.3(c), requiring appointing authorities to consult with affected negotiations representatives on pilot programs, is important. However, the commenter sought a more forceful amendment, requiring appointing authorities to "notify and negotiate with the affected negotiations representative prior to establishment and implementation of a pilot program."

RESPONSE: The provision identified by the commenter, N.J.A.C. 4A:1-4.3(c), is not a proposed amendment but rather is found in the current rule. The amendment proposed by the Board is a new subsection (e), requiring the Commissioner to verify that proper notice and consultations with affected negotiations representative have taken place. With regard to the suggested change in N.J.A.C. 4A:1-4.3(c), the use of the term "negotiate" would result in substantially different obligations than the term "consult." The Board believes that the current language reflects the appropriate level of regulatory control in this area.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 4A:1.

Full text of the adopted amendments follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

4A:1-1.3 Definitions

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

. . .

"Demotion" means, in local service, a reduction in title or scale of compensation *[or a change from full time to part time]*, and in State service, a reduction in class code *[or change from full time to part time]*.

. . .

4A:1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;
2. Information on specific educational or medical qualifications required for employment;
3. Final orders of the Commissioner or Board; and
4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) See N.J.A.C. 4A:4-2.16 concerning examination records.

4A:1-3.3 Merit System Board

(a) The Merit System Board shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;
2. Render final administrative decisions on appeals and on other matters referred by the Commissioner, except for those matters listed in N.J.A.C. 4A:1-3.2(a)6 or delegated to the Commissioner;
3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;
4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity; and
5. Perform such other duties as prescribed by law and these rules.

4A:1-4.3 Pilot programs

(a) The Commissioner may establish pilot programs, not to exceed one year, outside of the provisions of Title 11A, New Jersey Statutes, and these rules.

(b) Pilot programs may include, but are not limited to, the following:

1. Recruitment and selection;
2. Classification; and
3. Job sharing.

(c) Appointing authorities that request a pilot program shall consult with affected negotiations representatives prior to submission of a proposal.

(d) A proposal for a pilot program shall be submitted to the Commissioner and include:

1. A description of the program;
2. The individuals affected by the program;
3. The duration of the program;
4. The anticipated benefits of the program;
5. A summary of appointing authority consultations with negotiations representatives; and
6. Such other information as required by the Commissioner.

(e) The Commissioner shall verify that proper notice to and consultations with affected negotiations representatives have taken place.

(f) The Commissioner may accept, modify or reject the program and establish appropriate conditions.

(a)

MERIT SYSTEM BOARD
Appeals, Discipline and Separations
Readoption with Amendments: N.J.A.C. 4A:-2

Proposed: July 20, 1992 at 24 N.J.R. 2491(a).
Adopted: September 18, 1992 by the Merit System Board; Anthony J. Cimino, Commissioner, Department of Personnel.
Filed: September 22, 1992 as R.1992, d.414, **with substantive changes not requiring additional public notice and comment** (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 2C:51-2, 11A:1-2(e), 11A:2-6, 11A:2-11(h), 11A:2-13 et seq., 11A:4-15(c), 11A:8-4 and 52:14B-10(c).

Effective Date: September 22, 1992, Readoption; October 19, 1992, Amendments.
Expiration Date: September 22, 1997.

Public hearings on the proposed readoption of N.J.A.C. 4A:2 were held on August 6, 10, and 12, 1992. Henry Maurer served as hearing officer. Three persons presented comments on N.J.A.C. 4A:2 at the hearing. The hearing officer recommended the adoption of the proposal with a change recommended at N.J.A.C. 4A:2-2.7. The hearing records may be reviewed by contacting the Regulations Unit at (609) 984-0118 or by writing to Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, N.J. 08625. In addition, seven persons submitted written comments.

Summary of Public Comments and Agency Responses:

COMMENT: Donald Phillipi, the Business Manager of Local 195, IFPTE, suggested that N.J.A.C. 4A:2-1.5, concerning remedies, be amended to provide for seniority as a remedy.

RESPONSE: The current rule, N.J.A.C. 4A:2-1.5(a), already provides that seniority credit may be awarded in any successful appeal.

COMMENT: Richard Dann, the President of Local 1085, CWA, urged that N.J.A.C. 4A:2-3, which lists the causes of discipline, be amended to delete the final category of "other sufficient cause." This "catch-all" category, he argued, denies employees due process and fails to fulfill the mandate of N.J.S.A. 11A:2-20 that the Merit System Board establish by rule the general causes which constitute grounds for disciplinary action.

RESPONSE: It is impractical to have a descriptive category for every type of conduct which constitutes cause for disciplinary action. If an employee is subjected to disciplinary action for conduct he or she believes is not sufficient cause, the action can be appealed under the procedures set forth in this chapter.

COMMENT: Stacey Rosenberg, a lawyer representing Morris Council No. 6, New Jersey Civil Service Association, supported the proposed amendments to N.J.A.C. 4A:2-2.5, stating that appointing authorities have been vague, rather than specific, in setting forth the facts in the Preliminary Notice of Disciplinary Action. Mary Cupo-Cruz, the Labor Counsel for the Department of Law and Public Safety, argued that the proposed amendment to N.J.A.C. 4A:2-2.5 was overbroad. She suggested that the amendment be modified to provide that the notice contain "a factual summary sufficient to place the employee on notice of the incident or incidents which give rise to the disciplinary charges."

RESPONSE: The proposed amendment was merely intended to clarify current practice that a statement of facts supporting the disciplinary changes should be included under the heading "Specifications." The Board believes that the language of the amendment as proposed fulfills this purpose.

COMMENT: The lawyer representing Morris Council No. 6 supported the proposed amendment to N.J.A.C. 4A:4-2.7, providing for appointing authorities to notify employees regarding the Forfeiture Act. However, this amendment was opposed by Lawrence Pollex, the Business Administrator of the City of Perth Amboy and Robert Weakley, the Director of Employee Relations of the Department of Environmental Protection and Energy (DEPE). Both of these commenters stated that it was not the proper function of the appointing authority to provide notification to employees regarding provisions of the criminal laws. The Labor Counsel for the Department of Law and Public Safety also asserted that it was inappropriate to require a public employer to counsel an employee on the legal operation and implications of a criminal statute. Instead, she suggested that the rule simply provide that the Preliminary Notice cite the forfeiture statute and note that it may apply to the employee, who may choose to consult with an attorney. She further suggested that the amendment provide that any deficiency in the Preliminary Notice will not affect a subsequent administrative proceeding to determine whether forfeiture of office is appropriate, pursuant to *Moore v. Youth Correctional Institute,* 119 *N.J.* 256 (1990).

RESPONSE: The Board notes that the proposed amendment encourages, but does not require, appointing authorities to provide such notice. Failure to provide such notice would not cause the appointing authority's actions to be overturned. Nevertheless, the Board recognizes the problems associated with having public employers provide information to employees concering the effect of a criminal statute. Therefore, the Board has decided to modify the amendment as suggested by the Labor Counsel for the Department of Law and Public Safety. With regard to her suggested amendment based on *Moore, supra,* the Board believes that it is unnecessary to codify in Department of Personnel rules the Court's holding on the subject of a criminal statute.

COMMENT: Robert Weakley, the Director of Employee Relations of the DEPE, agreed with the proposed amendment to N.J.A.C. 4A:2-2.10, concerning back pay, especially the clarification of situations where the criminal charge is disposed of through pretrial intervention (PTI). Donald Phillippi, the Business Manager, Local 195, IFPTE, supported the substance of the amendment; however, he proposed that back pay should be awarded when a criminal charge is disposed of through PTI or similar programs. Robert Fagella, a lawyer representing law enforcement employees, supported the proposed amendments with two exceptions. First, he argued that the blanket denial of back pay in the case of PTI was unfair. Instead, the rule should provide for a hearing to demonstrate why admission into PTI was not an indication of guilt, and should not automatically preclude an award of back pay. Second, he urged that the amendment be made retroactive to May 15, 1992, the date on which *DelRossi v. Dept. of Human Services,* 256 *N.J. Super.* 286 (App. Div. 1992), was decided by the Appellate Division of Superior Court. Thomas Little, the President of Local 105, PBA, also urged that the amendment be made retroactive to the date of the *DelRossi* decision. The laywer representing Morris Council No. 6 opposed the denial of back pay to those who elect to proceed through PTI or conditional discharge. Under these programs, she noted, the criminal charges against the affected employee are generally dismissed. Such employees should not be treated differently than the employee who decides to undergo a full trial and is vindicated by a jury. She also opposed the limitation on back pay in the case of an employee who is subject to disciplinary action following the disposition of the criminal charge.

RESPONSE: In accordance with the rules of the Office of Administrative Law, this amendment is effective upon the date of publication in the New Jersey Register, which is October 19, 1992. See N.J.A.C. 1:30-4.6(b). The Board is not free to make this amendment retroactive to May 15, 1992 or any other date. However, retroactivity is unnecessary because the amendment codifies the policy that has been applied by the Merit System Board consistently in cases involving reinstatement following suspension due to pending criminal charges. With regard to the comments on PTI, the Board recognizes that PTI is not the equivalent of acquittal of criminal charges. Therefore, the Board believes that it is inappropriate to place the burden of back pay on public employers in situations where criminal charges against an employee are disposed of through PTI or conditional discharge. Finally, with regard to situations where disciplinary action short of removal is taken against an employee after disposition of the criminal charge, the Board maintains that the back pay remedy should be limited as set forth in the amendment, in view of the employee's culpable conduct.

COMMENT: Robert Weakley, the Director of Employee Relations for DEPE, disagreed with the proposed change to N.J.A.C. 4A:2-4.1, concerning notice of working test period termination, noting that in a large department, it is difficult to obtain the required notices in a timely fashion.

RESPONSE: The Board believes that notice of termination more than five working days prior to the last day of the working test period effectively deprives the probationary employee of the opportunity to demonstrate improvement during the last month of the working test period.

COMMENT: Richard Dann, the President of Local 1085, CWA, proposed amendment of N.J.A.C. 4A:2-4.3(b), which provides, in working test period appeals, that "the employee has the burden of proof to establish that the action was in bad faith." This standard, he suggested, was too narrow, since it did not include actions which are arbitrary and

capricious, or cases in which the appointing authority did not follow proper procedures. Therefore, he suggested that the rule provide that the employee has the burden of proof to establish that the termination at the end of the working test period "was arbitrary, capricious, in bad faith, or in violation of the rules governing the administration of working test periods."

RESPONSE: While there are situations where violations of the rules governing working test periods are so egregious that the termination is reversed, other situations involve mere technical violations of the rules. The Board believes it is appropriate to maintain the current rule language, and make these determinations on a case-by-case basis.

COMMENT: John Wineland, staff representative of Local 1033, CWA proposed that N.J.A.C. 4A:2-6.2 be amended by adding the following:

Where an appointing authority has knowledge that an employee is unable to report to work for legitimate medical reasons and where an employee has requested either a leave of absence or an extension of a leave, the provisions of this regulation will not be applicable.

He said that the amendment proposed by the Merit System Board, providing that request for leave shall not be unreasonably denied, is already in the union's contract, and would provide no defense for an employee charged with resignation not in good standing. He cited the situation of one Local 1033 member as an example of the inadequacy of the amendment proposed by the Board. Patricia Aplodite, the Local 1033 member, described her own situation, where a series of illnesses had required her to take a leave of absence beginning on March 7, 1991. Although all of her requests for leave were timely and accompanied by medical documentation, she was notified that disciplinary action would be taken if she did not return to work by March 7, 1992. Since her doctor would not clear her return to work until June, 1992, she did not return and thus was charged with resignation not in good standing. Her appeal is pending before the Merit System Board.

The proposed amendments to N.J.A.C. 4A:2-6.2 were opposed by Lawrence Pollex, the Business Administrator of the City of Perth Amboy, and Robert Weakley, the Director of Employee Relations of the DEPE, on the basis that the added language gave employees an additional defense to the charge of job abandonment. Mary L. Cupo-Cruz, the Labor Counsel for the Department of Law and Public Safety, stated that the proposed amendments to N.J.A.C. 4A:2-6.2 do not address the timing of the employee request for leave, and suggest that an employee may supply the basis for the absence after the unauthorized absence. She suggested that the rule be clarified to specify that the employee is required to request approval prior to or simultaneously with the commencement of absence, except in instances in which the employee may have been incapacitated.

RESPONSE: The Board believes that the amendments as proposed provide the appropriate balance between managerial needs and employee protections. The language proposed by the Local 1033 representative would tend to deprive public employers of their discretion to grant or not grant leaves of absences. On the other hand, the objections stated by the employer representatives are unfounded. A public employer retains the right to timely notice of absence, and retains the right to deny leaves of absence for good cause.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 4A:2.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

4A:2-1.1 Filing of appeals

(a) All appeals to the Commissioner or Board shall be in writing, signed by the person appealing (appellant) or his or her representative and must include the reason for the appeal and the specific relief requested.

(b) Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

(c) The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

(d) Except where a hearing is required by law or these rules, or where the Commissioner or Board finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. In written record appeals:

1. Each party must serve copies of all materials submitted on all other parties; and

2. A party may review the file at the Department of Personnel during business hours.

(e) A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

4A:2-2.5 Opportunity for hearing before the appointing authority

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See N.J.A.C. 4A:2-2.7.

(b) Where a suspension is immediate under (a)1 and (a)2 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date is agreed to by the parties.

(e) Appeals concerning violations of this section may be presented to the Commissioner through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action. The notice should include *[the provisions of]* ***a statement that*** N.J.S.A. 2C:51-2 *[and a brief explanation]* ***may apply to the employee, and that the employee may choose to consult with an attorney concerning the provisions*** of that statute.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to

criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

3. Where the appointing authority determines that an indefinite suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) The appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2, the departmental hearing shall be limited to the issue of the applicability of N.J.S.A. 2C:51-2. If N.J.S.A. 2C:51-2 is found not applicable, related disciplinary charges, if any, may be addressed at the hearing.

4A:2-2.10 Back pay, benefits and seniority

(a) Where a disciplinary penalty has been reversed, the Board shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.

(b) Where a municipal police officer has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the officer shall receive back pay, benefits and seniority pursuant to N.J.S.A. 40A:14-149.1 et seq.

(c) Where an employee, other than a municipal police officer, has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the employee is found not guilty at trial, the complaint or indictment is dismissed, or the prosecution is terminated.

1. Such items shall not be awarded when the complaint or indictment is disposed of through Conditional Discharge, N.J.S.A. 2C:36A-1, or Pre-Trial Intervention (PTI), N.J.S.A. 2C:43-12 et seq.

2. Where disciplinary action has been taken following disposition of the complaint or indictment, such items shall not be awarded in case of removal. In case of suspension, where the employee has already been suspended for more than six months pending disposition of the complaint or indictment, the disciplinary suspension shall be applied against the period of indefinite suspension. The employee shall receive back pay for the period of suspension beyond six months, but the appointing authority may for good cause deny back pay for the period beyond the disciplinary suspension up to a maximum of six months.

(d) Back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

1. Back pay shall not include items such as overtime pay and holiday premium pay.

2. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.

3. The award of back pay shall be reduced by the amount of money which was actually earned or could have been earned during the separation. If an employee also held other employment at the time of the adverse action, the earnings from such other employment shall not be deducted from the back pay. However, if the employee increased his or her work hours at the other employment during the back pay period, earnings from such additional hours shall be subtracted from the back pay award.

4. Funds that must be repaid by the employee shall not be considered when calculating back pay.

(e) Unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

(f) When the Board awards back pay and benefits, determination of the actual amounts shall be settled by the parties whenever possible.

(g) If settlement on an amount cannot be reached, either party may request, in writing, Board review of the outstanding issue. In a Board review:

1. The appointing authority shall submit information on the salary the employee was earning at the time of the adverse action, plus increments and across-the-board adjustments that the employee would have received during the separation period; and

2. The employee shall submit an affidavit setting forth all income received during the separation.

4A:2-4.1 Notice of termination

(a) An employee terminated from service or returned to his or her former permanent title at the conclusion of a working test period due to unsatisfactory performance shall be given written notice in person or by certified mail by the appointing authority.

(b) The notice shall inform the employee of the right to request a hearing before the Board within 20 days of receipt of the notice.

(c) The notice shall be served not more more than five working days prior to or five working days following the last day of the working test period. A notice served after this period shall create a presumption that the employee has attained permanent status.

4A:2-6.2 Resignation not in good standing

(a) If an employee resigns without complying with the required notice in N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.

(b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied.

(c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

(d) Where an employee is resigned not in good standing under (a), (b), or (c), the employee shall be provided with notice and an opportunity for a departmental hearing under N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the Board under N.J.A.C. 4A:2-2.8. An employee shall be in unpaid status pending the departmental decision. Should an employee seek to return to employment pending the departmental decision, a review under N.J.A.C. 4A:2-2.5(b) shall be conducted prior to continuation of the unpaid status.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

(a)

MERIT SYSTEM BOARD

Employee Transfers

Adopted New Rule: N.J.A.C. 4A:4-7.11

Proposed: July 20, 1992 at 24 N.J.R. 2494(a).

Adopted: September 18, 1992 by the Merit System Board;
Anthony J. Cimino, Commissioner, Department of Personnel.

Filed: September 22, 1992 as R.1992 d.419, **without change.**

Authority: N.J.S.A. 11A:2-6(d), 11A:4-16.

Effective Date: October 19, 1992.

Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

Public hearings on the proposed new rule were held on Thursday, August 6, 1992; Monday, August 10, 1992; and Wednesday, August 12,

1992. Henry Maurer served as hearing officer. **No comments** were received at these hearings on N.J.A.C. 4A:4-7.11 and no recommendations were made by the hearing officer.

No written comments received.

Full text of the adopted new rule follows.

4A:4-7.11 Transfer or combining of functions

(a) When any of the functions of a department, agency or unit of a political subdivision operating under Title 11A, New Jersey Statutes, are transferred, consolidated, unified, absorbed or combined with those of the State or of a separate political subdivision operating under Title 11A, New Jersey Statutes, the Department of Personnel upon request of both appointing authorities shall approve the transfer of some or all affected employees to the receiving unit.

(b) Any employee so transferred who holds permanent or probationary status in a title in the career service shall continue to hold such status in the receiving unit.

(c) Seniority calculations and leave entitlements for transferred permanent or probationary employees shall be calculated as if the entire period of service was in the receiving unit.

(d) If positions are abolished because they are made no longer necessary by the consolidation of functions, affected employees shall be accorded all layoff and special reemployment rights in N.J.A.C. 4A:8.

(a)

MERIT SYSTEM BOARD

Veterans and Disabled Veterans Preference

Readoption with Amendments: N.J.A.C. 4A:5

Proposed: July 20, 1992 at 24 N.J.R. 2495(a).

Adopted: September 18, 1992 by the Merit System Board; Anthony J. Cimino, Commissioner, Department of Personnel.

Filed: September 22, 1992 as R.1992 d.415, **without change.**

Authority: N.J.S.A. 11A:4-1(e), 11A:4-8, 11A:4-9, 11A:5-1 through 11A:5-8, 11A:5-15.

Effective Date: September 22, 1992, Readoption
October 5, 1992, Amendments.

Expiration Date: September 22, 1997.

Public hearings on the proposed readoption of N.J.A.C. 4A:5 were held on August 6, 10 and 12, 1992. Henry Maurer served as hearing officer. Three persons presented comments on N.J.A.C. 4A:5. The hearing officer recommended the adoption of the proposal. The hearing records may be reviewed by contacting the Regulations Unit at (609) 984-0118 or by writing to Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN312, Trenton, N.J. 08625. In addition, one person submitted written comments.

Summary of Public Comments and Agency Responses:

COMMENT: John Kelly, a staff representative of Local 1033, Communications Workers of America (CWA), stated that the rules on veterans preference are often circumvented by appointing authorities. In particular, when a veteran is on the top of a list, he said that appointing authorities do everything possible to deter the veteran from accepting the appointment.

RESPONSE: These concerns relate to the enforcement of the current rules on veterans preference. Remedies are available under the rules contained in N.J.A.C. 4A:10 where an appointing authority is alleged to have violated the rules in this chapter.

COMMENT: David Martin, a representative of the CWA Working Committee on Veterans Concerns (referred to as the Committee Representative), suggested that N.J.A.C. 4A:5-1.1 be amended and supplemented in accordance with the newly enacted statute on veterans preference. P.L. 1991, c.390.

RESPONSE: The proposed changes already reflect the new law.

COMMENT: The Committee Representative urged that 10 U.S.C. 511(d) of related statutes be reviewed, since N.J.A.C. 4A:5-1.1(a)1v lists training programs which are no longer in existence, or supplemented by new or different programs.

RESPONSE: The language of N.J.A.C. 4A:5-1.1(a)1v is taken directly from the statute, N.J.S.A. 11A:5-1, and therefore the Merit System Board is not free to change the rule as suggested.

COMMENT: The Committee Representative argued that N.J.A.C. 4A:5-1.3(a) should be changed to require submission of an "original or certified copy" of Veterans Separation Papers (Form DD214), to ensure that the document is genuine.

RESPONSE: It would be unrealistic to require veterans to submit the original of their Form DD214 to the Department of Personnel. Further, the commenter has not indicated how veterans can obtain a certified copy of their DD214. If it is alleged that a false or altered DD214 has been submitted to the Department of Personnel, a specific investigation can be undertaken.

COMMENT: The Committee Representative suggested that the letter referred to in N.J.A.C. 4A:5-1.3(b), concerning destruction of records, should be an original or certified copy. He further proposed that in situations where a veteran cannot secure appropriate proof from the National Personnel Records Center, the veteran be allowed to submit a copy of his or her letter to the NPRC, and that 90 days be allowed for verification.

RESPONSE: Although N.J.A.C. 4A:5-1.3(a) requires an individual to submit a copy of his or her DD214, N.J.A.C. 4A:5-1.3(b) requires an individual to submit "a letter from the appropriate agency." This language suggests that an original is required. With regard to the submission of the individual's own letter to the agency, it would be impractical to grant veterans preference, subject to rescission at a later date. Further, the pertinent statutory provision, N.J.S.A. 11A:5-1, places the burden on the applicant to submit proof of veterans or disabled veterans status on or before the closing date for an examination.

COMMENT: The Committee Representative urged that a new provision be added to N.J.A.C. 4A:5-1.3, providing that DD214s be open for public inspection and review. This is necessary, he argued, because of fraud occurring in the process of designating veterans preference.

RESPONSE: The DD214 is a personnel record as well as a part of the examination application. Therefore, its confidentiality is protected by Executive Order No. 11 (1974), N.J.A.C. 4A:1-2.2 and 4A:4-2.16. A particular DD214 can be examined by government representatives in the course of an investigation of fraud. Thus, it is unnecessary and unwarranted to provide for public inspection and review of all DD214s.

COMMENT: The Committee Representative, as well as Frank Rickette, another representative of CWA Local 1033, proposed that, instead of the current two categories (veterans and disabled veterans), preference in open competitive examinations be granted in three categories in the following order: veterans with greater than 30 percent disability; veterans with 10 percent to 30 percent disability; and veterans. They further proposed that these three categories of preference be applied to promotional examinations.

RESPONSE: N.J.S.A. 11A:5-4 through 11A:5-6 specifies the manner in which preference is granted to veterans and disabled veterans in open competitive examinations. The statute makes no provision for a further subdivision among disabled veterans. With regard to promotional examinations, N.J.S.A. 11A:5-7 does not authorize more than one category of veterans. The Merit System Board is not free to expand these statutory preferences.

COMMENT: The Committee Representative proposed that N.J.A.C. 4A:5-2.1(d) be amended by deletion of the word "not" as follows: "Appointing authorities are [not] required to give preference to disabled veterans or veterans when making a provisional appointment from an incomplete list."

RESPONSE: The longstanding policy of the Department of Personnel which has been affirmed by the courts, is that veterans preference is not applicable to provisional appointments from incomplete lists. See *Lavitz v. Civil Service Commission*, 94 *N.J. Super.* 260, 264 (App. Div. 1967). The Board does not believe that reversal of this policy is warranted at this time.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 4A:5.

Full text of the adopted amendments follows:

4A:5-1.1 Veterans preference

(a) A person is entitled to veterans preference (abbreviated as "V") if he or she:

1. Served at least 90 days in the active United States military or naval service and had been discharged under conditions other than dishonorable, during:

i. World War I, between April 6, 1917 and November 11, 1918;

ii. World War II, on or after September 16, 1940 and on or before December 31, 1946;

iii. Korean Conflict, on or after June 23, 1950 and on or before January 31, 1955; or

iv. Vietnam Conflict, on or after December 31, 1960 and on or before May 7, 1975;

v. The 90 day period must have begun on or before one of the ending dates above, and shall not include any period of education or training under the Army Specialized Training Program or the Navy College Training Program which was a continuation of a civilian course, nor any time spent as a cadet or midshipman at one of the service academies. During the period of the Vietnam conflict, the following are excluded: any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code; or any service performed pursuant to enlistment in the National Guard or the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve or Coast Guard Reserve.

2. Served in the Lebanon peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after September 26, 1982 and on or before February 26, 1984;

3. Served in the Grenada peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after October 25, 1983 and on or before November 21, 1983;

4. Served in the Panama peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after December 20, 1989 and on or before January 31, 1990;

5. Served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for the Operation Desert Shield/Desert Storm mission for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after August 2, 1990;

6. Received a service-incurred injury or disability during a period in (a)1 above, regardless of the length of service;

7. Served in any army or navy of the United States allies in World War I between July 14, 1914 and November 11, 1918, or World War II between September 1, 1939 and September 2, 1945, provided he or she voluntarily enlisted in such service, was a United States citizen at the time of enlistment, did not renounce or lose United States citizenship, and was honorably discharged; or

8. Is the surviving spouse of a person entitled to veterans preference and has not remarried.

(a)

MERIT SYSTEM BOARD

Leaves of Absence; Sick Leave Injury (SLI)

Adopted Amendment: N.J.A.C. 4A:6-1.6

Proposed: June 15, 1992 at 24 N.J.R. 2108(a).

Adopted: September 18, 1992 by the Merit System Board;
Anthony J. Cimino, Commissioner, Department of Personnel.

Filed: September 22, 1992 as R.1992, d.413, **with Option 2 adopted without change.**

Authority: N.J.S.A. 11A:2-6(d) and 11A:6-8.

Effective Date: October 19, 1992.

Expiration Date: January 4, 1993.

A public hearing on the proposed amendment was held on July 8, 1992. Henry Maurer served as hearing officer. Two persons presented comments at that time. The hearing officer recommended the adoption of Option 2 of the proposal. The hearing records may be reviewed by contacting the Regulations Unit at (609) 984-0118 or by writing to Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, N.J. 08625. In addition, 10 persons submitted written comments.

Summary of Public Comments and Agency Responses:

COMMENT: Vincent Trivelli, a representative of the Communications Workers of America (CWA) stated that neither option should be adopted. Rather, he said, the Merit System Board should grant SLI benefits for carpal tunnel syndrome (CTS) based on the current rules.

Steven P. Weissman, the District Counsel for CWA submitted similar comments, asserting that there was no need to amend the rules if the Board's intent is to provide benefits for work-related repetitive motion injuries. If the Board believes that rule changes are necessary, he argued, amendments he submitted should be considered. These amendments incorporated the proposed Option 2, but also included other revisions such as a change in the one-year limit for SLI benefits. He concluded by urging a two-fold approach: granting SLI benefits to injured workers; and curtailing incidences of CTS through implementation of guidelines issued in 1989 by the Department of Health.

Mark Setaro, a lawyer who specializes in workers' compensation, commented that both options are flawed. Although Option 2 is more in line with the intent of SLI, he urged adoption of new standards for all SLI cases based on the Workers' Compensation Act. He further argued that State employees should have the option of appealing SLI determinations to a Judge of Workers' Compensation, whose decision would be binding upon the Merit System Board.

RESPONSE: The Board believes that the current rules on SLI are not sufficiently precise to address claims arising from CTS and similar disorders. The Board first proposed a rule amendment in October, 1991, and then offered the current proposal in June, 1992, containing two options. At this point, the rules should be amended by the adoption of one of the two options, in order to define for the benefit of all interested parties the policy of the Board in these matters. With regard to the suggestion that the standards for workers' compensation be utilized for SLI, it must be noted that the SLI program offers benefits distinguished from those ordinarily available through workers' compensation. And thus unique and specific standards for SLI are appropriate. See *Morreale v. State of New Jersey,* 166 *N.J. Super.* 537 (App. Div. 1979). Further, there is no statutory authority for SLI determinations by Judges of Workers' Compensation.

COMMENT: Natalie Havran, the Director of Human Resources, Department of Transportation, agreed with Option 1, but also suggested that the amendatory language in Option 2 be incorporated in the rule.

RESPONSE: Option 1 would generally preclude SLI claims arising from CTS, while Option 2 would permit such claims, subject to medical documentation. Therefore, it would be inconsistent and confusing to adopt both Option 1 and Option 2.

COMMENT: Comments in favor of the adoption of Option 1 were submitted by D. Craig Stevens, the Director, Division of Personnel, Department of Environmental Protection and Energy; Donald Saber, the Employee Relations Coordinator, Department of Health; and John F. Shovlin, the Chief, Bureau of Administrative Support Services, Division of Medical Assistance, Department of Human Services. Generally, they cited the difficult in determining whether disorders such as CTS are work-related. J.S. Weidemann, the Director of Human Resources, Department of Treasury, commented that instead of changing the regulations, a Statewide educational effort should be initiated to reduce incidences of CTS. However, he preferred Option 1 to Option 2, since the latter would serve to expand the abuse which is widespread in the SLI program.

Comments in favor of the adoption of Option 2 were submitted by Donald Phillipi, the Business Manager, Local 195, IFPTE; and by Nicholas Scalera, the Director, Division of Youth and Family Services, Department of Human Services. Both argued that SLI benefits should be provided to State employees who have work-related disorders such as CTS. An individual employee, Edna Rumbold, with 24 years of service at the Hunterdon Developmental Center, Department of Human Services, submitted a letter describing her experience as a victim of CTS in both hands. She argued that it was unfair to deny SLI on the grounds that a specific event was not the cause, since her condition developed over time. Robert J. Yokavonus, the Assistant Commissioner of the Department of Labor, also supported Option 2, although he suggested further modifications. In particular, he suggested that the rules specify that medical documentation include details such as the date the disorder

began, the work duties contributing to the condition, and work limitations. In addition, he suggested that notice to the appointing authority be required within 30 days from the claimed onset of the disability.

RESPONSE: The Board has carefully considered these comments and has decided to adopt Option 2. The Board recognizes the difficulties inherent in demonstrating work-relatedness of CTS and similar disorders. However, restricting SLI to injuries caused by a specific event, as set forth in Option 1, would unfairly deny benefits to employees who suffer disabling injuries due to work activities occurring over a period of time. It is noted that the employee still has the burden of proof in SLI appeals (see N.J.A.C. 4A:6-1.7(h)), and the appointing authority retains the ability to obtain medical confirmation of disability and work-relatedness (see N.J.A.C 4A:6-1.7(d)).

With regard to the suggestions for modification of Option 2, the Board has determined to adopt Option 2 without further change at this time. Appointing authorities are not precluded from requiring medical documentation with the type of details described in the comments of the Department of Labor. Further, current rules require notice to the appointing authority within five days of injury (see N.J.A.C. 4A:6-1.7(a)), and therefore it would appear unnecessary to provide a longer notice period of 30 days exclusively for CTS. Of course, the Board may consider these and other modifications at a future time based on experience with SLI claims due to CTS.

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

4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

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

*[OPTION 1

(c) The disability must be due to an injury or illness resulting from the employment.

1. Injuries or illnesses which would not have occurred but for a specific work-related accident or event are compensable.

2. Preexisting illnesses, diseases and conditions aggravated by a work-related accident or event are not compensable when such aggravation was reasonably foreseeable.

3. Illnesses which are generally not caused by a specific work-related accident or event are not compensable except when the claim is supported by medical documentation that clearly establishes the injury or illness is work related.

4. and 5. (No change.)]*

[OPTION 2]

(c) The disability must be due to an injury or illness resulting from the employment.

1.-3. (No change.)

4. Progressive, degenerative or repetitive motion disorders, such as asbestosis or carpal tunnel syndrome, are compensable only when the claim is supported by medical documentation clearly establishing that the disorder would not have occurred but for the performance of specific work duties.

5. and 6. (No change in text.)

(d)-(e) (No change.)

(a)

MERIT SYSTEM BOARD

Equal Employment Opportunity and Affirmative Action

Readoption With Amendments: N.J.A.C. 4A:7

Proposed: July 20, 1992 at 24 N.J.R. 2496(c).

Adopted: September 18, 1992 by the Merit System Board; Anthony J. Cimino, Commissioner, Department of Personnel.

Filed: September 22, 1992 as R.1992 d.420, **without change.**

Authority: N.J.S.A. 10:5-12; 11A:1-2(d), 11A:2-6(b), 11A:7-1 through 11A:7-9, 11A:7-11 through 11A:7-13.

Effective Date: September 22, 1992, Readoption
October 19, 1992, Amendments.

Expiration Date: September 22, 1997.

Summary of Public Comments and Agency Responses:

Public hearings on the proposed readoption with amendments were held on Thursday, August 6, 1992; Monday, August 10, 1992; and Wednesday, August 12, 1992. Henry Maurer served as hearing officer. **No comments** were received at those hearings on N.J.A.C. 4A:7 and no recommendations were made by the hearing officer.

No written comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 4A:7.

Full text of the adopted amendments follows:

4A:7-1.1 General provisions

(a) There shall be equal employment opportunity for all persons in, or applicants for the career, unclassified and senior executive services, regardless of race, creed, color, national origin, sex, affectional or sexual orientation, age, marital status, religion, or handicap/disability, except where a particular qualification is specifically permitted and is essential to successful job performance. See N.J.A.C. 4A:4-4.5 on bona fide occupational qualifications.

(b) Equal employment opportunity includes, but is not limited to, recruitment, selection, hiring, training, promotion, transfer, work environment, layoff, return from layoff, compensation and fringe benefits. Equal employment opportunity further includes policies, procedures and programs for recruitment, employment, training, promotion, and retention of minorities, women and handicapped/disabled persons. Equal employment opportunity but not affirmative action is required with respect to persons identified solely by their affectional or sexual orientation.

(c) Handicapped/disabled persons shall include any person who has a physical or mental impairment which substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. See 29 U.S.C. 706 and 42 U.S.C. 12101 et seq. See also N.J.A.C. 4A:4-2.14 for accommodation and waiver of examinations for handicapped/disabled persons.

(d) The following race/ethnic categories shall be used by the Department of Personnel:

1. W: "White, not of Hispanic origin" means persons having origins in any of the original peoples of Europe, North Africa or the Middle East;

2. B: "Black, not of Hispanic origin" means persons having origins in any of the Black racial groups of Africa;

3. H: "Hispanic" means persons of Mexican, Puerto Rico, Cuban, Central or South America or other Spanish culture or origin, regardless of race;

4. I: "American Indian or Alaskan Native" means persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition; and

5. A: "Asian or Pacific Islander" means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or Pacific Islands. This area includes, for example, China, Japan, Korea, the Phillipine Islands and Samoa.

4A:7-2.1 Division responsibilities: State service

(a) The Division of Equal Employment Opportunity and Affirmative Action (Division of EEO/AA) shall develop, implement and administer an equal employment opportunity and affirmative action program for all State employees in the career, senior executive and unclassified services. Such program shall:

1. Ensure that each State agency's equal employment opportunity and affirmative action goals for minorities, women and handicapped/disabled persons are in accordance with the Standard for Determining Underrepresentation of Women and Minorities in New Jersey State Government, and are related to their population in the New Jersey labor market as determined by the relevant federal census;

2. Ensure that each agency complies with all laws and rules relating to equal employment opportunity and oversee that the purposes of this subchapter are implemented through the agency affirmative action officers;

3. Seek correction of discriminatory policies, practices and procedures;

4. Recommend appropriate sanctions for non-compliance to the Commissioner;

5. Review State personnel policies, practices and procedures, and where appropriate, eliminate artificial barriers to equal employment opportunity;

6. Act as liaison with federal, state and local enforcement agencies;

7. Perform such other duties as prescribed by law and these rules.

4A:7-2.2 Department of Personnel responsibilities: State service

(a) The Department of Personnel, through the Division of EEO/AA, shall:

1. Ensure that minorities, women and handicapped/disabled persons are among the pool of applicants for all vacant positions in the career, unclassified and senior executive services.

2. Review its rules, selection devices and testing procedures to eliminate those which are discriminatory;

3. Analyze job specifications to eliminate artificial barriers to employment;

4. Review all certification dispositions for compliance with this chapter;

5. Review all discrimination complaints under Title VII of the Civil Rights Act of 1964, evaluate trends and recommend appropriate policy changes;

6. Transmit to the Governor, at least semi-annually, progress reports on affirmative action in all State agencies; and

7. Perform such other duties as prescribed by law and these rules.

4A:7-3.1 Appointing authority responsibilities

(a) In local service, an appointing authority may establish equal employment opportunity and affirmative action programs. Upon request, the Division of EEO/AA shall advise and assist local appointing authorities in the development of such programs.

(b) Each State agency shall:

1. Ensure equality of opportunity for all of its employees and applicants seeking employment;

2. Appoint at least one person as the affirmative action officer with the responsibility for affirmative action and equal employment opportunity, who shall serve on a full-time basis, unless otherwise requested by the agency head and approved by the Commissioner and Director of the Division of EEO/AA;

3. Submit an affirmative action plan to the Director for approval, which shall include, but not be limited to, a policy statement, organization of the agency, a description of how the plan is communicated to its employees, an analysis of the workforce and job categories, goals and timetables and specific remedial action to meet its goals;

4. Submit to the Director quarterly affirmative action reports and an annual update of its affirmative action plan which shall include an evaluation of the goals set for the prior year, the goals for the upcoming year and the number, subject matter, time for processing and disposition of all discrimination complaints filed with the agency;

5. Make a good faith effort to meet the affirmative action goals and timetables set forth in its affirmative action plan and updates. Any agency which fails either to achieve or make a good faith effort to achieve its goals may be subject to sanctions and penalties;

6. Ensure that minorities, women and handicapped/disabled persons are considered for employment opportunities where the need for aggressive efforts have been identified;

7. Explore and, where appropriate, implement innovative personnel policies to enhance equal employment opportunity and affirmative action.

(a)

MERIT SYSTEM BOARD

Political Subdivisions

Readoption with Amendments: N.J.A.C. 4A:9

Proposed: July 20, 1992 at 24 N.J.R. 2498(a).

