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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 16
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(Includes adopted rules filed through July 31, 1989)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 19, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JULY 17, 1989

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **September 20, 1989.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Compensation; Promotional Examinations; Eligible Lists; Sick Leave; Rule Violations

Reproposed New Rule: N.J.A.C. 4A:3-4.17
Proposed Amendments: N.J.A.C. 4A:3-4.21; 4A:4-2.1, 4A:4-2.15, 4A:4-3.4, 4A:4-5.5; 4A:6-1.5 and 4A:10-1.1

Authority: N.J.S.A. 11A:2-6(d), 11A:3-7, 11A:4-1, 11A:4-6, 11A:6-5, 11A:6-7 and 11A:10-3.

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

Proposal Number: PRN 1989-438.

A **public hearing** will be held on:
Thursday, September 7, 1989 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Trenton, New Jersey

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

Submit written comments by September 20, 1989 to:
Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, N.J. 08625

The agency proposal follows:

Summary

In a continuing effort to improve the clarity and fairness of merit system rules, a reproposed new rule and series of amendments are being offered for public comment.

N.J.A.C. 4A:3-4.17, originally proposed with the rest of N.J.A.C. 4A:3 on April 18, 1988 (see 20 N.J.R. 846(a)), is being reproposed with more comprehensive and understandable provisions than those contained in the original proposal. The Merit System Board had decided not to adopt the rule as originally proposed (see 20 N.J.R. 2255(b)). The reproposed rule would set forth methods of calculating the salary and anniversary date of a State employee appointed from a special reemployment list to the same or different title. The rule would also provide procedures for calculation of the new salary and anniversary dates if the title to which the employee is appointed was reevaluated after the reduction in force took place. Finally, the reproposed rule would ensure that an employee would not receive a salary, upon reemployment, greater than he or she would have had had there been no reduction in force.

The proposed amendment to N.J.A.C. 4A:3-4.21 would delete the word "or" from paragraph (a)2, to clarify that the Commissioner of Personnel would consider all of the factors listed in subsection (a) in determining whether an employee need repay a salary overpayment.

In response to a petition for rulemaking filed by William Seip (see 21 N.J.R. 1581(b)), the Board proposes an amendment to N.J.A.C. 4A:4-2.1. Mr. Seip had asked that the Merit System Board adopt a rule requiring the Department of Personnel to reannounce a promotional examination if it does not promulgate a promotional list within one year from the examination closing date. Following Departmental review, the Board is publishing for comment a proposed amendment which would require the reannouncement of a promotional examination if, within one year of the closing date, the examination has not yet been constructed and scheduled.

The proposed amendment to N.J.A.C. 4A:4-2.15 would preclude the use of performance ratings as a factor in promotional examination ratings if both the supervisor, who completes the performance rating of a subordinate and the subordinate, compete in that promotional examination. This amendment would codify an existing policy of the Department of Personnel. This policy had been codified in N.J.A.C. Title 4, but was inadvertently repealed without the adoption of a replacement rule provision in N.J.A.C. 4A:4 when that new rule chapter was adopted.

The proposed amendment to N.J.A.C. 4A:4-3.4 would implement the provision in N.J.S.A. 11A:4-6 which permits the Commissioner of Personnel to revive an expired eligible list to effect the appointment of an eligible who was laid off during his or her working test period. The proposed amendment to N.J.A.C. 4A:4-5.5 would restore the name of an employee who is laid off during his or her working test period to the eligible list from which he or she was appointed. These amendments would codify current practice by the Department of Personnel.

Methods for calculating sick leave adjustments for a State employee who has a change in workweek or change in part time or full time status would be included in the proposed amendment to N.J.A.C. 4A:6-1.5. Two options are offered, providing alternative methods for addressing changes in workweek. Both options provide the same method for changes for part time or full time status. The amendments feature detailed examples on how to apply the provisions.

Finally, a proposed amendment to N.J.A.C. 4A:10-1.1 would require that all appointing authorities comply in a timely manner with Department of Personnel requests for information and documents which are necessary for the smooth administration of the merit system.

Social Impact

N.J.A.C. 4A:3-4.17, as reproposed and rewritten, would offer language more comprehensive than the previous proposed rule. The expansive nature of the proposed rule should assist any State personnel office staff and other State employees who may need to understand such adjustments.

The proposed amendment to N.J.A.C. 4A:3-4.21 would have a minimal, positive impact on State employees who have received salary overpayments, because the rule would ensure that the Commissioner of Personnel would have discretion to consider the equities of a particular situation.

The proposed amendments to N.J.A.C. 4A:4-2.1, in requiring the reannouncement of a promotional examination when there has been an unusual delay in the examination process as described in the amendments, would give some merit system employees a chance for promotional opportunity who may not have been eligible as of the original examination closing date. Such employees otherwise would have had to wait an inordinate amount of time for professional advancement simply because of a delay in the examination process which was no fault of their own.

The proposed amendment to N.J.A.C. 4A:4-2.15 should have a positive social impact on employees taking promotional examinations. Disallowing the use of performance ratings in the situation described above would enhance the fairness of promotional examination rating by eliminating a potential or real conflict of interest.

The proposed amendments to N.J.A.C. 4A:4-3.4 and 5.5 would have a positive impact on employees who are laid off in their working test period. Placement of a laid off employee's name on the eligible list from which he or she had been appointed would help to provide him or her with another opportunity for employment. Revival of an expired eligible list for purposes of effecting the appointment of an eligible who was laid off during his or her working test period also would help to further this purpose.

Personnel office staff in State appointing authorities, as well as other State employees, would be assisted by the extensive proposed amendment to N.J.A.C. 4A:6-1.5. This amendment would provide more uniformity regarding the amount of sick leave an employee would be entitled to if his or her workweek changes or if his or her status as a full or part time employee changes. This certainty would ensure greater fairness and accuracy in sick leave adjustments.

The social impact of the proposed amendment to N.J.A.C. 4A:10-1.1 would be minimal, although beneficial, for any person employed or hoping to be employed by a merit system jurisdiction. The amendment would help to ensure that the selection and appointment process and other merit system programs would go forward with a minimum of hindrances.

Economic Impact

In general, the economic impact of the proposed new rule and amendment would be minimal. N.J.A.C. 4A:3-4.17 would facilitate State employees' understanding of how salaries and anniversary dates will be adjusted upon reemployment, thus minimizing inaccurate calculations which could work to the detriment of employees hired from a special reemployment list.

Also, the proposed amendment to N.J.A.C. 4A:10-1.1 could assist the Department of Personnel and other State agencies in their efforts to save money in the administration of merit system practices by promoting efficiency in such procedures and preventing wasteful, duplicative efforts.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed rule and amendments will have no effect upon small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules regulate employment in the public sector.

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

4A:3-4.17 Salaries and anniversary dates for employees appointed from a special reemployment list: State service

(a) The salary of an employee appointed from a special reemployment list shall be determined as follows:

1. When appointed to the same title held at the time of the reduction in force, the employee shall receive the same step of the salary range received on the date of the layoff.

2. When appointed to a different title from the one held at the time of the reduction in force, the employee shall receive the most beneficial to the employee of the following:

i. The same step and salary range that he or she would have received if appointed to the new title on the date of the reduction in force; or

ii. When the employee is currently serving in another title, the salary determined by adjustment to the new title:

(1) When appointed to a new title with the same class code, make a lateral pay adjustment, N.J.A.C. 4A:3-4.8;

(2) When appointed to a new title with a higher class code, make an advancement pay adjustment, N.J.A.C. 4A:3-4.9; or

(3) When appointed to a new title with a lower class code, make a demotional pay adjustment, N.J.A.C. 4A:3-4.1.

EXAMPLE: An employee was demoted in lieu of layoff in October, 1988 from Secretarial Assistant II (Range A17, 35 hour workweek) to Principal Clerk (Range R11, 35 hour workweek). At the time of the reduction in force, the employee was at step three of range A17 or $22,328. In accordance with N.J.A.C. 4A:3-4.10(c), which governs non-disciplinary demotions, the salary in the Principal Clerk title was set at step nine of range R11, or $21,229. Five months later and before the employee's anniversary date, the employee was appointed from a special reemployment list to the title of Principal Clerk Typist (Range R12, 35 hour workweek). Two calculations are made: (1) Using (a)2i above, if the employee had been demoted to Principal Clerk Typist at the time of layoff, the application of N.J.A.C. 4A:3-4.10(c) would have placed the employee at step eight of range R12, or $21,492. (2) Using (a)2ii above, advancement from Principal Clerk to Principal Clerk Typist would be governed by N.J.A.C. 4A:3-4.9(b) and would place the employee at step nine of range R12, or $22,286. Since the second option is more beneficial to the employee, (a)2ii above is followed.

(b) The anniversary date of an employee appointed from a special reemployment list shall be determined as follows:

1. When using (a)1 or (a)2i above to determine salary, reconstruct the employee's anniversary date to the date of the reduction in force, then calculate the additional number of pay periods needed to meet the requirements for a performance increment. Assign the anniversary date which will include the additional number of pay periods of service needed to satisfy anniversary date requirements.

2. When using (a)2ii above to determine salary, follow the provisions for either a lateral pay adjustment (N.J.A.C. 4A:3-4.8), advancement pay adjustment (N.J.A.C. 4A:3-4.9) or demotional pay adjustment (N.J.A.C. 4A:3-4.10) as applicable.

3. If at the time of the reduction in force the employee was at the maximum salary step for the title from which displaced, assign the anniversary date that reflects the length of time that the employee had been at the maximum step on the date of the reduction in force.

EXAMPLE: An employee is reappointed from a special reemployment list on March 26, 1988 (pay period 8/88) to the permanent title from which the employee was laid off on January 15, 1988 (pay period 3/88). At the time of the layoff, the employee was receiving the ninth step of the salary range with an anniversary date of 1/88. When reappointed, the employee will receive an anniversary date of 6/88 to show that the employee had been at the maximum step of the salary range for two pay periods.

(c) The salary and anniversary date for an employee who is appointed to a title that was reevaluated after the date of the reduction in force shall be determined by calculating the salary and anniversary date by (a)1 and (b)1 above, using the title's former salary range. See N.J.A.C. 4A:3-4.9 and 4A:3-4.11.

(d) This section shall not be used to obtain a salary greater than that the employee would have received in the absence of a reduction in force.

4A:3-4.21 Salary overpayments: State service

(a) The Commissioner may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;

2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status; [or]

3. The terms of the repayment schedule would result in economic hardship to the employee.

(b) (No change.)

4A:4-2.1 Announcements and applications

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

(d) A promotional examination shall be reannounced if, within one year of the closing date, the examination has not been developed and scheduled.

Recodify (d)-(g) as **(e)-(h)** (No change in text.)

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 examinations.

1. Performance ratings shall not be used as a factor in promotions when the supervisor who completes a performance rating for a subordinate competes in the same promotional examination as the subordinate.

4A:4-3.4 Revival of eligible lists

(a) The Commissioner may revive an expired eligible list under the following circumstances:

1.-2. (No change.)

3. To correct an administrative error; [or]

4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or

[4.]**5.** For other good cause.

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

(a) (No change.)

(b) An employee who is laid off during the working test period shall be restored to the eligible list from which he or she was appointed.

[(b)](**c**) (No change in text.)

OPTION "A"

4A:6-1.5 Vacation and sick leave adjustments: State service

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

(f) In State service, when an employee's workweek changes while he or she is employed by an appointing authority which tracks and grants sick leave in hours, the employee's sick leave entitlement shall be recalculated in the following manner:

1. The number of hours of sick leave for the former workweek shall be converted into days by dividing by the number of hours in the former workweek workday; and

2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

EXAMPLE: Mary Smith is in a 35 hour workweek title. On January 1, 1989, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the 1989 (15 days x 7 hours), or a total of 350 sick leave hours. Effective May 1, she is appointed to a title with a 40 hour workweek. Her new sick leave entitlement is computed by dividing 350 by seven, the number of hours

in a 35 hour workweek workday, to yield the result of 50 days of sick leave. The 50 days are then multiplied by eight, the number of hours in a 40 hour workweek workday. Thus, Mary Smith's converted sick leave hours are 400.

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for 1989 (15 days x 8 hours), or a total of 350 sick leave hours. Effective May 1, he is appointed to a title with a 35 hour workweek. His new sick leave entitlement is computed by dividing 350 by eight, the number of hours in a 40 hour workweek workday, to yield the result of 43.75 days of sick leave. The 43.75 days are then multiplied by seven, the number of hours in a 35 hour workweek workday. Thus, Thomas Brown's converted sick leave hours are 306 (43.75 x 7 = 306.25, rounded to 306).

(g) In State service, an employee whose status changes from part time to full time, or from full time to part time, shall receive sick leave benefits as follows:

1. If an employee's status changes from part time to full time, the amount of proportional sick leave which the employee has earned as a part time employee is added to the amount of sick leave with which he or she is credited for the remainder of the year as a full time employee.

2. If an employee's status changes from full time to part time, the amount of sick leave which he or she has earned as a full time employee is added to the amount of proportional sick leave with which the employee is credited for the remainder of the year as a part time employee.

EXAMPLE: John Jones works two days a week. Therefore, he is employed for 40 percent of the workweek. As a part time, 40 percent employee, his yearly sick leave is calculated by taking 40 percent of 15 sick leave days; thus, John is credited with six sick leave days on January 1. On pay period 14, John becomes a full time employee. As of that time, he already has earned three sick leave days as a part time, 40 percent employee. As a full time employee for the remainder of the year, John is credited with 7.5 sick days. These are added to the three sick leave days which he earned during the first half of the year, so that he will have a total of 10.5 sick days for the year. Any accumulated sick days which John earned in previous years as a part time, 40 percent employee are added to the 10.5 sick days to which John will be entitled this year.

OPTION "B"

4A:6-1.5 Vacation and sick leave adjustments: State service

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

(f) In State service, when an employee's workweek changes while he or she is employed by an appointing authority which tracks and grants sick leave in hours, the employee's sick leave entitlement shall be recalculated in the following manner:

1. The number of hours of sick leave for the current year which have been credited, but not earned, as of the date of the change shall be converted into days by dividing by the number of hours in the former workweek workday.

2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

3. The hours of sick leave accumulated from prior years and the hours of sick leave earned during the current year as of the date of the change shall not be converted.

EXAMPLE: Mary Smith is in a 35 hour workweek title. On January 1, 1989, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the 1989 (15 days x 7 hours), or a total of 350 sick leave hours. Effective May 1, she is appointed to a title with a 40 hour workweek. Due to the change in workweek, the 1989 credit is converted. For the first four months, she has earned 35 hours (1/3 x 105 hours). For the remainder of the year, a yearly rate of 120 hours (15 days x 8 hours) is utilized, and her credit for this period is 80 hours (2/3 x 120 hours). The hours not converted are those accumulated from prior years (245) and those earned during the current year as of May 1 (35). Adding the converted and non-coverted hours, Mary Smith's sick leave entitlement as of May 1 is 360 hours.

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for 1989 (15 days x 8 hours), or a total of 350 sick leave hours. Effective May 1, he is appointed to a title with a 35 hour workweek. Due to the change in workweek, the 1989 credit is converted. For the first four months, he has earned 40 hours (1/3 x 120 hours). For the remainder of the year, a yearly rate of 105 hours (15 days x 7 hours) is utilized, and his credit for this period is 70 hours (2/3 x 105 hours). The hours not converted are those accumulated from prior years (230) and those earned during the current year as of May 1 (40). Adding the converted to the non-converted hours, Thomas Brown's sick leave entitlement as of May 1 is 340 hours.

(g) In State service, an employee whose status changes from part time to full time, or from full time to part time, shall receive sick leave benefits as follows:

1. If an employee's status changes from part time to full time, the amount of proportional sick leave which the employee has earned as a part time employee is added to the amount of sick leave with which he or she is credited for the remainder of the year as a full time employee.

2. If an employee's status changes from full time to part time, the amount of sick leave which he or she has earned as a full time employee is added to the amount of proportional sick leave with which the employee is credited for the remainder of the year as a part time employee.

EXAMPLE: John Jones works two days a week. Therefore, he is employed for 40 percent of the workweek. As a part time, 40 percent employee, his yearly sick leave is calculated by taking 40 percent of 15 sick leave days; thus, John is credited with six sick leave days on January 1. On pay period 14, John becomes a full time employee. As of that time, he already has earned three sick leave days as a part time, 40 percent employee. As a full time employee for the remainder of the year, John is credited with 7.5 sick days. These are added to the three sick leave days which he earned during the first half of the year, so that he will have a total of 10.5 sick days for the year. Any accumulated sick days which John earned in previous years as a part time, 40 percent employee are added to the 10.5 sick days to which John will be entitled this year.

4A:10-1.1 General provisions

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

(f) Appointing authorities shall timely supply all information, documents and other materials requested by the Department of Personnel for the purpose of efficiently and accurately administering the merit system.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT
Uniform Fire Code; Fire Code Enforcement
Fire Safety Code
Proposed Amendments: N.J.A.C. 5:18-1.4, 1.5, 2.4A, 2.5, 2.7, 2.8, 4.1, 4.7, 4.9, 4.11 and 4.13; 5:18A-3.3

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

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

Proposal Number: PRN 1989-429.

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

September 7, 1989 at 10:00 A.M.
Department of Community Affairs
101 South Broad Street
Trenton, New Jersey

Submit written comments by September 20, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This notice of proposal contains amendments to the Fire Safety Code (N.J.A.C. 5:18-4), to other provisions of the Uniform Fire Code (N.J.A.C. 5:18) and to the Fire Code Enforcement rules at N.J.A.C. 5:18A-3.3.

Section 22 of the Uniform Fire Safety Act (N.J.S.A. 52:27D-213) provides that State fire safety standards established by authority of any other law only continue in effect until such time as they are superseded by standards established by the Department of Community Affairs under the Uniform Fire Safety Act. N.J.A.C. 5:18-1.4 is therefore amended to include a list of rules deemed by the Department to have been superseded.

The rules concerning life hazard use registration and permits for elementary and high schools are amended so as to have the effect of requiring schools to pay no more than one annual fee of $115.00 per building. This applies to both public and private schools.

Provision is made for local enforcing agencies to either provide evidence of cyclical inspection of hotels and multiple dwellings that are not high rise structures or life hazards, or to leave such cyclical inspection responsibility to the Bureau of Housing Inspection, and to send to the Bureau of Fire Safety a copy of any certificate of inspection issued for any hotel, multiple dwelling or rooming or boarding house.

Requirements contained in the Fire Safety Code, the portion of the Uniform Fire Code that deals with the retrofitting of existing buildings with additional fire protection features, are Use Group specific. The Uniform Fire Code defines Use Groups by reference to the building subcode of the State Uniform Construction Code. However, the building subcode, which is the BOCA National Building Code, is subject to periodic revision, which may involve change of Use Group definitions. In order to avoid subjecting owners of buildings subject to the Fire Safety Code to the possibility of changing requirements due to changes in Use Group definitions, N.J.A.C. 5:18-1.5 is amended to identify Use Groups as defined in the 1984 edition of the BOCA Basic/National Building Code.

N.J.A.C. 5:18-4.7 is amended to require that automatic fire suppression systems be installed within one year of the effective date of these amendments in all buildings throughout all windowless stories below the seventh floor which do not have access in exterior wall(s) for fire fighting operations. Exceptions are made for basements not exceeding 3,000 square feet with supervised fire alarm systems and provision is made for "dry pipe" systems in basements not exceeding 10,000 square feet. N.J.A.C. 5:18-4.7 is also amended to allow fire separations between uses in a multi-use building as an alternative to fire suppression throughout the building when not all uses require it.

N.J.A.C. 5:18-4.9 carries over from the Regulations Governing Rooming and Boarding Houses a requirement concerning fire suppression systems in boarding houses. Funding for such systems in boarding houses is available through the New Jersey Housing and Mortgage Finance Agency.

N.J.A.C. 5:18-4.11 is amended to require mezzanines with an occupant load greater than 50 and a travel distance to an exit exceeding 75 feet to have at least two independent means of egress within one year of the effective date of these amendments. Replacement doors in Use Groups R-1, R-2 and I-1 are required to be 1-3/4 inch solid core wood or approved equal, rather than 20 minute labeled doors. Closing devices may be omitted in group homes with not more than 15 occupants which are protected by an automatic detection system. Assembly buildings with an occupant load exceeding 100 are required to have panic hardware on exit doors within one year of the effective date of these amendments.

N.J.A.C. 5:18-4.13 is amended to require fire barriers protecting interior stairways and other vertical openings in buildings of various sizes and configurations in various Use Groups, including business, educational, factory, high hazard, certain institutional and residential, and mercantile.

N.J.A.C. 5:18A-3.3 is amended to require fire officials to report fire deaths to the Bureau of Fire Safety by telephone within 48 hours and in writing within 30 days.

Social Impact

The proposed amendments are intended to substantially increase the level of fire protection for people in buildings that antedate the State Uniform Construction Code, which still comprise the great bulk of the building stock of New Jersey. Protection of stairways and other vertical openings may be expected to limit the spread of fire and thereby protect lives and property. New requirements for windowless stories will be of particular benefit to firefighters, for whom such stories are especially hazardous.

Economic Impact

These amendments may be expected to impose additional costs upon owners of certain buildings with windowless stories, certain buildings with mezzanines, and places of assembly and other buildings in municipalities where the Life Safety Code is not already in effect by ordinance. Specific examples of such costs are as follows:

1. Windowless spaces pose a special hazard for firefighters, as was recently evidenced by the multifatality fire in a commercial building in Hackensack. The cost of providing the automatic suppression systems required in such spaces within one year of the effective date of these amendments will, of course, vary with the size and configuration of the space. In many cases, it will be possible to avoid the requirement by installing a sufficient number of windows which can provide access to firefighters. Basements of up to 3,000 square feet will be exempted if they have a properly installed supervised automatic fire alarm system. In basements not exceeding 10,000 square feet, a "dry pipe" system, which does not require any water source other than an ordinary water line, will be acceptable. The cost of such a "dry pipe" system is estimated to be about $1.00 per square foot.

2. Mezzanines with an occupant load of more than 50 and with a travel distance to an exit exceeding 75 feet will be required to have at least two independent exits. Typically, it will be possible to satisfy this requirement with an unenclosed stairway costing about $1,000.

3. Approved panic hardware will be required on doors with latching devices in places of assembly accommodating more than 100 occupants. This was already required under the Life Safety Code, which was in effect by municipal ordinance in the approximately 270 municipalities which contain at least 70 percent of the State's buildings.

4. Fire barriers to protect stairways and other vertical openings will be required in certain buildings without automatic fire suppression systems in the business, educational, factory and industrial, high hazard, I-1 institutional, mercantile, and R-1 and R-2 residential Use Groups. The cost will vary depending on the size and configuration of the building and its hallways and stairways. In a typical business building, a fire barrier across a hallway might cost $1,000. In a small hotel or multiple dwelling, adequate fire barriers might be installed for $500.00 per floor. In a factory, the cost of barriers might be expected to be in the range of $3,000 to $10,000 per floor per stairway. It should be noted that all buildings built under the State Uniform Construction Code, which has been in effect since 1977, are in compliance, as are an estimated 95 percent of public schools and 80 percent of private schools. Virtually all high hazard buildings are on a single level and therefore unaffected. Most mercantile buildings are on not more than two levels and are therefore not affected. I-1 institutional buildings are already subject to similar requirements under the Rooming and Boarding House Act. Seventy percent of business buildings were already subject to similar requirements under the Life Safety Code by municipal ordinance and, of the remainder, approximately 40 percent are exempt because they are under 3,000 square feet per floor.

An exemption to vertical opening enclosure requirements is provided to owners of guest houses, now defined by the Code as a separate hotel category in recognition of the home-like atmosphere provided by such facilities serving fewer than 16 guests, where greater control of guest activities can be implemented and where improved early warning detection systems are installed. A similar exemption is granted in owner-occupied multiple dwellings having a limited number of dwelling units.

These rules will not be without economic benefit to property owners. Vertical openings are the main avenue of fire spread in a building. Protection of these openings will reduce property damage and will also save lives, which is not without economic consequence. Also, owners of buildings in the R-1 (hotels), R-2 (multiple dwellings) and I-1 (boarding houses and similar facilities) Use Groups will benefit from the rule change allowing a 1-3/4 inch solid core door in lieu of a 20 minute labeled door for replacement doors. The labeled door typically costs about $200.00 while the 1-3/4 inch solid core door typically costs about $60.00. Another savings will be to owners of mixed use buildings, who will be allowed

to separate uses requiring fire suppression from those that do not by fire separation walls, thereby avoiding the need to provide fire suppression to the whole building.

The proposed amendments will not have any notable effect upon the revenue, costs or workload of enforcing agencies because no new categories of buildings requiring inspection are being added.

The amendments to N.J.A.C. 5:18-2.4A, 2.7 and 2.8 will have the effect of reducing the fees charged to public and private schools by making them life hazard uses with a maximum fee of $100.00 per year and relieving them of the obligation to pay most permit fees.

Regulatory Flexibility Analysis

While no special exceptions are made for small businesses per se, the fact that the rules are generally more stringent in larger buildings than in smaller ones should tend to benefit small businesses, since they are more likely to own small buildings than large buildings. Allowing exemption from strict compliance based upon the nature of the owner rather than the nature of the building, however, would be inimical to the protection of the safety and welfare of building occupants, firefighters and the public generally, and it is for this reason that the rules do not provide any special dispensations for small businesses. If a small business owns a large building, it must make that building safe regardless.

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

5:18-1.4 Applicability

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

(d) [(Reserved)] **All regulations, other than this Code, promulgated by any State agency with regard to fire safety in existing buildings, structures and premises subject to this Code shall, to the extent of any inconsistency with this Code, be deemed to have been superseded by this Code.**

1. Regulations determined by the Department of Community Affairs to be affected by this subsection include the following:

i. N.J.A.C. 5:10-25;
ii. N.J.A.C. 5:27-5;
iii. N.J.A.C. 5:23-2.23(i)7 and 9;
iv. N.J.A.C. 8:43-3;
v. N.J.A.C. 8:43A-15.2(b) and (c);
vi. N.J.A.C. 8:43B-3.2;
vii. N.J.A.C. 8:39-41.3 and 41.4;
viii. N.J.A.C. 8:42A-23.7;
ix. N.J.A.C. 10:44A-6.1(e) through (w);
x. N.J.A.C. 10:44B-6.2;
xi. N.J.A.C. 10A:31-3.1(b)1-3 and 11-13;
xii. N.J.A.C. 10A:32-4.4 and 4.5;
xiii. N.J.A.C. 10A:34-2.13;
xiv. N.J.A.C. 12:100-4.2(a)10 (incorporating Subparts E, L and S of 29 C.F.R. Part 1910);
xv. N.J.A.C. 12:90; and
xvi. N.J.A.C. 12-200.

2. The enumeration of certain regulations in (d)1 above shall not be construed as limiting the applicability of this subsection.

(e)-(g) (No change.)

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found within the Uniform Construction Code, N.J.A.C. 5:23-1.4, shall govern:

. . .

"Guest house" means a facility providing sleeping or dwelling accommodations to transient guests which:

1. Is comprised of a structure originally constructed for the purposes of a private residence;

2. Includes individual sleeping accommodations for 15 or fewer guests;

3. Has at least one dwelling unit occupied by the owner of the facility as his place of residence during any time that the facility is being used for the lodging of guests;

4. Has not less than 300 square feet of common area for the exclusive use of the guests, including, but not limited to, parlors, dining rooms, libraries and solariums;

5. Prohibits cooking and smoking in guest rooms;

6. Does not serve food to the general public on the premises;

7. Is not a "rooming house" or "boarding house" as defined in N.J.A.C. 55:13B-3; and

8. Does not allow any guest to remain more than 30 successive days or more than 30 days of any period of 60 successive days.

. . .

"K-12 educational building" means an educational building serving 50 or more students from kindergarten through grade 12 and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive.

. . .

"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as [defined by the New Jersey Uniform Construction Code] **follows**. It shall also mean[s] 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. "Use Group A-1-A": This Use Group shall include all theaters and other buildings used primarily for theatrical or operatic performances and exhibitions, arranged with a raised stage, proscenium curtain, fixed or portable scenery loft, lights, motion picture booth, mechanical appliances or other theatrical accessories and equipment, and provided with fixed seats.

2. "Use Group A-1-B": This Use Group shall include all theaters without a stage and equipped with fixed seats used for motion picture performances.

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 as defined in N.J.A.C. 5:18-1.5, and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance.

4. "Use Group A-3": This Use Group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals.

5. "Use Group A-4": This Use Group shall include all buildings used as churches and for similar religious purposes.

6. "Use Group A-5": This Use Group shall include grandstands, bleachers, coliseums, stadiums, tents and similar structures for outdoor assembly uses.

7. "Use Group B": All buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes.

8. "Use Group E": This Use Group shall include all buildings and structures serving 50 or more students from kindergarten through grade 12 and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive.

9. "Use Group F": All buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F; including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials.

10. "Use Group H": All buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials.

11. "Use Group I-1": This Use Group shall include buildings housing six or more individuals who, because of age, mental instability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Included in this group are uses such as facilities for children, aged persons, mentally impaired and convalescents including: convalescent facilities, group homes, boarding houses, homes for the aged, mentally retarded care facilities, nursing homes (ambulatory), orphanages and residential care facilities. Occupancies such as the above with five or less occupants shall be classified as a residential Use Group.

12. "Use Group I-2": This Use Group shall include all buildings used for housing people suffering from physical limitations because of health or age, including, among others, day nurseries, hospitals, sanitariums, infirmaries, orphanages and homes for aged and infirm.

13. "Use Group I-3": This Use Group shall include all buildings designed for the detention of people under restraint, including, among others, jails, prisons, reformatories, insane asylums and similar uses.

14. "Use Group M": All buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to such purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets.

15. "Use Group R-1": This Use Group shall include all hotels, motels, and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than 30 days.

16. "Use Group R-2": This Use Group shall include all multiple family dwellings having more than two dwelling units and shall also include all dormitories, rooming houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature.

17. "Use Group S-1": All buildings and structures, or parts thereof, which are used primarily for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives; including, among others, warehouses, storehouses and freight depots.

18. "Use Group S-2": All buildings and structures, or parts thereof, which are used primarily for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings; including, among others, warehouses, storehouses and freight depots. Such products may have a negligible amount of plastic trim such as knobs, handles or film wrapping.

5:18-2.4A Type Aa through Aj life hazard uses

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

(e) Type Ae life hazard uses are as follows:

1.-3. (No change.)

4. Public and private K-12 educational buildings with a maximum permitted occupancy greater than 50 persons.

(f)-(j) (No change.)

5:18-2.5 Required inspections

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

(e) In addition to inspecting life hazard uses, a local enforcing agency may, by giving notice to the Bureau of Fire Safety, accept responsibility for cyclical inspection and enforcement of the Uniform Fire Code in hotels and multiple dwellings that are not life hazard uses. A local enforcing agency that accepts this responsibility shall inspect each multiple dwelling that is not a life hazard use and each hotel that is not a life hazard use at a frequency not less than that currently provided for in the rules for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10.

1. A local enforcing agency may, by ordinance, establish reasonable fees to cover the cost of such inspections in accordance with N.J.A.C. 5:18A-2.3(b).

(f) If a building is a multiple dwelling or a hotel, as defined in N.J.S.A. 55:13A-3, or a rooming house or boarding house, as defined in N.J.S.A. 55:13B-3, the local enforcing agency shall send a copy of the certificate of inspection to the Bureau of Fire Safety at the time of issuance of the certificate.

5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1. (No change.)

2. In a public or private K-12 educational building registered as a life hazard use, no permit shall be required for activities which are consistent with the designed and intended use of the building or part thereof.

Renumber existing 2.-6. as **3.-7.** (No change in text.)

5:18-2.8 Fees, registration and permit

(a) (No change.)

(b) Where more than one life hazard use exists under one ownership at a given location, the highest life hazard use shall be registered at full fee and subsequent life hazard uses at one-half the scheduled fee; **provided, however, that no public or private K-12 educational building shall pay more than one $115.00 life hazard use registration fee, regardless of the number or type of life hazard uses contained within the building.**

5:18-4.1 Code adopted; scope

(a) (No change.)

(b) The following buildings, **classified within the Use Groups set forth below in accordance with the definitions provided in N.J.A.C. 5:18-1.5,** shall be in compliance with all applicable requirements of this subchapter [by June 16, 1987].

1. Theaters incorporating a raised stage, platform, or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment, equipped with fixed seats; and which are classified as Use Group A-1-A [in accordance with the Uniform Construction Code].

2. Night clubs, dance halls, discotheques without a theatrical stage and which are classified as Use Group A-2 [in accordance with the Uniform Construction Code].

3. Eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more, and which are classified as Use Group A-3 [in accordance with the Uniform Construction Code].

4. Amusement buildings and places of amusement designed to disorient, reduce vision, present barriers, or otherwise impede the free flow of traffic, such as haunted houses, fun houses, tunnels of love and similar uses and which are classified as Use Group A-3 [in accordance with the Uniform Construction Code].

5. Institutional buildings and similar facilities including hospitals and long-term care facilities, which house people suffering from physical limitations due to age, health or handicaps and which are classified as Use Group I-2 [in accordance with the Uniform Construction Code].

6. Institutional buildings or similar facilities including acute alcoholism treatment, out-patient surgery, renal dialysis facilities, abortion clinics and birthing centers, and which are classified as Use Group I-2 [in accordance with the Uniform Construction Code].

7. Day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2-1/2 years, and which are classified as Use Group I-2 [in accordance with the Uniform Construction Code].

(c) The following buildings shall be in compliance with all applicable requirements of this subchapter [except N.J.A.C. 5:18-4.13 by June 16, 1988].

1. High rise structures as defined in N.J.A.C. 5:18-1.5.

2. Prisons or other facilities where residents, occupants or inmates are kept under restraint and which are classified as Use Group I-3 [in accordance with the Uniform Construction Code].

3. Institutional and similar facilities, including acute alcoholism treatment, outpatient surgery, renal dialysis facilities, abortion clinics, and birthing centers which are classified as Use Group B [in accordance with the Uniform Construction Code].

4. Residential health care facilities, boarding homes and similar facilities which are classified as Use Group I-1 [in accordance with the Uniform Construction Code].

5. Eating and drinking establishments which are primarily eating establishments with a maximum permitted occupancy of 200 or more and which are classified as Use Group A-3 [in accordance with the Uniform Construction Code].

6. Hotel or motel structures four stories or more in height or exceeding 100 rooms which have interior means of egress and which are classified as Use Group R-1 [in accordance with the Uniform Construction Code].

7. Any story which meets the criteria of N.J.A.C. 5:18-4.7(h) and which has a maximum permitted occupancy of 50 or more persons, regardless of Use Group classification; **provided, however, that this paragraph shall not be applicable to fire suppression requirements until one year after the effective date of N.J.A.C. 5:18-4.7(h).**

8. Motion picture theaters without a theatrical stage and which are classified as Use Group A-1-B [in accordance with the Uniform Construction Code].

9. Retail stores and other mercantile uses which exceed 12,000 square feet in gross floor area and which are classified as Use Group M [in accordance with the Uniform Construction Code].

10. Stadiums, race tracks and other similar exterior places of assembly with grandstands and which are classified as Use Group A-5 [in accordance with the Uniform Construction Code].

11. Industrial and commercial uses which incorporate any hazardous operation, [or] storage **or use** of combustible materials as described in N.J.A.C. 5:18-2.4[(c)12]**B**.

[12. Buildings used for the storage and use of materials and substances as described in N.J.A.C. 5:18-2.4(c)13.]

[13.]**12.** Buildings in which flammable cleaning solvents are used for dry cleaning purposes and which are classified as Use Group H [in accordance with the Uniform Construction Code].

[14]**13.** Buildings which exceed 12,000 square feet of gross floor area and which have atrium spaces three or more stories in height regardless of Use Group classification.

[15]**14.** Covered mall structures which exceed 12,000 square feet of gross floor area.

(d) All buildings for which requirements are established in this subchapter and which are not listed in (b) or (c) above shall be in compliance with such applicable requirements of this subchapter [except N.J.A.C. 5:18-4.13] by June 16, 1989, **unless a later date for compliance is set forth in this subchapter**.

(e) (No change.)

5:18-4.7 Fire suppression systems

(a)-(g) (No change.)

(h) [(Reserved)] **In all buildings, any windowless basement or story located below the seventh story shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code within one year after the effective date of these amendments.**

1. Stories or basements shall not be considered windowless when there is provided on at least one side of such story or basement fire fighter access through openings, such as windows, doors or access panels, which are located entirely above the adjoining grade level. If such openings are not less than 32 inches by 48 inches in size, they shall be spaced not more than 100 feet apart in each story or basement; if not less than 22 inches by 42 inches in size, they shall be spaced not more than 30 feet apart. Such openings shall be unobstructed to allow fire fighting and rescue operations from the exterior.

i. Openings shall have a sill height of not more than 36 inches, shall be readily identifiable and openable from the outside or shall be glazed with plain flat glass.

2. When openings in a story are provided on only one side and the opposite wall of such story is more than 75 feet from such openings, the story shall be considered windowless unless openings as specified above are provided or can be installed on at least two sides of the exterior walls of the story. If any portion of a basement is located more than 75 feet from openings as specified above, the basement shall be considered windowless.

3. Windowless basements not exceeding 10,000 square feet in area shall be exempt from this automatic suppression requirement, provided the following conditions are met:

i. A supervised automatic fire alarm system shall be installed in accordance with the New Jersey Uniform Construction Code;

ii. In basements greater than 3000 square feet, but not exceeding 10,000 square feet in area, the required suppression system need not be connected to a water supply other than an existing domestic supply. The system shall be provided with a fire department connection, which shall be marked with a sign reading "Basement Area Sprinkler Water Supply".

(i) (j) (No change.)

(k) [Mixed uses—Fire Separation Requirements. (Reserved)] **In buildings containing mixed uses, one or more of which requires automatic suppression in accordance with this section, suppression will not be required throughout the building, provided that the uses requiring suppression are separated from those not requiring suppression by fire resistive construction having a minimum one hour rating. In Use Group H, the rating is to be increased to two hours.**

5:18-4.9 Automatic fire alarms

(a) (No change.)

(b) An automatic fire alarm system shall not be required in buildings, **other than boarding homes of Use Group I-1,** equipped throughout with an automatic fire suppression system, a manual fire alarm system and single station smoke detectors located in the immediate vicinity of sleeping areas in accordance with NFiPA 72E or 74 as applicable.

(c) (No change.)

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. Each mezzanine with an occupant load of more than 50 and in which the travel distance to an exit exceeds 75 feet shall have access to at least two independent means of egress within one year of the effective date of these amendments.

[1.]**2.** When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress unless judged to be dangerous for use under emergency exiting conditions. Any new fire escapes shall be constructed and installed in accordance with Uniform Construction Code Formal Technical Opinion No. FTO-3, dated March 1985.

i.-iii. (No change.)

(b)-(k) (No change.)

(l) Means of egress doors shall conform to the following:

1. All egress doors serving an occupant load greater than 50 shall swing in the direction of exit travel:

2. In building of Use Groups R-1 and R-2 all doors opening onto a [grade] passageway **at grade** or exit stair shall be self-closing or automatic closing by [smoke detection] **listed closing devices**.

3. All dwelling unit, guest room or rooming unit corridor doors in buildings of Use Groups R-1, R-2, and I-1 shall be at least 1-3/8 inch solid core wood **or approved equal with approved door closers** and shall not have any glass panels, other than approved wire glass in metal frames. Corridor doors shall not be constructed of hollow core wood, shall not contain louvers and shall not be of panel construction. Doors shall fit both plumb and level in frames, and be reasonably tight fitting. All replacement doors shall [have a 20 minute label] **be 1-3/4 inch solid core wood or approved equal, unless existing frame will accommodate only a 1-3/8 inch door.**

i. Existing doors meeting the requirements of Federal Housing and Urban Development Rehabilitation Guidelines No. 8 or of Section 5 of Appendix B of the BOCA Basic/National Existing Structures Code, 1984 Ed. for a rating of 15 minutes or better shall be accepted as meeting the provisions of this requirement.

(1) Modifications made to existing doors to achieve the required rating shall be conducted in accordance with the Uniform [Construction] **Fire** Code.

ii. Existing doors in buildings provided with approved, complete automatic suppression shall be required only to provide a smoke

barrier; shall not contain louvers; shall fit plumb and level; and be reasonably tight fitting.

iii. In group homes with a maximum of 15 occupants, and which are protected with an approved automatic detection system, closing devices may be omitted.

4. (No change.)

5. All required exit doors equipped with latching devices in buildings or portions thereof of Use Group A with an occupant load greater than 100 shall be equipped with approved panic hardware within one year of the effective date of these amendments.

(m)-(o) (No change.)

5:18-4.13 Protection of interior stairways and other vertical openings

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

(c) Interior stairways and other vertical openings connecting no more than three levels shall [have protection] **be enclosed with approved assemblies and opening protectives having a fire resistance** as follows:

1. In Use Group A, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted[:]:

i. When connecting the main floor and [balcony in theaters and auditoriums] **mezzanines**; or

ii. (No change.)

2.[-6. (Reserved)] **In Use Group B, a minimum 30 minute fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barriers may be omitted in buildings not exceeding 3,000 square feet per floor or when the building is protected throughout by an approved automatic fire suppression system.**

3. In Use Group E, a minimum one-hour fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings connecting not more than three floor levels. Such barrier may be omitted when the building is protected throughout by an approved automatic fire suppression system.

4. In Use Group F, a minimum one-hour fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted:

i. In special purpose occupancies when necessary for manufacturing operations and direct access is provided to at least one protected stairway;

ii. In buildings which are protected throughout by an approved automatic fire suppression system;

5. In Use Group H, a minimum one-hour fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when necessary for manufacturing operations and every floor level has direct access to at least two remote enclosed stairways or other approved exits.

6. In Use Group I-1, a minimum one-hour fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted at either the top or bottom of a stairway which connect not more than two floor levels, when such stairway does not serve as a required means of egress, and the occupant load does not exceed 12, excluding staff.

7. (No change.)

8. [-11.] (Reserved)

9. In Use Group M, a minimum 30 minute fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when:

i. Openings connect only two floor levels, such as between the street floor and mezzanine or second floor; or

ii. Occupancies are protected throughout by an approved automatic fire suppression system.

10. In Use Group R-1, a minimum one-hour fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. In buildings which are protected throughout by an approved automatic fire suppression system; or

ii. In buildings which meet the definition of a "guest house" in N.J.A.C. 5:18-1.5 if the following conditions are met:

(1) The building is protected throughout by an automatic fire alarm system, installed in accordance with the New Jersey Uniform Construction Code and supervised in accordance with N.J.A.C. 5:18-4.9(c); and

(2) Any exit access corridor exceeding eight feet in length which serves two means of egress, at least one of which is an unprotected vertical opening, shall be separated from the vertical opening by a one-hour fire barrier; or

iii. In buildings with less than 25 guests in which the following conditions are met:

(1) Every sleeping room is provided with an approved window having a sill height not greater than 44 inches;

(2) Every sleeping room above the second floor is provided with direct access to a fire escape or other approved secondary exit;

(3) Any exit access corridor exceeding eight feet in length which serves two means of egress, at least one of which is an unprotected vertical opening, shall be separated from the vertical opening by a one-hour fire barrier; and

(4) The building is protected throughout by an automatic fire alarm system, installed in accordance with the New Jersey Uniform Construction Code and supervised in accordance with N.J.A.C. 5:18-4.9(c).

11. In Use Group R-2, a minimum 30 minute fire barrier shall be provided within one year of the effective date of these amendments to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. In buildings which are protected throughout by an approved automatic fire suppression system;

ii. When the vertical opening connects not more than two floor levels with not more than four dwelling units per floor and each dwelling unit has access to a fire escape or other approved secondary exit; or

iii. In owner-occupied buildings with not more than four dwelling units per floor, and in which the following conditions are met:

(1) Every sleeping room is provided with an approved window having a sill height not greater than 44 inches;

(2) Every dwelling unit or sleeping room above the second floor is provided with direct access to a fire escape or other approved secondary exit; and

(3) The building is protected throughout by an automatic fire alarm system, installed in accordance with the New Jersey Uniform Construction Code and supervised in accordance with N.J.A.C. 5:18-4.9(c).

5:18A-3.3 Duties of fire officials

(a) (No change.)

(b) Whenever a fire death occurs within the jurisdiction of a local enforcing agency, the fire official shall notify the Bureau of Fire Safety via telephone within 48 hours of the death. A Fire Incident and Casualty report shall be forwarded to the Bureau of Fire Safety within 30 days.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Assumption of Local Enforcement Powers
Proposed Amendment: N.J.A.C. 5:23-4.3

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

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1989-440.

Submit comments by September 20, 1989 to:

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

The agency proposal follows:

Summary

P.L. 1985, c.21 amended the State Uniform Construction Code Act by giving the Commissioner of the Department of Community Affairs the power to enforce the Code directly and, when necessary, to order corrective action when a local enforcing agency is failing to discharge its duties properly or to supplant and replace a local enforcing agency either for a specific project or entirely. This proposed amendment contains procedural standards intended to implement that statutory amendment.

The proposal replaces the portion of PRN 1988-373, published August 1, 1988 at 20 N.J.R. 1764(a), that proposed an amendment to subsection (f) of N.J.A.C. 5:23-4.3 that was not adopted (see notice of adoption published elsewhere in this issue of the New Jersey Register). In light of some of the comments submitted in response to that proposal, the Department has added provisions establishing hearing rights for local enforcing agencies, as well as for code enforcement personnel affected by any order, contesting orders to take corrective action or dissolution and replacement orders, stating that dissolution and replacement can only be ordered after a local enforcing agency, or the governing body or official having jurisdiction over it, has failed to comply with a final order to take corrective action, and establishing a procedure for continuation of a local enforcing agency under Department supervision, either as a temporary measure or in order to ensure an orderly transition. Such an orderly transition would give employees of a local enforcing agency the opportunity to find other employment, either with another local enforcing agency or with the Department.

In its decision in the case entitled *In re: Department of Community Affairs Order of March 15, 1988 regarding Burlington County Recycling Facility*, A-4622-87T5, the Appellate Division made it clear that the Department has authority to supplant or replace a local enforcing agency for a specific project, pursuant to N.J.S.A. 52:27D-124(k), even in the absence of implementing regulations. In refuting the contention that the Department's action was invalid because it had acted without first having promulgated rules concerning assumption of jurisdiction over specific projects, the court held that "generally, an administrative agency has discretion to exercise its statutory authority either by adjudication or rule-making" and that "case-by-case determinations are preferable where, as here, it is doubtful whether any generalized standards could be framed which would have more than marginal utility." Consequently, the proposed amendment, by limiting the rule to what is essentially a re-statement of the statute, preserves the right of the Department to act as it did in the Burlington County Recycling Facility matter in any future situation involving assumption of jurisdiction for a particular project only.

Social Impact

Since the Department already has the power to dissolve and replace a local enforcing agency, or to assume jurisdiction over a specific project, the social impact of the proposed amendment is limited to the establishment of uniform standards as to when, how and with what safeguards the powers are to be used.

Economic Impact

By making clear the steps that must be taken before the Department will dissolve and replace a local enforcing agency, the proposed amendment enhances the ability of a local enforcing agency, and the governing body or official having jurisdiction over it, to avoid surprises that might cause administrative disarray. For up to 60 days prior to dissolution, and in those cases in which the Department finds it appropriate to order administrative supervision by the Department instead of immediate dissolution and replacement, the local enforcing agency will continue to collect its revenue and pay its expenses, thus allowing for a more orderly transition.

Regulatory Flexibility Analysis

This proposed amendment concerns local governmental agencies. Its only effect upon small businesses would have to do with private inspection agencies licensed by the Department to serve as subcode officials for local enforcing agencies. In some cases, Department takeover of jurisdiction over specific projects or dissolution and replacement of local enforcing agencies would have the effect of eliminating work for private agencies. The effect on the private agencies would be ameliorated by the introduction of the option of administrative supervision, since the function of the private agency would not in that case be affected. By virtue of P.L. 1985, c.21, the Department is now able to dissolve and replace a local enforcing agency and, in so doing, to eliminate the workload of a private agency under contract to that local enforcing agency. The proposed amendment will allow the Department to address problems of a local enforcing agency without having an adverse impact upon a private agency which may well be doing its job properly.

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

5:23-4.3 Municipal enforcing agencies—establishment

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

(f) Departmental intervention:

1. Except as otherwise provided in (f)2 below, whenever the Department shall have reasonable cause to believe that a local enforcing agency is not carrying out its functions as intended by the Act and regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body, to the construction official, and to the municipal manager or administrator, if any, having jurisdiction over the local enforcing agency, a notice stating the nature of the alleged failure of the local enforcing agency to perform, the implications of such failure, and a statement setting forth the corrective action required to be taken by the local enforcing agency.

i. In the case of a local enforcing agency which the Department finds to have repeatedly or habitually failed to enforce the provisions of the State Uniform Construction Code Act, the Department shall issue an order, in the manner, and subject to the requirements, set forth in (f)1 above, to dissolve the local enforcing agency and replace it by the Department.

ii. No local enforcing agency shall be dissolved and replaced by the Department for repeated or habitual failure to enforce the regulations except upon its failure, or the failure of the governing body or official having jurisdiction over it, to comply with a notice issued by the Department setting forth corrective action required to be taken in order to ensure proper administration of the local enforcing agency and enforcement of the Code.

iii. Prior to the issuance of an order for the dissolution of any local enforcing agency and its replacement by the Department, or as an alternative to any such order, the Department shall place the local enforcing agency under the temporary supervision of an administrator employed by the Department. For the first 60 days of any period in which a local enforcing agency is under the temporary supervision of a Department administrator, the local enforcing agency shall retain fee revenue and be responsible for the payment of employee salaries and other expenses, other than the expenses of the administrator, in the same manner as if the local enforcing agency were not under the supervision of a Department administrator. In the event the period of temporary supervision extends beyond 60 days and the Department has assigned its own personnel to serve as officials and/or inspectors, fee revenue after the sixtieth day shall be paid to the Department and used by the Department to pay the costs of the local enforcing agency.

iv. In the event that any municipality having jurisdiction over a local enforcing agency subject to any notice or order issued pursuant to this paragraph is aggrieved by such notice or order, the municipality shall be entitled to an administrative hearing 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. A request for any such hearing must be mailed, within 15 days after receipt of the notice or order being appealed, to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, NJ 08625-0802. The right to a hearing under this paragraph shall also extend to any licensed code enforcement official or inspector who would be adversely affected by any Departmental order.

2. In any case in which it may find it necessary to do so, the Department may supplant or replace a local enforcing agency for a specific project.

(g) (No change.)

HUMAN SERVICES
(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Financial Eligibility for Social Services Program for Individuals and Families; Income Schedule

Proposed New Rules: N.J.A.C. 10:123-1

Authorized By: Drew Altman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:7-87.
Proposal Number: PRN 1989-441.

Submit comments by September 20, 1989 to:
Mary Ann Earhart
Office of Adult and County Social Services
Division of Youth and Family Services
CN 717
1 South Montgomery Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish an income schedule to determine financial eligibility for services provided by county welfare agencies and funded through the Social Services Block Grant program. The schedule is applied when an individual in need of Social Services Block Grant services is not otherwise eligible for services provided without regard to income. Block grant services are provided without regard to income when the client is in need of protection, is requesting information and referral or is currently receiving Aid to Families with Dependent Children or Supplemental Security Income payments.

This schedule is part of a larger body of material on the social services programs which are provided by the county welfare agencies. This body of material is now contained in the County Welfare Agencies Social Services Manual. An advisory group is being formed to develop this manual as proposed new rules. However, the Division feels that this income schedule is a priority for rule promulgation since it is applied daily and affects the rights of citizens seeking services.

Social Impact

Use of the income schedule assures that services such as homemaker or transportation are available to financially needy individuals even when they are not supported by Aid to Families with Dependent Children or Supplemental Security Income.

Provision of such services will allow individuals who are employed to maintain their employment while their social service needs are met through Social Services Block Grant funding.

Economic Impact

Through the use of the income schedule, the county welfare agencies are able to more equitably allocate resources to assist applicants for services provided to eligible recipients as part of the Social Service Block Grants (SSBGs). Social Service Block Grant funding available to county welfare agencies has remained static over the past ten years, while the purchasing power has declined significantly. The income schedule helps to preserve those limited funding resources for the most financially needy individuals who apply for social service through the county welfare agencies.

The programs provide financial assistance to persons deemed in need of SSBG services, thereby effecting a positive economic impact on those persons. When a person's income rises above the eligible limits, the person is considered ineligible and may suffer a negative economic impact. The amount funded for Social Service Block Grants has remained constant at $22,000,000 per year, which amount provides 75 percent of the funding. County resources provide the balance of the funding. The specific costs attributed to implementation of this rule can not be readily determined at this time, but are part of the general administrative costs of each county welfare agency.

Regulatory Flexibility Statement

The proposed new rules do not require a regulatory flexibility analysis as they do not impose any reporting, recordkeeping or compliance requirements on small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq. The rules provide for certain services to individuals funded through the Social Services Block Grant Program.

Full text of the proposal follows:

SUBCHAPTER 1. FINANCIAL ELIGIBILITY

10:123-1.1 Financial eligibility; income schedule

(a) Financial eligibility for services provided by the county welfare agencies and funded through the Social Services Block Grant program of the Social Security Act shall be determined using the following income schedule:

INCOME SCHEDULE

Family Size	Maximum Allowable Gross Income Per Month	Per Year
1	$1,264	$15,162
2	1,652	19,827
3	2,041	24,493
4	2,430	29,158
5	2,819	33,823
6	3,207	38,489
7	3,280	39,362
8	3,353	40,238
9	3,426	41,112
10	3,499	41,987
11	3,572	42,862
12	3,645	43,737

For each family member over 12, add $73.00 to the maximum allowable gross income per month.

(b) Persons whose gross monthly or annual family income does not exceed the maximums established in (a) above shall be eligible for services provided by the county welfare agency and funded by the Social Services Block Grant program.

(c) Persons who wish to appeal a determination of ineligibility for services based upon the income guidelines in (a) above shall proceed in accordance with N.J.A.C. 10:120-3.

INSURANCE
(b)

DIVISION OF THE REAL ESTATE COMMISSION

Contracts of Sale, Leases and Listing Agreements Agreement to Honor

Proposed Amendment: N.J.A.C. 11:5-1.16

Authorized By: The New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Authority: N.J.S.A. 45:15-6.
Proposal Number: PRN 1989-426.

Submit comments by September 20, 1989 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On June 12, 1989 the Appellate Division of the Superior Court of New Jersey rendered a decision *Carmagnola v. Hann,* ___ *N.J. Super.* ___, Dkt. No. A-2211-88T2F (App. Div. 1989), declaring invalid subparagraph (h) of Commission rule N.J.A.C. 11:5-1.16. This subparagraph required licensees to insert in the unsigned first drafts of all contracts or leases prepared by them which were required to contain an attorney review clause, an "Agreement to Honor" provision. The parties to the contract would then negotiate on whether or not any contract they signed would include the Agreement to Honor as recited in the rule, a revised version of it, or no such provision.

The Appellate Division determined that the rule provision was invalid because it required licensees to take an action, the effect of which could be to have a party waive, disclaim, relinquish or abridge the right of attorney review.

After receiving advice from the Attorney General's Office, the Real Estate Commission determined not to seek a review of this ruling by the New Jersey Supreme Court. Accordingly, it is necessary for the Commission to formally delete subparagraph (h) of N.J.A.C. 11:5-1.16.

Social Impact

The Commission's intent in adopting this provision was to alert all parties to a transaction to the fact that during the attorney review period the property remains on the market, with sellers free to solicit for and accept other higher offers and buyers free to attempt to secure comparable properties on better terms than those contained in the contract pending attorney review. At the time the provision was adopted, the Commission believed that the parties to the contract could agree between themselves not to seek more favorable deals during the attorney review period. The New Jersey State Bar Association and several attorneys submitted comments supporting the Commission's view and the adoption of this provision.

By adopting the provision, the Commission attempted to take an action which it believed would have a beneficial social impact upon all persons involved in residential real estate transactions in New Jersey which are subject to attorney review. Whatever beneficial impact the provision did have will be lost through its repeal. However, as noted above, the Commission has determined to abide by the ruling of the Appellate Division of the Superior Court invalidating the subsection.

Economic Impact

The economic impact of the Commission's deletion of this provision is negligible, since the Appellate Division of the Superior Court has ruled that the Agreement to Honor is unenforceable and the subsection being repealed void. Thus the Commission's action of deleting the provision imposing the Agreement to Honor requirement is merely a formality which will have no economic impact beyond the effect of the Appellate Court's decision.

Regulatory Flexibility Statement

Because the deletion of this provision removes a requirement which had been imposed upon licensees when they prepared the first drafts of certain contracts and leases, the effect of this deletion is to render compliance with the remaining requirements of N.J.A.C. 11:5-1.16 easier. There are no additional reporting requirements or burdens of compliance placed upon licensees by the deletion of this provision.

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

11:5-1.16 Contracts of sale, leases and listing agreements

(a)-(g) (No change.)

[(h) All licensee-prepared contracts and leases which, pursuant to (g) above are required to contain an Attorney Review provision as set forth therein, shall contain in the paragraph which numerically next follows the paragraph containing the Attorney Review provision, or in a Rider to which reference is made in the paragraph which immediately follows the Attorney Review provision, the following language, which shall be modified for leases in accordance with (h1) below:

AGREEMENT TO HONOR

It is hereby agreed and understood by both buyer and seller that:

1. The seller agrees not to permit showings of the property and not to consider any other offers to purchase this property during the three day attorney review period, and any extension of the time for attorney review that is agreed to by the parties or their attorneys.

If during the attorney review period either party's attorney disapproves this agreement by filing a Notice of Disapproval as described in the contract, the property will again be offered for sale and any deposit monies previously paid will be returned to the buyer immediately.

2. The seller directs their broker and all sub-agents not to show this property to other prospective purchasers and not to present additional offers to purchase the subject property to the seller or their attorney during the attorney review period of this contract and any extension of the time for attorney review that is agreed to by the parties or their attorneys.

The seller further directs their broker to disclose these provisions of this contract to other brokers or their representatives.

3. The buyer agrees that during the three day attorney review period and any agreed upon extension to it, the buyer shall not make any offers on other properties if their intended use by the buyer is identical to the buyer's intended use for this property.

4. Both parties affirm and agree that if at the end of the attorney review period neither attorney has disapproved this contract, this contract will become final, subject only to the contingencies, if any, specified elsewhere in the contract.

5. An administrative rule of the New Jersey Real Estate Commission requires the initial version of contracts such as this to contain this "Agreement to Honor" provision. HOWEVER, THE BUYER AND SELLER ARE NOT FREE TO NEGOTIATE ON WHETHER OR NOT THIS PROVISION OR ANY REVISED VERSION OF IT WILL BE CONTAINED IN THE FINAL VERSION OF ANY CONTRACT WHICH THEY MAY ENTER INTO.

1. In all leases which are required to contain an Attorney Review provision the words "Landlord", "Tenant", "Rent", and "Lease" shall be inserted in place of the words "Seller", "Buyer", "Sale", "Purchase" and "Contract" as applicable, in the paragraph therein containing the above language.]

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System

Proposed Readoption: N.J.A.C. 17:2

Proposed Repeal: N.J.A.C. 17:2-6.15

Authorized By: The Public Employees' Retirement System, Janice Nelson, Secretary.

Authority: N.J.S.A. 43:15A-17.

Proposal Number: PRN 1989-424.

Submit comments by September 20, 1989 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Pensions is constantly reviewing the administrative rules within N.J.A.C. 17:2 concerning the Public Employees' Retirement System. When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operations of the retirement system, the administrative rules are reviewed and, if changes therein are mandated, steps are taken to propose changes to those rules to conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. After careful scrutiny of the current rules in N.J.A.C. 17:2, the Division is satisfied that they are necessary and needed for the efficient operation of the Public Employees' Retirement System. Accordingly, the Division of Pensions, in conjunction with the Board of Trustees of the Public Employees' Retirement System, proposes to readopt the current rules within N.J.A.C. 17:2 and to extend through readoption the expiration date for such rules under Executive Order No. 66 (1978) to December 17, 1994.

The current rules within N.J.A.C. 17:2 deal with administration, enrollment, insurance and death benefits, membership, purchases and eligible service, retirement and transfers.

In addition, the Board of Trustees of the Public Employees' Retirement System also proposes to repeal the current text within N.J.A.C. 17:2-6.15 concerning compulsory retirement. Due to recent court cases, there no longer is compulsory or mandatory retirement for members of the Public Employees' Retirement System. Thus, the provisions of N.J.A.C. 17:2-6.15 are no longer applicable and should be repealed.

Social Impact

The rules governing the Public Employees' Retirement System affect and work to the benefit of the past, present and future public employees of the State, counties, municipalities and other public agencies. The taxpaying public is affected by these rules in the sense that public funds are used to fund the system.

Economic Impact

While the readoption and the single repeal of the rules by themselves will not present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not readopted, the benefits and claims mandated by the statutes must still be paid. Without the administrative rules to provide for the efficient operation of the system, financial chaos would occur.

Regulatory Flexibility Statement

The rules of the Public Employees' Retirement System only affect public employers and employees. Thus, this proposed readoption and repeal do not impose any reporting, recordkeeping or other compliance requirements upon small businesses. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:2.

Full text of the proposed repeal can be found at N.J.A.C. 17:2-6.15.

OTHER AGENCIES

(a)

NEW JERSEY TURNPIKE AUTHORITY

Petitions for Rules

Proposed New Rules: N.J.A.C. 19:9-6

Authorized By: New Jersey Turnpike Authority, Frank B. Holman, Executive Director.

Authority: N.J.S.A. 27:23-1 et seq., specifically N.J.S.A. 27:23-29 and 52:24B-4(f).

Proposal Number: PRN 1989-446.

Submit comments by September 20, 1989 to:
Frank B. Holman, Executive Director
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, New Jersey 08903

The agency proposal follows:

Summary

The Administrative Procedure Act ("the Act"), at N.J.S.A. 52:14B-4(f), authorizes interested persons to petition a State agency "to promulgate, amend or repeal any rule." The Act also directs State agencies to "prescribe the form for the petition and the procedure for the submission, consideration or disposition" of any such petition. N.J.A.C. 1:30-3.6(d) also requires that each agency prescribe by rule the form of a petition and the procedures for its submission. The Authority proposes the following rulemaking petition procedures in order to satisfy this mandate.

The proposed new rules provide that all petitions must be in writing and contain the substance or nature of the rulemaking which is requested, the reasons for the request and the petitioner's interest in the request, and reference to the authority of the agency to take the requested action.

Within 15 days of receipt of a petition, the Authority will file a notice, stating the name of the petitioner and the nature of the request, with the Office of Administrative Law for publication in the New Jersey Register.

The proposed new rules further require that the Authority take action on the petition within 30 days of its receipt. The action taken by the Authority may consist of either a denial of the petition; action upon the petition, which may include the initiation of a formal rulemaking proceeding; or referral of the matter to the appropriate department within the Authority for further deliberation.

Social Impact

The proposed new rule will have a positive social impact on the public by establishing procedures for the filing and consideration of rulemaking petitions.

Economic Impact

No direct economic impact on the general public is expected to result. Response cost is borne by the Authority within its budget.

Regulatory Flexibility Analysis

The proposed new rules would apply to any member of the public seeking amendment, promulgation or repeal of Turnpike Authority rules, including "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under the proposed rules, a small business will have to file rulemaking petitions in accordance with the requirements of the rules. Such requirements impose very minimal, if any, costs on petitioners, and no professional expertise should be necessary. No requirement differentiation related to business size is, therefore, provided.

Full text of the proposal follows:

SUBCHAPTER 6. PETITIONS FOR RULES

19:9-6.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the New Jersey Turnpike Authority, pursuant to N.J.S.A. 52:14B-4(f) and N.J.S.A. 27:23-29.

19:9-6.2 Procedure for petitioner

(a) Any person who wishes to petition the Authority to promulgate, amend or repeal a rule must submit to the Executive Director, in writing, the following information:

1. The name of the petitioner;
2. The substance or nature of the rulemaking which is requested, together with the citation of affected rule, if applicable;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Authority to take the requested action.

(b) Petitions shall be addressed to:
Frank B. Holman, Executive Director
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, New Jersey 08903

(c) Any document submitted to the Authority which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Authority action pursuant to N.J.S.A. 52:14B-4(f) and N.J.S.A. 27:23-29.

19:9-6.3 Procedure of the Authority

(a) Upon receipt of a petition in compliance with this subchapter, the Authority will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Withih 30 days of receiving the petition, the Authority will mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which will include:

1. The name of the petitioner;
2. The New Jersey Register citation for the notice of petition, if that notice appeared in a previous New Jersey Register;
3. Certification by the Executive Director that the petition was duly considered pursuant to law;
4. The nature or substance of the Authority's action upon the petition; and
5. A brief statement of reasons for the Authority's actions.

(c) Authority action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date.

The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Procedure for Dealing of Cards
Insurance Wagers
Proposed Amendments: N.J.A.C. 19:47-2.6 and 2.9

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c and 5:12-70f.
Proposal Number: PRN 1989-439.

Submit comments by September 20, 1989 to:
Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building—4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:47-2.6(f) and 2.9(b) correct an inconsistency with regards to the placing of insurance wagers at the game of blackjack. Specifically, the reference to the placing of an insurance wager has been removed from N.J.A.C. 19:47-2.6(f).

The proposed amendment to N.J.A.C. 19:47-2.9(b) has been made for purpose of clarity and comprehension and further defines that an insurance wager must be made prior to any player at the table receiving additional cards.

Social Impact

The proposed amendments would have a minor social benefit since the inconsistency in the rules would be eliminated, and, therefore, the possibility of possible confusion and complaints from patrons regarding the placement of insurance wagers would also be eliminated.

Economic Impact

There is no economic impact since all casinos currently comply with N.J.A.C. 19:47-2.9(b).

Regulatory Flexibility Statement

The proposed amendments will only affect the operation of casino licensees and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 5:12-1 et seq.

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

19:47-2.6 Procedure for dealing cards
(a)-(e) (No change.)
(f) After two cards have been dealt to each player and the appropriate number to the dealer, the dealer shall, beginning from his left, announce the point total of each player. As each player's point total is announced, such player shall indicate whether he wishes to double down, split pairs, stand[,] **or** draw [and/or make an insurance wager], as provided for by this chapter.
(g)-(n) (No change.)

19:47-2.9 Insurance wagers
(a) (No change.)
(b) An insurance bet may be made by placing on the insurance line of the layout an amount not more than half the amount staked on the player's initial wager, except that a player [must] **may** bet an amount in excess of half the initial wager to the next unit that can be wagered in chips, when because of the limitation of the value of chip denominations, half the initial wager cannot be bet. All insurance wagers shall be placed immediately after the second card is dealt to each player and prior to any additional cards being dealt to [them] **any player at the table.**
(c)-(d) (No change.)

(b)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Notice of Comment Period Extension
Subpoena for Witnesses
Procedure for Rulemaking Petitions
Proposed New Rules: N.J.A.C. 19:61-3.2 and 5.5

Take notice that the Executive Commission on Ethical Standards is extending the public comment period to September 20, 1989 for its proposed new rules N.J.A.C. 19:61-3.2 and 5.5, published in the June 5, 1989 New Jersey Register at 21 N.J.R. 1507(b) and 1508(a), respectively.

Submit comments by September 20, 1989 to:
John G. Donnelly, Executive Director
Executive Commission on Ethical Standards
28 West State Street, Room 1407
CN 082
Trenton, New Jersey 08625

EDUCATION

(c)

STATE BOARD OF EDUCATION

Approved Public Elementary and Secondary School Summer Sessions
Proposed Repeals: N.J.A.C. 6:26 and 6:27
Proposed New Rules: N.J.A.C. 6:8-9

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:4-23 through 18A:4-25, 18A:6-38, 18A:38-4 and 18A:45-1.
Proposal Number: PRN 1989-423.

Submit comments by September 20, 1989 to:
Irene Nigro, Rules Analyst
State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to requirements and criteria of Executive Order No. 66 (1978), N.J.A.C. 6:26, Elementary Education, and N.J.A.C. 6:27, Secondary Education, are due to expire on January 24, 1990. The Department of Education is proposing to repeal N.J.A.C. 6:26 and N.J.A.C. 6:27. The rules within these chapters fall into three categories: (1) rules which are duplicative of provisions in other sections; (2) rules which are being deleted; or (3) rules which are being moved to other sections of N.J.A.C. Title 6.

A review of chapter 26 by subchapter follows:

N.J.A.C. 6:26-1 Reserved
Subchapter 1 will remain in reserved status.

N.J.A.C. 6:26-2 Public Kindergartens
Subchapter 2 provides general requirements regarding the operation of public kindergarten in the State of New Jersey. The requirements include school attendance; teacher certification; programs, facilities and materials; and enrollment. The Department of Education proposes that this subchapter be repealed since these requirements are already contained elsewhere in N.J.A.C. 6:20 Business Services (N.J.A.C. 6:20-1.3(b) and (c) 1, 2 and 3).

N.J.A.C. 6:26-3 Approved Public Elementary School Summer Sessions
Subchapter 3 delineates the rules for the operation, staffing, admission and grade placement of pupils in elementary school summer sessions. The specific provisions governing the approval of elementary summer schools do not appear elsewhere in N.J.A.C. Title 6. These rules represent reasonable requirements for school districts operating summer sessions. The Department of Education proposes that this section be repealed, but that its provisions be combined with the subchapter on Approved Secondary

School Summer Sessions (N.J.A.C. 6:27-3) and that the combined text appear under a new subchapter, Approved Public Elementary and Secondary School Summer Sessions (N.J.A.C. 6:8-9). Modifications and deletions in language have occurred in combining both subchapters (N.J.A.C. 6:26-3 and N.J.A.C. 6:27-3).

A review of chapter 27 by subchapter follows:

N.J.A.C. 6:27-1 Approval of High Schools

Subchapter 1 contains requirements regarding the approval of all public high schools in the State of New Jersey. These requirements include: approval period, classification of schools, curriculum, credit for private music study, professional staff, teaching load, instructional equipment, clerical staff, pupil records, school efficiency, building and site, and definitions. Subchapter 1 will be repealed since the provisions of this subchapter are contained in sections of subchapters under School Districts (N.J.A.C. 6:3-1.10(l) 19 and 20 and N.J.A.C. 6:3-2.2), Thorough and Efficient System for Free Public Schools (N.J.A.C. 6:8-3.2, N.J.A.C. 6:8-4.2, N.J.A.C. 6:8-4.3(a) 3 and 5, and N.J.A.C. 6:8-7.1(d)ii), Teacher Preparation and Certification (N.J.A.C. 6:11-10.8), School Facility Planning Services (N.J.A.C. 6:22-2.4) and Adult Education Program (N.J.A.C. 6:30-1.7 and 4.7).

N.J.A.C. 6:27-2 Approval of Private Secondary Schools—Independent and Parochial

On November 6, 1986, the Attorney General rendered an opinion which stated that "The State Board of Education and the Commissioner of Education do not have statutory authority to approve or disapprove . . . nonpublic secondary schools." The Attorney General directed that ". . . the departmental practice of allowing voluntary review and approval of these nonpublic schools should be discontinued." Therefore, this subchapter is proposed for repeal.

N.J.A.C. 6:27-3 Approved Secondary School Summer Sessions

Subchapter 3 delineates rules for the operation, staffing, admission of pupils and credits in secondary school summer sessions. The specific provisions governing the approval of secondary summer schools do not appear elsewhere in N.J.A.C. Title 6. These rules represent reasonable requirements for school districts operating summer sessions. The Department of Education proposes that this section be combined with the subchapter on Approved Public Elementary School Summer Sessions (N.J.A.C. 6:26-3) and that the combined text appear under a new subchapter, Approved Public Elementary and Secondary School Summer Sessions (N.J.A.C. 6:8-9). Modifications and deletions in language have occurred in combining both subchapters (N.J.A.C. 6:26-3 and N.J.A.C. 6:27-3).

N.J.A.C. 6:27-4 Credit for Education Experiences in the Armed Forces of the United States

Subchapter 4 contains the rules governing the awarding of credit toward meeting the requirements for a high school diploma based upon educational experiences of military and maritime service personnel while in the armed forces of the United States. Specific provisions of this subchapter are already contained in the subchapter on Adult High Schools (N.J.A.C. 6:30-4.9(a)3i and 8ii). Except for these provisions, the remainder of this subchapter is obsolete. It was designed to meet the needs of young men and women returning to civilian life during and after WW II. In addition, N.J.A.C. 6:27-4.2(g) is inappropriate given N.J.A.C. 6:30 which prohibits the granting of course credit for GED test performance. Therefore, this subchapter will be repealed.

N.J.A.C. 6:27-5 Correspondence Courses in Approved Secondary Schools

Subchapter 5 addresses the conditions in which correspondence school courses of a vocational nature may be used in secondary schools. It is proposed that this subchapter be repealed since N.J.A.C. 6:30-4.9(a), Adult High Schools, allows the award of credit for experiences transferred from proprietary schools, public vocational training programs and accredited or state approved high schools or institutions.

N.J.A.C. 6:27-6 Summer Driver Education Courses

Subchapter 6 contains the rules concerning the approval of driver education courses to be offered during the summer months between regular school terms. Summer driver education courses, like other curriculum offerings, must be conducted under standards equal to those during the regular term. These provisions are already contained at N.J.A.C. 6:8-4.3(a)3. Therefore, the Department of Education proposes the repeal of this subchapter.

N.J.A.C. 6:27-7 Approval of Secondary Schools Operated by Other State, County and Local Agencies

Subchapter 7 contains provisions for secondary schools which are operated by any State, County, or local agency, other than those schools subject to evaluation procedures under N.J.A.C. 6:8-4.2, to be registered by the State Board of Education as an approved secondary school. The State Board of Education currently certifies local districts, not schools, based on monitoring provisions established in N.J.A.C. 6:8-4.2. Programs operated by other departments of New Jersey State government are regulated by provisions in N.J.A.C. 6:28-8.1. It is, therefore, proposed that this subchapter be repealed.

Social Impact

Summer school programs provide important remedial, advancement and enrichment courses to students statewide. Rules pertaining to the approval of public elementary and secondary summer schools have historically established the different purposes for which summer programs may be offered and have regulated the awarding of credit based on summer school work. The repeal of rules found elsewhere in Title 6 of the New Jersey Administrative Code and the reorganization of the rules concerning summer school programs ensures consistency and the continuity of the programs.

The proposed changes are expected to produce little new social impact since the sections proposed for repeal appear elsewhere and those sections being moved remain in effect. There is an unlikely possibility that the repeal of N.J.A.C. 6:27-4, Credit for Education Experiences in the Armed Forces of the United States, will have an impact upon students wishing to obtain high school credit for military training and correspondence courses from secondary schools. However, students who might be affected by this action may still obtain their diplomas through an adult education high school program where credit is available.

Economic Impact

The proposed repeal of certain rules and the reorganization of others will have no new economic impact upon programs or students at the State or local district levels. The costs related to approved summer school programs are not changed by the reorganization of related rules. Summer school costs are borne by local districts through the regular school district budget. As a percentage of the local district budget, costs for administration and teachers, facilities and maintenance, and supplies and materials vary, from district to district.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required because these proposed repeals and new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. This proposal solely affects New Jersey school districts and schools operated by the New Jersey State Department of Education.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 6:26 and 6:27.

Full text of the proposed new rules follows:

SUBCHAPTER 9. APPROVED PUBLIC ELEMENTARY AND SECONDARY SCHOOL SUMMER SESSIONS

6:8-9.1 Operation

(a) The rules for the approval of full-time public schools shall apply to all elementary and secondary summer sessions. No school summer session may be operated or approved unless it is operated by a district board of education without charge to pupils domiciled within the district.

(b) Remedial, advancement and enrichment courses may be offered to meet pupil needs. As used in this subchapter, the words below shall have the following meanings:

1. A "remedial course" is any course or subject which is a review of a course or subject previously taken for which credits or placement may be awarded upon successful completion of the course.

2. An "advanced course" is any course or subject not previously taken in an approved school program for which additional credits or advanced placement may be awarded upon successful completion of the course.

3. An "enrichment course" is any course or subject of avocational nature for which no credits are to be awarded.

(c) Reasonable tuition may be charged for enrichment courses which carry no credit and are determined by the county super-

intendent of schools to be unrelated to the curriculum of the regular school program.

(d) The operation of a summer session requires annual approval by the county superintendent of schools.

6:8-9.2 Staffing

(a) In each public school, a member of the administrative, supervisory or teaching staff who is certified as an administrator shall be assigned the responsibilities of administration and supervision of the summer session.

(b) Teachers in summer sessions conducted by district boards of education shall possess valid certificates for subjects taught. Curriculum enrichment may involve resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor or teacher.

6:8-9.3 Admission of pupils

(a) The assignment of pupils in summer session for remedial courses shall be based upon the recommendation of the principal of the school which the pupil regularly attends in accordance with policies established by the district board of education. The principal's recommendation must state in writing the name of the subject(s) which the pupil may take and the purpose for which each subject is taken.

6:8-9.4 Credit and grade placement

(a) An evaluation and a description of work completed shall be included in the pupil's cumulative record and the principal of the sending school will determine the grade placement of the pupil.

(b) To receive advanced credit for a subject not previously taken, the pupil shall receive class instruction in summer session under standards equal to those during the regular term.

(c) Full-year subjects which are given for review or for other purposes not including advanced credit must be conducted for 3,600 minutes of instruction under standards equal to those during the regular term.

(d) Credit for work taken in an approved elementary or secondary school summer session shall be transferable in the same manner as work taken in any approved elementary or secondary school.

(e) The amount of the time which a pupil has spent in receiving class instruction shall become part of his or her permanent record and shall be included whenever the record is transferred to another school.

(a)

STATE BOARD OF EDUCATION

Bilingual Education

Proposed Readoption with Amendments: 6:31

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:35-15 to 35-26, 18A:7A-1 et seq. and specifically 18A:7A-4 and 5.

Proposal Number: PRN 1989-430.

Submit written comments by September 20, 1989 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:31 expires on January 4, 1990. The State Board of Education has reviewed these rules and found them to be reasonable, necessary and proper for the purposes for which they were originally promulgated.

These rules were originally promulgated in response to the New Jersey Bilingual Education Act enacted in 1975. The purpose of this act was to provide special programs in the public schools in recognition of the educational needs of limited English proficient pupils. This chapter establishes rules for the provision of bilingual and English as a second language (ESL) programs and English language services for students identified as limited English proficient.

The proposed amendments contain several significant changes. A new section addresses graduation requirements for limited English proficient pupils. The amendments also permit the establishment of bilingual education program alternatives under special circumstances and in consultation with and the approval of the Department of Education.

In 1984, the State Board of Education adopted a special graduation policy for limited English proficient pupils which became effective in 1988. These special requirements allow pupils of limited English proficiency who enter New Jersey schools in grade nine or later to demonstrate their basic skills proficiencies in their native language through the Special Review Assessment. This provides a fair skill assessment for those pupils who have not been here long enough to acquire full proficiency in English. At the same time, in order to be eligible for a State-endorsed high school diploma, these pupils must also demonstrate that they have acquired fluency in the English language. This will be demonstrated through the achievement of a passing score on the Maculaitis Assessment Program, the State required English fluency test.

When, in local school districts, there are small numbers of limited English proficient students of different age and grade groups enrolled across schools which are separated geographically, the bilingual education program alternatives may be established. These models and the conditions under which they may be established are addressed in the proposed amendments.

The proposed amendments also clarify what identification procedures are to be followed to determine whether or not pupils are limited English proficient. There is also a requirement that parents be formally notified of their child's placement from the bilingual/ESL program into the general monolingual English program.

The section related to the supervision and administration of these programs, N.J.A.C. 6:31-1.8, was deleted since supervisory and administrative requirements are addressed in other chapters of the New Jersey Administrative Code.

To improve the organization of N.J.A.C. 6:31, two key sections were recodified. The section related to required programs for LEP students now precedes the section regarding bilingual education programs.

Additionally throughout the text, the term "limited English speaking ability" was changed to "limited English proficiency." This change was made for purposes of consistency with other State department and Federal documents and current literature in the field.

A review of the proposed amendments follows:

N.J.A.C. 6:31-1.1 Definitions

In the section on definitions, the term "bilingual education program" was amended to better define the population served. The definition now states that pupils served are of limited English proficiency, rather than of limited English speaking ability. The rule now clearly states that ESL instruction is required for all pupils enrolled in the bilingual program.

The term "bilingual education program alternative" was added to define when alternative models may be established. The terms "bilingual part-time component," "bilingual resource room," "bilingual tutorial program" and "high intensity ESL program" were also added to define what those alternative program models are. Essentially, these models provide for bilingual or special language instruction in the content areas in settings other than regular self-contained classes of bilingual education.

The term "children of limited English speaking ability" was changed to "children of limited English proficiency." These two terms refer to the same pupil population; however, the term children of limited English proficiency is the term used in Federal guidelines, other State documents, and current literature. An English language proficiency test is used to determine whether or not a pupil has limited English proficiency.

The term "dominant language" was deleted. This was a technical change, made to add clarity to the text. The proposed amendments now state that pupils be assessed to determine the language which shall be used initially as the primary language of instruction.

The term "educational needs" was modified for technical purposes. To insure consistency throughout the text, the term "limited English proficiency" now replaces "limited English speaking ability."

The term "English as a second language (ESL) program" now clarifies that developmental instruction is provided on a daily basis.

The term "English language services" was added to clarify the goals of these services.

The term "exit criterion" was amended for technical purposes. The term "score" was more precisely defined as "cutoff score."

N.J.A.C. 6:31-1.2 Identification of eligible participants

This section describes the procedures to be followed in order to identify pupils of limited English proficiency. The proposed amendments now

define the standard to be used when determining whether or not a pupil is limited English proficient. The requirement for recording these pupils on the Fall Report was recodified under the identification section, rather than under approval procedures, since all districts must follow these procedures and submit this report annually regardless of whether or not they provide bilingual or ESL programs.

N.J.A.C. 6:31-1.3 Graduation requirements for pupils of limited English proficiency

The proposed new rule will allow pupils of limited English proficiency who enter New Jersey schools in grade nine or later to demonstrate their basic skills proficiencies through the Special Review Assessment in their native language and to demonstrate that they have attained fluency in the English language in order to be eligible for high school graduation.

N.J.A.C. 6:31-1.4 Required programs for limited English proficient pupils

This section has been recodified and reorganized for purposes of clarity. If there are less than 10 pupils of limited English proficiency in the district, no formal program need be established. Nevertheless, these districts must provide services designed to develop the English language skills of these pupils. Additionally, at the secondary level, these pupils must be offered sufficient courses and opportunities to fulfill high school graduation requirements.

English as a second language programs must be established whenever there are 10 or more pupils of limited English proficiency. In addition to requiring district boards of education to formally adopt curricula for English as a second language, there is also a provision for addressing special needs of limited English proficient pupils in the program.

Lastly, when there are 20 or more pupils from the same language background enrolled in a district a bilingual program must be established.

N.J.A.C. 6:31-1.5 Bilingual education program

Several technical changes were made in this section. The term "limited English proficiency" replaces "limited English speaking ability" and the term "primary language" is used rather than "dominant language."

This section further clarifies that the bilingual program curriculum must be adopted by the district board of education. The provisions for the bilingual curriculum were reorganized, now listing the basic components.

The proposed amendment allows for bilingual education program alternatives at both the elementary and secondary levels when there are not sufficient numbers of pupils to form regular bilingual classes. These alternatives must be developed in consultation with and approved by the Department of Education.

The amendment also ensures that programs and services are designed to meet the special needs of limited English proficient pupils.

N.J.A.C. 6:31-1.6 Approval procedures

This section lists district information that must be reported to the State Department of Education. Plans for programs must be submitted annually. Plans are now also required for those districts with one or more, but less than 10, pupils of limited English proficiency to describe English language services.

The requirement to submit the Report of Limited English Proficient Students was recodified under N.J.A.C. 6:31-1.2, Identification of eligible participants, since all districts must submit this report whether or not they have a program of bilingual or ESL instruction. The requirement for reporting evaluation data is now listed separately since this data is not reported in the program plan. Evaluation data for English language services must also be reported.

Program budgets must be submitted annually with the Annual Improvement Program Budget by all districts serving pupils of limited English proficiency, since state bilingual categorical aid will now be available to districts providing English language services, as well as those with bilingual or ESL programs.

N.J.A.C. 6:31-1.7 Supportive services

This section mandates that limited English proficient pupils have full access to supportive services. The term "limited English speaking ability" has been changed to "limited English proficiency."

N.J.A.C. 6:31-1.9 Certification

Technical changes were made in order to conform with certification rules. Additional language clarifies that, although a specific endorsement is not required, teachers providing English language services must hold a valid instructional certificate.

N.J.A.C. 6:31-1.11 Bilingual and ESL program participation

Pupils of limited English proficiency must be enrolled in the appropriate program until they meet the exit criterion of a passing score on an English language proficiency test.

Procedures for reentry into bilingual and ESL programs are also described.

N.J.A.C. 6:31-1.12 Location

Bilingual and ESL classrooms must be approved by the county superintendent of schools.

N.J.A.C. 6:31-1.13 Notification

Parents of pupils enrolled in programs must be informed of their child's participation and academic progress in the program. They also must be informed of their right to review and challenge the identification process including procedures and pertinent data resulting in the identification of their child as limited English proficient. When pupils are to be exited from the bilingual or ESL education program and placed in the monolingual English program, parents must be informed.

N.J.A.C. 6:31-1.14 Joint programs

Districts may join together to provide programs under procedures established by the Department of Education. There is no change in text.

N.J.A.C. 6:31-1.15 Parental involvement

Districts must provide for parental involvement in the development of programs. The term "limited English speaking ability" was changed to "limited English proficiency."

N.J.A.C. 6:31-1.16 Office of Bilingual Education

The duties of the office include monitoring of district programs funded by State, local and Federal sources in conjunction with the county offices of education. The office is also responsible for the administration of the programs and technical assistance to districts with bilingual and ESL programs. The term "limited English speaking ability" was changed to "limited English proficiency."

N.J.A.C. 6:31-1.17 State advisory committee on bilingual education

A State advisory committee on bilingual education must be established to advise the Departments of Education and Higher Education in developing policies related to bilingual education. The term "limited English proficiency" replaces "limited English speaking ability."

Social Impact

Over the past 13 years since the enactment of the New Jersey Bilingual Education Act, the number of children identified as limited English proficient and the number of district programs developed to serve them has grown dramatically. These numbers are expected to increase over the next several years, because of the continuing flow of migrants, refugees and other immigrants entering the country and State.

Although there has been some discussion regarding the best instructional approach for developing English language and subject matter skills in children of limited English proficiency, educators and the general public agree that there is a need for special programs to meet the educational needs of these children. To assist districts in developing programs of bilingual instruction where there are not sufficient numbers of pupils to form self-contained bilingual classes, the proposed regulations define bilingual education program alternatives and the conditions under which they may be developed.

The inclusion of the native language of pupils in the Special Review Assessment as part of graduation requirements will afford recent entrant pupils the opportunity to demonstrate mastery of the required skills, along with fluency in English, so that they may be eligible for a State-endorsed diploma.

Economic Impact

The proposed amendments have little economic impact on school districts. Native language materials for the Special Review Assessment were developed by the State, at a cost of approximately $75,000 and are available at no cost to district boards of education.

State bilingual categorical aid will continue to be provided to those districts serving limited English proficient pupils in alternative bilingual classrooms, as well as in general self-contained bilingual classrooms. State aid will also be provided to districts offering English language services to identified pupils of limited English proficiency. During school year 1988-1989, there were 35,911 pupils of limited English proficiency identified in the State. Of that number, 34,723 were enrolled in programs of bilingual and/or ESL education. Under this provision, services to an additional 1,188 pupils would be funded through state bilingual categorical aid. The amount of State bilingual categorical aid in FY '89 was

$34,351,000. It is estimated that funding these services would cost an additional $1,197,504 in state bilingual categorical aid.

Regulatory Flexibility Statement

A Regulatory Flexibility Statement is not required because the rules proposed for readoption and amendment do not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules impact solely upon New Jersey school districts and on schools operated by the New Jersey Department of Education.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:31.

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

6:31-1.1 Definitions

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

"Act" means [Chapter 197], P.L. 1974, **c. 197** (N.J.S.A. 18A:35-15 to 26).

"Bilingual education program" means a full-time program of instruction in all those courses or subjects which a child is required by law or rule to receive, given in the native language of the children of limited English [speaking ability] **proficiency** enrolled in the program and also in English; in the aural comprehension, speaking, reading, and writing of the native language of the children of limited English [speaking ability] **proficiency** enrolled in the program and in the aural comprehension, speaking, reading and writing of English; and in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English [speaking ability] **proficiency** enrolled in the program and in the history and culture of the United States. **All pupils in bilingual education programs receive English as a second language instruction.**

"Bilingual education program alternative" means a part-time program of instruction that may be established by a district board of education in consultation with and approval of the Department of Education. All pupils in a bilingual education program alternative receive English as a second language.

"Bilingual part-time component" means a bilingual education program alternative in which pupils are assigned to monolingual English program classes, but are scheduled daily for their developmental reading and mathematics instruction with a certified bilingual teacher.

"Bilingual resource program" means a bilingual education program alternative in which pupils receive daily instruction from a certified bilingual teacher in identified subjects and with specific assignments on an individual pupil basis.

"Bilingual tutorial program" means a bilingual education program alternative in which pupils are provided one period of instruction in a content area required for graduation and a second period of tutoring in other required content areas. These two periods of instruction are provided by a certified bilingual teacher.

"Children of limited English [speaking ability] **proficiency**" means pupils whose native language is other than English and who have sufficient difficulty speaking, reading, writing or understanding the English language **as measured by an English language proficiency test** so as to be denied the opportunity to learn successfully in the classrooms where the language of instruction is English. This term means the same as limited English [proficiency] **speaking ability**, the term used in [Federal guidelines] **N.J.S.A. 18A:35-15 to 26**.

["Dominant language" with respect to the pupil means the language most relied upon for communication as determined by a test of language dominance or other screening process in accordance with guidelines prescribed by the Department of Education.]

"Educational needs" means the particular educational requirements of pupils of limited English [speaking ability] **proficiency**, the fulfillment of which will provide them with equal educational opportunities.

"English as a second language (ESL) program" means a **daily** developmental second language program which teaches [English vocabulary and structures] **aural comprehension, speaking, reading and writing in English** using second language teaching techniques and incorporates the cultural aspects of the pupils' experience in their ESL instruction.

. . .

"English language proficiency test" means a test which measures English language skills in the areas of aural comprehension, speaking, reading and writing.

"English language services" means services designed to improve the English language skills of pupils of limited English proficiency. These services, provided in districts with less than 10 pupils of limited English proficiency, are in addition to the regular school program and have as their goal the development of aural comprehension, speaking, reading and writing skills in English.

"Exit criterion" means the criterion which must be [considered] **applied** before a pupil may be [terminated or] exited from a bilingual **or ESL education** program. The criterion is the **State established cutoff score on an** English language proficiency test [score].

"High intensity ESL programs" means a bilingual education program alternative in which pupils receive two or more class periods a day of ESL instruction. One period is the standard ESL class and the other period is a tutorial or ESL reading class.

. . .

6:31-1.2 Identification of eligible participants

(a) (No change.)

(b) The district shall determine the English language proficiency of all pupils whose native language is other than English by means of [an initial screening process and] the administration of an English language proficiency test[, in accordance with guidelines prescribed by the Department of Education]. **Those pupils who score below the State established cutoff score on an English language proficiency test are pupils of limited English proficiency.**

(c) The district shall report annually the number of pupils identified whose native language is other than English and of that group, the number of pupils of limited English proficiency on the Report of Limited English Proficient Students on Roll which is part of the Fall Report.

[(c)](**d**) The district shall administer the Maculaitis Assessment Program (Alemany Press) to all limited English proficient pupils who enter New Jersey schools after grade eight at the time of enrollment to determine their level of English language fluency. These pupils shall be administered the Maculaitis Assessment Program annually thereafter until they achieve **a score of 133 raw score points,** the passing level of fluency, on the Maculaitis Assessment Program or they pass the High School Proficiency Test[, in accordance with guidelines prescribed by the Department of Education].

6:31-1.3 Graduation requirements for pupils of limited English proficiency

(a) All pupils of limited English proficiency must satisfy requirements for high school graduation in accordance with provisions of N.J.A.C. 6:8-7.1 except:

1. Pupils of limited English proficiency who enter New Jersey schools in grade nine or later may demonstrate that they have attained State minimum levels of proficiency through the Special Review Assessment in their native language; and

2. Pupils of limited English proficiency who enter New Jersey schools in grade nine or later and who demonstrate that they have attained State minimum levels of proficiency through the Special Review Assessment in their native language must take the Maculaitis Assessment Program and attain the passing level of fluency of 133 raw score points to be eligible for a State-endorsed high school diploma.

OAL NOTE: Current N.J.A.C. 6:31-1.3 is proposed for recodification as N.J.A.C. 6:31-1.5, with amendments.

6:31-1.4 [Programs for English proficiency] **Required programs for limited English proficient pupils**

(a) Whenever there are one or more, but fewer than 10, pupils of limited English [speaking ability] **proficiency** enrolled within the schools of the district, the district board of education shall provide services designed to improve the English language proficiency of those pupils pursuant to N.J.S.A. 18A:7A-4 **and 5**. [The school district shall develop a special instructional plan which has as its goal the development of English language proficiency.]

1. English language services shall be in addition to the regular school program.

[1.]**2.** At the secondary level, sufficient courses and relevant opportunities shall be offered to enable the pupils to fulfill all credits and other requirements for graduation.

(b) Whenever there are 10 or more pupils of limited English [speaking ability] **proficiency** enrolled within the schools of the district, [regardless of whether they speak the same native language, those pupils shall be taught by a certified ESL teacher in an ESL program] **the district board of education shall establish an ESL program.**

[(c)]**1. An** ESL curriculum **shall be adopted by the district board of education** [and services shall be developed] to address the [basic] instructional needs of pupils of limited English [speaking ability] **proficiency**.

2. [ESL programs] **Programs** and services designed to meet the special needs of pupils of limited English [speaking ability] **proficiency** shall include, but not be limited to, compensatory education, special education and vocational training and be provided in accordance with N.J.S.A. 18A:7A-4 **and 5**.

(c) In addition to the above listed requirements, whenever there are 20 or more pupils of limited English proficiency in any one language classification, the district board of education shall establish for each such classification a program in bilingual education as detailed in N.J.A.C. 6:31-1.5.

[6:31-1.3]**6:31-1.5** Bilingual education program

(a) When, at the beginning of any school year, there are within the schools of the district, 20 or more pupils of limited English [speaking ability] **proficiency** in any one language classification, the district board of education shall establish for each such classification a program in bilingual education for all pupils therein, providing also that a district board of education may establish a program in bilingual education for any language classification with less than 20 pupils. **All pupils in bilingual education programs must receive ESL instruction.**

(b) A district may establish a bilingual education alternative program with the approval of the Department of Education when there are 20 or more pupils eligible for the bilingual education program in grades kindergarten through 12 and the district is able to demonstrate that due to the age range, grade span and/or geographic location of eligible pupils it would be impractical to provide a full-time bilingual program.

1. Bilingual education program alternatives shall be developed in consultation with and approved annually by the Department of Education after review of pupil enrollment and achievement data.

2. The bilingual program alternatives that may be established are the bilingual part-time component, the bilingual resource program, the bilingual tutorial program and the high intensity ESL program.

3. Districts implementing alternative programs must annually submit student enrollment and achievement data that demonstrate the continued need for these programs.

4. As the number of pupils increase to the point where it would be feasible to form a self-contained or subject area class, the district shall establish a full-time bilingual education program.

[(b)]**(c)** A program of bilingual education may make provisions for the voluntary enrollment on a regular basis of pupils whose [dominant] **primary** language is English in order that they may acquire an understanding of the language and the cultural heritage of the pupils of limited English [speaking ability] **proficiency** for whom the particular program of bilingual education is designed, provided that no bilingual class contains a majority of pupils whose native language is English.

[(c)]**(d)** The district shall assess all pupils enrolled in the bilingual program to determine [their dominant] **the** language[,] which shall be used initially as [their] **the** primary language of instruction.

[(d)]**(e)** The bilingual program curriculum shall **be adopted by the district board of education.**

1. It shall include the full range of required courses and activities offered on the same basis and under the same rules that apply to all pupils within the school district.

2. In subjects and activities in which verbalization is not essential to understanding, including, but not limited to, music and physical education, pupils of limited English [speaking ability] **proficiency** shall participate fully with English speaking pupils in the [regular] **monolingual English** class or activities provided.

3. [There] **The bilingual program curriculum** shall [be a formal bilingual program curriculum which] address[es] the use of two languages within the curriculum.

[(e)]**(f)** [At the secondary level] **In grades nine through 12**, sufficient courses and other relevant opportunities shall be offered to enable the pupil to fulfill all credits and other requirements for graduation. When sufficient numbers of pupils are not available to form a bilingual class in a subject area, plans must be developed in consultation with the Department of Education to meet the needs of the pupils.

[(f)]**(g)** Bilingual programs and services designed to meet the special needs of pupils of limited English [speaking ability] **proficiency** shall include, but not be limited to, compensatory education, special education and vocational education services and be provided by districts in accordance with N.J.S.A. 18A:7A-4 **and 5**.

6:31-[1.5]**1.6** Approval procedures

(a) Each school district providing a bilingual **program,** [or] ESL program **or English language services** shall submit an annual plan [for a program of bilingual or ESL education] to the Department of Education for approval.

(b) Plans submitted by districts for approval shall include information on the following:

1. Identification of pupils;
2. Program description;
3. School information; **and**
4. Evaluation design[; and
5. Evaluation data].

(c) Districts shall submit annually [the Report of the Limited English Proficient Students as part of the Fall Survey] **evaluation data in reading, writing, mathematics, and ESL achievement and the exit data for the pupils of limited English proficiency enrolled in the district.**

(d) Districts shall also submit annually their [bilingual and ESL program] budget **for the bilingual and ESL program or English language services** as part of the Annual Improvement **Program** Budget.

6:31-[1.6]**1.7** Supportive services

(a) Pupils enrolled in bilingual and ESL education programs shall have full access to educational services available to other pupils in the school district.