Adopted: September 18, 1992 by the Merit System Board; Anthony J. Cimino, Commissioner, Department of Personnel.

Filed: September 22, 1992 as R.1992 d.418, **without change.**

Authority: N.J.S.A. 11A:2-6(d), 11A:3-1(a), 11A:6-3, 11A:6-5, 11A:9-1 et seq.

Effective Date: September 22, 1992, Readoption.
October 19, 1992, Amendments.

Expiration Date: September 22, 1997.

Summary of Public Comments and Agency Responses:

Public hearings on the proposed readoption with amendments were held on Thursday, August 6, 1992; Monday, August 10, 1992; and Wednesday, August 12, 1992. Henry Maurer served as hearing officer. **No comments** were received at those hearings on N.J.A.C. 4A:9 and no recommendations were made by the hearing officer.

No written comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 4A:9.

Full text of the adopted amendments follows.

4A:9-1.2 Jurisdictions subject to Title 11A, New Jersey Statutes, by consolidation or legislation

(a) This rule applies to political subdivisions which are subject to Title 11A, New Jersey Statutes through consolidation of governmental functions or by legislation.

(b) When functions of two or more political subdivisions are consolidated, and any one of the political subdivisions shall be operating under Title 11A, New Jersey Statutes, at the time of such consolidation, the other political subdivision or subdivisions shall be deemed to have adopted Title 11A, New Jersey Statutes with regard to the combined functions.

(c) The Commissioner shall provide for classification of all positions in the jurisdictions following such consolidation or enactment of legislation.

(d) Any employee who has been employed by the new jurisdiction, holds a position allocated to the career service and has been continuously employed by the former jurisdiction for a period of at least one year prior to the effective date of such consolidation or legislation, including any such employee on an approved leave of absence, shall be considered a permanent employee under Title 11A, New Jersey Statutes and these rules as of that date, except as may be provided in such legislation.

(e) Seniority calculations for employees determined to be permanent under (d) above shall be based upon the length of their continuous service with the political subdivision.

(f) Vacation and sick leave entitlements under Title 11A, New Jersey Statutes, for employees determined to be permanent under (d) above shall be based upon seniority and shall be effective on the effective date of consolidation or legislation.

(a)

MERIT SYSTEM BOARD
Violations and Penalties
Readoption: N.J.A.C. 4A:10

Proposed: July 20, 1992 at 24 N.J.R. 2499(a).
Adopted: September 18, 1992 by the Merit System Board; Anthony J. Cimino, Commissioner, Department of Personnel.
Filed: September 22, 1992 as R.1992 d.417, **without change.**

Authority: N.J.S.A. 11A:2-6, 11A:2-11(e), 11A:2-23, 11A:4-5, 11A:10-1 through 10-5, 11A:11-2.

Effective Date: September 22, 1992.
Expiration Date: September 22, 1997.

Summary of Public Comments and Agency Responses:
Public hearings on the proposed readoption were held on Thursday, August 6, 1992; Monday, August 10, 1992; and Wednesday, August 12, 1992. Henry Maurer served as hearing officer. **No comments** were received at those hearings on N.J.A.C. 4A:10 and no recommendations were made by the hearing officer.

No written comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 4A:10.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT
Uniform Fire Code
Use Group Definitions; Fire Suppression Systems
Adopted Amendments: N.J.A.C. 5:18-1.5 and 4.7

Proposed: June 1, 1992 at 24 N.J.R. 1938(a).
Adopted: September 16, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: September 18, 1992 as R.1992, d.405, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

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

Effective Date: October 19, 1992.
Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:
A comment was received from Joseph Ardire, Richard Bellshot and Michael Marsh, representing the Fire Code Committee of the New Jersey Licensed Beverage Association, Inc.

COMMENT: The original proposal, which was published in the March 2, 1992 edition of the New Jersey Register at 24 N.J.R. 677(a), contained occupancy limits that were satisfactory to the Department and acceptable to the beverage industry. However, the lower limits in the June 1 proposal would impose an unnecessary and excessive economic burden that would force many small taverns and restaurants to close.

RESPONSE: Upon further review, the Department has concluded that the original proposal, which was approved by the Codes Council of the Fire Safety Commission, would adequately protect the public and it is therefore modifying this proposal on adoption to conform to the original proposal, which had been formally withdrawn.

The standards contained in the original proposal are more restrictive than any existing national standards. Furthermore, the Codes Council, which approved the original proposal, is composed of professionals upon whose judgement the Department considers itself justified in relying.

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

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L.1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. When a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, which is used for human purpose or occupancy, which use would subject it to the provisions of this Code if it were a building or premises.

1.-2. (No change.)

3. "Use Group A-2": This Use Group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs, and eating and/or drinking establishments, and similar occupancies, in which the established maximum permitted occupant load exceeds the number of seats provided by more than 30 percent, and shall include all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance.

4.-19. (No change.)

5:18-4.7 Fire suppression systems

(a) All buildings of Use Group A-2, or portions thereof when separated in accordance with (k) below, with a permitted occupant load of 50 or more, shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. The following are exceptions to paragraph (a) above:

i. Buildings with a permitted occupancy of fewer than *[200]* ***300*** having all components of the required means of egress on the same level as the use and having all such exits discharging not more than five feet above, nor more than two feet below, the adjacent grade;

ii. Buildings with a permitted occupancy of fewer than *[100]* ***200*** having no portion of the required means of egress located more than one level above, or more than two feet below, the adjacent grade.

(b)-(k) (No change.)

(c)

DIVISION OF LOCAL GOVERNMENT SERVICES
Tax Collection Procedures
Unbudgeted School Aid
Adopted Repeal: N.J.A.C. 5:30-8.2
Adopted Amendment: N.J.A.C. 5:33-1.2 and 1.3
Adopted New Rules: N.J.A.C. 5:33-1.5, 1.6, 1.7 and 1.8

Proposed: August 17, 1992 at 24 N.J.R. 2766(a).
Adopted: September 25, 1992 by the Local Finance Board, Barry Skokowski, Sr., Chairman.
Filed: September 25, 1992 as R.1992 d.426, **without change.**

Authority: N.J.S.A. 52:27BB-32.

Effective Date: October 19, 1992.
Expiration Date: June 29, 1993, N.J.A.C. 5:30;
August 6, 1995, N.J.A.C. 5:33.

Summary of Public Comments and Agency Responses:
One letter was received from the public, First American Real Estate Tax Service. Their comment recommended that the rules should direct the payment procedure to be followed when tax bills are issued late.

The comment is well taken in light of the difficulties that occurred over the summer of 1992 because most municipal property tax bills were mailed significantly after the statutory deadline. Mortgage and escrow processors have been unduly burdened by a variety of practices employed

by municipal tax collectors throughout the state in this regard. However, the ability to change the payment procedure is an authority that the Local Finance Board does not possess.

The mechanism for payment of property taxes is set forth in a separate statute which does not grant the Board rulemaking authority. The authority exercised under this action is rooted in the Board's authority to regulate accounting and procedural aspect of the tax collection process. However, the Board is aware of this problem and is working with all concerned parties to develop a legislative solution to the problem in time for the 1993 tax billing cycle.

Full text of the adoption follows:

5:33-1.2 Bank collection of tax payments

(a) Any municipality adopting a resolution to contract for services in connection with N.J.S.A. 54:4-122.9 shall, prior to awarding the contract, receive approval of the Director of the Division of Local Government Services of the contract. Such contract shall include detailed procedures to be used in implementing procedures to receive and deposit funds, forwarding of back-up materials to the collector, holding of funds, audit trails and all other information required for evaluation of the proposed system.

(b) (No change.)

(c) Any municipality which has contracted with a bank, savings bank or trust company under N.J.S.A. 54:4-122.9 shall notify all taxpayers at least once annually that such a service has been contracted. Notification must be made by mail to all taxpayers at least 30 days prior to the next payment due, payable and subject to possible receipt by such bank, savings bank or trust company agent, following the designation of such agent.

5:33-1.3 Form of tax collection record

Tax collectors shall use a standard from for posting preliminary and final taxes. Sample copies can be obtained from:

Division of Local Government Services
Department of Community Affairs
CN 803
Trenton, NJ 08625

5:33-1.5 Definitions

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

"Current" payment means any payment which is not yet due and payable, or any payment which became due and payable within the tenth calendar day prior to its receipt, provided that the municipality has adopted a resolution allowing "that no interest shall be charged if payment of any installment is made within the tenth calendar day following the date upon which the same became payable" in accordance with provisions of N.J.S.A. 54:4-67.

"Delinquent" payment means any payment which is not current (as defined above), plus any payments for accounts on which a Tax Title Lien exists.

"Property identification information" means the information necessary to identify a specific parcel of land and includes the following elements: name of municipality, county, block number, lot number, qualification code, property address or location, name and mailing address of the property owner.

"Replacement bill" shall mean a property tax bill made or generated by a mortgagee, servicing organization, or tax processing organization to serve as a replacement to an original tax bill and used in accordance with this subchapter.

"Tax bill" shall mean the original form issued by the tax collector with the appropriate itemization and payment information for local property taxes as required by N.J.S.A. 54:4-64, 65 and 66. It shall include the information section itemizing the taxes due, and payment stubs containing property identification information and amount due for each of the quarters.

"Tax collector" shall mean the properly designated tax collector of the taxing district in which the mortgagor's property is located.

5:33-1.6 Payment of property tax bills

(a) Payment of property tax bills shall be made by presenting the stub from either an original or duplicate tax bill, or through the use of a replacement bill as described in N.J.A.C. 5:33-1.7. The original or duplicate tax bill itself does not need to be presented for payment when a payment stub showing the required information is used.

(b) When a receipt for payment sent through the mail is requested, the payor must provide the bill, stub, and a self-addressed stamped envelope for the return of the receipt.

(c) Notwithstanding any provision herein to the contrary, at the option of the local tax collector, computer printouts or other electronically generated data formats containing property identification and payment amounts will be accepted for processing in lieu of individual tax bills. Notice to the public of tax collector options shall be provided pursuant to N.J.A.C. 5:33-1.8.

5:33-1.7 Use of replacement bills

(a) Replacement bills must contain property identification information, the amount of tax due, and indication of which quarterly installment is being paid for each parcel. It may be an individually printed bill with a stub, a printed listing of many bills, or many bills transferred via magnetic media or transmitted through electronic means. If printed individually, it must contain a stub that is at least six square inches in size and include the information detailed above.

(b) Individually printed replacement tax bills may be used under the following conditions:

1. For the first payment on the tax bill if the tax collector is unable to, or fails to, issue or mail an original or duplicate tax bill 15 calendar days prior to the statutory due date for that payment, or a later date set by the governing body at which time the full interest penalty for late payments shall begin to accrue, whichever is later;

2. For other quarters if a formal request for a duplicate or original tax bill is not fulfilled within 15 calendar days from the time the tax collector receives the request; or

3. For other quarters when specifically permitted by the tax collector.

(c) The tax collector may permit non-individually printed replacement bills to be used for payment periods other than the first payment period. Such determination shall be made solely by the tax collector and shall be published annually by the Director as provided in N.J.A.C. 5:33-1.8.

(d) When a payment is made with a replacement bill, if not previously forwarded, the tax collector shall forward the original bill or a duplicate tax bill, without charge, when the original tax bill was not properly issued by the tax collector. The tax collector shall send the original or duplicate tax bill, as the case may be, to the payor so the subsequent tax payments can be paid in a timely manner.

5:33-1.8 Annual publication of municipal practices

(a) Each year the Director shall survey each tax collector and, prior to June 14, publish, as a public notice in the New Jersey Register, a listing of the following tax collection practices for each municipality:

1. Duplicate bill fee;
2. Acceptable format(s) of replacement bills;
3. Use of printouts or electronic media for tax payment information;
4. Payment quarters when replacement bills may be used; and
5. Office and facsimile machine telephone numbers.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISON OF FISH, GAME AND WILDLIFE FISH AND GAME COUNCIL

1992-93 Game Code
Hunting Prohibition
Parker Creek and Oceanport Creek, Monmouth County

Adopted Amendment: N.J.A.C. 7:25-5.13

Proposed: August 17, 1992 at 24 N.J.R. 2773(a).
Adopted: September 23, 1992 by the Fish and Game Council, Cole Gibbs, Chairman.
Filed: September 25, 1992 as R.1992 d.423, **without change.**

Authority: N.J.S.A. 13:1B-29 et seq.

DEPE Docket Number: 32-92-07.

Effective Date: October 19, 1992.
Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendment follows.

SUBCHAPTER 5. 1992-93 GAME CODE

7:25-5.13 Migratory birds
(a)-(q) (No change.)
(r) Parker Creek and Oceanport Creek: There shall be no open firearm season for hunting any game bird or mammal including waterfowl on Parker Creek and Oceanport Creek, Monmouth County, or the shores thereof, southwest or upstream of the Conrail R.R. bridge.
(s) (No change in text.)

(b)

OFFICE OF ENERGY

Periodic Reporting by Energy Industries of Energy Information

Adopted Repeal: N.J.A.C. 14A:11-2

Proposed: September 16, 1991 at 23 N.J.R. 2830(b).
Adopted: September 16, 1992, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Filed: September 16, 1992 as R.1992 d.403, **without change.**

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

BPU Docket Number: AX91071225
DEPE Docket Number: 048-91-12
Effective Date: October 19, 1992.

On September 16, 1991, the Board of Public Utilities (Board) proposed to repeal N.J.A.C. 14A:11-2, which requires suppliers of home heating oil to report certain price information. The Board had determined that this information was of limited value except during an energy emergency, and that the Board could obtain this information under other rules during an energy emergency.

Reorganization Plan No. 002-1991 abolished the Division of Energy Planning andd Conservation in the Board, and transferred all of its functions, powers and duties to the Department of Environmental Protection and Energy (Department). Therefore, the Department is adopting this repeal.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14A:11-2.

HEALTH

(c)

DIVISION OF PUBLIC HEALTH AND ENVIRONMENTAL LABORATORIES

Blood Bank Fees;
Laboratory Charges

Adopted Amendments: N.J.A.C. 8:8-1.3 and 8:45-2.1

Proposed: July 20, 1992 at 24 N.J.R. 2508(a).
Adopted: September 25, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Filed: September 25, 1992 as R.1992 d.427, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3.).

Authority: N.J.S.A. 45:9-42.30, 26:1A-33 and 26:2A-4.

Effective Date: October 19, 1992.
Operative Date: November 1, 1992.
Expiration Date: April 24, 1994, N.J.A.C. 8:8;
February 7, 1995, N.J.A.C. 8:45.

Summary of Public Comments and Agency Responses:
The New Jersey Department of Health proposed amendments to N.J.A.C. 8:45-1.3 and 2.1 covering blood bank license fees and laboratory charges in the New Jersey Register on July 20, 1992, 24 N.J.R. 2508(a). The Department of Health received written comments as well as the testimony of individuals at the public hearing held on August 21, 1992.

Hearing Officer's Report:
Beth Frederick, Coordinator of the Cooper-Bancroft PKU Program gave strong supporting testimony for the fee increase as it relates to inborn errors of metabolism (IEM). Ms. Frederick stressed the need to support the funding base as a preventive measure to avoid the devastating economic impact upon all New Jersey citizens if the IEM screening or follow-up treatment services were compromised by the inability to meet increased costs. In additional testimony, Ms. Frederick stated that she witnesses, on a daily basis, the direct and immediate benefit of the screening for inborn errors of metabolism and the benefits of treatment gained through the speed and accuracy of the IEM laboratory and the special metabolic formula provided to the patients for their on-going medical/dietary management.

Ms. Kristine Kolarsick, a PKU parent, gave supporting testimony for fee increases related to IEM stating that the blood test is vital to screen and identify the disorders and monitor the blood so the vital formula can be adjusted to the patient's needs.

Ms. Joanne Friedman, a Registered Dietitian in a PKU program, gave supporting testimony for IEM fee increases, stating that the laboratory testing identifies the disorders and the test results determine the dietary balance required for each patient. These activities can help reduce and/or prevent institutionalization on a statewide basis.

Additional IEM-fee-supporting testimony was given by:

Ms. Debbie Jeffery, PKU Program Nutritionist; Mr. Larry Minch, PKU parent; Jack and Susan Byrne, PKU parents; Mr. James Madden, PKU parent; Robert and Patty Liscio, PKU parents; Ms. Gina Liscio, PKU patient; Ms. Debbie Hughes, PKU parent; Dr. A. Haroutunian, Pediatrician, PKU Center.

All those who testified stated that they supported adoption of the proposed fee for inborn errors of metabolism (I.E.M.), as those funds are invaluable in the testing, identifying, treatment, and support for the children and families with I.E.M. disorders.

Hearing Officer's Recommendations:
The hearing officer, Shahiedy I. Shahied, Ph.D., recommended that the Department of Health express its appreciation to those individuals from families with afflicted children, as well as to professionals involved

in the diagnosis and follow-up of such disorders, for taking the time to publicly comment upon the value of these services.

1. COMMENT: Written comment supporting the proposed changes was received from the following individuals:

Alifanti, Joseph L., Executive Director, New Jersey Family Planning League, Inc.; Altamura, Lisa and Leonardo, PKU relatives; Altamura, Rosa and Joseph, PKU grandparents; Alton, Betty J., PKU grandparent; Alton, Scott, PKU relative; Avena, Angela and Carmine, PKU grandparents; Avena, Angelo and Teresa, PKU relative; Avena, Maria and Joseph, PKU parents; Avena, Sandra, PKU relative; Berkowitz, David J., Vice President, Palisades General Hospital; Bonvenca, Eugene and Maureen, PKU relatives; Brand, Jeff, Executive Director, Planned Parenthood of Greater Northern New Jersey; Brown, G. Lynn, Executive Director, Planned Parenthood, Greater Camden Area; Brown, Sally, PKU relative; Burke, Margaret, PKU relative; Byrnes, Denise and Jim, PKU parents; Cherry, Violet P., Health Officer, City of Englewood; Cimino, Nancy and Chris, PKU godparents; Corcione, Elaine and Carmen, PKU family friends; Corwonski, Evelyn, PKU parent; D'Elia, Joy and Jim, PKU relative; Danka, Cheryl and Lou, PKU family friends; Del Russo, Phyllis, PKU parent; Dobronsky, Richie, PKU relative; Dobronsky, Richard and Rosemarie, PKU grandparents; Feldman, Matthew, Senator, 37th District; Ferraiolo, Joseph, Director of Materials Management, The Hospital Center at Passaic; Frederick, Beth Everett, Program Coordinator, Cooper-Bancroft PKU Program; Gray, Douglas and Terry; PKU parents; Gray, Leo J. and Elizabeth, PKU grandparents; Greco, Albert, Health Officer, Mid-Bergen Regional Health Commission; Grullon, Damiana and Miguel, PKU relatives; Hurley, Mike and Janice, PKU relatives; Jenecke, William, PKU grandparent; Kennedy, Mr. and Mrs. Vincent, PKU parents; Knox, Judith A., PKU grandparent; Kolarsick, Rick and Kristine, PKU parents; Landis, Debbie, PKU family friend; LaPerriere, Leona and Daniel, PKU family friends; Leone, Anita, Executive Director, Family Planning Association of New Jersey; Lindner, Mrs. Carol, PKU parent; Lindner, Patrick, PKU patient; Liscio, Robert A. and Gina Lyn, PKU parents; Madden, James and Sharon, PKU parents; McClelland, Hope Renee, PKU relative; Minch, Joan, PKU parent; Minch, Lawrence E. Jr., PKU parent; Moore, Gail, PKU relative; Mulligan, Terrance S. and Peggy, Alaimo A., PKU parents; O'Donnell, Susan, PKU parent; Rowley, Kathy and Ronald, PKU family friends; Ryan, Chuck and Alana, PKU relatives; Ryan, John and Florence, PKU grandparents; Ryan, Kevin, PKU relative; Ryan, Tom and Elsie, PKU relatives; Ryan, William and Donna, PKU parents; Sergi, Martin and Sharon, PKU parents; Sevilla, Chris and Jim, PKU family friends; Shaw, Marguerite A., PKU great-grandparent; Smith, Brian and Debbie, PKU relatives; Speak, Kimberly, PKU relative; Tyson, Delores, Executive Director, Planned Parenthood of Essex County; Vita, Clara and Carmine, PKU relatives; Von Stetten, Carol and Carl, PKU grandparents; Walker, Barbara and David, PKU parents; Walker, Maureen and Harry, PKU grandparents; Wellnitz, Betty D. and Rudolph B., PKU parents; Wellnitz, Emily A., PKU patient; Wilson, Mike and Mary Beth, PKU relatives.

Written comment against the proposed fee increases was received as follows:

2. COMMENT: Pamela H. Shaw, the Laboratory Manager from the Muhlenberg Regional Medical Center, Inc., and the President of the New Jersey Hospital Association, Louis Scibetta, FACHE, felt that, although they understood that the cost of instrumentation, laboratory reagents and supplies increase each year, they found it difficult to believe that the costs associated with performing the test for I.E.M. have increased enough to justify an $8.00 increase from $19.00 to $27.00.

RESPONSE: The fee associated with I.E.M. screening includes a wide range of costs associated with all four neonatal tests (PKU, Galactosemia, T4, and Sickle Cell). The fee is necessary to offset the laboratory expenses which include cost increase in reagents, printing, equipment, maintenance services, personnel and general administration. In addition, a portion of the fee is forwarded to Special Child Health Services to support the follow-up treatment and dietary formula required for patient management. As the total costs of operations increases and funding appropriations are reduced, the fee will need to be adjusted to support this critical area of testing and patient support.

3. COMMENT: The General Hospital Center at Passaic asked for a straight five percent deduction off invoice.

RESPONSE: The fee-for-service system must be administered uniformly. The Department of Health is not in a position to grant discounts unilaterally.

4. COMMENT: The City of Englewood Health Department, Senator Matthew Feldman, 37th District (Bergen) on behalf of Ms. Violet Cherry, Health Officer, City of Englewood, the Mid-Bergen Regional Health Commission, the New Jersey Family Planning League Inc., the Planned Parenthood of Essex County, Planned Parenthood of Greater Northern New Jersey and the Family Planning Association of New Jersey also expressed concern that the $1.00 "specimen transport kit" fee will have a serious impact on their ability to continue to provide services to their clients.

RESPONSE: The State Department of Health has experienced severe reductions in legislative appropriations over the past few years. As a result of major revenue losses, coupled with the escalating costs of laboratory equipment and supplies, the Department has no choice but to increase fees if it is to maintain a viable capability for laboratory operations and avoid termination of select testing services.

Summary of Agency-Initiated Change:

On review, the Department has determined that it would be more appropriate to codify the amendment proposed at N.J.A.C. 8:45-1.3(b) as N.J.A.C. 8:8-1.3(f). This codification change will not destroy the effect of the original proposal, since the primary and secondary notices would be the same, and the change would allow for easy access to all blood banking information in one location.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*).

8:8-1.3 Licensure

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

***(f) Pursuant to N.J.S.A. 26:2A-4, the following blood bank licensure fees shall be effective November 1, 1992:**

1. Transfusion Services:

Number of Transfusions	**Fee**
0-1,000	**$200.00**
1,001-2,000	**300.00**
2,001-3,000	**400.00**
3,001-4,000	**500.00**
4,001-5,000	**600.00**
5,001-+	**700.00**

2. Collection Centers:

Number of Collections	**Fee**
0- 200	**$ 250.00**
201- 1,500	**500.00**
1,501- 3,000	**750.00**
3,001- 5,000	**1,000.00**
5,001-10,000	**1,250.00**
10,001-15,000	**1,500.00**
15,001-25,000	**1,600.00**
25,001-35,000	**1,700.00**
35,001-50,000	**1,800.00**
50,001-+	**1,900.00**

3. Other Blood Bank Services:

Type	**Fee**
Collection Site	**$100.00**
Broker	**200.00**
Industrial Blood Bank	**200.00**
Home Transfusion Service	**200.00***

8:45-1.3 Licensure fees

(a) (No change.)

*[(b) Pursuant to N.J.S.A. 26:2A-4, the following blood bank licensure fees shall be effective November 1, 1992:

1. Transfusion Services:

Number of Transfusions	Fee
0-1,000	$200.00
1,001-2,000	300.00
2,001-3,000	400.00
3,001-4,000	500.00
4,001-5,000	600.00
5,001-+	700.00

2. Collection Centers:

Number of Collections	Fee
0- 200	$ 250.00
201- 1,500	500.00
1,501- 3,000	750.00
3,001- 5,000	1,000.00
5,001-10,000	1,250.00
10,001-15,000	1,500.00
15,001-25,000	1,600.00
25,001-35,000	1,700.00
35,001-50,000	1,800.00
50,001-+	1,900.00

3. Other Blood Bank Services:

Type	Fee
Collection Site	$100.00
Broker	200.00
Industrial Blood Bank	200.00
Home Transfusion Service	200.00]*

8:45-2.1 Fees; generally

(a) Effective November 1, 1992, the following fee-for-service cost structure shall apply to the New Jersey State Department of Health:

Laboratory Test	
Inborn Errors of Metabolism (PKU, T4, Galactosemia, Sickle Cell)	$27.00
Toxoplasmosis	$15.00
Rubella Screen	$10.00
Blood Lead	$12.00
Mycobacteriology (TB)	$30.00
Water Bacteriology	$15.00
Bacteriology Culture	$30.00
Susceptibility Studies (TB)	$30.00
Isolation of Special Pathogens	$30.00
Parasitology	$15.00
Lyme Disease	$20.00

(b) Effective November 1, 1992, the following additional fee-for-service charges shall also apply:

Bacteriology	
Lyme Disease	$20.00
Specimen Transport Kits (each kit)	$ 1.00

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Administrative Correction

Certificate of Need: Regionalized Perinatal Services Regional Perinatal Plan; High Risk Mothers and Neonates

N.J.A.C. 8:33C-2.7 and 7.2

Take notice that the Department of Health has discovered errors in the text of N.J.A.C. 8:33C-2.7, Regional perinatal plan, and N.J.A.C. 8:33C-7.2, High risk mothers and neonates, as adopted at 24 N.J.R. 3131(a), in the September 8, 1992 New Jersey Register.

In the September 8, 1992 issue of the New Jersey Register at 24 N.J.R. 3131(a), 3139-3140, the Department adopted changes to the intensive care bassinet formula in N.J.A.C. 8:33C-2.7(b)4i to utilize patient discharge data to determine regional intensive care bassinet needs. This was done utilizing a formula based on neonatal DRGs. While the formula is correct, the definitions contain two typographical errors, in items a and l.

In addition, at 24 N.J.R. 3131(a), 3143, the Department incorrectly referenced N.J.A.C. 8:43G-19.20(b)2 for intermediate care. The language of the text at N.J.A.C. 8:33C-7.2 clearly states that the referenced applies to intermediate care facilities, but the citation is to basic facilities standards. The reference has been corrected to refer to N.J.A.C. 8:43G-19.20, since such a reference includes all newborn care patient services.

These errors are corrected through this notice of administrative correction, 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]):

8:33C-2.7 Regional perinatal plan

(a) (No change.)

(b) The specific components of the regional perinatal plan shall include:

1.-3. (No change.)

4. A demonstration of the overall need for intensive care bassinets, utilizing the methodology contained in (b)4i below, and for intermediate bassinets. The overall need shall be based on data from the preceeding two years and a projection of the needs for the next four years. The number of births, the number of intermediate weight births, and the number of very low birth weight births shall be the same as those reported to the Department for the most recently available year. The Statewide average length of stay per birth weight category shall be determined by the Department every two years.

i. The total number of intensive care bassinets approved for all Regional and Community Perinatal Centers in each region shall be determined by the following formula:

$$\frac{(a\times b)+(c\times d)+(e\times f)+(g\times h)+(i\times j)+(k\times l)+(m\times n)+(o\times p)}{365}\times 1.18$$

where

a = Regional number of live births < 1000 grams discharged alive plus the regional number of live births *[<]* ***1000-***1500 grams with a significant operating room procedure discharged alive

b = Statewide average length of stay for type of patients defined in a above

c = Regional number of live births < 1500 grams not included in a above

d = Statewide average length of stay for type of patients described in c above

e = Regional number of live births > or equal to 1500 grams but < 2500 grams with a significant operating room procedure with major multiple problems

f = Statewide average length of stay for type of patients described in e above

g = Regional number of live births equal to or > 1500 grams but < 2000 grams either with a significant operating room procedure without multiple major problems or with multiple major problems without a significant operating room procedure

h = Statewide average length of stay for patients described in g above

i = Regional number of live births equal to or > 2000 grams but < 2500 grams either with a significant operating room procedure without multiple major problems or with multiple major problems without a significant operating room procedure

j = Statewide average length of stay for patients described in i above

k = Regional number of live births equal to or > 1500 grams but < 2500 grams with a major problem but without a significant operating room procedure

l = Statewide average length of stay for type of patients described in *[g]* ***k*** above

m = Regional number of live births equal to or > 2500 grams with a significant operating room procedure without multiple major problems, or multiple major problems without a significant operating room procedure

n = Statewide average length of stay for patients described in m above

o = Regional number of live births equal to or > 2500 grams with a significant operating room procedure and multiple major problems

p = Statewide average length of stay for patients described in o above

ii. (No change.)

8:33C-7.2 High risk mothers and neonates

(a) (No change.)

(b) Community Perinatal Center-Intermediate applicants shall assure that any high risk infant anticipated as requiring ventilatory support longer than 48 hours cumulatively or otherwise with needs exceeding the facility's capabilities as described in the letter of agreement shall be transported as soon as possible after delivery to the facility with advanced capabilities as specified in the terms of the regional perinatal plan and letters of agreement and in accordance with N.J.A.C. 8:43G-19.20*[(b)2]*.

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 6, 1992 at 24 N.J.R. 2414(b).

Adopted: September 18, 1992 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: September 18, 1992 as R.1992 d.428, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: October 19, 1992.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

There were no comments submitted pertaining to the proposed products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on August 3, 1992. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. No comments were submitted. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified as "not adopted," and referred the products identified as "pending" for further study.

The following product and its manufacturer was **adopted**:

Atenolol/chlorthalidone tabs 50/25, 100/25 mg	IPR

The following products were **not adopted but are still pending**:

Acetazolamide tabs 250 mg	ALRA
Atenolol tabs 100 mg	Novopharm
Atenolol tabs 25 mg	Geneva
Atenolol tabs 50 mg	Novopharm
Clemastine fumarate tabs 1.34 mg	Geneva
Clemastine fumarate tabs 2.68 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.1/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.2/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.3/15 mg	Geneva
Clorazepate tabs 3.75 mg, 7.5 mg, 15 mg	ALRA
Darvon Compound-65 caps substitute	ALRA
Diltiazem HCl tabs 120 mg	Mutual
Diltiazem HCl tabs 30 mg	Mutual
Diltiazem HCl tabs 60 mg	Mutual
Diltiazem HCl tabs 90 mg	Mutual
Fenoprofen caps 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Ibuprofen tabs 400 mg, 600 mg, 800 mg	ALRA
Imipramine tabs 10 mg, 25 mg, 50 mg	ALRA
Ketoprofen caps 25 mg	Biocraft
Ketoprofen caps 50 mg	Biocraft
Ketoprofen caps 75 mg	Biocraft
Lactulose syrup 10g/15ml	ALRA
Loperamide HCl caps 2 mg	Geneva
Loxapine caps 5 mg	Geneva
Loxapine caps 10 mg	Geneva
Loxapine caps 25 mg	Geneva
Loxapine caps 50 mg	Geneva
Meprobamate tabs 200 mg, 400 mg	ALRA
Metoclopramide tabs 5 mg	Biocraft
Naproxen sodium tabs 275 mg	Mutual
Naproxen sodium tabs 550 mg	Mutual
Naproxen tabs 250 mg	Mutual
Naproxen tabs 375 mg	Mutual
Nucofed expectorant substitute	LuChem
Pediazole suspension substitute	ALRA
Potassium bicarbonate effervescent tabs 25 mEq	ALRA
Potassium chloride ER tabs 10 mEq	ALRA
Potassium chloride ER tabs 8 mEq	Upsher-Smith
Potassium chloride powder 20 mEq	ALRA
Propoxyphene HCl caps 65 mg	ALRA
Sucralfate tabs 1 gm	Biocraft
Sulfisoxazole tabs 500 mg	ALRA
Tolbutamide tabs 500 mg	ALRA
Tolectin sodium caps 400 mg	Geneva
Tolmetin sodium caps 400 mg	Lemmon
Tolmetin sodium tabs 200 mg	Geneva
Triamterene/HCTZ tabs 37.5/25 mg	Geneva
Verapamil tabs 40 mg	Geneva

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 24 N.J.R. 3174(c).

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Administrative Change

Long-Term Care Services Manual

General Provisions

N.J.A.C. 10:63-1

Take notice that, pursuant to N.J.A.C. 1:30-2.7(c), the Division of Medical Assistance and Health Services, Department of Human Services, with the concurrence of the Office of Administrative Law, is recodifying portions of N.J.A.C. 10:63-1 as three new subchapters in N.J.A.C. 10:63. No change is made to the text of the provisions recodified. Through this administrative change, the Division seeks to improve the organizational clarity of the Long-Term Care Services Manual.

The following is a recodification chart of those sections affected, showing the three new subchapter headings. The Code locations currently occupied by these provisions will be retained as "(Reserved)."

CHAPTER 63
LONG-TERM CARE SERVICES MANUAL

Old Citation	New Citation
—	SUBCHAPTER 2A. NURSING FACILITIES SERVICES
10:63-1.3	10:63-2A.1
10:63-1.4	10:63-2A.2
10:63-1.8(a)	10:63-2A.3
10:63-1.10	10:63-2A.4
10:63-1.17	10:63-2A.5
SUBCHAPTER 4. (RESERVED)	SUBCHAPTER 4. MISCELLANEOUS PAYMENT
10:63-1.11	10:63-4.1
10:63-1.12	10:63-4.2
SUBCHAPTER 5. (RESERVED)	SUBCHAPTER 5. AUDIT
10:63-1.21	10:63-5.1
10:63-1.22	10:63-5.2
10:63-1.23	10:63-5.3

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of Administrative Change
Designation of the "Division of Economic Assistance" as the "Division of Family Development"

N.J.A.C. 10:80 Organization of the Division of Family Development
N.J.A.C. 10:81 Public Assistance Manual
N.J.A.C. 10:82 Assistance Standards Handbook
N.J.A.C. 10:83 Service Programs for Aged, Blind, or Disabled Individuals
N.J.A.C. 10:87 Food Stamp Manual
N.J.A.C. 10:89 Home Energy Assistance Handbook
N.J.A.C. 10:109 Ruling Number 11

Take notice that the Reorganization Plan (No. 001-1992) which was published in the New Jersey Register on June 1, 1992, at 24 N.J.R. 1935(a) changed the name of the Division of Economic Assistance (DEA) in the Department of Human Services to the Division of Family Development (DFD), effective July 6, 1992. All references to DEA at N.J.A.C. 10:80, 81, 82, 83, 87, 89 and 109 are, by this notice, changed to DFD. These changes will be incorporated into the text of the New Jersey Administrative Code.

INSURANCE

(b)

DIVISION OF FRAUD

Automobile Physical Damage Inspection Procedures
Adopted Repeal: N.J.A.C. 11:3-36.12

Proposed: August 3, 1992 at 24 N.J.R. 2708(c).
Adopted: September 25, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: September 25, 1992 as R.1992 d.424, **without change.**

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); and 17:33B-33.

Effective Date: October 19, 1992.

Summary of Public Comments and Agency Responses:

Two public comments were received from an insurance company (Selective Insurance Company of America) and an insurance trade association (Professional Insurance Agents).

COMMENT: The first commenter agreed with the Department's efforts to amend the inspection procedures. The second commenter approved of the photo inspection program for its deterrent effort on fraudulent insurance claims. The second commenter further states that in order to decrease premiums to a reasonable level so that insurance will be affordable to New Jersey drivers, other cost effective measures should be taken. The second commenter notes that though drivers pay nothing for photo inspections, the cost of $10.00 to $12.00 per inspection is still passed on to the insured (through an insurer's rate base). This cost is necessary when vehicles coming out of the Market Transition Facility ("MTF") and going to the voluntary market have never received photo inspections. However, the commenter states that an insured need not incur this cost if the vehicle has previously been inspected while insured in the MTF. The commenter suggests that the Department amend the rule to provide an exemption to the photo inspection requirements for vehicles previously inspected while insured in the MTF, as long as the inspection documentation is readily accessible for the insurer in the voluntary market. The commenter believes that this will eliminate the additional cost to the insurer for another inspection and will also eliminate the burden on insureds having to obtain another photo inspection.

RESPONSE: The Department does not believe this amendment is necessary. The Department does not want the MTF to undertake the task, nor absorb the cost, of individually retrieving hundreds of thousands of inspection reports and providing them to the proper voluntary insurer. The risk is to be inspected or waived in accordance with these rules.

Full text of repealed rule can be found in the New Jersey Administrative Code at N.J.A.C. 11:3-36.12.

(c)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Insurance of Municipal Bonds
Readoption: N.J.A.C. 11:7

Proposed: June 1, 1992 at 24 N.J.R. 1958(a).
Adopted: September 25, 1992, by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: September 25, 1992 as R.1992 d.425, **without change.**

Authority: N.J.S.A. 17:1-8.1 and 17:1c-6(e).

Effective Date: September 25, 1992.
Expiration Date: September 25, 1997.

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. 11:7.

LAW AND PUBLIC SAFETY

(d)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Preparation of Patient Records
Adopted Amendment: N.J.A.C. 13:35-6.5

Proposal: January 6, 1992 at 24 N.J.R. 50(a).
Adopted: March 11, 1992 by the Board of Medical Examiners, Sanford Lewis, M.D., President.
Filed: September 28, 1992 as R.1992 d.429, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2, P.L. 1991, c.201.

Effective Date: October 19, 1992.
Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment relating to preparation of patient records. The official comment period ended February 5, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 6, 1992 at 24 N.J.R. 50(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Asbury Park Press, the Commissioner of the New Jersey State Department of Health, the Director of Licensure, Certification and Standards of the Department of Health, the New Jersey Hospital Association, the Medical Society of New Jersey and the 21 county medical societies, the New Jersey Association of Osteopathic Physicians and Surgeons, the Radiological Society of New Jersey, the New Jersey Podiatric Medical Society, the Federation of State Boards of Medical Examiners, the University of Medicine and Dentistry, General Hospital Center at Passaic, Memorial Hospital, and to various other professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, 28 West State Street, Room 602, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

The following individuals submitted written comments regarding the proposal:

Norman H. Coopersmith, M.D., Clinical Laboratory Director; Joseph A. Riggs, M.D., President of the Medical Society of New Jersey; Audrey Meyers, V.P. Administration, the Valley Hospital; James M. Sumerson, M.D.