(b) School districts should use full or part-time bilingual personnel to provide supportive services, such as counseling, to pupils of limited English [speaking ability] **proficiency**.

[6:31-1.7 Administration and supervision

(a) School districts shall ensure the adequate administration and supervision of bilingual and ESL education programs.

(b) Personnel selected for administrative and/or supervisory positions shall provide evidence to the chief school administrator of specialized training and/or experience in bilingual or ESL education.]

6:31-1.9 Certification

(a) All teachers of bilingual classes shall hold a valid New Jersey [teacher's] **instructional** certificate **with an endorsement** for the appropriate grade level and/or content area [and] **as well as** an endorsement in bilingual education pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.S.A. 18A:35-15 to 26.

(b) All teachers of ESL classes shall hold a valid New Jersey [teacher's] **instructional** certificate **with an endorsement** in English as a second language pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.S.A. 18A:35-15 to 26.

(c) All teachers providing English language services as defined in N.J.A.C. 6:31-1.4 shall hold a valid New Jersey instructional certificate.

6:31-1.10 Bilingual and ESL program participation

(a) All school age pupils of limited English [speaking ability] **proficiency** shall be enrolled in the bilingual or ESL education program

established by the school district, as prescribed in N.J.A.C. 6:31-[1.1(a)]**1.4(b)** and 6:31-[1.4(b)]**1.5(a)**.

(b) Pupils enrolled in the bilingual or ESL education program shall be placed in a [regular] **monolingual English** program when they have met the exit criterion of [a passing] **the State established cutoff** score on [the] **an** English language proficiency test. [This shall take effect in the spring of 1988.]

(c) Pupils enrolled in the bilingual or ESL education program shall be assessed annually for exit with [the] **an** English language proficiency test. Pupils may be referred for testing at any time if a program teacher judges that the pupil may be ready for program exit.

(d) Newly exited pupils who are not progressing in the [regular] **monolingual English** program may be considered for reentry **to bilingual and ESL programs** as follows:

1. After a minimum of one full semester and within two years of exit, the [regular] **monolingual English** classroom teacher, with the approval of the principal, may recommend retesting. A waiver of the minimum time limitation may be approved by the county superintendent upon request of the chief school administrator if the pupil is experiencing extreme difficulty in adjusting to the mainstream program.

2. The recommendation for retesting would be based on the teacher's judgment that the [student] **pupil** is experiencing difficulties due to problems in using English as evidenced by the [student's] **pupil's** inability to:

i. Communicate effectively with peers and adults;

ii. Understand directions given by the teacher;

iii. Comprehend basic verbal and written materials.

3. The pupil shall be tested using a different form of the test or a different language proficiency test than the one used to exit the pupil.

4. If the pupil scores below the cutoff **score** on the language proficiency test, the pupil shall be reentered into the bilingual or ESL program.

6:31-1.11 Location

All bilingual **and ESL** programs shall be conducted within classrooms approved by the county superintendent of schools within the regular school buildings of the district.

6:31-1.12 Notification

(a) No later than 10 working days after the enrollment of any pupil in a bilingual or ESL education program, the district shall notify, by mail, the parent(s) or legal guardian that the pupil has been enrolled in a bilingual or ESL educational program. The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the pupil is enrolled. The notice shall also inform the parent(s) of their right to review and discuss with district administrators the procedures and pertinent data used to identify their child as having limited English [speaking ability] **proficiency**. The notice shall also advise the parent(s) of the appeal process to be followed pursuant to N.J.S.A. 18A:6-9, if they wish to challenge the identification of their child. During the pendency of any such appeal before the [commissioner] **Commissioner**, the child shall remain enrolled in the program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

(b) School districts shall send progress reports to parent(s) of pupils enrolled in bilingual or ESL education programs in the same manner and frequency as progress reports are sent to parent(s) of other pupils enrolled in the school district.

(c) Progress reports shall be written in English and in the native language of the parent(s) of pupils enrolled in the bilingual program. The progress reports for pupils enrolled in an ESL program shall be written in English and in the native language of the parent(s) unless it can be demonstrated that this requirement would place an unreasonable burden on the local school district.

(d) Districts shall notify the parent(s) when pupils meet the exit criterion and are placed in a monolingual English program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

6:31-1.14 Parental involvement

(a) Each district shall provide for the maximum practicable involvement of parent(s) of pupils of limited English [speaking ability] **proficiency** in the development and review of program objectives and dissemination of information to and from the local school districts and communities served by the bilingual or ESL education program.

(b) Each school district implementing a bilingual education program shall establish a parent advisory committee on bilingual education on which the majority will be parent(s) of pupils of limited English [speaking ability] **proficiency**.

(c) The parent advisory committee shall be convened a minimum of four times per school year.

6:31-1.15 Office of Bilingual Education

(a) (No change.)

(b) The Office of Bilingual Education shall be charged with the following:

1.-2. (No change.)

3. Coordination and monitoring in conjunction with the county offices of education of local, State, and Federal programs designed to meet the educational needs of pupils of limited English [speaking ability] **proficiency**.

6:31-1.16 State advisory committee on bilingual education

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

(c) The committee shall be composed of at least 15, but not more than 25 members, one of whom shall be elected chairperson. The membership shall include the following representation:

1. A minimum of two, but not more than four, parents of pupils of limited English [speaking ability] **proficiency**;

2.-6. (No change.)

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Plan Review Fee Schedule

Proposed Readoption: N.J.A.C. 8:31-30 as 8:31-1

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

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

Proposal Number: PRN 1989-432.

Submit comments by September 20, 1989 to:

Leonard D. Dileo, Director
Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey Department of Health
300 Whitehead Road, CN 367
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:31 expires on November 5, 1989. The Department has reviewed these rules and has found that only N.J.A.C. 8:31-30.1 continues to be necessary, reasonable and proper for the purpose for which it was promulgated, and proposes to readopt essentially this rule restructured into a new rule and recodified to N.J.A.C. 8:31-1.1. All other subchapters in N.J.A.C. 8:31 will not be proposed for readoption prior to their expiration.

The following subchapter contains architectural and mechanical fee requirements for the review of applications for construction or modification of health care facilities. The Department of Health, through the Health Facilities Construction Service of the Division of Health Facilities Evaluation, has the responsibility for reviewing and approving all architectural and mechanical plans for all health facility construction projects and assesses fees for this purpose.

The Department has been designated by the Department of Community Affairs as the sole review agency for health care facility construction. In addition, the Department evaluates the facilities for compliance with Life Safety Code 101 and the United States Public Health Service stan-

dards. Reviews include evaluations of the plans by staff architects and engineers, as well as nursing and other Health Department staff, as needed, on a consultation basis.

In accordance with this subchapter, no health care facility will be issued a building permit to commence construction until the Department of Health, through the office of Health Facilities Construction Services, has stamped and approved the plans for the project.

This subchapter has been readopted with amendments which will clarify the rule and will continue the economic effect of the current fee structure. The increase by 25 percent in rates assessed by the Department of Community Affairs under the provisions of N.J.A.C. 5:23-4.20 made necessary a reduction in the multiplier used by the Department of Health, from 4.0 to 3.0, so that the revenues from fees would remain approximately the same. The fee structure is evaluated each year and amendments are made as necessary.

Social Impact

The proposed readoption of this chapter will protect the health, safety and welfare of the citizens of New Jersey by assuring that all health care facility construction is adequate and is maintained according to uniform construction standards.

Economic Impact

The economic impact will be on applicants for permits for health facility construction projects, who will continue to be charged a fee based upon the fees established at N.J.A.C. 5:23-4.20. The change in the multiplier from 4.0 to 3.0 will permit the revenues generated by the Department of Health to remain the same and will permit the evaluation function performed by the Department to be funded through the fee structure. If such fees were not assessed, the Department would be required to support the evaluation function through its current operating budget, thereby creating a deficit. The Department has evaluated the provision of review services, comparing the costs of services as provided by outside contractors and as provided by the Department, and has concluded that the current system is more cost-effective.

Fees assessed upon the health facility construction project sponsors will not increase due to this change.

Regulatory Flexibility Analysis

The rule regulates health care facilities and sponsors of health facility construction projects, some of whom can be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The sponsors and facilities are all health care facilities licensed by the State of New Jersey which range in size from general hospital facilities, nursing homes, and intermediate care facilities which employ over 100 people to small health centers and clinics which may employ under 10 people.

The rule utilizes performance standards, in that it requires the payment of a fee for the review of plans. It is not possible to estimate the costs of compliance for an individual applicant, as each project differs in complexity and size. However, the basis for the fees assessed is contained in N.J.A.C. 5:23-4.20. The fees received during the last year totalled approximately $600,000.

The fees, as based upon the fees established by N.J.A.C. 5:23-4.20, assess differing amounts upon the projects, generally depending upon the size and complexity of the proposed project. This factor allows for differentiation between small and large businesses. The Department does not believe that it is appropriate, therefore, to differentiate further between small and large businesses.

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

SUBCHAPTER [30.]**1.** UNIFORM CONSTRUCTION CODE PLAN REVIEW FEE

[8:31-30.1]**8:31-1.1** Architectural and mechanical plan review fee

[(a) The Department of Health will utilize 20 percent of the local municipality schedule in computing the plan review fee for health care facilities. The municipality will charge the balance of 80 percent for the other aspects of construction, i.e., inspections, permits, and the like.

(b) The Department of Health will utilize the fee schedule outlined in N.J.A.C. 5:23-4.20 of the Uniform Construction Code using a multiplier of 4.0.

(c) All fees paid to the Department of Health shall be nonrefundable. All fees shall be paid by check or money order, payable to the "Treasurer, State of New Jersey."]

(a) The Department of Health shall charge a fee to sponsors of health facility construction projects for the review of architectural and mechanical plans for such projects. The fee shall be 20 percent of the local municipality fees established by N.J.A.C. 5:23-4.20, multiplied by 3.

(b) All checks for fees shall be made payable to "Treasurer, State of New Jersey" and forwarded to:

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey Department of Health
300 Whitehead Road, CN 367
Trenton, N.J. 08625

(c) No health care facility shall be issued a building permit until the plans for that facility have been reviewed, approved and stamped by the office of Health Facilities Construction.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Health Care for the Uninsured Program

Proposed Amendments: N.J.A.C. 8:31B-4.37 and 7.3

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

Authority: N.J.S.A. 26:2H-18.4 et seq., N.J.S.A. 26:2H-5 et seq., and P.L. 1978, c.83 (N.J.S.A. 26:2H-4.1).

Proposal Number: PRN 1989-437.

Submit written comments by September 20, 1989 to:
Scott Crawford, Director
Program for the Uninsured, 8th Floor
CN 360
New Jersey Department of Health
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments make two changes to the existing body of hospital rate setting rules that pertains to uncompensated care. The first proposed amendment, to N.J.A.C. 8:31B-4.37(g), establishes a new subsection which describes a special category of uncompensated care write-offs associated with the Department's proposed Reinsurance Program. The intent of the Reinsurance Program is to increase the number of New Jerseyans with health insurance or health maintenance organization coverage and thereby decrease uncompensated care. Through this program, those hospital bills of patients who have health coverage that is "reinsured" by the uncompensated care payment system which exceed the predetermined amount would be considered a special write-off.

The second proposed amendment, to N.J.A.C. 8:31B-7.3(d), revises the present subsection by allowing interest earned on the Uncompensated Care Trust Fund to be used to fund efforts to expand health insurance, which would have an indirect impact of reducing uncompensated care in the State. Current requirements at N.J.A.C. 8:31B-7.3(d) state that interest shall be used to reduce the uncompensated care add-on for the next period.

Social Impact

Both of the proposed amendments enable the Department of Health to proceed with efforts to expand health insurance or health maintenance organization coverage to employed but uninsured New Jerseyans and their families. To the extent that these efforts are successful, a reduction in the State's uncompensated care amount is expected.

Economic Impact

There are several economic impacts anticipated by these proposed amendments. Proposed new subsection N.J.A.C. 8:31B-4.37(g), which describes a special category of uncompensated care write-offs associated with the Department's proposed Reinsurance Program, is expected to reduce the cost of insurance premiums or health maintenance organization coverage. It is not expected to result in an increase in uncompensated care but is expected to decrease uncompensated care because of the increase in the number of insured persons.

The proposed revision to N.J.A.C. 8:31B-7.3(d) which specifies the use of interest earned on money in the Uncompensated Care Trust Fund is expected to only slightly increase (by less than one-third of one percent) the amount of uncompensated care collected through the add-on in the short term; this increase is expected to be more than offset in the longer term due to the resulting increase in the number of persons with insurance.

Regulatory Flexibility Analysis

The proposed new section N.J.A.C. 8:31B-4.37(g) which describes a special category of uncompensated care write-offs as a provision of the Department's Reinsurance Program may impact insurance companies with less than 100 employees that voluntarily choose to participate in the program. Any participating insurance company will be required to keep track of policies sold through the Reinsurance Program as well as claims filed under such policies. These record-keeping functions are not expected to be onerous. There are no hospitals with less than 100 employees under New Jersey's Chapter 83 system, so there are no hospitals considered a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed revision to N.J.A.C. 8:31B-7.3(d) which specifies the use of interest earned on the Uncompensated Care Trust Fund is not expected to impact any small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-4.37 Charity care and reduced charge charity care for indigent patients

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

(g) Special eligibility for charity care under the Department's Reinsurance Program shall be as follows:

1. Patients who are insured under the Department's Reinsurance Program, which has negotiated terms of reinsurance with one or more insurance company or health maintenance organization in the State, are eligible for 100 percent charity care for that portion of their hospital bill which exceeds the predetermined amount as specified by the Commissioner. Deductibles and copayments are not affected by this provision.

2. Hospitals shall bill insurance companies and health maintenance organizations as usual. When an insurance company or health maintenance organization receives a hospital bill for one of its clients who is covered under the Department's Reinsurance Program for an amount which exceeds the predetermined amount, it shall transmit payment to the hospital for the portion for which it is responsible, along with an explanatory letter. The insurance company or health maintenance organization shall then forward a copy of the bill to the Department or its agent for continued processing.

3. The Department or its agent will verify that the client/patient is covered through the Reinsurance Program and send written authorization to the hospital to write off the balance of the bill as 100 percent charity care. The hospital shall keep this authorization in the patient's file for review by auditors.

4. The hospital shall not pursue payment for the amount of the bill which exceeds the predetermined reinsurance figure from the patient. However, the hospital shall pursue payment for any deductibles or copayments as is standard practice.

5. The Department or its agent shall keep a record of all patient bills which are insured under the Department's Reinsurance Program and will monitor the Program's impact on uncompensated care in the State.

8:31B-7.3 Determination of uniform [statewide] **Statewide** uncompensated care add-on

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

(d) [Any] **The amount of any** interest payments credited to the benefit of the Trust Fund shall be used to **directly** reduce the amount of the uniform [statewide] **Statewide** uncompensated care add-on [for the next period, except that, prospectively estimated interest to accrue for the period July 1 through December 31, 1988 shall be used to reduce the amount of the uniform statewide uncompensated care add-on for that period] **or to indirectly reduce the amount of the uniform Statewide add-on through special projects as determined by the Commissioner. These special projects may include expansion of health insurance coverage in the State. This applies to interest payments earned on or after January 1, 1987.**

(e) (No change.)

(a)

HOSPITAL REIMBURSEMENT
Uncompensated Care
Proposed Amendments: N.J.A.C. 8:31B-4.38 through 4.40

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

Authority: N.J.S.A. 26:2H-18.4 et seq. (P.L. 1989, c.1) and N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18(d).

Proposal Number: PRN 1989-436.

Submit comments by September 20, 1989 to:
Scott Crawford, Director
Health Care for the Uninsured Program
New Jersey Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments are designed to implement the changes mandated by N.J.S.A. 26:2H-18 et seq. as well as other technical corrections and changes to the credit and collection components of the hospital rate setting system. The proposed amendments have been reviewed by the Trust Fund Advisory Committee.

The major changes include the following:

1. Charity Care for Mobile Intensive Care Units (MICU) is to be paid through the Uncompensated Care Trust Fund.

2. Services for which uncompensated care payments are not available are clearly delineated.

3. Hospitals will no longer be allowed to estimate uncompensated care amounts when reporting to the Department of Health.

4. The data elements that a hospital must collect on each patient are specified.

5. Patients who fail or refuse to provide required information or fail to comply with their payers' prior authorization requirements will have their care deferred unless the patient is in need of immediate medical attention.

6. The timing for hospitals to send billing statements is specified. In addition, the amendments would establish that two collection follow-up letters must be sent and specifies the data elements and timing of these letters.

7. The hospital must make at least three telephone attempts to reach the patient. If these attempts are unsuccessful, a collection telegram must be sent. The format for a collection telegram is delineated.

8. The hospital must document in each patient's file bona fide collection efforts or adequate reasons to terminate the collection effort if terminated prior to the specific steps outlined.

9. The hospital must review all remaining unpaid balances no less than 90 days or more than 120 days following discharge to determine whether an account should be held in house for an additional period of time if it is likely that the bill can be collected; sent to an outside collection agency; pursued through appropriate legal action.

10. The hospital must pursue appropriate internal collection procedures unless and until clearly outlined criteria are followed, for example, until the cost of collection exceeds the amount of the bill.

11. Legal action is now defined and shall be required in all cases unless it is deemed inappropriate based on the patient's income and assets, or the bill is less than the costs of legal action. Legal action may not be taken for Medicaid recipients for medically necessary and appropriate services.

12. The hospital is not prevented from taking intermediate steps after the post-discharge steps outlined in the rules, before taking legal action. This includes, but is not limited to, sending an account to a collection agency.

If adopted by the HCAB, these rules will become operative January 1, 1990. As provided in section 23 of the Trust Fund statute, the credit and collection requirements of section 10 were law on April 11, 1989. The Department of Health will be required, in its audit, to hold hospitals responsible for a reasonable, good faith effort to comply with the statute given the level of guidance afforded in the statute.

Social Impact

The proposed amendments to N.J.A.C. 8:31B-4.38 through 4.40 serve to implement mandatory requirements of sections 9 and 10 of the Uncompensated Care Trust Law, P.L. 89, c.1. Sections 9 and 10 specify technical collection procedures designed to control the escalating cost of uncompensated care.

Those affected by the Trust Fund law and the proposed amendments to N.J.A.C. 8:31B-4.38 through 4.40 include Ch. 83 acute care hospitals, third party payers, and purchasers of hospital services. There are approximately 843,000 people who do not have hospital insurance in the State of New Jersey. Caring for these people involves significant cost to the hospitals.

The collection procedures established in the Trust Fund law and further reinforced by the proposed amendments are required to be followed by each hospital as a condition of being reimbursed through the Uncompensated Care Trust Fund. Some areas of sensitivity expressed by hospital industry representatives center around financial interviewing of inpatients and outpatients. The deferral of non-emergent care under specific circumstances cited in N.J.A.C. 8:31B-4.40(b)4i through iv, is likely to cause public relations concerns in the hospital industry, although this section specifically states that a hospital is not authorized to defer necessary and appropriate treatment for failure to meet financial requirements.

The increased collection efforts by hospitals may result in an awareness of the importance and need for hospital insurance coverage by the general public who use hospital services. The proposed amendments will implement the Legislature's intent to assure that adequate credit and collection policies are applied by hospitals. This will help limit unreasonable expenses of uncompensated care, and end any incentive for people to avoid purchasing health insurance.

Economic Impact

The proposed amendments to N.J.A.C. 8:31B-4.38 through 4.40 affect the Chapter 83 acute care hospitals of New Jersey and maximize their credit and collection efforts pursuant to sections 9 and 10 of the Trust Fund Law, P.L. 89, c.1. The proposed amendments are designed to implement the law and increase efforts by Chapter 83 hospitals to assure control over uncompensated care costs. Currently, uncompensated care costs exceed $500 million, and have been increasing steadily over the years. These proposed amendments to the rules will further the legislative intent to minimize the escalating cost of uncompensated care by applying more thorough credit and collection practices to hospital billing. This application may result in increased collections/revenue to hospitals.

Implementing these proposed amendments to the rules may result in a minimal increase to administrative hospital costs. Although hospitals have been required to interview patients regarding appropriate payment of hospital services pursuant to current rules, hospital industry representatives have stated that, due to the volume of outpatient cases, this may add cost. Hospital industry representatives have questioned the cost efficiencies of the collection procedures.

Regulatory Flexibility Statement

The proposed amendment affects only those hospitals whose rates are set by the Hospital Rate Setting Commission. There are no hospitals subject to the amendment with fewer than 100 full-time employees. Therefore, the amendment has no impact on any institution which would qualify as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-4.38 Uncompensated care

(a) Uncompensated care includes **only** the reasonable cost of the following:

1. Bad debts **For Chapter 83 Services,** provided appropriate collection procedures as defined in N.J.A.C. 8:31B-4.40 are followed and the account is at least 120 days old;

2. [The provision of health care services to individuals unable to pay for them for reasons of indigency] **Charity care for Chapter 83 Services, provided the patient is qualified as eligible pursuant to N.J.A.C. 8:31B-4.37;**

3. [But excluding medical denials.] **Advanced life support (ALS) services provided pursuant to P.L. 1984, c.146 (N.J.S.A. 26:2K-7 et seq.) provided the patient is qualified as eligible for charity care pursuant to N.J.A.C. 8:31B-4.37. The Commission shall establish a schedule of reimbursement rates for advanced life support services. Reimbursement shall exclude bad debts, the difference in a contractual allowance, and any medical denials for advanced life support services. This shall apply to reimbursement for ALS services as of November 1, 1987;**

4. Charity care, as defined by following N.J.A.C. [8:31B-4.39(a)8] **8:31B-4.37** and bad debts, provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.40, for outpatient dialysis services provided after September 1, 1987 to patients ineligible for Medicare coverage. Reasonable costs shall be limited to the lower of the hospital's charges or the prospectively determined composite rate as established by Medicare. The amount reported by the hospital as uncompensated care shall not include Medicare coinsurance amounts since Medicare will reimburse providers for that amount provided reasonable collection efforts are pursued, **or if the patient is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37.**

(b) Uncompensated care excludes the cost of the following:

1. Medical denials, which are services that are denied for lack of medical necessity by a utilization review organization (URO) or peer review organization, unless the denial is for days within the trim points;

2. Courtesy adjustments as defined in N.J.A.C. 8:31B-4.15(a)4;

3. Discounts provided to health maintenance organizations or other payers;

4. Patient Convenience Items as defined in N.J.A.C. 8:31B-4.65;

5. Excluded Health Services as defined in N.J.A.C. 8:31B-4.62;

6. Cosmetic surgery except where medically necessary;

7. Cost associated with procuring organs sent to foreign countries;

8. Non-health services provided by a hospital; and

9. Services not paid pursuant to Chapter 83 except as provided in (a)3 and 4 above.

[(b)] **(c)** Uncompensated care shall be determined prospectively as the cost associated with [deductions from Revenues Related to Patient Care for Charity Care] **eligible services provided to persons determined to be eligible for charity care pursuant to N.J.A.C. 8:31B-4.37,** net of grants and other funds available for the medically indigent, and for a hospital's Bad Debt Provision provided appropriate collection procedures have been followed.

8:31B-4.39 Determination of uncompensated care [factor] **payments**

(a) In order to [prospectively] include **prospectively** a factor for uncompensated care, such care shall be measured for the Current Cost Base pursuant to N.J.A.C. 8:31B-4.131 as follows:

1. [The sum of the Deduction for Charity Care and Bad Debt Provision for each reporting period shall be expressed as a fraction of Gross Revenue Related to Patient Care for each year. This ratio shall be defined as the hospital's uncompensated care factor.] **The Statewide uncompensated care add-on shall be determined pursuant to N.J.A.C. 8:31B-7.3(a)1.**

2. [The] **A hospital's** uncompensated care [factor so determined will be reviewed and] **amount shall include the sum of a hospital's actual, reasonable charity care and a reasonable provision for bad debt. A hospital's uncompensated care amount** may be adjusted by the Commission for inability to document historical **charity care eligibility determination policies and practices and** bad debt collection policies and practices which meet or surpass in effectiveness the appropriate collection procedures defined in N.J.A.C. **8:31B-4.37 and** 8:31B-4.40, **respectively.**

3. In setting the Schedule of Rates for each hospital the uncompensated care factor shall be applied to the Preliminary Cost Base (determined in accordance with the Methodological and [Procedures] **Procedural** Regulations). From the Schedule of Rates will be subtracted the Current Cost Base year amount of grants **or payments** from county governments, municipal governments or others on behalf of the medically indigent.

4. At [year end] **final reconciliation** the uncompensated care [factor] **revenue** will be adjusted [for] **to** the actual [percentage] **amount**

of charity care and bad debts [to Gross Revenue Related to Patient Care experienced, as described in the Methodological Regulations].

5. Hospitals shall implement appropriate collection procedures as defined in N.J.A.C. 8:31B-4.40. Hospitals that fail to follow the appropriate collection procedures shall receive reductions in their [Uncompensated] **uncompensated** care amounts [that do not exceed the aggregate amount of improper billings].

6. Hospitals that fail to meet **their** Hill-Burton [obligations] **obligation** for [uncompensated care or] community services (see PHS 42 CFR Part 124) shall receive appropriate reductions in their uncompensated care amounts. **Hospitals that fail to meet charity care requirements as defined in N.J.A.C. 8:31B-4.37 shall receive appropriate reductions in their uncompensated care amounts pursuant to N.J.A.C. 8:31B-4.39.**

7. The hospital shall not pursue payment according to specified billing procedures for those patients who meet the criteria described in N.J.A.C. 8:31B-4.37.

8. [With respect to any historical data to be reported to the Department of Health, wherever historical records are unavailable, conservative, reasonable estimates shall be made. Nevertheless,] Total Deductions from Gross Operating Revenue for the Current Cost Base year must agree with the hospital's financial statement for the same reporting period.

9.-10. (No change.)

8:31B-4.40 Appropriate collection procedures

(a) [Generally, in] **In** determining [eligibility for medical assistance, seeking payment, or determining uncollectibility] **ability to pay**, the provider shall take into account a patient's total resources including, but not limited to, an analysis of assets (except those which may be necessary for the [patients] **patient's** daily living[,]), liabilities, [and] income and expenses. Although extenuating circumstances may be considered, independent verification of both the patient's financial condition and the circumstances shall be required unless totally unobtainable. Moreover, the provider shall make a continuing, diligent effort to secure payment from the patient, any legally responsible individual, or any other potential source [, unless otherwise indicated below]. The provider's collection effort shall be documented by copies of bills, follow-up letters, reports of phone calls, personal contact, and additional supporting documentation stored **in files or** on computer. **Such documentation must be maintained until the Commission has approved the final audit covering the time of service.** Minimum appropriate collection procedures are defined as those set forth in this section [, given the cost-benefit of their application to the individual situation of each hospital].

(b) [In-Patient:

1.] Pre-Admission/[Admission] **Service** Procedures: Except where an emergency medical condition dictates otherwise, prior to or upon admission **or service,** a patient or [their legally responsible individual] **the patient's family member, responsible party or guardian, as appropriate,** shall be interviewed [in order to:] **by a hospital employee(s) who has been trained in the collection of patient financial data, identification of third party coverage and in assessing a patient's eligibility for public assistance. This interview shall include the following activities:**

[i.] **1.** Determine all existing third-party benefits.

[ii.] **2.** Screen the patient for eligibility for medical assistance from any source [,]; refer **the patient to that source** and [follow-up] **follow up.** At such time, for any patient found to be non-eligible for existing medical assistance programs, a determination shall be made with respect to the patient's full or partial qualification [as a medically needy individual per Federal Title XIX criteria] **for charity care pursuant to N.J.A.C. 8:31B-4.37.**

[iii.] **3.** If the patient does not qualify or qualify fully under (b)1 [i.] and [ii.] **2** above, an appropriate deposit shall be required and a reasonable payment [scheme] **plan** negotiated prior to admission, based on the patient's ability to pay and the type of services to be rendered. **A reasonable payment plan may, if necessary based on the patient's ability to pay, extend beyond a term of one year from the date of admission or service. The hospital may write-off to bad debt any amounts remaining after one year, providing all appropriate collection steps up to that point have been taken. These accounts shall not be sent to a collection agency unless the patient defaults on his or her payment plan and unless the hospital first follows the required in-house collection steps to reinstate the payment plan. The monies collected by the hospital after the account has been written off shall be considered recoveries of bad debts.** Necessary and appropriate treatment cannot be denied when the patient is unable to meet the financial requirements [in (a) above]. However, upon adequate documentation and independent verification of the patient's qualifications [as a medically needy individual (per Title XIX Federal regulations)] **for charity care,** the hospital should not pursue the collection procedures set forth herein.

4. If complete information is not provided by the patient, the hospital shall document the efforts made to obtain such information and the reasons why it was not provided. However, merely stating the reason why information was not provided does not relieve the hospital of its responsibility to obtain required information.

i. The designated hospital employee shall obtain documentation of proper identification of the patient. This shall include all of the data elements listed below as "proper identification", along with one or more of the following forms of documentation of proper identification. Documentation of proper identification may include, but shall not be limited to, a driver's license, a voter registration card, an alien registry card, a birth certificate, an employee identification card, a union membership card, an insurance or welfare plan identification card or a Social Security card. Proper identification of the patient may also be provided by personal recognition by a person not associated with the patient. For the purposes of this section, "proper identification" means the patient's name; mailing address; residence telephone number; date of birth; Social Security number; place and type of employment, employment address and employment telephone number, as applicable.

ii. The designated hospital employee shall inquire of the patient, family member, responsible party or guardian, as appropriate, whether the patient is covered by health insurance, and if so, shall request documentation of the evidence of health insurance coverage. Documentation may include, but shall not be limited to, a government-sponsored health plan card or number, a group sponsored or direct subscription health plan card or number, a commercial insurance identification card or claim form or a union welfare plan identification card or claim form. The hospital shall also inquire as to whether the patient had complied with any prior authorization requirements of the patient's insurance policy. If the patient has not done so, the hospital shall defer the service until prior authorization is obtained unless the patient's condition requires immediate medical attention.

iii. If evidence of health insurance coverage for the patient is not documented, or if evidence of health insurance coverage is documented but the patient's health insurance coverage is unlikely to provide payment in full for the patient's account at the hospital, the designated hospital employee shall make an initial determination of whether the patient is eligible for participation in a public assistance program. If the employee concludes that the patient may be eligible for a public assistance program, the employee shall so advise the patient, family member, responsible party or guardian, as appropriate. The employee, either directly or through the hospital's social services office shall give the patient, family member, responsible party or guardian, as appropriate, the name, address and phone number of the public assistance office that can assist in enrolling the patient in the program. The employee, or the social services office of the hospital, shall also advise the public assistance office of the patient's possible eligibility, including possible retroactive or presumptive eligibility, for the program.

iv. If evidence of health insurance coverage for the patient is not documented or if evidence of health insurance coverage is documented but the patient's health insurance coverage is unlikely to provide payment in full for the patient's account, and the patient does not appear to be eligible for public assistance, the designated hospital employee shall determine if the patient is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37. If the patient does not qualify for charity care, the designated hospital employee shall request from the patient, family member, responsible party or guardian or other independent source, as appropriate, the patient's or responsible party's place of employment, income, real property and durable personal property and liquid assets owned by the patient or responsible party and bank accounts possessed

by the patient or responsible party, along with account numbers and the name and location of the bank.

v. Unless the patient's condition requires immediate medical attention, the hospital shall defer the admission or service until the information required in (b)4i through iv above is provided to the hospital if the required information is available to the patient or responsible party and if the patient or responsible party fails or refuses to provide the information to the hospital. Written certification by a medical professional, or notation in the file by the designated hospital employee that verbal certification was given by a medical professional, of the patient's need for immediate medical attention shall be acceptable evidence of the same. This section does not authorize hospitals to defer necessary and appropriate treatment for failure to meet financial requirements.

[2. Pre-Discharge/Discharge Procedures](c) **Pre-discharge procedures are as follows:**

[i.]**1.** With respect to patients admitted on an emergency basis, the interview required in (b) [1] above shall be conducted as soon thereafter as possible **but within five working days of the patient's admission into the hospital or prior to discharge, whichever is sooner.** If, due to the nature of the illness, the patient cannot be interviewed, the procedure required above shall be conducted by other means including, but not limited to, direct contact by the provider [of] **with** relatives, and legally responsible individuals or third parties, **if any.**

[ii.]**2.** Once the information required in (b)[1] above is obtained, the provider shall seek payment from the appropriate carrier, or [follow-up] **follow up** to obtain the medical assistance or secure the deposit agreement required in (b) [1] above from the patient or legally responsible individual, as appropriate, on or no longer than seven days following discharge or verification of eligibility. The provider must document all cases when compliance with the aforementioned collection procedures cannot be accomplished.

[3.](**d**) Post-Discharge Follow-up/In-House Efforts: The hospital shall [follow-up] **follow up** periodically with the proper carrier until the amount owing has been paid in full. Except for denials due to lack of medical necessity, [a] **the** patient shall be contacted and payment requested concerning any portion of the bill declined by third party carriers. With respect to these patients, self-pay patients and legally responsible individuals, collection procedures [must] **shall** include, but are not limited to:

[i.]**1.** Sending a minimum[,] **of** three billing statements[;]. **The first billing statement shall be sent within an average of 14 days from the date of discharge for inpatients or the date of service for outpatients. If outpatient charges are accumulated and billed monthly, the hospital may continue to do so, provided that the median date of the billing cycle for all outpatient billing is not more than 14 days from the billing date. The hospital shall document all cases where this schedule cannot be followed. The second and third billing statements shall be sent to the patient's or responsible party's mailing address at intervals of no less than three weeks and no more than monthly. A hospital is not required to comply with the requirements of sending a third billing statement or two collection follow-up letters, if mail has twice been returned to the hospital, and hospital personnel, despite reasonable efforts, are unable to determine a new mailing address of the patient or responsible party.**

[ii.]**2.** Sending **a minimum of two** collection follow-up letters[;] **following the three billing statements. These letters shall be sent to the patient's or responsible party's mailing address at an interval of no less than two weeks and no more than three weeks. Each collection letter shall include the following elements:**

i. The amount due and a demand for payment;

ii. The date of service;

iii. The hospital's intention to proceed with legal action if the outstanding balance is not paid in full, or if the patient or responsible party fails to enter into payment arrangements; except that if the bill is too small to warrant legal action, such letter shall indicate the hospital's intent to proceed with outside collection efforts. In either case, the letter shall indicate that any unpaid accounts will be reported to the Department of Health and any State income tax refunds or homestead rebates up to the amount of the unpaid bill will be withheld by the Department of Treasury;

iv. A request for a partial payment and an offer to establish a payment schedule based on the patient or responsible party's ability to pay; and

v. The name of a person and a telephone number for the patient or responsible party to call in order to arrange for such a payment schedule or to discuss any aspect of the bill.

[iii.]**3.** Making telephone contact or sending telegrams[;] **after the follow-up letters. The hospital or its agent shall make three attempts to reach the patient or responsible party by telephone, if the hospital has the home or business telephone number of the person. If hospital personnel or their agent are not able to make telephone contact with the patient or responsible party or if the hospital does not have and cannot determine a home or business telephone number for the patient or responsible party, the hospital shall send a collection telegram or comparable urgent notification letter.**

i. Telephone contact means a person-to-person discussion about the bill between a hospital employee and the patient or responsible parties via the telephone. This excludes any instance where a mechanical device is involved on either side. Such mechanical efforts may, however, be reported as an attempt to make contact.

ii. A comparable urgent notification letter must meet the following criteria:

(1) The outside envelope shall display at least two colors and include some indication that the contents are urgent;

(2) The outside envelope shall not resemble previous correspondence from the hospital;

(3) The letter shall be sent in a standard envelope, not a data mailer;

(4) Postage should be metered or use a permit number; and

(5) The letter shall convey a sense of urgency, both on the inside and the outside.

[iv.]**4.** Documentation in each patient's file shall indicate bona fide collection efforts or adequate reasons related to the case which support the provider's decision to terminate the collection effort [as listed in i, ii, and iii above] **if such efforts are terminated prior to completing the steps listed above.**

[4.](**e**) Post-Discharge/Out-of-House Collection Efforts: Not [more] **less** than 90 days **or more than 120 days** following discharge, all remaining unpaid balances due and owing, **unless subject to a payment plan pursuant to (b)3 above,** shall be reviewed and a determination made with respect to whether or not an account should be held in-house for an additional [thirty days or longer] **period of time** if [strong evidence exists] **it is likely** that the bill can be collected[,]; sent to an outside collection agency[,]; **or** pursued through appropriate [court] **legal** action. Appropriate **internal** collection procedures shall be fully pursued unless and until:

[i.]**1.** Evidence clearly shows that there is no likelihood of recovery at any time in the future[;].

[ii. Based on sound business judgement, the] **2. The** cost of collection [is likely to exceed] **exceeds** the [estimated recovery, in which case, upon adequate documentation contained in the account file, a responsible officer of the hospital shall so certify; or] **amount of the bill.**

i. For accounts of $150 or less, an exception shall be made and the following steps shall be adhered to:

(1) Two billing statements must be mailed;

(2) One collection follow-up letter must be mailed;

(3) Two attempts at telephone contact must be made; and

(4) One collection telegram or urgent notification letter must be sent;

ii. In addition, for all accounts, the hospital may use the services of outside collection agencies and shall refer accounts not collected after following these steps, to the Department of Health which shall request the Department of Treasury to apply or cause to be applied the income tax refund or homestead rebate, or so much of either or both as is necessary to recover the amount due and owing on the patient's account, pursuant to section 1 of P.L. 1981, c.239 (N.J.S.A. 54A:9-8.1 et seq.), for which purpose the patient's outstanding balance shall be considered a debt to the fund and the fund shall be considered an agency of State government.

iii. For accounts in excess of $150.00, the hospital shall complete all steps through the point of using outside collection agencies and legal action.

[iii.]**3.** Existing evidence that further in-house collection efforts would be futile after adhering to the appropriate procedures in [(b)3] **(d)** above.

[5.]**(f)** While the hospital may write off accounts, or portions thereof, 120 days after discharge, this does not relieve the hospital of the obligation to continue to make reasonable efforts to obtain payment.

[(c) Outpatients:

1. Clinics and Private Referrals: Except for emergent medical situations, all patients shall be screened for existing third party benefits and eligibility for medical assistance; and except where services are fully covered, or where exceptional financial circumstances dictate otherwise, all patients shall be required to pay at least a portion of the clinic fee and/or ancillary charges, or balance due thereof, in advance of provision of the service. Treatment cannot be denied when the patient is unable to meet the financial requirements in (a) above.

2. Emergency Room: Except where the medical condition dictates otherwise, patients shall be screened as in (b)1 above. Except where services are fully covered, or where exceptional financial circumstances dictate otherwise, patients shall be required to pay cash; however, services may not be denied because of inability to pay. Where case payment is obtainable, all attempts shall be made to determine positive identification of patients.

3. Renal Dialysis: Patients shall be screened as in (a) above prior to acceptance in program. Screening should include an effort to obtain third party coverage when the patient is not covered by Medicare. Non-eligible patients shall provide proof of their ability to pay and an appropriate payment scheme negotiated prior to a patient's acceptance into the program.

4. Home Health Agency: Patients shall be screened as in (b)1i, ii and iii above.

(d) Collection efforts required for all outpatients shall be the same as in (b)3 and 4 above except that court action shall not be required unless, based on sound business judgement, the estimated recovery is likely to exceed the cost of collection. In no event shall court action be taken for Medicaid beneficiaries for medically necessary Services Related to Patient Care. However, the hospital shall make continuing efforts to verify possible eligibility for payment from any source.]

(g) Legal action shall be required in all cases unless legal action is not appropriate, based on the patient's income and assets, or unless the bill is less than the likely costs of legal action. If the litigation process (as distinct from the initial filing of a lawsuit) is undertaken by a law firm hired on a contingency basis, it shall be at the discretion of that law firm whether to undertake and whether to continue such litigation. Legal action shall not be taken for Medicaid recipients for medically necessary and appropriate services.

1. Legal action shall be defined as the filing of a lawsuit and shall include all subsequent steps in the litigation process up to and including the garnishment of wages and the execution of a judgment upon the assets of the debtor. Hospitals shall not execute judgement on a patient's principal residence or on personal property or assets needed for daily living.

(h) Nothing in this section shall prevent a hospital from taking intermediate steps after the post-discharge steps in (d) and (e) above, but before taking legal action. This includes, but is not limited to, sending an account to a collection agency.

(a)

HOSPITAL REIMBURSEMENT

Financial Elements and Reporting
Excluded Health Care Services

Proposed Amendment: N.J.A.C. 8:31B-4.62

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1989-435.

Submit written comments by September 20, 1989 to:

Pamela S. Dickson, Assistant Commissioner
Health Planning and Resources Development
New Jersey Department of Health, Room 601
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The proposed amendment to the Financial Elements and Reporting Rules removes the reimbursement restrictions under the Health Care Financing Administration (HCFA) waiver for Mobile Intensive Care Unit (MICU) Services. On October 31, 1987, the HCFA MICU Part B Coverage Waiver expired. The HCFA waiver allowed New Jersey hospitals which provided MICU services to implement a transition to an ambulance service which would meet HCFA's requirements. Under the waiver, MICU reimbursement was based upon a cost per vehicle which was established and monitored by the Department of Health. This amendment establishes MICU services under Chapter 83 beginning November 1, 1987 as "excluded health care services", which are referred as "Case C" items in the Financial Elements at N.J.A.C. 8:31B-4.61.

This amendment makes provision for the accounting (and allocation) of costs and revenues associated with Mobile Intensive Care Unit Services for the purpose of excluding them from the Chapter 83 Preliminary Cost Base. This exclusion is intended to insure that there are no duplicate payments for these services by eliminating the associated direct and indirect costs from the Preliminary Cost Base.

The proposed amendment also establishes a provision for reimbursement of charity care for hospitals which provide MICU services in accordance with P.L. 1989, c.1.

Social Impact

The proposed amendment removes the reimbursement restrictions for MICU hospitals relating to the provision of Advanced Life Support services in New Jersey. However, this change is not expected to impact negatively on the quality of care being provided to the citizens of New Jersey because of the Department of Health's licensing criteria currently in effect for the provision of Advanced Life Support. Currently, this amendment will affect 42 hospitals under the Chapter 83 Reimbursement System.

Economic Impact

The proposed amendment to MICU reimbursement incorporates an element of risk to MICU hospital providers since the charges and associated revenues would be deregulated. Thus, the amendment would allow the potential for a loss as well as the opportunity for hospitals to retain any surplus earned. Third party payers such as Medicare and Blue Cross will continue to provide reimbursement for the provision of Advanced Life Support Services.

The provision for reimbursement of charity care for MICU hospitals will insure that all citizens of New Jersey will be eligible to receive MICU services regardless of their ability to pay for the service.

Regulatory Flexibility Statement

The proposed amendment applies to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and, therefore, does not fall into the category of small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-4.62 Excluded Health Care Services

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

(g) Mobile Intensive Care Unit (MICU) Services provided after November 1, 1987: The cost and revenue related to these services are to be treated as Case C, revenues and expenses are netted, and neither gains nor losses are added to the Preliminary Cost Base. Sufficient accounting records should be maintained to account for the costs of such operations (that is, Medicare cost report HCFA-2552) and such direct and indirect cost shall be excluded from Costs Related to Patient Care.

1. Pursuant to P.L. 1989, c.1, section 19, charity care related to MICU services will be reimbursed through the New Jersey Uncompensated Care Trust Fund for all hospitals providing MICU services except University of Medicine and Dentistry of New Jersey University

Hospital. Charity care for University Hospital shall be paid through its own hospital's reimbursement rates as established by the Hospital Rate Setting Commission.

(a)

HEALTH FACILITIES RATE SETTING
Residential Alcoholism Treatment Facilities Cost Accounting and Rate Evaluation Guidelines
Proposed Amendments: N.J.A.C. 8:31C-1.2, 1.3, 1.4, 1.6, 1.12 and 1.17

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-18(c).

Proposal Number: PRN 1989-433.

Submit written comments by September 20, 1989 to:

Charles O'Donnell, Director
Health Facilities Rate Setting
New Jersey Department of Health, Room 601
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendments to the Residential Alcoholism Treatment Facilities Rules, N.J.A.C. 8:31C, reflect the Department of Health's continuing efforts to refine the reimbursement methodology for the purpose of establishing reasonable reimbursement rates.

The proposed amendment to N.J.A.C. 8:31C-1.2 will clarify the definition of the "Base Year", "Rate Year", and the "Effective Rate Period" regarding the establishment of the screened rates issued to the Residential Alcoholism Treatment Facilities (RATFs). These definitions will eliminate having to revise the regulations on a year-to-year basis for the purpose of specifying a particular year's financial data to represent the Base Year for the establishment of the screened rate. All references to a particular year which represents the base year in the reimbursement methodology will be eliminated.

The proposed amendment to N.J.A.C. 8:31C-1.3 will allow the RATFs to submit their cost reports to the Department of Health by April 30th. Currently, the rules require the facilities to submit their cost reports by March 31st. This amendment will provide the RATFs additional time to file their cost reports in a suitable manner to be entered into the Department of Health's data base.

The proposed amendment will also allow the Department of Health to establish the RATFs' screened rates 90 days prior to the effective date of the rate. This will provide the Department with additional time to review the data prior to issuing the screened rates to the RATFs. This amendment will also clarify the retroactivity of the revised rates. In addition, this amendment will replace the current penalty of a 20 percent recoverable reduction per month to the RATF's latest approved rate, to a 20 percent non-recoverable reduction to the RATF's current per diem rate if an RATF fails to submit a cost report by April 30th in a condition suitable for entry into the data base.

The proposed amendment to N.J.A.C. 8:31C-1.4 will clarify the definition of related party transactions by RATFs. This amendment will address non-equity interests as well as equity interests of individuals, corporations and non-profit organizations related to the operation and management of an RATF. This amendment will provide assurances that rates issued to the RATFs will exclude unreasonable costs which result from related party transactions.

The proposed amendment to N.J.A.C. 8:31C-1.6 will modify reimbursement for target occupancy for RATFs approved to provide treatment to adolescents. These facilities will be reimbursed a rate reflective of the greater of the RATF's actual occupancy or 90 percent of the Statewide average occupancy based upon only the adolescent RATFs. This amendment will recognize the differences in occupancy levels between adult versus adolescent RATFs and will reflect a more reasonable rate of reimbursement. The minimal target occupancy levels required for adult RATFs will remain at 70 percent.

The proposed amendment to N.J.A.C. 8:31C-1.12 will clarify the establishment of the reasonableness screens for the Routine Patient Care Expense Cost Centers. This amendment will develop the reasonable limits for the Nursing and Counseling Cost Centers at 110 percent above the median cost per day by accumulating the equalized costs.

The proposed amendment to N.J.A.C. 8:31C-1.17 will revise the effective date of the reimbursement period for issuing the screened rates to the RATFs. The reimbursement period will be based upon a calendar year beginning January 1, 1990 through December 31, 1990, rather than a fiscal year beginning July 1, 1989 through June 30, 1990.

This amendment also allows the RATFs to be reimbursed at the greater of the Department of Health's screened rate effective July 1, 1988 increased by an economic factor or the screened rate effective January 1, 1990. This will minimize the financial impact on the RATFs as a result of the transition from a June Fiscal Year End to a December Calendar Year End.

Social Impact

The proposed amendments will contribute to controlling costs for the RATF, the payer and the consumer. These amendments will continue to address the intent of the 1971 Health Care Facilities Planning Act, as amended, by providing an RATF rate setting system that promotes quality of care and cost effective services.

Economic Impact

The proposed amendments to N.J.A.C. 8:31C-1.2, 1.4 and 1.12 are intended to clarify the Department of Health's rate setting methodology. There will be a minimal economic impact on reimbursement.

The proposed amendment to N.J.A.C. 8:31C-1.3 will allow the RATFs to submit the alcoholism cost reports by April 30th and allow the Department of Health to establish the screened rate 90 days prior to the beginning of the effective rate period. In addition, the current 20 percent recoverable penalty to the RATFs' latest approved rate will be replaced with a 20 percent non-recoverable reduction to the RATFs' current per diem rate. This penalty may be applied when the RATFs fail to submit their cost reports by April 30th. It is expected that the amendment will have a minimal economic impact on the RATFs and ensure the establishment of reasonable reimbursement rates for the providing of alcoholism treatment services.

The proposed amendment to N.J.A.C. 8:31C-1.6 recognizes the differences in occupancy levels between adults versus adolescent RATFs and reflect a more reasonable rate of reimbursement. This amendment will allow the adolescent RATFs a rate reflective of the greater of the facility's actual occupancy or 90 percent of the Statewide average occupancy based upon only the adolescent RATFs data. It is expected that this amendment will increase reimbursement rates for the adolescent RATFs. Currently, this amendment will affect only five RATFs.

The proposed amendment to N.J.A.C. 8:31C-1.17 allows the RATFs to receive the greater of the Department of Health's screened rate effective July 1, 1988 increased by an economic factor or the screened rate effective January 1, 1990 through December 31, 1990. This rate will be retroactive to July 1, 1989.

This amendment will provide for all of the RATFs to phase into the Department of Health's rate setting methodology, and eliminate use of the original Blue Cross historical rate. It is expected that the amendment will not have a substantial economic impact on the RATFs, the payer or consumer requiring alcoholism treatment services.

Regulatory Flexibility Analysis

The RATFs in New Jersey are all included in the small business category, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose standardized reporting and recordkeeping in a consistent manner for all of the RATFs and is necessary to insure the development of a reasonable reimbursement rate in accordance with the rules.

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

8:31C-1.2 Definitions

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

. . .

"Base Year" is the year from which historical cost data are utilized for the prospective reimbursement in the 'Rate Year' or reimbursement period. This Base Year is two years prior to the Rate Year.

. . .

"Effective Rate Period" represents the calendar year beginning January 1st through December 31.

...

"Rate Year" is the year of reimbursement and is known as the 'Reimbursement Period' or Effective Rate Period.

...

8:31C-1.3 Reporting period: cost data

(a) [Commencing with calendar years ending December 31, 1987, RATFs will furnish required cost studies to the Department of Health, Health Facilities Rate Setting, within 90 days of the close of each calendar year. For rate review purposes, the period for which these actual data are reported will constitute the "base period" for establishing prospective per diem reimbursement rates commencing six months after the end of the base period. These rates will not be subject to routine retroactive adjustments except for matters as specified in the rules.] **RATFs shall submit their base year data to the Department of Health no later than April 30th of the following year. The Department of Health shall establish the Screened Rate 90 days prior to the beginning of the effective rate period. These rates will not be subject to routine retroactive adjustments except for matters specified in the rule.**

(b) Residential Alcoholism Treatment Facilities that fail to submit their actual cost reports by [March 31] **April 30**, in a condition that would render them suitable for entry into the data base, shall forfeit their right to proceed under the screened methodology for determining a reasonable reimbursement rate. Where cost studies are received beyond the [90 day] **120 day** filing requirement, prospective per diem rates will be established [three months after the receipt of the required cost studies] **no later than 90 days after the effective date of the reimbursement rate**. [There will be no adjustment for inflation.] The revised rate will [not] be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in this chapter. [The Director of Health Facilities Rate Setting, upon review, may apply a 20 percent recoverable reduction per month to the RATF's latest approved rate which will remain in effect until the cost report has been received by the Department of Health.] **The Director of Health Facilities Rate Setting may apply a non-recoverable 20 percent reduction to the RATF's latest approved per diem rate. This reduction will remain in effect until the facility has submitted an acceptable cost report to the Department of Health. This non-recoverable reduction will not be subject to an appeal under N.J.A.C. 8:31C-1.16.**

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

(e) The [penalty] **reduction** rates indicated in (b) above will be applied to [cost studies commencing with the reporting periods ending December 31, 1988] **the appropriate rate year**.

8:31C-1.4 Rate components

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

(d) All lease costs incurred as a result of related party transactions, will be excluded for reimbursement purposes. A "related party" is defined as:

1. A corporation, partnership, trust or other business entity:

i. Which has an equity interest or 10 percent or more of the facility;

ii. Which has an equity interest of 10 percent or more in any business entity which is related by the definition in (d)1i above [which has an equity interest in 10 percent or more in any business entity related by (d)1ii above]; or

iii. In which any party, who is a related party, by any other definition (in (d)1i or ii above or in (d)2 below) has an equity interest of 10 percent or more and which has a significant business relationship with the facility.

2. An individual:

i. Who has a beneficial interest of 10 percent or more in the net worth of the facility; or

ii. Who has a beneficial interest of 10 percent or more in an equity related by **(d)**1[.] ii or [1.] iii **above**; or

iii. Who is a relative of an individual who is covered by the definition in (d)2i or ii above; **or**

iv. Whose beneficial interest is cumulative, if it relates to spouse, parent or children[.]; **or**

v. One party who has the ability to influence the management or operating policies of the other party to the extent that one of the transacting parties is not fully pursuing its own separate interest.

(1) This includes sole proprietorships, partnerships, non-profit entities and corporations or any individual or group with a vested interest in any entity associated with the operation of an RATF.

(2) In order to ascertain if any potential conflict may result, all persons in a decision-making capacity such as administrator, chief financial officer, chief executive officer, department head or board member must certify in writing if they have a contractual, financial, fiduciary or advisory relationship with any entity associated with the operation of the RATF.

(e) In related lease transactions, the rent paid to the lessor by the provider is not allowable as cost. The provider, however, would include in its costs the property expenses of ownership of the facility. These expenses include only depreciation, interest, property taxes and property insurance for the building and/or equipment. Other expenses of the lessor such as accounting fees, utilities, travel and other direct or indirect overhead are non-allowable. The effect is to treat the facility as though it were owned by the provider. **Other related party transactions will be screened for reasonableness.**

(f) Related parties must disclose the nature of any contractual and/or financial relationship that they may have with any Residential Alcoholism Treatment Facility in the State of New Jersey.

8:31C-1.6 Target occupancy levels

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

(c) Target occupancy for Residential Alcoholism Treatment Facilities with adolescent treatment beds will be established at the higher of the facility's actual occupancy or 90 percent of the Statewide average occupancy for those facilities approved for adolescent beds by the Department of Health.

8:31C-1.12 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services will be established as follows:

1. (No change.)

2. Total nursing costs for each RATF in the base period (per (b)1 above) will **be accumulated and** then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a [statewide] **Statewide** basis.

3. (No change.)

(c) Reasonableness limits for counseling services will be established as follows:

1. (No change.)

2. Total counseling costs for each RATF in the base period (per (c)1 above) will **be accumulated and** then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a category basis (adult, adolescent).

3. (No change.)

8:31C-1.17 Special rate provision for rates effective July 1, 1988

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

(d) For the rate period July 1, 1989 through December 31, 1990, reimbursement rates will be established based upon the greater of the Department of Health's screened rate effective July 1, 1988 increased by an economic factor or the screened rate effective January 1, 1990 through December 31, 1990. This rate will be retroactive July 1, 1989.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Home Health Agency Policy Manual

Proposed Amendments: N.J.A.C. 8:33L-1.2, 2.1, 2.2, 2.4. 2.6 and 2.7

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

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

Proposal Number: PRN 1989-431.

Submit comments by September 20, 1989 to:
John Calabria, Director
Health Policy, Planning, and Certificate of Need
New Jersey Department of Health, Room 604
CN 360
Trenton, N.J. 08625

The agency proposal follows:

Summary

The existing rules at N.J.A.C. 8:33L require periodic updating to address evolving activities and concerns within the home health care field. The amendments proposed herein reflect the Department of Health's ongoing interest in promoting access to high quality, efficiently provided home health services. A Departmental advisory committee composed of experts in home health care was formed during the Fall of 1988 for the purpose of reviewing the existing rules; the proposed amendments incorporate many of the recommendations made by that group.

One of the most important issues addressed by the Department's home health advisory committee was the certificate of need requirement pertaining to charity care. Since the Home Health Agency Policy Manual (N.J.A.C. 8:33L) was first adopted in October, 1987, some home health providers have expressed concerns about the Manual's free or charity care requirements for medically indigent patients. Problems have included confusion about the meaning of "free care" and the definition of "medically indigent patient." Consequently, the proposed amendments include modifications of the existing definition of "medically indigent patient" and, for the first time, a definition of "charity care". The latter term is believed to be more meaningful and appropriate than "free care."

The following substantive changes are proposed:

1. Addition of definitions in N.J.A.C. 8:33L-1.2 to clarify new terms used in the rules, including "charity care", "coordination and standardization of care", "low income municipality", and "reimbursable cost center". Also, the current definition of "medically indigent patient" is amended.

2. Addition of a new subsection at N.J.A.C. 8:33L-2.1(c), limiting the service area of any new home health agency to one county or the subareas of two contiguous counties, except in the case of low population density counties, where the maximum service area for a new agency will be two full contiguous counties. This provision is proposed in view of the difficulties inherent in establishing agencies to serve larger areas. In recent years, the Department has approved CN applications for five new home health agencies proposing to serve areas encompassing more than one county. Only one of these was successfully implemented; the others failed to initiate or maintain services. This provision should promote the likelihood that approved agencies will become operational in the communities they are approved to serve.

3. Addition of a new subsection at N.J.A.C. 8:33L-2.1(d) to address concerns about agencies' coordination and standardization of care throughout their service areas. A branch office is acknowledged as one possible—but neither necessary nor sufficient—means for fostering coordination of care in service areas that extend more than 25 miles from the agency's central office. The establishment of a branch office may be beneficial in reducing staff travel time to the agency's central office, and as well the office's visibility within the local community may result in increased utilization of the agency's services. However, when the branch office will only be used by a very small number of the agency's clinicians in order to provide home visits to a small, remote area, there may be less costly, more efficient alternatives whereby the area can be served without a branch office. Furthermore, a branch office can lead to the isolation of staff, as a result of which they may be less likely to receive complete, updated information about ongoing changes in the agency's policies and protocols. In addition, staff working out of a branch office may have reduced opportunities to interact and share expertise with many other members of the multidisciplinary home health team. Because there are both advantages and disadvantages to establishing and maintaining a branch office, the proposed amendment requires that agencies determine which approaches to the coordination and standardization of care are most appropriate and viable for their area.

4. Addition of a paragraph at N.J.A.C. 8:33L-2.2(b)3 to allow an exception to the 5,000 nursing visit volume requirement for those agencies proposing to serve low income municipalities or special sub-populations, as described in N.J.A.C. 8:33L-2.4(g) and (h). The number of patients that would be eligible to receive services from the latter agencies would typically be less than the number receiving services from home health agencies approved to serve the general population of a larger service area. Therefore, the minimum nursing visit requirement for agencies approved to serve low income municipalities or special sub-populations will be 2,500 visits per year.

5. Amendment to N.J.A.C. 8:33L-2.4(a)4 to allow greater flexibility to the Department of Health in utilizing the most recent available data for identifying home health access problems.

6. Amendment to N.J.A.C. 8:33L-2.4(a)4iii, which is intended to promote the availability of high-tech home care services provided by licensed home health agencies. Currently, some home health agencies subcontract with unlicensed medical equipment companies or temporary nurse staffing agencies to provide high-tech care. Because the latter agencies are not licensed by the Department of Health, it is not possible to assure that recipients of these agencies' services are consistently receiving high quality care. Given the complex and potentially life-endangering nature of high-tech home care, the Department wishes to encourage the provision of services such as ventilator care and infusion therapies by licensed home health agencies. In this paragraph, the word "arterial" is also proposed for deletion because central line infusions are generally administered into a vein rather than an artery.

7. Amendment to N.J.A.C. 8:33L-2.4(a)4iv, which is intended to create a more equitable system for measuring home health agencies' provision of care to medically indigent patients. Some agencies are currently providing a substantial amount of unreimbursed, charity care in the form of service to low-income patients who pay part of the fee for each visit. The latter payment may be only a token amount in relation to the agency's actual cost of providing the service. The existing rules only acknowledge agencies for the provision of care to patients who pay nothing for their home health care. The proposed amendment encourages agencies to collect fees from patients to the extent that they are able to pay, and takes into account care provided to medically indigent patients who pay part of the agencies' fees.

8. Amendment to N.J.A.C. 8:33L-2.4(e) which elaborates on the requirements that Certificate of Need applicants must meet with respect to the treatment of HIV-infected patients in a manner that will promote access to highly coordinated, state-of-the-art care.

9. Addition of a new subsection at N.J.A.C. 8:33L-2.4(g) to specify certificate of need requirements for agencies proposing to serve low income municipalities. This provision is proposed in view of the fact that the three percent charity care provision may not be adequate for assuring access to indigent care in the most impoverished communities of the State. New Jersey has a number of counties such as Essex, Union, and Camden that encompass both very affluent and very poor communities. It is conceivable that some home health agencies approved to serve the entire county are actually targeting their services to the more affluent communities. These agencies may be meeting their charity care requirement, but not providing their charity visits to those patients within the county who are most indigent. The Department proposes to approve new agencies in cases where the applicant submits compelling evidence that certain low income communities are not receiving adequate access to services.

10. A new subsection regarding the certificate of need requirements for agencies intending to treat special sub-populations is proposed in N.J.A.C. 8:33L-2.4(h). In current practice, most home health agencies provide care to a broad spectrum of patients without regard to factors such as age or disease condition. However, the practice on the part of some home health agencies of treating predominantly geriatric patients may result in inadequate access to care for other special sub-populations, due to lack of staff familiarity with and competence in treatment of these sub-populations. The proposed subsection will allow for the approval of new or expanding home health agencies that will improve access to care in areas where existing agencies may be providing insufficient services to sub-populations such as pediatric or HIV-infected patients.

11. Amendment to N.J.A.C. 8:33L-2.6(e) which excludes from consideration for a transfer of ownership those agencies that have failed to achieve either the minimum volume of nursing visits specified in N.J.A.C. 8:33L-2.2 or the number of nursing visits projected by the agency in its most recently approved certificate of need application, whichever number of visits is greater. This provision is intended to assure that agencies realistically project the volume of services they are likely to provide in a given area. As well, the amendment is intended to assure that applicants for new home health agencies implement these services with a commitment to achieving and maintaining a high volume of home visits. The transfer of ownership of "paper" agencies that only provide a negligible amount of care and a small number of visits does not contribute to the orderly development of health services and should not be encouraged.

12. Amendments to N.J.A.C. 8:33L-2.6(g) and 2.7(a) and (c) to make these sections uniform with respect to charity care requirements for home health agencies.

Social Impact

The Department anticipates that the proposed amendments will have a very positive social impact in improving access to home health services, to the extent that they are needed throughout the State. The proposed amendments will allow for the approval of new home health agencies, when warranted, to increase the availability of home health care for low income municipalities and special sub-populations, such as pediatric patients and patients who are HIV-infected. The amendments provide clarification regarding the Department's three percent charity care requirement for home health agencies, assuring more equitable treatment of agencies in the way that the amount of care to indigent patients is computed.

Economic Impact

It is not anticipated that proposed amendments will impose any additional economic burdens either on home health agencies or on any Department of the State government. With respect to the newly proposed approach to computing agencies' provision of charity care, agencies are already supplying all elements of the required information for their Medicare cost reports and other financial statements. Consequently, there should be no appreciable additional cost to agencies to supply the necessary data to the Department of Health regarding charity care provision.

Regulatory Flexibility Analysis

The proposed amendments will affect all 65 home health agencies, a number of which may be considered small businesses as defined by N.J.S.A. 52:14B-16 et seq. In proposing the amendments which entail recordkeeping and data reporting on the part of applicants for home health agencies, the Department has had to balance the impact of added personnel costs with the need to provide safe and effective health care services. The Department of Health has determined that compliance with N.J.A.C. 8:33L will be necessary without exception for all those proposing to establish or to expand existing home health agencies, as defined and described in these rules. In order to promote the orderly development of home health services, the Department must assure that the proposed amendments will be equitably and uniformly applied, regardless of the type or size of the agency. Varying the compliance requirements for small businesses employing fewer than 100 full-time workers, as defined in Section 2 of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., would be at odds with the statutory purpose mandated in the Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.).

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

8:33L-1.2 Definitions

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

"Charity care" means home visits that are provided by a home health agency to medically indigent patients either at no charge to the patient or at a reduced charge.

"Coordination and standardization of care" means the provision of home health services in accordance with patients' needs and with protocols established by a home health agency, so that all patients of the agency receive the following aspects of service in a standardized, consistent manner: screening for agency admission and discharge, case management, follow-up of health-related problems, and referrals to other agencies and service providers for care that can not be offered the home health agency.

. . .

"Low income municipality" means any municipality with a poverty rate for families of at least 15 percent, according to the most recent U.S. Census Bureau data.

"Medically indigent patient" means a person who requires nursing care or other home health agency services but who lacks [both] sufficient resources to pay **either the full amount of agency charges or any portion of those charges** for the care (that is, income at or below the State Pharmaceutical Assistance for the Aged and Disabled (P.A.A.D.) guidelines) and **who also lacks** third party payment coverage (that is, insurance) for the **full cost of the** needed services.

. . .

"Reimbursable cost center" means a service such as nursing, physical therapy, occupational therapy, speech therapy, social work, and home health aide service, for which Medicare reimburses home health agencies.

. . .

8:33L-2.1 Service areas

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

(c) Due to the complexity inherent in successfully establishing a new home health agency, the maximum number of counties that any applicant for a new home health agency shall propose to serve is one county or the sub-areas of two contiguous counties.

1. An exception to (c) above may be considered by the Department of Health in the case where an applicant for a new agency proposes to serve no more than two contiguous counties, each with a population density of less than 300 persons per square mile, according to the most recent available U.S. Census data. For the purpose of this chapter, these counties are Cumberland, Hunterdon, Salem, Sussex, and Warren. The request for an exception to (c) shall be granted, provided that the application complies with all other applicable requirements contained in this chapter.

(d) Certificate of Need applicants proposing to serve an area that extends more than 25 miles from the agency's chief office shall identify those strategies that will be implemented to assure coordination and standardization of home health care throughout the service area, including whether the agency will maintain branch offices in specified locations.

8:33L-2.2 Home health service utilization rates

(a) An applicant for a Certificate of Need to provide home health services shall demonstrate the capability to provide a minimum of 5,000 skilled nursing visits per year in the proposed service area, as described in N.J.A.C. 8:33L-2.1(a). In addition, the agency shall provide all other services required to comply with applicable licensure regulations pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

(b) The following are exceptions to (a) above:

1.-2. (No change.)

3. Agencies proposing to serve a low income municipality or a special sub-population, as described in N.J.A.C. 8:33L-2.4(g) and (h). For these agencies, the applicant shall demonstrate the capability to provide a minimum of 2,500 skilled nursing visits per year, in addition to providing all other services required to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

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

8:33L-2.4 Certificate of Need requirements

(a) In addition to all other applicable required items of documentation specified in this chapter, applicants proposing to expand an existing home health agency's service area or to institute a new agency shall submit all of the following with their application:

1.-3. (No change.)

4. Documentation of home health care access problems in the service area. Certificate of Need approval shall only be granted in those instances where there are one or more of the following documented access problems and where the applicant is able to provide compelling evidence, to the satisfaction of the Department of Health, that these specific problems will be substantially ameliorated by the new agency. Where data from annual surveys conducted by the Department of Health form the basis for identifying the service area's access problems enumerated below, **the most recent, annual home health agency survey data that are available at the time that the Certificate of Need applications are accepted for processing shall be utilized** [reports of these surveys will be made available by the Department of Health each year on or before October 1. These reports shall be used to make determinations on all applications submitted for home health review cycles during the subsequent year, as specified in N.J.A.C. 8:33-1.5(d)]. Access problems to be considered include the following:

i.-ii. (No change.)

iii. Absence of existing home health agencies providing care in a proposed service area which offer "high-tech" services. For the purpose of this rule, "high-tech" services shall include mechanical ventilator care and intravenous and central [arterial] line [fusion]

infusion therapies. These services shall be available to patients in the service area who require them, either through direct provision by one or more of the service area's home health agencies or through subcontracting by the home health agencies **with another licensed home health agency that provides the service directly**. Annual licensure inspection reports and results of an annual survey conducted and reported by the Department of Health shall be used to determine provision of the aforementioned services by home health agencies in service areas.

iv. Lack of provision of a minimally acceptable level of services to medically indigent patients. A reasonable minimum level of care to the medically indigent population shall be inferred from the provision of [at least three percent free (that is, no pay) home health care visits of the total number of home health visits provided by each existing agency in a service area on an annual basis] **charity care by each licensed home health agency in any service area at a cost equalling or exceeding three percent of the agency's total, annual, home health reimbursable cost centers**. Results of annual surveys conducted by the Department of Health, supplemented by [agencies'] **each agency's financial statement with a detailed allowance column and the agency's** audited cost report[s] from the most recent available year, shall be used for determining the level of [indigent care] **charity care** provided by existing agencies. [This access criterion shall not be implemented as a basis for approving new or expanding home health agencies until 1989.]

v. (No change.)

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

(e) **Applicants shall submit a copy of proposed staff education materials pertaining to the care of HIV-infected patients, including documentation regarding how universal precautions shall be instituted by all agency staff who are involved in direct patient care.** As a condition of Certificate of Need approval, agencies shall agree not to deny care on the basis of diagnosis and shall agree to care for patients [with Acquired Immune Deficiency Syndrome and AIDS-Related Complex.] **who are HIV-positive. In addition, applicants shall agree to enter into and maintain a formal affiliation with the Department of Health's AIDS Division to assure follow-up and case management of patients who are or may be HIV-infected.**

(f) (No change.)

(g) To promote access to care for medically indigent patients, the Commissioner of Health shall give consideration to approving a new or expanding home health agency proposing to serve any low income municipality with a population of at least 50,000 or group of contiguous low income municipalities with a population of at least 50,000. Documentation shall be submitted by the applicant, to the satisfaction of the Department of Health, indicating that existing agencies serving the area are not offering adequate home health care access to the low income population. This criterion shall apply even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)4 above.

1. Documentation to be submitted by the applicant shall include a local community health care needs assessment/survey and letters from at least three referral sources (that is, health care facilities or social service agencies that are 100 percent corporately independent from the applicant) citing specific instances during the prior 18 month period when patients were denied timely access to needed services by existing home health care agencies in the service area.

2. In addition to meeting other applicable requirements of this chapter, the applicant shall submit a plan documenting how charity care for medically indigent patients shall be provided and paid for, in an amount that exceeds the average amount being provided by other all home health agencies already serving the proposed service area.

(h) To promote the availability of care for special sub-populations (for example, pediatric patients or patients who are HIV-infected) that may have difficulty accessing needed home health services, the Commissioner of Health shall give consideration to approving a new or expanding agency, even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)4 above.

1. As a condition of Certificate of Need approval, home health agencies approved to serve a special sub-population shall be permitted to provide home health services only to members of the identified sub-population; all other patients shall be referred to other home health agencies in the service area.

2. In addition to complying with all other applicable requirements of this chapter, the applicant for a home health agency proposing to serve a special sub-population shall submit the following forms of documentation, to the satisfaction of the Department of Health:

i. Evidence that none of the existing agencies serving the area is offering adequate home health care access to the identified sub-population;

ii. Letters from at least three referral sources (that is, health care facilities or social service agencies that are 100 percent corporately independent from the applicant) citing specific instances during the prior 18 month period when patients within the sub-population were denied timely access to needed services by existing home health care agencies;

iii. A detailed description of the unique programs and services that will be offered by the proposed agency to meet the special needs of the sub-population and of how these programs and services will be integrated within the area's existing health care system;

iv. Evidence that the health problems of the sub-population can be substantially ameliorated by the forms of care that are typically provided by a home health agency;

v. A description of staff qualifications and strategies that will be implemented by the agency to recruit and retain staff with expertise in the care of the sub-population; and

vi. Verification that the agency will be financially feasible and that reimbursement from third party payers will be available for the majority of services to be provided by the agency.

8:33L-2.6 Transfer of ownership for home health agencies

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

(e) An application for transfer of ownership shall not be approved if the agency which is the subject of the transfer application has not initiated the delivery of home health services, nor if it has ceased to provide these services, nor if it has substantially reduced services, **nor if it has failed to achieve either the utilization rates for nursing visits specified in N.J.A.C. 8:33L-2.2 or the volume of nursing visits that was projected in the agency's most recently approved Certificate of Need application, whichever number of visits is greater.**

(f) (No change.)

(g) As a condition of Certificate of Need approval of a transfer of ownership, the new agency shall provide [a minimum of three percent of its total home health visits in the form of free (that is, no pay) visits to medically indigent patients on an annual basis] **charity care at a cost equaling or exceeding three percent of its total annual home health reimbursable cost centers.** If the transferred agency was providing more than three percent [of its visits in the form of free (that is, no pay) visits to medically indigent patients] **charity care,** the new agency shall, to the satisfaction of the Department of Health, be required to propose and implement a program to insure that a comparable [number of free home health visists] **amount of charity care** shall be provided in the service area on a ongoing basis subsequent to the transfer of ownership.

(h) (No change.)

8:33L-2.7 Care for medically indigent patients

(a) As a condition of Certificate of Need approval, applicants proposing new agencies or expansions of existing agencies shall be required to provide [a minimum of three percent of their total annual home health visits in the form of free (that is, no pay) visits to medically indigent persons] **charity care at a cost equaling or exceeding three percent of their total annual reimbursable cost centers.** Where agency expansions are approved, this minimum three percent requirement will apply to the agency's total annual [visit provision] **home health reimbursable cost centers.** This percentage shall be achieved within one year of license issuance and maintained annually.

(b) (No change.)

(c) Pursuant to the prioritization criteria identified in N.J.A.C. 8:33L-2.4(b)2, Certificate of Need applicants proposing to provide more than the required three percent [free (that is, no pay) visits] **charity care** shall accept as a condition of approval that failure to provide the proposed percentage of [free home health visits] **charity care** annually shall, at the discretion of the Commissioner of Health, result in revocation of the agency's license or other licensure penal-

ties. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1[-1 et seq.]).

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Psychiatric Inpatient Beds Child and Adolescent Acute Psychiatric Beds

Proposed Amendment: N.J.A.C. 8:43E-4.5

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1989-434.

Submit comments by September 20, 1989 to:

Henry Gerding, Health Systems Specialist
Health Systems Review Program
New Jersey Department of Health, Room 604
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

On February 16, 1988, the Department of Health established rules to govern the planning and certification of need of child and adolescent acute psychiatric beds. The formula for the bed need is being revised in order to more accurately reflect the need for these services.

Social Impact

The concentration of need for psychiatric services for children and adolescents in areas with the highest indicators of socio-economic problems is not adequately reflected in the present formula. The Department anticipates that child and adolescent psychiatric patients will have improved access to acute inpatient services as a result of the proposed amendments.

Economic Impact

The proposed rules are not expected to have any negative impact on existing providers of child and adolescent acute psychiatric beds.

Regulatory Flexibility Statement

Facilities affected by these rules consist of hospitals with more than 100 beds. These hospitals typically employ well over 100 full-time employees. Therefore, these facilities do not fall into the category of small businesses as defined in N.J.S.A. 52:14B-16 et seq., the New Jersey Regulatory Flexibility Act.

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

8:43E-4.5 Bed need

(a) The general formula for the determination of Child and Adolescent Acute Psychiatric Bed Need is as follows:

New Beds Needed = Total Beds Needed minus Available Beds

$$\text{[(b) Total Beds Needed} = \frac{\text{Statewide Beds Needed}}{21} \text{ plus } \frac{\text{SD x (T-50)}}{10}$$

1. SD = Standard deviation of bed need estimate for each county
2. T = Average T score of bed need distribution and T score of county-specific children's mental health risk factor
3. $\text{T Score for bed need} = \frac{\text{Average bed need minus mean bed need}}{\text{SD}} \times 10 + 50$
4. $\text{Average bed need} = \frac{\text{Normative bed need plus Actual bed use}}{2 \times .85}$
5. $\text{Normative Bed Need} = \frac{\text{Total annual patient days needed in State}}{\text{State children's population} \times 365} \times \text{County children's population}$
6. $\text{Actual Bed Use} = \frac{\text{Annual patient days utilized by children in each county}}{365]}$

$$\textbf{(b) Total Beds Needed} = \frac{\textbf{Statewide Beds Needed}}{53} \textbf{ plus } \frac{\textbf{SD} \times \textbf{(T-50)}}{10}$$

1. SD = Standard deviation of bed need estimate for each service area

2. T = Average T score of bed need distribution and T score of service area specific children's mental health risk factor

3. T Score for bed need $= \frac{\textbf{Average bed need minus mean bed need}}{\textbf{SD}} \times 10 + 50$

4. Average bed need $= \frac{\textbf{Normative bed need plus Actual bed use}}{2 \times .85}$

$$\text{5. Normative Bed Need} = \text{Total annual pt. days needed in State} \times \frac{\text{Service area child population}}{\text{State children's population} \times 365}$$

$$\text{6. Actual Bed Use} = \frac{\text{Annual patient days utilized by children in each service area}}{365}$$

7. Estimated Annual Patient Days Needed in State [minus] equals the sum of [Patient] **patient** days in the following categories:

i. Patient days in existing Children's Crisis Intervention Service (CCIS) Units as contained in the official inventory of general hospital and free-standing beds;

ii. [80 percent of the general] **General** hospital psychiatric patient days for children and adolescents, excluding any hospital-based CCIS unit patient days;

iii. 75 percent of the patient days at Trenton State Hospital, calculated by [county] **service area**, for 90 percent of admitted children and adolescents, using their first 30 days of hospital stay;

iv. 75 percent of the patient days at the Arthur Brisbane Children's Treatment Center (ABCTC), for all admitted children using their first 30 days of hospital stay;

v. [80 percent of the]**Annual** patient days expected by estimating the number of children and adolescents refused admission to a CCIS unit due to a lack of capacity. An Average Length of Stay (ALOS) of 22.6 days utilized to reflect average of CCIS units[.];

vi. Patient days expected by the diversion of children and adolescents requiring acute inpatient psychiatric treatment from the juvenile justice system. Based on [5] **7.5** percent of juvenile violent crimes, multiplied by CCIS ALOS (22.6 days).

[8. T Score for Children's Mental Health =

$$\frac{\text{County Mental Health Risk Factor-Mean Risk Factor}}{\text{Standard Deviation of County Risk Factor}} \times 10 + 50]$$

8. T Score for Children's Mental Health Risk Factor =

$$\frac{\text{Service Area Mental Health Risk Factor-Mean Risk Factor}}{\text{Standard Deviation of Service Area Risk Factors}} \times 10 + 50$$

9. [County] **Service Area** Mental Health Risk Factor [=] **equals** the mental health inpatient need scores for children and adolescents which were derived for each New Jersey [county] **mental health service area** in a statistical procedure based on the correlation between the treated prevalence and incidence of mental illness among children and adolescents and [the] 28 area characteristics such as poverty, child abuse, school dropout rate, infant mortality and others.

(c) Available Beds [=] **equals** child and adolescent acute psychiatric inpatient beds as defined in N.J.A.C. 8:43E-4.3 which have been approved through the Certificate of Need process or are in operation. [Beds allocated to each county are based on the average of distribution by population and actual bed usage.]

(d)-(g) (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Emergency Vehicle Equipment

Proposed Readoption with Amendments: N.J.A.C. 13:24

Proposed Repeal: N.J.A.C. 13:20-3

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-43, 39:3-50, 39:3-54, 39:3-54.7 et seq. and 39:3-69.

Proposal Number: PRN 1989-442.

Submit comments by September 20, 1989 to:
Glenn R. Paulsen, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt with amendments the provisions of N.J.A.C. 13:24 in accordance with the "sunset" and other provisions of Executive Order No. 66(1978). These rules expire on November 5, 1989. The Division of Motor Vehicles has reviewed N.J.A.C. 13:24 in accordance with Executive Order No. 66 and has determined that said rules as amended by this proposal, with the exception of N.J.A.C. 13:24-2 which is proposed for repeal and is to be replaced by a proposed new rule which is part of this proposal, are necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were originally promulgated.

The rules which are the subject of this proposal set forth what vehicles or persons may qualify to display or use red, blue and/or amber emergency warning lights or flashing lights or sirens on vehicles and the permit application procedure in those instances in which a permit for such lights or sirens is required.

Proposed for amendment are existing subchapters in N.J.A.C. 13:24 which pertain to: the definition of words and phrases used in this chapter (N.J.A.C. 13:24-1); special State Office of Emergency Management rules concerning emergency lights and sirens on certain vehicles owned or leased by certain persons (N.J.A.C. 13:24-3); and flashing amber light permits for certain vehicles (N.J.A.C. 13:24-4). Proposed for repeal is N.J.A.C. 13:24-2, which pertains to red emergency lights and sirens used on certain vehicles to be replaced by a proposed new subchapter concerning the same subject. Two new subchapters are also proposed, which pertain to: the display and authorization required for blue emergency lights used on vehicles owned by volunteer firefighters or volunteer first aid or rescue squad members or members of their households (N.J.A.C. 13:24-5); and special amber identification light permits issued to licensed private detective businesses for their vehicles (N.J.A.C. 13:24-6).

Also proposed for repeal is N.J.A.C. 13:20-3, which pertains to identification lights for vehicles owned by volunteer firefighters or members of first aid squads, because it is inconsistent with the statutory provisions of N.J.S.A. 39:3-54.7 et seq. However, as noted above, a new subchapter is proposed at N.J.A.C. 13:24-5 which concerns the same subject.

Social Impact

This proposed readoption with amendments will promote highway safety by identifying the various types, colors and uses of emergency warning lights and sirens which may be displayed or used in this State, the types of vehicles on which they may be displayed or used and the individuals who may apply for permits to display or use the various types and colors of emergency lights. Thus, the public and this State's law enforcement officials will be better informed as to the types of vehicles or persons permitted to exhibit and use emergency warning lights and sirens.

Economic Impact

The economic impact of this proposed readoption with amendments on the State is limited to the costs incurred by the Division of Motor Vehicles in connection with processing permit applications and issuing permits in accordance with these rules. The owners of motor vehicles which need to be modified in some manner to comply with the rules' emergency light or siren mounting provisions may incur expenses in connection with the required modifications. Licensed private detective businesses applying for a special amber identification light permit pursuant to N.J.A.C. 13:24-6 will incur an expense in the amount of a

$25.00 fee payable to the Division of Motor Vehicles as required by N.J.S.A. 39:3-54.14.

Regulatory Flexibility Analysis

Any small business which operates an ambulance which falls within the definition of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1 and which wishes to display flashing red lights and/or sirens on such a vehicle must comply with the mounting and use provisions set forth in N.J.A.C. 13:24-2. This includes any vehicle licensed as an ambulance by the New Jersey Department of Health in accordance with N.J.A.C. 8:40, and any ambulance of a volunteer first aid, rescue or ambulance squad certified as qualified for emergency medical service programs in accordance with N.J.S.A. 27:5F-27, when such vehicles are operated in response to an emergency. A Division of Motor Vehicles' red light and/or siren permit for such vehicles would no longer be required under the terms of this proposed readoption with amendments provided the vehicles fall within the above-mentioned definition of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1. Other than the mounting and use provisions (which replace provisions dealing with the same subject which were part of the previous version of N.J.A.C. 13:24-2), N.J.A.C. 13:24-2 does not impose reporting, recordkeeping or compliance requirements on such small businesses.

Any small business engaged in the manufacture and/or sale of emergency vehicles or equipment as set forth in N.J.A.C. 13:24-2.5(a)4 which wishes to display red lights and/or sirens on its vehicles so that same may be operated by its employees only for the purpose of demonstration or delivery must apply to the Division of Motor Vehicles for a red light and/or siren permit in accordance with the procedures detailed in N.J.A.C. 13:24-2. The Division's permit application process for such small businesses is not unduly burdensome, consisting basically of completing a permit application form and forwarding the completed application form to the Division of Motor Vehicles. The Division does not charge a fee for the issuance of red light and/or siren permits issued pursuant to N.J.A.C. 13:24-2. Other than the permit application process, mounting, use and permit possession and exhibition provisions, N.J.A.C. 13:24-2 does not impose additional reporting, recordkeeping or compliance requirements on such small businesses, and professional services should not be needed to assist in the completion of the permit application form. Given the need of this State's law enforcement officials to be able to determine by means of a permit issued by the Division of Motor Vehicles whether a vehicle being operated by an employee of a business engaged in the manufacture and/or sale of emergency vehicles or equipment for the purpose of demonstration or delivery is permitted to display flashing red lights and/or sirens, no exemption for such small businesses from the requirements of N.J.A.C. 13:24-2 is warranted.

Small businesses desiring to obtain a flashing amber light permit for their vehicles pursuant to N.J.A.C. 13:24-4 or a special amber identification light permit for their vehicles pursuant to N.J.A.C. 13:24-6 will be affected by this proposed readoption with amendments in that they will be required to comply with the Division of Motor Vehicles' permit application process set forth in the rules.

Any small business which owns or leases wreckers or service vehicles bearing commercial registration, or which owns or leases snow removal and/or sanding equipment under the circumstances set forth in N.J.A.C. 13:24-4 and which wishes to display flashing amber lights on same in accordance with that subchapter, must apply to the Division of Motor Vehicles for a flashing amber light permit for such vehicles in accordance with the procedures detailed in N.J.A.C. 13:24-4. The Division's permit application process for small businesses which own or lease such vehicles and wish to display flashing amber lights on same is not unduly burdensome, consisting basically of completing a permit application form, submitting the appliction form to the chief law enforcement official in the municipality in which the service is being provided for signature, and forwarding the completed application form to the Division of Motor Vehicles. The Division does not charge a fee for the issuance of flashing amber light permits issued pursuant to N.J.A.C. 13:24-4. Other than the permit application process, use and permit possession and exhibition provisions, N.J.A.C. 13:24-4 does not impose additional reporting, recordkeeping or compliance requirements on small businesses, and professional services should not be needed to assist in the completion of the permit application form. Given the need of this State's law enforcement officials to be able to quickly ascertain by means of a permit issued by the Division of Motor Vehicles whether a vehicle operator is permitted to display flashing amber lights on a vehicle, no exemption for small businesses from the requirements of N.J.A.C. 13:24-4 is warranted.

Any small business which is a licensed private detective business and which meets the requirements of N.J.S.A. 39:3-54.14 and N.J.A.C. 13:24-6 and wishes to display a special amber identification light on its vehicles must apply to the Division of Motor Vehicles for a special amber identification light permit for such vehicles in accordance with the procedures detailed in N.J.A.C. 13:24-6. The Division of Motor Vehicles charges qualifying licensed private detective businesses a fee of $25.00 for the issuance of each such permit in accordance with N.J.S.A. 39:3-54.14. A small business which is a licensed private detective business is not exempt from payment of this mandatory statutory fee. The Division's permit application process for small businesses which are qualified licensed private detective businesses and which wish to display a special amber identification light on their vehicles is in accordance with N.J.S.A. 39:3-54.14 and is not unduly burdensome, consisting basically of completing a permit application form, submitting the application form to the chief law enforcement official in the municipality in which the permit will be used for signature, and forwarding the completed application form and the other documents specified in N.J.A.C. 13:24-6.2(b)1 and 2 and the mandatory statutory permit fee to the Division of Motor Vehicles. Other than the permit application process, fee, mounting, and permit possession and exhibition provisions, N.J.A.C. 13:24-6 does not impose additional reporting, recordkeeping or compliance requirements on small businesses, and professional services should not be needed to assist in the completion of the permit application form. Given the need of this State's law enforcement officials to be able to determine by means of a permit issued by the Division of Motor Vehicles whether a vehicle operator is permitted to display a special amber identification light on a vehicle, no exemption for small businesses which are qualified licensed private detective businesses from the requirements of N.J.A.C. 13:24-6 is warranted.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:20-3.

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

CHAPTER 24
[EMERGENCY VEHICLE] EQUIPMENT **FOR EMERGENCY VEHICLES AND OTHER SPECIFIED VEHICLES**

SUBCHAPTER 1. DEFINITIONS

13:24-1.1 Words and phrases defined

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

"Authorized emergency vehicle" means a vehicle of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety, when operated in response to an emergency call. **Any vehicle which is licensed as an ambulance by the New Jersey Department of Health in accordance with N.J.A.C. 8:40, and any ambulance of a volunteer first aid, rescue or ambulance squad which has been certified as qualified for emergency medical service programs in accordance with N.J.S.A. 27:5F-27, shall be considered approved as an authorized emergency vehicle for purposes of N.J.S.A. 39:1-1 and this chapter when operated in response to an emergency.**

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Flashing light" means a lamp with an intermittent or revolving action.

"Service vehicle" means any vehicle bearing commercial or governmental registration that is used to perform some type of maintenance or repair function within the confines of public roadways or any vehicle used to transport or escort overdimensional loads on public roadways.

"Wrecker" means any vehicle bearing commercial or governmental registration designed and used to tow other vehicles with at least two wheels of the towed vehicle off the ground and includes flatbed trucks designed and used to retrieve and transport other vehicles on a flat bed.

[SUBCHAPTER 2. RED EMERGENCY LIGHTS; SIRENS]

[13:24-2.1 Red-colored lamps on vehicles]

[(a) N.J.S.A. 39:3-50 prohibits the use, on any street or highway, of a vehicle equipped with a lamp displaying a light of a color other than white, yellow or amber, when such light is visible from directly in front of the vehicle, with these exceptions:

1. An authorized emergency vehicle; or

2. A vehicle authorized by a permit issued by the Director.]

[13:24-2.2 Siren, whistle or bell on vehicles]

[N.J.S.A. 39:3-69 provides that no vehicle shall be equipped with, nor shall any person use upon a vehicle any siren, whistle or bell except as otherwise permitted in this Chapter.]

[13:24-2.3 Flashing lights on vehicles]

[N.J.S.A. 39:3-54 prohibits the use of flashing lights on any vehicle except as a means for indicating right or left turns; provided, however, that a vehicle may be equipped with flashing emergency lights of a type approved by the Director of Motor Vehicles.]

[13:24-2.4 Possession of permit]

[Permits issued under this chapter must be in the possession of the operator and produced on request of any proper police authority.]

[13:24-2.5 Permit applications]

[(a) All requests for permits authorizing the use of red lights and/or sirens are to be made to the Director by the head of the governing body of the municipality in which the applicant resides, on an application form furnished by the Division of Motor Vehicles.

(b) Applications may be obtained from the Emergency Light Unit, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, New Jersey, 08666.

(c) If approval for such use is granted, the permit will be forwarded to the applicant via the official who made the request, as specified in subsection (a) of this section.]

[13:24-2.6 Vehicle types; ownership requirements]

[A permit will be issued only for a vehicle owned by the applicant, or leased by a municipality for police or fire department use, and which is of the regular passenger car type.]

[13:24-2.7 Eligibility]

[(a) Owners of vehicles listed in the following categories may be considered eligible for red light and/or siren permits.

1. Private passenger type vehicle or non-commercial truck; provided, that such vehicle is owned by:

i. A chief of a volunteer fire company or the first assistant chief of a volunteer fire company; provided, that no more than two permits will be issued to any one volunteer fire company;

ii. A chief of police of a municipality where such municipality does not provide him with a vehicle for police purposes, or a police captain or first assistant to the chief of police as defined in this paragraph; provided, that no more than two permits will be issued to any police department meeting these conditions; and provided further, that applicants must be full time police officials.

2. Vehicles leased by a municipality for police or fire department use.]

[13:24-2.8 Vehicles ineligible for permits]

[(a) Under no circumstances will permits be issued for privately owned vehicles of:

1. Volunteer firemen, fire commissioners, fire inspectors, fire police, fire engineers, fire marshals or other fire department personnel, except as provided for in Section 2.7 (Eligibility) of this Chapter;

2. Police, special police, auxiliary police, part time police, constables, wardens or marshals, except as provided for in Section 2.7 (Eligibility) of this Chapter;

3. Civil Defense or Disaster Control personnel or officials, other than a Municipal Director or County Coordinator as provided for in Section 3.1 (Permits to qualified personnel) of this Chapter;

4. Police surgeons, coroners, chaplains or morgue keepers;

5. Military personnel;

6. Plant supervisors or emergency personnel.]

[13:24-2.9 Red light mounting and use requirements]

[(a) All red lights for which permits are issued may only be mounted on the exterior of the vehicle and may not be used when:

1. The vehicle is being operated outside of the municipality for which the permit was issued; and/or

2. The vehicle is operated by one other than the person to whom the permit was issued;

3. Exceptions to this Section are:

i. Vehicles owned by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment being operated by an employee thereof for the purpose of demonstration or delivery, when such operation is in compliance with the terms of the permit; or

ii. Vehicles being operated by the County Civil Defense-Disaster Control Coordinator, for which a permit has been issued under the provisions contained in Subchapter 3 (Special Civil Defense Regulations) of this Chapter.]

[13:24-2.10 Siren mounting and use requirements]

[(a) All sirens for which permits are issued must comply with the following mounting and use provisions:

1. Sirens must be mounted under the hood of the vehicle; and

2. Sirens may not be used outside of the municipality for which the permit was issued.]

[13:24-2.11 Permit cancellation or revocation]

[(a) Permits shall remain valid until cancelled or revoked.

(b) The Director may cancel or revoke a permit under his authority, under any of the conditions listed in this Section, or for any other reasonable grounds:

1. Expiration, for any reason, of term of office or contract which entitled the holder to the permit.

2. The sale or destruction of the vehicle for which the permit was issued.

3. A violation of any of the conditions applying to such permit, or stated in this Chapter applying to such permits.

4. Upon the operator of the vehicle being convicted of any violation of the Motor Vehicle Traffic Laws.

(c) Expired or revoked permits for red lights or sirens must be returned to the Director, in care of the Chief Inspector, by the head of the governing body of the municipality in which the applicant resides.]

SUBCHAPTER 2. RED EMERGENCY LIGHTS; SIRENS

13:24-2.1 Red lights on vehicles

(a) No vehicle equipped with a red light, when such light is visible from directly in front of the vehicle, may be used on any street or highway, with the following exceptions:

1. An authorized emergency vehicle;

2. An authorized school bus;

3. A frozen dessert truck as defined in N.J.S.A. 39:4-128.3;

4. An omnibus equipped in accordance with N.J.S.A. 39:3-54(b); or

5. A vehicle authorized by a permit issued by the Director.

(b) A red light permit is not required for those vehicles set forth in (a)1 to 4 above.

13:24-2.2 Flashing lights on vehicles

(a) No vehicle shall be equipped with and no person shall use upon any vehicle any flashing lights except as a means for indicating right or left turns or for the purpose of warning of the presence of a vehicular traffic hazard; provided, however, that a vehicle may be equipped with flashing lights of a type approved by the Director if it falls into one of the categories of vehicles set forth in N.J.A.C. 13:24-2.1(a)1 to 5 or as otherwise provided in this chapter.

(b) An authorized emergency vehicle as defined in N.J.S.A. 39:1-1 and this subchapter may be equipped with flashing red lights. A permit is not required for such red lights.

(c) A red light permit is not required for a school bus which is equipped with flashing red lights.

(d) A frozen dessert truck as defined in N.J.S.A. 39:4-128.3 shall be equipped with flashing red lights in accordance with N.J.S.A. 39:4-128.5, and such lights must be used in accordance with N.J.S.A. 39:4-128.6. A permit is not required for such red lights.

(e) An omnibus as defined in N.J.S.A. 39:1-1 may be equipped with flashing red lights in accordance with N.J.S.A. 39:3-54(b) to be used for the purpose set forth in that subsection. A permit is not required for such red lights.

13:24-2.3 Siren, whistle or bell on vehicles

(a) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle or bell with the following exceptions:

1. An authorized emergency vehicle may be equipped with a siren, whistle or bell to be utilized when such vehicle is operated in response to a fire or emergency call. Police vehicles may also use a siren, whistle or bell in the pursuit of an actual or suspected violator of the law. A permit is not required for an authorized emergency vehicle equipped with such siren, whistle or bell.

2. A vehicle authorized by a permit issued by the Director may be equipped with a siren to be utilized for answering a fire or emergency call.

3. A theft alarm signal device which is installed so that it cannot be used by the driver as an ordinary warning signal may be installed on any vehicle in accordance with N.J.S.A. 39:3-69.

13:24-2.4 Permit applications

(a) Requests for permits authorizing the use of red lights and/or sirens pursuant to this subchapter are to be made to the Director by the mayor or chief executive officer in the municipality in which the applicant's service is being provided; except that Emergency Management personnel shall apply for such permits in accordance with the procedures set forth in N.J.A.C. 13:24-3, and organizations eligible for such permits pursuant to N.J.A.C. 13:24-2.5(a)4 shall make application directly to the Division of Motor Vehicles.

(b) Applications for permits authorizing the use of red lights and/or sirens pursuant to this subchapter may be obtained from, and completed applications must be submitted to, the Division of Motor Vehicles.

(c) A permit issued by the Division of Motor Vehicles pursuant to this subchapter will be forwarded to the applicant via the official who made the request, as specified in (a) above.

13:24-2.5 Eligibility for permit

(a) Applicants for permits authorizing the use of red lights and/or sirens pursuant to this subchapter may be considered eligible only if the vehicle intended to display the red lights and/or sirens is:

1. Owned by and registered in the name of an active chief of a volunteer fire company or the first assistant chief of a volunteer fire company; provided, that no more than two permits will be issued to any one volunteer fire company;

2. Owned by, or leased by or for, a chief of police of a municipality or a police captain or first assistant to the chief of police of a municipality, where such municipality does not provide that person with a vehicle for police purposes; provided, that no more than two permits will be issued to any police department meeting these conditions; and provided further, that applicants must be full time police officials;

3. Owned by, or leased by or for, a captain or principal assistant of a volunteer first aid or rescue squad; provided, that no more than two permits will be issued to any one volunteer first aid or rescue squad;

4. Owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment and operated by an employee thereof only for the purpose of demonstration or delivery, when such operation is in compliance with the terms of the permit; or

5. Owned or leased by those Emergency Management personnel set forth in N.J.A.C. 13:24-3.1 or 3.2.

(b) Except as may otherwise be provided by rule, no applicants other than those set forth in (a) above shall be eligible for red light and/or siren permits pursuant to this subchapter.

13:24-2.6 Possession and exhibition of permit

A permit issued pursuant to this subchapter must be in the possession of the operator at all times when the red lights and/or sirens are displayed on the vehicle, and must be exhibited upon the request of any law enforcement official.

13:24-2.7 Permit cancellation or revocation

(a) Permits issued pursuant to this subchapter shall remain valid for a period of four years, unless cancelled or revoked, and shall be non-transferable.