This rule amendment was precipitated by informal inquiry of the Radiological Society of New Jersey noting that the State Department of Health has established safeguards with regard to use of electronic signatures in a hospital setting. The Society requested that the Board of Medical Examiners establish safeguards for the use of electronic signatures in a private office setting.

COMMENT: Dr. Coopersmith addresses subparagraph (b)1x which requires that a professional treatment record contain documentation when, in the reasonable exercise of the physician's judgment, the communication of test results is necessary and action thereon needs to be taken, but reasonable efforts made by the physician responsible for communication have been unsuccessful. The commenter questioned whether a clinical laboratory director is required to document his or her attempted communication to referring physicians of test results on which action needs to be taken.

RESPONSE: This subparagraph would not generally be applicable to a clinical lab director except in most unusual circumstances. The Board notes: 1) Board rule N.J.A.C. 13:35-3.6 prohibits a lab director from accepting requests for lab examination from private persons. Thus, the lab director would be issuing the report only to an authorized requester of the test—usually a physician or public health entity. 2) Ordinarily, a clinical lab director will be issuing a written report and sending it by mail to the requesting physician/public health entity, and it is the recipient of the written report which will undertake follow-up with the patient. However, the rule amendment does mandate record documentation where attempted communication was believed necessary and was unsuccessful. Thus, for example, a report mailed to a referring physician but returned as undeliverable would require documentation and some reasonable effort to transmit the report's information. Also, where a referring physician has requested a telephoned "stat" report but is then unreachable, such an attempt would be documented. Other than such unusual situations, the clinical lab director would not likely be affected by this subsection. (This is generally consistent with the provisions of another Board rule, N.J.A.C 13:35-2.5, whereby, in contrast to the special follow-up of abnormal reports which is required of a physician in a private practice doing screening or diagnostic medical testing of private patients, the director of a licensed lab is expressly exempted from that duty because of the licensure and the doctor-to-doctor referral status.)

Additionally, subsection (b) imposes the follow-up obligation in the context of a professional treatment. Performance of a lab test by a doctor who provides solely consultation/technical services to other licensed health care professionals and does not provide treatment to patients, does not establish a physician-patient relationship of the kind requiring preparation of a professional "treatment" record in the form presented in subsection (b).

COMMENT: The Valley Hospital Administration comments on subparagraph (b)1xi which requires documentation of the existence of any advance directive for health care, and associated pertinent information. The commenter asks whether a Board licensee must inquire of every patient as to the existence of an advance directive or must simply document its existence if known. The commenter also questions whether such inquiry or documentation is necessary in some medical specialties such as pediatrics, allergy and podiatry, etc., where, in the opinion of the commenter, it is not likely to be a pertinent issue.

RESPONSE: The referenced law is the New Jersey Advance Directives for Health Care Act, now codified at N.J.S.A. 26:2H-53 to 78 (and as to Ombudsman obligations at N.J.S.A. 52:27G-5.1 and 25.1). Section 10 requires a doctor to make an affirmative inquiry of patients or their families or representatives, as appropriate under the circumstances, regarding the existence of an advance directive. The response to that inquiry, or information volunteered to the doctor, must be documented. The law refers to "attending physician" and does not address or exclude specialists. Thus, neither allergy nor podiatry nor other specialty practice is excluded from the inquiry obligation. The section can, however, be read to allow one limiting circumstance: the law regarding preparation of an advance directive authorizes such document to be prepared by an "adult" defined as a person 18 or more years old, or an emancipated minor (see section 25 discussing Durable Powers of Attorney document).

However, many sections of the new law are not qualified in this way and refer simply to the term "patient" and the several sections specifically applicable to health care institutions (such as section 13) mandate routine inquiry of, and information about advance directives to be given to, all "interested patients" and their families and health care representatives. The same section 13 refers to the decision-making process under section 11 which in turn discusses "patient" defined only as an individual who is under the care of a health care professional. Thus, the Legislature may have foreseen that circumstances would arise involving the need to make health care decisions affecting persons who do not have advance directives, including minors. In such circumstances, the Board rule would not apply and it is expected that the usual hospital prognosis committees would be convened where appropriate. (It should, however, also be noted that section 16 of the law expressly confirms the authority of a physician to issue a do-not-resuscitate order not only when it is consistent with the terms of an advance directive and the new law, but even without an advance directive when such order can be issued under any other existing legal authority. Such an order must be documented in the record.)

The Board recognizes that, in addition to referring primarily to "adults," there is another possible qualification to the mandate of making affirmative inquiry; that is the limiting phrase in section 10 "as appropriate under the circumstances." Although the matter is far from clear, the Board believes it reasonable to allow the licensee some discretion as to whether to ask about advance directives, depending on the reason for the consultation or the treatment being rendered. A licensee should present the inquiry where, for example, treatment is being provided for a significant illness or where an emergency has occurred presenting imminent threat to life, or where surgery is anticipated with use of general anesthesia. However, a licensee currently providing care for a simple infection, or an allergist providing routine hayfever desensitization injections, would not be expected to make such inquiry of a current patient who had already been under care prior to enactment of the law, although such a question should reasonably appear on an initial intake form for a new patient. This interpretation seems consistent with the serious sanction authorized by section 25 for any intentional failure to comply with the duty to make inquiry.

In summary as to this comment, the obligation of a physician to affirmatively inquire about the existence of an advance directive could reasonably be limited to adult patients (as contrasted with the universal population inquiry obligation of a hospital), and can be limited to circumstances where information on that subject is pertinent. To clarify this issue, the Board has modified subparagraph (b)1xi to clarify that the treating doctor is required to make inquiry of an adult or emancipated minor when providing treatment for a significant illness, or where an emergency has occurred presenting imminent threat to life or where surgery is anticipated with use of general anesthesia. Inquiry should also be made on a routine intake history form for a new patient.

COMMENT: Dr. Sumerson notes he is a practicing otolaryngologist who has a computerized patient records system in which the doctor dictates a report which is later transcribed directly onto a computer disc. No hard copy is printed except on demand. He states that no computerized system can be made 100 percent safe to prevent alteration of records. He recognizes the serious problem of altered computerized medical records and states that when his office issues a printed report, it is accompanied by an affidavit signed by his medical transcriptionist as well as the attending physician asserting that the document is authentic and has not been altered. He suggests that compliance with the rule will be "impossible" and that it "may" require program changes or changing his current system, but he does not state whether he has been advised of any impossibility of adapting his current system to the proposed rule.

RESPONSE: The Board points out that its current rule provisions already require that a permanent professional treatment record be prepared; this clearly mandates more than a disc subject to alteration or destruction, whether intentional or due to accident such as electrical storm or loss. The transcriptionist who is currently employed by a doctor cannot be asked to verify the original authenticity of a record prepared by an earlier transcriptionist or a record which may have been previously altered or accidentally partially lost (even if the loss is known). Nor can the physician realistically provide such affidavit for a document which was not originally prepared in a "hard copy."

COMMENT: The Medical Society of New Jersey comments that a number of officers of the Society, county societies and specialty societies were consulted regarding the rule and a "significant" number of them believed their current software or hardware could not produce the "format" detailed in the proposal and that significant expenditures would be necessary. The Society asks that the proposal be rescinded because it would have an adverse impact on the cost of care.

RESPONSE: The Society has offered no numbers of persons it believes to be adversely affected, nor explanation of why they could not adapt their systems to the rule as proposed, nor what expenditures are anticipated as necessary. Nor has the Society indicated what "format" cannot be produced. The comment suggests that some licensees may be in violation of the current Board rule requiring "permanent" records. The rule amendment merely lists minimum essential data for a patient record, and does not dictate a particular format. Technical information was provided on this subject, at the request of the Board, by the Manager of Data Processing Programs for the Department of Law and Public Safety indicating that, based on generally recognized principles of data processing, an existing computer program can be modified or adapted by another program to include desired characteristics such as confidential access code and a method of finalizing an entry to prevent subsequent alteration. The Board therefore concludes that licensees having current non-complying programs can feasibly arrange for the changes to be made, if they wish to keep their records on computer, and the need for assuring the integrity of the patient record makes it appropriate that such new program be implemented. However, the Board will allow a transition period for all current patient records in such noncompliant system by adding new subparagraph (b)3viii upon adoption. The transition period shall be 12 months from the effective date of the subparagraph, until October 19, 1993. Direction is given to licensees for how to maintain a permanent patient record in the interim, while those who desire to switch to a computer system complete the installation or complete modification of current systems. The record requirements pertain only to patient treatment records and not to computerized billing forms.

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

13:35-6.5 Preparation of patient records, computerized records, access to or release of information; confidentiality, transfer or disposal of records

(a) (No change.)

(b) Licensees shall prepare contemporaneous, permanent professional treatment records. Licensees shall also maintain records relating to billings made to patients and third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of seven years from the date of the most recent entry.

1. To the extent applicable, professional treatment records shall reflect:

Recodify existing 1.-7. as i.-vii. (No change in text.)

viii. Treatment ordered, including specific dosages, quantities and strengths of medications including refills if prescribed, administered or dispensed, and recommended follow-up;

ix. The identity of the treatment provider if the service is rendered in a setting in which more than one provider practices;

x. Documentation when, in the reasonable exercise of the physician's judgment, the communication of test results is necessary and action thereon needs to be taken, but reasonable efforts made by the physician responsible for communication have been unsuccessful; and

xi. Documentation of the existence of any advance directive for health care ***for an adult or emancipated minor***, and associated pertinent information. ***Documented inquiry shall be made on the routine intake history form for a new patient who is a competent adult or emancipated minor. The treating doctor shall also make and document specific inquiry of or regarding a patient in appropriate circumstances, such as when providing treatment for a significant illness, or where an emergency has occurred presenting imminent threat to life, or where surgery is anticipated with use of general anesthesia.***

2. Corrections/additions to an existing record can be made, provided that each change is clearly identified as such, dated and initialled by the licensee.

3. A patient record may be prepared and maintained on a personal or other computer only when it meets the following criteria:

i. The patient record shall contain at least two forms of identification, for example, name and record number or any other specific identifying information;

ii. An entry in the patient record shall be made by the physician contemporaneously with the medical service and shall contain the date of service, date of entry, and full printed name of the treatment provider. The physician shall finalize or "sign" the entry by means of a confidential personal code ("CPC") and include date of the "signing";

iii. Alternatively, the physician may dictate a dated entry for later transcription. The transcription shall be dated and identified as "preliminary" until reviewed, finalized and dated by the responsible physician as provided in (b)3ii above;

iv. The system shall contain an internal permanently activated date and time recordation for all entries, and shall automatically prepare a back-up copy of the file;

v. The system shall be designed in such manner that, after "signing" by means of the CPC, the existing entry cannot be changed in any manner. Notwithstanding the permanent status of a prior entry, a new entry may be made at any time and may indicate correction to a prior entry;

vi. Where more than one licensee is authorized to make entries into the computer file of any professional treatment record, the physician responsible for the medical practice shall assure that each such person obtains a CPC and uses the file program in the same manner; *[and]*

vii. A copy of each day's entry, identified as preliminary or final as applicable, shall be made available promptly:

(1) To a physician responsible for the patient's care;

(2) To a representative of the Board of Medical Examiners, the Attorney General or the Division of Consumer Affairs as soon as practicable and no later than 10 days after notice; and

(3) To a patient as authorized by this rule within 30 days of request (or promptly in the event of emergency)*[.]***; and***

viii. A licensee wishing to continue a system of computerized patient records, which system does not meet the requirements of (b)3i through vii above, shall promptly initiate arrangements for modification of the system which must be completed by October 19, 1993. In the interim, the licensee shall assure that, on the date of the first treatment of each patient treated subsequent to October 19, 1992, the computer entry for that first visit shall be accompanied by a hard copy printout of the entire computer-recorded treatment record. The printout shall be dated and initialled by the attending licensee. Thereafter, a hard copy shall be prepared for each subsequent visit, continuing to the date of the changeover of computer program, with each page initialled by the treating licensee. The initial printout and the subsequent hard copies shall be retained as a permanent part of the patient record.

(c)-(h) (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Route U.S. 9 in Atlantic County
Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: August 17, 1992 at 24 N.J.R. 2806(a).
Adopted: September 18, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: September 18, 1992 as R.1992 d.408, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: October 19, 1992.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.41 Route U.S. 9

(a) The rate of speed designated the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. (No change.)

2. For both directions of traffic in Atlantic County:

i.-iv. (No change.)

v. In the City of Absecon:

(1)-(5) (No change.)

(6) Zone 17: 40 miles per hour between Route N.J. 157 and the City of Absecon-Township of Galloway line (approximate mileposts 43.77 to 44.14): thence

vi. In Galloway Township:

(1) Zone 18: 40 miles per hour between the City of Absecon-Township of Galloway line and East Brook Avenue-Old Shore Road (approximate mileposts 44.14 to 44.53); thence

(2) Zone 19: 45 miles per hour between East Brook Avenue-Old Shore Road and Boice Road (approximate mileposts 44.53 to 45.56); thence

(3) Zone 20: 50 miles per hour between Boice Road and 1,418 feet north of Chanese Lane (at stream) (approximate mileposts 45.56 to 46.18); thence

(4) Zone 21: 45 miles per hour between 1,418 feet north of Chanese Lane (at stream) and 620 feet north of Sommers Town Lane except for 35 miles per hour when passing through the Oceanville School zone (mileposts 46.23 to 46.51) while "35 m.p.h. when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 46.18 to 46.54); thence

(5) Zone 22: 40 miles per hour between 620 feet north of Sommers Town Lane and 1,225 feet north of Old Port Republic Road-Oyster Creek Road (Co. Rd. 618) (approximate mileposts 46.54 to 47.21); thence

(6) Zone 23: 50 miles per hour between Old Port Republic Road-Oyster Creek Road (Co. Rd. 618) and Smithville Boulevard (approximate mileposts 47.21 to 48.08); thence

(7) Zone 24: 45 miles per hour between Smithville Boulevard and Quail Hill Boulevard (approximate mileposts 48.08 to 48.30); thence

(8) Zone 25: 40 miles per hour between Quail Hill Boulevard and Old New York Road (Co. Rd. 610) (approximate mileposts 48.30 to 48.72); thence

(9) Zone 26: 45 miles per hour between Old York Road (Co. Rd. 610) and Smith Bowen Road (approximate mileposts 48.72 to 49.04); thence

(10) Zone 27: 50 miles per hour between Smith Bowen Road and the Township of Galloway-City of Port Republic line (approximate mileposts 49.04 to 51.34); thence

vii. In the City of Port Republic:

(1) Zone 28: 50 miles per hour between the Township of Galloway-City of Port Republic line and the Garden State Parkway Interchange No. 48 (approximate mileposts 51.34 to 52.36).

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes U.S. 1 in Middlesex and Mercer Counties; U.S. 1 and 9 in Middlesex, Union, Essex, Hudson and Bergen Counties; N.J. 3 in Passaic, Bergen and Hudson Counties; U.S. 9 in Atlantic County; U.S. 1 (Business) in Mercer County; and U.S. 1 and 9 (Truck) in Essex and Hudson Counties.

Adopted Amendments: N.J.A.C. 16:28A-1.1, 1.2, 1.3, 1.7, 1.97 and 1.106

Proposed: August 17, 1992 at 24 N.J.R. 2807(a).

Adopted: September 18, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: September 18, 1992 as R.1992 d.407, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-198.

Effective Date: October 19, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28A-1.1 Route U.S. 1

(a) The certain parts of State highway Route U.S. 1 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing in Mercer County:

i. Along both sides:

(1) In the City of Trenton, and the Townships of Lawrence and West Windsor:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other approved parking restrictions.

2. No stopping or standing in Middlesex County:

i. Along both sides:

(1) In the Townships of Plainsboro, South Brunswick, North Brunswick, Edison and Woodbridge:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other approved parking restrictions.

(b) The certain parts of State highway Route U.S. 1 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the northbound (easterly) side in Middlesex County:

i. In the Township of South Brunswick:

(1) Near side bus stop:

(A) Whispering Woods Boulevard (105 feet).

2. Along the southbound (westerly) side in Middlesex County:

i. In the Township of South Brunswick:

(1) Near side bus stop:

(A) Wynwood Drive (105 feet).

16:28A-1.2 Route U.S. 1 and 9

(a) The certain parts of State highway Route U.S. 1 and 9 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except as provided in N.J.S.A. 39:4-139. In

accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing in Middlesex County:

i. Along both sides:

(1) In Woodbridge Township:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other approved parking restrictions.

2. No stopping or standing in Union County:

i. Along both sides:

(1) In the City of Linden:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other approved parking restrictions.

3. No stopping or standing in Essex County:

i. Along both sides:

(1) In the City of Newark:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other approved parking restrictions.

4. No stopping or standing in Hudson County:

i. Along both sides:

(1) In the City of Jersey City and the Township of North Bergen:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions.

5. No stopping or standing in Bergen County:

i. Along both sides:

(1) In the Boroughs of Ridgefield and Palisades Park:

(A) For the entire length within the corporate limits, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions.

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

16:28A-1.3 Route 3

(a) The certain parts of State highway Route 3 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing in Passaic County:

i. Along both sides:

(1) In the City of Clifton:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions.

2. No stopping or standing in Bergen County:

i. Along both sides:

(1) In the Borough of East Rutherford:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions.

3. No stopping or standing in Hudson County:

i. Along both sides:

(1) In the Town of Secaucus and the Township of North Bergen:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions.

(b) The certain parts of State highway Route 3 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.-2. (No change.)

16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing along both sides for the entire length within the corporate limits of the following municipalities including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions.

i.-ii. (No change.)

iii. Marlboro Township, Monmouth County; and

iv. In the City of Northfield, Atlantic County.

2.-21. (No change.)

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

16:28A-1.97 Route U.S. 1 Business

(a) The certain parts of State highway Route U.S. 1 Business described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing in Mercer County:

i. Along both sides:

(1) In the City of Trenton and the Township of Lawrence:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions.

(b) (No change.)

16:28A-1.06 Truck Route U.S. 1 and 9

(a) The certain parts of State highway Truck Route U.S. 1 and 9, which runs from milepost 51 to milepost 54.5 (approximate 4.14 miles), below the Pulaski Skyway, which are described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing along both sides for the entire length within the corporate limits of the following municipalities including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions:

i. The Town of Kearny, Hudson County;

ii. The City of Jersey City, Hudson County; and

iii. The City of Newark, Essex County.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax Assessment and Reassessment

Adopted Amendment: N.J.A.C. 18:7-13.1

Proposed: November 4, 1991 at 23 N.J.R. 3275(a).

Adopted: September 17, 1992 by Leslie A. Thompson, Director, Division of Taxation.

Filed: September 17, 1992 as R.1992 d.404, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: October 19, 1992.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

Susan A. Feeney, on behalf of the Taxation Section of the New Jersey State Bar Association, and specifically the State Tax Procedure and

Agency Liaison Committee of the Taxation Section, submitted the following comments, the responses to which are set forth below:

COMMENTS: The writer suggested that the statutory standard for reviewing penalty and interest abatement requests under the corporation income tax and the corporation business tax is different from the standard expressed in N.J.A.C. 18:2-2.7 and that the Division did not have the statutory authority to use the procedures provided for in N.J.A.C. 18:2-2.7.

RESPONSE: Upon analyzing the statutory language as a whole, the Division concluded that it had discretion under use of the statutory term "may" to abate generally, but could do nothing in situations of fraud or evasion. If the Division were required to abate penalty and interest in any case other than fraud and evasion, then it is not clear why the statutes would refer to the State Tax Uniform Procedures Law under N.J.S.A. 54:10A-17(b) and 54:10E-14(b) which cover abatements in areas other than fraud or evasion. Also, where N.J.S.A. 54:10A-17(b) and 54:10A-19.1 and N.J.S.A. 54:10E-14(b) and 54:10E-19 are read together respectively, if the first sentence of N.J.S.A. 54:10A-17(b) and 54:10E-14(b) requires the Division to charge interest, and the last sentence of N.J.S.A. 54:10A-19.1(a) and 54:10E-19(a) requires the interest to be abated in all cases except for cases of fraud and evasion, the Division would be doing many administrative calculations for no purpose. Thus, the Division believes that its interpretation is supported by both logic and the statutory language read as a whole. A comment and response on this subject is also found at 23 N.J.R. 3342(c) at 3343, the fifth comment and response.

Full text of the adoption follows.

18:7-13.1 Assessment and reassessment

(a) On its return, the taxpayer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1.-3. (No change.)

4. For the procedure to request an abatement of penalty and interest and the criteria used by the Division in reviewing and making determinations on such requests, see N.J.A.C. 18:2-2.7.

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

(a)

DIVISION OF TAXATION

Transfer Inheritance and Estate Tax

Adopted Amendments: N.J.A.C. 18:26-3.2, 6.4 and 11.20

Adopted Repeals: N.J.A.C. 18:26-11.21 through 11.28

Proposed: July 20, 1992 at 24 N.J.R. 2533(a).

Adopted: September 15, 1992 by Leslie A. Thompson, Director, Division of Taxation.

Filed: September 16, 1992 as R.1992 d.402, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: October 19, 1992.

Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:

The Division received two comments on the proposal, one from the New Jersey Society of Certified Public Accountants and one from the New Jersey Safe Deposit Association. Both commenters supported the amendments.

Full text of the adoption follows.

18:26-3.2 Amount and nature of tax

(a) (No change.)

Example:

Mr. "A", a New Jersey resident, died on July 16, 1992, having a taxable estate of $700,000 for Federal estate tax purposes. The credit allowable for state taxes under the Federal estate tax law was $18,000, the amount actually paid to New Jersey for inheritance taxes was $6,000. The New Jersey estate tax due is $12,000.

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

18:26-6.4 Tenancy by the entirety

(a) The transfer of real property or personal property in this State held by a husband and wife as tenants by the entirety to the surviving spouse is not taxable for New Jersey inheritance tax purposes.

1. See N.J.S.A. 46:3-17.2, effective P.L. 1987, c.357.

18:26-11.20 Release of safe deposit box contents

No safe deposit company, trust company, bank or other institution may deliver or transfer any securities, deposits or other assets contained in a safe deposit box within its control or possession which belongs to or stands in the name of a resident decedent, principal of a one person corporation or in the joint names of a resident decedent and one or more other persons, unless a release is obtained from the Transfer Inheritance Tax Branch. A blanket release will be issued to safe deposit companies, trust companies, banks and other institutions which will allow for release of the contents of all safe deposit boxes without inspection by the Division.

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Official Zoning Map

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: July 6, 1992 at 24 N.J.R. 2346(a).

Adopted: September 23, 1992 by the Hackensack Meadowlands Commission, Anthony Scardino, Jr., Executive Director.

Filed: September 25, 1992 as R.1992 d.422, **with technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i), and N.J.A.C. 19:4-6.27.

Effective Date: October 19, 1992.

Expiration Date: May 26, 1993.

The adopted amendment to the Official Zoning Map of the Hackensack Meadowlands District consists of a change in the zoning designation of Block 286, Lots 5, 6A, 7 and 9 in Kearny from Highway Commercial and Right-of-Way (Lot 6A) to Heavy Industrial. While Lot 6A was described as Highway Commercial, it was actually zoned "Right-of-Way".

Summary of Hearing Officer's Report and Recommendations:

A public hearing was held on July 28, 1992 at the Commission's Offices in Lyndhurst, chaired by HMDC's Director of Solid Waste and Engineering, Thomas Marturano and Ileana Kafrouni, Acting Deputy Chief Engineer. The applicant appeared at the hearing. No members of the public attended. John Agnello, Esq. appeared on behalf of the applicant, Joseph Supor. In addition to the appearance by the applicants, testimony on behalf of the proposal was also offered by their employees and consultants, David Nolan, plant manager; Walter S. Koroluk, licensed real estate broker; and Susan Gruel, licensed professional planner. The applicant, Mr. Nolan, Mr. Koroluk and Ms. Gruel all supported the amendment as a more appropriate current use of the property. A copy of the transcript of the public hearing may be reviewed at or obtained from the HMDC, One DeKorte Park Plaza, Lyndhurst, New Jersey 07071.

The hearing officer did not make any recommendations.

Summary of Public Comment and Agency Responses:

The HMDC received one letter from Raymond J. Narwid, Construction Official of Kearny. Mr. Narwid stated that he was writing at the request of the Mayor of Kearny. He stated in the letter that the Town opposed the Heavy Industrial zoning designation, but would favor a Light Industrial and Distribution "A" or "B" (LIA or LIB) classification.

Through subsequent conversations with the Mayor and Construction Official, it was determined that they had two main concerns. Specifically, they were concerned with the fact that the Heavy Industrial zone allows "resource recovery systems" as a permitted use and that the zone does not prohibit outdoor storage of materials. This activity, outdoor storage

of materials, is specifically prohibited in the LIA and LIB zones which they had recommended.

At the Mayor's request, a presentation was made to the Mayor and Council during a regularly scheduled Council meeting. The specific questions raised by the Council as well as all of their concerns were answered and/or addressed. All of their questions dealt with the two areas of concern previously mentioned. Commission staff informed the Mayor and Council that siting solid waste uses is ultimately the responsibility of NJDEPE, regardless of zoning designation. With respect to the outdoor storage, staff explained HMDC policy of screening materials and operations as much as possible. As part of the presentation, staff also reviewed photographs of outdoor storage currently taking place in Kearny, both inside and outside of the Meadowlands District. At the end of the discussion, the Town of Kearny adopted a resolution supporting the proposed rezoning. No other comments were made to the Commission.

Summary of Changes between Proposal and Adoption:

The adopted amendment to the Official Zoning Map of the Hackensack Meadowlands District consists of a change in the zoning designation of Block 286, Lots 5, 6A, 7 and 9 in Kearny from Highway Commercial and Right-of-Way (Lot 6A) to Heavy Industrial. While Lot 6A was described as Highway Commerical, it was actually zoned "Right-of-Way".

Full text of the adoption follows (additions to proposal description are indicated in boldface with asterisks ***thus***; deletions from proposal description are indicated in brackets with asterisks *[thus]*).

19:4-6.28 Official Zoning Map

Change the zoning designation of Block 286, Lots 5, *[6A,]* 7 and 9, in the Town of Kearny, from Highway Commercial to Heavy Industrial***, and Block 286, Lot 6A, in the Town of Kearny, from Right of Way to Heavy Industrial***. *[An excerpt from the Official Zoning Map, highlighting the four lots affected, is reproduced below.]*

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Local Development Financing Fund

Adopted New Rules: N.J.A.C. 19:31-7

Proposed: July 20, 1992 at 24 N.J.R. 2534(a).
Adopted: September 1, 1992 by the New Jersey Economic Development Authority, Richard L. Timmons, Assistant Deputy Director.
Filed: September 22, 1992 as R.1992 d.421, **without change.**

Authority: N.J.S.A. 34:1B-1 et seq., especially 34:1B-36 et seq.

Effective Date: October 19, 1992.
Expiration Date: August 20, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: A comment was received from the Utility and Transportation Contractors Association of New Jersey, requesting that the agency include a requirement that projects involving construction of public facilities or infrastructure comply with Local Public Contracts Law.

RESPONSE: The Local Development Financing Fund was established in accordance with N.J.S.A. 34:1B-36 et seq., to provide long term fixed asset financing. Any highway utility and infrastructure work would represent an incidental project cost and would be undertaken by a private entity in connection with a commercial or industrial project. The N.J.E.D.A. is not a contracting unit, as the term is defined in N.J.S.A. 40A:11-2 of the Local Public Contracts Law; therefore, that law does not apply to the N.J.E.D.A. Further, provisions at N.J.S.A. 34:1B-43b(2) require that a project "has met, or is reasonably assured of meeting, the requirements of any pertinent law, ordinance and administrative regulation. . . ." Therefore the requested change has not been made.

Full text of the adoption follows.

SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

19:31-7.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement "The New Jersey Local Development Financing Fund Act" (P.L. 1983, ch. 190). This Act established the Local Development Financing Fund, a special depository fund for the purpose of providing financial assistance to certain commercial and industrial projects in certain municipalities who sponsor these projects.

19:31-7.2 Definitions

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

"Act" means the New Jersey Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

"Eligible project" means a project which has been approved by the Authority to receive financial assistance from the Local Development Financing Fund.

"Eligible project costs" means the costs of planning, developing, executing and making operative, an industrial or commercial redevelopment project. Eligible project costs include:

1. The cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;
2. The cost incurred for, or in connection with, or incidental to, acquiring and managing the land, property or interest;
3. The cost incurred for, or in connection with, the relocating and moving of persons displaced by acquisition;
4. The cost of development or redevelopment, including:
   i. The comprehensive renovation or rehabilitation of the land, property or interest;
   ii. The cost of equipment and fixtures which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project;
   iii. The cost of energy conservation improvements designed to encourage the efficient use of energy resources, including renewable and alternative energy resources and cogenerating facilities; and
   iv. The disposition of land or other property for these purposes;
5. The cost of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;
6. The cost of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project; and
7. The cost incurred or incidental cost including, but not limited to:
   i. Administrative, appraisal and economic analysis;
   ii. Engineering service;
   iii. Planning service;
   iv. Design service;
   v. Architectural service;
   vi. Surveying service; and
   vii. Other professional service.

"Financial assistance" means, but is not limited to, loans, loan guarantees, grants, secondary mortgages, and equity participation provided by the fund.

"Fund" means the Local Development Financing Fund.

"Municipality" means a New Jersey municipality qualifying for aid pursuant to the State formula for State aid to municipalities (see N.J.S.A. 52:27D-178) for services and to offset property taxes.

"Project" means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a local development corporation, community development corporation, municipal port authority, or governing body of a county, or, with the approval

of the government of a county, a county development corporation or other public entity designated by the Authority as a sponsor (see N.J.S.A. 40:68A-29).

19:31-7.3 Application for financial assistance

(a) Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of $500.00.

(b) Each application for financial assistance from the Fund shall be accompanied by evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

(c) Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the applicant. The benefit statement shall address:

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;

2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;

3. The increase in the valuation of real property in the municipality as a result of the completion of the project;

4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;

5. Whether the project will be located in an area targeted for economic development and receiving Federal State and/or local development assistance under other programs;

6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;

7. The extent to which the project will advance State and/or regional planning and development strategies; and

8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

(d) Each application for financial assistance from the Fund shall be accompanied by evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied by evidence of all requisite Federal and/or State environmental permits necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a plan for the utilization of minority and women contractors and equal opportunity for employment in connection with the project (see N.J.A.C. 19:31-7.6).

19:31-7.4 Financial assistance

(a) No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

(b) The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

(c) No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include, but are not limited to:

1. Conventional private sector mortgages;

2. Purchase money mortgages;

3. Industrial Revenue Bonds;

4. Leases;

5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and

6. Equity investments in the project.

(d) The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Authority (see N.J.A.C. 19:31-7.5(c)).

(e) The applicant shall secure interim financing on all projects involving construction, unless the Authority agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Authority.

(f) The applicant shall have such equity in the project as the Authority may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

(g) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the project would be economically unviable and unable to proceed.

(h) Assistance other than loans from the Fund may be approved where the Authority deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

19:31-7.5 Terms of financial assistance

(a) The minimum loan amount from the Fund shall be $50,000 and the maximum loan amount from the Fund shall be $2,000,000.

(b) The term of a loan from the Fund can be up to 25 years.

(c) The interest rate on a loan from the Fund will be the lower of one-half of the Federal Discount Rate at the time of approval or at the time of the loan closing, with a minimum of five percent.

19:31-7.6 Evaluation of applications

(a) The Authority shall evaluate and rank each application for financial assistance considering the following factors:

1. The number of unemployed persons in the municipality in which the project is located;

2. The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;

3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;

4. The increase in the valuation of real property in the municipality as a result of the completion of the project;

5. The percentage of the total eligible project costs to be financed from private and/or other public sources;

6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;

7. Whether the project will be located in an area targeted for economic development and/or will be receiving Federal, State and/or local development incentives under other programs;

8. The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;

9. The degree to which the project will facilitate the advancement of State or regional planning development strategies;

10. The extent to which the locations of the project are accessible to and/or promote the use of public transportation;

11. The degree of support for, participation in, and/or consultation about the project, within the community in which the project will be located;

12. The likelihood that the project will create and/or preserve private sector jobs, which will last for a period of at least two years; and

13. The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.

(b) After the evaluation and ranking is completed, the projects will be presented to the members of the Authority for their review and approval.

19:31-7.7 Minority and women business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Fund shall set a target level of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses and women businesses.

(b) The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate

in the project by construction trade, together with the contract sum to be paid to each minority business.

(c) In determining the target level and compliance therewith, a developer and/or general contractor must proceed in accordance with N.J.A.C. 12A:10-2.

19:31-7.8 Rescission of financial assistance from the Fund

(a) The Authority may at its discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

1. The commitment of other financial resources from private sources has been withdrawn;

2. The project is judged no longer capable of repaying the Fund for the financial assistance it has received;

3. The project is judged incapable of achieving its target requirement, pursuant to N.J.A.C. 19:31-7.7, or that the project is not employing good faith efforts to achieve the requirements under N.J.A.C. 19:31-7.7; or

4. The participants in the project are found not to be of a good moral character. Such a finding may be based on convictions of felony offenses or any other conduct of the applicant which may be viewed in a nonfavorable light by a reasonable person.

(b) Upon determination of the Authority that financial assistance from the Fund shall be rescinded, the Authority shall send a certified letter to the applicant and the sponsor informing them of the rescission.

(a)

CASINO CONTROL COMMISSION

General Provisions

Organization and Operation of the Commission

Adopted Amendment: N.J.A.C. 19:40-2.1

Adopted: September 16, 1992 by Casino Control Commission, Steven P. Perskie, Chairman.

Filed: September 18, 1992 as R.1992 d.410.

Authority: N.J.S.A. 5:12-69(a) and 52:14B-4(b).

Effective Date: September 18, 1992.

Expiration Date: August 24, 1994.

These proposed amendments are organizational and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and are effective upon filing.

Full text of the adoption follows: (deletions indicated in brackets [thus]).

19:40-2.1 Organization

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

(c) The Commission's staff shall be comprised of the divisions set forth below. Each division shall be organized into such operational units, and each unit shall have such assigned positions, as the Chair shall direct.

1.-4. (No change.)

5. The Office of the Commissioners shall consist of the General Counsel, the Public Information Officer, the Director of Governmental and Community Relations[, the Director of Organizational Development] and the Executive Secretary, together with the members of their respective staffs. The members of the office shall, together with the Chair and the directors of the several divisions, constitute the management team of the Commission, and shall execute general Commission policies as established by the Commissioners.

(b)

CASINO CONTROL COMMISSION

Organization and Operation of the Commission

Delegation of Authority

Adopted New Rule: N.J.A.C. 19:40-2.5

Proposed: July 6, 1992 at 24 N.J.R. 2348(a).

Adopted: September 16, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: September 18, 1992 as R.1992 d.409, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-54 and 69(a).

Effective Date: October 19, 1992.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement (Division) noted that the new rule does not provide for notice of the Commission's intention to proceed with any delegation of authority, other than that such action must occur at a public meeting and would be listed on that meeting's agenda. The Division commented that such notice "may not be sufficient for the Division to assess the proposed Commission action," and suggested a minimum of 10 days written notice of any proposed delegation to the Division and any affected party.

RESPONSE: Delegations of authority to the Commission staff have always been effected through the adoption of a formal resolution at a public meeting, with the public notice attendant to any such agenda item. Nonetheless, unlike decisions relating to petitions, applications and other types of contested matters heard by the Commission, the Commission certainly has the discretion to assign tasks to its own staff without prior input from the Division or any other party.

COMMENT: Proposed N.J.A.C. 19:40-2.5(d) provides that any determination by the staff pursuant to delegated authority will be presented to the full Commission upon written request by the Division, or any party adversely affected, if such request is received within three days of the staff action. The Division contends that this time frame is inadequate to "react to and submit a writing in opposition to a determination," and suggests a 10-day period for the filing of the request.

RESPONSE: The new rules recognize that an affected party should have recourse to review by the full Commission. However, the time allowed for filing such request should not be so lengthy as to hamper the agency's ability to respond to the regulated public in an efficient and expedient manner. Moreover, while a request for review must be filed within three days, the review by the full Commission at a regularly scheduled public meeting will allow all parties adequate time to prepare and present their arguments for the Commission's consideration.

Summary of Agency-Initiated Changes:

The Commission has determined that all delegations should be periodically reviewed by the full Commission, concurrent with each readoption of Chapter 40, to determine whether each delegation should be retained. N.J.A.C. 19:40-2.5(c) has been modified upon adoption to reflect this new procedure.

Full text of the adoption follows:

19:40-2.5 Delegation of Commission authority

(a) The Commission may, in its discretion and where permitted by law, delegate its authority to perform any of its functions under the Act or this title to a member or members of its staff. Except as provided in (d) below, such action shall for all purposes be deemed the final action of the Commission, without approval, ratification or other further action by the Commission.

(b) Any delegation of Commission authority shall be effected through the adoption of a formal resolution at a public meeting of the Commission. Such resolution shall specify the following, without limitation:

1. The specific authority delegated;

2. The member or members of the Commission's staff to whom such authority is delegated; and

3. Any limitations or conditions imposed on the authority delegated.

(c) All delegations of authority made pursuant to this section shall remain in effect indefinitely, unless otherwise specified in the implementing resolution. Any delegation of authority previously approved by the Commission may be revoked or modified by the Commission through the adoption of a subsequent formal resolution. ***All previous delegations of authority shall be reviewed by the full Commission, concurrent with each readoption of this chapter, to determine whether each delegation should be retained.***

(d) Any determination by the Commission staff pursuant to delegated authority shall be presented for review by the full Commission, upon timely request by the Division or any party adversely affected by such determination. Such request shall be in writing, and must be received by the Commission within three days after the date of such determination. No determination by the Commission staff pursuant to delegated authority shall be deemed final until all parties have been afforded an opportunity for review in accordance with this subsection.

(e) Notwithstanding any other provision of this section, any matter which has otherwise been delegated to the Commission staff may alternatively be presented to and determined by the full Commission on its own motion or at the discretion of the Chair, or upon the request of the Commission staff.

(f) The use of the term "Commission," "Chair," "Chairman," "Commissioner," or "member" in this title shall not be interpreted to preclude any delegation of authority to the Commission staff in accordance with this section.

(g) Whenever any provision of these regulations requires that a party provide notice to or file any application, petition or other submission with the Commission or Chair, the Commission shall provide written notice to such party, designating any member or members of its staff authorized to accept such notice or filings on behalf of the Commission or Chair.