(b) The Director may cancel or revoke a permit issued pursuant to this subchapter for any of the following reasons, or for any other reasonable grounds:

1. Expiration or termination, for any reason, of term of office or contract which entitled the holder to the permit;

2. The sale, transfer, destruction or termination of lease of the vehicle for which the permit was issued;

3. A violation of any of the conditions applying to such permit as stated in this subchapter; and/or

4. Upon the operator of the vehicle being convicted of any violation of the Motor Vehicle Traffic Laws involving the use of the lights or sirens.

(c) Cancelled or revoked permits for red lights or sirens must be surrendered to the Division of Motor Vehicles by the permit holder within 10 days of the cancellation or revocation of the permit.

(d) A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

13:24-2.8 Red light mounting and use requirements

(a) There is no limit as to the number of red lights which may be mounted on an authorized emergency vehicle; provided, that no red lights shall be mounted on the vehicle's interior front dashboard nor shall red lights be used in place of the vehicle's regular headlights.

(b) All authorized emergency vehicles used for police or law enforcement purposes purchased on or after January 1, 1990 that display roof mounted red lights shall be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open.

(c) Red lights placed on a vehicle owned by and registered in the name of an active chief of a volunteer fire company or the first assistant chief of a volunteer fire company pursuant to a permit issued by the Director in accordance with this subchapter shall be mounted only on the exterior of the vehicle and shall consist of not more than two magnetic base type removable lights.

1. If one red light is used on such a vehicle, it shall be mounted on:

i. The center of the roof of the vehicle; or

ii. The left windshield column.

2. If two red lights are used on such a vehicle, they shall be mounted on:

i. Either side of the roof at the front of the vehicle directly behind the top of the windshield; or

ii. Each windshield column.

(d) There is no limit as to the number of red lights which may be mounted on a vehicle owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment for which a permit has been issued by the Director pursuant to N.J.A.C. 13:24-2.5(a)4 permitting the display of such lights when the vehicle is being operated by an organization employee only for the purpose of demonstration or delivery; provided, that no red lights shall be mounted on the vehicle's interior front dashboard nor shall red lights be used in place of the vehicle's regular headlights.

(e) Except for those vehicles specified in (c) and (d) above, vehicles equipped with a red light pursuant to a permit issued by the Director in accordance with this subchapter shall display one magnetic base type removable light. The red light shall not be mounted on the vehicle's interior front dashboard and shall not be used in place of the vehicle's regular headlights.

(f) Vehicles operated by Emergency Management personnel shall comply with the red light mounting and use requirements of N.J.A.C. 13:24-3.

(g) Any mounting of red lights not provided for by this subchapter is prohibited.

(h) Red lights shall only be used when the vehicle is being operated in response to a fire or emergency call; provided, however, that red lights mounted on a vehicle owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment for which a permit has been issued by the Director pursuant to N.J.A.C.

13:24-2.5(a)4 may only be used when such vehicle is being operated by an organization employee for the purpose of demonstration or delivery. Police vehicles may also use red lights in the pursuit of an actual or suspected violator of the law. Fire department vehicles may also use red lights while returning from an emergency call. Ambulances which qualify as authorized emergency vehicles pursuant to N.J.A.C. 13:24-1.1 may also use red lights when transporting a person to a hospital on an emergency basis.

13:24-2.9 Siren mounting requirements

(a) A siren may be mounted at any location on an authorized emergency vehicle.

(b) A vehicle authorized by a permit issued pursuant to this subchapter to utilize a siren shall comply with the following provisions:

1. The siren must be mounted under the hood of the vehicle; except that a vehicle for which a permit has been issued authorizing the use of a siren, other than a vehicle owned by and registered in the name of an active chief of a volunteer fire company or the first assistant chief of a volunteer fire company, may mount a removable siren on the center of the roof of the vehicle for use while responding to an emergency call provided it is removed at the conclusion of the emergency.

(c) Vehicles operated by Emergency Management personnel shall comply with the siren mounting and use requirements of N.J.A.C. 13:24-3.

SUBCHAPTER 3. SPECIAL [CIVIL DEFENSE] EMERGENCY MANAGEMENT REGULATIONS

[13:24-3.1 Permits to qualified personnel]

[(a) Permits for emergency red lights and/or sirens may be granted to the following Civil Defense-Disaster Control personnel for use on their personal vehicles:

1. County Civil Defense Coordinator;
2. Municipal Civil Defense Director.]

13:24-[3.2] **3.1** Municipal [civil defense director] **Emergency Management Coordinator** applications

(a) Municipal Emergency Management Coordinators may apply for a red light and/or siren permit for a vehicle or vehicles which they own or lease.

[(a) A] **(b) An applicant pursuant to this section shall submit a** letter of request on official stationery, signed by the mayor **or chief executive officer** of a municipality, **together with a completed application,** [shall be addressed to the Director of the Division of Motor Vehicles for application for a] **to the County Emergency Management Cordinator requesting approval to place a** red light and siren [to be placed] on the [local Civil Defense Director's automobile] **Municipal Emergency Management Coordinator's vehicle or vehicles.**

[(b) The letter of request and the original and two copies of the application shall be forwarded to the County Coordinator for his approval.]

(c) Upon approval of the County Coordinator, the letter of request and all three copies of the application shall be forwarded to the State Office of [Civil Defense] **Emergency Management** for approval by the [State] Director **of that Office.**

(d) If approved, the [State] Director **of the State Office of Emergency Management** will send the application to the Director of the Division of Motor Vehicles for final approval and issuance of the permit.

13:24-[3.3] **3.2** County [civil defense coordinator] **Emergency Management Coordinator** applications

(a) County Emergency Management coordinators and Deputy County Emergency Management Coordinators may apply for a red light and/or siren permit for a vehicle or vehicles which they own or lease.

(b) In the case of the application of the [county coordinator] **County Emergency Management Coordinator or Deputy County Emergency Management Coordinator,** the application shall be signed by the director of the board of chosen freeholders for that county and the letter of request and all three copies of the application forwarded to the State Office of [Civil Defense] **Emergency Management** for approval.

(c) If approved, the Director of the State Office of Emergency Management will send the application to the Director of the Division of Motor Vehicles for final approval and issuance of the permit.

13:24-[3.4] **3.3** Application contents

(a) The application is to contain:

1. The name and address of the owner of the vehicle **or vehicles** for which the permit is to be issued **and, if applicable, the name and address of the lessee of the vehicle or vehicles for which the permit is to be issued.** The owner **or lessee** must be the [civil defense director or the county coordinator] **Municipal Emergency Management Coordinator or the County Emergency Management Coordinator or Deputy County Emergency Management Coordinator.**

2. The following vehicle information must be given:

[i. The registration number of the vehicle; and]

[ii.] **i.** The **registration number,** make, model, year and [serial] **vehicle identification** number of the vehicle **or vehicles** on which the emergency warning devices are to be mounted.

13:24-[3.5] **3.4** Period of validity; cancellation of permit

(a) The permit is valid only during the term of office of the holder **or for a period of four years, whichever period is shorter,** and is nontransferable.

(b) At the expiration **or upon termination** of the term of office of a [county or municipal defense directors] **County or Municipal Emergency Management Coordinator or a Deputy County Emergency Management Coordinator,** or upon **the sale, transfer,** disposal **or termination of lease** of the [the] **any** vehicles for which the permit was issued, the permit [should] **shall** be [channeled through] **surrendered to** the State Office of [Civil Defense] **Emergency Management** [to that of the Chief Inspector of Motor Vehicles for cancellation].

(c) The State Office of Emergency Management shall forward a surrendered permit to the Division of Motor Vehicles for cancellation.

13:24-[3.6] **3.5** Mounting regulations

(a) [The siren is to] **Any siren permitted by this subchapter must** be mounted under the hood **or in the center of the roof** of the vehicle.

(b) [The] **Any** red light **permitted by this subchapter** must be a portable light with a **removable** magnetic-type base.

(c) The **red** light may be affixed to the vehicle only at such times when the vehicle is being operated in response to an emergency.

(d) [The] **Any** red light **permitted by this subchapter** may only be mounted on the roof of the vehicle. Mounting on the **interior front** dashboard, fenders or at any other location of the vehicle is prohibited.

(e) At the conclusion of the emergency the **red** light must be removed.

13:24-[3.7] **3.6** Use regulations

(a) The red light and/or siren may be used only under the following conditions:

1. The vehicle is being operated by the [civil defense director or county coordinator] **Municipal Emergency Management Coordinator or County Emergency Management Coordinator or Deputy County Emergency Management Coordinator** in response to an actual emergency.

[2. Any use of the red lights and/or siren during simulated emergencies, and other types of training is prohibited.

3. Use of this equipment during any such simulated emergencies or training will be cause for immediate revocation of the permit.]

13:24-[3.8] **3.7 Possession and** exhibition of permit

The permit must be [carried] **in the possession of the operator** at all times when the vehicle is being operated **and the red light and/or siren is displayed on the vehicle,** and [is to] **must** be exhibited upon the request of [the proper authorities] **any law enforcement official.**

13:24-[3.9] **3.8** Revocation of permit

(a) The [Division of Motor Vehicles and/or the Division of Civil Defense reserves the right to] **Director of Motor Vehicles may in his or her discretion** revoke [this] **any** permit **issued pursuant to this subchapter** at any time for noncompliance with the terms of the permit **or the conditions of its issuance** or for any [cause which is deemed reasonable by either the Director of the Division of Motor Vehicles or the State Director of Civil Defense] **other reasonable**

grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 4. FLASHING AMBER LIGHT PERMIT

13:24-4.1 [Vehicles] **Persons** eligible

(a) Owners **or lessees** of the following type vehicles may be considered eligible for amber light permits.

1. Wreckers, bearing commercial **or governmental** registration:

i. (No change.)

2. Service [type] vehicles bearing commercial **or governmental** registration[.]:

i. A flashing amber light may be used [while vehicle is stopped for a service operation in a location] where such warning light activation is necessary for the protection of the public or service vehicle personnel.

3. (No change.)

(b) Notwithstanding any other provisions of this subchapter, police or law enforcement vehicles may be equipped with flashing amber lights which are displayed to the rear of the vehicle as part of its roof-mounted emergency light bar while the vehicle is stationary. A flashing amber light permit is not necessary when amber lights are mounted and used on police or law enforcement vehicles in such a manner. Such amber lights on police or law enforcement vehicles must be controlled by a switch separate from the red lights.

13:24-4.2 Application procedure

(a) Application for a flashing amber light permit **pursuant to this subchapter** must be made in writing to[:] **the Division of Motor Vehicles.**

[New Jersey Division of Motor Vehicles
Emergency Light Unit
25 South Montgomery Street
Trenton, New Jersey 08666]

(b) The application **for vehicles not bearing governmental registration,** after completion, is to be signed by the [head of the police authority] **chief law enforcement official** in the municipality [shown on the vehicle registration] **in which the service is being provided,** and returned to the [Emergency Light Unit at the address given above] **Division of Motor Vehicles.**

(c) The application for vehicles bearing governmental registration, after completion, is to be signed by the chief official of the governmental agency which owns or leases the vehicles, and returned to the Division of Motor Vehicles.

(d) Amber light permits issued pursuant to this subchapter shall be valid for a period of four years, unless cancelled or revoked, and shall be nontransferable.

13:24-4.3 [Exhibition] **Possession and exhibition**

[Permits for flashing amber lights] **A permit issued pursuant to this subchapter** must be **in the possession of the operator at all times when the flashing amber lights are displayed on the vehicle, and must be** exhibited upon request of any [proper authority] **law enforcement official.**

13:24-4.4 Revocation

[Misuse of the privilege provided by this subchapter, or violation of the conditions imposed herein, will be considered reasonable grounds for revocation of the permit.] **The Director may in his or her discretion revoke any permit issued pursuant to this subchapter at any time for noncompliance with the terms of the permit or the conditions of its issuance or for any other reasonable grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine weather to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.**

13:24-4.5 Termination of employment

Termination of the type **of** employment or service for which the permit was issued automatically and immediately **cancels the permit and** invalidates the authority for such a light, and the permit [is to] **must** be [returned] **surrendered** to the [Emergency Light Unit] **Division of Motor Vehicles by the permit holder within 10 days of the cause of cancellation.**

SUBCHAPTER 5. [(RESERVED)] **BLUE EMERGENCY WARNING LIGHTS**

13:24-5.1 Blue emergency warning lights restricted

(a) An active member in good standing of a volunteer fire company or a volunteer first aid or rescue squad may display a blue emergency warning light or lights on a motor vehicle owned by him or her or by a member of his or her household if he or she has been issued an identification card (permit) for such light or lights pursuant to this subchapter and is in compliance with the provisions of this subchapter.

(b) An identification card (permit) issued pursuant to this subchapter must be in the possession of the operator at all times when the blue light or lights are displayed on a vehicle, and must be exhibited upon the request of any law enforcement official.

13:24-5.2 Identification card (permit) application procedure

(a) An applicant for a permit pursuant to this subchapter shall complete an application form prescribed by the Division of Motor Vehicles.

(b) The applicant shall submit his or her completed application to the mayor or chief executive officer of the municipality recognizing and being served by the applicant's volunteer fire company or volunteer first aid or rescue squad. Upon approving a permit application for blue emergency lights, the mayor or chief executive officer shall sign and forward the application to the Division of Motor Vehicles.

(c) Upon receipt of a permit application for blue emergency lights which has been submitted in accordance with (b) above, the Division of Motor Vehicles shall forward an identification card (permit) signed by the Director, listing each vehicle described in the permit application to the mayor or chief executive officer of the municipality.

(d) The mayor or chief executive officer of the municipality shall countersign the identification card (permit) and issue it to the applicant.

(e) Identification cards (permits) issued pursuant to this subchapter shall remain valid for a period of four years, unless cancelled or revoked, and shall be nontransferable.

13:25-5.3 Surrender of identification cards (permits)

(a) When a person to whom an identification card (permit) has been issued pursuant to this subchapter ceases to be an active member in good standing of a volunteer fire company or volunteer first aid or rescue squad, or upon the sale, transfer or disposal of any vehicles for which the permit was issued, the identification card (permit) shall automatically and immediately be deemed cancelled and shall be surrendered to the Division of Motor Vehicles by the permit holder within 10 days of the cause of cancellation.

13:24-5.4 Mounting; specifications

(a) No more than two blue emergency warning lights may be installed on a vehicle.

1. If one blue light is used, it shall be mounted on:

i. The center of the roof;

ii. The left windshield column; or

iii. The front of the vehicle so that the top of the light is no higher than the top of the vehicle's headlights.

2. If two blue lights are used, they shall be mounted on:

i. Either side of the roof at the front of the vehicle directly behind the top of the windshield; or

ii. Each windshield column.

(b) The blue lights shall be temporarily attached, removable lights of the flashing or revolving type, and shall not exceed seven and one-half inches in diameter.

(c) The lights shall have a blue lens and shall be equipped with a lamp of not more than 51 candlepower as measured without a lens. The lights shall be controlled by a switch installed inside of the vehicle.

13:24-5.5 Use of blue emergency warning lights.

(a) A blue emergency warning light shall only be used:

1. In the municipality where the identification card (permit) was issued, or in a municipality contiguous to the issuing municipality;

2. While the vehicle is responding to a fire or emergency call; and

3. On a motor vehicle owned by the identification card (permit) holder or by a member of his or her household.

13:24-5.6 Revocation

The Director may in his or her discretion revoke any identification card (permit) issued pursuant to this subchapter at any time for noncompliance with the terms of the permit or the conditions of its issuance or for any other reasonable grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 6. SPECIAL AMBER IDENTIFICATION LIGHTS (LICENSED PRIVATE DETECTIVE BUSINESSES)

13:24-6.1 Permit eligibility

Vehicles owned or leased by licensed private detective businesses under contractual agreement to provide community security services in planned developments as defined in N.J.S.A. 40:55D-1 et seq. are eligible for special amber identification light permits in accordance with the procedures set forth in this subchapter to enable them to be equipped with and display such a light.

13:24-6.2 Application procedure

(a) Application for a special amber identification light permit pursuant to this subchapter must be made in writing to the Division of Motor Vehicles.

(b) The application, after completion by the applicant, is to be signed by the chief law enforcement official in the municipality in which the permit will be used. Thereafter, the application should be submitted by the applicant to the Division together with:

1. A copy of the vehicle registration;

2. A copy of the contractual agreement referred to in N.J.A.C. 13:24-6.1; and

3. A $25.00 check or money order made payable to the New Jersey Division of Motor Vehicles as authorized by N.J.S.A. 39:3-54.14.

(c) Special amber identification light permits issued pursuant to this subchapter shall be valid for a period of four years or until the termination of the contract, whichever period is shorter, and shall be nontransferable.

13:24-6.3 Mounting; specifications

(a) No more than one special amber identification light may be mounted on a vehicle pursuant to this subchapter. Such light shall be mounted on:

1. The center of the roof of the vehicle;

2. The left windshield column; or

3. The front of the vehicle so that the top of the light is no higher than the top of the vehicle's headlights.

(b) A special amber identification light mounted on a vehicle pursuant to this subchapter shall not exceed seven and one-half inches in diameter, shall have an amber lens and shall be equipped with a lamp of not more than 51 candlepower as measured without a lens. The light shall be controlled by a switch installed inside of the vehicle.

13:24-6.4 Possession and exhibition

A permit issued pursuant to this subchapter must be in the possession of the operator at all times when the special amber identification light is displayed on the vehicle, and must be exhibited upon the request of any law enforcement official.

13:24-6.5 Revocation

The Director may in his or her discretion revoke any permit issued pursuant to this subchapter at any time for noncompliance with the terms of the permit or the conditions of its issuance or for any other reasonable grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq.

13:24-6.6 Termination of employment

Termination of the type of employment or service for which the permit was issued, or the sale, transfer, disposal or termination of lease of the vehicle for which the permit was issued, automatically and immediately cancels the permit and invalidates the authority for such a light, and the permit is to be surrendered to the Division of Motor Vehicles by the permit holder within 10 days of the cause of cancellation.

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF DENTISTRY
Application Fees
Proposed Repeal: N.J.A.C. 13:30-2.18
Proposed Amendments: N.J.A.C. 13:30-1.2 and 8.1

Authorized By: State Board of Dentistry, William Gutman, Executive Director.

Authority: N.J.S.A. 45:6-3, 4, 52, and 57; 45:1-3.2.

Proposal Number: PRN 1989-427.

Submit comments by September 20, 1989 to:

William Gutman, Executive Director
Board of Dentistry, Room 321
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendments will increase most of the fees charged by the State Board of Dentistry for licensure and registration of dentists, dental hygienists and dental assistants. The fee changes, which reflect substantial increases in the Board's overhead expenses, are necessary in order to provide the Board with adequate funding to discharge its statutory obligation to evaluate and examine applicants for licensure and to regulate the practice of dentistry. In accordance with N.J.S.A. 45:1-3.2, the revenues to be generated through this increase are calculated not to exceed the amount required for proper performance of the Board's functions.

Since New Jersey no longer offers simultaneous examination, N.J.A.C. 13:30-1.2(d) relating to fees is proposed for immediate deletion; the Board will repeal other provisions relating to simultaneous examination in the course of readoption of Board rules prior to their "sunset" in April, 1990.

In order to implement amendments to the Dental Auxiliaries Act, N.J.S.A. 45:6-49 et seq., which create an inactive license status for dental hygienists, a biennial registration fee of $10.00 for an inactive registration and a $35.00 late fee for an inactive registration are also proposed. The latter amount has been uniformly set in the new schedule as the late fee for all categories of dental personnel.

The current rule relating to application fees for dental hygienists engaged in expanded duties and for registered dental assistants, N.J.A.C. 13:30-2.18, is being repealed as a separate rule, but is incorporated in the overall fee schedule, N.J.A.C. 13:30-8.1.

Two categories of application fees, proposed at N.J.A.C. 13:30-8.1(c), reflect an increase in statutorily created fees. Such increases are authorized by N.J.S.A. 45:1-3.2, which permits Boards to establish higher fees by regulation. As set forth here, the proposed application fee for dentists will rise to $75.00 and for dental hygienists to $50.00. The application fee for dental hygienists who wish to engage in expanded duties is unchanged at $10.00, and the fee for registered dental assistants will remain $15.00.

Upon adoption, other references to these fees in N.J.A.C. 13:30 will be reconciled to the fee changes proposed herein.

Social Impact

No social impact will be felt as a result of these amendments. The increased charges simply allow the Board to continue to fulfill its mandated duty of protecting the public health, safety and welfare by ensuring professional competence and the maintenance of high standards in the practice of dentistry.

Economic Impact

The proposed amendments to N.J.A.C. 13:30-1.2 and 8.1 will impact economically on all present and prospective licensees of the State Board of Dentistry insofar as it will cost more for licensure as well as for biennial registration of dental practice personnel. Such impact is justified, however, in light of the increased overhead costs under which the Board is now laboring and the fact that without increases in its fee schedule the Board cannot meet the statutory mandate to cover its expenses. In proposing these amendments, the Board has endeavored to minimize any adverse economic impact by setting the fees at the lowest realistic amount.

Regulatory Flexibility Analysis

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

The proposed amendments, which constitute a general increase in the Board's fee schedule, are needed in order for the Board to avoid operating at a loss. They do not involve any reporting or recordkeeping nor do they necessitate the retention of professional services for compliance. As a business expense, the proposed fees will have minimal effect on licensees, and since they have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:30-1.2 Application procedure

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

[(d) Examination and reexamination fee for the Northeast Regional Board Examination is determined by and payable to N.E.R.B. Upon successful completion of the N.E.R.B. examination, the fee for licensure in New Jersey is $50.00. The fee for the simultaneous reexamination is $20.00. All simultaneous fees are payable to the State of New Jersey, in care of the New Jersey State Board of Dental Examiners.]

[13:30-2.18 Application fee

(a) The application fee charged by the State Board of Dentistry shall be as follows:

1. Dental hygienists engaged in expanded duties: $10.00.
2. Registered dental assistants: $15.00.]

13:30-8.1 Fee schedules

(a) The application fees charged by the Board of Dentistry shall be the following:

1. Dentists $75.00
2. Dental Hygienists $50.00
3. Dental Hygienists—expanded duties supplement $10.00
4. Registered Dental Assistants $15.00

[(a)] **(b)** The Biennial Registration fees charged by the Board of Dentistry shall be the following:

1. Dentists:
i. Active registration ..... [$75.00] **$100.00**
ii. Inactive registration ..... [$30.00] **$40.00**
iii. Branch office $20.00
2. Dental Hygienists:
i. Active registration ..... [$20.00] **$30.00**
ii. Inactive registration $10.00
[ii.] **iii.** Branch office $10.00
3. Registered Dental Assistants
i. Active registration ..... [$20.00] **$30.00**

[(b)] **(c)** Registrations submitted after due dates shall have the following late fees assessed:

1. Dentists:
i. Active registration ..... [$25.00] **$35.00**
ii. Inactive registration ..... [$25.00] **$35.00**
2. Dental Hygienists:
i. Active registration ..... [$25.00] **$35.00**
ii. Inactive registration $35.00
3. Registered Dental Assistants:
i. Active registration ..... [$25.00] **$35.00**

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

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF OPTOMETRISTS
Unlawful Advertising Practices
Reproposed Amendment: N.J.A.C. 13:38-1.2

Authorized By: State Board of Optometrists, Jan C. Gavzy, Executive Director.
Authority: N.J.S.A. 45:12-4.
Proposal Number: PRN 1989-428.

Submit comments by September 20, 1989 to:
Jan C. Gavzy, Executive Director
Board of Optometrists, Room 501
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

A proposed amendment to N.J.A.C. 13:38-1.2(j), relating to unlawful advertising practices, was initially published on September 19, 1988, at 20 N.J.R. 2361(b). Two comments were received during the comment period. One commenter supported the amendments, but noted that they did not "go far enough." The other commenter opposed the amendments which were felt to be a partial ban on testimonials. The Board determined that further review and clarification were necessary and did not adopt the proposed amendment when other rule amendments were adopted effective May 15, 1989 (see 21 N.J.R. 1366(b)). The Board now reproposes an amendment to N.J.A.C. 13:38-1.2(j).

The reproposed amendment prohibits the use of endorsements or personal testimonials which attest to the technical, optometric quality of services rendered in merchandise received. If a testimonial advertisement is used, it must arise from a bona fide patient-optometrist relationship and there shall be disclosure, as visible and/or audible as the rest of the advertisement, of any compensation received by the person giving the testimonial. Other requirements include the retention of advertisements for three years and the ability to be able to substantiate any material claim or representation set forth in an advertisement.

Social Impact

The requirements contained in the reproposed amendment are designed to prevent over-zealous or deceptive solicitation of customers. The Board continues to endeavor to enlighten public awareness by placing specifications and limitations on the use of testimonials used by licensees in advertising. No information suggests that the amendment would adversely impact access to or the quality of patient care.

Economic Impact

There will be no discernible economic impact on consumers as a result of the reproposed amendment. Failure to comply with the amendment may result in monetary penalties imposed on licensees who violate any of these provisions.

Regulatory Flexibility Analysis

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

Approximately 950 optometrists are currently licensed by the Board. The compliance requirements of the reproposed amendment are reasonable and uniformly applicable to all licensees, without differentiation as to the size of the business. This is consistent with the Board's desire to enlighten public awareness and to prevent overzealous and deceptive solicitation of consumers.

With regard to reporting and recordkeeping requirements, all licensees will be required to retain a copy or duplicate of any advertisement for a period of three years following the date of publication or dissemination (N.J.A.C. 13:38-1.9(j)3). Documentation relating to the use of testimonials shall include the name, address and telephone number of the individual in the advertisement; the type and amount or value of compensation; and a signed, notarized statement and release.

Any costs of compliance, either initial or annual, will be dependent on the amount and type of advertising selected by the optometrist. No new professional services are likely to be needed for compliance. No differentiation in requirements based upon business size is provided, since to do so would lessen the provision's impact in enlightening consumer awareness and preventing overzealous and deceptive solicitation of consumers.

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

13:38-1.2 General advertising practices

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

(j) It shall be an unlawful advertising practice for an optometrist licensed by the New Jersey Board of Optometrists to:

[1. Use or employ any advertisement containing colored, flashing or neon lights;]

[2.]**1.** Employ endorsements or personal testimonials attesting to the **technical, optometric** quality of services rendered or merchandise received;

i. A testimonial advertised shall arise from a bona fide patient-optometrist relationship.

ii. Any compensation, direct or indirect, received by a person giving a testimonial shall be disclosed by specifying the type of compensation and amount or value of compensation in the testimonial advertisement. Such disclosure shall be as visible and/or audible as the rest of the advertisement.

iii. An optometrist who advertises through the use of testimonials shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation, and a signed, notarized statement and release, obtained prior to the time the testimonial is advertised, verifying the truthfulness of the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement.

[3.]**2.** Guarantee that services rendered will result in cures of any optometric or visual abnormality;

[4. Utilize any advertising format or presentation which is undignified or unprofessional in nature;]

[5. Engage in any form or method of advertising wherein the advertised medium limits access thereto to a closed, limited or designated class of optometrists;]

[6.]**3.** Fail to retain a copy or duplicate of any advertisement for a period of three years following the date of publication or dissemination. Such copies or tapes shall be made available on request by the Board or its designee;

[7.]**4.** Fail to **be able to** substantiate [the truthfulness or accuracy of any assertion] **any material claim** or representation set forth in an advertisement.

TRANSPORTATION

(a)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT MAINTENANCE ENGINEERING

Drawbridge Operations Reimbursed Highway Safety Lighting

Proposed New Rules: N.J.A.C. 16:46-1 and 2

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14B-1.1 et seq.

Proposal Number: PRN 1989-351.

Submit comments by September 20, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Proposed new rules N.J.A.C. 16:46-1 represent a recodification of N.J.A.C. 16:26-2 and 3, which expired on August 6, 1989, pursuant to Executive Order No. 66 (1978).

In view of the recent Reorganization Plan of the Department of Transportation (see 20 N.J.R. 937) and the realignment of functions, N.J.A.C. 16:26-1, Release of Traffic Signal Information, was retained within the Bureau of Electrical Engineering (formerly the Electrical Bureau). N.J.A.C. 16:26-2, Drawbridge Operations, is proposed herein as new rule N.J.A.C. 16:46-1. The rule is essentially a reference to applicable Federal regulations and to a Departmental Manual which, as an intraagency statement regulating Department personnel, is not subject to rulemaking pursuant to N.J.S.A. 52:14B-2(e). Since certain contactual arrangements with the Federal government may require codified State rule, such requirement is satisfied by this rule. The Department is reviewing the Manual for certain elements, knowledge of which may benefit the general public, for future rule proposal. N.J.A.C. 16:26-3, Reimbursed Highway Safety Lighting, became the responsibility of the Bureau of Maintenance Engineering within the Division of Construction and Maintenance Engineering Support. The latter two subchapters were proposed for repeal in the June 19, 1989 New Jersey Register at 21 N.J.R. 1653(b).

Proposed new N.J.A.C. 16:46-2 provides the basic principles governing reimbursement for highway safety lighting. The rules outline the procedures to be followed in the commitment of State funds to counties and municipalities for the maintenance of street lighting. The proposed new rules do not vary from those contained in expired N.J.A.C. 16:26-3.

Social Impact

The proposed new rules will have no new or additional social impact since the counties and municipalities have been complying with identical rules already in force. N.J.A.C. 16:46-2 provides financial assistance to counties and municipalities to maintain street lighting, and thus promote public safety. The requirements referenced in N.J.A.C. 16:46-1 provide for safe and efficient drawbridge operations.

Economic Impact

Proposed new N.J.A.C. 16:46-2 will have no increased economic impact on State or local government since reimbursement claims are being paid on a semi-annual basis under the present codification of the reimbursed highway safety lighting rules. The rules economically benefit counties and municipalities by providing financial assistance in the maintenance of street lighting. No economic impact is expected from N.J.A.C. 16:46-1 beyond the promulgation itself satisfying certain agency contractual obligations.

Regulatory Flexibility Statement

The proposed new rules do not place bookkeeping, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily concern operations within the counties and municipalities.

Full text of the new rules follow:

CHAPTER 46
DRAWBRIDGE OPERATIONS AND
REIMBURSED HIGHWAY SAFETY LIGHTING

SUBCHAPTER 1. DRAWBRIDGE OPERATIONS

16:46-1.1 Opening and closing of bridges

(a) Movable bridges shall be operated in accordance with the rules and regulations of Title 33 (Navigations and Navigable Waters), Federal Register, United States Department of Transportation, Coast Guard; and the New Jersey Department of Transportation manual "Rules and Regulations—Operations of New Jersey Department of Transportation's Drawbridges".[1]

(b) A copy of the rules and regulations specified in subsection (a) of this section may be inspected at the office of the Division of Traffic

Engineering and Local Aid, Department of Transportation, CN 600, 1035 Parkway Avenue, Trenton, New Jersey 08625.

[1] A copy of this manual may be inspected in the Bureau of Traffic Engineering and Safety Programs Traffic Engineering and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, CN-600, Trenton, New Jersey 08625

SUBCHAPTER 2. REIMBURSED HIGHWAY SAFETY LIGHTING

16:46-2.1 Definitions

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

"Reimbursed highway safety lighting" means the commitment of State funds to counties and municipalities for the maintenance of street lighting. It shall be considered only for the potential problem locations along the State highway system such as intersections of roadways, railroad crossings, dangerous curves and headwalls.

16:46-2.2 Inquiries

All inquiries regarding reimbursed highway safety lighting shall be referred to the Bureau of Maintenance Engineering, Division of Construction and Maintenance Engineering Support.

16:46-2.3 Investigations

The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support shall arrange for any necessary field investigations pertaining to requests by local governments for State participation in the cost of maintaining existing or proposed highway safety lighting. The Bureau of Electrical Engineering of the Division of Traffic Engineering and Local Aid shall conduct the necessary field investigations when requested by the Bureau of Maintenance Engineering. The results of the investigation are to be forwarded to the Bureau of Maintenance Engineering. The Bureau of Maintenance Engineering shall inform the local governments of the results of all investigations and a complete file of all transactions shall be part of the Bureau of Maintenance Engineering's records.

16:46-2.4 State aid participation basis

(a) The rate of reimbursement to county and local government shall be based on the preceding fiscal year appropriations for this program and the number and type of lighting units in the program.

1. Incandescent units will not be eligible for reimbursement.

2. Lamps with a lamp lumen output greater than or equal to 7,000 lumens but less than 11,000 lumens will be reimbursed at the base rate.

3. Lamps with a lamp lumen output greater than or equal to 11,000 lumens, but less than 20,000 lumens will be reimbursed at a rate of approximately 1.7 times the base rate.

4. Lamps with a lamp lumen output greater than or equal to 20,000 lumens will be reimbursed at a rate of approximately 2.5 times the base rate.

(b) Reimbursement for each lamp shall not exceed 80 per cent of the total cost of the lighting to the county or municipality.

(c) To be eligible for reimbursement, lighting units must be at least 7,000 lumen intensity and be of the arc discharge type.

16:46-2.5 Standards

Reimbursed highway safety lighting shall conform to the standards set by the Division of Construction and Maintenance Engineering Support as to location, lamp intensity, mounting height and type of luminaries.

16:46-2.6 Approval of agreement

(a) The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support shall not enter into any contract obligations with utility companies on reimbursed safety lighting agreements.

(b) Upon approval of safety lighting location and lamp size, an agreement and copy of a form of resolution is prepared by the Bureau of Maintenance Engineering for execution and adoption by the local government. One copy of the properly executed agreement is returned to the local government, indicating the number of lighting units and the amount of the State's participation in the cost of maintaining these units with the local government.

16:46-2.7 Termination of agreement

(a) If the Department decides to terminate the agreement, the Manager, Bureau of Maintenance Engineering, shall send written notice of intent to terminate to the local government. Formal Departmental action terminating the agreement shall be sent to the local government.

(b) If the local government decides to terminate this agreement, the Director, Division of Construction and Maintenance Engineering Support shall be notified in a form of resolution adopted by the local government. Formal Departmental action terminating the agreement shall be sent to the local government.

16:46-2.8 Extension of agreement

(a) Agreements shall be executed to terminate on the 31st day of December. Agreements may be extended for a period of one year upon a determination that the lighting program complies with the terms of the agreement, that conditions warrant the extension and that sufficient funds are available.

(b) An agreement and a form of resolution for the ensuing year are prepared and mailed to the participating local government on or about December 15 by the Bureau of Maintenance Engineering. The full executed agreement shall be returned by the local government to the State on or before February 15 with a duly certified copy of the resolution.

16:46-2.9 Reimbursement

(a) The State will reimburse the participating local government in conformance with the executed agreement subject to contract and quantity discount and outage allowance granted by the utility company for the number of units actually in service.

(b) Reimbursement claims shall be paid semi-annually to the participating local government upon presentation of vouchers provided by the State. The local government shall provide the following certification statement on the invoice: "This is to certify that the lighting units described in the schedule attached to our reimbursement agreements have been in operation and are expected to remain in service during this 6-month certified period."

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Livestock and Poultry Importations

Adopted New Rules: N.J.A.C. 2:3

Proposed: June 5, 1989, at 21 N.J.R. 1477(a).
Adopted: July 31, 1989 by Arthur R. Brown, Jr., Secretary; and the State Board of Agriculture.
Filed: July 31, 1989, as R.1989 d.455, **without change.**

Authority: N.J.S.A. 4:5-54 through 75.

Effective Date: August 21, 1989.
Expiration Date: August 21, 1994.

Summary of Public Comment and Agency Response:
No comments received.

The rules adopted herein as new were proposed as a readoption with amendments. Since these rules expired, pursuant to Executive Order 66(1978), on June 18, 1989, they are adopted as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:3.

Full text of the adopted new rules proposed as amendments to the readoption follows.

CHAPTER 3
LIVESTOCK AND POULTRY IMPORTATIONS

SUBCHAPTER 1. GENERAL REQIREMENTS

2:3-1.1 Interstate health certificate to accompany animals entering State

All livestock and poultry moved into New Jersey, except for immediate slaughter, shall be accompanied by an official Certificate of Veterinary Inspection approved by the livestock disease control agency of the state or county of origin. A National Poultry Improvement Plan (NPIP) Form 3-B may be used for poultry in lieu of the Certificate of Veterinary Inspection.

2:3-1.2 Contents of Certificate of Veterinary Inspection

(a) The official Certificate of Veterinary Inspection shall indicate that the livestock designated thereon comply with all requirements for entry into New Jersey.

(b) The official Certificate of Veterinary Inspection shall include a legible report of the following:

1. Complete name and address of consignor;
2. Origin of the livestock;
3. Complete name and address of consignee;
4. Destination of the livestock;
5. Description of the livestock. Cattle, sheep and swine shall be identified by ear tag, tattoo or registration name and number. Horses shall be identified by physical description and/or tattoo or brand;
6. Statement that the livestock received an inspection by a veterinarian within 30 days of entry, and that the veterinarian found the livestock not showing signs of infectious, contagious and/or communicable disease; and
7. Additional information as required for specific class of livestock.

2:3-1.3 Copy of Certificate of Veterinary Inspection to New Jersey Department of Agriculture

A copy of the official Certificate of Veterinary Inspection shall be mailed promptly by the approving agency to the Division of Animal Health, New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625.

2:3-1.4 Expiration date of Certificates of Veterinary Inspection

Official Certificates of Veterinary Inspection shall be void 30 days after issuance.

2:3-1.5 Quarantine of livestock entering State

All livestock entering the State are subject to quarantine by the New Jersey Department of Agriculture.

Recodify 2:3-1.7 and 1.8 as 1.6 and 1.7 (No change in text.)

SUBCHAPTER 2. LIVESTOCK FOR BREEDING AND HERD REPLACEMENTS

2:3-2.1 (No change.)

2:3-2.2 Definitions

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

"Accredited herd" shall mean a herd as defined in 9 C.F.R. Part 77.1(b).

"Accredited tuberculosis free state" shall mean a state as defined in 9 C.F.R. Part 77.1(a).

"Brucellosis class free state or area" shall mean a state or area as defined in 9 C.F.R. Part 78.1(t).[1]

"Brucellosis class A state or area" shall mean a state or area as defined in 9 C.F.R. Part 78.1(u).[1]

"Brucellosis class B state or area" shall mean a state or area as defined in 9 C.F.R. Part 78.1(v).[1]

"Brucellosis class C state or area" shall mean a state or area as defined in 9 C.F.R. Part 78.1(w).[1]

"Certified brucellosis free herd" shall mean a herd as defined in 9 C.F.R. Part 78.1(q).[1]

[1]Copies are filed with and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN 330, Trenton, New Jersey 08625.

2:3-2.3 Importing diseased livestock

Livestock from herds under quarantine because of tuberculosis, brucellosis, or any other disease, or livestock currently classified as suspects because of tuberculosis, brucellosis or other infections shall not be imported into the State.

2:3-2.4 Negative reaction of cattle and bison to the tuberculosis test

(a) Animals that originate from an accredited bovine Tuberculosis-Free State or an accredited bovine Tuberculosis-Free Herd and shall have been included in the annual herd test or are a natural addition to the herd are exempt from tuberculosis tests.

(b) Cattle and bison six months of age or over shall be negative to a tuberculosis test within 60 days prior to entry.

(c) Requirements for tuberculosis testing may be waived if it is determined that livestock are from an area of equal disease-free status to New Jersey.

2:3-2.5 and 2.6 (No change.)

2:3-2.7 Brucellosis testing—Class B and C States

(a) The following conditions apply to animals imported from Class B and Class C States:

1. A prior permit for movement shall be obtained by the consignee from the Director, Division of Animal Health, New Jersey Department of Agriculture.
2. The herd test, certified herd number, prior permit number, and a statement by the accredited veterinarian that the animals being imported were included in the herd test or were natural additions, must appear on the Certificate of Veterinary Inspection.
3. All animals to be imported must be members of or natural additions to a Certified Brucellosis-Free Herd.
4. All animals six months of age or over shall be negative to an official brucellosis test within 30 days prior to entry, except official brucellosis vaccinated heifers under 14 months of age.

5. The imported animals shall be quarantined separate and apart from native animals upon entry into the State until brucellosis tested negative at owner's expense, not less than 45 or more than 120 days after entry into the state.

6. Steers and spayed heifers are exempt from (a)1 through 5 above.

2:3-2.8 Brucellosis test for imported cattle

(a) The department may require cattle imported to be tested for brucellosis if in its judgment such testing would be necessary to prevent introduction of the disease.

(b) Brucellosis test requirements may be waived if it is determined that livestock are from an area of equal disease-free states as New Jersey, and did not pass through a livestock auction.

2:3-2.9 Anaplasmosis or Bluetongue

(a) Cattle from states with endemic Anaplasmosis or Bluetongue, as determined by the U.S.D.A., must have a negative test within 30 days of entry, or be tested negative at owner's expense following entry.

(b) Anaplasmosis positive animals will be quarantined until three repeated tests at least 30 days apart are negative or returned to state of origin.

(c) Bluetongue positive animals will be quarantined and must be isolated until epidemiology and retesting discloses no potential threat to contact animals.

2:3-2.10 (No change.)

2:3-2.11 Horses, mules and asses

(a) All equidae entering New Jersey must meet the requirements of N.J.A.C. 2:3-1.

(b) All equidae entering the State after January 1, 1974, must have had a negative Coggins test for equine infectious anemia conducted at a jointly-approved U.S.D.A.-State laboratory within the past 12 months.

2:3-2.12 (No change.)

2:3-2.13 Health certificate to indicate swine free from brucellosis

The official Certificate of Veterinary Inspection shall indicate that swine for breeding purposes are members of a brucellosis-free herd, or are negative to a blood test for brucellosis within 30 days prior to entry.

2:3-2.14 Imported breeding swine to conform to Federal Regulation

(a) All breeding swine imported into New Jersey must meet the requirements of 9 C.F.R. 76.4 through 76.18.[1]

(b) All breeding swine imported into New Jersey must be individually identified by ear tag, tatoo or other approved individual identification.

[1]Copies are filed with and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN 330, Trenton, New Jersey 08625.

2:3-2.15 (No change.)

2:3-2.16 Quarantine of imported breeding swine

All breeding swine imported must be held in quarantine on the farm of destination separate and apart from all native animals and retested negative after 30 days for pseudorabies and brucellosis prior to release by the New Jersey Department of Agriculture, with the exception that swine from Validated/Qualified Free herds delivered directly by owner's vehicle are exempt.

2:3-2.17 All imported breeding swine; not infected with pseudorabies

(a) All imported breeding swine must come from a herd that has not been infected with pseudorabies in the past 60 days. Individuals must have been negative to an official pseudorabies test within 30 days prior to entry, conducted at a State or Federal laboratory. Swine from Qualified Pseudorabies Negative Herds may enter if the Qualified Pseudorabies Negative Herd Number and the date of the last qualifying test are stated on the official Certificate of Veterinary Inspection.

(b) "Qualified Pseudorabies Negative Herd" means a herd which complies with the provisions of 9 C.F.R. 85.1(ee).

SUBCHAPTER 3. FEEDER STOCK

2:3-3.1 Compliance with subchapter and importation requirements

In addition to the general requirements for importation, feeder stock moved into New Jersey shall meet the specific requirements of this subchapter, provided, however, that feeder swine are exempt from the general requirements for importation (see N.J.A.C. 2:3-1).

2:3-3.2 Tuberculin tests for steers and spayed heifers

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

(c) All other feeder cattle shall meet the provisions of N.J.A.C. 2:3-3.1.

2:3-3.3 Certification of feeder lambs free from infectious disease

Feeder lambs shall be certified to have originated in a flock free from infectious disease or recent exposure thereto.

2:3-3.4 Imported feeder swine to conform to Federal regulations

(a) All feeder swine imported into New Jersey must meet the requirements of 9 C.F.R. 76.4 through 76.18.[1]

(b) All feeder swine imported into New Jersey must be individually identified by ear tag, tattoo or other approved individual identification.

[1]Copies are filed and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN-330, Trenton, New Jersey 08625.

2:3-3.5 (No change.)

2:3-3.6 (No change in text.)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. POULTRY AND HATCHING EGGS

2:3-5.1 and 5.2 (No change.)

2:3-5.3 Poultry for immediate slaughter

Poultry for immediate slaughter may be moved into New Jersey within restriction, except that poultry infected with or exposed to contagious diseases are prohibited unless accompanied by special prior permit.

2:3-5.4 Salmonella enteriditis

While present diagnosis and surveillance techniques for Salmonella enteriditis are not adequate for proper control and prevention, the State of New Jersey will require that chickens imported into the State for the purpose of producing eggs for human consumption and hatching eggs imported for the purpose of raising chickens that will produce eggs for human consumption shall meet the standards of the United States Sanitation Monitored Program of the National Poultry Improvement Plan or such other regulations that may be imposed by USDA/NJ as better methods of control are developed.

SUBCHAPTER 6. LIVESTOCK FOR EXHIBITION

2:3-6.1 (No change.)

SUBCHAPTER 7. NUTRIA (MYOCASTER COYPU)

2:3-7.1 Compliance with importation requirements

Nutria shall meet the general requirements for importation.

(a)

DIVISION OF ANIMAL HEALTH
Quarantines and Embargoes
Avian Influenza and Equine Infectious Anemia
Adopted New Rules: N.J.A.C. 2:5

Proposed: June 5, 1989 at 21 N.J.R. 1479(a).
Adopted: July 31, 1989 by Arthur R. Brown, Jr., Secretary; and the State Board of Agriculture.
Filed: July 31, 1989 as R.1989 d.454, **without change**.

Authority: N.J.S.A. 4:5-1 through 3 and 4:5-94 through 106.

Effective Date: August 21, 1989.
Expiration Date: August 21, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

The rules adopted herein as new were proposed as a readoption with amendments. Since these rules expired, pursuant to Executive Order No. 66(1978), on June 18, 1989, they are adopted as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:5.

Full text of the adopted new rules proposed as amendments to the readoption follows.

2:5-2.7 Other authorized movement or transfer

(a) The provisions of N.J.A.C. 2:5-2.5 and 2.6 shall not apply to any horse or other equidae which is imported, sold, exchanged, bartered, given away or transported under permit from the Director of the Division of Animal Health, New Jersey Department of Agriculture for purposes of immediate slaughter, research, return of the animal to the state, country or farm of its origin, or other authorized purpose provided written authorization for such movement or transfer is obtained in advance thereof from the Director.

1.-2. (No change.)

3. Horses imported or purchased for slaughter may be purchased only by a registered slaughter buyer. Persons may become registered by application to the Director of the Division of Animal Health on forms available from him or her. Registered slaughter buyers shall maintain and make available to the Division a record of sales including dates, identification of animal and destination. Failure to maintain such records will be cause for removing the registered designation.

(b) (No change.)

2:5-3.1 Poultry importation

(a) No live poultry originating from those designated areas or counties with confirmed cases of Avian Influenza, so designated by the New Jersey Department of Agriculture, United States Department of Agriculture, or other state Departments of Agriculture shall be allowed into New Jersey for any purpose unless inspected by or under a prior permit of the Department of Agriculture.

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

2:5-3.4 Routes: Interstate shipment through New Jersey of live poultry

(a) All trucks carrying live poultry through New Jersey for out-of-State markets must confine themselves to interstate highway system roads. All trucks carrying birds for slaughter in New Jersey must follow routes designated by the Director of the Division of Animal Health for slaughter facilities, as conditions require.

(b)

DIVISION OF RURAL RESOURCES
State Agriculture Development Committee
Readoption: N.J.A.C. 2:76

Proposed: June 19, 1989 at 21 N.J.R. 1601(a).
Adopted: July 31, 1989 by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Filed: July 31, 1989 as R.1989 d.453, **without change.**

Authority: N.J.S.A. 4:1C-5f and 16a.

Effective Date: July 31, 1989.
Expiration Date: July 31, 1994.

Summary of Public Comments and Agency Responses:
No public comment was received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:76.

(c)

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Creation of Farmland Preservation Programs
Adopted Amendment: N.J.A.C. 2:76-3.12

Proposed: May 15, 1989, at 21 N.J.R. 1183(a).
Adopted: July 31, 1989, by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Filed: July 31, 1989, as R.1989 d.451, **without change.**

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

Effective Date: August 21, 1989.
Expiration Date: July 31, 1994.

Summary of Public Comment and Agency Response:

COMMENT: The State Board of Agriculture and the Atlantic County Agriculture Development Board felt that the State Agricultural Development Committee (SADC) should not exercise its right of first refusal on transfers of farmland enrolled in eight-year farmland preservation programs when those transfers occur among family members. The State Board further specified that this should apply when the intent of such transfer was the continued agricultural use of the property.

RESPONSE: The intent of the right of first refusal provisions is to allow the SADC to protect certain farmland from being converted to non-agricultural uses. Farmland being transferred to another family member for continued agricultural use would not appear to be under such threat.

The SADC must, however, be notified of such proposals so it may have the opportunity to act to protect farmland in those instances where the true or eventual intent of the transfer is the conversion of the land out of farm use. The SADC also notes that these right of first refusal provisions are voluntary, as they only apply under enrollment in a voluntary program.

Full text of the adoption follows.

2:76-3.12 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board and the landowner(s) when a farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

1.-14. (No change.)

"15. Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns grant the Committee the first right and option to purchase the premises in fee simple absolute in accordance with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28. Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns, agree to give the Committee at least sixty days notice prior to contracting to sell and/or selling the premises. The notice shall include a copy of the proposed offer indicating the price which the proposed purchaser has agreed to pay for the premises and any other information required by the Committee by regulation. The Committee

may exercise its first right and option to purchase the premises in fee simple absolute by complying with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28.

16.-19. (No change in text.)

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

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Creation of Municipally Approved Farmland Preservation Programs

Adopted Amendment: N.J.A.C. 2:76-4.11

Proposed: May 15, 1989, at 21 N.J.R. 1183(b)

Adopted: July 31, 1989, by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.

Filed: July 31, 1989, as R.1989 d.452, **without change.**

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

Effective Date: August 21, 1989.

Expiration Date: July 31, 1994.

Summary of Public Comment and Agency Response:

COMMENT: The State Board of Agriculture and the Atlantic County Agriculture Development Board felt that the State Agricultural Development Committee (SADC) should not exercise its right of first refusal on transfers of farmland enrolled in eight-year municipally-approved farmland preservation programs when those transfers occur among family members. The State Board further specified that this should apply when the intent of such transfer was the continued agricultural use of the property.

RESPONSE: The intent of the right of first refusal provisions is to allow the SADC to protect certain farmland from being converted to non-agricultural uses. Farmland being transferred to another family member for continued agricultural use would not appear to be under such threat.

The SADC must, however, be notified of such proposals so it may have the opportunity to act to protect farmland in those instances where the true or eventual intent of the transfer is the conversion of the land out of farm use. The SADC also notes that these right of first refusal provisions are voluntary, as they only apply under enrollment in a voluntary program.

Full text of the adoption follows.

2:76-4.11 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board, and the municipal governing body and the landowner(s) when a municipally approved farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

1.-14. (No change.)

"15. Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns grant the Committee the first right and option to purchase the premises in fee simple absolute in accordance with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28. Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns, agree to give the Committee at least sixty days notice prior to contracting to sell and/or selling the premises. The notice shall include a copy of the proposed offer indicating the price which the proposed purchaser has agreed to pay for the premises and any other information required by the Committee by regulation. The Committee may exercise its first right and option to purchase the premises in fee simple absolute by complying with the provisions of N.J.S.A. 4:1C-1 et seq., as amended by P.L. 1989, c.28.

16.-19. (No change in text.)

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

BANKING

(b)

DIVISIONS OF BANKING, SAVINGS AND LOAN

Application Fees

Adopted New Rules: N.J.A.C. 3:1-2.25, 2.26 and 3:6-14.2

Adopted Amendments: N.J.A.C. 3:6-13.3, 13.5; 3:6-14.1; 3:11-5.1 and 11.9

Proposed: June 19, 1989 at 21 N.J.R. 1601(b).

Adopted: July 27, 1989 by Mary Little Parell, Commissioner, Department of Banking.

Filed: July 31, 1989 as R.1989 d.449, **without change.**

Authority: N.J.S.A. 17:9A-333, -334, and 17:12B-226.

Effective Date: August 21, 1989 (Note: As an emergency adoption, these new rules and amendments were effective July 3, 1989.)

Expiration Dates: N.J.A.C. 3:1—January 6, 1991; N.J.A.C. 3:6—March 3, 1991; N.J.A.C. 3:11—May 1, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

The new rules and amendments adopted herein were adopted on an emergency basis effective July 3, 1989 (see 21 N.J.R. 2397(a)).

Full text of the adoption follows.

3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1. For filing an application for charter	$15,000
2. For filing an application for approval of the establishment of a full branch office	$1,500
3. For filing an application for approval of the establishment of a mini-branch office	$1,000
4. For filing an application for approval of the establishment of a communication terminal branch office	$500.00
5. For filing an application for approval of a change in location of principal office or full branch office	$500.00
6. For filing an application for approval of the cost of the establishment of an auxiliary office	$500.00
7. For filing an application for approval of an interchange between principal office and full branch office	$500.00
8. For filing an agreement of merger, per bank	$3,000
9. For filing plans of acquisition, per company, per bank or savings bank	$3,000
10. For filing an application for conversion from a mutual to stock savings bank	$3,500
11. For filing a copy of a plan of reorganization	$1,000
12. For the issuance by the Commissioner of a certificate of authority	$500.00
13. For filing a certificate of amendment of a certificate of incorporation, or an amended certificate of incorporation	$200.00
14. For filing any other certificate	$50.00
15. For filing a required report	$100.00
16. For filing a required affidavit	$50.00
17. For filing proof of publication, or other required proof	$50.00
18. For the issuance of a certified copy of any certificate of incorporation or merger or plan of reorganization or any other certificate or affidavit filed in the Department, plus $2.00 per page	$25.00
19. For filing a pension plan	$500.00
20. For filing an amendment or alteration to a pension plan	$200.00

21. For the issuance of any other approval by the Commissioner, plus per diem charges where applicable . $100.00
22. For the issuance of any extension by the Commissioner, plus per diem charges where applicable $50.00

(b) In addition to the fees in (a), a per diem charge may be assessed when a special investigation of a filing is required.

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

1. Application to establish a mutual association $7,500
2. Application to establish a stock association $15,000
3. Application for a bulk sale, pursuant to N.J.S.A. 17:12B-204 ..... $500.00
4. Application for a conversion $3,500
5. Application for a merger:
i. Per insured association $3,000
ii. Per institution when one or more is an uninsured association $1,500
6. Application to establish a branch office, not pursuant to a merger or bulk purchase $1,500
7. Application to interchange a principal and branch office when such interchange involves two separate municipalities $500.00
8. Application to interchange a principal and branch office within the same municipality $500.00
9. Application to change location of a principal office to another municipality $500.00
10. Application to change location of branch office beyond 1,500 feet but within same municipality $500.00
11. Application to change location of branch office to another municipality $500.00
12. Application to share facilities $100.00
13. Application for approval of a savings and loan holding company where the resulting holding company will own 100 percent of the insured association as its only capital through an exchange of stock $2,000
14. Filing plans of acquisition, stock savings and loan and existing holding companies $3,000
15. Application for change of name $50.00
16. Certification by the Commissioner of papers or records on file with the Department, plus $2.00 per page for each certification $25.00
17. Annual report or certificate $50.00
18. Dissolution $250.00
19. Filing of any other certificate $50.00
20. Issuance of any other approval by the Commissioner, plus a per diem $100.00

(b) In addition to the fees in (a) above, a per diem charge may be assessed when a special investigation of a filing is required.

3:6-13.3 Off-site location

(a) (No change.)

(b) The following items must accompany each application:

1. A filing fee of $500.00 plus an additional $50.00 if one or more other financial institutions will share access to the automated teller machine(s).

2. A certified copy of a resolution of the board of the applying bank authorizing the application.

(c) (No change.)

3:6-13.5 Additional access

(a) (No change.)

(b) A filing fee of $50.00 shall accompany each such notice regardless of the number of institutions or networks added or eliminated.

(c) A fee of $200.00 shall accompany each request to the Commissioner to require an institution to share access to its communication terminal branch office.

3:6-14.1 Biennial fee

The certificate of authority or certificate of renewal of a certificate of authority for a foreign bank shall run from the date of issuance to the end of the biennial period. When the initial certificate is issued in the second year of the biennial certificate period, the certificate fee shall be an amount equal to one half of the fee for the biennial certificate period. The first biennial period shall commence as of April 1, 1983. Certificates issued during the period April 1, 1982 to April 1, 1983 will bear a fee equal to one half of the $800 biennial fee. For the biennial period commencing April 1, 1991, the biennial fee will be $1,000. Certificates issued during the period April 1, 1990 to April 1, 1991 will bear a fee equal to one half of the $1,000 biennial fee.

3:6-14.2 Miscellaneous fees

(a) A foreign bank shall pay to the Commissioner the following fees:

1. For filing a copy of its certificate of incorporation, or an amendment or change to the certificate $50.00
2. For filing a statement of its financial condition $50.00
3. For filing a power of attorney $25.00
4. For each substitution of securities, pursuant to N.J.S.A. 17:9A-320B $50.00

3:11-5.1 Operational subsidiaries

(a) With the prior approval of the Commissioner of Banking, a bank may engage in activities, which are a part of the business of banking or incidental thereto, by means of an operating subsidiary corporation. In order to qualify an an operating authority hereunder, at least 80 percent of the voting stock of the subsidiary must be owned by the bank. An application to conduct business as an operating subsidiary shall be accompanied by a $100.00 application fee. In addition, the Department shall impose a per diem charge, as required.

(b)-(h) (No change.)

3:11-11.9 Approval procedures for other investments

(a) A bank which seeks to make an investment or engage in any activity requiring the specific approval of the Commissioner shall submit a written application, accompanied by a $100.00 application fee. In addition, the Department shall impose a per diem charge, as required. Within 30 days of the filing of such application, the Commissioner shall notify the applicant in writing either that all information required by this section has been filed or that additional specified information must be filed. The Commissioner shall, within 60 days of the date of written notice that all required information has been filed, endorse thereon his approval or disapproval.

(b) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Adopted Amendment: N.J.A.C. 5:23-4.3

Proposed: August 1, 1988 at 20 N.J.R. 1764(a).
Adopted: July 17, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.
Filed: July 21, 1989 as R.1989 d.435, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: August 21, 1989.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Various comments were received regarding the proposed amendments on the subject of Departmental intervention. Some of those commenting construed the proposed amendments as being unfair to inspectors or beyond the Department's statutory authority. The Department's position remained that the proposed rules would only serve to implement P.L. 1985, c.21. In the interim, however, the Appellate Division issued its decision in the case entitled *In re: Department of Community Affairs Order of March 15, 1988 regarding Burlington County Recycling Facility,* A-4622-87T5, and upheld the power of the Department to take action

under P.L. 1985, c.21 even in the absence of implementing regulations. The Department is therefore proceeding with the deletion of the rule provisions in subsection (f) that were superseded by the statutory amendment, but withdrawing the proposed substitute language on Departmental intervention in subsection (f) and proposing, in lieu thereof, new language that incorporates certain recommendations made by persons who submitted comments (see notice of proposal published elsewhere in this issue of the New Jersey Register).

Inasmuch as the proposed repeal of subsection (e) entitled "interim procedures" elicited no objection, the Department is adopting that portion of the proposal that repeals that subsection and renumbers those that follow.

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

5:23-4.3 Municipal enforcing agencies—establishment

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

Redesignate (f) as (e) (No change in text.)

(f) *[Departmental intervention:]***(Reserved)***

*[1. Whenever the department shall have reasonable cause to believe that a local enforcing agency is not carrying out its functions as intended by the act and regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body having jurisdiction over the local enforcing agency, a notice stating the nature of the alleged failure of the local enforcing agency to perform, the implications of such failure, and a statement setting forth the corrective action required to be taken by the local enforcing agency or, in the case of a local enforcing agency which the department finds to have repeatedly or habitually failed to enforce the provisions of the State Uniform Construction Code Act, ordering the dissolution of the local enforcing agency and its replacement by the department.

2. In any case in which it may find it to be in the public interest to do so, the department may supplant or replace a local enforcing agency for a specific project.]*

Redesignate (h) as (g) (No change in text.)

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Notice of Administrative Correction
Substantive Rules
Controls on Affordability
Option to Buy Sales Units
N.J.A.C. 5:92-12.3

Take notice that the New Jersey Council on Affordable Housing has discovered an error in the text of N.J.A.C. 5:92-12.3(b) as adopted in the July 17, 1989 New Jersey Register at 21 N.J.R. 2020(a). In the adopted rule text as filed with the Office of Administrative Law, and as set forth in the last paragraph of the Summary of Agency Initiated Changes upon adoption, the words "and the Council" should be deleted from the subsection. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

5:92-12.3 Option to buy sales units

(a) (No change.)

(b) All restrictive covenants governing low and moderate income units shall require the owner to notify the authority [and the Council] by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first nonexempt sale after controls have been in effect on the housing unit for the period specified in N.J.A.C. 5:92-12.1.

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

EDUCATION

(b)

STATE BOARD OF EDUCATION

Notice of Administrative Correction
Adult Education
Application for Funding
N.J.A.C. 6:30-2.3

Take notice that the Department of Education has discovered an error in the published adopted text of N.J.A.C. 6:30-2.3 published in the July 3, 1989 New Jersey Register at 21 N.J.R. 1826(a).

In N.J.A.C. 6:30-2.3(a), the second phrase of the first sentence should correctly read as it was proposed, "to the Division of Adult Education by July 1 of the pre-budget year." The language was erroneously dropped upon publication of the adoption.

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

6:30-2.3 Application for funding

(a) Eligible agencies entitled to program support shall submit a statement of anticipated funding needs for the succeeding fiscal year **to the Division of Adult Education by July 1 of the pre-budget year.** For the purpose of this section, "agency, institution and organization" shall be referred to as "agency". In this section, the phrase "pre-budget year" shall mean the school year prior to the school year to which a statement of anticipated funding needs, a tentative allocation, an application for funds, or a notification of funding makes reference.

1. (No change.)

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

HEALTH

(c)

HOSPITAL REIMBURSEMENT

Notice of Administrative Correction
Procedural and Methodological Regulations
Reasonable Indirect Patient Care Costs
N.J.A.C. 8:31B-3.24

Take notice that the Department of Health has discovered an error in the text of N.J.A.C. 8:31B-3.24(c)6 as adopted in the July 17, 1989 New Jersey Register at 21 N.J.R. 2058(a). N.J.A.C. 8:31B-3.24(b)5, referred to in the rule, does not exist; the correct reference is to N.J.A.C. 8:31B-3.24(c)5. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

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

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance, malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

1.-5. (No change.)

6. Hospitals that have an overall teaching adjustment factor of 18 percent or greater, or physical plants older than 10 years may appeal for unit costs that reflect a portion of their own base-year costs, provided their base-year unit costs exceeded the peer group mean by

1.0 standard deviation. Specialty hospitals as recognized in accordance with N.J.A.C. 8:31B-3.22(b)5 and 3.24[(b)5] (c)**5** may appeal for unit costs that reflect their own base-year costs. The hospitals making appeals under these options must also demonstrate that they are well utilized as measured by occupancy rates in the base years and subsequent rate years.

7. (No change.)

(d) (No change.)

(a)

HOSPITAL REIMBURSEMENT

Notice of Administrative Correction
Diagnostic Related Groups
DRG Lists
N.J.A.C. 8:31B-5.3

Take notice that the Department of Health has discovered errors in the text of five DRGs listed in N.J.A.C. 8:31B-5.3(c) as adopted in the July 17, 1989 New Jersey Register at 21 N.J.R. 2088(a). In DRGs 185, 186, 253, 254 and 255, the symbols for "greater than" (>) or "less than" (<) were inadvertently omitted, as appropriate, between the word "age" and the actual age number. Such symbols were part of the DRGs as proposed, but were mistakenly not made part of the DRGs as revised upon adoption. In addition, absent the symbols, the DRGs are inconsistent with other DRG age designations. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

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

8:31B-5.3 List of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Groups follows:

...

MAJOR DIAGNOSTIC CATEGORY 03: DISEASES AND DISORDERS OF THE EAR, NOSE, MOUTH, AND THROAT

	OUTLIER TRIM POINT LOW	HIGH
...		
(185) DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE > 17	2	21
(186) DENTAL EXTRACTIONS & RESTORATIONS AGE < 18	2	11

...

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES OF THE MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

	OUTLIER TRIM POINT LOW	HIGH
...		
(253) FX, SPRAIN, STRAIN & DISLOC. OF UPPER ARM, LOWER LEG, EXC FOOT AGE > 17 W CC	2	34
(254) FX, SPRAIN, STRAIN & DISLOC. OF UPPER ARM, LOWER LEG, EXC FOOT AGE > 17 WO CC	2	15
(255) FX, SPRAIN, STRAIN & DISLOC. OF UPPER ARM, LOWER LEG, EXC FOOT AGE > 18	1	11

...

(b)

DIVISION OF HEALTH FACILITIES EVALUATION

Rehabilitation Hospitals
Standards for Licensure
Adopted New Rules: N.J.A.C. 8:43H
Adopted Amendments: N.J.A.C. 8:43B-11.1 and 11.3
Adopted Repeal: N.J.A.C. 8:43B-11.4

Proposed: May 1, 1989 at 21 N.J.R. 1067(a).

Adopted: July 18, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: July 20, 1989 as R.1989 d.432, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: August 21, 1989.

Expiration Date: 8:43B—January 21, 1991.
8:43H—August 21, 1994.

Summary of Public Comments and Agency Responses:

The Department received 10 letters of comment concerning the proposed rules for licensure of rehabilitation hospitals. Letters were submitted by representatives of the New Jersey State Board of Nursing; the New Jersey State Board of Physical Therapy; the New Jersey Pharmaceutical Association; the Community Health Law Project; Automated Pharmaceutical Services; The Robert Wood Johnson Jr. Rehabilitation Institute; Kessler Institute for Rehabilitation, Inc., Manor HealthCare Corporation; Mediplex Rehab; and Our Lady of Lourdes Medical Center.

Of the 10 letters received, the letters from the the Kessler Institute for Rehabilitation and The Robert Wood Johnson Jr. Rehabilitation Institute express support for the proposed rules. The comments from the Kessler Institute for Rehabilitation indicate that the proposed rules "represent months of effective planning by the Department of Health and members of the rehabilitation community" and that the rules are substantially in accordance with recommendations which were made by the Comprehensive Rehabilitation Advisory Committee. The letter from the Kessler Institute for Rehabilitation also indicates that the facility "wholeheartedly supports" the adoption of the proposed rules and looks forward to licensure under the new rules. The commenter from The Robert Wood Johnson Jr. Institute of Rehabilitation indicated that the rules are "comprehensive and complete" and that the Institute "would endorse and encourage strict adherence to and ongoing enforcement of the licensure rules as presented." The Department acknowledges and appreciates the letters of support from Kessler Institute for Rehabilitation and The Robert Wood Johnson Jr. Rehabilitation Institute.

The Department has compiled the comments and recommendations which have been received, responded to each comment, and forwarded a copy of the compilation of comments and responses to each commenter. The compilation is on file at the Office of Administrative Law and at the Standards Program of the Department. Consideration of comments and recommendations received and further review of the proposed rules have led the Department to change the proposed rules both substantively and technically. The technical changes which have been made are intended to render the rules technically more precise and accurate. Where substantive changes have been made, they will not be detrimental to the health and safety of patients.

The following is a summary of the comments submitted and the Departmental responses.

COMMENT: Manor HealthCare Corporation indicated that the "rehabilitation program at Manor Care facilities is not intended to provide the same intensity of services as a rehabilitation hospital nor the all encompassing services listed in 8:33M-1.4 of the Rules."

RESPONSE: The Department agrees with the commenter's remark.

COMMENT: N.J.A.C. 8:43H-1.6 elicited a remark that "dental services should be provided for inpatients by a dentist or oral surgeon who is properly licensed by the New Jersey State Board of Dentistry."

RESPONSE: The proposed rule at N.J.A.C. 8:43H-1.6 was not rewritten, because the category of licensed dentists includes oral surgeons.

COMMENT: Proposed N.J.A.C. 8:43H-1.19 should be expanded to distinguish the difference between a licensed psychologist and a psychologist.

RESPONSE: The rule was not expanded to distinguish between a licensed psychologist and a psychologist as requested by the commenter. When the term "psychologist" is used in the proposed rules, it refers to persons specified in proposed N.J.A.C. 8:43H-1.19, who are licensed psychologists. No rationale for the recommended change was provided by the commenter.

COMMENT: A commenter concurred that a rehabilitation hospital should provide all the services listed in N.J.A.C. 8:43H-3.1(d) on an inpatient basis, but recommended that dental services and pharmaceutical services should not be provided on an outpatient basis by the facility. It was claimed that outpatients would be more appropriately served by private dentists in their offices and by pharmacists in the community.

RESPONSE: The proposed rule was not rewritten. The rule does not prohibit outpatients from receiving services at private dental offices or at community pharmacies. In the interest of continuity of patient care, however, these services must be provided by the facility.

COMMENT: A commenter requested that psychology and vocational services be added to proposed N.J.A.C. 8:43H-3.1(g), which requires that the facility provide each patient with three hours of services per day, including physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and/or audiology services, as specified in N.J.A.C. 8:43H-12.1(b) and (c), and that N.J.A.C. 8:43H-12.1(b) be revised so as to include respiratory therapy, psychology, and vocational services.

RESPONSE: Proposed N.J.A.C. 8:43H-3.1(g) and 8:43H-12.1(b) were written on the recommendation of the Comprehensive Rehabilitation Advisory Committee. The Committee determined that the facility shall provide to each adult patient at least three hours of service per day, five days per week, which shall include physical therapy and shall include at least one of the following: occupational therapy and/or speech-language pathology services. The aforementioned services constitute the core of comprehensive rehabilitation services for adult patients. It was not the intent of the Comprehensive Rehabilitation Advisory Committee to reduce or lessen the intensity of the core of comprehensive rehabilitation services. Psychology and vocational services must also be provided to patients, but these are to be provided in addition to the specified three hours of therapy services. The proposed rule, therefore, was not rewritten.

COMMENT: A letter of comment suggested that a definition of "unit of service" be added to proposed N.J.A.C. 8:43H-3.12(b), which requires that an annual financial report be submitted to the Department.

RESPONSE: The phrase "unit of service" has been deleted. Consequently, a definition is not required. Departmental rules regarding financial reporting do not address units of service. The change, while substantive in nature, will not adversely impact on the health and safety of patients.

COMMENT: One commenter questioned whether or not N.J.A.C. 8:43H-8.1 requires a physician in-house 24 hours per day, seven days a week, or whether or not the rule refers to availability of a physician.

RESPONSE: Proposed N.J.A.C. 8:43H-8.1 refers to the availability of a physician. Each patient, however, must receive medical services as needed.

COMMENT: The New Jersey State Board of Nursing requested that proposed N.J.A.C. 8:43H-9.4(a)3 be revised so as to require that a registered professional nurse assess the nursing needs of each patient, develop nursing diagnoses, and design the patient's plan of nursing care.

RESPONSE: The proposed rule has been rewritten, as requested, to conform with the Nursing Practice Act, N.J.S.A. 45:11-23 et seq., and with N.J.A.C. 13:37-6.2. The Department agrees with the rationale provided by the Board in support of the proposed change. The Board stated, "The plan of nursing care evolves from the nursing assessment performed by the registered professional nurse and may not be delegated to the licensed practical nurse. The licensed practical nurse contributes to the plan of care, assists in implementing the plan of care but is not educationally prepared to develop this plan. It is a violation of the Nursing Practice Act N.J.S.A. 45:11-23 for the licensed practical nurse to be assigned this responsibility and to function in this manner." The revised rule will promote patient care and safety.

COMMENT: The New Jersey Pharmaceutical Association requested clarification of proposed N.J.A.C. 8:43H-10.1, and Automated Pharmaceutical Services objected to the same rule. Both commenters were concerned that the proposed rule would require a facility to have an institutional or "in-house" pharmacy.

RESPONSE: The proposed rule does not mandate that the facility have an in-house institutional pharmacy. The rule allows the facility to provide pharmaceutical services by a written agreement or its equivalent.

COMMENT: The New Jersey Pharmaceutical Association recommended that N.J.A.C. 8:43H-10.4(a)1i be amended to allow for a unit drug dose distribution system with a 24-hour supply of medications.

RESPONSE: The rule was not rewritten. Proposed N.J.A.C. 8:43H-10.4(a)1i does not prohibit the facility from limiting the available supply of medications to a 24-hour supply as requested by the commenter. The rule, rather, allows flexibility within the specified limits. The recommendation, if accepted, would result in an increased economic impact upon facilities.

COMMENT: The New Jersey Pharmaceutical Association requested an explanation of "exempt areas," as stated in proposed N.J.A.C. 8:43H-10.4(a)11, and also requested that the rule be rewritten to "comply with current patient protection regulations."

RESPONSE: N.J.A.C. 8:43H-10.4(a)11 states that exempt areas within the facility are specified by the facility. Although the Department recognizes the important advantages which the pharmacy-based intravenous admixture service offers, it similarly recognizes the necessity of permitting the immediate preparation of intravenous infusion solutions in certain patient care areas. The commenter has not provided the Department with specific patient protection regulations with which to make the proposed rules comply.

COMMENT: With respect to proposed N.J.A.C. 8:43H-12.1(b), one commenter concurred with the requirement "that each adult patient receive at least three hours of therapy per day, five days per week, which shall include physical therapy and at least one of the following: occupational therapy and/or speech-language pathology services."

RESPONSE: The proposed rule was based on the recommendation of the Comprehensive Rehabilitation Advisory Committee.

COMMENT: There was a comment in reference to N.J.A.C. 8:43H-12.2(a) suggesting that it would be appropriate to have a combined speech-language pathology and audiology department under the direction of either a speech-language pathologist or an audiologist.

RESPONSE: The rule was not rewritten. If a person meets the qualifications for an audiologist and a speech-language pathologist, then the person may direct the two services or a combined department of audiology and speech-language pathology.

COMMENT: A recommendation was received from the New Jersey State Board of Physical Therapy to change proposed N.J.A.C. 8:43H-12.3(b) so as to specify that driver evaluation services could be provided by physical therapists, nurses, or occupational therapists.

RESPONSE: The proposed rule has been deleted. Driver evaluation services may be provided by persons who are appropriately qualified by education, training, and/or licensing or certification, as specified in N.J.A.C. 8:43H-3.4(a) and (b). It is not necessary for the rule to list the specific classes of professionals who may perform the driver evaluation services. Patient care and safety will not be jeopardized by the deletion of this rule.

COMMENT: One commenter requested that in order "to be consistent with our comments in section 8:43H-1.19, we recommend that the facility appoint a licensed psychologist who shall be responsible for the direction, provision and quality of psychology services."

RESPONSE: The rule was not rewritten. Proposed N.J.A.C. 8:43H-13.2(a), together with N.J.A.C. 8:43H-1.19, requires the director of the psychology service to be licensed as a psychologist.

COMMENT: The Department received a recommendation from the Community Health Law Project in reference to the Legal Assistance for Medicare Patients (LAMP) program. The commenter requested the inclusion, at proposed N.J.A.C. 8:43H-17.2, of the name, addresses and telephone numbers of the offices where information on Medicare coverage may be obtained.

RESPONSE: Proposed rule N.J.A.C. 8:43H-17.2(b) has been rewritten as requested by the commenter. The addition to the proposed rule was made in order to comply with legislation which is found in N.J.S.A. 30:4H-1 et seq., and with N.J.A.C. 10:13, governing the program for Legal Assistance for Medicare Patients (LAMP).

In addition to the changes which were made as a result of comments received, technical changes have been made at the following citations: N.J.A.C. 8:43H-1.3, 1.5, 1.19, 1.24, 2.1(b), 3.8(a), 3.10(a), 7.1(a)3iv, 10.4(a)1iii, 10.5, 10.6(a), and 17.2(a)7.

Changes have also been made at N.J.A.C. 8:43H-1.5 and 1.24, to delete references to the Audiology and Speech-Language Pathology Advisory Committee as a licensing entity. It is the Division of Consumer Affairs, and not this Committee, which grants licensure to audiologists and speech-language pathologists.

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

8:43B-11.1 General provisions

(a) This subchapter shall be applicable to all groups, organizations or individuals seeking a license to operate a special hospital, excluding rehabilitation hospitals as defined in N.J.A.C. 8:43H. The general hospital application form of the department shall be utilized to secure basic information from all new applicants.

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

8:43B-11.3 Conditions

(a) Special hospitals, excluding rehabilitation hospitals as defined in N.J.A.C. 8:43H, shall conform to applicable administrative, professional, paramedical, ancillary and institutional service requirements set forth in State regulations for general hospitals.

(b)-(m) (No change.)

8:43B-11.4 (Reserved)

Full text of the proposed new rules follows:

CHAPTER 43H
MANUAL OF STANDARDS FOR LICENSURE OF REHABILITATION HOSPITALS

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43H-1.1 Scope

The rules in this chapter pertain to all facilities which provide comprehensive rehabilitation services, including hospitals which provide these services as a separate service. These rules constitute the basis for the licensure of rehabilitation hospitals by the New Jersey State Department of Health.

8:43H-1.2 Purpose

Rehabilitation hospitals provide integrated care to disabled individuals in order to assist these individuals in reaching the functional levels of which they are capable as well as to protect their health and safety. The aim of this chapter is to establish minimum rules to which a rehabilitation hospital must adhere in order to obtain a license to operate in New Jersey.

8:43H-1.3 Definitions

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

"Activities of daily living (ADL)" means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least: mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

"Adult patient" means a patient who is 20 years of age or older.

"Ancillary nursing personnel" means unlicensed workers employed to assist licensed nursing personnel.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bylaws" means a set of rules adopted by the facility for governing its operation. A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.

"Care plan" means a written plan of care for each patient, developed by each health care practitioner participating in the patient's care.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" means a written, signed, and dated notation made by each health care professional who renders a service to the patient.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970 (N.J.S.A. 24:21-1 et seq.).

"Current" means up-to-date, extending to the present time.

"Department" means the New Jersey State Department of Health.

"Discharge plan" means a written plan initiated at the time of the patient's admission, which includes at least an evaluation of the patient's needs, the development of goals for discharge, and referrals to community agencies and resources for services following discharge.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

"Documented" means written, signed, and dated.

"Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. The word "medication" is used interchangeably with the word "drug" in this chapter.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures.

"Drug dispensing" means a procedure entailing the interpretation of the original or direct copy of the prescriber's order for a drug and, pursuant to that order, the proper selection, measuring, labeling, packaging, and issuance of the drug to a patient or a service or unit of the facility, in conformance with all applicable Federal, State, and local rules and regulations.

"Environmental modification services" means a process of evaluation and/or adaptation of a patient's living environment as may be needed to permit maximum independent functioning.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, and derived from a common or propagated source.

"Family" means person***s*** related by blood, marriage, or commitment.

"Full-time" means relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

"Hospital" means a health care facility as defined in N.J.A.C. 8:43B.

"Intravenous infusion admixture service" means the preparation by pharmacy personnel of intravenous infusion solutions requiring compounding and/or reconstitution.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Medical record" means all records in the facility which pertain to the patient, including radiological films.

"Monitor" means to observe, watch, or check.

"Multidisciplinary team" means those persons representing different services, who work together to provide an integrated program of care to the patient.

"Nosocomial infection" means an infection acquired by a patient while in the facility.

"Nursing unit" means a continuous area on one floor, which includes rooms for patients.

"Patient treatment plan" means a written plan of patient care which is based upon the patient assessments by the multidisciplinary team and care plans of all services participating in the patient's care.

"Pediatric patient" means a patient who is under 20 years of age.

"Prescriber" means a person who is authorized to write prescriptions in accordance with Federal and State laws.

"Progress note" means a written, signed, and dated notation summarizing information about health care provided and the patient's response to it.

"Rehabilitation hospital" means a facility licensed by the New Jersey State Department of Health to provide comprehensive rehabilitation services to patients for the alleviation or amelioration of the disabling effects of illness. Comprehensive rehabilitation services are characterized by the coordinated delivery of multidisciplinary care intended to achieve the goal of maximizing the self-sufficiency of the patient. A rehabilitation hospital is a facility licensed to provide only comprehensive rehabilitation services or is a distinct unit providing only comprehensive rehabilitation services located in a licensed health care facility.

"Restraint" means a physical device or chemical (drug) used to limit, restrict, or control patient movements.

"Self-administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself.

"Sexual counseling services" means individual, family and/or group counseling regarding the individual patient and the effect of the specific disability on sexual function.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand.

"Staff education plan" means a written plan developed at least annually and implemented throughout the year which describes a coordinated program for staff education for each service, including inservice programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises within view of the supervisor.

"Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), and strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.

8:43H-1.4 Qualifications of the administrator of the rehabilitation hospital

The administrator shall have a baccalaureate degree in administration or in a health care discipline and four years of administrative or supervisory experience in a health care facility.

8:43H-1.5 Qualifications of audiologists

Each audiologist shall be so licensed by the *[Audiology and Speech-Language Pathology Advisory Committee of the]* Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

8:43H-1.6 Qualifications of dentists

Each dentist shall be so licensed by the New Jersey State Board of Dentistry.

8:43H-1.7 Qualifications of dietitians

Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration.

8:43H-1.8 Qualifications of the director of nursing services

The director of nursing services shall be a registered professional nurse who has completed a baccalaureate degree program accredited by the National League for Nursing and shall have at least two years of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a health care facility.

8:43H-1.9 Qualifications of food service supervisors

(a) Each food service supervisor shall:

1. Be a dietitian; or

2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association; or

3. Be a graduate of a course, approved by the New Jersey State Department of Education, providing 90 or more hours of classroom instruction in food service supervision, and have one year of full-time, or full-time equivalent, experience as a food service supervisor in a health care facility, with consultation from a dietitian; or

4. Have training and experience in food service supervision and management in a military service equivalent to the programs listed in (a)2 or 3 above.

8:43H-1.10 Qualifications of licensed practical nurses

Each licensed practical nurse shall be so licensed by the New Jersey State Board of Nursing.

8:43H-1.11 Qualifications of the medical director

The medical director shall be a physiatrist who is certified by the American Board of Physical Medicine and Rehabilitation, Inc., or the American Osteopathic Board of Rehabilitation Medicine. If the facility provides services to pediatric patients only, the medical director may be a pediatrician who is certified by the American Board of Pediatrics, Inc., or the American Osteopathic Board of Pediatrics.

8:43H-1.12 Qualifications of medical record practitioners

(a) Each medical record practitioner shall:

1. Be eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Medical Record Association; or

2. Be a graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Medical Record Association.

8:43H-1.13 Qualifications of occupational therapists

Each occupational therapist shall be certified or eligible for certification as an occupational therapist, registered (OTR) by the American Occupational Therapy Association.

8:43H-1.14 Qualifications of pediatricians

Each pediatrician shall be a physician who is certified or eligible for certification by the American Board of Pediatrics, Inc., or the American Osteopathic Board of Pediatrics.

8:43H-1.15 Qualifications of pharmacists

Each pharmacist shall be so registered by the New Jersey State Board of Pharmacy.

8:43H-1.16 Qualifications of physiatrists

Each physiatrist shall be a physician who is certified or eligible for certification by the American Board of Physical Medicine and Rehabilitation, Inc., or the American Osteopathic Board of Rehabilitation Medicine.

8:43H-1.17 Qualifications of physical therapists

Each physical therapist shall be so licensed by the New Jersey State Board of Physical Therapy Examiners.

8:43H-1.18 Qualifications of physicians

Each physician shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

8:43H-1.19 Qualifications of psychologists

Each psychologist shall be so licensed by the New Jersey ***State*** Board of Psychological Examiners.

8:43H-1.20 Qualifications of recreational therapists

(a) Each recreational therapist shall:

1. Have a bachelor's degree from an accredited college with a major in recreation or therapeutic recreation; or

2. Have a bachelor's degree with a major in psychology, sociology, physical education, music, dance or drama including 18 semester hours of recreation or therapeutic recreation course content, and five years of full-time, or full-time equivalent, experience in therapeutic recreation.

8:43H-1.21 Qualifications of registered professional nurses

Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

8:43H-1.22 Qualifications of respiratory therapists

Each respiratory therapist shall be certified or eligible for certification by the National Board for Respiratory Care.

8:43H-1.23 Qualifications of social workers

(a) Each social worker shall:

1. Have a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

2. Have a baccalaureate degree in social work from a social work program accredited by the Council on Social Work Education.

8:43H-1.24 Qualifications of speech-language pathologists

Each speech-language pathologist shall be so licensed by the *[Audiology and Speech-Language Pathology Advisory Committee of the]* Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43H-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and
Resources *[Department]* ***Development***
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:43H-2.2 Application for licensure

(a) Following receipt of a Certificate of Need as a rehabilitation hospital, any person, organization, or corporation desiring to operate a rehabilitation hospital shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625

(b) The Department shall charge a nonrefundable fee of $500.00 for the filing of an application for licensure as a rehabilitation hospital and $500.00 for the annual renewal of the license. If comprehensive rehabilitation services are offered by a licensed health care facility as a separate service, the health care facility shall be charged $150.00 for the filing of an application for licensure of the service and $150.00 for the annual renewal.

(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

8:43H-2.3 Newly constructed or expanded facilities

(a) The application for license for a newly constructed or expanded facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625

(b) An on-site inspection of the construction of the physical plant shall be made by representatives of the Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

(c) Any rehabilitation hospital with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:43H-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43H-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this chapter; and

5. Professional personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not

be limited to, the review of all facility documents and patient records and conferences with patients.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:43H-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met.

8:43H-2.6 Surrender of license

The facility shall notify each patient, the patient's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:43H-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:43H-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of this section shall apply to facilities with a temporary license and facilities with a full license.

8:43H-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:43H-3.1 Services provided

(a) The facility shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients in accordance with the rules in this chapter.

(b) The facility shall provide, at a minimum, audiology, dental, dietary, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing services directly in the facility.

(c) Driver training services shall be provided.

(d) Audiology, dental, driver evaluation, driver training, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing services shall be provided on an inpatient basis and on an outpatient basis.

(e) If a health care facility licensed by the Department provides comprehensive rehabilitation services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the rules for licensure of facilities providing the other health care services.

(f) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

(g) The facility shall provide a minimum of three hours of services per patient per day, which shall include physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and/or audiology services, as specified in N.J.A.C. 8:43H-12.1(b) and (c).

8:43H-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:43H-3.3 Submission and availability of documents

(a) The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing, Certification and Standards Program of the Department.

8:43H-3.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies, and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) The facility shall maintain written staffing schedules. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. Staffing schedules shall be im-

plemented to ensure continuity of care and the provision of services consistent with the rehabilitation goals specified in the patient treatment plan.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training.

1. All personnel shall receive orientation at the time of employment and continuing in-service education regarding emergency plans and procedures, and the infection prevention and control services.

(e) At least one person trained in cardiopulmonary resuscitation in an approved course, as defined in the facility's policy and procedure manual, shall be in all patient areas when patients are present.

8:43H-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's philosophy and objectives, and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the facility.

3. A description of the quality assurance program for patient care and staff performance;

4. Specification of business hours and visiting hours;

5. Policies and procedures for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.,[1] including, but not limited to, the following:

i. The designation of a staff member(s) to be responsible for coordinating the report of diagnosed and/or suspected cases of child abuse and/or neglect, recording the notification to the Division of Youth and Family Services on the medical record, and serving as a liaison between the facility and the Division of the Youth and Family Services;

ii. The development of written protocols for the identification and treatment of abused and/or neglected children; and

iii. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis;

6. Policies and procedures for the maintenance of confidential personnel records for each employee, including, at a minimum, the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance; and

7. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and persons providing direct patient care services through contractual arrangements or written agreements. Such policies and procedures shall ensure that;

i. Each employee who cannot document the result of a previous rubella screening test shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test approved by the Department. Each new employee who cannot document the result of a previous rubella screening test shall be given the rubella screening test upon employment. An employee who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine shall not be required to have a rubella screening test;

(1) Each employee tested shall be informed in writing by the facility of the results of his or her rubella screening test;

(2) Each employee's personnel record shall contain documentation of all tests performed and the results; and

(3) A list shall be maintained of all employees who are seronegative and unvaccinated, to be used in the event that an employee is exposed to rubella and a determination is needed as to whether or not the employee may continue to work.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

[1]Copies of the law can be obtained from the local district office of the Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, New Jersey State Department of Human Services, CN 717, Trenton, New Jersey 08625.

8:43H-3.6 Patient transportation

The facility shall develop and implement methods of patient transportation for services provided outside the facility, including emergency services, which includes plans for security and accountability for the patient and his or her personal possessions.

8:43H-3.7 Written agreements

The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered, and require that services be provided in accordance with the rules in this chapter.

8:43H-3.8 Reportable events

(a) The facility shall notify the Department immediately by telephone *[(609-292-4304)]* ***at 609-588-7725 (609-392-2020 after business hours)***, followed within 72 hours by written confirmation, of the following:

1. Interruption or cessation of services listed in the rules in this chapter;

2. Termination of employment of the administrator, and the name and qualifications of the administrator's replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to patients and/or personnel, disruption of services, and extent of damages; and

5. All alleged or suspected crimes committed by or against patients, which shall also be reported at the time of occurrence to the local police department in accordance with Federal laws regarding confidentiality.

8:43H-3.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility between 8:00 A.M. and 8:00 P.M. daily to patients and the public:

1. All waivers granted by the Department;

2. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding patient rights;

4. Visiting hours (including at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily) and business hours of the facility, including the policies of the facility regarding limitations and activities during these times; and

5. The names and addresses of the members of the governing authority.

8:43H-3.10 Information reportable to State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2*[;]**,* the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing on forms provided by the Department, within 30 days of the proceeding or action, request, settlement, judgment or award. (Submit forms to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. Questions may be directed to the Board office at (609) 292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction

or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board; and

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s), and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgment, or award; and

vi. Other information relating to the settlement, judgment, or arbitration award as may be required by the Board.

8:43H-3.11 Maintenance of records

(a) The following records shall be maintained by the facility:

1. A chronological listing of patients admitted and discharged, including the destination of patients who are discharged; and

2. Statistical data as required by the Department.

8:43H-3.12 Financial reports

(a) Upon development of a uniform cost reporting system approved by the Health Care Administration Board, the facility shall adopt and maintain the uniform system of cost reporting from which reports will be prepared to meet the requirements of the Commissioner as stated in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(b) An annual financial report shall be submitted to the Department and shall include a statement of income and expenditure *[by unit of service]*.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:43H-4.1 Responsibility of the governing authority

(a) The facility shall have a governing authority which shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;

2. Provision of a safe physical plant equipped and staffed to maintain the facility and services;

3. Adoption and documented review of written bylaws, or their equivalent, according to a schedule established by the governing authority;

4. Appointment, reappointment, assignment of privileges, and curtailment of privileges of health care professionals, and written confirmation of such actions;

5. Development and documented review of all policies and procedures, according to a schedule established by the governing authority;

6. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within the facility. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;

7. Determination of the frequency of meetings of the governing authority and its committees, or their equivalents, conducting such meetings, and documenting them through minutes;

8. Delineation of the duties of the officers of any committees, or their equivalent, of the governing authority. When the governing authority establishes committees or their equivalents, their purpose, structure, responsibilities, and authority, and the relationship of the committee or its equivalent to other entities within the facility shall be documented;

9. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents; and

10. Approval of the medical staff bylaws or their equivalent.

SUBCHAPTER 5. ADMINISTRATION

8:43H-5.1 Appointment of administrator

The governing authority shall appoint a full-time administrator who shall be available on the premises of the facility at all times. An alternate shall be designated in writing to act in the absence of the administrator.

8:43H-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;

2. Planning for, and the administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Participating in the quality assurance program for patient care and staff performance;

4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

5. Ensuring the provision of staff orientation and staff education; and

6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families.

SUBCHAPTER 6. PATIENT CARE POLICIES

8:43H-6.1 Policies and procedures

(a) Written patient care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures for the following:

1. Patient rights;

2. The determination of staffing levels on the basis of patient need;

3. The referral of patients to other health care providers and medical consultative services. Medical consultative services shall include, at a minimum, the following: surgery, internal medicine, neurology, neurosurgery, ophthalmology, orthopedic surgery, otorhinolaryngology, pediatrics, plastic surgery, psychiatry, pulmonary medicine, and urology;

4. The provision of sexual counseling services directly in the facility, in accordance with the patient treatment plan;

5. The provision of environmental modification services in the patient's living environment, in accordance with the patient treatment plan;

6. Emergency care of patients, in accordance with the rules in this chapter; care of patients during an episode of communicable disease; and care of patients with tuberculosis which is not communicable following initiation of chemotherapy, or is nonpulmonary and therefore not transmissible;

7. Obtaining written informed consent;

8. Patient instruction and health education, including the provision of printed and/or written instructions and information for patients, with multilingual instructions as indicated;

9. Admission of patients;

10. An interview with the patient and his or her family, conducted by the administrator or his or her designee, prior to or at the time

of the patient's admission. The interview shall include, at a minimum, orientation of the patient to the facility's policies, business hours, fee schedule, services provided, patient rights, and criteria for admission, treatment, and discharge. A summary of the interview shall be documented in the patient's medical record;

11. Restrictions to the admission and retention of patients, to ensure that:

i. A patient who manifests such a degree of behavioral disorder that he or she is a danger to himself or herself or others, or whose behavior interferes with the health or safety of other patients, shall not be admitted or retained;

ii. A patient suffering from substance abuse or misuse only shall not be admitted to or retained in the facility; and

iii. If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or his or her family shall be given the reason for such denial in writing, signed by the administrator, within 15 days;

12. Verbal and telephone orders, to ensure that they are written into the patient's medical record by the person accepting them and countersigned by the prescriber within 24 hours. Verbal and telephone orders shall be limited to emergency situations, as defined in the facility's policies and procedures;

13. Financial arrangements, to ensure that the facility:

i. Informs patients of the fees for services (where a fee is charged);

ii. Maintains a written record of all financial arrangements with the patient and/or his or her family, with copies furnished to the patient;

iii. Assesses no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

(1) Upon written approval and authority of the patient and/or his or her family, who shall be given a copy of the written approval;

(2) Upon written orders of the patient's physician, stipulating specific services and supplies not included in the admission agreement;

(3) Upon 15 days' prior written notice to the patient and/or his or her family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or

(4) In the event of a health emergency involving the patient and requiring immediate, special services or supplies to be furnished during the period of the emergency;

iv. Describes for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance; and

v. Describes sliding fee scales and any special payment plans established by the facility;

14. Interpretation services, if the patient population is non-English-speaking or for patients who are blind or deaf;

15. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and 26:3D-7 et seq.;

16. Notification of the patient's family in the event that the patient sustains an injury, or an accident or incident occurs, immediately after the occurrence. Immediately following such notification, the notification shall be documented in the patient's medical record;

17. The use of restraints, including, as a minimum:

i. Specification of the uses of restraints and types of restraints permitted, specification of the frequency with which a patient placed in restraint shall be monitored and of the personnel responsible for monitoring the patient, and specification of the required documentation;

ii. Prohibition of the use of locked restraints and confinement of a patient in a locked or barricaded room, and prohibition of the use of restraints for punishment or for the convenience of facility personnel;

iii. Specification that restraints be used so as not to cause physical injury or discomfort to the patient and only when authorized for a specified period of time. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each one-hour period in which a physical restraint is employed, to ensure opportunity for elimination of body wastes, good body alignment, circulation, and change of position; and

iv. A requirement that a physical restraint be used only when authorized in writing by a physician except when necessitated by an emergency, in which case it shall be approved by the medical director, or the director of nursing services or his or her designee;

18. Discharge, transfer and readmission of patients, including criteria for each;

i. Written notification by the administrator shall be provided to a patient of a decision to involuntarily discharge him or her from the facility. The notice shall include the reason for discharge and the patient's right to appeal. A copy of the notice shall be entered in the patient's medical record;

ii. The patient shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the patient's medical record with the disposition or resolution of the appeal;

19. The care and control of pets if the facility permits pets in the facility or on its premises;

20. The calibration of instruments of measurement, including the frequency of calibration; and

21. Care of deceased patients, including, but not limited to, the following:

i. Pronouncement of death. The patient's family shall be notified at the time of death. The deceased shall not be discharged from the facility until pronounced dead and the death documented in the patient's medical record;

ii. Removal of the deceased from rooms occupied by other patients; and

iii. Transportation of the deceased in the facility, and removal from the facility, in a dignified manner.

SUBCHAPTER 7. PATIENT ASSESSMENTS, CARE PLANS, AND TREATMENT PLAN

8:43H-7.1 Patient treatment plans

(a) Each patient shall have a written patient treatment plan, developed under the direction of a physician, which is based upon assessments of his or her needs by the multidisciplinary team.

1. The physician responsible for providing care to the patient shall document in the patient's medical record an admission and medical history and a report of physical examination within 24 hours of admission, the plan of care, and progress notes and shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

2. A written plan of care shall be developed by the health care practitioners participating in the patient's care. The care plan shall include, but not be limited to: care to be provided based upon the patient assessment, an evaluation of the patient's potential for improving his or her functional level, goals consistent with the patient's potential for rehabilitation, and the patient's discharge plan. If the patient does not need a service, a care plan is not needed for that service.

3. The patient treatment plan shall be developed from the assessments by the multidisciplinary team and initiated upon the patient's admission. The patient treatment plan shall include, but not be limited to, the following:

i. Orders for treatment or services, medications, and diet;

ii. The patient's rehabilitation goals for himself or herself;

iii. The specific rehabilitation goals of treatment or services;

iv. The time intervals, which shall not exceed 14 days*[;]**,* at which the patient's response to treatment or services will be reviewed;

v. Anticipated time frame(s) for the accomplishment of the rehabilitation goals;

vi. The measures to be used to assess the effects of treatment or services.

(b) The patient and, if indicated, family members shall participate in the development of the patient treatment plan including the discharge plan. Participation shall be documented in the patient's medical record.

1. If, in the opinion of a physician, the patient's participation in the development of the patient treatment plan is medically contraindicated, as documented in the patient's medical record, a designated member of the multidisciplinary team shall review the treatment plan

with the patient prior to implementation, and the family shall be informed of the treatment plan.

8:43H-7.2 Implementation of plans

(a) Each health care practitioner participating in the patient's care shall provide services in accordance with the care plan and patient treatment plan.

(b) Each health care practitioner providing services to the patient shall establish criteria to measure the effectiveness and outcome of services provided and shall assess and reassess the patient to determine if services provided meet the established criteria. Assessment and reassessment shall be documented in the patient medical record.