(a)

CASINO CONTROL COMMISSION

Junkets; Applications; Casino Service Industries
Junket Representatives
Junket Enterprises
Fees
Agreements With Casino Licensees; Vendor Registration
Applications For Casino Service Industry Licensure
Readoption With Amendments: N.J.A.C. 19:49
Adopted Amendments: N.J.A.C. 19:41-9.9A, 9.11A, 11.1, 11.2, 11.3 and 11.4; 19:43-1.1, 1.2, 1.3, 1.4, 1.5, 1.8, 1.12, 1.13 and 1.14; and 19:49-2.1, 2.2, 3.1, 3.2 and 3.5
Adopted Repeals: N.J.A.C. 19:41-1.2 and 3.2 and 19:49-2.3

Proposed: August 3, 1992 at 24 N.J.R. 2695(b).
Adopted: September 16, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: September 18, 1992 as R.1992 d.412, **without change**.

Authority: N.J.S.A. 5:12-63, 69, 70, 92, 102 and 104.

Effective Dates: September 18, 1992, Readoption;
October 19, 1992, Amendments and Repeals.
Expiration Dates: September 18, 1997, N.J.A.C. 19:49;
May 12, 1993, N.J.A.C. 19:41;
April 27, 1994, N.J.A.C. 19:43.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement, Bally's Park Place, Inc. and GNOC Corp. expressed their general support for adoption of the proposal as published.

RESPONSE: Accepted.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:49.

Full text of the adopted amendments follows.

19:41-1.2 (Reserved)

19:41-3.2 (Reserved)

19:41-9.9A Junket enterprise license fees

(a) In accordance with subsection 102(c) of the Act, all qualifiers of junket enterprises shall meet the standards established for casino key employees in order for the junket enterprise to be licensed. Under subsection 94(d) of the Act, a junket enterprise license shall be issued for a three year period and shall be renewable for additional three year periods.

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

19:41-9.11A Junket representative license fees

(a) In accordance with subsection 102(b) of the Act, all junket representatives employed by a casino licensee shall meet the standards established for casino key employees, except for residency, in order to be licensed. Under subsection 94(d) of the Act, such a license shall be issued for a three year period and shall be renewable for additional three year periods.

(b) (No change.)

SUBCHAPTER 11. AGREEMENTS TO DO BUSINESS WITH CASINO LICENSEES

19:41-11.1 Presentation of the agreement

(a) Each casino licensee shall be required, upon directive of the Commission, to present to and file with the Commission a fully signed copy of every written agreement and a precise written description of every other agreement, including the terms thereof and the persons involved therein and associated therewith, regarding either:

1. The realty of its casino hotel facility; or
2. Any business or person doing business with or on the premises of its casino hotel facility.

(b) Each applicant for a casino license, upon directive of the Commission, shall be required to present to and file with the Commission every agreement described in (a)1 and 2 above not likely to have been fully and completely performed in all respects by all parties prior to the issuance to the applicant of a casino license.

(c) Except as otherwise provided in (d) below, each casino licensee or applicant for a casino license shall file with the Commission no later than 20 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. Notwithstanding the foregoing, an incomplete vendor registration form shall be considered timely filed by the licensee or applicant in accordance with this subsection if:

1.-2. (No change.)

(d) Each casino licensee or applicant for a casino license shall, prior to its participation in any junket which involves one or more junket enterprises, file with the Commission a junket enterprise vendor registration form for each junket enterprise involved in such junket which has not already had a junket enterprise vendor registration form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. This requirement shall apply regardless of whether such junket enterprise has had a vendor registration form filed with the Commission on its behalf pursuant to (c) above for an agreement unrelated to junkets. A junket enterprise vendor registration form shall be completed and certified by the junket enterprise in a form specified by the Commission and submitted to the casino licensees or applicant participating in the junket. The casino licensee or applicant shall be required to certify, to the best of its knowledge, as to the accuracy of the information provided by the junket enterprise. Notwithstanding the foregoing, an incomplete junket enterprise vendor registration form shall be considered timely filed by the casino licensee or applicant in accordance with this subsection if:

1. The incomplete junket enterprise vendor registration form is substantially complete except for minor errors or omissions and is filed prior to the arrival of the junket at the casino hotel; and

2. A revised junket enterprise vendor registration form, completed in accordance with a deficiency notice provided by the Commission, is filed within 10 days of service of notice or prior to the arrival of the junket, whichever is later.

(e) Any failure of a casino licensee or applicant for a casino license to seasonably file any information required by subsection 104b of the Act or the regulations of the Commission shall be the basis for the Commission to pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission.

(f) Each agreement with a casino licensee or applicant for a casino license governed by subsection 104(b) of the Act and this section, whether or not expressly included therein by the parties thereto, shall be deemed to include a provision for its termination without liability on the part of the casino licensee or applicant for a casino license, or on the part of any qualified party to the agreement or any related agreement the performance of which is dependent upon such agreement, if the Commission shall disapprove thereof in accordance with subsection 104b of the Act and the regulations of the Commission.

(g) (No change in text.)

(h) Except as otherwise provided in this section, no agreement with a casino licensee shall be either performed or in force or effect unless a written vendor registration form or junket enterprise vendor registration form describing the enterprise performing pursuant to such agreement is properly and seasonably filed with the Commission in accordance with subsection 104b of the Act and the regulations of the Commission.

19:41-11.2 Suitability of the agreement

(a) The Commission may review each agreement governed by N.J.A.C. 19:41-11.1 on the basis of the reasonableness of the terms of the agreement, including the terms of compensation, and on the further basis of the qualifications of the persons involved in and associated with the agreement in accordance with the standards enumerated in section 86 of the Act. The Commission may thereafter make a finding as to the suitability of the persons to be involved or associated with the casino licensee or applicant.

(b) Whenever, pursuant to subsection 92c of the Act and the regulations of the Commission, the Commission has exempted any person involved in or associated with an agreement governed by N.J.A.C. 19:41-11.1 from the casino service industry license requirement otherwise imposed by subsection 92(c), the Commission may in its discretion base its findings as to the suitability of the person to be involved or associated with the casino licensee or applicant upon the fact of such exemption.

(c) If the Commission shall disapprove of an agreement governed by N.J.A.C. 19:41-11.1 or any person associated therewith, the Commission may by directive require the termination of such agreement or association or pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission. If such disapproved agreement or association is not thereafter promptly terminated as required by Commission directive, the Commission may pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission.

19:41-11.3 Casino service industry license applications

(a) The Commission shall further review each agreement governed by N.J.A.C. 19:41-11.1 to determine whether any enterprise involved therein or associated therewith is a casino service industry enterprise required to be licensed by the Act and the regulations of the Commission.

(b) The Commission shall direct that a casino service industry license application be promptly filed by any enterprise involved in or associated with an agreement if the enterprise is providing or is likely to provide goods or services to, or is conducting or is likely to conduct business with, a casino licensee, its employees or agents which directly relates to casino or gaming activity, including, without limitation, a gaming school enterprise, a gaming equipment enterprise or a casino security service enterprise.

(c) The Commission shall determine each casino service industry license application filed pursuant to (b) above in accordance with the standards contained in subsections 92a and b of the Act and N.J.A.C. 19:43.

(d) The Commission shall direct that a casino service industry license application be promptly filed by any enterprise involved in or associated with an agreement if the enterprise is providing or is likely to provide goods or services to, or is conducting or is likely to conduct business, including junket business, with, a casino licensee, its employees or agents on a regular or continuing basis which:

1. Is not directly related to casino or gaming activity; and

2. Has not been exempted from the casino service industry license requirement in accordance with subsection 92c of the Act and the regulations of the Commission.

(e) The Commission shall determine each casino service industry license application filed pursuant to (d) above in accordance with the standards contained in subsections 92c and d of the Act and N.J.A.C. 19:43; provided, however, that junket enterprises shall also be subject to the standards contained in section 102 of the Act and N.J.A.C. 19:49.

(f) The Commission, upon directing that a casino service industry license application be filed by any enterprise pursuant to (b) or (d) above, may also then indicate to the enterprise the amount of license fee in accordance with the provisions of the Act and the regulations of the Commission.

(g) The Commission may, in its discretion, permit a casino service industry enterprise which has been directed to file a license application pursuant to (d) above to continue, for a reasonable time, to provide goods or services to or to conduct business with a casino licensee, its employees or agents. No casino licensee, or any employee or agent thereof, may purchase any goods or services from or engage in any business with an enterprise not holding a valid casino service industry license unless:

1. (No change.)

2. A vendor registration form or junket enterprise vendor registration form has been filed with the Commission by a casino licensee on behalf of the enterprise doing such business in accordance with the provisions of N.J.A.C. 19:41-11.1; and

3. Any required casino service industry or junket enterprise license application has been properly filed by the enterprise with, and is pending before, the Commission; provided, however, that any enterprise directed to file an application may, in the discretion of the Commission, be permitted a reasonable time to prepare and file the application.

(h) In exercising the discretion established by (g) above, the Commission shall consider any relevant evidence or comments provided to it by the Division.

(i) The Commission may expressly prohibit any unlicensed enterprise from providing goods or services to or conducting business with a casino licensee, its employees or agents on the basis that, after having been directed to file a casino service industry or junket enterprise license application, such enterprise failed to properly file such application within a reasonable time. Any unlicensed enterprise prohibited from providing goods or services or conducting business on the basis of its failure to properly file an application may resume providing goods or services or conducting business:

1. Thirty days following the proper filing of its casino service industry or junket enterprise license application and after the payment of an additional late filing license fee of $250.00; or

2. Immediately following a determination that the enterprise is not required to be licensed as a casino service industry or junket enterprise.

(j) No waiver of all or any portion of the 30-day period mandated by (i)l above shall be granted by the Commission on the ground of economic hardship or loss to the unlicensed casino service industry or junket enterprise in question.

(k) The application process for the approval of casino licensee agreements set forth in this subchapter shall not in any way limit the duty and obligation of any enterprise to, on its own initiative, apply for a casino service industry or junket enterprise license.

19:41-11.4 Competition within casino service industries

The Commission may further review each agreement governed by N.J.A.C. 19:41-11.1 to determine whether any action is desirable or necessary to regulate, control or prevent economic concentration in any casino service industry or to encourage or preserve competition in any casino service industry in accordance with N.J.S.A. 5:12-1b(12) and N.J.A.C. 19:43-1.6.

Editor's note: In addition to the text above, a sample application of a casino licensee for the approval of an agreement was adopted as a part of these rules but is not reproduced herein. Information on this form may be obtained from the Casino Control Commission, Arcade Building, Tennessee Avenue and Boardwalk, Atlantic City, NJ 08401.

19:43-1.1 Definitions

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

...

"Junket enterprise" is defined in N.J.S.A. 5:12-29.1 and N.J.A.C. 19:49-2.2.

...

19:43-1.2 License requirements

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

(c) No enterprise shall, on a regular or continuing basis, conduct business as a junket enterprise with a casino applicant or licensee, its employees or agents unless such enterprise is licensed in accordance with subsections 92c and d and section 102 of the Act or is authorized to do so pursuant to N.J.A.C. 19:41-11.3.

(d) In determining if a person or enterprise does or will, on a regular or continuing basis, conduct business as a junket enterprise or provide goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino applicants or licensees, their employees or agents, the following factors shall be considered:

1.-7. (No change.)

(e) Notwithstanding the provisions of (d) above, persons and enterprises which conduct business as a junket enterprise or provide, or imminently will provide, goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino applicants or licensees, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

1.-2. (No change.)

(f) (No change in text.)

(g) In determining whether a person or enterprise has exceeded or will exceed the dollar thresholds established in (e) above, all types of business, including junket business, transacted by that person or enterprise with casino applicants or licensees, their employees or agents shall be accumulated.

19:43-1.3 Standards for qualification

(a) The standards for qualification for a casino service industry or junket enterprise license are set forth below and in N.J.A.C. 19:43-1.5. Additional rules establishing standards for qualification for gaming schools are set forth in N.J.A.C. 19:44-3 and 19:44-4.

(b) Each applicant required to be licensed as a casino service industry in accordance with subsections 92a and b of the Act, except as otherwise required for gaming schools (see N.J.A.C. 19:44), shall, prior to the issuance of any casino service industry license, produce such information, documentation and assurances to establish by clear and convincing evidence:

1.-2. (No change.)

3. That the applicant, either directly or through its employees, has sufficient business ability and experience to establish, operate and maintain the enterprise with reasonable prospects for successful operation;

4.-6. (No change.)

(c) Each applicant required to be licensed as a casino service industry in accordance with subsections 92c and d of the Act or as a junket enterprise in accordance with section 102 of the Act shall, prior to the issuance of any casino service industry or junket enterprise license, produce such information, documentation, including, without limitation as to the generality of the foregoing, its financial books and records, and assurances to establish by clear and convincing evidence its good character, honesty and integrity.

1. Each applicant for a casino service industry license issued pursuant to subsections 92c and d of the Act shall also be required to establish the good character, honesty and integrity of each of the persons required to be qualified pursuant to the provisions of N.J.A.C. 19:43-1.14.

2. Each applicant for a junket enterprise license shall also be required to establish that such of its owners, management and supervisory personnel, junket representatives and other principal employees as the Commission may consider appropriate for qualification pursuant to N.J.A.C. 19:43-1.14 shall qualify under the standards, except for residency, established for the qualification of a casino key employee under N.J.S.A. 5:12-89.

(d) Any enterprise directed to file an application for a casino service industry license pursuant to subsections 92c and d of the Act, other than a junket enterprise, may request permission from the Commission to submit a modified form of such application. The Commission, in its discretion, may permit such modification if the enterprise can demonstrate to the Commission's satisfaction that securities issued by it are listed, or are approved for listing upon notice of issuance, on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers' Automated Quotation System (NASDAQ) National Market System.

(e) (No change.)

19:43-1.4 Persons required to be qualified

The general rules relating to the persons required to be qualified prior to the issuance of a casino service industry or junket enterprise license are set forth in N.J.A.C. 19:43-1.14. Additional rules relating to the persons required to be qualified prior to the issuance of a casino service industry license to a gaming school are set forth in N.J.A.C. 19:44-4.

19:43-1.5 Disqualification criteria

A casino service industry or junket enterprise license may be denied to any applicant who has failed to prove by clear and convincing evidence that the applicant or any of the persons required to be qualified, are in fact qualified in accordance with the Act and with the provisions of these rules and regulations, or who has violated any of the provisions of the Act or these rules and regulations or who is disqualified under any of the criteria set forth in section 86 of the Act.

19:43-1.8 Duration of licenses

(a) Licensure pursuant to N.J.S.A. 5:12-92a is granted for a term of one year for the initial license term and the first two successive renewals, and for a term of two years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. Licensure pursuant to N.J.S.A. 5:12-92c and 5:12-102 is granted for three years. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license. The application for renewal of a license need contain only that information which represents or reflects changes, deletions, additions or modifications to the information previously filed with the Commission.

(b) (No change.)

19:43-1.12 Fees

The general rules relating to the fees for the issuance and renewal of casino service industry and junket enterprise licenses are set forth in N.J.A.C. 19:41-9. Additional rules relating to fees for the issuance of a casino service industry license to a gaming school are set forth in N.J.A.C. 19:44.

19:43-1.13 Exemption

(a) The general rules relating to exemption of persons or fields of commerce from licensure as casino service industries are set forth in N.J.S.A. 5:12-92(c).

(b) The Commission may, upon the written request of any person, or upon its own initiative, exempt any person or field of commerce, other than a junket enterprise, from the casino service industry licensure requirements of sections 92c and d of the Act, pursuant to the standards contained in N.J.S.A. 5:12-92(c).

19:43-1.14 Casino service industry licenses

(a) No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have been established in accordance with all provisions including those cited, of the Act and of the rules of the Commission.

1. (No change.)

2. In the case of casino service industry or junket enterprise licenses issued in accordance with subsections 92c and d or section 102 of the Act:

i.-vii. (No change.)

viii. The management employee supervising the regional or local office which employs the sales representative or junket representative soliciting business or dealing directly with a casino licensee;

ix. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees and each junket representative who will deal directly with casino licensees or their employees;

x. (No change.)

(b) In addition to the persons required to qualify pursuant to (a) above, each applicant for a junket enterprise license may be required, upon directive from the Commission, to establish the qualifications of any junket representative employed by that junket enterprise, regardless of whether such junket representative deals directly with a casino licensee.

1. The Division may request the Commission to require a junket representative employed by a junket enterprise licensee or applicant to establish his or her qualifications at any time.

2. Any junket enterprise required to establish the qualifications of a junket representative pursuant to this subsection may be required, subject to the provisions of N.J.A.C. 19:41-8.6, to pursue a determination as to the qualifications of the junket representative regardless of whether the employment relationship with the junket representative has been terminated.

3. Any person required to establish his or her qualifications as a junket representative pursuant to this subsection may be required to pursue a determination as to his or her qualifications as a junket representative regardless of whether the employment relationship with the junket enterprise has been terminated.

19:49-2.1 Junket representatives

(a) (No change.)

(b) The fact that a person licensed as a casino key employee may, pursuant to N.J.S.A. 5:12-102 and (c)3 below, act as a junket representative while employed by a casino licensee without further endorsement of his or her license does not excuse the casino licensee or any other person from meeting any other licensing, registration or reporting obligation which may exist as a result of the conduct of the junket activity.

(c) Except as otherwise provided by N.J.S.A. 5:12-102o, no person shall act as a junket representative in connection with a junket to a licensed casino unless he or she:

1. Has been plenarily or temporarily licensed as a junket representative in accordance with the provisions of section 102 of the Act and is employed by a licensed casino; or

2. Has been licensed as a junket enterprise in accordance with the provisions of section 102 and subsection 92(c) of the Act, N.J.A.C. 19:43 and this chapter, or has been registered as a junket enterprise vendor in accordance with the provisions of N.J.A.C. 19:41-11 and this chapter; or

3. Is the holder of a current and valid casino key employee license, is currently employed by the casino licensee for whom such junket representative services are being rendered and is reported to the Division in accordance with the requirements of N.J.A.C. 19:49-3.6; or

4. Is employed as a junket representative by a junket enterprise which is licensed in accordance with the provisions of section 102 and subsection 92(c) of the Act, N.J.A.C. 19:43 and this chapter, or by a junket enterprise which is registered as a junket enterprise vendor in accordance with the provisions of N.J.A.C. 19:41-11 and this chapter.

(d) A junket representative may only be employed by one casino licensee or junket enterprise at a time. For the purposes of this section, to qualify as an employee of a casino licensee, a junket enterprise licensee or a junket enterprise vendor, a junket representative must:

1. Receive all compensation for his or her services as a junket representative through the payroll account of the employer; and

2. Exhibit all other appropriate indicia of genuine employment, including Federal and State taxation withholdings.

(e) No casino licensee or junket enterprise shall employ or otherwise engage the services of a junket representative except in accordance with the provisions of this section. A junket representative may begin employment with:

1. A casino licensee as soon as he or she is licensed by the Commission in accordance with (c) above; or

2. A junket enterprise as soon as the enterprise or the junket representative has completed and filed with the Commission all information required by the Act and the regulations of the Commission.

19:49-2.2 Junket enterprises

(a) A junket enterprise, as defined in the Act, is any person, other than the holder of or an applicant for a casino license, who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed casino, regardless of whether or not such activities occur within the State of New Jersey.

(b) A junket enterprise shall be registered as a junket enterprise vendor in accordance with the provisions of N.J.A.C. 19:41-11 and this chapter or licensed as a junket enterprise in accordance with the provisions of N.J.S.A. 5:12-92(c), 5:12-102 and N.J.A.C. 19:43 prior to a casino licensee permitting a junket involving that junket enterprise to arrive at its casino. A junket enterprise shall be considered "involved" in a junket to a licensed casino if it received any compensation whatsoever from any person as a result of the conduct of the junket. No casino licensee or junket enterprise may engage the services of any junket enterprise which has not been so registered or licensed.

19:49-2.3 (Reserved)

19:49-3.1 Junket schedules

(a) A junket schedule shall be prepared by a casino licensee for each junket which involves a junket enterprise.

(b) (No change.)

(c) Junket schedules shall be certified by an authorized agent of the casino licensee and shall include:

1.-4. (No change.)

5. The name of all junket representatives and the name and license or vendor registration number of all junket enterprises involved in the junket.

(d)-(e) (No change.)

19:49-3.2 Junket arrival reports

(a) An arrival report shall be prepared by a casino licensee for each junket which involves either:

1. (No change.)

2. An offer of complimentary services or items which have a value in excess of $200.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9; or

3. Complimentary guest room accommodations.

(b) Arrival reports shall be prepared and maintained by the casino licensee on the premises of its casino hotel in accordance with the following:

1. (No change.)

2. An arrival report on a junket required by (a)1 or 2 above shall be prepared by 5:00 P.M. of the next calendar business day following arrival. A junket arrival which occurs after 12:00 A.M. but before the end of the gaming day shall be deemed to have occurred on the preceding calendar day. For the purposes of this section, a business day shall be defined as any day except a Saturday, Sunday or State and Federal holiday.

(c) (No change.)

19:49-3.5 Purchases of patron lists

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

(d) If a list of names of junket patrons or potential junket patrons has been compiled in whole or in part by selecting the names included therein on a "basis related to their propensity to gamble," as the phrase is defined in N.J.A.C. 19:49-1.2, the seller of such list shall be appropriately licensed or registered in accordance with the provisions of N.J.S.A. 5:12-102, 5:12-92(c), N.J.A.C. 19:41-11, 19:43 and this chapter prior to engaging in such sale. No casino licensee or junket enterprise shall purchase a list of names compiled in such fashion unless the seller has been so licensed or registered.

(a)

CASINO CONTROL COMMISSION

Pai Gow Poker
Rules of the Games
Gaming Equipment
Accounting and Internal Controls
Gaming Schools

Adopted New Rules: N.J.A.C. 19:46-1.13B and 19:47-11

Adopted Amendments: N.J.A.C. 19:44-8.3; 19:45-1.11 and 1.12; 19:46-1.15, 1.16, 1.17, 1.18 and 1.19; and 19:47-8.2

Proposed: February 18, 1992 at 24 N.J.R. 569(a).

Adopted: September 16, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: September 18, 1992 as R.1992 d.406, **with substantive and technical changes, not requiring additional public notice and comment** (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-5, 69(a), 70(f), (j), 99 and 100(e).

Effective Date: October 19, 1992.

Expiration Date: September 29, 1993, N.J.A.C. 19:44;
March 24, 1993, N.J.A.C. 19:45;
April 28, 1993, N.J.A.C. 19:46;
April 28, 1993, N.J.A.C. 19:47.

Summary of Public Comment and Agency Responses:

Written comments were received from the following: Division of Gaming Enforcement (Division), Mr. Thomas Kracinovich, Mr. Robert McDermody, Trump Plaza Associates (Trump Plaza), Mr. Donald R. Harrigan, Boardwalk Regency Corporation, Adamar of New Jersey, Inc. (TropWorld), Resorts International Hotel, Inc. and Trump Taj Mahal Associates (Trump Taj).

COMMENT: The Division recommended that N.J.A.C. 19:46-1.15(b) be amended to permit the size of pai gow poker dice to be no smaller than .625 of an inch and no larger than .655 of an inch, since dice cannnot be manufactured to a size of .640 of an inch.

RESPONSE: Accepted. The Commission has adopted minor substantive changes to N.J.A.C. 19:46-1.15, which permit the dice to vary in size from .637 of an inch to .643 of an inch. The Commission does not think it necessary to expand the size range as far as that suggested by the Division.

COMMENT: Mr. Kracinovich commented that the Commission should permit the use of beveled edge dice because they are less likely to stack in the shaker.

RESPONSE: Rejected. Beveled edge dice cannot be inspected for tampering. Razor edge dice can.

COMMENT: The Division, Mr. Kracinovich, Mr. McDermody and Trump Plaza commented that N.J.A.C. 19:46-1.19(f) should be amended to eliminate the requirement that a sliding door or other device be attached to the face plate of the shoe to prevent players from viewing the next card to be dealt because it slows the game down; is not needed because cards are in the dealing shoe only for a short period of time; and elimination of the requirement does not affect game security.

RESPONSE: Rejected. The requirement that a device be connected to the face plate of the dealing shoe to conceal the card coming out of the shoe adds security to the game in case the card is marked.

COMMENT: Mr. Harrigan commented that N.J.A.C. 19:46-1.19(f) should be amended to either eliminate the reference to "sliding door" or to add a reference to "bristle face plate" because "sliding door" is, in his opinion, a reference to a particular type of shoe.

RESPONSE: Accepted. The Commission has made a minor substantive change to N.J.A.C. 19:46-1.19(f) which eliminated the specific reference and incorporated a generic one.

COMMENT: Boardwalk Regency Corporation commented that the definition of flush in N.J.A.C. 19:47-11.3(b)6 should be modified because not all flushes are identical in value.

RESPONSE: Accepted. A minor substantive change to N.J.A.C. 19:47-11.3(b)6 has been adopted.

COMMENT: TropWorld and Trump Taj commented that pai gow poker is a slow game and the dealer should be permitted to deal from the hand rather than from a dealing shoe.

RESPONSE: Rejected. The rules for pai gow poker and the terms of the pai gow poker experiment were developed in light of N.J.S.A. 5:12-100(m) which, until its recent amendment, prohibited a dealer from dealing cards from the hand.

COMMENT: The Division, Trump Taj and Resorts International Hotel, Inc. commented that the definitions and rules of the game, N.J.A.C. 19:47-11, should be amended to permit the dealing of seven "stacks" of seven cards each. Each stack would then be distributed to a player rather than dealing seven cards directly to each player position.

RESPONSE: Rejected. As indicated above, the rules for pai gow poker and the terms of the pai gow poker experiment were developed in light of N.J.S.A. 5:12-100(m), which, until its recent amendment, prohibited a dealer from dealing cards from the hand. In view of this statutory requirement, the dealing of "stacks" from a dealing shoe was extremely difficult, and in the Commission's opinion, had a negative impact on game security. In view of the recent statutory change which gives the Commission authority to permit dealing from the hand, the Commission would suggest that any casino licensee seeking to implement other pai gow poker dealing options file a petition requesting consideration of appropriate regulatory amendments.

COMMENT: Trump Taj commented that it is customary practice to allow up to three people to bet on one hand in pai gow poker and that the rules should be amended to permit such wagering.

RESPONSE: Rejected. Limiting the number of persons who can bet on a hand to the player who is seated and playing at the table provides game security. A casino licensee is not prohibited from opening additional pai gow poker tables if demand to wager on this game warrants.

COMMENT: Trump Plaza commented that the dealing procedures for the game should be revised so as to provide that the first four cards taken from the shoe are discarded.

RESPONSE: Rejected. During the test period a procedure whereby another cut card, inserted on top of the bottom four cards in the deck, was successfully utilized. This procedure satisfies the concerns raised by Trump Plaza and a minor substantive amendment has been made to N.J.A.C. 19:47-11.6 to incorporate this optional procedure.

COMMENT: Trump Plaza commented that patrons who improperly set their hands should be permitted to reset them the house way.

RESPONSE: Rejected. The rules governing this procedure reflect the traditional rules of the game for pai gow poker. Permitting the resetting of hands at this point causes game security concerns since some or all of the hands may have been exposed. Once hands have been exposed, the game security concerns outweigh the occasional foul hand that is lost by a patron for not properly setting his or her hands.

COMMENT: Trump Plaza commented that N.J.A.C. 19:47-11.11(j) should be clarified to explain that if a player acting as the bank improperly sets his or her hands, the hands will be reset the house way.

RESPONSE: Accepted. N.J.A.C. 19:47-11.11(i) provides that if the dealer does not properly set his or her hands, the hands must be reset in accordance with the casino licensee's approved games submission, N.J.A.C. 19:47-11.9, so that the round of play may be completed. When

banking procedures are in effect, the player-bank is performing the functions of the dealer, with the exception of dealing the cards and settling the wagers. To clarify that the same procedures apply to improperly set hands of the dealer or bank, a minor substantive change to N.J.A.C. 19:47-11.11(j) has been adopted.

COMMENT: Mr. Kracinovich commented that any improperly set hands of a player acting as a bank should be considered losing hands.

RESPONSE: Rejected. As indicated in the response to the previous comment, the dealer can reset the hands the house way.

COMMENT: TropWorld, Mr. Kracinovich and Mr. McDermody commented that the rules of the game should provide that an additional cut card may be used to mark the position to which the first card should be dealt.

RESPONSE: Accepted. Although the rules published for public comment did not preclude such use of an additional cut card, the Commission decided to adopt N.J.A.C. 19:47-11.8(c) with a minor substantive change that specifically states that an additional cut card or other object can be used to indicate where the first card should be dealt.

COMMENT: TropWorld, Trump Taj and Mr. Kracinovich commented that losing wagers should be placed in front of the dealer until all hands are settled.

RESPONSE: Rejected. For purposes of game security and revenue integrity, losing wagers should be placed immediately in the float and the Commission has adopted changes to N.J.A.C. 19:47-11.9(g) to clarify that this is the standard acceptable procedure required by the Commission for this game as well as all other games played in Atlantic City casinos.

COMMENT: Trump Taj commented that the rules should be amended to clarify that a four-of-a-kind could split into two pairs, one in the high hand and one in the low hand. N.J.A.C. 19:47-11.9(a).

RESPONSE: Accepted. Appropriate amendments to definitions contained in N.J.A.C. 19:47-11.1 have also been adopted in response to this comment.

COMMENT: Trump Taj commented that N.J.A.C. 19:47-11.10(g) should be amended to permit a patron to wager 10 percent more than the amount of his or her last wager.

RESPONSE: Rejected. The rules, as adopted, do not prohibit a casino licensee from accepting a wager that is 10 percent greater than the player's previous wager. However, a casino licensee must receive approval from the Commission through its games submission for such calculation and, once approved, must make such information readily available to the public.

COMMENT: Mr. Kracinovich and Mr. McDermody commented that a player should either lose his or her wager, if he or she purposely manipulates or drops cards, or the hand should be considered a "dead hand."

RESPONSE: Rejected. The rules provide that all players must be seated and must keep the cards on the table in view of the dealer at all times. Players who do otherwise should not be permitted to play the game.

COMMENT: Mr. Kracinovich commented that N.J.A.C. 19:47-11.9(e) should be amended to eliminate the words "after the hands of the dealer have been set," because a player should be permitted to surrender his or her hands at any time before the hands are exposed.

RESPONSE: Accepted. An appropriate change has been made to N.J.A.C. 19:47-11.9(e).

COMMENT: Mr. Kracinovich commented that alternate player/dealer banking should be permitted. Mr. McDermody commented that optional alternate player/dealer banking should be permitted.

RESPONSE: Rejected. The rules provide for the traditional dealing procedures used in the game of pai gow poker.

COMMENT: Mr. Kracinovich commented that, when cutting cards, the "cut card" should be moved along with all cards on top of it to the bottom of the pile for added game security, N.J.A.C. 19:47-11.6(d).

RESPONSE: Accepted. An appropriate change has been made to N.J.A.C. 19:47-11.6(d).

COMMENT: Mr. McDermody commented that a marker should be used to designate when co-banking is in effect.

RESPONSE: Accepted. Minor amendments have been made to N.J.A.C. 19:47-11.1 and 11.10 to address this comment.

COMMENT: Mr. McDermody commented that the bank should cut the cards when banking is in effect, and hands upon which no wager has been placed should be picked up first, not last.

RESPONSE: Accepted. N.J.A.C. 19:47-11.6 and 11.8, applicable to banking and co-bank situations pursuant to N.J.A.C. 19:47-11.10(a), already require these procedures and no further amendments are necessary.

COMMENT: Mr. McDermody commented that: (1) the size and color of cards used to play pai gow poker should be different from those used in blackjack or baccarat; (2) the rules should require that cards be changed every hour; and (3) the rules should require that cards should be spread and checked after misdeals.

RESPONSE: Rejected. The rules do not prohibit implementation of any of Mr. McDermody's suggestions. However, the Commission does not think that it is necessary to incorporate them in the rules. Rather, the Commission feels that implementation of any or all of these suggestions should be left to casino management's discretion.

COMMENT: Mr. McDermody commented that the shoe used for pai gow poker should be a two or four deck shoe, made of either an opaque or clear material.

RESPONSE: Rejected. The rules as adopted do not prohibit a casino licensee from using a two or four deck shoe, but leave this decision to management's discretion. N.J.A.C. 19:46-1.19 sets forth the design and construction standards for dealing shoes that may be used in Atlantic City casinos and this proposal did not address changes to the materials used to construct dealing shoes.

COMMENT: Mr. McDermody commented that the rules should be amended to provide that a player acting as the bank must cover any dealer's toke bets.

RESPONSE: Rejected. If a toke bet is placed as a wager by a patron it must be covered by the bank under the rules, as adopted. No further regulatory changes are required.

COMMENT: Mr. McDermody commented that when banking is in effect, the bank should place winning wager money on a designated area of the layout instead of keeping it in his or her own bank roll.

RESPONSE: Rejected. The Commission feels that further designations of areas on the layout and use of this procedure does not need to be part of its rules governing the game of pai gow poker.

Summary of Agency-Initiated Changes:

Minor technical changes to N.J.A.C. 19:45-1.12 were adopted to reflect changes made to this rule after the pai gow poker rule proposal was published.

Minor substantive changes were made to N.J.A.C. 19:46-1.13B and N.J.A.C. 19:47-11.1, which permit casino licensees to refer to the "low hand" as the "second highest hand."

Minor changes were made to N.J.A.C. 19:46-1.16(a) and 1.18(a) to clarify that if cards and dice are stored in the cashiers' cage they must be secured in a locked cabinet and that cards and dice stored in other primary or secondary storage areas are not subject to that requirement.

As noted by the Division in its comments on the pai gow proposal, the proposed changes to N.J.A.C. 19:46-1.16(d) would have required that all dice, including those that had not been inspected, be transported to the casino floor in transparent containers. Under current regulations, dice that have not been pre-inspected are delivered to the gaming tables in the manufacturer's foil wrapper. Changing this requirement would have led to confusion among dice that have not been inspected, pre-inspected dice and used dice. Since it was not the Commission's intent to change the requirements concerning dice distribution when it published this proposal the Commission did not adopt the proposed language. Minor changes were made to N.J.A.C. 19:46-1.16(e)2iv and v to make the dice inspection procedures for craps, sic bo and pai gow poker dice consistent.

Minor changes were made to N.J.A.C. 19:47-11.10(h) and (l) to correctly identify the shaker used in this game as the pai gow poker shaker, and a minor change was made to N.J.A.C. 19:47-11.10(o) to eliminate an inconsistency in the rules since the dealer may not have a wager against the co-bank.

A minor change to N.J.A.C. 19:47-11.11(e) was adopted to clarify the Commission's intent that this section also applies to the bank when banking is in effect.

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

(OFFICE OF ADMINISTRATIVE LAW NOTE: The text set forth below for N.J.A.C. 19:44-8.3, 19:45-1.11 and 1.12, 19:46-1.15 and 1.16, and 19:47-8.2 includes as current text the text of those rules as adopted elsewhere in this issued of the New Jersey Register, concerning pai gow.)

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer shall satisfy the following minimum requirements:

1. For a student being trained to deal a first game the following minimum hours of training and instruction shall be required:

i. 160 hours to deal blackjack;

ii. 208 hours to deal baccarat and minibaccarat;

iii. 200 hours to deal roulette;

iv. 240 hours to deal craps; *[and]*

v. 270 hours to deal pai gow; and

*[v.]**vi.* 180 hours to deal pai gow poker.

2. For a student being trained to deal a second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student certified to deal blackjack:

(1) 180 hours to deal craps;

(2) 120 hours to deal roulette;

(3) 85 hours to deal baccarat and minibaccarat; *[and]*

(4) 210 hours to deal pai gow; and

*[(4)]**(5)* 95 hours to deal pai gow poker.

ii. For a student certified to deal roulette:

(1) 180 hours to deal craps;

(2) 80 hours to deal blackjack;

(3) 88 hours to deal baccarat and minibaccarat; *[and]*

(4) 210 hours to deal pai gow; and

*[(4)]**(5)* 110 hours to deal pai gow poker.

iii. For a student certified to deal craps:

(1) 120 hours to deal roulette;

(2) 80 hours to deal blackjack;

(3) 88 hours to deal baccarat and minibaccarat; *[and]*

(4) 210 hours to deal pai gow; and

*[(4)]**(5)* 110 hours to deal pai gow poker.

iv. For a student certified to deal baccarat:

(1) 180 hours to deal craps;

(2) 120 hours to deal roulette;

(3) 80 hours to deal blackjack;

(4) 10 hours to deal minibaccarat; *[and]*

(5) 210 hours to deal pai gow; and

*[(5)]**(6)* 95 hours to deal pai gow poker.

3. For a student who has been certified to deal blackjack and baccarat, five hours shall be required to prepare him **or her** to deal minibaccarat.

(b) (No change.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department shall be responsible for the operation and conduct of the following games:

i.-vi. (No change.)

vii. Red dog;

viii. Sic bo; and

ix. Pai gow; and

*[ix.]**x.* Pai Gow Poker.

5.-9. (No change.)

(c)-(f) (No change.)

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, big six and pai gow poker table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be the second level supervisor assigned the responsibility for directly supervising the operation and conduct of a craps game, and the first level supervisor assigned the responsibility for directly supervising the operation and conduct of a baccarat, blackjack, roulette, sic bo, minibaccarat, red dog, pai gow, ***pai gow poker*** or big six game.

6. Pit boss shall be the third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a craps game and the second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a blackjack, roulette, minibaccarat, big six, sic bo, red dog, pai gow, ***pai gow poker*** or baccarat game.

7.-8. (No change.)

(c) Each casino licensee shall maintain the following standard levels of staffing:

1. (No change.)

2. One dealer shall be assigned to each baccarat, blackjack, roulette, minibaccarat, sic bo, red dog, pai gow, ***pai gow poker*** and big six table.

3.-4. (No change.)

5. One floorperson shall supervise:

i. (No change.)

ii. Not more than two craps tables ***or pai gow poker tables or a combination of one pai gow poker table and one other authorized gaming table excluding craps***; or

iii. (No change.)

6. (No change.)

(d)-(h) (No change.)

19:46-1.13B Pai gow poker table; pai gow poker shaker; physical characteristics

(a) Pai gow poker shall be played at a table having on one side places for the players and on the opposite side a place for the dealer. The cloth covering the pai gow poker table shall have imprinted thereon the name of the casino.