(c) Each health care practitioner providing services to the patient shall participate as a member of the multidisciplinary team in developing, implementing, reviewing and revising the patient treatment plan.

1. The multidisciplinary team shall review and revise the patient treatment plan based upon the patient's response to the care provided by each of the participating services. Documentation in the patient's medical record shall indicate review and revision of the patient treatment plan.

SUBCHAPTER 8. MEDICAL SERVICES

8:43H-8.1 Provision of medical services

Medical services shall be provided to all patients 24 hours a day, seven days a week, directly in the facility.

8:43H-8.2 Appointment of medical director

A full-time medical director shall be appointed. Comprehensive rehabilitation services shall be provided under the direction of the medical director. The medical director shall designate in writing a physician to act in his or her absence.

8:43H-8.3 Medical director's responsibilities

(a) The medical director shall be responsible for the direction, provision, and quality of medical services provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the medical service;

2. Participating in planning and budgeting for the medical service;

3. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for the medical staff, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Developing, implementing, and reviewing written medical policies, including medical staff bylaws or their equivalent, in cooperation with the medical staff, including, but not limited to, the following:

i. A plan for medical staff meetings and their documentation through minutes;

ii. A mechanism for establishing and implementing procedures relating to credentials review, delineation of qualifications, medical staff appointments and reappointments, evaluation of medical care, and the granting, denial, curtailment, suspension, or revocation of medical staff privileges; and

iii. A system for completion of entries in the patient medical record by members of the medical staff. Entries shall be signed by a physician in accordance with the facility's policies and procedures.

8:43H-8.4 Responsibilities of physicians

The physician responsible for providing care to the patient shall document in the patient's medical record an admission and medical history and a report of physical examination within 24 hours of admission, the care plan, and progress notes and shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

8:43H-8.5 Availability of pediatrician

If the facility provides care for pediatric patients, a pediatrician shall be available.

8:43H-8.6 Availability of physiatrist

If the medical director of a facility providing services to pediatric patients is a pediatrician, a full-time physiatrist shall be available.

SUBCHAPTER 9. NURSING SERVICES

8:43H-9.1 Provision of nursing services

(a) The facility shall provide nursing services to patients 24 hours a day, seven days a week, directly in the facility.

(b) At least one registered professional nurse and one licensed nurse, excluding the director of nursing services or his or her designee, shall be assigned to each nursing unit 24 hours a day, seven days a week. Additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

(c) A registered professional nurse who has completed a baccalaureate degree program accredited by the National League for Nursing and who is certified by the Association of Rehabilitation Nurses shall provide staff orientation and staff education to nursing personnel.

8:43H-9.2 Appointment of director of nursing services

A registered professional nurse shall be appointed in writing as the director of nursing services and shall be on duty at all times. A registered professional nurse shall be designated in writing to act in the director's absence.

8:43H-9.3 Responsibilities of director of nursing services

(a) The director of nursing services shall be responsible for the direction, provision, and quality of nursing service provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, philosophy, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;

2. Participating in planning and budgeting for the nursing service;

3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for nursing and ancillary nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Ensuring that nursing services are provided to the patient as specified in the nursing care plan, which shall be initiated upon the patient's admission, and that nursing personnel are assigned to patients in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need; and

6. Providing for a planned orientation program in rehabilitation nursing concepts.

8:43H-9.4 Responsibilities of licensed nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., as interpreted by the New Jersey State Board of Nursing, and written job descriptions, licensed nursing personnel shall be responsible for providing nursing care, including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;

2. Care toward prevention of infection, accident, and injury;

3. Assessing the nursing care needs of the patient, preparing the nursing care plan based upon the assessment, providing nursing care services as specified in the nursing care plan, reassessing the patient's response to services provided, and revising the nursing care plan. *[The initial assessment shall be performed by a registered professional nurse.]* Each of these activities shall be documented in the patient's medical record*. **A registered professional nurse shall assess the nursing needs of each patient, develop nursing diagnoses, and design the patient's plan of nursing care***;

4. Teaching, supervising, and counseling the patient, family and staff regarding nursing care and the patient's needs. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel;

5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;
6. Writing clinical notes and progress notes; and
7. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

8:43H-9.5 Nursing care services related to pharmaceutical services

(a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All drugs administered are prescribed in writing and the order signed and dated by the prescriber. Drugs shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:

i. Registered professional nurses;

ii. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;

iii. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and

iv. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member;

2. Drugs are not prepoured. Drugs shall be administered promptly after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;

3. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;

4. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the nurse who administered the drug;

5. All drugs are kept in locked storage areas, except intravenous infusion solutions which shall be stored according to a system of accountability, as specified in the facility's policies and procedures. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements;

6. Needles and syringes are procured, stored, used, and disposed of in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and

7. Drugs are stored and verified according to the following:

i. Drugs in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs (except that drugs in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled drugs);

ii. The keys for the storage compartments for drugs in Schedules II, III, and IV shall be kept on a person who meets the criteria listed in (a)1i through iv above; and

iii. Except in a unit dose drug distribution system, a declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be made at the termination of each tour of duty wherever these drugs are maintained. This record shall be signed by both the outgoing and incoming nurses who shall meet the criteria listed in (a)1i through iv above. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse who administered the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse who witnessed the destruction or wasting of the drug (when appropriate).

SUBCHAPTER 10. PHARMACEUTICAL SERVICES

8:43H-10.1 Provision of pharmaceutical services

Pharmaceutical services shall be provided to patients 24 hours a day, seven days a week, directly in the facility. If the facility has an institutional pharmacy, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department in accordance with the Controlled Dangerous Substances Acts.

8:43H-10.2 Appointment of pharmacist

(a) A pharmacist shall be appointed and shall be responsible for the direction, provision, and quality of the pharmaceutical services. The pharmacist shall be responsible for, but not limited to, the following:

1. Together with the Pharmacy and Therapeutics Committee, developing and maintaining written objectives, policies, and a procedure manual, an organizational plan, and a quality assurance program for the pharmaceutical service;

2. Participating in planning and budgeting for the pharmaceutical service;

3. Coordinating and integrating the pharmaceutical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for pharmacy personnel, if any, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

6. Maintaining a means of identifying the signatures of all prescribers authorized to use the pharmaceutical service for prescriptions; and

7. Maintaining records of the transactions of the pharmaceutical service, as required by Federal, State, and local laws, to ensure control and accountability of all drugs. This shall include a system of controls and records for the requisitioning and dispensing of pharmaceutical supplies to all services of the facility.

8:43H-10.3 Pharmacy and Therapeutics Committee

(a) A multidisciplinary Pharmacy and Therapeutics Committee shall be appointed by and accountable to the governing authority. The committee shall be responsible for, but not limited to, the following:

1. Development of policies and procedures, approved by the governing authority, and documentation of their review. These policies and procedures shall govern evaluation, selection, obtaining, dispensing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients;

2. Development and at least annual review and approval of a current formulary ("Formulary" means a list of all drugs approved for use in the facility. It may also list drugs which are considered appropriate for treating specific illnesses, or may list substitutions of chemically or therapeutically equivalent drugs for trade name prescription drugs.); and

3. Approval of the minimal pharmaceutical reference materials to be retained at each nursing unit, those to be kept in the pharmacy and made available to at least nursing personnel and the medical staff, and methods for communicating product information to at least nursing personnel and the medical staff.

8:43H-10.4 Policies and procedures for drug administration

(a) The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. Policies and procedures shall include, but not be limited to, the following:

1. Policies and procedures for the implementation of a unit dose drug distribution system;

i. The facility shall have a unit dose drug distribution system. ("Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), and strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.) At least one exchange of patient medications shall occur every three days. The number of doses for each patient shall be sufficient for a maximum of 72 hours. No more than a 72-hour supply of doses shall be delivered to or available in the patient care area at any time;

ii. Cautionary instructions and additional information, such as special times of administration, regarding dispensed medications shall be transmitted to the personnel responsible for the administration of the medications;

iii. If the facility repackages medications in single unit packages*,* the facility's policies and procedures shall indicate how such packages shall be labeled to identify the lot number or reference code and manufacturer's or distributor's name; and

iv. Policies and procedures shall specify the drugs which will not be obtained from manufacturers or distributors in single unit packages and will not be repackaged as single units in the facility;

2. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

3. Policies and procedures, approved by the Pharmacy and Therapeutics Committee in accordance with these rules, regarding emergency kits and emergency carts, including the following:

i. Approval of their locations and contents;

ii. Provision for pediatric doses in areas of the facility where pediatric emergencies may occur;

iii. Determination of the frequency of checking contents, including expiration dates;

iv. Approval of the assignment of responsibility for checking contents; and

v. A requirement that emergency kits are secure but are not kept under lock and key;

4. Policies and procedures, approved by the medical staff of the facility, to ensure that all drugs are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all drugs are administered in accordance with the laws of the State of New Jersey;

5. Policies and procedures for drug administration, including, but not limited to, establishment of the times for administration of drugs prescribed;

6. If facility policy permits, policies and procedures regarding self-administration of drugs. ("Self-administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself.) Policies and procedures for self-administration shall include, but not be limited to, the following:

i. A requirement that self-administration be permitted only upon a written order of the prescriber;

ii. Storage of drugs;

iii. Labeling of drugs;

iv. Methods for documentation in the patient's medical record of self-administered drugs;

v. Training and education of patients in self-administration and the safe use of drugs; and

vi. Establishment of precautions so that patients do not share their drugs or take the drugs of another patient;

7. Policies and procedures for documenting and reviewing adverse drug reactions and medication errors. Allergies shall be documented in the patient's medical record and on its outside front cover;

8. Policies and procedures for ensuring the immediate delivery of stat. doses. Stat. (statim) shall mean immediately;

9. If facility policy permits, policies and procedures for the use of floor stock drugs. "Floor stock" means a supply of drugs provided by the pharmacist to a service or unit in a labeled container in limited quantities, as approved by the Pharmacy and Therapeutics Committee of the facility. A list shall be maintained of floor stock drugs and their amounts stored throughout the facility;

10. Policies and procedures for discontinuing drug orders, including, but not limited to, the following:

i. The length of time drug orders may be in effect, for drugs not specifically limited as to duration of use or number of doses when ordered, including intravenous infusion solutions; and

ii. Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered;

11. Policies and procedures for the use of intravenous infusion solutions. The facility shall have an intravenous infusion admixture service operated by the pharmaceutical service. If the preparation, sterilization, and labeling of parenteral medications and solutions are performed in the exempt areas within the facility, as specified by facility policy, but not under direct supervision of a pharmacist, the pharmacist shall be responsible for providing written guidelines and for approving the procedures. Policies and procedures for the use of intravenous infusion solutions shall include, but not be limited to, the following:

i. Safety measures for the preparation, sterilization, and admixture of intravenous infusion solutions. These shall be prepared under a laminar air flow hood, except in patient care areas specified by facility policy;

ii. Quality control procedures for laminar air flow hoods, including cleaning of the equipment used on each shift, microbiological monitoring as required by the infection prevention and control policies and procedures of the facility, and documented checks at least every 12 months for operational efficiency; and

iii. Policies and procedures for the labeling of intravenous infusion solutions, such that a supplementary label is affixed to the container of any intravenous infusion solution to which drugs are added. The label shall include the patient's first and last name and room number; the name of the solution; the name and amount of the drug(s) added; the date and time of the addition; the date, time, and rate of administration; the name or initials of the pharmacy personnel who prepared the admixture; the name, initials, or identifying code of the pharmacist who prepared or supervised preparation of the admixture; supplemental instructions, including storage requirements; and the expiration date of the solution;

12. Policies and procedures for the storage of intravenous infusion solutions, which shall be stored according to a system of accountability specified in the facility's policies and procedures;

13. If facility policy permits, policies and procedures for drug research and the use of investigational drugs, in accordance with Federal and State rules and regulations;

14. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs, in accordance with New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and the Controlled Dangerous Substances Acts and amendments thereto;

15. Policies and procedures for the procurement, storage, use, and disposition of needles and syringes in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

16. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

i. Provision for a verifiable record system for controlled drugs;

ii. Policies and procedures to be followed in the event that the inventories of controlled drugs cannot be verified or drugs are lost, contaminated, unintentionally wasted, or destroyed. A report of any such incident shall be written and signed by the persons involved and any witnesses present; and

iii. In all areas of the facility where drugs are dispensed, administered, or stored, procedures for the intentional wasting of controlled drugs, including the disposition of partial doses, and for documentation which includes the signature of a second person who shall witness the disposition;

17. Policies and procedures for the maintenance of records of prescribers' Drug Enforcement Administration numbers for New Jersey;

18. Specification of the information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage, to be provided in the pharmacy and in each nursing unit. Current antidote information and the telephone number of the regional poison control center shall also be provided in the pharmacy and in each nursing unit;

19. A list of abbreviations, metric apothecary conversion charts, and chemical symbols, approved by the medical staff, to be kept in each nursing unit; and

20. Policies and procedures concerning the activities of medical and pharmaceutical sales representatives in the facility. Drug samples shall not be accepted, placed or maintained in stock, distributed, or used in the facility.

8:43H-10.5 Inspection of premises

At intervals specified in the policy and procedure manual, a pharmacist shall inspect all areas in the facility where drugs are dispensed, administered, or stored, and shall maintain record*[s]* of such inspections.

8:43H-10.6 Storage of drugs

(a) All drugs, except intravenous infusion solutions*,* shall be kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use.

(b) All drugs shall be stored in accordance with manufacturers' instructions. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the nursing unit. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements.

(c) All drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs.

(d) Drugs for external use shall be kept separate from drugs for internal use.

SUBCHAPTER 11. DIETARY SERVICES

8:43H-11.1 Provision of dietary services

The facility shall provide dietary services to meet the daily nutritional needs of patients, directly in the facility.

8:43H-11.2 Appointment of dietitian

(a) The facility shall appoint a full-time dietitian who shall be responsible for the direction, provision, and quality of the dietary service. The dietitian shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the dietary service;

2. Participating in planning and budgeting for the dietary service;

3. Ensuring that dietary services are provided as specified in the dietary care plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

6. Providing nutritional counseling.

8:43H-11.3 Food service supervisor

The facility shall appoint a full-time food service supervisor who functions under the direction of a dietitian. A dietitian and/or food service supervisor shall be on duty seven days a week.

8:43H-11.4 Responsibilities of dietitians

(a) In accordance with written job descriptions, dietitians shall be responsible for providing dietary care, including, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary care plan based on the assessment, providing dietary services to the patient as specified in the dietary care plan, reassessing the patient's response to services, and revising the dietary care plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

3. Writing clinical notes and progress notes; and

4. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

8:43H-11.5 Requirements for dietary services

(a) Dietary personnel shall be scheduled for a period of at least 12 hours daily.

(b) The dietary services shall comply with the provisions of N.J.A.C. 8:24.

(c) A current diet manual shall be available in the dietary service and in each nursing unit.

(d) Meal planning shall be in accordance with, but not limited to, the following:

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of patients;

2. Written, dated menus shall be planned at least 14 days in advance of all diets. The same menu shall not be used more than once in seven days; and

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus, with changes, shall be kept on file in the dietary department for at least 30 days.

(e) Meal preparation and serving shall be in accordance with, but not limited to, the following:

1. Diets served shall be consistent with the diet manual and in accordance with physicians' orders;

2. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient;

3. At least three meals or their equivalent shall be prepared and served daily to patients. At least two meals shall contain three or more menu items, one of which shall be or shall include a high quality protein food such as meat, fish, eggs, or cheese. Each meal shall represent no less than 20 percent of the day's total calories, and at least 10 percent of the day's total calories shall be provided by protein;

4. Nutrients and calories shall be provided for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the patient;

5. Between-meal and bedtime nourishments shall be provided and beverages shall be available at all times for each patient, unless contraindicated by a physician as documented in the patient's medical record;

6. Substitute foods and beverages of equivalent nutritional value shall be available to all patients;

7. No more than 14 hours shall elapse between an evening meal and breakfast the next morning; and

8. Designated staff shall be responsible for observing meals refused or missed and documenting the name of the patient and the meal refused or missed.

(f) A record shall be maintained for each patient, identifying the patient by name, location, diet order, and other information, such as meal patterns when on a calculated diet, and allergies. Such record shall appear on the patient's tray or in the dining room.

SUBCHAPTER 12. PHYSICAL THERAPY, OCCUPATIONAL THERAPY, RESPIRATORY THERAPY, SPEECH-LANGUAGE PATHOLOGY, AND AUDIOLOGY SERVICES

8:43H-12.1 Provision of physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology services

(a) The facility shall provide physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology services directly in the facility to meet the rehabilitation needs of patients.

(b) The facility shall provide to each adult patient at least three hours of services per day, five days per week, which shall include physical therapy and shall include at least one of the following: occupational therapy and/or speech-language pathology services.

(c) The facility shall provide to each pediatric patient at least three hours of services per day, five days per week, which shall include at least two of the following: physical therapy, occupational therapy, speech-language pathology, and respiratory therapy services.

8:43H-12.2 Appointment of physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, and audiologist

(a) The facility shall appoint a physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, and audiologist who shall be responsible for the direction, provision, and quality of the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology service, respectively. The physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, and audiologist shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology service, respectively;

2. Participating in planning and budgeting for the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology service, respectively;

3. Ensuring that services are provided as specified in the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology care plan, respectively, and are coordinated with other patient care services to provide a continuum of care for the patient.

4. Assisting in developing and maintaining written job descriptions for physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology personnel, respectively, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:43H-12.3 Responsibilities of physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology personnel

(a) In accordance with the State of New Jersey Physical Therapy Practice Act, N.J.S.A. 45:9-37.11 et seq., for physical therapy personnel, and in accordance with the State of New Jersey Audiology and Speech-Language Pathology Practice Act, N.J.S.A. 45:3B-1 et seq., for speech-language pathology and audiology personnel, and in accordance with written job descriptions, each physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, or audiologist shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, or audiology needs, respectively, of the patient, preparing the care plan based on the assessment, providing services as specified in the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, or audiology care plan, respectively, reassessing the patient's response to services, and revising the care plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

3. Writing clinical notes and progress notes; and

4. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

[(b) Driver evaluation services shall be provided by occupational therapists.]

SUBCHAPTER 13. SOCIAL WORK SERVICES AND PSYCHOLOGY SERVICES

8:43H-13.1 Provision of social work services and psychology services

The facility shall provide social work services and psychology services to patients directly in the facility.

8:43H-13.2 Appointment of social worker and psychologist

(a) The facility shall appoint a full-time social worker who has a master's degree in social work, and a psychologist. The social worker and the psychologist shall be responsible for the direction, provision, and quality of the social work service and psychology service, respectively. The social worker and the psychologist shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the social work service and psychology service, respectively;

2. Participating in planning and budgeting for the social work service and psychology service, respectively;

3. Ensuring that services are provided as specified in the social work care plan and psychology care plan, respectively, and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for social work service personnel and psychology service personnel, respectively, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:43H-13.3 Responsibilities of social worker and psychology staff

(a) In accordance with written job descriptions, each social worker or psychology staff member shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the social work needs or psychological needs, respectively, of the patient, preparing the social work care plan or psychology care plan, respectively, based on the assessment, providing services as specified in the social work care plan or psychology care plan, respectively, reassessing the patient's response to services, and revising the social work care plan or psychology care plan, respectively. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

3. Writing clinical notes and progress notes.

SUBCHAPTER 14. RECREATIONAL THERAPY SERVICES

8:43H-14.1 Provision of recreational therapy services

(a) The facility shall provide recreational therapy services to patients. A planned, diversified program of recreational activities for patients, including daytime, evening, individual, group, and/or independent activities, on at least six days of the week, directly in the facility.

(b) Patients shall have the opportunity to communicate with members of the community, to participate in community activities, and to utilize community resources, unless contraindicated by the patient's physician as documented in the patient's medical record.

(c) Indoor and outdoor recreation shall be provided.

8:43H-14.2 Appointment of recreation therapist

(a) The facility shall appoint a recreation therapist who shall be responsible for the direction, provision, and quality of the recreational therapy service. The recreation therapist shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the recreational therapy service;

2. Participating in planning and budgeting for the recreational therapy service;

3. Ensuring that services are provided as specified in the recreational therapy care plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for recreational therapy personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating in staff education activities and providing consultation to facility personnel; and

6. Posting a current weekly recreational activities schedule where it can be read by patients, staff, and visitors, and maintaining a record of such schedules for one year.

8:43H-14.3 Responsibilities of recreation therapy personnel

(a) In accordance with written job descriptions, each recreation therapist shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the recreational therapy needs of the patient, preparing the recreational therapy care plan based on the assessment, providing recreational therapy services as specified in the recreational therapy care plan, reassessing the patient's response to services, and revising the recreational therapy care plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

3. Writing clinical notes and progress notes; and

4. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

SUBCHAPTER 15. ORTHOTIC AND PROSTHETIC SERVICES, VOCATIONAL TESTING, DRIVER TRAINING SERVICES, DENTAL SERVICES, LABORATORY AND RADIOLOGICAL SERVICES

8:43H-15.1 Provision of services

(a) The facility shall provide orthotic and prosthetic services, vocational testing, dental services, and laboratory and radiological services directly in the facility to patients who need these services.

(b) Driver training services shall be provided.

8:43H-15.2 Qualifications of personnel

(a) Orthotic and prosthetic services shall be provided by persons certified or eligible for certification by the American Board for Certification in Orthotics and Prosthetics, Inc.

(b) Vocational testing services shall be provided by a rehabilitation counselor who is certified or eligible for certification by the Commission on Rehabilitation Counselor Certification.

(c) Driver training services shall be provided by persons licensed as commercial driving school instructors by the New Jersey State Department of Law and Public Safety, Division of Motor Vehicles.

8:43H-15.3 Provision of dental services

(a) Dental services shall be provided to patients, including, but not limited to, emergency dental care to relieve pain and infection.

(b) The facility, with consultation from a dentist, shall establish and implement written policies and procedures for dental services for patients and for staff education regarding dental care of patients.

(c) The dentist shall document in the patient's medical record all dental services provided, at the time services are provided.

8:43H-15.4 Provision of laboratory and radiological services

(a) Laboratory services shall be provided. Laboratories shall be licensed or approved by the Department.

(b) Radiological services shall be provided. Facilities providing radiological services shall be licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiation Protection.

SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

8:43H-16.1 Emergency plans and procedures

(a) The facility shall have a written emergency plan which shall include plans and procedures to be followed in case of medical emergencies, equipment breakdown, fire, or other disaster.

(b) Procedures for emergencies shall specify persons to be notified, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating patients, frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(c) The emergency plans and all emergency procedures shall be conspicuously posted throughout the facility. Personnel shall be trained in the location and use of emergency equipment in the facility.

8:43H-16.2 Drills and tests

(a) Simulated drills of emergency plans shall be conducted on each shift at least four times a year (a total of 12 drills) and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills on each shift shall include at least one drill for emergencies due to fire. The facility shall conduct at least one drill per year for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident.

(b) The facility shall test at least one manual pull alarm each week of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(c) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (N.F.P.A.) requirements.

SUBCHAPTER 17. PATIENT RIGHTS

8:43H-17.1 Policies and procedures regarding patient rights

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients, staff, and the public and shall be conspicuously posted in the facility.

(b) The staff of the facility shall be trained to implement policies and procedures regarding patient rights.

(c) The facility shall comply with all applicable State and Federal statutes and rules concerning patient rights, including N.J.S.A. 52:27G-7.1. The State Office of the Ombudsman for the Institutionalized Elderly shall be notified of any suspected patient abuse or exploitation pursuant to N.J.S.A. 52:27G-7.1, if the patient is 60 years of age or older.

8:43H-17.2 Rights of each patient

(a) Patient rights, policies, and procedures shall ensure that, as a minimum, each patient admitted to the facility:

1. Is informed of these rights, as evidenced by his or her written acknowledgement, and receives an explanation, in terms that he or she can understand, and a copy of the patient rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for his or her care, and of fees and related charges, including the payment, fee, deposit, and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is informed of the plan for treatment and of his or her condition, unless medically contraindicated as documented by a physician in the patient's medical record, is informed of the risks associated with the use of any drugs and/or procedures, and has the opportunity to participate in the planning of his or her treatment, to refuse medication and treatment, and to refuse to participate in experimental research;

4. Is informed of the alternatives for care and treatment;

5. Is transferred or discharged only for medical reasons or for his or her welfare or that of other patients, upon the written order of the patient's physician, and such actions are documented in the patient's medical record, except in an emergency situation, in which case the administrator shall notify the physician and the family immediately, and document the reason for the transfer in the patient's medical record. If a transfer or discharge on a nonemergency basis is requested by the facility, including transfer or discharge for nonpayment for the patient's stay (except as prohibited by sources of third party payment), the patient and his or her family shall be given at least 10 days advance notice of such transfer or discharge;

6. Has access to and/or may obtain a copy of his or her medical record, in accordance with the facility's policies and procedures and with applicable Federal and State laws and rules;

7. Is free from mental and physical abuse, free from exploitation, and free from the use of chemical and physical restraints, except those restraints used in accordance with N.J.A.C. 8:43H-6.1(a)17. Drugs and other medication**s*** shall not be used for punishment or for convenience of facility personnel;

8. Is assured confidential treatment of his or her records and disclosures in accordance with State and Federal statutes and rules, and shall have the opportunity to approve or refuse their release to any individual outside the facility, except in the case of the patient's transfer to another health care facility or as required by law or third-party payment contract;

9. Is treated with courtesy, consideration, respect, and recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures. Privacy of the patient's body shall be maintained during the toileting, bathing, and other activities of personal hygiene, except as needed for patient safety or assistance;

10. Is not required to perform work for the facility unless the work is part of the patient treatment plan and is performed voluntarily by the patient. Such work shall be in accordance with local, State, and Federal laws and rules;

11. May associate and communicate privately with persons of his or her choice, may join with other patients or individuals within or outside the facility to work for improvements in patient care, may send and receive personal mail unopened, and, upon his or her request, shall be given assistance in the reading and writing of correspondence;

12. May participate in facility activities and meet with, and participate in activities of, social, religious, and community groups. Arrangements shall be made, at the patient's expense, for attendance at religious services of his or her choice, when requested;

13. Is allowed to leave the facility if his or her physician so approves and so indicates in the patient's medical record. A signout sheet shall record the patient's whereabouts at these times;

14. Is assured security in retaining and using personal clothing and possessions as space permits, unless to do so would be unsafe or would infringe upon rights of other patients. If the patient has property on deposit with the facility, he or she shall have daily access to such property during specific periods established by the facility;

15. Is allowed daily visitation at least between the hours of 8:00 A.M. and 8:00 P.M. and, if critically ill, is allowed visits from his or her family at any time, unless medically contraindicated (as documented, by a physician, in the patient's medical record). The facility shall conspicuously post the visiting hours, which shall include at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily. Members of the clergy shall be notified by the facility at the patient's request and shall be admitted at the request of the patient and/or family at any time. Privacy shall be ensured for visits with family, friends, clergy, or for professional or business purposes;

16. Is allowed to conduct private telephone conversations between the hours of 8:00 A.M. and 8:00 P.M. daily;

17. Is not required to go to bed unless ordered by a physician, with documentation in the patient's medical record;

18. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any patient;

19. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The patient's participation may be restricted or prohibited if recommended by the patient's physician in the patient's medical record and consented to by the patient;

20. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility; and

21. Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, may voice grievances on behalf of himself or herself or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination, or reprisal.

(b) The administrator shall provide all patients and/or their families with the name, address, and telephone numbers of the following offices where complaints may be lodged:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
Telephone: (800) 792-9770
and
State of New Jersey
Office of the Ombudsman for the
Institutionalized Elderly
CN 808
Trenton, New Jersey 08625
Telephone: (800) 624-4262

***The administrator shall also provide all patients and/or their families with the name, addresses, and telephone numbers of the following office where information concerning Medicare coverage may be obtained:**

Legal Assistance for Medicare Patients
c/o The Community Health Law Project
530 Cooper Street
Camden, New Jersey 08102
Telephone: (609) 964-0030
or
7 Glenwood Avenue
East Orange, New Jersey 07017
Telephone: (201) 672-6073*

These telephone numbers shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

SUBCHAPTER 18. DISCHARGE PLANNING SERVICES

8:43H-18.1 Discharge plan

(a) The facility plan shall provide discharge planning services to patients.

(b) Each patient shall have a discharge plan. Discharge planning shall be initiated upon admission. Plans for discharge shall be reviewed and revised.

(c) The patient and, if indicated, family members shall participate in developing and implementing the patient discharge plan. Participation shall be documented in the patient medical record.

(d) The discharge plan shall include instructions given to the patient and/or his or her family for care following discharge.

8:43H-18.2 Discharge planning policies and procedures

(a) Written policies and procedures shall be established and implemented for discharge planning services, which shall describe:

1. The functions of the person or persons responsible for planning, providing, and/or coordinating discharge planning services;

2. The time period for completing each patient's discharge plan;

3. The time period that may elapse before a reevaluation of each patient's discharge plan is made;

4. Use of the multidisciplinary team in discharge planning;

5. Criteria for patient discharge; and

6. Methods of patient and family involvement in developing and implementing the discharge plan.

SUBCHAPTER 19. MEDICAL RECORDS

8:43H-19.1 Maintenance of medical records

(a) A current medical record shall be maintained for each patient and shall contain documentation of all services provided.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical record services shall be developed and implemented.

(c) A record system shall be maintained in which the patient's complete medical record is filed as one unit in one location within the facility.

8:43H-19.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:43H-19.3 Contents of medical records

(a) The patient medical record shall include, but not be limited to, the following:

1. Patient identification data, including name, date of admission, address, date of birth, race and religion (optional), sex, referral source, payment plan, marital status, and the name, address, and telephone number of the person(s) to be notified in an emergency;
2. The patient's signed acknowledgement that he or she has been informed of and given a copy of patient rights;
3. A summary of the admission interview;
4. Documentation of the medical history and physical examination, signed and dated by the physician;
5. A patient treatment plan, signed and dated by the physician;
6. Care plans and patient assessments for each service providing care to the patient;
7. Clinical notes, which shall be entered on the day service is rendered;
8. Progress notes;
9. Documentation of the patient's participation in his or her treatment plan, or documentation by a physician that the patient's participation is medically contraindicated;
10. A record of medications administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;
11. A record of self-administered medications, if the patient self-administers medications, in accordance with the facility's policies and procedures;
12. Documentation of allergies in the medical record and on its outside front cover;
13. Documentation of sexual counseling and environmental modification services;
14. Documentation of orthotic and prosthetic services, vocational testing, driver training, laboratory and radiological, and dental services;
15. A record of referrals to other health care providers;
16. Documentation of consultations;
17. A record of the clothing, personal effects, valuables, funds, and other property deposited by the patient with the facility for safekeeping, signed by the patient or his or her family, and substantiated by receipts given to the patient or his or her family;
18. Any signed written informed consent forms;
19. A record of any treatment, drug, or service offered by personnel of the facility and refused by the patient;
20. Documentation of injuries, accidents, incidents, or death;
21. The discharge plan; and
22. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:43H-19.4 Requirements for entries

(a) All orders for patient care shall be prescribed in writing and signed and dated by the prescriber, in accordance with the laws of the State of New Jersey.

(b) All entries in the patient medical record shall be legible and signed and dated by the person entering them.

8:43H-19.5 Medical records policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding medical records including, but not limited to, policies and procedures for the following:

1. The protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use. The patient's consent shall be obtained for release of medical record information;
2. The specific period of time in which the medical record shall be completed following patient discharge, and disciplinary action for non-compliance;
3. The transfer of patient information when the patient is transferred to another health care facility, or if the patient becomes an outpatient at the same facility; and
4. The release and/or provision of copies of the patient's medical record to the patient and/or the patient's authorized representative. Such written policies and procedures shall include, but not be limited to, the following:

i. Establishment of a fee schedule for obtaining copies of the patient's medical record;

ii. Policies and procedures regarding patient access to his or her medical record during business hours;

iii. Policies and procedures regarding availability of the patient's medical record to the patient's authorized representative if it is medically contraindicated (as documented by a physician in the patient's medical record) for the patient to have access to or obtain copies of the record; and

iv. Procedures to ensure that the patient's medical record is provided within 30 calendar days of the written request.

8:43H-19.6 Preservation, storage, and retrieval of medical records

(a) All medical records shall be preserved in accordance with N.J.S.A. 26:8-5 et seq.

(b) If the facility plans to cease operations, it shall notify the Department in writing, at least 14 days before cessation of operation, of the location where medical records shall be stored and of methods for their retrieval.

SUBCHAPTER 20. INFECTION PREVENTION AND CONTROL SERVICES

8:43H-20.1 Administrator's responsibility

The administrator shall ensure the development and implementation of an infection prevention and control program.

8:43H-20.2 Infection control policies and procedures

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures regarding the following:

1. A definition of nosocomial infection;
2. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;
3. Reporting of reportable and other diseases in accordance with N.J.A.C. 8:57;
4. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;
5. Surveillance techniques to minimize sources and transmission of infection;
6. Techniques to be used during each patient contact, including handwashing before and after caring for a patient;
7. The prevention of decubitus ulcers;
8. Isolation of patients, including criteria for isolation;
9. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable patient care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged and labeled to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

10. The collection, storage, handling, and disposition of all pathological and infectious wastes within the facility, and for the collection, storage, handling, and disposition of all pathological and infectious wastes to be removed from the facility, including, but not limited to, the following:

i. Needles and syringes shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto;

ii. Solid, sharp, or rigid items shall be placed in a puncture-resistive container and incinerated or compacted prior to disposal;

iii. Non-rigid items, such as blood tubing and disposable equipment and supplies, shall be incinerated or placed in three mil plastic bags or equivalent and disposed of in a sanitary landfill approved by the New Jersey State Department of Environmental Protection;

iv. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into the sewerage system; and

v. All pathology specimens and waste, including gross and microscopic tissue removed surgically or by any other procedure, shall be incinerated.

(b) Each service in the facility shall develop written policies and procedures for the infection control program for that service.

8:43H-20.3 Staff orientation and education

All personnel shall receive orientation at the time of employment and continuing in-service education regarding the infection control program.

SUBCHAPTER 21. HOUSEKEEPING, SANITATION, AND SAFETY

8:43H-21.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for patients.

(b) The facility shall provide housekeeping, laundry, and pest control services.

(c) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for housekeeping, sanitation, and safety services shall be developed and implemented.

8:43H-21.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures, including the use, cleaning, and care of equipment.

8:43H-21.3 Patient care environment

(a) The following housekeeping, sanitation, and safety conditions shall be met:

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborages;

2. Nonskid wax shall be used on all waxed floors;

3. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

4. All patient areas shall be free of noxious odors;

5. Throw rugs or scatter rugs shall not be used in the facility;

6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;

7. All equipment shall have unobstructed space provided for operation;

8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;

9. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

10. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

11. Articles in storage shall be elevated from the floor and away from walls;

12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;

13. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater located in an open basement;

14. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in closed metal cabinets or containers;

15. Unobstructed aisles shall be provided in storage areas;

16. A program shall be maintained to keep rodents, insects, vermin, and birds out of the facility.

17. Toilet tissue, soap, and towels or air dryers shall be provided in each bathroom at all times;

18. Solid or liquid waste, garbage, and trash shall be stored or disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24;

19. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

20. Wastebaskets and ashtrays shall be made of noncombustible materials;

21. Latex foam pillows shall be prohibited;

22. The temperature of the hot water used for showers, bathing and handwashing shall not exceed 110 degrees Fahrenheit (43 degrees Celsius); and

23. The temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day and at a minimum of 68 degrees Fahrenheit (20 degrees Celsius) at night. "Day" shall mean the time between sunrise and sunset.

8:43H-21.4 Linen and laundry services

(a) Written policies and procedures shall be established and implemented for linen and laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage, transportation and laundering of linen and personal laundry. Such policies shall not interfere with the patient's right to personal choice regarding dress;

2. The frequency of laundering linen and personal laundry;

3. The frequency of changing bed linen, towels, and washcloths;

4. Provision of a supply of linen, including at least sheets, pillow cases, blankets, drawsheets (or an alternative), towels, and washcloths, that is three times the licensed bed capacity, so that at least one set of clean linens remains available for each patient;

5. Collection of soiled linen and laundry so as to avoid microbial dissemination into the environment, and placement in impervious bags or containers that are closed at the site of collection. Separate containers shall be used for transporting clean linen and laundry and for transporting soiled linen and laundry;

6. Storage of soiled linen and laundry in a ventilated area separate from any other supplies. Soiled linen and laundry shall not be stored, sorted, rinsed, or laundered in patient rooms, bathrooms, areas of food preparation and/or storage, or areas in which clean linen, material, and/or equipment are stored; and

7. Protection of clean linen from contamination during processing, transporting, and storage.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAM

8:43H-22.1 Quality assurance plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the person(s) responsible for the quality assurance program and shall provide for ongoing monitoring of staff and patient care services.

8:43H-22.2 Quality assurance activities

(a) Quality assurance activities shall include, but not be limited to, the following:

1. At least annual review of staff and physician qualifications and credentials;
2. At least annual review of staff orientation and staff education;
3. Evaluation of patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services;
4. Evaluation by patients and their families of care and services provided by the facility;
5. Audit of patient medical records (including those of both active and discharged patients) on an ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care; and
6. Establishment of a patient care outcome assessment system for evaluation of the patient care provided by each service, which includes criteria to be used for the determination of achievement of patient rehabilitation goals. The assessment of outcome shall examine the condition of the patient at the conclusion of care in relation to the goals of the patient's treatment.

8:43H-22.3 Measures for corrections and improvements

The results of the quality assurance program shall be submitted to the governing authority at least annually and shall include at least deficiencies found and recommendations for corrections or improvements. Deficiencies which jeopardize patient safety shall be reported to the governing authority immediately. The administrator shall, with the approval of the governing authority, implement measures to ensure that corrections or improvements are made.

SUBCHAPTER 23. (RESERVED)

SUBCHAPTER 24. (RESERVED)

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Comprehensive Rehabilitation Hospitals Standards for Licensure

Physical Plant and Functional Requirements Adopted New Rule: N.J.A.C. 8:43H-23 and 24

Proposed: May 15, 1989, at 21 N.J.R. 1188(a).
Adopted: July 18, 1989, by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: July 20, 1989, as R.1989 d.433, **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. 26:2H-1 et seq, specifically 26:2H-5.

Effective Date: August 21, 1989.
Expiration Date: August 21, 1994.

Summary of Public Comments and Agency Responses:

The Department received two written comments in connection with the new rules. The same comment was received from both the New Jersey Pharmaceutical Association and the Automated Pharmaceutical Services and the response thereto is set forth below.

COMMENT: The commenters request that a rehabilitation facility have the option of providing the pharmacy service either on-site or through a contract arrangement. This would not mandate an on-site pharmacy as set forth in the rules.

RESPONSE: The rules have been changed upon adoption, at N.J.A.C. 8:43H-24.19(a), to permit pharmacy services to be provided within the rehabilitation hospital or through a contract arrangement. The rule's purpose to regulate physical plant and functional requirements for comprehensive rehabilitation hospitals continues; the Department did not intend to require an on-site pharmacy.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 23. PHYSICAL PLANT

8:43H-23.1 Standard for construction, alteration, or renovation of rehabilitation facilities

(a) Standards for construction of rehabilitation facilities in new buildings, additions, alterations and renovations to existing buildings shall be in accordance with the New Jersey Uniform Construction Code, N.J.A.C. 5:23 under Use Group I-2 and standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and the Community Affairs, and the Guidelines for Construction and Equipment of Hospital and Medical Facilities 1987 Edition as published by The American Institute of Architects Press. In order to avoid conflict between N.J.A.C. 5:23 and the other standards listed above, Sections 501.3, 610.4.1, 704.0, 705.0, 706.0, 708.0 and 916.5 of the 1987 BOCA Basic Building Code of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities.

(b) The following standards, in addition to those in (a) above, shall apply to alterations and renovations of existing buildings.

1. When alterations and/or renovations are made within any 12 month period, costing in excess of 50 percent of the physical value of the structure, requirements for new structures shall apply to entire structure, including those portions not altered or renovated.

2. When alterations and/or renovations are made within any 12 month period, costing between 25 percent to 50 percent of the physical value of the structure, only the altered or renovated area need to conform to the requirements for new structures.

3. When alterations and/or renovations are made within any 12 month period costing less than 25 percent of the physical value of the structure, the New Jersey Department of Health shall determine to what degree the portions so altered or renovated shall be made to conform to the requirements for new structures.

SUBCHAPTER 24. FUNCTIONAL REQUIREMENTS

8:43H-24.1 Provisions for the handicapped

Facilities shall be available and accessible to the physically handicapped, pursuant to New Jersey Uniform Construction Code, N.J.A.C. 5:23-7, Barrier Free Subcode.

8:43H-24.2 Functional service areas

(a) Each rehabilitation facility shall contain the following service areas on site:
1. Medical evaluation services;
2. A psychology service with sexual counseling services;
3. Social work services;
4. Vocational services;
5. Recreation therapy services;
6. Respiratory therapy services;
7. Dietary services with nutritional counseling;
8. Administration services;
9. Nursing services;
10. Physical therapy services;
11. Occupational therapy services with environmental modification services, driver evaluation services and activities of daily living services;
12. Orthotic and prosthetic services;
13. Speech-language pathology and audiology services;
14. Dental services;
15. Radiology services;
16. Laboratory services;
17. Pharmacy services;
18. Sterilization services;
19. Linen services;
20. Housekeeping services;
21. Employees facilities;
22. Engineering service and equipment areas; and
23. Educational services.

(b) The following optional special service areas may be provided, if required by the program.
1. Urology services; and
2. Personal care services.

(c) Each rehabilitation facility shall also comply with the requirements for details and finishes set forth at N.J.A.C. 8:43H-24.26 and 24.27.

8:43H-24.3 Medical evaluation services

(a) The medical evaluation service shall include the following:

1. Office(s) for personnel;

2. Examination rooms, which shall have a minimum floor area of 120 square feet, excluding such spaces as the vestibule, toilet, closet, and work counter (whether fixed or movable). The minimum room dimension shall be 10 feet. The room shall contain a lavatory or sink equipped for handwashing, a work counter, storage facilities and a desk, counter, or shelf space for writing; and

3. Evaluation room areas, which shall be arranged to permit appropriate evaluation of patient needs and progress and to determine specific programs of rehabilitation. Rooms shall include a desk and work area for the evaluators; writing and workspace for patients; and storage for supplies. Where the facility is small and the workload light, evaluation may be done in the examination room(s).

8:43H-24.4 Psychology services

The psychology services unit shall include offices and workspace for testing, evaluation and counseling.

8:43H-24.5 Social work services

The social work services unit shall include office space(s) for private interviewing and counseling, waiting space, record storage space and secretarial office space.

8:43H-24.6 Vocational services

The vocational services unit shall contain office(s) and workspace for evaluation, counseling and placement.

8:43H-24.7 Patient dining, recreation therapy and day spaces

(a) Patient dining, recreation therapy and day spaces may be in separate or adjoining spaces and it shall be possible for both dining and recreation to occur simultaneously.

(b) For inpatients and residents, a total of 30 square feet per bed for the first 100 beds and 27 square feet per bed for all beds in excess of 100 shall be provided for patient dining, recreation therapy and day spaces.

(c) An indoor and an outdoor recreation area shall be provided.

(d) For outpatients in medical day and/or day hospitalization, a total of 20 square feet per person shall be provided, if dining is part of the day care program. If dining is not part of the program, at least 10 square feet per person for recreation and day spaces shall be provided.

(e) Storage spaces shall be provided for recreational equipment and supplies.

(f) An office for the recreation therapist shall be provided.

8:43H-24.8 Respiratory therapy services

(a) Respiratory therapy services may be provided as a separate area or at the patient's bedside.

1. A separate area shall include:

i. Office and clerical space;

ii. Convenient access to staff toilets, lounge, lockers and showers;

iii. A conference room;

iv. Storage for equipment and supplies; and

v. Space and utilities for cleaning and sanitizing equipment.

2. If respiratory therapy services are provided at the patient's bedside, there shall be storage in the patient's room for equipment and supplies.

8:43H-24.9 Dietary services and nutritional counseling

(a) The construction, equipment, and installation of food service facilities shall meet the requirements of the functional program. Services may consist of an onsite conventional food preparation system, a convenience food service system, or an appropriate combination thereof. The following facilities shall be provided as required to implement the food service selected:

1. A control station for receiving food supplies;

2. Storage facilities for four days' food supply, including cold storage items;

3. Food preparation facilities as follows:

i. Conventional food preparation systems with space and equipment for preparing, cooking, and baking;

ii. Convenience food service systems; such as frozen prepared meals, bulk packaged entrees, individually packaged portions, and contractual commissary services with space and equipment for thawing, portioning, cooking, and/or baking;

4. Handwashing facility(ies) located in the food preparation area;

5. Patient meal service facilities for tray assembly and distribution;

6. Dining space for staff and visitors;

7. Warewashing space, which shall be located in a room or an alcove separate from food preparation and serving area. Commercial dishwashing equipment shall be provided. Space shall also be provided for receiving, scraping, sorting, and stacking soiled tableware and separate area for transferring clean tableware to the using areas. A lavatory shall be conveniently available;

8. Potwashing facility(ies);

9. Storage areas for cans, carts, and mobile tray conveyors;

10. Waste storage facility(ies) which shall be located in a separate room easily accessible to the outside for direct waste pickup or disposal;

11. Office(s) or desk space(s) for dietitian(s) or the dietary service manager;

12. Toilets for dietary staff with handwashing facility(ies), which shall be immediately available;

13. A janitor's closet located within the dietary department and containing a floor receptor or service sink and storage space for housekeeping equipment and supplies; and

14. Self-dispensing icemaking facilities, which may be in an area or room separate from the food preparation area, but must be easily cleanable and convenient to dietary facilities.

(b) Nutritional counseling shall be provided in the dietitian's office, or conference room or patient bedroom, based on program.

8:43H-24.10 Administration services

(a) A grade-level entrance, sheltered from the weather and able to accommodate wheelchairs, shall be provided which conforms to the requirements of N.J.A.C. 5:23-7.

(b) A lobby shall be provided which shall include:

1. Wheelchair storage space(s);

2. A reception and information counter or desk;

3. Waiting space(s);

4. Public toilet facility(ies);

5. Public telephone(s); and

6. Drinking fountain(s).

(c) Interview space(s) for private interviews relating to social service, credit, and admissions shall be provided.

(d) General or individual office(s) for business transactions, records, and administrative and professional staffs shall be provided.

(e) Multipurpose room(s) shall be provided for conferences, meetings, health education, and library services.

(f) Special storage shall be provided for employees' personal effects.

(g) Separate space for office supplies, sterile supplies, pharmaceutical supplies, splints and other orthopedic supplies, and housekeeping supplies and equipment shall be provided.

8:43H-24.11 Nursing services

(a) The maximum size of an adult unit or pediatric unit shall be 30 beds.

(b) Each patient room shall meet the following requirements:

1. Maximum room occupancy shall be four patients. At least two single-bed rooms with private toilet rooms shall be provided for each nursing unit.

2. Each patient shall have a minimum room area exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules of 125 square feet in single-bed rooms and 100 square feet per bed in multibed rooms.

3. Each bedroom shall have a space for a wheelchair to make a 180 degree turn, which is a clear space of 60 inches in diameter.

4. Each one-bed room shall have a minimum clear floor space of 36 inches along each side of bed and 42 inches between the foot of the bed and the wall.

5. Each two-bed room shall have a minimum clear floor space of 42 inches between the foot of bed and the wall, 36 inches between the side of bed and the wall and 48 inches between beds.

6. Each four-bed room shall have a minimum clear floor space of 48 inches from the foot of the bed to the foot of the opposing bed, 36 inches between side of bed and the wall and 48 inches between beds.

7. Each patient sleeping room shall have a window.

8. A nurses' calling system shall be provided as follows:

i. Each patient room shall be served by at least one calling station for two way voice communications;

ii. Each bed shall be provided with a call button;

iii. Two call buttons serving adjacent beds may be served by one calling station;

iv. Calls shall activate a visible signal in the corridor at the patient's door; and

v. Nurses' call emergency system shall be provided at each inpatient toilet, bath, sitz bath and shower room. The call system shall be designed so that a signal light activated at the calling patients' station will remain lighted until turned off at the patients' calling station.

9. In new construction, handwashing facilities shall be provided in each patient room. In renovations and modernization, the lavatory may be omitted from the bedroom where a water closet and lavatory are provided in a toilet room designed to serve one single-bed room, or one two-bed room.

10. Each patient shall have access to a toilet room without having to enter the general corridor area. One toilet room shall serve no more than four beds and no more than two patient rooms. The toilet room shall contain a water closet and a lavatory. The lavatory may be omitted from a toilet room that serves single-bed and two-bed rooms if each such patient's room contains a lavatory.