(b) Each pai gow poker layout shall be approved by the Commission and shall contain, at a minimum, the following:

1. Six separate designated betting areas for the players at the table with each area being numbered one through six;

2. Two separate areas located below each betting area which shall be designated for the placement of the high and ***second highest or*** low hands of that player; and

3. Two separate areas designated for the placement of the high and ***second highest or*** low hands of the dealer.

(c) Each pai gow poker table shall have a drop box and tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.

(d) Pai gow poker shall be played with a container, to be known as a "pai gow poker shaker," which shall be used to shake three dice before each hand of pai gow poker is dealt in order to determine the starting position for the dealing of the cards. The pai gow poker shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:

1. The pai gow poker shaker shall be capable of housing three dice and shall be designed so as to prevent the dice from being seen while the dealer is shaking it; and

2. The pai gow poker shaker shall have the name or identifying logo of the casino imprinted or impressed thereon.

19:46-1.15 Dice; physical characteristics

(a) Except as otherwise provided in (b) below, each die used in gaming shall:

1. (No change.)

[2. Be manufactured to an accuracy tolerance of no greater than .0002 of an inch;]

Recodify existing 3.-4. as ***2.-3.*** (No change in text.)

*[5.]***4.*** Have all edges and corners perfectly square and forming perfect 90 degree angles;

Recodify existing 6.-10. as ***5.-9.*** (No change in text.)

9. Have spots arranged so that the side containing one spot is directly opposite the side containing six spots, the side containing two spots is directly opposite the side containing five spots and the side containing three spots is directly opposite the side containing four spots; each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound which is equal in weight to the weight of the cellulose drilled out and which forms a permanent bond with the cellulose cube, and shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 of an inch; and

10. Have imprinted or impressed thereon the name of the casino in which the die is being used.

(b) (No change.)

*[(b)]***(c)*** Each die used in gaming at pai gow poker shall comply with the requirements of (a) above except as follows:

1. Each die shall be formed in the shape of a perfect cube *[which shall be .640 of an inch in size]* ***and of a size no smaller than .637 of an inch*** on each side ***nor any larger than .643 of an inch on each side***;

2. Instead of the name of the casino, a casino licensee may, with the approval of the Commission, have an identifying mark or logo imprinted or impressed on each die; and

3. The spots on each die do not have to be equal in diameter.

19:46-1.16 Dice; receipt; storage; inspections and removal from use

(a) When dice for use in the casino are received from the manufacturer or distributor thereof, they shall immediately following receipt be inspected by a member of the casino security department and a casino supervisor to assure that the seals on each box are intact, unbroken and free from tampering. Boxes that do not satisfy these criteria shall be inspected at this time to assure that the dice conform to Commission standards and are completely in a condition to assure fair play. Boxes satisfying these criteria, together with boxes having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet ***in the cashiers cage or*** within a primary or secondary storage area. Dice which are to be distributed to gaming pits or tables for use in gaming shall be *[placed in]* ***distributed from*** a ***locked*** cabinet in the cashiers' cage or *[in]* ***from*** another secure primary storage area in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus dice. Dice maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the dice have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b) All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organization hierarchy shall have access to the casino department key. Dice stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of each gaming day and at such other times as may be necessary, the assistant shift manager or casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of dice for that gaming day from a primary storage area.

(d) All envelopes and containers used to hold or transport ***preinspected*** dice ***to the casino floor and those collected by security*** shall be transparent.

1. The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering shall be evident.

2. The envelopes or containers and seals shall be approved by the Commission.

(e) All dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

1. Alternative No. 1: Distribution to and inspection at craps or sic bo tables:

i. The assistant shift manager or casino supervisor thereof and the casino security officer who removed the dice from the primary storage area shall distribute sufficient dice directly to the craps supervisor in each craps pit or to a pit boss in each sic bo pit or place them in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or a casino supervisor thereof;

ii. At the time of receipt, a box person at each craps table and the floorperson at each sic bo table shall, in the presence of the dealer, inspect the dice given to him or her with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept in a compartment at each craps table or pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play;

iii. (No change.)

iv. The pit boss shall place extra dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or a casino supervisor thereof. No dice taken from this reserve shall be used for actual gaming until and unless inspected in accordance with (e)1ii above.

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i. The assistant shift manager or casino supervisor thereof and the casino security officer who removed the dice from the primary storage area shall distribute the dice directly to the casino supervisor identified in (e)2ii below who will perform the inspection in each pit.

ii. The inspection of the dice at the pit stand shall be performed by:

(1) For craps, a craps supervisor, in the presence of another craps supervisor, neither of whom shall be a pit boss or a casino supervisor thereof;

(2) For sic bo, a pit boss, in the presence of a casino security officer; and

(3) (No change.)

*[(3)]***(4)*** For pai gow poker, a casino supervisor, in the presence of another casino supervisor, neither of whom shall be a pit boss.

iii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play. The inspection shall be performed on a flat surface which allows the dice inspection to be observed through closed circuit television cameras and by any persons in the immediate vicinity of the pit stand.

iv. After completion of the inspection, the dice shall be distributed as follows:

(1) For craps, the craps supervisor who inspected the dice shall ***, in the presence of the other casino supervisor who observed the inspection,*** distribute such dice to the boxperson at each craps table. The boxperson shall, in the presence of the dealer, place the dice in a cup on the table for use in gaming and while the dice are at the table they shall never be left unattended;

(2) For sic bo, the pit boss shall in the presence of the casino security officer who observed the inspection place three dice into the shaker and seal or lock the sic bo shaker. The pit boss shall then secure the sic bo shaker to the table in the presence of the casino security officer. No sic bo shaker that has been secured to a table shall remain there for more than 24 hours; and

(3) (No change.)

*[(3)]***(4)*** For pai gow poker, the casino supervisor who inspected the dice shall, in the presence of the other casino supervisor,

distribute such dice directly to the dealer at each pai gow poker table. The dealer shall immediately place the dice in the pai gow poker shaker.

v. The pit boss shall place extra sets of dice for dice reserve in the pit stand.

(1) Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or a casino supervisor thereof.

(2) All dice taken from the reserve shall be reinspected by a casino supervisor in the presence of another casino supervisor in accordance with the inspection procedures set forth in (e)2ii and iii above, prior to their use for actual gaming; provided, however, that if ***previously inspected*** reserve dice are maintained in a locked compartment under dual key control as approved by the Commission, the reserve dice may be used for gaming without being reinspected.

3. Alternative No. 3: Inspection in primary storage area and distribution to tables:

i. Inspection of dice in an approved primary storage area shall be performed by:

(1) For craps, a craps supervisor, in the presence of an assistant shift manager or casino supervisor thereof, and a casino security officer;

(2) For sic bo, an assistant shift manager or casino supervisor thereof, in the presence of a casino security officer; and

(3) (No change.)

*[(3)]****(4)*** For pai gow poker, a casino supervisor, in the presence of a casino security officer.

ii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play. These instruments shall be maintained in the storage area.

iii. After completion of the inspection, the person performing the inspection shall seal the dice as follows:

(1) For craps, after each set of at least five dice are inspected, they shall be placed in a sealed envelope or container; provided, however, that reserve dice may be placed in individual sealed envelopes or containers. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container;

(2) For sic bo, after each set of three dice are inspected, they shall be sealed or locked in a sic bo shaker. A seal that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall then be placed over the area that allows access to open the sic bo shaker.

(3) (No change.)

*[(3)]****(4)*** For pai gow poker, after each set of three dice are inspected, they shall be placed in a sealed envelope or container. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container.

iv. At the beginning of each gaming day and at such other times as may be necessary, an assistant shift manager or casino supervisor thereof and a casino security officer shall distribute the dice as follows:

(1) For craps, the sealed envelopes or containers of dice shall be distributed to a pit boss in each craps pit or placed in a locked compartment in the pit stand by the pit boss. When the sealed dice are distributed to the craps table, a boxperson, at each craps table, after assuring the seals are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in a cup on the table for use in gaming. While dice are on the table, they shall never be left unattended.

(2) For sic bo, the sealed sic bo shakers shall be distributed to the pit boss supervising the game of sic bo. The pit boss shall then secure the sic bo shaker to the table. No sic bo shaker shall remain on a table for more than 24 hours.

(3) (No change.)

*[(3)]****(4)*** For pai gow poker, the sealed envelope or container shall be distributed to a pit boss in each pai gow poker pit or placed in a locked compartment in the pit stand. When the sealed dice are distributed to the pai gow poker table by the pit boss, a floorperson, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in the pai gow poker shaker.

v. When the envelope or container or the seal is damaged, broken or shows indication of tampering, the dice shall not be used for gaming activity unless the dice are reinspected as follows:

(1) For craps and sic bo, in accordance with the procedures in (e)1 or (e)2 above.

(2) (No change.)

*[(2)]****(3)*** For pai gow poker, in accordance with the procedures in (e)2 above.

vi. The pit boss shall place extra sets of dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or casino supervisor thereof.

vii. A micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet shall also be maintained in a locked compartment in each pit stand.

viii. Any primary storage area in which dice are inspected in accordance with this alternative, shall be equipped with closed circuit television camera coverage capable of observing the entire inspection procedure.

(f) The casino licensee shall remove any dice at any time of the gaming day if there is any indication of tampering, flaws or other defects that might affect the integrity or fairness of the game, or at the request of the Commission or Division.

(g) At the end of each gaming day or at such other times as may be necessary, the casino supervisor identified in (g)1 below shall visually inspect each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to the Commission and the Division by completion and delivery of an approved three-part Dice Discrepancy Report.

1. The inspection required by this subsection shall be performed by:

i. For craps, a craps supervisor other than the one who originally inspected the dice;

ii. For sic bo, a sic bo pit boss other than the one who originally inspected the dice; or

iii. (No change.)

*[iii.]****iv.*** For pai gow poker, the floorperson assigned to the table.

2. Any dice showing evidence of tampering shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by:

(1) For craps, the boxperson and casino supervisor;

(2) For sic bo, the pit boss; or

(3) (No change.)

*[(3)]****(4)*** For pai gow poker, the dealer and casino supervisor.

ii. A casino supervisor or casino security officer responsible for delivering the dice to the Commission shall also sign the label.

iii. The Commission Inspector receiving the dice shall sign the original, duplicate and triplicate copy of the Dice Discrepancy Report and retain the original at the Commission Booth. The duplicate copy shall be delivered to the Division office located within the casino hotel facility and the triplicate copy shall be returned to the pit and maintained in a secure place within the pit until collection by a casino security officer.

3. All other dice shall be put into envelopes or containers at this time.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the appropriate persons identified in (g)2i above.

ii. The envelope or container shall be appropriately sealed and maintained in a secure place within the pit until collection by a casino security officer.

(h) All extra dice in dice reserve that are to be destroyed or cancelled shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(i) At the end of each gaming day or at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers of used dice and any dice in the dice reserve that are to be destroyed or cancelled and shall transport them to the casino security department for cancellation or destruction. The casino security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any. No dice that have been placed in a cup for use in gaming shall remain on a table for more than 24 hours.

(j) At the end of each gaming day or at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra dice in dice reserve.

1. If collected, dice shall be returned to the primary storage area; provided, however, that any dice which have not been inspected and sealed pursuant to the requirements in (e)3 (Alternative No. 3) above shall, prior to use for actual gaming, be inspected as follows:

*[1.]***i.*** For craps or sic bo, in accordance with the requirements in (e)1 or (e)2 above;

ii. (No change.)

*[2.]***iii.*** For pai gow poker, in accordance with the requirements in (e)2 above.

2. (No change.)

(k) The casino licensee shall submit to the Commission for approval procedures for:

1. (No change.)

2. A reconciliation on a daily basis of the dice distributed, the dice destroyed and cancelled, the dice returned to the primary storage area and, if any, the dice in dice reserve; and

3. A physical inventory of the dice at least every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of dice on hand required in (k)1i above.

ii. (No change.)

(l) All destruction and cancellation of dice, other than those retained for Commission or Division inspection, shall be completed within 48 hours of collection.

1.-2. (No change.)

3. The destruction and cancellation of dice shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat/minibaccarat, pai gow poker and red dog shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. Notwithstanding the foregoing, decks of cards used to play pai gow poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

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

(f) The design to be placed on the backs of cards used by a casino shall be submitted to the Commission for approval prior to use of such cards in gaming activity.

(g) (No change.)

(h) Nothing in this section shall prohibit a manufacturer from manufacturing decks of cards with one or more jokers contained therein; provided, however, such jokers shall not be used by the casino in the play of any games other than pai gow poker in accordance with the provisions of N.J.A.C. 19:47-11.

19:46-1.18 Cards; receipt, storage, inspections and removal from use

(a) When decks of cards are received for use in the casino from the manufacturer or distributor thereof, they shall be placed ***for*** storage ***in a locked cabinet in the cashiers' cage or within a primary or secondary storage*** area by at least two individuals, one of whom shall be from the casino department and the other from the casino security department. The ***cabinet or*** primary storage area shall be located in the cashiers' cage or in another secure place in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus cards. Cards maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the cards have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b) All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organizational hierarchy shall have access to the casino department key. Cards stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of each gaming day and at other times as may be necessary, the assistant shift manager or casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of decks of cards for that gaming day from a primary storage area.

(d) The assistant shift manager or casino supervisor thereof and the casino security officer who removed the decks shall distribute sufficient decks to the pit boss.

1. (No change.)

2. Cards in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or casino supervisor thereof.

(e) Prior to their use at a table, all decks shall be inspected by the dealer, and the inspection verified by a floorperson. Card inspection at the gaming table shall require each pack to be used to be sorted into sequence and into suit to assure that all cards are in the deck. The dealer shall also check the back of each card to assure that it is not flawed, scratched or marked in any way.

1. If, after checking the cards, the dealer finds that a card is unsuitable for use, a casino supervisor shall bring a substitute card from the card reserve in the pit stand.

2. The unsuitable card shall be placed in a sealed envelope or container, identified by table number, date, and time and shall be signed by the dealer and casino supervisor. The casino supervisor shall maintain the envelope or container in a secure place within the pit until collection by a casino security officer.

(f) All envelopes and containers used to hold or transport cards collected by security shall be transparent.

1. The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering shall be evident.

2. The envelopes or containers and seals shall be approved by the Commission.

(g) Any cards which have been opened and placed on a gaming table shall be changed at least every 24 hours. In addition:

1. Cards opened for use on a baccarat table shall be changed at least once during the gaming day; and

2. Cards opened for use on a pai gow poker table shall be changed at least every eight hours.

(h) Cards damaged during the course of play shall be replaced by the dealer who shall request a casino supervisor to bring cards in substitution from the pit stand.

1. (No change.)

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(i) At the end of each gaming day and at such other times as may be necessary, the casino supervisor shall collect all used cards.

1. These cards shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which shall identify the table number, date, and time and shall be signed by the dealer and casino supervisor.

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(j) The casino licensee shall remove any cards at any time during the day if there is any indication of tampering, flaws, scratches, marks or other defects that might affect the integrity or fairness of the game, or at the request of the Commission or Division.

(k) All extra decks in card reserve with broken seals shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(l) At the end of each gaming day or at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers with damaged cards, cards used during the gaming day, and all extra decks in card reserve with broken seals and shall return the envelopes or containers to the casino security department.

(m) At the end of each gaming day or at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra decks in card reserve. If collected, all sealed decks shall either be cancelled or destroyed or returned to the storage area.

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. For cards used in blackjack, baccarat or minibaccarat, the casino licensee shall cause to be inspected either:

i. All decks used during the day; or

ii. A sample of decks selected at random or in accordance with an approved stratification plan provided that the procedures for selecting the sample size and for assuring a proper selection of the sample are submitted to and approved by the Commission;

2. The casino licensee shall also inspect:

i. Any cards which the Commission or Division requests the casino licensee to remove for the purpose of inspection;

ii. Any cards the casino licensee removed for indication of tampering; and

iii. All cards used for pai gow poker;

3. The procedures for inspecting all decks required to be inspected under this subsection shall, at a minimum, include:

i. The sorting of cards sequentially by suit;

ii. The inspection of the backs with an ultra-violet light; and

iii. The inspection of the sides of the cards for crimps, bends, cuts and shaving.

4. The individuals performing said inspection shall complete a work order form which shall detail the procedures performed and list the tables from which the cards were removed and the results of the inspection. The individual shall sign the form upon completion of the inspection procedures.

5. The casino licensee shall submit the training procedures for those employees performing the inspection, which shall be approved by the Commission;

6. Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be immediately reported to the Commission and Division by the completion and delivery of a three-part Card Discrepancy Report.

i. The report shall accompany the cards when delivered to the Commission.

ii. The cards shall be retained for further inspection by the Commission.

iii. The Commission Inspector receiving the cards shall sign the original, duplicate and triplicate copy of the Card Discrepancy Report and retain the original at the Commission Booth. The duplicate copy shall be delivered to the Division office located within the casino hotel facility. The triplicate copy shall be retained by the casino licensee.

(o) The casino licensee shall submit to the Commission for approval procedures for:

1. A card inventory system which shall include, at a minimum, the recordation of the following:

i.-iv. (No change.)

v. The signatures of the individuals involved;

2. A reconciliation on a daily basis of the cards distributed, the cards destroyed and cancelled, the cards returned to the storage area and, if any, the cards in card reserve; and

3. A physical inventory of the cards at least once every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of cards on hand required in (o)1i above.

ii. Any discrepancies shall immediately be reported to the Commission and Division.

(p) Where cards in an envelope or container are inspected and found to be without any indication of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play, those cards shall within 48 hours of collection be destroyed or cancelled. Once released by the Commission and Division, the cards submitted as evidence shall immediately be destroyed or cancelled.

1.-2. (No change.)

3. The destruction and cancellation of cards shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission.

19:46-1.19 Dealing shoes

(a) (No change.)

(b) Cards used to game at blackjack, pai gow poker, minibaccarat, and red dog shall be dealt from a dealing shoe which shall be secured to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment during non-gaming hours.

(c) A device which automatically shuffles cards may be utilized at the game of blackjack, pai gow poker, minibaccarat and red dog in addition to or in place of a dealing shoe, provided that the device and the procedures for dealing and shuffling the cards through the use of the device are submitted to and approved by the Commission.

(d)-(e) (No change.)

(f) A pai gow poker dealing shoe, in addition to meeting the requirements of (d) above, shall also contain a *[sliding door or other]* device approved by the Commission on the front of the face plate so as to preclude the players from viewing the next card to be dealt.

(g) All dealing shoes and shuffling devices in the casino shall be inspected at the beginning of each gaming day by a floorperson assigned to the table prior to cards being placed in them. The purpose of this inspection shall be to assure that there has been no tampering with the shoe or shuffling device.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-9. (No change.)

*[9.]***10.*** Pai Gow Poker:

i. If the minimum wager at the table is $5.00 or less, the maximum wager shall be at least $100.00.

(c) (No change.)

SUBCHAPTER 11. PAI GOW POKER

19:47-11.1 Definitions

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

"Bank" shall mean the player who elects to have the other players and dealer play against him or her and accepts the responsibility to pay all winning wagers.

"Co-banking" is defined in N.J.A.C. 19:47-11.10.

"Copy hand" shall mean either a two card hand or a five card hand of a player which is identical in rank to the corresponding two card hand or five card hand of the dealer or bank.

"High hand" shall mean the five card hand which is formed from the seven cards dealt at the game of pai gow poker so as to rank ***equal to or*** higher than the two card low hand.

"Low hand" shall mean the two card hand which is formed from the seven cards dealt at the game of pai gow poker so as to rank lower than the five card high hand.

"Marker" shall mean an object or objects used to designate the bank and the co-bank, as approved by the Commission.

...

"Push" is a tie as defined in N.J.A.C. 19:47-11.9(h).

"Rank or ranking" shall mean the relative position of a card or group of cards as set forth in N.J.A.C. 19:47-11.3.

"Second highest or low hand" shall mean the two card hand which is formed from the seven cards dealt at the game of pai gow poker so as to rank ***equal to or*** lower than the five card high hand.

...

"Set or setting the hands" shall mean the process of forming a high hand and low hand from the seven cards dealt.

"Suit" shall mean one of the four categories of cards, that is, diamond, spade, club or heart.

19:47-11.2 Cards; number of decks; dealing shoe

(a) Pai gow poker shall be played with one deck of cards with backs of the same color and design and one additional solid yellow or green cutting card. The deck of cards used to play pai gow poker shall meet the requirements of N.J.A.C. 19:46-1.17 and shall include one joker. Nothing in this section shall prohibit a casino licensee from using decks which are manufactured with two jokers provided that only one joker is used for gaming at pai gow poker.

(b) All cards to be used in pai gow poker shall be dealt from a dealing shoe which shall meet the requirements of N.J.A.C. 19:46-1.19 and which shall be located on the table to the left of the dealer.

19:47-11.3 Pai gow poker rankings; cards; poker hands

(a) The rank of the cards used in pai gow poker, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, nine, eight, seven, six, five, four, three, and two. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or a "straight" formed with a two, three, four and five. Except as otherwise provided in (c) below, the joker shall be used and ranked as an ace.

(b) The permissible poker hands at the game of pai gow poker, in order of highest to lowest rank, shall be:

1. "Five aces" is a high hand consisting of four aces and a joker;
2. "Royal flush" is a high hand consisting of an ace, king, queen, jack and ten of the same suit;
3. "Straight flush" is a high hand consisting of five cards of the same suit in consecutive ranking, with ace, two, three, four, and five being the highest ranking straight flush; king, queen, jack, 10, and nine being the second highest ranking straight flush, and six, five, four, three and 2 being the lowest ranking straight flush;
4. "Four-of-a-kind" is a high hand consisting of four cards of the same rank regardless of suit, with four aces being the highest ranking four-of-a-kind and four twos being the lowest ranking four-of-a-kind;
5. "Full house" is a high hand consisting of a "three-of-a-kind" and a "pair," with three aces and two kings being the highest ranking full house and three twos and two threes being the lowest ranking full house;
6. "Flush" is a high hand consisting of five cards of the same suit*[, regardless of rank, with all flushes being of identical rank]***. When comparing two flushes the provisions of (e) below shall be applied***;
7. "Straight" is a high hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack and 10 being the highest ranking straight; an ace, two, three, four and five being the second highest ranking straight, and a six, five, four, three and two being the lowest ranking straight;
8. "Three-of-a-kind" is a high hand containing three cards of the same rank regardless of suit, with three aces being the highest ranking three-of-a-kind and three twos being the lowest ranking three-of-a-kind;
9. "Two pairs" is a high hand containing two "pairs," with two aces and two kings being the highest ranking two pair hand and two threes and two twos being the lowest ranking two pair hand; and
10. "Pair" is either a high hand or a low hand consisting of two cards of the same rank, regardless of suit, with two aces being the highest ranking pair and two twos being the lowest ranking pair.

(c) For purposes of setting the hands, a joker may be used as any card to complete a "straight," a "flush," a "straight flush" or a "royal flush."

(d) Notwithstanding the provisions of (b) above, a casino licensee may, in its discretion, determine that a straight flush formed with an ace, two, three, four and five of the same suit shall be the lowest ranking straight flush and that a straight formed with an ace, two, three, four and five, regardless of suit, shall be the lowest ranking straight. If a casino licensee chooses to exercise this option, it shall so indicate in its Rules of the Games Submission.

(e) When comparing two high hands or two low hands which are of identical poker and hand rank pursuant to the provisions of this section, or which contain none of the poker hands authorized herein, the hand which contains the highest ranking card as provided in (a) above which is not contained in the other hand shall be considered the higher ranking hand. If the two hands are of identical rank after the application of this subsection, the hands shall be considered a copy hand.

19:47-11.4 Dice; number of dice; pai gow poker shaker

(a) Pai gow poker shall be played with three dice which shall be maintained at all times inside a pai gow poker shaker. The dice used to play pai gow poker shall meet the requirements of N.J.A.C. 19:46-1.15 and the pai gow poker shaker shall meet the requirements of N.J.A.C. 19:46-1.13B.

(b) The pai gow poker shaker and the dice contained therein shall be the responsibility of the dealer and shall never be left unattended while at the table.

(c) No dice that have been placed in a pai gow poker shaker for use in gaming shall remain on a table for more than 24 hours.

19:47-11.5 Opening of the table for gaming

(a) After receiving one deck of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer shall sort and inspect the cards and the floorperson assigned to the table shall verify the inspection as required by N.J.A.C. 19:46-1.18. If the deck of cards used by the casino licensee contains two jokers, the dealer and a casino supervisor shall ensure that only one joker is utilized and that the other joker is torn in half and discarded.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out according to suit and in sequence and shall include one joker.

(c) After the first player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with N.J.A.C. 19:47-11.6.

(d) All cards opened for use on a pai gow poker table shall be changed at least every eight hours.

19:47-11.6 Shuffle and cut of the cards

(a) Immediately prior to commencement of play and after each round of play has been completed, the dealer shall shuffle the cards so that they are randomly intermixed.

(b) After the cards have been shuffled, the dealer shall offer the stack of cards to be cut, with the backs facing up and faces facing the layout, to the player determined pursuant to (c) below. If no player accepts the cut, the dealer shall cut the cards.

(c) The cut of the cards shall be offered to players in the following order:

1. The first player to the table, if the game is just beginning;
2. The player who accepts the bank pursuant to N.J.A.C. 19:47-11.10; provided, however, if the bank refuses the cut, the cards shall be offered to each player moving counterclockwise around the table from the bank until a player accepts the cut; or
3. The player at the farthest position to the right of the dealer, if there is no bank during a round of play; provided, however, if there are two or more consecutive rounds of play where there is no bank, the offer to cut the cards shall rotate in a counterclockwise manner after the player to the far right of the dealer has been offered the cut.

(d) The player or dealer making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted, the dealer shall take ***the cutting card and*** all the cards on top of the cutting card and place them on the bottom of the stack. *[The cutting card shall then be placed on the bottom of the stack and the]* ***A casino licensee may in its discretion insert an additional cutting card four cards from the bottom of the deck. The*** cards shall ***then*** be inserted into the dealing shoe for commencement of play.

(e) If there is no gaming activity at the pai gow poker table, the cards shall be removed from the dealing shoe and spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-11.5(c) shall be completed.

19:47-11.7 Wagers

(a) All wagers at pai gow poker shall be made by placing gaming chips or plaques on the appropriate betting area of the pai gow poker layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow poker.

(b) Only players who are seated at the pai gow poker table may place a wager at the game. Once a player has placed a wager and received cards, that player must remain seated until the completion of the round of play.

(c) All wagers at pai gow poker shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures set forth in N.J.A.C. 19:47-11.8. No wager at pai gow poker shall be made, increased or withdrawn after the dealer has announced "No more bets."

19:47-11.8 Procedures for dealing the cards

(a) Once the dealer has completed shuffling the cards and the cards have been placed in the shoe, the dealer shall announce "No more bets" prior to shaking the pai gow poker shaker. The dealer shall than shake the pai gow poker shaker at least three times so as to cause a random mixture of the dice.

(b) The dealer shall then remove the lid covering the pai gow poker shaker, total the dice and announce the total. The total of the dice shall determine which player receives the first card.

(c) To determine the starting position for dealing the cards, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one and continuing around the table with each betting position counted in order, regardless of whether there is a wager at the position, until the count matches the total of the three dice. ***A casino licensee may in its discretion mark the first position to which cards will be dealt by use of an additional cut card or similar object.*** Examples are as follows:

1. If the dice total eight, the dealer would receive the first card; or
2. If the dice total 14, the sixth wagering position would receive the first card.

(d) Each card shall be removed from the dealing shoe with the left hand of the dealer, and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (c) above and, moving clockwise around the table, deal all other positions including the dealer a card, regardless of whether there is a wager at the position. The dealer shall then return to the starting position and deal a second card in a clockwise rotation and shall continue dealing until each position including the dealer has seven cards.

(e) After seven cards have been dealt to each position and the dealer, the dealer shall ***remove the remaining cards from the shoe and determine that exactly four cards are left.***

1. If four cards remain, the four cards shall not be exposed to anyone and they shall be placed in the discard rack. The dealer shall then collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards.

2. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a player or the dealer has more or less than seven cards, all hands shall be void pursuant to N.J.A.C. 19:47-11.11. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18. *[then collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards. The dealer shall then remove the remaining cards from the shoe and determine that exactly four cards are left. The four cards shall not be exposed to anyone at the table and shall be placed in the discard rack. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a player or the dealer has more or less than seven cards, all hands shall be void pursuant to N.J.A.C. 19:47-11.11. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.]*

(f) Once seven cards have been dealt to each position and the dealer and any cards dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow poker shaker shall then be placed to the right of the dealer.

19:47-11.9 Procedures for completion of each round of play; setting of hands; payment and collection of wagers; payout odds; vigorish

(a) After the dealing of the cards has been completed, each player shall set his or her hands by arranging the cards into a high hand and low hand. When setting the two hands, the five card high hand must be ***equal to or*** higher in rank than the two card low hand. For example, if the two card hand contains a pair of sevens, the five card hand must contain at least a pair of *[eights]* ***sevens and the three remaining cards***.

(b) Each player at the table shall be responsible for setting his or her own hands and no other person except the dealer may touch the cards of that player. Each player shall be required to keep the seven cards in full view of the dealer at all times. Once each player has set a high and low hand and placed the two hands face down on the appropriate area of the layout, the player shall not touch the cards again.

(c) After all players have set their hands and placed the cards on the table, the seven cards of the dealer shall be turned over and the dealer shall set his or her hands by arranging the cards into a high and low hand. The dealer shall then place the two hands face up on the appropriate area of the layout.

(d) Each casino licensee shall submit to the Commission in its Rules of the Games Submission the manner in which it will require the hands of the dealer to be set.

(e) A player may ***announce that he or she wishes to*** surrender his or her wager *[after the hands of the dealer have been set. The player must announce his or her intention to surrender]* prior to the dealer exposing either of the two hands of that player pursuant to (f) below. Once the player has announced his or her intention to surrender, the dealer shall:

1. Immediately collect the wager from that player; and
2. Collect the seven cards dealt to that player without exposing the cards to anyone at the table. The dealer shall verify that seven cards were collected by counting them face down on the layout prior to placing them in the discard rack.

(f) Once the dealer has set a high and low hand, the dealer shall expose both hands of each player, starting from the right and

proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the dealer and shall announce if the wager of that player sall win, lose or be considered a tie ("push").

(g) All losing wagers shall be immediately collected by the dealer *[along with the cards of that player.]* ***and put in the table inventory container. All losing hands shall also be collected.*** A wager made by a player shall lose if:

1. The high hand of the player is lower in rank than the high hand of the dealer and the low hand of the player is lower in rank than the low hand of the dealer;

2. The high hand of the player is identical in rank to the high hand of the dealer or the low hand of the player is identical in rank to the low hand of the dealer (a "copy hand") and the other hand of the player is identical in rank or lower in rank than the other hand of the dealer;

3. The high hand of the player was not set so as to rank ***equal to or*** higher than the low hand of that player; or

4. The two hands of the player were not otherwise set correctly in accordance with the rules of the game (for example, a player forms a three card low hand and a four card high hand).

(h) If a wager is a push, the dealer shall not collect or pay the wager, but shall immediately collect the cards of that player. A wager made by a player shall be a push if:

1. The high hand of the player is higher in rank than the high hand of the dealer, but the low hand of the player is identical in rank to the low hand of the dealer (copy hand) or lower in rank than the low hand of the dealer; or

2. The high hand of the player is identical in rank to the high hand of the dealer (copy hand) or lower in rank than the high hand of the dealer, but the low hand of the player is higher in rank than the low hand of the dealer.

(i) All winning hands shall remain face up on the layout. Winning wagers shall be paid after all hands have been exposed. The dealer shall pay winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table. A wager made by a player shall win if the high hand of the player is higher in rank than the high hand of the dealer and the low hand of the player is higher in rank than the low hand of the dealer.

(j) A winning pai gow poker wager shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to 25 cents or the next highest multiple of 25 cents. A casino licensee shall collect the vigorish from a player at the time the winning payout is made. After a winning wager has been paid and the vigorish collected, the dealer shall then collect the cards from that player.

(k) All cards collected by the dealer shall be picked up in order and placed in the discard rack in such a way that they can be readily arranged to reconstruct each hand in case of a question or dispute.

19:47-11.10 Player bank; co-banking; selection of bank; procedures for dealing

(a) A casino licensee may, in its discretion, offer to all players at a pai gow poker table the opportunity to bank the game. If the casino licensee elects this option, all the other provisions of this subchapter shall apply except to the extent that they conflict with the provisions of this section, in which case the provisions of this section shall control for any round of play in which a player is the bank.

(b) A player may not be the bank at the start of the game. For the purposes of this section, the start of the game shall mean the first round of play after the dealer is required to shuffle the cards in accordance with the procedures set forth in N.J.A.C. 19:47-11.5(c).

(c) After the first round of play pursuant to (b) above, each player at the table shall have the option to either be the bank or pass the bank to the next player. The dealer shall, starting with the player farthest to the right of the dealer, offer the bank to each player in a counterclockwise rotation around the table until a player accepts the bank. The dealer shall place a marker ***designating the bank*** in front of the player who accepts the bank. If the first player offered the bank accepts, the player seated to the right of that player shall first be offered the bank on the next round of play. The initial offer to be the bank shall rotate counterclockwise around the table until it returns to the dealer. In no event may any player bank two consecutive rounds of play. If no player wishes to be the bank, the round of play shall proceed in accordance with the rules of play provided in this subchapter.

(d) Before a player may be permitted to bank a round of play, the dealer shall determine that:

1. The player placed a wager against the dealer during the last round of play in which there was no player banking the game; and

2. The player has sufficient gaming chips on the table to cover all of the wagers placed by other players at the table for that round of play.

(e) A casino licensee may, in its discretion, offer the bank the option of having the casino cover 50 percent of the wagers made during a round of play. If the casino licensee offers this option, it shall make it available to all players at the table. If the bank wishes to use this option, the bank must specifically request the dealer to accept responsibility for the payment of one-half of all winning wagers. When the bank covers 50 percent and the casino covers 50 percent of the winning wagers, it shall be known as "co-banking" ***and the dealer shall place a marker designating the co-bank in front of that player***. When the dealer is co-banking, the dealer shall be responsible for setting the hand of the bank in the manner submitted to the Commission pursuant to N.J.A.C. 19:47-11.9. When co-banking is in effect, the dealer may not place a wager against the bank.

(f) If a player is the bank, the player may only wager on one betting area.

(g) Once the dealer has determined that a player may be the bank pursuant to (d) above and after the cards have been shuffled, the dealer shall remove gaming chips from the table inventory container in an amount equal to the last wager made by that player against the dealer or in an amount, the calculation of which has been approved by the Commission. This amount shall be the amount the dealer wagers against the bank. The bank may direct that the sum wagered by the dealer be a lesser amount or that the dealer place no wager during that round of play. Any amount wagered by the dealer shall be placed in front of the table inventory container.

(h) Once the dealer has announced "No more bets," the bank shall shake the pai gow ***poker*** shaker. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow ***poker*** shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow ***poker*** shaker, the dealer shall remove the lid covering the pai gow ***poker*** shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow ***poker*** shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow ***poker*** shaker to be covered and reshaken by the bank.

(i) To determine the starting position for dealing the cards, the dealer shall count counterclockwise around the table, with the position of the banker considered number one and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice.

(j) Each card shall be removed from the dealing shoe with the left hand of the dealer, and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (i) above and, moving clockwise around the table, deal all other positions including the dealer a card, regardless of whether there is a wager at the position. The dealer shall then return to the starting position and deal a second card in a clockwise rotation and shall continue dealing until each position including the dealer has seven cards.

(k) After seven cards have been dealt to each position and the dealer, the dealer shall ***remove the remaining cards from the shoe and determine that exactly four cards are left.***

1. If four cards remain, the four cards shall not be exposed to anyone and shall be placed in the discard rack. The dealer shall then collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards.

2. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a player or the dealer has more or less than seven cards, all hands shall be void pursuant to N.J.A.C. 19:47-11.11. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18. *[collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards. The dealer shall then remove the remaining cards from the shoe and determine that exactly four cards are left. The four cards shall not be exposed to anyone at the table and shall be placed in the discard rack. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a player or the dealer has more or less than seven cards, all hands shall be void pursuant to N.J.A.C. 19:47-11.11. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.]*

(l) Once seven cards have been dealt to each position and the dealer and any cards dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow ***poker*** shaker shall then be placed to the right of the dealer.

(m) If the cards dealt to the dealer have not been previously collected, after each player has set his or her two hands and placed them on the appropriate area of the layout, the two hands of the dealer shall then be set. Once the dealer has formed a high and low hand, the dealer shall expose the hands of the bank and determine if the hands of the dealer are higher in rank than the hands of the bank. If the dealer wins, the cards of the dealer shall be stacked face up to the right of the table inventory container with the amount wagered by the dealer against the bank placed on top. If the dealer pushes, the dealer shall return the amount wagered by the dealer against the bank to the table inventory container. If the dealer loses, the amount wagered by the dealer against the bank shall be moved to the center of the layout.

(n) If banking is in effect, once the dealer has determined the outcome of the wager of the dealer against the bank, if any, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the bank, an amount equal to the remaining winning wagers and place that amount in the center of the layout. The remaining winning wagers shall be paid from the amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount shall be charged a five percent vigorish in accordance with N.J.A.C. 19:47-11.9. Once the vigorish has been paid, the remaining amount shall be given to the bank.

(o) If co-banking is in effect, once the dealer has set the co-bank hand pursuant to (e) above, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers*[, including the dealer's wager,]* shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the co-bank, an amount equal to one-half of the remaining winning wagers and place that amount in the center of the layout. The dealer shall remove an amount equal to one-half of the remaining winning wagers from the table inventory container and place that amount in the center of the layout. The remaining winning wagers shall be paid from the total amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount will be counted and the dealer shall place half of this amount into the table inventory container. The dealer shall collect a five percent vigorish in accordance with N.J.A.C. 19:47-11.9 on the remaining amount and place the vigorish amount in the table inventory container. The remaining amount shall then be given to the co-bank.

(p) Immediately after a winning wager of the dealer is paid, this amount and the original wager shall be returned to the table inventory container.

(q) Each player who has a winning wager against the bank shall pay a five percent vigorish on the amount won to the dealer, in accordance with N.J.A.C. 19:47-11.9.

19:47-11.11 Irregularities; invalid roll of the dice

(a) If the dealer uncovers the pai gow poker shaker and all three dice do not land flat on the bottom of the shaker, the dealer shall call a "No roll" and reshake the dice.

(b) If the dealer uncovers the pai gow poker shaker and a die or dice fall out of the shaker, the dealer shall call a "No roll" and reshake the dice.

(c) If the dealer incorrectly totals the dice and deals the first card to the wrong position, all hands shall be called dead and the dealer shall reshuffle the cards.

(d) If the dealer exposes any of the cards dealt to a player, the player has the option of voiding the hand. Without looking at the unexposed cards, the player shall make the decision either to play out the hand or to void the hand.

(e) If a card or cards in the hand of the dealer ***or bank*** is exposed, all hands shall be void and the cards shall be reshuffled.

(f) A card found turned face up in the shoe shall not be used in the game and shall be placed in the discard rack. If more than one card is found turned face up in the shoe, all hands shall be void and the cards shall be reshuffled.

(g) A card drawn in error without its face being exposed shall be used as though it was the next card from the shoe.

(h) If any player or the dealer is dealt an incorrect number of cards, all hands shall be void and the cards reshuffled.

(i) If the dealer does not set his or her hands in the manner submitted to the Commission pursuant to N.J.A.C. 19:47-11.9, the hands must be reset in accordance with this submission and the round of play completed.

(j) If the bank does not set his or her own hands correctly, the wager shall not be lost pursuant to N.J.A.C. 19:47-11.9, and the *[bank]* ***dealer*** shall be required to reset the ***bank's*** hands ***in the manner submitted to the Commission pursuant to N.J.A.C. 19:47-11.9*** so that the round of play may be completed.

19:47-11.12 Minimum and maximum wagers

(a) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each pai gow poker table.

(b) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each pai gow poker table.

19:47-11.13 A player wagering on more than one betting area

(a) Except as provided in N.J.A.C. 19:47-11.10(f), a casino licensee may, in its discretion, permit a player to wager on no more than two betting areas at a pai gow poker table, which areas must be adjacent to each other.

(b) If a casino licensee permits a player to wager on two adjacent betting areas, the cards dealt to each betting area shall be played separately. If the two wagers are not equal, the player shall be required to rank and set the hand with the larger wager before ranking and setting the other hand. If the amounts wagered are

equal, each hand shall be played separately in a counterclockwise rotation with the first hand being ranked and set before the player proceeds to rank and set the second hand. Once a hand has been ranked and set and placed face down on the appropriate area of the layout, the hand may not be changed.

(a)

CASINO CONTROL COMMISSION

Pai Gow
Rules of the Game
Gaming Equipment
Accounting and Internal Controls
Gaming Schools
Adopted New Rules: N.J.A.C. 19:46-1.13C, 1.19A and 1.19B; 19:47-10
Adopted Amendments: N.J.A.C. 19:44-8.3; 19:45-1.11 and 1.12; 19:46-1.15, 1.16 and 1.20; and 19:47-8.2

Proposed: February 18, 1992 at 24 N.J.R. 558(a).
Adopted: September 16, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: September 18, 1992 as R.1992 d.411, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-5, 69(a), 70(f), (j), 99 and 100(e).

Effective Date: October 19, 1992.
Expiration Dates: September 29, 1993, N.J.A.C. 19:44;
March 24, 1993, N.J.A.C. 19:45;
April 28, 1993, N.J.A.C. 19:46;
April 28, 1993, N.J.A.C. 19:47.

Summary of Public Comment and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division) and Trump Taj Mahal Associates (Trump Taj).

COMMENT: The Division commented that requiring one floorperson for each pai gow table may be too restrictive and that the appropriate staffing level was one floorperson for four pai gow tables.

RESPONSE: Rejected. Pai gow is an extremely complex Oriental game played with tiles. The tile rankings and game rules are quite different from the gaming equipment and rules used to play the traditional casino games of blackjack, craps and roulette. Further, experience with this game in casinos in other jurisdictions where it is played, has shown that cheating at the game is possible. In an effort to minimize cheating opportunities, the Commission thinks that it is necessary and appropriate to require that one floorperson supervise no more than one pai gow table. Since the game of pai gow has not yet been offered by any Atlantic City casino and the gaming regulators have no experience with this game, the Commission has adopted a requirement that one floorperson supervise one pai gow table for standard levels of staffing, N.J.A.C. 19:45-1.12(c).

COMMENT: The Division recommended that N.J.A.C. 19:46-1.15(b) be amended to permit the size of pai gow dice to be no smaller than .625 of an inch and no larger than .655 of an inch, since dice cannot be manufactured to a size of .640 of an inch.

RESPONSE: Accepted. The Commission has adopted minor substantive changes to N.J.A.C. 19:46-1.15 which permit the dice to vary in size from .637 of an inch to .643 of an inch. The Commission does not think it necessary to expand the size range as far as that suggested by the Division.

COMMENT: The Division commented that there was a technical error in N.J.A.C. 19:46-1.16(d) which changed the existing requirements for transportation of uninspected dice.

RESPONSE: Accepted. As noted by the Division, the proposed changes to N.J.A.C. 19:46-1.16(d) would have required that all dice, including those that had not been inspected, be transported to the casino floor in transparent containers. Under current regulations, dice that have not been pre-inspected are delivered to the gaming tables in the manufacturer's foil wrapper. Changing this requirement would have led to confusion among dice that have not been inspected, pre-inspected dice and used dice. Since it was not the Commission's intent to change the requirements concerning dice distribution when it published this proposal the Commission did not adopt the proposed language.

COMMENT: The Division commented that since there were no specific dimensions governing pai gow tiles, N.J.A.C. 19:46-1.19A(b)1, there can be no required tolerances or standard from which a deviation can be based.

RESPONSE: The Commission has addressed the size of pai gow tiles by requiring that all tiles be identical in size, N.J.A.C. 19:46-1.19A(a), and be no smaller than 2.5 inches in length, one inch in width and .375 of an inch in thickness, N.J.A.C. 19:46-1.19A(b)1. Because the Commission is trying to minimize the possibility that patrons may be able to distinguish one tile from another and cheat at the game, it is requiring that all tiles be the same size. As previously mentioned, the game of pai gow is not presently being offered by any Atlantic City casinos and the regulatory agencies have no experience with the game. The Commission is not convinced at this time that deviation standards or tolerances are necessary or appropriate.

COMMENT: The Division commented that it can not be assured of the consistency of any identifying markings on pai gow tiles, if the tiles are not presented to the Division for examination prior to approval. N.J.A.C. 19:46-1.19A(b)3.

RESPONSE: Accepted. As with dice and cards, a prototype of all tiles must be submitted to the Commission and Division for approval prior to use. Additionally, the Division can conduct field inspections of the tiles whenever it desires to assure that the tiles in use on a game are the same as the approved prototype.

COMMENT: Trump Taj commented that marking or engraving the tiles only makes it easier to cheat and that if markings are necessary they should only be visible under ultra-violet light.

RESPONSE: Rejected. The Commission is requiring that tiles be marked for added game security. Unmarked tiles could be easily introduced into, or removed from, a game without detection. Nothing in these rules precludes a casino licensee from having markings visible under ultra-violet light placed on its tiles, in addition to a visible marking, for additional game security.

COMMENT: The Division commented that washing tiles with the heels of the dealer's hands is impractical and that the regulations should be amended to provide that washing should be done in such a manner as to always move the tiles to the center of the table, N.J.A.C. 19:47-10.4(d).

RESPONSE: Rejected. Washing the tiles with the heels of the hands rather than fingertips and in the manner required by N.J.A.C. 19:47-10.4(d) provides better game security because it is more difficult to manipulate and track the location of specific tiles.

COMMENT: The Division commented that house rules should permit the splitting of the supreme pair, and that the regulations should not preclude it. N.J.A.C. 19:47-10.7(d)1.

RESPONSE: Accepted. N.J.A.C. 19:47-10.7(e) provides that with prior Commission approval a casino licensee may implement "house rules" for setting the dealer's hands which permit splitting the supreme pair.

COMMENT: The Division commented that a floorperson should determine whether a player can be the banker if there is any question.

RESPONSE: Rejected. As with any wager, it is the responsibility of the dealer to determine whether a player can be the bank. Disputes regarding the dealer's decisions will be handled by pit supervisors.

COMMENT: The Division commented that after calling the dice, the dealer should re-cover the shaker, shake it and return it to its proper location so that this procedure is consistent with the requirements applicable when the dealer is the bank. N.J.A.C. 19:47-10.8(i).

RESPONSE: Accepted. The procedures questioned by the Division are already applicable to situations where a player is banking pursuant to N.J.A.C. 19:47-10.6(f), which applies to such a situation through N.J.A.C. 19:47-10.8(a).

COMMENT: Trump Taj commented that the reference to "tiles" in N.J.A.C. 19:47-10.4(a)3 is inconsistent with the language used in N.J.A.C. 19:46-1.19B which refers to "set of tiles."

RESPONSE: Accepted. Minor changes have been incorporated in N.J.A.C. 19:47-10.4(a)3.

COMMENT: Trump Taj commented that variations in the methods of picking up stacks of tiles is desirable. In traditional pai gow games the dealer is permitted to pick up stacks of four to eight tiles at a time to eliminate tile tracking.

Trump Taj commented that the rules should be amended to provide for changes in the cut and movement of tiles. Specifically, Trump Taj

recommends that seven different cuts of tiles and variations thereof should be approved by the Commission through each casino licensee's games submission.

Trump Taj commented that the rules should be amended to provide that the delivery style chosen by the bank dictates how the tiles will be delivered. N.J.A.C. 19:47-10.8(j).

Trump Taj commented that the dealing procedures should be changed to provide that the dealer begin by exposing the hands of the player to the right of the banker, not the player to the farthest right of the dealer, to reflect the traditional Oriental dealing procedures. N.J.A.C. 19:47-10.8(n) and (o).

RESPONSE: Rejected. Trump Taj's comments may be valid, but until the Commission has experience with the game of pai gow, uniform dealing procedures will be required.

COMMENT: Trump Taj commented that it is customary practice to allow up to three people to bet on one hand in pai gow and that the rules should be amended to permit such wagering.

RESPONSE: Rejected. Limiting the number of persons who can bet on a hand to the player who is seated and playing at the table provides game security. Casino licensees are not prohibited from opening additional pai gow tables if demand to wager on this game warrants.

COMMENT: Trump Taj commented that the "dead hand," N.J.A.C. 19:46-1.13C and 19:47-10.6(c), should be eliminated because in Trump Taj's opinion requiring a "dead hand" in pai gow does not add to game security. Further, Trump Taj asserts that this procedure was tried in Nevada and that Oriental players would not participate in the game.

RESPONSE: Rejected. In the Commission's opinion, requiring a "dead hand" provides added game security. Further, eliminating four tiles from each round of play makes cheating less likely.

COMMENT: Trump Taj commented that losing wagers should be placed in front of the dealer until all hands are settled.

RESPONSE: Rejected. For purposes of game security and revenue integrity, losing wagers should be placed immediately in the float. The Commission has adopted minor changes to N.J.A.C. 19:47-10.7(h) to clarify that this is the standard acceptable procedure required by the Commission for this game as well as all other games played in Atlantic City casinos.

COMMENT: Trump Taj commented that N.J.A.C. 19:47-10.8(h) should be amended to permit a patron to wager 10 percent more than the amount of his or her last wager.

RESPONSE: Rejected. The rules, as adopted, do not prohibit a casino licensee from accepting a wager that is 10 percent greater than the player's previous wager. However, a casino licensee must receive approval from the Commission through its games submission for such calculation and, once approved, must make such information readily available to the public.

COMMENT: Trump Taj commented that N.J.A.C. 19:47-10.9(e) should be amended to provide that if the tiles of the bank are exposed the hand should be void.

RESPONSE: Accepted. When banking procedures are in effect, the player-bank is performing the functions of the dealer, with the exception of dealing the cards and settling the wagers. To clarify that the same procedures apply to exposed hands of either the dealer or bank, a minor substantive change to N.J.A.C. 19:47-10.9(e) has been adopted.

Summary of Agency-Initiated Changes:

Minor technical changes to N.J.A.C. 19:45-1.12 were adopted to reflect changes made to this rule after the pai gow proposal was published (see 24 N.J.R. 56(a) and 972(a)).

Minor changes were made to N.J.A.C. 19:46-1.16(a) to clarify that if dice are stored in the cashiers' cage they must be secured in a locked cabinet and that dice stored in other primary or secondary storage areas are not subject to that requirement. Changes to N.J.A.C. 19:46-1.16(e)2iv and v were adopted so that the dice inspection procedures for craps, sic bo and pai gow dice would be consistent.

The rules, as adopted, were amended to provide that a "marker" could be used to designate the bank and co-bank.

A minor substantive change was made to N.J.A.C. 19:47-10.1, which permits casino licensees to refer to the "low hand" as the "second highest hand."

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

(OFFICE OF ADMINISTRATIVE LAW NOTE: The text set forth below for N.J.A.C. 19:44-8.3, 19:45-1.11 and 1.12, 19:46-1.15 and 1.16, and 19:47-8.2 includes as current text the text of these rules as adopted elsewhere in this issue of the New Jersey Register, concerning pai gow poker.)

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer shall satisfy the following minimum requirements:

1. For a student being trained to deal a first game the following minimum hours of training and instruction shall be required:

i. 160 hours to deal blackjack;
ii 208 hours to deal baccarat and minibaccarat;
iii. 200 hours to deal roulette;
iv. 240 hours to deal craps; *[and]*
v. 270 hours to deal pai gow*[.]**; and***
vi. 180 hours to deal pai gow poker.

2. For a student being trained to deal a second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student certified to deal blackjack:
(1) 180 hours to deal craps;
(2) 120 hours to deal roulette;
(3) 85 hours to deal baccarat and minibaccarat; *[and]*
(4) 210 hours to deal pai gow*[.]**; and***
(5) 95 hours to deal pai gow poker.
ii. For a student certified to deal roulette:
(1) 180 hours to deal craps;
(2) 80 hours to deal blackjack*;*
(3) 88 hours to deal baccarat and minibaccarat; *[and]*
(4) 210 hours to deal pai gow*[.]**; and***
(5) 110 hours to deal pai gow poker.
iii. For a student certified to deal craps:
(1) 120 hours to deal roulette;
(2) 80 hours to deal blackjack;
(3) 88 hours to deal baccarat and minibaccarat; *[and]*
(4) 210 hours to deal pai gow*[.]**; and***
(5) 110 hours to deal pai gow poker.
iv. For a student certified to deal baccarat:
(1) 180 hours to deal craps;
(2) 120 hours to deal roulette;
(3) 80 hours to deal blackjack;
(4) 10 hours to deal minibaccarat; *[and]*
(5) 210 hours to deal pai gow*[.]**; and***
(6) 95 hours to deal pai gow poker.

3. For a student who has been certified to deal blackjack and baccarat, five hours shall be required to prepare him or her to deal minibaccarat.

(b) (No change.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department shall be responsible for the operation and conduct of the following games:

i.-vi. (No change.)
vii. Red dog;
viii. Sic bo; *[and]*
ix. Pai Gow*[.]**; and***
x. Pai gow poker.

5.-9. (No change.)

(c)-(f) (No change.)

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, big six and pai gow table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be the second level supervisor assigned the responsibility for directly supervising the operation and conduct of a craps game, and the first level supervisor assigned the responsibility for directly supervising the operation and conduct of a baccarat, blackjack, roulette, sic bo, minibaccarat, red dog**, pai gow,*** pai gow poker or big six game.

6. Pit boss shall be the third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a craps game and the second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a blackjack, roulette, minibaccarat, big six, sic bo, red dog **, pai gow,*** pai gow poker or baccarat game.

7.-8. (No change.)

(c) Each casino licensee shall maintain the following standard levels of staffing:

1. (No change.)

2. One dealer shall be assigned to each blackjack, roulette, minibaccarat, sic bo, red dog**, pai gow,*** pai gow poker and big six table.

3.-4. (No change.)

5. One floorperson shall supervise:

i.-ii. (No change.)

iii. Not more than one baccarat ***or pai gow*** table.

6. (No change.)

(d)-(h) (No change.)

19:46-1.13C Pai gow table; pai gow shaker; physical characteristics

(a) Pai gow shall be played at a table having on one side places for the players and on the opposite side a place for the dealer. The cloth covering the pai gow table shall have imprinted thereon the name of the casino.

(b) Each pai gow layout shall be approved by the Commission and shall contain, at a minimum, the following:

1. Six separate designated betting areas for the players at the table with each area being numbered one through six; and

2. A separate area, located to the left of the dealer, for the placement of four tiles which shall be referred to as the "dead hand."

(c) Each pai gow table shall have a drop box and tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.

(d) Pai gow shall be played with a container, to be known as a "pai gow shaker," which shall be used to shake three dice before each hand of pai gow is dealt in order to determine the starting position for the dealing of the pai gow tiles. The pai gow shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:

1. The pai gow shaker shall be capable of housing three dice and shall be designed so as to prevent the dice from being seen while the dealer is shaking it; and

2. The pai gow shaker shall have the name or identifying logo of the casino imprinted or impressed thereon.

19:46-1.15 Dice; physical characteristics

(a) Except as otherwise provided in (b) below, each die used in gaming shall:

1. (No change.)

[2. Be manufactured to an accuracy tolerance of no greater than .0002 of an inch;]

Recodify existing 3.-4. as ***2.-3.*** (No change in text.)

*[5.]****4.*** Have all edges and corners perfectly square and forming perfect 90 degree angles;

Recodify existing 6.-8. as ***5.-7.*** (No change in text from proposal.)

*[9.]****8.*** Have spots arranged so that the side containing one spot is directly opposite the side containing six spots, the side containing two spots is directly opposite the side containing five spots and the side containing three spots is directly opposite the side containing four spots; each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound which is equal in weight to the weight of the cellulose drilled out and which forms a permanent bond with the cellulose cube, and shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 of an inch; and

*[10.]****9.*** Have imprinted or impressed thereon the name of the casino in which the die is being used.

(b) Each die used in gaming at pai gow shall comply with the requirements of (a) above except as follows:

1. Each die shall be formed in the shape of a perfect cube *[which shall be .640 of an inch in size]* ***and of a size no smaller than .637 of an inch*** on each side ***nor any larger than .643 of an inch on each side***;

2. Instead of the name of the casino, a casino licensee may, with the approval of the Commission, have an identifying mark or logo imprinted or impressed on each die; and

3. The spots on each die do not have to be equal in diameter.

19:46-1.16 Dice; receipt; storage; inspections and removal from use

(a) When dice for use in the casino are received from the manufacturer or distributor thereof, they shall immediately following receipt be inspected by a member of the casino security department and a casino supervisor to assure that the seals on each box are intact, unbroken and free from tampering. Boxes that do not satisfy these criteria shall be inspected at this time to assure that the dice conform to Commission standards and are completely in a condition to assure fair play. Boxes satisfying these criteria, together with boxes having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet *[with]* ***in the cashiers' cage or within*** a primary or secondary storage area. Dice which are to be distributed to gaming pits or tables for use in gaming shall be *[placed in]* ***distributed from*** a ***locked*** cabinet in the cashiers' cage or *[in]* ***from*** another secure primary storage area in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus dice. Dice maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the dice have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b) All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organization hierarchy shall have access to the casino department key. Dice stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of each gaming day and at such other times as may be necessary, the assistant shift manager or casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of dice for that gaming day from a primary storage area.

(d) All envelopes and containers used to hold or transport ***preinspected*** dice ***to the casino floor and those collected by security*** shall be transparent.

1. The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering shall be evident.

2. The envelopes or containers and seals shall be approved by the Commission.

(e) All dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

1. Alternative No. 1: Distribution to and inspection at craps or sic bo tables:

i. The assistant shift manager or casino supervisor thereof and the casino security officer who removed the dice from the primary storage area shall distribute sufficient dice directly to the craps supervisor in each craps pit or to a pit boss in each sic bo pit or place them in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or a casino supervisor thereof;

ii. At the time of receipt, a box person at each craps table and the floorperson at each sic bo table shall, in the presence of the dealer, inspect the dice given to him or her with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept in a compartment at each craps table or pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play;

iii. (No change.)

iv. The pit boss shall place extra dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or a casino supervisor thereof. No dice taken from the reserve shall be used for actual gaming until and unless inspected in accordance with (e)1ii above.

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i. The assistant shift manager or casino supervisor thereof and the casino security officer who removed the dice from the primary storage area shall distribute the dice directly to the casino supervisor identified in (e)2ii below who will perform the inspection in each pit.

ii. The inspection of the dice at the pit stand shall be performed by:

(1) For craps, a craps supervisor, in the presence of another craps supervisor, neither of whom shall be a pit boss or a casino supervisor thereof;

(2) For sic bo, a pit boss, in the presence of a casino security officer; *[and]*

(3) For pai gow, a casino supervisor, in the presence of another casino supervisor, neither of whom shall be a pit boss*[.]**; and*

(4) (No change.)

iii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play. The inspection shall be performed on a flat surface which allows the dice inspection to be observed through closed circuit television cameras and by any persons in the immediate vicinity of the pit stand.

iv. After completion of the inspection, the dice shall be distributed as follows:

(1) For craps, the craps supervisor who inspected the dice shall ***, in the presence of the other casino supervisor who observed the inspection,*** distribute such dice to the boxperson at each craps table. The boxperson shall, in the presence of the dealer, place the dice in a cup on the table for use in gaming and while the dice are at the table they shall never be left unattended;

(2) For sic bo, the pit boss shall in the presence of the casino security officer who observed the inspection place three dice into the shaker and seal or lock the sic bo shaker. The pit boss shall then secure the sic bo shaker to the table in the presence of the casino security officer. No sic bo shaker that has been secured to a table shall remain there for more than 24 hours; *[and]*

(3) For pai gow, the casino supervisor who inspected the dice shall, in the presence of the other casino supervisor ***who observed the inspection***, distribute such dice directly to the dealer at each pai gow table. The dealer shall immediately place the dice in the pai gow shaker*[.]**; and*

(4) (No change.)

v. The pit boss shall place extra sets of dice for dice reserve in the pit stand.

(1) Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or a casino supervisor thereof.

(2) All dice taken from the reserve shall be reinspected by a casino supervisor in the presence of another casino supervisor in accordance with the inspection procedures set forth in (e)2ii and iii above, prior to their use for actual gaming; provided, however, that if ***previously inspected*** reserve dice are maintained in a locked compartment under dual key control as approved by the Commission, the reserve dice may be used for gaming without being reinspected.

3. Alternative No. 3: Inspection in primary storage area and distribution to tables:

i. Inspection of dice in an approved primary storage area shall be performed by:

(1) For craps, a craps supervisor, in the presence of an assistant shift manager or casino supervisor thereof, and a casino security officer;

(2) For sic bo, an assistant shift manager or casino supervisor thereof, in the presence of a casino security officer; *[and]*

(3) For pai gow, a casino supervisor, in the presence of a casino security officer*[.]**; and*

(4) (No change.)

ii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play. These instruments shall be maintained in the storage area.

iii. After completion of the inspection, the person performing the inspection shall seal the dice as follows:

(1) For craps, after each set of at least five dice are inspected, they shall be placed in a sealed envelope or container; provided, however, that reserve dice may be placed in individual sealed envelopes or containers. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container;

(2) For sic bo, after each set of three dice are inspected, they shall be sealed or locked in a sic bo shaker. A seal that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall then be placed over the area that allows access to open the sic bo shaker.

(3) For pai gow, after each set of three dice are inspected, they shall be placed in a sealed envelope or container. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container*[.]**; and*

(4) (No change.)

iv. At the beginning of each gaming day and at such other times as may be necessary, an assistant shift manager or casino supervisor thereof and a casino security officer shall distribute the dice as follows:

(1) For craps, the sealed envelopes or containers of dice shall be distributed to a pit boss in each craps pit or placed in a locked compartment in the pit stand by the pit boss. When the sealed dice are distributed to the craps table, a boxperson, at each craps table, after assuring the seals are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in a cup on the table for use in gaming. While dice are on the table, they shall never be left unattended.

(2) For sic bo, the sealed sic bo shakers shall be distributed to the pit boss supervising the game of sic bo. The pit boss shall then secure the sic bo shaker to the table. No sic bo shaker shall remain on a table for more than 24 hours.

(3) For pai gow, the sealed envelope or container shall be distributed to a pit boss in each pai gow pit or placed in a locked compartment in the pit stand. When the sealed dice are distributed to the pai gow table by the pit boss, a floorperson, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in the pai gow shaker.

(4) (No change.)

v. When the envelope or container or the seal is damaged, broken or shows indication of tampering, the dice shall not be used for gaming activity unless the dice are reinspected as follows:

(1) For craps and sic bo, in accordance with the procedures in (e)1 or (e)2 above; and

(2) For pai gow, in accordance with the procedures in (e)2 above*[.]**; and***

(3) (No change.)

vi. The pit boss shall place extra sets of dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or casino supervisor thereof.

vii. A micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet shall also be maintained in a locked compartment in each pit stand.

viii. Any primary storage area in which dice are inspected in accordance with this alternative, shall be equipped with closed circuit television camera coverage capable of observing the entire inspection procedure.

(f) The casino licensee shall remove any dice at any time of the gaming day if there is any indication of tampering, flaws or other defects that might affect the integrity or fairness of the game, or at the request of the Commission or Division.

(g) At the end of each gaming day or at such other times as may be necessary, the casino supervisor identified in (g)1 below shall visually inspect each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to the Commission and the Division by completion and delivery of an approved three-part Dice Discrepancy Report.

1. The inspection required by this subsection shall be performed by:

i. For craps, a craps supervisor other than the one who originally inspected the dice;

ii. For sic bo, a sic bo pit boss other than the one who originally inspected the dice; *[or]*

iii. For pai gow, the floorperson assigned to the table*[.]**; and***

iv. (No change.)

2. Any dice showing evidence of tampering shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by:

(1) For craps, the boxperson and casino supervisor;

(2) For sic bo, the pit boss; *[or]*

(3) For pai gow, the dealer and casino supervisor*[.]**; or***

(4) (No change.)

ii. A casino supervisor or casino security officer responsible for delivering the dice to the Commission shall also sign the label.

iii. The Commission Inspector receiving the dice shall sign the original, duplicate and triplicate copy of the Dice Discrepancy Report and retain the original at the Commision Booth. The duplicate copy shall be delivered to the Division office located within the casino hotel facility and the triplicate copy shall be returned to the pit and maintained in a secure place within the pit until collection by a casino security officer.

3. All other dice shall be put into envelopes or containers at this time.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the appropriate persons identified in (g)2i above.

ii. The envelope or container shall be appropriately sealed and maintained in a secure place within the pit until collection by a casino security officer.

(h) All extra dice in dice reserve that are to be destroyed or cancelled shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(i) At the end of each gaming day or at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers of used dice and any dice in dice reserve that are to be destroyed or cancelled and shall transport them to the casino security department for cancellation or destruction. The casino security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any. No dice that have been placed in a cup for use in gaming shall remain in a table for more than 24 hours.

(j) At the end of each gaming day or at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra dice in dice reserve.

1. If collected, dice shall be returned to the primary storage area; provided, however, that any dice which have not been inspected and sealed pursuant to the requirements in (e)3 (Alternative No. 3) above shall, prior to use for actual gaming, be inspected as follows:

*[1.]***i.*** For craps or sic bo, in accordance with the requirements in (e)1 or (e)2 above; *[or]*

*[2.]***ii.*** For pai gow, in accordance with the requirements in (e)2 above*[.]**; or***

iii. (No change.)

2. (No change.)

(k) The casino licensee shall submit to the Commission for approval procedures for:

1. (No change.)

2. A reconciliation on a daily basis of the dice distributed, the dice destroyed and cancelled, the dice returned to the primary storage area and, if any, the dice in dice reserve; and

3. A physical inventory of the dice at least every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of dice on hand required in (k)1i above.

ii. (No change.)

(l) All destruction and cancellation of dice, other than those retained for Commission or Division inspections, shall be completed within 48 hours of collection.

1.-2. (No change.)

3. The destruction and cancellation of dice shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commisison.

19:46-1.19A Pai gow tiles; physical characteristics

(a) Pai gow shall be played with a set of 32 rectangular blocks to be known as tiles. Each tile in a set shall be identical in size and shading to every other tile in the set.

(b) Each tile used in gaming at pai gow shall:

1. Be made of a non-transparent black material, formed in the shape of a rectangle, and be of a size no smaller than 2.500 inches in length, 1.000 inch in width and .375 of an inch in thickness;

2. Have the surface of each of its sides perfectly flat, except that the front side of each tile shall contain spots which shall extend into the tile exactly the same distance as every other spot;

3. Have on the back of each tile an identifying feature unique to each casino;

4. Have the texture and finish of each side, with the exception of the front side, exactly identical to the texture and finish of all other sides;

5. Have the back and sides of each tile within a set be identical and no tile within a set shall contain any marking, symbol or design that will enable a person to know the identity of any element on the front side of the tile or that will distinguish any tile from any other tile within a set; and

6. Have identifying spots on the front of the tiles which are either red or white or both.

(c) Each set of tiles shall be composed of 32 tiles as set forth in N.J.A.C. 19:47-10.2(g).

(d) Each set of tiles shall be packaged separately and completely sealed in such a manner so that any tampering shall be evident.

19:46-1.19B Pai gow tiles; receipt; storage; inspections and removal from use

(a) When sets of tiles to be used at pai gow are received from the manufacturer or distributor thereof, they shall immediately following receipt be inspected by a member of the casino security department and a casino supervisor to assure that the seals on each package are intact, unbroken and free from tampering. Packages that

do not satisfy these criteria shall be inspected at this time to assure that the tiles conform to Commission standards and there is no evidence of tampering. Packages satisfying these criteria, together with packages having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet within a primary or secondary storage area. Sets of tiles which are to be distributed to gaming pits or tables for use in gaming shall be placed in a cabinet in the cashiers' cage or in another secure primary storage area in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus tiles. Tiles maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the tiles have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b) All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organization hierarchy shall have access to the casino department key. Tiles stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of each gaming day and at such other times as may be necessary, the assistant shift manager or casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of sets of tiles for that gaming day from a primary storage area.

(d) All envelopes and containers used to hold or transport tiles shall be transparent.

1. The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering shall be evident.

2. The envelopes or containers and seals shall be approved by the Commission.

(e) The assistant shift manager or casino supervisor thereof shall distribute sufficient sets of tiles to the pit boss in each pai gow pit.

1. The pit boss shall then distribute the sets to the dealer at each table, and shall place extra sets in reserve at the pit stand.

2. Sets of tiles in reserve shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or casino supervisor thereof.

(f) If during the course of play any damaged tile is detected, the entire set of tiles shall be immediately replaced. The dealer or floorperson shall request that the pit boss bring a substitute set of tiles to the table from the reserve in the pit stand.

1. The set of damaged tiles shall be placed in a sealed envelope, identified by table number, date and time and shall be signed by the dealer and casino supervisor.

2. The pit boss shall maintain the envelope or container in a secure place within the pit until collection by a casino security officer.

(g) Tiles used at pai gow shall be changed at least every eight hours. The casino supervisor shall collect used tiles which shall be placed in a sealed envelope or container.

1. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the dealer and casino supervisor.

2. The pit boss shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(h) The casino licensee shall remove any tiles at any time of the gaming day if there is any indication of tampering, flaws, scratches, marks or other defects that might affect the integrity or fairness of the game, or at the request of the Commission or Division.

(i) All extra sets of tiles in reserve which have been opened shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(j) At the end of each gaming day or at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers with damaged tiles, tiles used during the gaming day, and all extra tiles in reserve which have been opened, and shall return the envelopes or containers to the casino security department.

(k) At the end of each gaming day or at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra sets of tiles in reserve which have not been opened. If collected, all unopened sets of tiles shall either be cancelled or destroyed or returned to the storage area.

(l) When the envelopes or containers of used tiles and reserve sets of tiles which have been opened are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional tiles or anything that might indicate unfair play.

1. The casino licensee shall cause to be inspected all sets of tiles used during the gaming day;

2. The procedures for inspecting all sets of tiles shall at least include the following:

i. The sorting of tiles by pairs;

ii. The visual inspection of the sides and back of each tile for tampering, markings or alterations; and

iii. The inspection of the sides and back of each tile with an ultraviolet light;

3. The individual performing the inspection required by (l)1 and 2 above shall complete a work order form which shall detail the procedures performed and list the tables from which the tiles were removed and the results of the inspection. The individual shall sign the form upon completion of the inspection procedures; and

4. Evidence of tampering, marks, alterations, missing or additional tiles or anything that might indicate unfair play discovered at this time, or at any other time, shall be immediately reported to the Commission and Division by the completion of a three-part report.

i. The report shall accompany the tiles when delivered to the Commission;

ii. The tiles shall be retained for further inspection by the Commission; and

iii. The Commission Inspector receiving the tiles shall sign the original, duplicate and triplicate report and shall retain the original at the Commission Booth. The duplicate copy shall be delivered to the Division office located within the casino hotel facility. The triplicate copy shall be retained by the casino licensee.

(m) If after completing the inspection procedures required in (l) above, it is determined that a complete set of 32 tiles removed from a gaming table is free from tampering, markings or alterations, that set may be returned to the pai gow storage area for subsequent gaming use in accordance with procedures approved by the Commission. In no event may individual tiles from different sets be used to make a complete set for subsequent gaming use.

(n) The casino licensee shall submit to the Commission for approval, procedures for:

1. An inventory system which shall include the recordation of at least the following:

i. The balance of sets of tiles on hand;

ii. The sets of tiles removed from storage;

iii. The sets of tiles returned to storage or received from the manufacturer;

iv. The date of the transaction; and

v. The signatures of the individuals involved.

2. A reconciliation on a daily basis of the sets of tiles distributed and the sets of tiles destroyed and cancelled, the sets of tiles returned to the storage area and, if any, the sets of tiles in tile reserve;

3. A physical inventory of the sets of tiles at least once every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of the sets of tiles on hand as required in (n)1i above.

ii. Any discrepancies shall immediately be reported to the Commission and Division.

(o) All destruction and cancellation of tiles other than those retained for Commission or Division inspection, shall be completed within 48 hours of collection. The method of destruction or cancella-

tion shall be approved by the Commission. The destruction and cancellation of tiles shall take place in a secure place, the location and physical characteristics of which shall also be approved by the Commission.

19:46-1.20 Approval of gaming equipment; retention by Commission and Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming equipment and other devices used in a casino as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices and data processing equipment.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards and pai gow tiles may be found at N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at the table games shall be as follows:

1.-8. (No change.)

9. Pai Gow:

i. If the minimum wager at the table is $5.00 or less, the maximum wager shall be at least $100.00.

(c) (No change.)

SUBCHAPTER 10. PAI GOW

19:47-10.1 Definitions

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

"Bank" shall mean the player who elects to have the other players and dealer play against him or her and accepts the responsibility to pay all winning wagers.

"Co-banking" is defined in N.J.A.C 19:47-10.8.

"Copy hand" shall mean either a high hand or low hand of a player which is identical in pair rank or point value and contains the same highest ranking tile as the corresponding high hand or low hand of the dealer or bank.

"Dead hand" is defined in N.J.A.C. 19:46-1.13C.

"Gongs" is defined in N.J.A.C. 19:47-10.2.

"High hand" shall mean the two tile hand formed with two of the four tiles dealt at the game of pai gow so as to rank higher than the hand formed from the remaining two tiles.

["Low hand" shall mean the two tile hand formed with two of the four tiles dealt at the game of pai gow so as to rank lower than the hand formed from the remaining two tiles.]

"Marker" shall mean an object or objects used to designate the bank and the co-bank, as approved by the Commission.

...

"Matched pairs" is defined in N.J.A.C. 19:47-10.2.

"Mixed or unmatched pairs" is defined in N.J.A.C. 19:47-10.2.

"Push" is a tie as defined in N.J.A.C. 19:47-10.7(h).

"Rank or ranking" shall mean the relative position of a pai gow hand as set forth in N.J.A.C. 19:47-10.2.

[Low] ***Second highest or low*** hand" shall mean the two tile hand formed with two of the four tiles dealt at the game of pai gow so as to rank lower than the hand formed from the remaining two tiles.

...

"Setting the hands" shall mean the process of forming a high hand and a low hand from the four dealt tiles.

"Supreme pair" shall mean the pair of tiles that form the highest ranking hand in the game of pai gow and shall be formed with the six (2-4) tile and the three (1-2) tile.

"Value" shall mean the numerical point value assigned to a pair of tiles in accordance with the provisions of N.J.A.C. 19:47-10.2.

"Washing" is defined in N.J.A.C. 19:47-10.4.

"Wongs" is defined in N.J.A.C. 19:47-10.2.

19:47-10.2 Pai gow tiles; ranking of hands, pairs and tiles; value of the hand

(a) Pai gow shall be played with one set of 32 tiles which shall meet the requirements of N.J.A.C. 19:46-1.19A.

(b) When comparing high hands or low hands to determine the higher ranking hand, the determination shall first be based upon the rank of any permissible pair of tiles which are contained in the hands. A hand with any permissible pair of tiles shall rank higher than a hand which does not contain any permissible pair. The permissible pairs of tiles in pai gow and their rank, with the "supreme pair" being the highest or "first" ranking pair, are as follows:

Ranking	Pairing
	Supreme Pair
First	Six (2-4) and Three (1-2)
	Matched Pairs
Second	Twelve (6-6) and Twelve (6-6)
Third	Two (1-1) and Two (1-1)
Fourth	Eight (4-4) and Eight (4-4)
Fifth	Four (1-3) and Four (1-3)
Sixth	Ten (5-5) and Ten (5-5)
Seventh	Six (3-3) and Six (3-3)
Eighth	Four (2-2) and Four (2-2)
Ninth	Eleven (5-6) and Eleven (5-6)
Tenth	Ten (4-6) and Ten (4-6)
Eleventh	Seven (1-6) and Seven (1-6)
Twelfth	Six (1-5) and Six (1-5)
	Mixed or Unmatched Pairs
Thirteenth	Mixed Nines (3-6 and 4-5)
Fourteenth	Mixed Eights (3-5 and 2-6)
Fifteenth	Mixed Sevens (3-4 and 2-5)
Sixteenth	Mixed Fives (1-4 and 2-3)
	Wongs
Seventeenth	Twelve (6-6) and Nine (4-5)
	Twelve (6-6) and Nine (3-6)
Eighteenth	Two (1-1) and Nine (4-5)
	Two (1-1) and Nine (3-6)
	Gongs
Nineteenth	Twelve (6-6) and Eight (2-6)
	Twelve (6-6) and Eight (3-5)
	Twelve (6-6) and Eight (4-4)
Twentieth	Two (1-1) and Eight (2-6)
	Two (1-1) and Eight (3-5)
	Two (1-1) and Eight (4-4)

(c) When comparing high hands or low hands which are of identical permissible pair rank, the dealer or, if applicable, the bank shall win that hand (copy hand).

(d) When comparing the rank of high hands or low hands which do not contain any of the pairs listed in (b) above, the higher ranking hand shall be determined on the basis of the "value" of the hands. The value of a hand shall be a single digit number from zero to

nine inclusive and shall be determined by adding the total number of spots which are contained on the two tiles which form the hand. If the numeric total of the spots is a two digit number, the left digit of such number shall be discarded and the right digit shall constitute the value of the hand. Examples of this rule are as follows:

1. A hand composed of a two (1-1) and a six (3-3) has a value of eight; and

2. A hand composed of an eleven (5-6) and a seven (1-6) has a numeric total of 18, but a value of only eight, since the left digit ("1") in the number 18 is discarded.

(e) Notwithstanding the provisions of (d) above, if the tiles which form the supreme pair are used separately, the numeric total of the three (1-2) may be counted as a six and the numeric total of the six (2-4) may be counted as a three. When the three (1-2) is counted as six, its individual ranking pursuant to (g) below shall be fifteenth instead of seventeenth and when the six (2-4) is counted as three its individual ranking shall be seventeenth instead of fifteenth.

(f) When comparing high hands or low hands which are of identical value, the hand with the highest ranking individual tile shall be considered the higher ranking hand.

(g) The individual ranking for each tile, with "first" representing the highest ranking, is as follows:

Ranking	Tile	Number of Tiles in Set
First	Twelve (6-6)	2
Second	Two (1-1)	2
Third	Eight (4-4)	2
Fourth	Four (1-3)	2
Fifth	Ten (5-5)	2
Sixth	Six (3-3)	2
Seventh	Four (2-2)	2
Eighth	Eleven (5-6)	2
Ninth	Ten (4-6)	2
Tenth	Seven (1-6)	2
Eleventh	Six (1-5)	2
Twelfth	Nine (3-6)	1
Twelfth	Nine (4-5)	1
Thirteenth	Eight (2-6)	1
Thirteenth	Eight (3-5)	1
Fourteenth	Seven (2-5)	1
Fourteenth	Seven (3-4)	1
Fifteenth	Six (2-4)	1
Sixteenth	Five (1-4)	1
Sixteenth	Five (2-3)	1
Seventeenth	Three (1-2)	1

(h) If the highest ranking tile in each hand being compared is of identical rank after the application of (f) above, the hand shall be considered a copy hand, and the hand of the dealer or bank, as applicable, shall be considered the high ranking hand.

19:47-10.3 Dice; number of dice; pai gow shaker

(a) Pai gow shall be played with three dice which shall be maintained at all times inside a pai gow shaker while at the table. The dice used to play pai gow shall meet the requirements of N.J.A.C. 19:46-1.15 and the pai gow shaker shall meet the requirements of N.J.A.C. 19:46-1.13B.

(b) The pai gow shaker and the dice contained therein shall be the responsibility of the dealer and shall never be left unattended while at the table.

(c) No dice that have been placed in a pai gow shaker for use in gaming shall remain on a table for more than 24 hours.

19:47-10.4 Opening of the table for gaming; shuffling procedures

(a) After receiving one set of tiles at the table in accordance with N.J.A.C. 19:46-1.19B, the dealer shall sort and inspect the tiles and the floorperson assigned to the table shall verify the inspection. Nothing in this section shall preclude a casino licensee from cleaning the tiles prior to the inspection required herein. The inspection of tiles at the gaming table shall require the following:

1. Each set shall be sorted into pairs in order to assure that the supreme pair and all 15 matched and unmatched pairs as identified in N.J.A.C. 19:47-10.2(b) are in the set.

2. Each tile shall be placed side by side in order to determine that all tiles are the same size and shading.

3. The back and sides of each tile shall be examined to assure that it is not flawed, scratched or marked in any way.

i. If, after checking the tiles, the dealer finds that certain tiles are unsuitable for use, a casino supervisor shall bring ***a*** substitute ***set of*** tiles to the table from the reserve in the pit stand.

ii. The unsuitable ***set of*** tiles shall be placed in a sealed envelope or container, identified by table number, date and time and shall be signed by the dealer and casino supervisor.

(b) Following the inspection of the tiles and the verification by the floorperson assigned to the table, the tiles shall be turned face up, then placed into 16 pairs and arranged according to rank starting with the supreme pair. The tiles shall be left in pairs for visual inspection by the first player to arrive at the table.

(c) After the first player is afforded an opportunity to visually inspect the tiles, the tiles shall be turned face downward on the table, mixed thoroughly by a "washing" of the tiles and stacked.

(d) The "washing" of the tiles shall be performed by the dealer and be known as the shuffle and shall be performed with the heels of the palms of the hands. The dealer shall shuffle the tiles in a circular motion with one hand moving clockwise and the other hand counterclockwise. Each hand shall complete at least eight circular motions in order to provide a random shuffle. The dealer shall then randomly pick up four tiles with each hand and place them side by side in stacks in front of the table inventory container, forming eight stacks of four tiles.

(e) If during the stacking process described in (d) above, a tile is turned over and exposed to the players, the entire set of tiles shall be reshuffled.

(f) After each round of play has been completed, the dealer shall turn all of the tiles face down and shuffle the tiles in accordance with (d) above.

(g) If there is no gaming activity at the pai gow table, the tiles shall be turned face up and placed into 16 pairs according to rank starting with the supreme pair. Once a player arrives at the table, the procedures in (c) and (d) above shall be followed.

19:47-10.5 Wagers

(a) All wagers at pai gow shall be made by placing gaming chips or plaques on the appropriate betting area of the pai gow layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow.

(b) Only players who are seated at the pai gow table may place a wager at the game. Once a player has placed a wager and received tiles, that player must remain seated until the completion of the round of play.

(c) All wagers at pai gow shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures set forth in N.J.A.C. 19:47-10.6. No wager at pai gow shall be made, increased or withdrawn after the dealer has announced "No more bets."

19:47-10.6 Procedures for dealing the tiles

(a) Once the dealer has completed shuffling the tiles, the dealer shall announce "No more bets" prior to shaking the pai gow shaker. The dealer shall then shake the pai gow shaker at least three times so as to cause a random mixture of the dice.

(b) The dealer shall then remove the lid covering the pai gow shaker, total the dice and announce the total. The total of the dice shall determine which player receives the first stack of tiles.

(c) To determine the starting position for dealing the tiles, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one and continuing around the table with each betting position, regardless of whether there is a wager at the position, and the dead hand counted in order until the count matches the total of the three dice. Examples are as follows:

1. If the dice total nine, the dealer would receive the first stack of four tiles; or

2. If the dice total 15, the sixth wagering position would receive the first stack of four tiles.

(d) The dealer shall deal the first stack of four tiles, starting from the right side of the eight stacks, to the starting position as determined in (c) above and, moving counterclockwise around the table, deal all other positions including the dead hand and the dealer a stack of tiles, regardless of whether there is a wager at the position. The dealer shall place a marker on top of his or her stack of tiles immediately after they are dealt.

(e) After all the stacks of tiles have been dealt, the dealer shall, without exposing the tiles, collect any stacks dealt to a position where there is no wager and place the stacks with the dead hand on the layout to the left of the dealer in front of the table inventory container.

(f) Once all tiles have been dealt and any tiles dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow shaker and shake the shaker once. The pai gow shaker shall then be placed to the right of the dealer.

19:47-10.7 Procedures for completion of each round of play; setting of hands; payment and collection of wagers; payout odds; vigorish

(a) After the dealing of the tiles has been completed, each player shall set his or her hands by arranging the tiles into a high hand and low hand. After setting the hands the tiles shall be placed face down on the layout immediately behind that player's betting area and separated into two distinct hands.

(b) Each player at the table shall be responsible for setting his or her own hands and no other person except the dealer may touch the tiles of that player. Each player shall be required to keep the four tiles in full view of the dealer at all times. Once each player has set a high hand and low hand and placed the two hands face down on the layout, the player shall not touch the tiles again.

(c) After all players have set their hands and placed the tiles on the table, the four tiles of the dealer shall be turned over and the dealer shall set his or her hands by arranging the tiles into a high and low hand. The high hand shall be placed on the layout face up to his or her right and the low hand shall be placed on the layout face up to his or her left.

(d) Except as provided in (e) below, the dealer shall be required to comply with the following rules when setting the hands of the dealer:

1. If the dealer has the supreme pair, it shall be played as such;

2. If possible, the dealer shall always play a pair, wong or gong as set forth in N.J.A.C. 19:47-10.2;

3. If the dealer does not have any combinations described in (d)1 or (d)2 above, the dealer shall play any two tiles together which have a value equal to nine, eight or seven; and

4. If the dealer does not have a combination listed in (d)1 through (d)3 above, the dealer shall play the highest ranking tile with the lowest ranking tile.

(e) Each casino licensee shall submit to the Commission in its Rules of the Games Submission the manner in which it proposes to require the hands of the dealer to be set, and shall specifically note any exceptions it proposes to the rules listed in (d) above.

(f) A player may surrender his or her wager after the hands of the dealer have been set. The player must announce his or her intention to surrender prior to the dealer exposing either of the two hands of that player pursuant to (g) below. Once the player has announced his or her intention to surrender, the dealer shall:

1. Immediately collect the wager from that player; and

2. Collect the four tiles dealt to that player and stack them face down on the right side of the table in front of the table inventory container without exposing the tiles to anyone at the table.

(g) Once the dealer has set a high and low hand, the dealer shall expose both hands of each player, starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall always compare the high hand of the player to the high hand of the dealer and the low hand of the player to the low hand of the dealer and shall announce if the wager of that player shall win, lose or be considered a tie ("push").

(h) All losing wagers shall be collected immediately by the dealer *[along with the tiles of that player.]* ***and put in the table inventory container. All losing hands shall also be collected.*** A wager made by a player shall lose if the high hand of the player is identical in rank or lower in rank than the high hand of the dealer, and the low hand of the player is identical in rank or lower in rank than the low hand of the dealer or has a value of zero.

*[(h)]***(i)*** If a wager is a push, the dealer shall not collect or pay the wager, but shall immediately collect the tiles of that player. A wager made by a player shall be a push if:

1. The high hand of the player is higher in rank than the high hand of the dealer, but the low hand of the player is identical in rank to the low hand of the dealer (copy hand), lower in rank than the low hand of the dealer or has a value of zero; or

2. The high hand of the player is identical in rank to the high hand of the dealer (copy hand) or lower in rank than the high hand of the dealer, but the low hand of the player is higher in rank than the low hand of the dealer.

*[(i)]***(j)*** All winning hands shall remain face up on the layout. Winning wagers shall be paid after all hands have been exposed. The dealer shall pay winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table. A wager made by a player shall win if the high hand of the player is higher in rank than the high hand of the dealer and the low hand of the player is higher in rank than the low hand of the dealer.

*[(j)]***(k)*** A winning pai gow wager shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to 25 cents or the next highest multiple of 25 cents. A casino licensee shall collect the vigorish from a player at the time the winning payout is made. After a winning wager has been paid and the vigorish collected, the dealer shall then collect the tiles from that player.

*[(k)]***(l)*** All tiles collected by the dealer shall be picked up in order and in such a way that they can be readily arranged to reconstruct each hand in case of a question or dispute and shall be placed face up to the right of the dealer in front of the table inventory container.

19:47-10.8 Player bank; co-banking; selection of bank; procedures for dealing

(a) A casino licensee may, in its discretion, offer to all players at a pai gow table the opportunity to bank the game. If the casino licensee elects this option, all the other provisions of this subchapter shall apply except to the extent that they conflict with the provisions of this section, in which case the provisions of this section shall control for any round of play in which a player is the bank.

(b) A player may not be the bank at the start of the game. For the purposes of this section, the start of the game shall mean the first round of play after the dealer is required to restack and shuffle the tiles in accordance with the procedures set forth in N.J.A.C. 19:47-10.4(b) or (g).

(c) After the first round of play pursuant to (b) above, each player at the table shall have the option to either be the bank or pass the bank to the next player. The dealer shall, starting with the player farthest to the right of the dealer, offer the bank to each player in a counterclockwise rotation around the table until a player accepts the bank. The dealer shall place a marker ***designating the bank*** in front of the player who accepts the bank. If the first player offered the bank accepts, the player seated to the right of that player shall first be offered the bank on the next round of play. The initial offer to be the bank shall rotate counterclockwise around the table until it returns to the dealer. In no event may any player bank two consecutive rounds of play. If no player wishes to be the bank, the round of play shall proceed in accordance with the rules of play provided in this subchapter.

(d) Before a player may be permitted to bank a round of play, the dealer shall determine that:

1. The player placed a wager against the dealer during the last round of play in which there was no player banking the game; and

2. The player has sufficient gaming chips on the table to cover all of the wagers placed by other players at the table for that round of play.

(e) A casino licensee may, in its discretion, offer the bank the option of having the casino cover 50 percent of the wagers made during a round of play. If the casino licensee offers this option, it shall make it available to all players at the table. If the bank wishes to use this option, the bank must specifically request the dealer to accept responsibility for the payment of one-half of all winning wagers. When the bank covers 50 percent and the casino covers 50 percent of the winning wagers, it shall be known as "co-banking" ***and the dealer shall place a marker designating the co-bank in front of that player***. When the dealer is co-banking, the dealer shall be responsible for setting the hand of the bank in the manner submitted to the Commission pursuant to N.J.A.C. 19:47-10.7. When co-banking is in effect, the dealer may not place a wager against the bank.

(f) If a player is the bank, the player may only wager on one betting area.

(g) Once the tiles have been shuffled, the bank shall have the option to cut the tiles. The bank shall point to the location of tiles that he or she would like moved. Upon direction from the bank, the tiles may be moved to the right or left of the stack. If the bank does not wish to cut the tiles, there shall be no cut.

(h) Once the dealer has determined that a player may be the bank pursuant to (d) above and after the tiles have been shuffled, the dealer shall remove gaming chips from the table inventory container in an amount equal to the last wager made by that player against the dealer or in an amount, the calculation of which has been approved by the Commission. This amount shall be the amount the dealer wagers against the bank. The bank may direct that the sum wagered by the dealer be a lesser amount or that the dealer place no wager during that round of play. Any amount wagered by the dealer shall be placed in front of the table inventory container. Immediately upon receipt of the four tiles dealt to the dealer, the dealer shall place his or her wager on top of these tiles before dealing the remaining tiles, instead of the marker required by N.J.A.C. 19:47-10.6.

(i) Once the dealer has announced "No more bets," the bank shall shake the pai gow shaker. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow shaker, the dealer shall remove the lid covering the pai gow shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow shaker to be covered and reshaken by the bank.

*[(i)]***(j)*** To determine the starting position for dealing the tiles, the dealer shall count counterclockwise around the table, with the position of the bank considered number one and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice.

*[(j)]***(k)*** The dealer shall deal the first stack of four tiles, starting from the right side of the eight stacks, to the starting position as determined in *[(i)]* ***(j)*** above and, moving counterclockwise around the table, deal all other positions including the dead hand and the dealer a stack of tiles, regardless of whether there is a wager at the position. The dealer shall place his or her wager, if any, on top of his or her stack of tiles immediately after they are dealt.

*[(k)]***(l)*** After all the stacks of tiles have been dealt, the dealer shall, without exposing the tiles, collect any stacks dealt to a position where there is no wager and place the stacks with the dead hand on the layout to the left of the dealer in front of the table inventory container.

*[(l)]***(m)*** Once all tiles have been dealt and any tiles dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow shaker and shake the shaker once. The pai gow shaker shall then be placed to the right of the dealer.

*[(m)]***(n)*** If the tiles dealt to the dealer have not been previously collected, after each player has set his or her two hands and placed them on the layout, the two hands of the dealer shall then be set. Once the dealer has formed a high and low hand, the dealer shall expose the hands of the bank and determine if the hands of the dealer are higher in rank than the hands of the bank. If the dealer wins, the tiles of the dealer shall be stacked face up to the right of the table inventory container with the amount wagered by the dealer against the bank placed on top. If the dealer pushes, the dealer shall return the amount wagered by the dealer against the bank to the table inventory container. If the dealer loses, the amount wagered by the dealer against the bank shall be moved to the center of the layout.

*[(n)]***(o)*** If banking is in effect, once the dealer has determined the outcome of the wager of the dealer against the bank, if any, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted all winning wagers have been paid, the dealer shall collect from the bank an amount equal to the remaining winning wagers and place that amount in the center of the layout. The remaining winning wagers shall be paid from the amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount shall be charged a five percent vigorish in accordance with N.J.A.C. 19:47-10.7. Once the vigorish has been paid, the remaining amount shall be given to the bank.

*[(o)]***(p)*** If co-banking is in effect, once the dealer has set the co-bank hand pursuant to (e) above, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the co-bank, an amount equal to one-half of the remaining winning wagers and place that amount in the center of the layout. The dealer shall remove an amount equal to one-half of the remaining winning wagers from the table inventory container and place that amount in the center of the layout. The remaining winning wagers shall be paid from the total amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount will be counted and the dealer shall place half of this amount into the table inventory container. The dealer shall collect a five percent vigorish in accordance with N.J.A.C. 19:47-10.7 on the remaining amount and place the vigorish amount in the table inventory container. The remaining amount shall then be given to the co-bank.

*[(p)]***(q)*** Immediately after a winning wager of the dealer is paid, this amount and the original wager shall be returned to the table inventory container.

*[(q)]***(r)*** Each player who has a winning wager against the bank shall pay a five percent vigorish on the amount won to the dealer, in accordance with N.J.A.C. 19:47-10.7.

19:47-10.9 Irregularities; invalid roll of the dice

(a) If the dealer uncovers the pai gow shaker and all three dice do not land flat on the bottom of the shaker, the dealer shall call a "No roll" and reshake the dice.

(b) If the dealer uncovers the pai gow shaker and a die or dice fall out of the shaker, the dealer shall call a "no roll" and reshake the dice.

(c) If the dealer incorrectly totals the dice and deals the tiles to the wrong positions, all hands shall be void and the dealer shall reshuffle the tiles.

(d) If the dealer exposes any of the tiles dealt to a player, the player has the option of voiding the hand. Without looking at the unexposed tiles, the player shall make the decision either to play out the hand or to void the hand.

(e) If a tile dealt to the dealer, ***bank,*** the dead hand or any position where there is no wager is exposed, all hands shall be void and the tiles shall be reshuffled.

19:47-10.10 Minimum and maximum wagers

(a) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each pai gow table.

(b) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each pai gow table.

19:47-10.11 A player wagering on more than one betting area

(a) Except as provided in N.J.A.C. 19:47-10.8(f), a casino licensee may, in its discretion, permit a player to wager on no more than two betting areas at a pai gow table, which areas must be adjacent to each other.

(b) If a casino licensee permits a player to wager on two adjacent betting areas, the tiles dealt to each betting area shall be played separately. If the two wagers are not equal, the player shall be required to rank and set the hand with the larger wager before ranking and setting the other hand. If the amounts wagered are equal, each hand shall be played separately in a counterclockwise rotation with the first hand being ranked and set before the player proceeds to rank and set the second hand. Once a hand has been ranked and set and placed face down on the layout, the hand may not be changed.

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PUBLIC NOTICES

AGRICULTURE

(a)

STATE SOIL CONSERVATION COMMITTEE

Notice of Impacts of the Permit Extension Act upon the Expiration of Soil Erosion and Sediment Control Plan Certification

Take notice that in accordance with the Permit Extension Act (P.L. 92, c.82), soil conservation district certification of soil erosion and sediment control plans, pursuant to the Soil Erosion and Sediment Control Act (P.L. 1975, c.251 as amended), which have expired or will expire on or after January 1, 1989 and have not been recertified prior to August 7, 1992, will be extended until December 31, 1994 without requirement for recertification. This extension shall not apply if there have been changes to the plan or project in which case certification or recertification will be required. The soil conservation districts may require the payment of fees in accordance with the current fee schedule as approved by the State Soil Conservation Committee to cover costs of additional project inspections and other required services when it has been determined by the district that the original fee has been exhausted.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

ENFORCEMENT POLICY

Notice of Action on Petition for Rulemaking: Penalties for Air Pollution in Violation of N.J.A.C. 7:27-5.1 et seq.

Petitioners: Middlesex County Utilities Authority, Bayshore Regional Sewerage Authority, Cape May County Municipal Utilities Authority, Cumberland County Utilities Authority, Ewing-Lawrence Sewerage Authority, Linden Roselle Sewerage Authority, North East Monmouth County Regional Sewerage Authority, Randolph Township Municipal Utilities Authority, Secaucus Municipal Utilities Authority, South Monmouth Regional Sewerage Authority, Two Bridges Sewerage Authority, Warren/Pequest River Municipal Utilities Authority, Western Monmouth Utilities Authority, New Jersey League of Municipalities, Association of Environmental Authorities, New Jersey Alliance for Action

Authority: N.J.S.A. 13:1D-1 et seq. and 26:2C-1 et seq.

Take notice that on March 17, 1992, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the Department's rules governing the assessment and payment of civil administrative penalties (penalties) for causing, suffering, allowing or permitting air pollution, as defined in and prohibited by N.J.A.C. 7:27-5.1 et seq. (see 24 N.J.R. 1642(c) and 1907(c)). Petitioners own and/or operate sewerage treatment plants and other waste disposal facilities and recycling facilities. The amendments which petitioners request concern violations by public entities of N.J.A.C. 7:27-5.1 et seq. by reason of an odor (odor violations). Specifically, the petitioners propose:

1. Promulgation of a new subsection, N.J.A.C. 7:27A-3.3(c), to provide for the notification of the owner/operator of a public entity by the Department immediately upon receipt of an odor complaint, permitting a representative of the owner/operator to accompany Department staff during an investigation of an odor complaint, and providing the owner/operator with the findings and conclusions of the Department staff immediately upon completion of the investigation;

2. Amending N.J.A.C. 7:27A-10 to: (a) add a new paragraph defining a public entity to include any municipality, county, municipal or county utility authority organized under N.J.S.A. 40:14A, the Passaic Valley Sewerage Commissioners, the Joint Meeting of Union and Essex Counties, and any department, agency, commission or board thereof; (b) establish a new section providing for five levels of odor to be applied to public entities and that level zero to two do not constitute a violation; and (c) provide for reduced penalties for odor violations by public entities based upon the duration of the odor and the intent or foreseeability of odor by the public entity; and

3. The promulgation of a new section, N.J.A.C. 7:27A-3.13, to provide that penalties assessed and collected against a public entity for odor violations be escrowed and refunded upon the implementation of adequate odor controls by the public entity.

After due consideration of the petition pursuant to law, the Department has denied the petition for the reasons set forth below.

1. Petitioners propose promulgation of a new subsection, N.J.A.C. 7:27A-3.3(c), providing for the notification of the owner/operator of a public entity by the Department immediately upon receipt of a complaint of an odor violation, permitting a representative of the owner/operator to accompany Department staff during an investigation of an odor complaint, and providing the owner/operator with the findings and conclusions of the Department staff immediately upon completion of the investigation.

Pursuant to the Department's current operating procedure, Department staff advise facility owner/operator of the nature of a complaint and the findings and conclusions of the staff person's investigation immediately following the investigation. It would not be possible in most cases to advise a facility owner/operator immediately upon the receipt of a complaint or to provide a representative of the facility an opportunity to accompany the Department inspector during the initial stages of an investigation of a complaint. Under current Department operating procedure, upon receiving a complaint, an inspector proceeds to the home or other location of the person making the complaint. The inspector next attempts to confirm the existence of an odor and identify its characteristics. The inspector then attempts to trace the odor to its source using established field procedures. Thus, upon receipt of a complaint and during the initial stages of the investigation, the source of the odor will not have been determined. Therefore, it would be impossible to notify the source facility owner/operator upon receipt of a complaint and during the initial stages of the investigation. However, under current practice, once a particular source is identified as the potential cause of an odor, the facility owner/operator is notified and accompanies the inspector during an inspection of the owner/operator's site. Thus, to the extent feasible, the Department's practice accords with the petitioner's request.

2. Petitioners request that the Department make several amendments to N.J.A.C. 7:27A-3.10: (a) to add a new paragraph, defining a public entity; (b) to add a new section establishing five levels of odor to be applied to public entities and providing that violations of levels one and two would not constitute a violation; and (c) to provide for reduced penalties for violations by public entities, based upon the duration of the odor violation, and providing for reduced penalties for public entities based upon the intent of the public entity or the foreseeability of the violation.

(a) Petitioners petition the Department to amend N.J.A.C. 7:27A-3.10, adding a new paragraph defining a public entity to include any municipality, county, municipal or county utilities authority organized under N.J.S.A. 40:14A, the Passaic Valley Sewerage Commissioners, the Joint Meeting of Union and Essex Counties, and any department, agency, commission or board thereof.

This amendment to N.J.A.C. 7:26-3.10, like those requested by petitioners pursuant to 2(b) and 2(c) below, is premised upon the assumption that public entities should always be treated differently from privately owned entities in the assessment of civil administrative penalties for violations of the Air Pollution Control Act by reason of an odor. While the Department recognizes that circumstances unique to public entities may arise warranting consideration in the assessment of penalties, the Department finds it is neither necessary nor appropriate to establish a general rule treating public entities differently in every case. The Department finds that these situations are more appropriately addressed on a case-by-case basis, and that ample authority currently exists to consider appropriate mitigating circumstances in the assessment of penalties regardless of whether such circumstances affect all entities equally or are

unique to public entities. For the reasons further articulated in 2(b) below, the Department denies this request.

(b) Petitioners petition the Department to amend N.J.A.C. 7:27A-3.10, adding a new section providing for five levels of odor to be applied to public entities. Level zero would be nondetectable; level one would be very light; level two would be light; level three would be moderate; level four would be strong; level five would be very strong. Based upon this scale, a public entity would not be found to be in violation if a zero, one or two level odor is established by an inspector.

In support of their petition, petitioners assert that the collection, treatment and disposal of society's waste are inherently odoriferous and some level of odor must be expected.

Under the current Department complaint investigation guidelines, field inspectors identify and characterize odors based on a zero to five scale for all facilities. This guidance document describes five levels of odor concentrations virtually identical to that proposed by petitioners. Under the Department's guidelines, a level zero odor is not detectable; level one reflects an odor that is very light, activating the sense of smell, but the characteristics of which are not distinguishable; level two characterizes a light odor, which activates the sense of smell, is distinguishable and definite, but is not necessarily objectionable in short durations; level three describes a moderate odor which easily activates the sense of smell, is very distinct and clearly distinguishable and may tend to be objectionable and/or irritating; level four describes a strong odor, which would be objectionable and cause a reasonable person to attempt to avoid it completely, and could indicate a tendency to possibly produce physiological effects during prolonged exposure; and level five constitutes a very strong odor, which is so strong it is overpowering and intolerable for any length of time and could tend to easily produce some physiological effects. This scale only serves to document conditions by facilitating the identity and characteristics of an odor. The threshold determination as to whether a violation has occurred must be based upon the statutory definition of air pollution. The Air Pollution Control Act defines air pollution as: "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, or *would unreasonably interfere with the enjoyment of life or property* ..." N.J.S.A. 26:2C-2. The regulations adopted by the Department recite this definition verbatim. N.J.A.C. 7:27-5.1. Pursuant to the statute and the rules adopted thereunder, not every odor will rise to the level of a violation of the Act because not every odor "unreasonably interferes with the enjoyment of life or property." Obviously, an odor which is described as not detectable could not constitute a violation. However, even a light odor could unreasonably interfere with enjoyment of property. Therefore, the scale alone cannot determine whether an odor meets the statutory definition of air pollution. Accordingly, the Department believes that the current regulations adequately distinguish those odors that do not constitute a violation from those that do. Moreover, the definition of an odor of such duration or concentration as to constitute a violation of the Act is dictated by the statute. Thus, any odor which "unreasonably interferes with the enjoyment of life or property," including one accurately characterized as level one, constitutes a violation. To provide otherwise by rule or enforce a different standard would be contrary to the express language of the statute.

The Department may, however, appropriately consider the severity of an odor in determining the proper amount of a civil administrative penalty, and the Department finds the five level odor scale to be an appropriate basis upon which to distinguish the severity and effect of a particular odor violation. Accordingly, the Department will propose amendments to the regulations governing the assessment of civil administrative penalties for air pollution violations by reason of an odor. These amendments will propose including the severity of an odor as a factor to be applied by the Department in determining the proper amount of a civil administrative penalty. Specifically, the Department proposes to amend N.J.A.C. 7:27A-3.2, to add the five level odor scale contained in the Department's complaint investigation guidelines to the subsection of the regulations defining the terms used in the penalty regulations. In addition, the Department proposes to amend N.J.A.C. 7:27A-3.10(e)5 to allow the Department to consider the severity of the odor, as determined by application of the five level scale, as factors in determining the amount of a penalty for odor violations. The proposal is expected to be published in the New Jersey Register in November, 1992.

(c) The petitioners petition the Department to establish a diminished penalty policy for public entities based upon the duration of the odor and the intent of the public entity or the foreseeability of the particular violation.

In support of their petition, petitioners assert that, as a general rule, publicly owned waste collection, treatment and disposal facilities were originally cited in relatively desolate locations to minimize their impact upon the public. However, since their construction and installation, development has occurred around these facilities to satisfy the needs of the expanding population.

Petitioners have not submitted any evidence to support this conclusion, and no information which the Department currently possesses leads it to reach that conclusion. Moreover, the Air Pollution Control Act provides that a violation occurs when an odor, "unreasonably interferes with the enjoyment of life or property." The Act's definition of air pollution does not take into account who was located in the area first, that is, a "coming to the nuisance" theory. Accordingly, it would be inconsistent with the express terms of the statute for the Department to distinguish violations on this basis. In addition, the petitioners have not distinguished their situation from non-public entities insofar as non-public entities may argue with equal force that their location and use pre-existed that of potential complainants.

In further support of their petition for diminished penalties, petitioners assert that public entities are not in the business of owning or operating waste collection, treatment or disposal facilities. Therefore, special handling and deference is required to encourage public entities to continue to open and maintain such facilities. The Department recognizes the important public service performed by petitioners and is committed to working cooperatively with petitioners to achieve compliance with the law. Specifically, the Department is committed to providing technical assistance to public as well as non-public entities, including guidance in understanding and applying the regulatory requirements of the Act through pre-application conferences and periodic seminars to explain the substantive requirements of the law. The Department is further committed to improving upon this cooperative effort to achieve greater compliance. However, once a facility is established, the Department is obligated by law to enforce the same operational standard against public and private entities. Moreover, because the environmental and public health concerns underlying regulatory standards are the same for public and private entities, the Department uniformly enforces the standards regardless of the ownership of an entity. In addition, the Department does not believe, as a general matter, that providing for discounted penalties for public entities will enhance cooperation or result in greater compliance with the law. On the contrary, the Department believes that substantially discounted penalties for public entities, as proposed by petitioners, would generally encourage delay and noncompliance. The Department believes that the most appropriate means to assist public entities in achieving compliance is to provide the maximum assistance at the front end of the process. To this end, in addition to the technical assistance available to public entities on an on-going basis, the Department provides financial assistance to public entities prior to construction or major facility upgrades. Specifically, the Department administers grant and loan programs established by the Legislature providing financial assistance to local government agencies for, among other things, wastewater treatment facility construction and upgrades, resource recovery facilities, state of the art landfills, recycling facilities, and sludge processing and disposal facilities.

In further support of their petition for diminished penalties, petitioners assert that requiring a public entity to pay both the penalty and the cost of corrective action out of public funds is contrary to proper environmental enforcement philosophy, which is to foster compliance and not to seek retribution and punishment.

The Department's enforcement philosophy is predicated upon the goal of achieving 100 percent compliance. Compliance, in turn, results in improvements to the quality of the State's environment, including the quality of the air that we breath. While penalties are effective as a deterrent tool, they are only a means to achieve the larger goal of compliance. Accordingly, the Department is committed to working cooperatively with public and private entities toward the goal of achieving compliance. Retribution and punishment have no place in the Department's enforcement philosophy, and are neither reflected in the text of the penalty rules nor in their application by the Department. However, as discussed below, deterrence of future violations is an important part of the Department's enforcement policy.

Penalties are assessed by the Department for violations of the Air Pollution Control Act based upon the ranges and criteria set forth in the statute, N.J.S.A. 26:2C-19, the regulations adopted by the Department reflecting these ranges and criteria, N.J.A.C. 7:27A, and the specific facts underlying each violation. The statute, as amended in 1985, P.L.

1985, c.12, established a three tier approach to the assessment of civil administrative penalties. The statute fixed the maximum penalty amount at $10,000 for the first violation, $25,000 for the second violation and $50,000 for the third and each subsequent violation. The rules adopted by the Department reflect this approach. The statute also provides that each day a violation continues constitutes a separate offense, and this is reflected in the penalty regulations adopted by the Department. Accordingly the duration of an odor is addressed under the existing regulations. In determining the actual penalty assessment in a specific case, the rules require the Department to consider the compliance history of the violator, any remedial measures taken to mitigate the effects of the violation and to prevent further violations, and the effect of the violation on the environment, including such factors as the size of the population affected, the nature and amount of the air contaminant and the property damage resulting from the violation. N.J.A.C. 7:27A-3.10(e)5.

In addition, the amount of a penalty should be sufficient to discourage future violations. Applying these rules in a fair manner, each violation is evaluated by the Department based upon the specific facts of the case. The statute provides that the Department may compromise any penalty assessed "as may appear appropriate and equitable under all of the circumstances." N.J.S.A. 26:2C-19(c). Under this provision of the statute, once all the objective factors have been applied to the specific facts of each case, the Department retains the discretion to reexamine the penalty assessment to ensure a fair and equitable result is achieved under all of the circumstances present in the case.

The duration of an odor, as discussed above, is considered in the assessment of civil administrative penalties under the existing regulations, pursuant to the statutory provisions therefor. The intent of a violator, on the other hand, is only indirectly considered in determining the amount of a civil administrative penalty. The statute proscribes certain conduct and conditions without regard for the intent of a violator, imposing strict liability. Once liability is established, however, the statute does not bar the Department from considering a violator's intent in determining the appropriate amount of a civil administrative penalty.

Intent must ordinarily be inferred from factual circumstances present in each case. Accordingly, the existing penalty regulations require the Department to consider specific facts or circumstances that are probative of intent. In particular, the Department considers any remedial measures taken by a violator to mitigate the effect of a violation or to prevent subsequent violations, and reduces the penalty amount commensurately. This approach not only allows the Department to consider relevant factors that are probative of intent, but also promotes the important policy goal of encouraging the prompt initiation of remedial measures by a violator.

Foreseeability, the reasonable anticipation that harm or injury is a likely result of an act or omission, is not an appropriate factor in determining the amount of a civil administrative penalty. Applying foreseeability as a factor to mitigate a penalty would require the Department to distinguish those violations that are reasonably anticipated or probable from those violations that are merely possible, and impose a reduced penalty upon a finding that a violation was not reasonably anticipated. Holding permittees equally accountable for violations that are not only probable, but possible as well, has the desirable prophylactic effect of encouraging permittees to be vigilant in all aspects of compliance. Allowing for reduced penalties for possible, but unforeseen violations, would discourage strict adherence to operation and maintenance procedures and other practices designed to achieve compliance.

Finally, it should be noted that when the Department obtains evidence that a violator has willfully or purposefully released contaminants into the environment, the Department generally refers such matters to the Division of Criminal Justice to determine whether a criminal prosecution should be initiated.

In support of their petition for diminished penalties for public entities, petitioners also assert that the present penalty structure imposes a double penalty upon public entities, the penalty plus the costs of corrective action.

Costs incurred by a public or private entity to comply with the terms of the Air Pollution Control Act are not a penalty. The costs of ensuring compliance generally involve both up-front capital investments in emission control apparatus and ongoing operation and maintenance costs. These costs do not constitute penalties. Every facility has an obligation to operate in compliance with the regulations. The fact that the Department discovers the noncompliance and issues a notice of violation and penalty does not alter that fact. Accordingly, a public entity is not subject to a double penalty as asserted by the petitioners.

In support of their petition for diminished penalties for public entities, petitioners further assert that the forfeiture of excessive penalties to NJDEPE is a severe economic burden upon public entities and that public entities can be prevented from taking corrective action to remedy a violation because a penalty eliminates the funding for the remedy.

Funds necessary to remain in compliance with the law should be an integral part of every public or private entities' annual operating budget, including regular operation and maintenance costs as well as debt service for capital requirements. Thus, costs associated with corrective action should not be considered extraordinary or arising solely as a consequence of a penalty enforcement action. These expenditures should be considered routine. Furthermore, penalties, as previously noted, are not designed to be in excess of that amount necessary to provide effective deterrence. Thus, an entity which undertakes reasonable, diligent, good faith measures to comply with the law should achieve compliance. Such entities that nevertheless fail to achieve compliance, are not subject to severe penalties under the existing rules. The Department has the latitude to reduce penalties where appropriate. In this case, no incentive is necessary because appropriate efforts to comply are being undertaken. Unfortunately, this is not true in every case, including cases involving public entities, and the Department is compelled to impose more substantial penalties against recalcitrant violators. In these cases, the need to provide for an effective deterrence applies equally to the public as well as the private entity. Historically, the Department's record of enforcement actions against public entities for odor violations does not support petitioners' argument that penalties have been levied in excessive amounts. As of the date this petition was filed, for the previous two years, a total of $260,350 in civil administrative penalties were collected from 19 public entities for violations of N.J.A.C. 7:27-5.1 by reason of an odor under the existing regulations. Of this amount, $160,000 was collected from two entities. Thus, 17 facilities paid $100,350 in penalties over two years. This is not an excessive amount. The remaining two entities incurred relatively higher penalties due to the severity of their violations and less than adequate efforts to abate them. The majority of public entities have no or minimal odor enforcement history.

Petitioners assert that public entities are not in a position to recover costs associated with penalties as part of the cost of doing business and that public entities do not have the profit margin enjoyed by private commercial operations.

As previously stated, the primary objective of a penalty is to achieve compliance by establishing an adequate monetary deterrent to noncompliance. This objective applies equally to public and private entities. The adequacy of a penalty to deter noncompliance is evaluated based upon several factors, including the compliance history of the violator, the diligence and timeliness of the violator in taking remedial measures to avoid future violations. Severe penalties are not necessary as a deterrent when a violator has taken reasonable, diligent measures to remedy a violation. On the other hand, severe penalties may be necessary when a violator has consistently refused or delayed the implementation of a remedy.

The assessment of penalties against a public entity impacts upon the general public when costs associated with penalties are passed through to the general public through increased rates, service charges or local taxes. Accordingly, the inherent value of penalties as a deterrent to noncompliance by public entities is apparent. Taxpayers and rate payers, no more or less than the stockholders of a non-public entity, demand accountability from those responsible for violations and subsequent penalties. This demand for accountability has the desirable and intended effect of deterring noncompliance.

In summary, none of the assertions made by petitioners adequately distinguish their situation from that of private entities to warrant a general rule providing for diminished penalty assessments for public entities. The Department recognizes that circumstances unique to public entities may arise where a strict application of the penalty rules would pose an undue hardship. The Department, however, finds that such situations are better addressed on a case by case basis consistent with the current penalty regulations and the discretion available to the Department under the statute.

3. Petitioners also petition the Department to promulgate a new section, N.J.A.C. 7:27A-3.13, providing that penalties assessed and collected against a public entity be escrowed and refunded upon the implementation of adequate odor controls by the public entity within one year.

The Air Pollution Control Act was amended in 1967 to expressly provide that the Department may rebate up to 90 percent of penalties paid, where the violator has remedied the problem giving rise to the violation within the period of one year. P.L. 1967, c.105. This provision, however, was deleted in subsequent amendments to the Act adopted in 1985 when the Legislature substantially increased the maximum civil administrative penalties the Department could assess. P.L. 1985, c.12. The manifest intent of P.L. 1985, c.12 was to "create an incentive to avoid the release of pollutants." (See Statement of the Governor, January 23, 1985.). It is reasonable to infer from the deletion of the rebate provision in P.L. 1985 c.12 that the Legislature determined it was no longer appropriate. In any event, it would be inappropriate for the Department to initiate through rulemaking precisely that which the Legislature abolished in 1985. Accordingly, the Department denies petitioners' request.

(a)

OFFICE OF ENERGY

Notice of Action on Petition for Rulemaking Required Provisions for Energy Conservation Equipment Sales Contracts N.J.A.C. 12A:60-1.5(a)15i

Petitioner: Honeywell, Inc.

Take notice that on June 19, 1992, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the amendment of regulations governing financing of energy conservation measures, N.J.A.C. 12A:60 (see 24 N.J.R. 2631(a)).

N.J.A.C. 12A:60 applies to contracts which:

1. Involve work, services, materials, supplies or equipment furnished or performed for the purpose of conserving energy in the following:

a. Buildings owned or operations conducted by entities subject to the Local Public Contracts Law, N.J.S.A. 40A:11-15; or

b. Buildings owned by any board of education subject to N.J.S.A. 18A:18A-5 and 42; and

2. Have the entire price established as a percentage of the resulting energy savings.

Petitioner specifically requests that the Department amend N.J.A.C. 12A:60-1.5(a)15i. This provision requires that all contracts subject to N.J.A.C. 12A:60 provide that "no payment shall be required of the user until the energy conserving renovations have generated energy savings for the user." Petitioner states that the rule effectively precludes petitioner from providing energy conservation systems to schools and other public entities to which the rule applies.

Petitioner requests that the rule be amended to instead allow the user to enter into a contract guaranteeing the amount of energy savings, under which the vendor would provide the user with a bond securing the vendor's performance of its contractual obligations.

The Department is studying the circumstances which the petitioner describes, by taking the following actions:

1. Meeting with representatives of schools and other public entities, to discuss the effect of the requested rule change upon them;

2. Conducting a survey of schools and other public entities to determine whether the existing rule has effectively precluded them from contracting for energy conservation measures; and

3. Evaluating the requested rule change to determine whether it would preserve the benefit to schools and other public entities which the existing rule was intended to produce.

4. Holding **a public hearing** regarding this petition on Thursday, November 5, 1992 at 10:00 A.M. at:

New Jersey Department of Environmental Protection and Energy
Seventh Floor Large Conference Room
401 East State Street
Trenton, New Jersey 08625

The Department expects to complete its deliberations and act on the petition by December 1, 1992.

(b)

SITE REMEDIATION PROGRAM

Notice of Action on Petition for Rulemaking Standard for Cleanup of Chromium Contamination in Soil

Petitioner: Interfaith Community Organization.

Take notice that the Department of Environmental Protection and Energy ("Department") has been petitioned by the Interfaith Community Organization for the promulgation of a rule on the standard for cleanup of chromium contamination in soil pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 7:1-1.2 (see 24 N.J.R. 3440(b)). The Department agrees with the petitioner that a cleanup standard for chromium in soil is necessary to protect human health and the environment in Hudson County as well as the State of New Jersey.

One of the guiding principles of the Department is to base standards, decisions and activities on sound science. To that end, the Department has recently completed a series of meetings with outside experts to discuss scientific and technical issues which are directly related to the development of a cleanup standard for chromium in soil.

As a result of these meetings, the Department will issue an initial draft cleanup standard for chromium in soil for interested party review prior to formal proposal in the New Jersey Register. This draft is scheduled for distribution in November 1992. It is the Department's intention to develop a cleanup standard for both hexavalent and total chromium which will be applicable for all contaminated sites in the State.

After evaluating comments received from the interested party review, the Department will formally propose a chromium cleanup standard in the New Jersey Register. This proposal is tentatively scheduled for May 1993. Upon review and response to public comments, the Department intends to promulgate the standard by December 1993.

(c)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Notice of Striped Bass Trophy Fish Check Stations

Take notice that the Department of Environmental Protection and Energy, pursuant to N.J.S.A. 23:2B-6 and N.J.A.C. 7:25-18.1(1)1ii announces fish checking stations for the Striped Bass Trophy Fish Program. Fishermen harvesting a trophy striped bass pursuant to N.J.A.C. 7:25-18.1(1) must present their fish for registration on the day caught at one of the following Division of Fish, Game and Wildlife authorized fish check stations:

Bait & Tackle Shop	City/County
Ask Us Sports Inc. 2A So. Washington Ave.	Bergenfield/Bergen
Outdoorsman Ltd. 12 E. Columbia Ave.	Palisades Park/Bergen
Joe Spinazzola's Sport Shop 1630 Springfield Ave.	Maplewood/Essex
Ray's Sport Shop Inc. 559 Highway 22 West	North Plainfield/Somerset
Tackle Box Inc. 1134 Highway 36	Hazlet/Monmouth
Julian's Bait & Tackle Route 36	Atlantic Highlands/Monmouth
Giglio's Bait & Tackle 1123 E. Ocean Ave.	Sea Bright/Monmouth
Jim's Bait & Tackle 50 Atlantic Ave.	North Long Branch/ Monmouth
Mac's Shark River Bait & Tackle 1301 Route 35	Neptune/Monmouth
Fisherman's Den Belmar Marina, Rt. 35	Belmar/Monmouth
Gates Bait & Tackle 5 Ocean Ave.	Pt. Pleasant Beach/Ocean

Reel Life Bait & Tackle 2505 Bridge Ave.	Pt. Pleasant/Ocean
The Bait 'N' Tackle Shop Hwy. 35 North (Box 786)	Normandy Beach/Ocean
Betty & Nick's Bait & Tackle 64-66 Grand Central Ave.	Lavallette/Ocean
Betty & Nick's Bait & Tackle 807 S.W. Central Ave.	Seaside Park/Ocean
Hook House Bait & Tackle 2308 Rt. 37 East	Toms River/Ocean
Forked River Bait & Tackle 244 Route 9	Forked River/Ocean
Bruce & Pat's Bait & Tackle 317 Long Beach Blvd.	Surf City/Ocean
Fisherman's Headquarters 280 West 9th St.	Ship Bottom/Ocean
Jingles Bait & Tackle Shop 1214 Bay Ave.	Beach Haven/Ocean
Tuckerton Bait & Tackle Shop 244 S. Green St.	Tuckerton/Ocean
Chestnut Neck Boat Yard Route 9, Exit 48 G.S.P.	Port Republic/Atlantic
Jersey State Marine Inc. 601 Bayshore Ave.	Brigantine/Atlantic
Atlantic City Fishing Center 433 North Maryland Ave.	Atlantic City/Atlantic
Absecon Bay Sportsman Center 81 Natalie Terrace	Absecon/Atlantic
Ray's Sports Marine Center 1300 White Horse Pike	Egg Harbor/Atlantic
Campbell's Margate Bridge Road	Northfield/Atlantic
Fish Stuff Tackle Shop Inc. 621 Bay Ave.	Ocean City/Cape May
Red Dog Bait & Tackle 367 43rd Place	Sea Isle City/Cape May
Moran Dockside Bait & Tackle 14th Ocean Drive	Avalon/Cape May
Jim's Bait & Tackle 1208 Route 109	Cape May/Cape May
Sportsmen's Center U.S. Highway 130	Bordentown/Burlington
Pine Barrens Stove & Sport Shop Route 72	Chatsworth/Burlington
Parsippany Bait, Sport & Tackle 180 Parsippany Road	Parsippany/Morris

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan. This amendment proposal was submitted by the Bergen County Utilities Authority (BCUA). The proposed amendment is for a Wastewater Management Plan (WMP) for the BCUA. The WMP delineates the existing and proposed sewer service area to the BCUA sewage treatment plant (STP). The BCUA STP will be expanded to serve the projected annual average flow of 84.350 million gallons per day. The Wood-Ridge Borough STP will be abandoned with flow conveyed to the BCUA STP. The WMP delineates the portions of Cliffside Park and Fort Lee served by the Edgewater Borough STP, the portions of Washington Township served by the Northwest Bergen County Utilities Authority STP, and the portion of Rockleigh Borough served by the Orangetown STP. The BCUA WMP also delineates the service area for groundwater discharge facilities with a design capacity of less than 20,000 gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Carroll J. Oliva, Paulus, Sokolowski and Sartor, Inc., 67 A Mountain Boulevard Extension, Warren, New Jersey 07060. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on August 28, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment adopts the Pompton Lakes Borough Municipal Utilities Authority (PLBMUA) Wastewater Management Plan (WMP). The WMP delineates the entire Borough of Pompton Lakes as within the future sewer service area to the PLBMUA sewage treatment plant. The WMP also modifies the treatment level for suspended solids as required in the Northeast Water Quality Management Plan. The modification will change the total suspended solids concentration in the PLBMUA New Jersey Pollutant Discharge Elimination System permit to 30 mg/1 as a monthly average and 45 mg/1 as a weekly average.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that on September 10, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for the South Monmouth Regional Sewerage Authority (SMRSA) district. The WMP addresses wastewater management planning for the Boroughs of Belmar, South Belmar, Spring Lake, Spring Lake Heights, Sea Girt, Manasquan and Brielle and a portion of the Township of Wall.

The WMP delineates all of the SMRSA planning area as the existing and future sewer service area and projects a wastewater flow for the service area for the year 2010 of 6.725 million gallons per day. The Wall Township WMP adopted December 5, 1989 is incorporated by reference. Wall Township retains wastewater management plan responsibility for the Township.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on September 10, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment, which was proposed by Commerce Bank, N.A., modifies the Moorestown Township and Mount Laurel Municipal Utilities Authority (MLMUA) Wastewater Management Plans. The amendment identifies the Commerce Bank site located at Block 278-S, Lot 14A and the RE/Max site located at Block 278-S, Lots 14B and 14C in Moorestown Township, Burlington County, as sewer service area of the MLMUA Hartford Road sewage treatment plant (STP). The RE/Max site presently lies within Moorestown Township's sewer service area 3, which prohibits sewer service to new development. Only the existing real estate office in this area can be served by the MLMUA STP. The Commerce Bank site presently lies within the future sewer service area of the proposed Moorestown Township Water Pollution Control Plant (WPCP) #2. At such time as this proposed STP is operational and a truck line reaches the vicinity of both project sites, the wastewater flow from these sites will cease discharge to the MLMUA Hartford Road STP and connect into the Moorestown Township WPCP #2.

HUMAN SERVICES

(b)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program

Notice of Income Eligibility, Deduction, and Coupon Allotment Standards

Take notice that, in accordance with N.J.A.C. 10:87-12, the Department of Human Services announces that the following food stamp income eligibility, deduction, and coupon allotment standards shall be utilized in the New Jersey Food Stamp Program for the period October 1, 1992 through September 30, 1993. This change is effective October 1, 1992.

Table I
Income Deductions

Standard Deduction (N.J.A.C. 10:87-12.1(a))	$127.00
Shelter Deduction (N.J.A.C. 10:87-12.1(b))	$200.00
Uniform Telephone Allowance (UTA) (N.J.A.C. 10:87-12.1(c))	$ 18.00
Standard Utility Allowance (SUA) (N.J.A.C. 10:87-12.1(d))	$124.00
Heating Utility Allowance (HUA) (N.J.A.C. 10:87-12.1(e))	$201.00

TABLE II

Maximum Coupon Allotment (MCA)
(N.J.A.C. 10:87-12.2)

Household Size	MCA
1	$111
2	203
3	292
4	370
5	440
6	528
7	584
8	667
Each Additional Member	+83

TABLE III

Maximum Allowable Net Income
(N.J.A.C. 10:87-12.3)

Household Size	Maximxum Allowable Income
1	$ 568
2	766
3	965
4	1163
5	1361
6	1560
7	1758
8	1956
Each Additional Member	+199

TABLE IV

Maximum Allowable Gross Income
(N.J.A.C. 10:87-12.4)

Household Size	Maximum Allowable Income
1	$ 738
2	996
3	1254
4	1512
5	1770
6	2027
7	2285
8	2543
Each Additional Member	+258

TABLE VII

165 Percent of Poverty Level
(N.J.A.C. 10:87-12.7)

Household Size	Maximum Allowable Income
1	$ 937
2	1264
3	1591
4	1919
5	2246
6	2573
7	2900
8	3228
Each Additional Member	+328

(c)

NEW JERSEY DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Grant Funds for Research and Development

Take notice that the New Jersey Developmental Disabilities Council, in accordance with the requirements of 42 U.S.C. 6000, hereby provides general notice of the availability of grant funds. Specific notice regarding particular grants will be published in future issues of the New Jersey Register and will be provided to anyone who has asked the Council to notify them about the availability of grant funds. The New Jersey Developmental Disabilities Council (NJDDC) is a Federally-mandated planning and advisory agency located "in but not of" the New Jersey Department of Human Services. While NJDDC's mandate prohibits the provision of direct service, the Council does provide grants for research and demonstration projects whose outcomes are designed to improve the lives of people with developmental disabilities and their families. Contracts are let in response to competitive bid procedures; the Council does not fulfill unsolicited requests for funding. Priority areas of interest include employment, education, housing, and personal assistance services.

For more information on funds available during Federal Fiscal Year 1993, and to request individual notification of specific grant, please contact Rachel Hickson, Planner, NJDDC, CN 700, Trenton, N.J. 08625.

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Notice of Action on Petition for Rulemaking

N.J.A.C. 11:17, 11:17A

Petitioner: Self-Storage Insurance Agency, Inc.
Authority: N.J.S.A. 17:22A-2(m); N.J.A.C. 11:17-2.10(a) and N.J.A.C. 11:17A-1.2(b).

Take notice that on February 27, 1992, the Department of Insurance (Department) received a petition for rulemaking from Self-Storage Insurance Agency, Inc. through its counsel, David B. Ward. Esq. The petition requests that the Department act upon a proposed amendment to N.J.A.C. 11:17-1.2(b) which would permit self-storage property insurance to be marketed through a limited insurance representative under N.J.A.C. 11:17-2.10(a). The Department published the notice of receipt and action on the petition in the May 4, 1992 issue of the New Jersey Register (see 24 N.J.R. 1826(b)) in which the Commissioner certified that the petition was duly considered pursuant to law and that upon due deliberation, the matter was referred to the Department for further deliberations.

In accordance with N.J.A.C. 1:30-3.6 and 11:1-15.3, and after a thorough review of the petition, the Department has concluded that the petition is not appropriate and that the suggested amendment should not be proposed. "Personal property self-storage insurance" is not a separate and distinct line of insurance. It is property insurance against fire and theft, etc., which is a general line of insurance. The Department believes that this kind of insurance is simply a method of marketing property insurance to persons in order to cover a separate portion of their property (that is property which is being "self-stored"). Because "personal property self-storage insurance" is not a separate line, but rather insurance on a sub-set of property, potential insureds may have other insurance which covers the same property. In this respect, self-storage insurance is dissimilar to the kinds of insurance which currently may be marketed through limited insurance representatives and are listed under N.J.A.C. 11:17-2.10(a). The Department believes that to allow the individuals to cover their off-premises storage exposure without having the benefit of an analysis of their greater insurance needs would be a disservice to the public. Some consumers of self-storage insurance may have off-premises personal property coverage under an existing homeowners or tenants policy. Solicitation of applicants for self-storage insurance should be made by licensed insurance producers familiar with insurance coverages provided under existing policies so as to avoid a duplication of coverage.

The Department believes that authority to permit limited insurance representative status should be granted sparingly. Use of limited insurance representatives was not intended to replace agents where general insurance needs are involved or to accommodate unique or novel marketing methods. Therefore, self-storage insurance is not appropriate for marketing by limited insurance representatives.

TRANSPORTATION

(b)

DIVISION OF RESEARCH AND DEMONSTRATION BUREAU OF TRANSPORTATION SYSTEMS RESEARCH

Notice of Request for Expression of Interest

Professional Services for the Conduct of Research to Demonstrate Innovative Bidding and Contracting Practices

Public Notice

Take notice that the New Jersey Department of Transportation is seeking qualified engineering firms (consultants) interested in submitting letters of interest to conduct a research study for the investigation and development of innovative bidding and contracting practices to expedite the time of completion of construction projects in New Jersey.

As part of FHWA contract HPR 0010 (15), the New Jersey Department of Transportation (NJDOT) is seeking qualified engineering firms (consultants) interested in submitting letters of interest to conduct a research study for the investigation and development of innovative bidding and contracting practices to expedite the time of completion of construction projects in New Jersey. The study will include the identification of specific procedures, the development of general guidelines and specification wording, the writing of specifications for experimental applications, the monitoring of the experimental applications on construction projects in New Jersey and the preparation of a final report detailing the study and making recommendations for future applications.

The Department encourages applications from qualified minority contractors and disadvantaged business enterprises (DBE). The New Jersey Department of Transportation has a DBE target of 20 percent.

The selection of the contractor will be done in two phases. The first phase will be a review of letters of interest to evaluate the contractors' capabilities and experience in performing the work required for this project. Such letters shall also indicate the DBE status of the contractor and any subcontractors. Secondly, based on the review of the letters of interest, Requests for Proposals will be sent to up to five contractors for their use in preparing proposals. The final selection will be based on a review of the proposals submitted. Understanding of the work, proposed staffing, relevant experience of the personnel and firms and required licensing will be elements in letter of interest and final proposal review.

This effort is to be completed within 30 months of the beginning of work, which is scheduled to begin in early 1993.

There is $100,000 available for this contract.

The work on this effort must be under the direction of a licensed professional engineer.

Individuals and organizations wishing to be considered for this study should submit five copies of (1) a letter of interest, not exceeding four single side, letter sized pages, providing a level of detail adequate for the review mentioned above, and summarizing the firm's understanding of the project, qualifications of the firm, prior relevant experience, team organization and key personnel; (2) a list of references claimed as relevant experience by each firm and each key individual including: name, title, agency, address and telephone number of client agency program manager; (3) an organizational chart showing proposed key personnel names, position titles and reporting relationship of each firm; (4) an organizational chart showing proposed key personnel names, position titles, professional licenses and/or registrations and reporting relationships; and (5) completed NJDOT Form SA87 to:

Mailing Address:
Richard L. Hollinger
New Jersey Department of Transportation
Research and Demonstration
CN 612
Trenton, NJ 08625-0612

Office Location: 1600 North Olden Avenue, Trenton, NJ.

The **deadline for receipt** of letters of interest is 4:00 P.M. on Monday, November 23, 1992.

Solicitation number: 4500093IP021

Any questions on this effort should be directed to:
Jack Croteau
New Jersey Department of Transportation
Research and Demonstration
CN 612
Trenton, NJ 08625-0612
Telephone: (609) 292-4728

For a blank copy of NJDOT Form SA87, contact the NJDOT Bureau of Professional Services at (609) 530-2452.

(a)

DIVISION OF RESEARCH AND DEMONSTRATION BUREAU OF TRANSPORTATION SYSTEMS RESEARCH

Notice of Request for Expression of Interest

Professional Services for the Development, Design and Testing of Improved Street Hardware

Public Notice

Take notice that the New Jersey Department of Transportation is seeking qualified universities or engineering firms (consultants) interested in submitting letters of interest to conduct a research study for the development, testing, and design of improved methods for resetting highway hardware (manhole covers and inlet grates) to match the height of a newly resurfaced pavement.

As part of FHWA grant NJ 91-101, the New Jersey Department of Transportation (NJDOT) is seeking qualified universities or engineering firms (consultants) interested in submitting letters of interest to conduct a research study for the development, testing, and design of improved methods for resetting highway hardware resurfaced pavement. The research study will establish generic design procedures, specifications and improved prototype extension frame devices to facilitate that objective.

The research study will consist of the following: (1) developing analysis and design criteria for the extension frames; (2) testing the validity of those developed criteria through means of laboratory, test track, and actual field installations; (3) development of a testing protocol, specifications and prototype of an improved generic extension frame design; and (4) development of an implementation package to permit transfer/demonstration of the improved technology developed to other highway agencies.

The Department encourages applications from qualified minority contractors and disadvantaged business enterprises (DBE). The New Jersey Department of Transportation has a DBE target of 20 percent.

A contractor will not be eligible to bid on this work if there is a preexisting relationship with a vendor of highway hardware which could cause even the appearance of a conflict of interest or unfair competitive advantage. A conflict of interest will be deemed to exist if the contractor has previously been involved in the development or marketing of highway hardware which might be evaluated in this research or in the development of technical criteria to be used in the acquisition of such highway hardware.

The selection of the contractor will be done in two phases. The first phase will be a review of letters of interest to evaluate the contractors' capabilities and experience in performing the work required for this project. Such letters shall also indicate the DBE status of the contractor and any subcontractors to be utilized and the nature of any preexisting relationship with a vendor of highway hardware. Secondly, based on the review of the letters of interest, Requests for Proposals will be sent to up to five contractors for their use in preparing proposals. The final selection will be based on a review of the proposals submitted. Understanding of the work, proposed staffing, relevant experience of the personnel and firms and required licensing will be elements in short listing and final selection.

This effort is to be completed within 36 months of the beginning of work, which is scheduled to begin in early 1993.

There is $650,000 available for this contract.

The work on this effort must be supervised and approved by a licensed professional engineer.

Organizations and joint ventures wishing to be considered for this study should submit three copies of: (1) a letter of interest, not exceeding four single side, letter sized pages, providing a level of detail adequate for the review mentioned above, and summarizing the firm's understanding of the project, qualifications of the firm, prior relevant experience, team organization and key personnel; (2) a list of references claimed as relevant experience by each firm and each key individual including: name, title, agency, address and telephone number of client agency program manager; (3) an organizational chart showing proposed key personnel names, position titles and reporting relationship of each firm; (4) an organizational chart showing proposed key personnel names, position titles, professional licenses and/or registrations and reporting relationships; and (5) completed NJDOT Form SA87 to:

Mailing Address:

Richard L. Hollinger
New Jersey Department of Transportation
Division of Research and Demonstration
CN 612
Trenton, NJ 08625-0612

Office Location: 1600 North Olden Avenue, Trenton, NJ.

The **deadline for receipt** of letters of interest is 4:00 P.M. on Monday, November 23, 1992.

Solicitation number: 22003571

Any questions on this effort should be directed to:

Jack Croteau
New Jersey Department of Transportation
Division of Research and Demonstration
CN 612
Trenton, NJ 08625-0612
Telephone: (609) 292-4728

For a blank copy of NJDOT Form SA87, contact the NJDOT Bureau of Professional Services at (609) 530-2452.

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 September 8, 1992 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.1992 d.1 means the first rule adopted in 1992.

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 AUGUST 17, 1992

NEXT UPDATE: SUPPLEMENT SEPTEMBER 21, 1992

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
23 N.J.R. 3061 and 3192	October 21, 1991	24 N.J.R. 1659 and 1840	May 4, 1992
23 N.J.R. 3193 and 3402	November 4, 1991	24 N.J.R. 1841 and 1932	May 18, 1992
23 N.J.R. 3403 and 3548	November 18, 1991	24 N.J.R. 1933 and 2102	June 1, 1992
23 N.J.R. 3549 and 3678	December 2, 1991	24 N.J.R. 2103 and 2314	June 15, 1992
23 N.J.R. 3679 and 3840	December 16, 1991	24 N.J.R. 2315 and 2486	July 6, 1992
24 N.J.R. 1 and 164	January 6, 1992	24 N.J.R. 2487 and 2650	July 20, 1992
24 N.J.R. 165 and 318	January 21, 1992	24 N.J.R. 2651 and 2752	August 3, 1992
24 N.J.R. 319 and 508	February 3, 1992	24 N.J.R. 2753 and 2970	August 17, 1992
24 N.J.R. 509 and 672	February 18, 1992	24 N.J.R. 2971 and 3202	September 8, 1992
24 N.J.R. 673 and 888	March 2, 1992	24 N.J.R. 3203 and 3454	September 21, 1992
24 N.J.R. 889 and 1138	March 16, 1992	24 N.J.R. 3455 and 3578	October 5, 1992
24 N.J.R. 1139 and 1416	April 6, 1992	24 N.J.R. 3579 and 3784	October 19, 1992
24 N.J.R. 1417 and 1658	April 20, 1992		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-1.5, App. A	Conduct of administrative law judges	24 N.J.R. 2755(a)		
1:6A-9.2, 14.1, 14.4, 18.1, 18.3, 18.5	Special Education Program	24 N.J.R. 1936(a)	R.1992 d.331	24 N.J.R. 3091(a)
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
1:31-3.1	Conduct of administrative law judges	24 N.J.R. 2755(a)		
	Most recent update to Title 1: TRANSMITTAL 1992-3 (supplement May 18, 1992)			
AGRICULTURE—TITLE 2				
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:69-1.11	Commercial values of primary plant nutrients	24 N.J.R. 2318(a)	R.1992 d.373	24 N.J.R. 3511(a)
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program	24 N.J.R. 2318(b)	R.1992 d.374	24 N.J.R. 3511(b)
2:71-2.28, 2.29	Inspection and grading charges for fruits and vegetables	24 N.J.R. 2321(a)	R.1992 d.375	24 N.J.R. 3513(a)
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing uses of enrolled lands	24 N.J.R. 2831(a)		
2:76-6.15	Farmland Preservation Program: pre-existing uses on lands permanently deed restricted	24 N.J.R. 2833(a)		
	Most recent update to Title 2: TRANSMITTAL 1992-4 (supplement August 17, 1992)			
BANKING—TITLE 3				
3:1-2.1–2.9, 2.18, 2.20, 2.21	Branch and charter application procedures for banks, savings banks, and savings and loan associations	24 N.J.R. 3034(a)		
3:18-1, 2.1, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 7.4, 7.5, 8.1, 8.2, 9, 10.5, 10.7, 10.8, 11	Secondary Mortgage Loan Act rules	24 N.J.R. 2760(a)		
3:38	Mortgage bankers and brokers	24 N.J.R. 2653(a)	R.1992 d.378	24 N.J.R. 3514(a)
3:38-1.6	Mortgage bankers and brokers: administrative correction regarding surety bonds	———	———	24 N.J.R. 3514(b)
3:38-1.9, 5.2, 5.3	Branch offices; mortgage services licensure exemption; solicitor registration	24 N.J.R. 1937(a)		
	Most recent update to Title 3: TRANSMITTAL 1992-6 (supplement August 17, 1992)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
PERSONNEL—TITLE 4A				
4A:1	General rules and Department organization	24 N.J.R. 2490(a)	R.1992 d.416	24 N.J.R. 3715(a)
4A:2	Appeals, discipline, separations	24 N.J.R. 2491(a)	R.1992 d.414	24 N.J.R. 3716(a)
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-3.7, 7.10, 7.12	Reinstatement of permanent employee following disability retirement	24 N.J.R. 2107(a)	R.1992 d.338	24 N.J.R. 3091(b)
4A:4-7.11	Transfers and retention of employee rights in a consolidation	24 N.J.R. 2494(a)	R.1992 d.419	24 N.J.R. 3718(a)
4A:5	Veterans and disabled veterans preference	24 N.J.R. 2495(a)	R.1992 d.415	24 N.J.R. 3719(a)
4A:6-1, 2, 3, 4, 5	Leaves, hours of work, and employee development: preproposed readoption	24 N.J.R. 2496(b)		
4A:6-1.6	Sick leave injury (SLI) benefits: carpal tunnel syndrome and asbestosis	24 N.J.R. 2108(a)	R.1992 d.413	24 N.J.R. 3720(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-6	Awards program: preproposed readoption	24 N.J.R. 2496(a)		
4A:7	Equal employment opportunity and affirmative action	24 N.J.R. 2496(c)	R.1992 d.420	24 N.J.R. 3721(a)
4A:9-1	Political subdivisions	24 N.J.R. 2498(a)	R.1992 d.418	24 N.J.R. 3722(a)
4A:10	Violations and penalties	24 N.J.R. 2499(a)	R.1992 d.417	24 N.J.R. 3723(a)
	Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
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5:4-2	Debarment and suspension from Department contracting	24 N.J.R. 2322(a)	R.1992 d.389	24 N.J.R. 3515(a)
5:10-25	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)	R.1992 d.390	24 N.J.R. 3515(b)
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.5, 2.4A, 2.4B, 2.7, 2.8	Uniform Fire Code: life hazard uses and permits	24 N.J.R. 2654(a)	R.1992 d.385	24 N.J.R. 3519(a)
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system requirement	24 N.J.R. 1938(a)	R.1992 d.405	24 N.J.R. 3723(b)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25	Uniform Construction Code: mechanical inspector license and mechanical inspections	24 N.J.R. 3457(a)		
5:23-3.7, 3.8, 4.20	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)	R.1992 d.390	24 N.J.R. 3515(b)
5:23-3.14	Uniform Construction Code: tent permits	24 N.J.R. 2656(a)	R.1992 d.391	24 N.J.R. 3521(a)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5, 4.19–4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19, 12.5, 12.6	UCC: State Training Fee Report; fees	24 N.J.R. 2657(a)	R.1992 d.392	24 N.J.R. 3521(b)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-5.7	UCC: subcode official requirements	24 N.J.R. 2661(a)	R.1992 d.393	24 N.J.R. 3525(a)
5:23-5.19	UCC: elevator inspector H.H.S. requirements	24 N.J.R. 2662(a)	R.1992 d.394	24 N.J.R. 3525(b)
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)		
5:25-5.4	State new home warranty plan contributions	24 N.J.R. 2663(a)	R.1992 d.395	24 N.J.R. 3525(c)
5:26-2.3, 2.4	Planned real estate development full disclosure: fees	24 N.J.R. 2657(a)	R.1992 d.392	24 N.J.R. 3521(b)
5:30-8.2	Unbudgeted school aid	24 N.J.R. 2766(a)	R.1992 d.426	24 N.J.R. 3723(c)
5:33-1.2, 1.3, 1.5–1.8	Municipal tax collection procedures	24 N.J.R. 2766(a)	R.1992 d.426	24 N.J.R. 3723(c)
5:33-3.2, 3.3, 3.6, 3.8–3.11	Tenant Property Tax Rebate Program	24 N.J.R. 3205(a)		
5:33-4	Property tax and mortgage escrow account transactions	24 N.J.R. 2664(a)	R.1992 d.400	24 N.J.R. 3527(a)
5:34-7	Cooperative purchasing by local contracting units	24 N.J.R. 2667(a)	R.1992 d.401	24 N.J.R. 3529(a)
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91	Council on Affordable Housing: procedural rules	24 N.J.R. 2671(a)		
	Most recent update to Title 5: TRANSMITTAL 1992-8 (supplement August 17, 1992)			
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:5	State veterans' facilities: admission criteria, care maintenance fee, transfer or discharge	24 N.J.R. 2499(b)	R.1992 d.372	24 N.J.R. 3311(a)
	Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
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6:3-2.6	Conditions for access to pupil records	24 N.J.R. 3038(a)		
6:8	Thorough and efficient system of public schools	24 N.J.R. 3039(a)		
6:8-6	Programs and services for pupils at risk	24 N.J.R. 3494(a)		
6:8-9	Educational improvement plans in special needs districts	24 N.J.R. 2323(a)	R.1992 d.396	24 N.J.R. 3535(b)
6:12-1.2, 1.7–1.10, 1.14	Governor's Teaching Scholars Program	24 N.J.R. 3050(a)		
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 2109(a)		
6:21-6A.6	Pupil transportation: administrative correction to N.J.A.C. 6:21-6A.6 regarding school bus color	24 N.J.R. 2325(a)		
6:29-2.4	Attendance at school by pupils or adults infected by HIV	24 N.J.R. 2124(a)	R.1992 d.398	24 N.J.R. 3538(a)
6:29-8	Nonpublic school nursing services	24 N.J.R. 3495(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:31-1.1–1.7, 1.9–1.16	Multiple indicators for exit from bilingual programs	24 N.J.R. 3497(a)		
6:64	Public, school, and college libraries	24 N.J.R. 2126(a)	R.1992 d.399	24 N.J.R. 3538(b)
	Most recent update to Title 6: TRANSMITTAL 1992-4 (supplement August 17, 1992)			
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 1968(a)		
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
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7:14B	Underground storage tanks	24 N.J.R. 2975(a)		
7:14B	Underground storage tanks: public hearing	24 N.J.R. 3286(b)		
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7:25-6	1993-94 Fish Code	24 N.J.R. 2539(a)		
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7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
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7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies: reopening of comment period	24 N.J.R. 2002(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
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7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B	Environmental Cleanup Responsibility Act rules	24 N.J.R. 2773(b)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. 1	ECRA rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
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7:27-25	Control and prohibition of air pollution by vehicular fuels: public meeting and hearing on oxygenated fuels program	24 N.J.R. 2128(a)		
7:27-25.1–25.4, 25.7–25.12	Control and prohibition of air pollution by vehicular fuels	24 N.J.R. 2386(a)	R.1992 d.382	24 N.J.R. 3539(a)
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27A-3.10	Civil administrative penalties for violations of Air Pollution Control Act	24 N.J.R. 2386(a)	R.1992 d.382	24 N.J.R. 3539(a)
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)		
7:30	Pesticide Control Code	24 N.J.R. 2776(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		
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8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:21-3A	Registration of wholesale distributors of prescription drugs	24 N.J.R. 2410(b)	R.1992 d.354	24 N.J.R. 3100(a)
8:31A-1.5, 7.4, 7.5, App. D	SHARE Manual: per diem add-on fee assessment	24 N.J.R. 2810(a)		
8:31A-App. A	SHARE Manual: administrative correction regarding Cost Center Record	_____	_____	24 N.J.R. 3103(a)
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:33	Health care facilities and services: Certificate of Need application and review process	24 N.J.R. 2222(a)	R.1992 d.342	24 N.J.R. 3104(a)
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33C	Regionalized perinatal services: Certificate of Need criteria and standards	24 N.J.R. 2005(a)	R.1992 d.343	24 N.J.R. 3131(a)
8:33C-2.7, 7.2	Regionalized perinatal services: administrative corrections	_____	_____	24 N.J.R. 3727(a)
8:33H	Long-term care services: Certificate of Need policy manual	24 N.J.R. 2014(a)	R.1992 d.344	24 N.J.R. 3144(a)
8:34-1.7	Licensure examination fee for nursing home administrator	24 N.J.R. 2414(a)	R.1992 d.345	24 N.J.R. 3161(a)
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8:45-1.3, 2.1	Blood bank licensure fees and Department laboratory services charges	24 N.J.R. 2508(a)	R.1992 d.427	24 N.J.R. 3725(c)
8:65-2.5	Controlled dangerous substances: physical security controls	24 N.J.R. 174(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 145(b))	23 N.J.R. 3258(a)	R.1992 d.136	24 N.J.R. 948(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products (see 24 N.J.R. 947(b), 1897(a), 2560(a))	24 N.J.R. 61(a)	R.1992 d.349	24 N.J.R. 3173(b)
8:71	Interchangeable drug products (see 24 N.J.R. 1896(a), 2560(b))	24 N.J.R. 735(a)	R.1992 d.350	24 N.J.R. 3174(a)
8:71	Interchangeable drug products	24 N.J.R. 1673(a)	R.1992 d.296	24 N.J.R. 2559(a)
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b))	24 N.J.R. 1674(a)	R.1992 d.348	24 N.J.R. 3173(a)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c))	24 N.J.R. 2414(b)	R.1992 d.428	24 N.J.R. 3728(a)
8:71	Interchangeable drug products	24 N.J.R. 2997(a)		
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9:6A	State college personnel system	24 N.J.R. 3052(a)		
9:7	Student Assistance Programs	24 N.J.R. 2510(a)		
9:9-7.6	NJCLASS Program: loan interest rate	24 N.J.R. 2687(b)		
9:9-7.6, 7.7	NJCLASS program: student loan interest rates	_____	_____	24 N.J.R. 3180(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	24 N.J.R. 1859(a)	R.1992 d.353	24 N.J.R. 3091(c)
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10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:53A	Hospice Services Manual	24 N.J.R. 2778(a)		
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10:71-5.6	Medicaid Only income eligibility standards for hospice care	24 N.J.R. 2778(a)		
10:72	New Jersey Care: Special Medicaid Programs Manual	24 N.J.R. 2145(a)	R.1992 d.364	24 N.J.R. 3343(a)
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)		
10:80 et al.	Designation of Division of Economic Assistance as Division of Family Development	_____	_____	24 N.J.R. 3729(a)
10:81-1.6, 1.11, 1.12, 2.1, 2.2, 2.4, 2.7, 2.8, 3.8, 3.9, 3.18, 3.19, 4.2, 4.23, 5.2, 5.7, 5.8, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 14.1, 14.18, 14.20, 14.21	Public Assistance Manual: Family Development Program and REACH/JOBS provisions	24 N.J.R. 2147(a)	R.1992 d.366	24 N.J.R. 3345(a)
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10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	24 N.J.R. 2160(a)	R.1992 d.340	24 N.J.R. 3092(a)

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10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
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10:97-1.3, 7.3	Business Enterprise Program for the blind and visually impaired: promotion and transfer	24 N.J.R. 2798(a)		
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10:121A	Manual of Requirements for Adoption Agencies	24 N.J.R. 3500(a)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
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10:124	Children's Shelter Facilities and Homes: manual of standards	24 N.J.R. 3089(a)		
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10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
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