11. Each patient shall have a wardrobe, closet, or locker with minimum clear dimensions of one foot 10 inches by one foot eight inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

12. Visual privacy shall be provided for each patient in multi-bed rooms with cubicle curtains between beds.

(c) The service areas noted below shall be in or readily available to each nursing unit. Although identifiable spaces are required for each indicated function, consideration will be given to alternative designs that accommodate some functions without designating specific areas or rooms. Each service area may be arranged and located to serve more than one nursing unit, but at least one such service area shall be provided on each nursing floor. The following service areas shall be provided:

1. An administrative center or nurses' station;

2. A nurses' office;

3. Storage for administrative supplies;

4. Handwashing facilities located near the nurses' station and the drug distribution station. One lavatory may serve both areas;

5. Charting facilities for staff;

6. A lounge and toilet room(s) for staff;

7. Individual closets or compartments for safekeeping the personal effects of nursing personnel, located convenient to the duty station or in a central location;

8. A room for examination and treatment of patients. This room may be omitted if all patient rooms are single-bed rooms. It shall have a minimum floor area of 120 square feet, excluding space for vestibules, toilet, closets, and work counters (whether fixed or movable). The minimum room dimension shall be 10 feet. The room shall contain a lavatory or sink equipped for handwashing, work counter, storage facilities, and a desk, examination table, counter, or shelf space for writing. The examination room in the evaluation unit may be used if it is in the immediate area;

9. A clean workroom or clean holding room;

10. A soiled workroom or soiled holding room;

11. A drug distribution station. Provisions shall be made for convenient and prompt 24-hour distribution of medicine to patients. Distribution may be from a medicine preparation room, a self-contained medicine dispensing unit, or through another approved system. If used, a medicine preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine dispensing unit may be located at a nurses station, in the clean workroom, or in an alcove or other space under visual observation of nursing or pharmacy staff;

12. Clean linen storage with a separate closet or an area within the clean workroom provided for this purpose. If a closed-cart system is used, storage may be in an alcove;

13. A nourishment station, which shall contain a sink for handwashing, equipment for serving nourishment between scheduled meals, a refrigerator, storage cabinets, and icemaker-dispenser units;

14. An equipment storage room for equipment such as I.V. stands, inhalators, air mattresses, and walkers; and

15. Parking for stretchers and wheelchairs which shall be located out of the path of normal traffic.

(d) Bathtubs or showers shall be provided at a ratio of one bathing facility for each eight beds not otherwise served by bathing facilities within patient rooms. At least one island-type bathtub shall be provided in each nursing unit. Each tub or shower shall be in an individual room or privacy enclosure that provides space for the private use of bathing fixtures, for drying and dressing, and for a wheelchair and an assistant. Showers in central bathing facilities shall be at least four feet square, curb-free, and designed for use by a wheelchair patient.

(e) Patient toilet facilities shall be as follows:

1. The minimum dimensions of a room containing only a toilet shall be three feet by six feet clear space; additional space shall be provided if a lavatory is located within the same room. Toilets must be usable by wheelchair patients;

2. At least one room on each floor containing a nursing unit(s) shall be provided for toilet training. It shall be accessible from the corridor. A minimum clearance of three feet shall be provided at the front and at each side of the toilet. This room shall also contain a lavatory;

3. A toilet room that does not require travel through the general corridor shall be accessible to each central bathing area;

4. Doors to toilet rooms shall have a minimum width of two feet 10 inches to admit a wheelchair. The doors shall permit access from the outside in case of an emergency and swing outward; and

5. A handwashing facility shall be provided for each water closet in each multifixture toilet room.

8:43H-24.12 Physical therapy services

(a) The following shall be provided in physical therapy services;

1. Office space;

2. Waiting space;

3. Treatment area(s);

i. For thermotherapy, diathermy, ultrasonics, respiratory therapy, hydrotherapy, and other treatments performed in a physical therapy unit, cubicle curtains around each individual treatment area shall be provided. Handwashing facility(ies) shall also be provided. One lavatory or sink may serve more than one cubicle. Facilities for collection of wet and soiled linen and other material shall be provided.

4. An exercise area;

5. Storage for clean linen, supplies, and equipment;

6. Patients dressing areas, showers, lockers, and toilet rooms; and

7. Wheelchair and stretcher storage.

(b) The areas designated in (a)1, 2, 5, 6 and 7 above may be planned and arranged for shared use by occupational therapy patients and staff if the functional program reflects this sharing concept.

8:43H-24.13 Occupational therapy services

(a) The following shall be provided in an occupational therapy service unit:

1. Office space;

2. Waiting space;

3. Activity areas, which shall have provisions for a sink or lavatory;

4. Storage for supplies and equipment;

5. Patients dressing areas, showers, lockers, and toilet rooms;

6. Space for driver evaluation;

7. An environmental modification area (bio-engineering rehabilitation therapy); and
8. Activities for daily living.
i. An area for teaching the activities of daily living shall be provided. The area shall include a bedroom, bath, and kitchen space with stove.
(b) The areas designated in (a)1, 2, 4, 5 and 8 above may be planned and arranged for shared use by physical therapy patients and staff, if the functional program reflects this sharing concept.

8:43H-24.14 Prosthetics and orthotics services
(a) The following shall be provided in a prosthetic and orthotic service:
1. Workspace for technician(s);
2. Space for evaluation and fitting which shall include provision for privacy; and
3. Space for equipment, supplies, and storage.

8:43H-24.15 Speech-language pathology and audiology services
(a) The following shall be provided in speech-language pathology and audiology services:
1. Office(s) for therapists;
2. Space for evaluation and treatment; and
3. Space for equipment and storage.

8:43H-24.16 Dental services
(a) A dental unit shall contain a dental chair with light and drill, and lavatory.
(b) If the program does not require a room, a portable chair may be used.

8:43H-24.17 Radiology services
(a) A radiology service shall contain the following:
1. Radiographic room(s);
2. Film processing facilities;
3. Viewing and administration area(s);
4. Film storage facilities;
5. A toilet room with handwashing facility;
6. Dressing area(s) conveniently accessible to toilets;
7. A waiting area; and
8. A holding area for stretcher patients.
(b) A portable x-ray with film processing facilities may be used, if required by program.

8:43H-24.18 Laboratory services
(a) Laboratory services shall be provided within the rehabilitation hospital or through contract arrangement with a hospital or laboratory service for hematology, clinical chemistry, urinalysis, cytology, pathology, and bacteriology.
1. If laboratory services are provided on-site the following shall be the minimum provided:
i. Laboratory work counter(s) with a sink, and gas and electric service;
ii. Handwashing facilities;
iii. Storage cabinet(s) or closet(s);
iv. Specimen collection facilities. Urine collection rooms shall be equipped with a water closet and lavatory. Blood collection facilities shall have space for a chair and work counter; and
v. Refrigerator.

8:43H-24.19 Pharmacy services
(a) *[Provisions shall be made for the following functional areas in the pharmacy unit:]* ***Pharmacy services shall be provided within the rehabilitation hospital or through a contract arrangement.***
1. If pharmacy services are provided on-site, the following shall be the minimum provided.
[1. Dispensing] ***i. A dispensing*** area with handwashing facility;
[2.] ***ii.*** An area for compounding; and
[3.] ***iii.*** Locked storage areas.

8:43H-24.20 Sterilization services
Where required by the functional program, a system for sterilizing equipment and supplies shall be provided.

8:43H-24.21 Linen services
(a) If linen is to be processed on the site, the following shall be provided:
1. A laundry processing room with commercial equipment that can process seven days' laundry within a regularly scheduled workweek, with handwashing facilities;
2. A soiled linen receiving, holding, and sorting room with handwashing and cart-washing facilities;
3. Storage for laundry supplies;
4. A clean linen storage, issuing, and holding room or area; and
5. A janitor's closet, containing a floor receptor or service sink and storage space for housekeeping equipment and supplies.
(b) If linen is processed off the rehabilitation facility site, the following shall be provided:
1. A soiled linen holding room; and
2. A clean linen receiving, holding, inspection, and storage room(s).

8:43H-24.22 Housekeeping services
A janitor's closet shall be provided for each nursing unit. It may service two nursing units if they are on the same floor and adjacent to each other. In addition, janitor's closets shall be provided throughout the facility as required to maintain a clean and sanitary environment.

8:43H-24.23 Employees facilities
Employee facilities, such as lockers, lounges, and toilets, shall be provided for employees and volunteers.

8:43H-24.24 Engineering service and equipment areas
(a) Equipment room(s) for boilers, mechanical equipment, and electrical equipment shall be provided.
(b) Storage rooms for building maintenance supplies and yard equipment shall be provided.
(c) Space and facilities shall be provided for the sanitary storage and disposal of waste. If provided, design and construction of incinerators and trash chutes shall conform to the requirements prescribed by the New Jersey Department of Environmental Protection.

8:43H-24.25 Educational services
Space shall be provided for educational services. In a pediatric unit, there shall be classroom(s) for pediatric patients as required by the New Jersey Department of Education.

8:43H-24.26 Details
(a) Compartmentation, exits, automatic extinguishing systems, and other details relating to fire prevention and fire protection in inpatient rehabilitation facilities shall comply with requirements listed in the New Jersey Uniform Construction Code, N.J.A.C. 5:23.
(b) Items such as drinking fountains, telephone booths, vending machines and portable equipment shall not restrict corridor traffic or reduce the corridor width below the required minimum.
(c) Rooms containing bathtubs, sitz baths, showers, and water closets which are subject to patient use shall be equipped with doors and hardware that will permit access from the outside in an emergency. When such rooms have only one opening, the doors shall open outward or be otherwise designed to open without pressing against a patient who may have collapsed within the room.
(d) Minimum width of all doors to rooms needing access for beds shall be three feet eight inches. Doors to rooms requiring access for stretchers and doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two feet 10 inches. Where the functional program states that the sleeping facility will be for residential use (and therefore not subject to in-bed patient transport), patient room doors may be three feet wide, if approved by the New Jersey Department of Health.
(e) Doors between corridors and rooms or those leading into spaces subject to occupancy, except elevator doors, shall be swing-type. Openings to showers, baths, patient toilets, and other small wet areas not subject to fire hazard are exempt from this requirement.
(f) Doors, except those to spaces such as small closets not subject to occupancy, shall not swing into corridors in a manner that obstructs traffic flow or reduces the required corridor width.

(g) Windows shall be designed to prevent accidental falls when open, or shall be provided with security screens where deemed necessary by the functional program.

(h) Windows and outer doors that may be frequently left open shall be provided with insect screens.

(i) Patient rooms intended for occupancy shall have windows that operate without the use of tools and shall have sills not more than three feet above the floor.

(j) Doors, sidelights, borrowed light, and windows glazed to within 18 inches of the floor shall be constructed of safety glass, wired glass, or plastic glazing material that resists breaking or creates no dangerous cutting edges when broken. Similar materials shall be used in wall openings of playrooms and exercise rooms. Safety glass or plastic glazing material shall be used for shower doors and bath enclosures.

(k) Linen and refuse chutes shall comply with the New Jersey Uniform Construction Code, N.J.A.C. 5:23.

(l) Thresholds and expansion joint covers shall be flush with the floor surface, to facilitate use of wheelchairs and carts.

(m) Grab bars shall be provided at all patient toilets, bathtubs, showers, and sitz baths. The bars shall have one and one-half inches clearance to walls and shall be sufficiently anchored to sustain a concentrated load of 250 pounds. Special consideration shall be given to shower curtain rods which may be momentarily used for support.

(n) Recessed soap dishes shall be provided in showers and bathrooms.

(o) Handrails shall be provided on both sides of corridors used by patients. A clear distance of one and one-half inches shall be provided between the handrail and wall, and the top of the rail shall be 32 inches above the floor.

(p) Ends of handrails and grab bars shall be constructed to prevent snagging the clothes of patients.

(q) The location and arrangement of handwashing facilities shall permit proper use and operation. Particular care shall be given to clearance required for blade-type operating handles. Lavatories intended for use by handicapped patients shall be installed to permit wheelchairs to fit under them.

(r) Mirrors shall be arranged for use by wheelchair patients as well as by patients in a standing position.

(s) Provisions for hand drying shall be included at all handwashing facilities.

(t) Lavatories and handwashing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture.

(u) Radiation protection requirements of x-ray and gamma ray installations shall conform to applicable State and local laws. Provisions shall be made for testing the completed installation before use. All defects shall be corrected before use of equipment.

(v) The minimum ceiling height shall be seven feet 10 inches, with the following exceptions:

1. Boiler rooms shall have a ceilng clearance not less than two feet six inches above the main boiler header and connecting piping.

2. Ceilings of radiographic and other rooms containing ceiling-mounted equipment, including those with ceiling-mounted surgical light fixtures, shall have sufficient height to accommodate the equipment and/or fixtures.

3. Ceilings in corridors, storage rooms, toilet rooms, and other minor rooms shall not be less than seven feet eight inches.

4. Suspended tracks, rails, and pipes located in the path of normal traffic shall not be less than six feet eight inches above the floor.

(w) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed areas unless special provisions are made to minimize such noise.

(x) Rooms containing heat-producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above and below from exceeding a temperature 10 degrees Fahenheit (six degrees Celsius) above the ambient room temperature.

(y) Noise reduction criteria shown in Table 1 of the Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1987 edition, as published by the American Institute of Architects Press, incorporated herein by reference, shall apply to partition, floor, and ceiling construction in patient areas.

8:43H-24.27 Finishes

(a) Cubicle curtains and draperies shall be noncombustible or rendered flame retardant.

(b) Floor materials shall be readily cleanable and wear resistant for the location. Floors in food preparation or assembly areas shall be water resistant. Joints in tile and similar material in such areas shall also be resistant to food acids. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors subject to traffic while wet, such as shower and bath areas, kitchens, and similar work areas, shall have a non-slip surface.

(c) Wall bases in kitchens, soiled workrooms and other areas that are frequently subject to wet cleaning methods shall be monolithic and coved with the floors, tightly sealed within the wall, and constructed without voids that can harbor insects.

(d) Wall finishes shall be washable and, in the proximity of plumbing fixtures, shall be smooth and moisture-resistant. Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free from spaces that can harbor pests.

(e) Floor and wall areas penetrated by pipes, ducts, and conduits shall be tightly sealed to minimize entry of pests. Joints of structural elements shall be similarly sealed.

(f) Ceilings throughout shall be readily cleanable. All overhead piping and ductwork in the dietary and food preparation area shall be concealed behind a finished ceiling. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

(g) Acoustical ceilings shall be provided for corridors in patient areas, nurses stations, dayrooms, recreational rooms, dining areas, and waiting areas.

8:43H-24.28 Optional services

(a) If a urology service is provided it shall include:

1. One hundred square feet per examination table in the urology unit, with cubicle curtains for each patient for privacy, if more than one table is provided;
2. Storage space for equipment:
3. A handwashing sink;
4. A soiled utility room with lavatory;
5. Office space;
6. A charting area; and
7. A storage area for supplies.

(b) If personal care services for inpatients are provided, a separate room with appropriate fixtures and utilities shall be provided for patient grooming. This function can be performed in patient's bedroom, if part of his or her rehabilitation program.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Licensing and Degree Approval Standards Proprietary Institutions of Higher Education

Adopted Amendments: N.J.A.C. 9:1-5.1, 5.2, 5.4, 5.5 and 5.8

Adopted New Rule: N.J.A.C. 9:1-5.10

Proposed: June 19, 1989 at 21 N.J.R. 1632(a).

Adopted: July 21, 1989 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: July 26, 1989 as R.1989 d.443, **without change**.

Authority: N.J.S.A. 18A:3-14m and n.

Effective Date: August 21, 1989.

Expiration Date: February 21, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: One letter with comments was received from Burlington County College. It was concerned that the proprietary institutions be held

to the same standards as non-profit institutions and that the standards remain consistent when ownership of an institution changes.

RESPONSE: The amendments made to these rules assure that the standards for the proprietary institutions are identical to those for non-profit institutions. The only exception is regarding the proprietary institutions' participation in the College Outcomes Evaluation Program (COEP). Participation in this program is limited to New Jersey's public colleges and universities at this time. When the program is fully implemented, this position will be re-evaluated; however, it would be premature to at this time require the proprietary institutions to participate in COEP.

Full text of the adoption follows:

9:1-5.1 General provisions

(a) Proprietary institutions of higher education in New Jersey may be licensed to operate and approve to award academic degrees subject to conformance with the regulations and standards for such licensure and approval as contained in N.J.A.C. 9:1-1.

(b) (No change.)

9:1-5.2 Degree standards

(a) Proprietary institutions may petition to award the Associate in Arts, the Associate in Science, and the Associate in Applied Science degrees pursuant to the standards set forth in Standards Governing Community Colleges, specifically N.J.A.C. 9:4-1.6.

(b) Certificate and diploma programs at proprietary institutions shall be eligible for Board of Higher Education approval only in those instances where all of the courses comprising the certificate or diploma program are currently being offered by the institution in a Board approved degree program.

(c) Pre-associate degree certificate and diploma programs shall be designed in accordance with N.J.A.C. 9:4-1.6.

(d) Proprietary institutions may petition to award baccalaureate degrees pursuant to the standards set forth in the State College regulations regarding Baccalaureate Degree Standards, specifically N.J.A.C. 9:6-2.

(e) Proprietary institutions may petition to award graduate degrees pursuant to the standards set forth in N.J.A.C. 9:1-4.1.

9:1-5.4 Duration of license

(a) Any license to operate and grant a degree shall be for a specific period, not to exceed five years, as determined by the Board of Higher Education.

(b) (No change.)

9:1-5.5 Minimum library requirements

(a) A proprietary institution offering a degree shall have a library collection of sufficient size and composition to meet program objectives, to support high quality instruction and, where appropriate, research.

(b) The library collection shall be kept up-to-date.

9:1-5.8 Faculty teaching loads

(a) Undergraduate faculty should normally have teaching loads not to exceed the equivalent of 15 semester credit hours; graduate faculty should normally have teaching loads not to exceed the equivalent of nine semester credit hours.

(b) (No change.)

9:1-5.10 Basic skills testing and enrollment in remedial courses

(a) Proprietary institutions shall be subject to all of the Board of Higher Education's policies regarding basic skills testing and remedial instruction as implemented by the New Jersey College Basic Skills Council.

(b) Proprietary institutions shall administer the New Jersey College Basic Skills Placement Test (NJCBSPT) to all full and part-time freshmen seeking a degree, to any student who does not initially seek a degree but who registers for a program that would result in the accumulation of 12 or more credits, and to any transfer student who has not transferred to the institution college credits in English composition and mathematics.

(c) Appropriate remedial instruction shall be provided by proprietary institutions in the basic skills of reading, writing, computation and elementary algebra to all of the skills deficient students they have admitted.

(d) Proprietary institutions shall not enroll a student in any college-level course without first being certain that the student is proficient in the basic skills required for that course.

(e) No graduation credit shall be awarded for any remedial course.

(f) Proprietary institutions shall comply with the reporting guidelines of the Basic Skills Council regarding the submission of student outcomes data and the retesting of students who exit the institution's remedial program(s).

(a)

BOARD OF HIGHER EDUCATION

Alternate Benefit Program
Eligibility for Enrollment
Adopted Amendment: N.J.A.C. 9:2-4.1

Proposed: May 15, 1989, at 21 N.J.R. 1268(a).
Adopted: July 21, 1989, by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: July 26, 1989, as R.1989 d.442, **without change.**

Authority: N.J.S.A. 18A:66-170 and 18A:66-172.

Effective Date: August 21, 1989.
Expiration Date: June 17, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: One letter with comments was received from Gloucester County College. It indicated that this amendment would increase the operating expenses of the college as the county colleges, rather than the State, are responsible for paying the employer contribution, currently eight percent of the employee's salary, for non-academic employees enrolled in the program. As additional non-academic titles are eligible to participate in the program under the proposal, the college as employer will be expected to contribute the eight percent for those employees which will not be reimbursed by the State.

RESPONSE: The Board believes that although the costs to the county colleges may increase, it is a justifiable and reasonable cost in return for the institutions being able to recruit experienced personnel to their campuses. The amended rule will assist the institutions in attracting many of the potential employees that they would otherwise lose to competing institutions of higher education.

Full text of the adoption follows:

9:2-4.1 General provisions

(a) Full-time members of the faculty and administrative staffs, as set forth below, of the University of Medicine and Dentistry of New Jersey, Rutgers, the State University, the New Jersey Institute of Technology, the State colleges and the county colleges are eligible to participate in the alternate benefit program under N.J.S.A. 18A:66-167 et seq.:

1.-4. (No change.)

5. All professional employees providing that those holding such titles serve in applicable positions as set forth in (b) below;

6.-7. (No change.)

8. Administrative and research personnel who perform work which requires knowledge of an advanced nature in a field of science, technology or other area of specialized study and are preferably recruited from among individuals with experience in higher education.

(b) Eligibility to participate in the alternate benefit program by those employees within the category set forth in (a)5 above shall be limited to professional employees who are preferably recruited from among individuals with experience in higher education. Except for those employees eligible under (c) below, no employees employed in a clerical or other non-professional position shall be eligible to participate in the alternate benefit program.

(c) (No change.)

(d) Any employee of an eligible institution who has previously been denied eligibility for participation in the alternate benefit program who is currently eligible for participation in the alternate benefit program under this subchapter shall be granted until December 31, 1989 to apply for eligibility to participate in the alternate benefit program.

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

(g) All professional employees in the Department of Higher Education shall be eligible to participate in the alternate benefit program.

(h) For the purposes of this subchapter, "professional employee" shall mean any employee whose minimum qualifications for hiring include a baccalaureate degree or its equivalent but shall not include career service employees as defined by the Department of Personnel pursuant to Title 11A of the New Jersey Revised Statutes.

(a)

BOARD OF HIGHER EDUCATION

Graduate Medical Education Program General Provisions

Adopted New Rules: N.J.A.C. 9:15

Proposed: May 15, 1989 at 21 N.J.R. 1271(a).

Adopted: July 21, 1989, by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: July 26, 1989, as R.1989 d.441, **without change.**

Authority: N.J.S.A. 18A:64H-8.

Effective Date: August 21, 1989.

Expiration Date: August 21, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: There were two comments received in response to the rules as proposed. Both the New Jersey Podiatric Medical Society and the podiatric member of the Board of Medical Examiners requested that the specific language in N.J.A.C. 9:15-1.1, Definitions, be amended to cite podiatry as a specialty under "primary care medicine." Such an amendment would allow Podiatric Graduate Medical Education Programs, approved by the Council on Podiatric Medical Education, to be eligible for grants-in-aid support provided by the Graduate Medical Education Program. The podiatric profession deems an amendment to be equitable because, like applicants for the plenary license, the New Jersey Board of Medical Examiners requires applicants for the podiatric license to complete post-graduate studies in an approved graduate medical education program.

RESPONSE: In response to the issues raised by the comments, the Board has requested the Advisory Graduate Medical Education Council to examine the state of podiatric graduate medical education opportunities in New Jersey and make appropriate recommendations regarding the establishment of reasonable mechanisms for providing financial support to podiatric residency programs if warranted. However, as the Department is phasing out the grants-in-aid program and initiating a project to monitor and assess the scope and quality of graduate medical education programs that receive reimbursement through the New Jersey Hospital Rate Setting Commission, the Board did not recommend that the requested change be made to these rules at this time.

Full text of the adoption follows:

CHAPTER 15
GRADUATE MEDICAL EDUCATION PROGRAMS

SUBCHAPTER 1. GENERAL PROVISIONS

9:15-1.1 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 Graduate Medical Education Act, N.J.S.A. 18A:64H-1 et seq.

"Board" means the Board of Higher Education of New Jersey.

"Chairperson" means the chairperson of the Advisory Graduate Medical Education Council.

"Chancellor" means the Chancellor of Higher Education.

"Commissioner" means the Commissioner of Health.

"Council" means the Advisory Graduate Medical Education Council of New Jersey.

"Curriculum" means a body of clinical knowledge taught to trainees in graduate medical education programs.

"Graduate medical education" means internship and residency programs as defined in N.J.S.A. 18A:64H-3(c).

"Primary care medicine" means the medical specialties of general and family practice, general internal medicine, general obstetrics and gynecology, pediatrics and psychiatry.

"Student" means a full time equivalent (three part-time equal one full-time) physician in a graduate medical educational program.

9:15-1.2 Guidelines for participating hospitals

(a) A New Jersey private not-for-profit or public hospital seeking support for graduate medical education normally shall, in response to requests for proposals issued by the Chancellor of Higher Education, submit an application containing the following:

1. An education plan for each program for which support is requested, which plan shall identify:

i. The objectives of the program;

ii. A justification of the request giving evidence of the need for funds and of the area's need for physician manpower;

iii. The length of training;

iv. The curriculum to be offered in each year of the program, and clinical rotations;

v. A list of faculty members indicating their qualifications and time involvement;

vi. The name of the program director whose qualifications shall be subject to the review of the Council and who shall qualify for medical school appointment;

vii. A projection of the number of students that will be trained in each year of the program;

viii. The nature of the required relationship of the program to a United States medical school;

ix. The resources that are available at the institution to support the program;

x. The additional resources which are needed;

xi. A summary of other existing clerkships and residency programs within the applying institution;

xii. Support of the hospital's board of trustees; and

xiii. Any other appropriate information at the discretion of the applicant or the request of the Council.

2. A statement indicating that the chief executive of the hospital or his or her designee shall assume the responsibility for implementing the program and coordinating it with other graduate medical education programs in hospitals; the medical school with which the program is affiliated; and with the Council.

3. Assurances that the program will be one that will provide a high degree of excellence. Such assurances should include, but not be limited to, documentation that the program currently is fully or provisionally approved by either the Accreditation Council on Graduate Medical Education or the Office of Education of the American Osteopathic Association, or indications of reasonable probability that such approvals will be received.

4. Assurances that alternate sources of support for each program will be established by the end of the grant period. Such assurances should include, but not be limited to, a plan in which future levels of training activity and financial support are identified.

9:15-1.3 Criteria for selecting recipients

(a) In selecting recipients the Council shall consider, but not be limited to, the following criteria:

1. Programs that meet Statewide physician manpower needs and/or the needs of specific service populations such as those programs in primary care medicine;

2. Teaching programs that involve innovative methods that may be of special value in promoting effective solutions to the problems identified in the Act; and

3. Programs that pay special attention to the recruitment of minority graduates.

9:15-1.4 Guidelines for expenditure of funds

(a) The Council, with the approval of the Chancellor, acting on behalf of the Board, and the Commissioner shall establish a list of activities that can be funded under this authority. The list may include, but need not be limited to:

1. Salaries, or a portion thereof, of directors of medical education;
2. Salaries, or a portion thereof, of program directors;
3. Salaries, or a portion thereof, of faculty;
4. The cost of educational supplies;
5. The cost of library materials;
6. The cost of audio visual equipment;
7. The cost of other educational equipment;
8. Salaries, or a portion thereof, of secretaries and other overhead costs;
9. Partial funding of residents' salaries as these are related to educational activities; and
10. Funding required for planning and developmental activities.

9:15-1.5 Approved programs

(a) Program applications shall be reviewed by the Council which shall forward its recommendations to the Chancellor for transmittal, together with his or her own recommendations, to the Board and the Commissioner. Cost reimbursement contracts will be executed annually for the programs approved by the Board and the Commissioner between the Chancellor, acting on behalf of the Board, and the chief executive of the institution receiving support.

(b) The Chancellor, acting for the Board, may authorize the reallocation of funds within an existing contract with the advice of the Chairperson when such allocations do not change the nature of the contract. If the Chancellor and Chairperson determine that such allocations will change the nature of the contract, these changes may be made subject to the approval of the Council and the Chancellor, acting for the Board.

9:15-1.6 Reporting requirements for recipients of awards

(a) At a time specified by the Council, the chief executive of his or her designee of each hospital receiving funds under this chapter shall submit to the Council a semiannual progress report for each program so funded. This report shall include the following:

1. A summary of accomplishments to date;
2. Problems encountered during the grant period and their proposed solution;
3. Requests for reimbursement for approved expenditures as defined in N.J.A.C. 9:15-1.4;
4. Requests for continuation funds; and
5. Information on placement of residents upon completion of the program.

9:15-1.7 Payment procedures

Upon certification of expenditures made pursuant to the contract, the Chancellor shall authorize the State Treasurer to reimburse funds according to the contract.

9:15-1.8 Unexpended funds

In the event that the amounts previously awarded have not been obligated pursuant to the approved project and at the recommendation of the Council, the Chancellor, acting for the Board, may, upon notice to the recipient, reduce the amount of the contract to an amount consistent with the recipient's needs.

9:15-1.9 Termination of contracts

Contracts may be terminated for failure to adhere to the terms and conditions of the contract, the Graduate Medical Education Act, or any of the rules promulgated thereto. The Chancellor may, in his or her discretion, suspend without notice the operation of any contract pending a review by the Council. Upon recommendation of the Council, the Chancellor may terminate a contract. Prior to making such recommendations, Council shall afford a recipient reasonable notice and opportunity to be heard. A recipient shall return any monies improperly utilized at the time of contract termination.

9:15-1.10 Financial audits

Final payment of funds under the contract will be withheld until an independent audit is conducted, paid for by the recipient of the contract, certifying that the expenditures were in accordance with the terms of the contract. Copies of such an audit shall be submitted to the Chancellor.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Need for a Guardian

Adopted Repeal and New Rules: N.J.A.C. 10:43

Proposed: November 21, 1988 at 20 N.J.R. 2850(a).
Adopted: July 17, 1989, by Drew Altman, Commissioner, Department of Human Services.
Filed: July 18, 1989, as R.1989 d.430, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 30:1-12 and 30:4-165.4 et seq., specifically 30:4-165.16.
Effective Date: August 21, 1989.
Expiration Date: August 21, 1994.

Summary of Public Comments and Agency Responses

Comments were received from the Community Health Law Project of East Orange, N.J. the Association for Retarded Citizens of New Jersey; Eden A.C.R.E.S., Inc.; Planned Lifetime Assistance Network of New Jersey; and the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled. The comments and responses follow, grouped by commenter.

Community Health Law Project

COMMENT: The rules should use the term "need to pursue guardianship" rather than "need for a guardian" to more correctly reflect the fact that the Division may determine the need to pursue guardianship while it is a court of law that ultimately may decide that a person needs a guardian.

RESPONSE: The rules in no way usurp the prerogative of the courts. They are written to clearly indicate those circumstances where the Division of Developmental Disabilities determines in preliminary fashion that there is a need for a guardian. The suggested change would have little impact on the rules as written. Therefore, no change in the proposed rules is indicated.

COMMENT: Mental incompetence should be defined as follows "means conditions, disabilities, impairments of a mental, psychological and or physical nature which results in mental incompetence". The definition of "clinical and social factors" which appear at N.J.A.C. 10:43-1.3 are another means of describing mental incompetence. Surely the Division cannot have in mind pursuing guardianship for those individuals who merely have a diminished capacity to communicate decisions in any way, for example, through the use of an augmentative communication device.

RESPONSE: The definition of mental incompetence is itself too broad to be of guidance in decision making. By defining clinical and social factors, the rules are establishing some criteria whereby decisions may be made. The definition of clinical and social factors has been revised to clarify that even the use of augmentative communication devices do not enable the client to effectively communicate.

COMMENT: Limiting the Division's actions to appointment of guardians of the person only is not in concert with the governing statute, N.J.S.A. 30:4-165.4 et seq. Appointing guardians of the **estate** as well as guardians of the person was clearly envisioned by the legislature in their desire to "eliminate the cost and burden to parents of obtaining guardianship over their mentally incompetent children who are 18 years of age and older . . ." (Assembly Judiciary Committee statement, Assembly, No. 617-L. 1985, c. 133, appended to N.J.S.A. 30:4-165.4, hereinafter "Assembly Statement").

Whereas the Division may feel that it cannot act in the capacity of guardian of the client's estate, this should not have any bearing on its ability to bring guardianship actions on behalf of family members or other interested persons who wish to become guardians of the estate of the client where this is in the client's best interests.

This change should be reflected throughout the rules.

RESPONSE: It is by no means clear that the law intended that guardianship actions initiated by the Commissioner should also include guardianship of the estate. The Division's concern is limited to guardianship of the person. By far, the majority of the clients of the Division have

no estate. In those few instances where a client has an estate, it seems more appropriate for the family to pursue guardianship privately. Therefore no change in the proposed rules is indicated.

COMMENT: For consistency and clarity, the definition for "mental incompetence" should be utilized here, N.J.A.C. 10:43-2.1(c) should read:

"Only a person with development disabilities who is impaired by reason of physician disability, mental illness, or mental deficiency to the extent that he or she lacks sufficient capacity to govern himself or herself and manage his or her affairs, may be determined in need of a guardian."

RESPONSE: The Department has considered this argument and for purposes of clarifying the intent of this section, N.J.A.C. 10:43-2.1(a) has been changed accordingly.

COMMENT: The definition in N.J.A.C. 10:43-1.3 for mental incompetence should be incorporated into N.J.A.C. 10:43-2.1(b) and the subsection should read:

"The conclusion that an individual is in need of a guardian shall be based upon an assessment by a psychologist or a physician that the individual is impaired by reason of physical disability, mental illness, or mental deficiency to the extent that he or she lacks sufficient capacity to govern himself or herself and manage his or her affairs."

RESPONSE: The Division feels that the present wording provides more detail to aid in the decision making process. Therefore, no change to the proposed rule has been made.

COMMENT: The use of the word "assessment" in N.J.A.C. 10:43-3.1 is unclear. Perhaps "assessment" should be defined in N.J.A.C. 10:43-1.3 to mean initial screening and, where necessary, clinical evaluation and review by the administrative head of the functional service unit.

RESPONSE: The means of completing this assessment are described under N.J.A.C. 10:43-3.2. Therefore, no change to the proposed rule has been made.

COMMENT: The time frame in N.J.A.C. 10:43-3.1 for completing the "assessment" is also unclear. It should be emphasized that the initial screening and, where necessary, the clinical evaluation and review by the administrative head, should be completed no later than 30 days after the date of the eligibility determination for a person who is determined to be eligible after attaining the age of 17, and is determined to be eligible after attaining the age of 17, and at least six months prior to the eighteenth birthday of an individual already receiving services from the Division.

RESPONSE: The Department has considered this argument and N.J.A.C. 10:43-3.1 has been amended as suggested.

COMMENT: N.J.A.C. 10:43-3.2(a)1—The definition for mental incompetence should again be used here and the section should read:

"Each individual is presumed competent and not in need of a guardian unless he or she is impaired by reason of physical disability, mental illness, or mental deficiency to the extent that he or she lacks sufficient capacity to govern himself or herself and manage his or her affairs."

RESPONSE: The Division feels that this wording does not provide sufficient guidance to aid in decision making and therefore does not add value to the rule.

COMMENT: The person(s) who perform the screening in N.J.A.C. 10:43-3.2(a)2i should be provided with guidelines such as the definition for mental incompetence and such person(s) should prepare their written statement to indicate an analysis in conformance with the guidelines. Where possible, the person performing the screening should speak with those familiar with the client's daily functioning.

RESPONSE: This rule is intended to serve as the guideline for staff in analyzing the need for a guardian. It is expected that the individuals performing the screening will be familiar with the definition of mental incompetence as it is presented in these rules. It is also anticipated that staff will obtain the input of those familiar with the client's daily functioning.

COMMENT: A clinical evaluation in N.J.A.C. 10:43-3.3(a)1 should consist of **both** a review of clinical data **and** an examination of the client. This would be in keeping with the mandate set forth at proposed N.J.A.C. 10:43-1.1 that the conclusion to pursue a guardianship must be "founded upon a sound clinical basis" as well as the guidelines set forth by the legislature to "ensure the due process rights of these persons in guardianship proceedings." (Assembly Statement).

RESPONSE: There are some instances where a client may be functioning at the profound level of mental retardation. In these instances a review of clinical records would be sufficient at the time of clinical evaluation. N.J.A.C. 10:43-5.1(a)2 requires a personal examination of each individual to verify the conclusion about the need for a guardian.

COMMENT: In order to avoid harassment of the client and undue expense to the Division, the administrative head should be limited in N.J.A.C. 10:43-3.3(b)3 to directing one re-evaluation and to be bound by the conclusions of that re-evaluation. This should also be reflected in N.J.A.C. 10:43-4.1(a).

RESPONSE: The administrative head of the component should be allowed sufficient discretion to reach a reasonable conclusion. To allow the administrative head only one re-evaluation could result in a hearing which may not be necessary. The rule should allow reasonable flexibility.

COMMENT: At the same time that the Division's determination is explained to the client, the Division should explain the ramifications of guardianship.

RESPONSE: The suggested requirement has been added to N.J.A.C. 10:43-4.1(a).

COMMENT: In addition to communicating the explanation to the client in a manner consistent with the client's limitations and capabilities, the client should, at all times, be provided with an explanation in writing so that he or she has a record of the determination.

RESPONSE: Many clients for whom guardianship will be pursued are illiterate. Written notification in such instances would be meaningless. All notifications and explanations, whether or not made in writing, must be documented in the record, according to N.J.A.C. 10:43-4.1(a). N.J.A.C. 10:43-4.1(a) has been changed to require written notification where it is appropriate.

COMMENT: A fifth option should be added to N.J.A.C. 10:43-4.1(b)1. The family of the client or to other interested parties should have a right to discuss the matter further with the administrative head of the component, if they do not wish guardianship to be pursued.

RESPONSE: Even if the family or other interested parties feel that guardianship should not be pursued, it is incumbent upon the Division to pursue guardianship, once a need has been identified. There are opportunities in the proceedings for the family or other interested parties to make their position known.

COMMENT: It is unclear why each case must be referred to the Chief of the Bureau of Guardianship Services if his or her sole function is to "review the material for completeness" and act as a conduit for referring the matter to the Office of the Attorney General. It would appear much more efficient and cost effective to have the administrative head of the functional service unit refer the matter directly to the Attorney General. This comment is also relevant for N.J.A.C. 10:43-9.3(c).

RESPONSE: The documents for guardianship essentially must be managed by the Division of Developmental Disabilities' Central Office in order to ensure that they do indeed contain the factual basis for developing the Verified Complaint of the Commissioner or his designated agent to be filed for guardianship, in accordance with N.J.S.A. 30:4-165.8. The Chief, Bureau of Guardianship Services, will, in fact, be the Commissioner's designee as the petitioner in the court action to have guardianship established. The chief, Bureau of Guardianship Services, will sign certification of the Verified Complaint for this purpose. In order to clarify this matter, the language of N.J.A.C. 10:43-5.2 will be expanded as follows:

"Upon receipt of the referral package, the Chief, Bureau of Guardianship Services, shall review the material for completeness and, as the Commissioner's designated agent in accordance with N.J.S.A. 30:4-165.5, shall sign a Verified Complaint and shall refer the matter to the Office of the Attorney General for the purpose of bringing a guardianship action in court pursuant to R. 4:83-10."

COMMENT: To protect the client's due process rights, reports used in N.J.A.C. 10:43-5.1(a)3 for the purpose of pursuing guardianship should be no older than six months. This should not be a problem if in fact every person for whom guardianship is sought is examined by a psychologist or physician consistent with the comments above on N.J.A.C. 10:43-3.3.

RESPONSE: The evaluation is only one element in the process. A personal examination is indeed required at N.J.A.C. 10:43-5.1(a)2. Such examination must occur within 20 days of bringing the guardianship action.

COMMENT: Prior to N.J.A.C. 10:43-5.1(a)4iii, there has been no discussion of the need for the functional service unit to look into the suitability of the proposed guardian. It might be appropriate to move the section which discusses this so that it precedes subchapter 5.

RESPONSE: This requirement is already contained in the rule. Its appearance in the sequence of the rule appears to be appropriate.

COMMENT: If one was unfamiliar with the governing statute, one might assume that there was no court action involved in these guardianship procedures. To avoid this, it might be helpful to add to the end of the paragraph that the matter is being referred to the Office of the Attorney General "for the purpose of bringing a guardianship action in court pursuant to R. 4:83-10."

RESPONSE: The Department agrees and this wording has been added to N.J.A.C. 10:43-5.2.

COMMENT: In order to truly comport with the governing statute's mandate to "eliminate the cost and burden to parents of obtaining guardianship over their mental incompetent children," (Assembly Statement) and to comport with the proposed rules' statement of "social impact," the administrative head of the functional service unit should be mandated to direct that an affidavit of a psychologist or physician be provided to the family member or other interested party who initiates legal action for the appointment of a guardian. This could easily be done in most cases at no cost to the Division by providing the family member or other interested party with the affidavit prepared by the physician or psychologist pursuant to N.J.A.C. 10:43-3.3(B). In the long run, providing the affidavit may be cost-effective to the Division as it may encourage some family members or other interested parties to pursue guardianship privately where they otherwise would feel barred due to the cost of procuring the necessary affidavits.

RESPONSE: The statute mandates that the Commissioner of Human Services address the issue of guardianship, unless another application is pending. Where the Department is pursuing guardianship, the required affidavits will be completed by staff. This will greatly impact on staff who have duties in addition to those involving guardianship actions. To extend the requirement for affidavits for the purpose of occurring private guardianship would divert staff time from client related duties.

COMMENT: N.J.A.C. 10:43-8.1 should precede subchapter 5.

RESPONSE: The section is appropriate as located.

COMMENT: In order for staff of the functional service unit to ascertain whether or not a prospective guardian is suitable, they must be provided with appropriate guidelines. Guidelines should include interviewing the proposed guardian and ascertaining his or her future plans for the daily living of the client, discussing the choice of guardian with the client and interviewing other family members and/or interested parties with respect to the choice of guardian.

RESPONSE: Although guidelines would be helpful, the individual circumstances vary too greatly to be appropriate for inclusion in these rules. This matter will be addressed through staff training and possible future rulemaking.

COMMENT: N.J.A.C. 10:43-8.1(a)2—The functional service staff *should* attempt to resolve the question of the suitability of a guardian informally, unless the best interest of the client dictates otherwise.

RESPONSE: In most instances there shall be attempts to resolve these situations informally, whenever possible. However, there may be instances, such as client abuse, where informal resolution is neither appropriate nor feasible.

COMMENT: Another section should be added to N.J.A.C. 10:43-9.2 to cover the possibility of a family member or other interested person wishing to assume guardianship. Such person should be entitled to the same procedures as are set forth at subchapters 4, 5 and 8.

RESPONSE: This section refers to the review of the need for a guardian. If any individual who does not have a court appointed guardian continues to need a guardian, this will be noted in the person's Individual Habilitation Plan until the court appoints a guardian. The family member may be appointed as the guardian at that time.

COMMENT: The proposed rules fail to provide guidelines for pursuing guardianships in an emergent fashion, prioritizing those cases which might be more urgent than others and prioritzing cases in general.

RESPONSE: This issue constitutes one of the reasons for the provision in N.J.A.C. 10:43-5.2 that referrals for guardianship be routed to the Chief, Bureau of Guardianship Services. Review by the Chief of the circumstances of each individual case will result in appropriate prioritization of the more urgent cases.

Association for Retarded Citizens

COMMENT: A definition for "socially dependent" should be provided.

RESPONSE: N.J.A.C. 10:43-2.1(a) has been changed to provide greater clarity.

COMMENT: There should be a time line included in N.J.A.C. 10:43-7.1(a)1 for the administrative head to forward the affidavit. The whole purpose of applicants utilizing private attorneys is the frustration in waiting for a response through the bureau onsite process. The Association recommends a requirement of 10 working days.

RESPONSE: This subchapter has been amended to include the 10 day time limit.

Eden A.C.R.E.S. Inc.

COMMENT: The chapter is a comprehensive document regarding guardianship. In this commenter's opinion, the proposed rules, in their present form, do not interfere with the rights of an individual under the auspices of the Division.

RESPONSE: The Department appreciates the support for the rules as written.

Planned Lifetime Assistance Network of New Jersey

COMMENT: This commenter believes that N.J.A.C. 10:43-2.1 is unclear, but can be made more clear by defining the term "socially dependent," and including it in N.J.A.C. 10:43-1.3 "Definitions." Because of the importance of providing a basis for the Division in making this determination, appropriate definition is warranted.

RESPONSE: N.J.A.C. 10:43-2.1(a) has been changed to provide greater clarity.

COMMENT: This commenter relates that many of the families that it has dealings with often express their frustration in going through the public process of obtaining guardianship. Indeed, that is often why families utilize private attorneys. There must be a specific time frame that the administrative head must forward the affidavits. It is recommended that N.J.A.C. 10:43-7.1(a)1 read: "The administrative head of the functional service unit shall provide upon request within five working days, an affidavit attesting to the individual's need for a guardian."

RESPONSE: N.J.A.C. 10:43-7.1(a)1 has been amended to include a 10 day time limit.

Division of Advocacy for the Developmentally Disabled

COMMENT: The Public Advocate recommends that N.J.A.C. 10:43-1.4 be revised. As presently written, the new rule would not apply to persons actually admitted to functional or other services for less than 30 days, but would apply to persons who have been determined eligible and on a waiting list for services for less than 30 days. Moreover, the new rules would not apply to persons on the waiting list for an extended period of time and then subsequently admitted to and receiving services for less than 30 days when referred for guardianship services. The Public Advocate recommends that the proposed new rules apply to all persons deemed eligible for functional or other services, regardless of whether they are admitted to receive services or placed on a waiting list for services.

RESPONSE: The language of this section is meant to address instances where individuals have very limited needs in terms of services, for example, a weekend respite. Pursuing guardianship on behalf of such persons would clearly not be a prudent, appropriate use of the court guardianship process, nor is it consonant with the intentions of the law. The rules do require the need for guardianship to be addressed for persons determined eligible but on a waiting list for a preferred service.

COMMENT: N.J.A.C. 10:43-2.1(a), the proposed rules states that "[o]nly a person with developmental disabilities who is persistently socially dependent to such a degree that he or she either lacks the cognitive capacity to make judgments for himself or herself or to communicate decisions in any way may be determined in need of a guardian." This entire section, in particular the phrase "persistently socially dependent" is subjective and vague, and is not supported by N.J.S.A. 30:4-165.5 et seq., which provides the authority for the regulatory proposal. N.J.A.C. 10:43-3.3(a) is beset by similar problems.

The Public Advocate recognizes that the proposed rule deals exclusively with the internal procedures to be utilized by the Division of Developmental Disabilities (DDD) when it makes the initial determination about a client's appropriateness for guardianship services and that clients who are deemed appropriate will have the benefit of an impartial adjudication of their status. However, to avoid inappropriate referrals for guardianship and unnecessary confusion in the decision-making process, the Public Advocate recommends that if DDD wishes to further define the statutory standard, it do so by stating specific, objective criteria such as the ability to comprehend money as a medium of exchange, concepts related to health care and medical treatment and the like.

RESPONSE: The Department has considered this argument and N.J.A.C. 10:43-2.1(a) has been changed to provide greater clarity.

COMMENT: The Public Advocate urges DDD to revise this section to include forwarding of the referral package to the Public Advocate at the same time it is forwarded to the Attorney General. Although DDD currently provides such referral packages to the Public Advocate, in view of the Public Advocate's mandate to provide legal representation for clients DDD has determined are in need of guardianship services, the Public Advocate recommends specific recognition of this practice in the proposed rule.

RESPONSE: This requirement has been added to N.J.A.C. 10:43-4.2.

Full text of the adoption follows (additions to proposal indicated in bold face with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 43
DETERMINATION OF NEED FOR A GUARDIAN

SUBCHAPTER 1 GENERAL PROVISIONS

10:43-1.1 Philosophy

An adult individual with developmental disabilities may or may not require appointment of a guardian to act on his or her behalf. A conclusion that a guardian is required shall be founded upon a sound clinical basis and shall be regularly reviewed, in accordance with this chapter.

10:43-1.2 Authority; scope of services

(a) Pursuant to N.J.S.A. 30:4-165.5, the Commissioner of the Department of Human Services shall evaluate each minor admitted to functional or other services provided by the Division of Developmental Disabilities as he or she approaches adulthood to determine if it appears that such person will need a guardian on attainment of his or her majority.

(b) The Commissioner is also required to ascertain whether those individuals, who are already 18 years old at the time of their admission into functional or other services, are in need of guardian.

10:43-1.3 Definitions

The following words and terms shall, for the purposes of this chapter, have the meanings contained in this section unless the text clearly indicates otherwise.

"Adaptive behavior" means the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group (see N.J.A.C. 10:43-2.2).

"Bureau of Guardianship Services" means the unit within the Division of Developmental Disabilities which has the responsibility and authority to provide guardian of the person services to individuals in need of same.

"Clinical and social factors" means conditions, disabilities, impairments of a mental, psychological, and/or physical nature which diminish capacity to make judgments and decisions or to communicate decisions to others in any way, *[for example,]* ***even though the*** use of an augmentative communication device.

"Commissioner" means the Commissioner of the Department of Human Services.

"Developmental disability" means a severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental or physical impairments; is manifest before age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and are individually planned and coordinated. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida, and other neurological impairments where the above criteria are met (see N.J.S.A. 30:6D-3(a)).

"Division" means the Division of Developmental Disabilities.

"Functional or other services" means those services and programs in the Division which are available to provide persons with developmental disabilities with education, training, rehabilitation, adjustment, treatment, care and protection. Functional or other services include residential care, case management, social supervision, and day programming.

"Functional service unit" means any of the following components of the Division: a Developmental Center, a Regional Office of Community Services, or the Bureau of Special Residential Services.

"Guardian" means an individual or agency appointed by a court of competent jurisdiction or who is otherwise legally authorized and responsible to act on behalf of a minor or incompetent adult to assure provision for the health, safety, and welfare of the individual and to protect his or her rights.

"Guardianship services" means those services and programs provided by the Division of Developmental Disabilities for the purpose of implementing its responsibility toward the individual with developmental disabilities, for whom it is performing the services of guardian of the person.

"Individual Habilitation Plan (IHP)" means a document that provides an evaluation of the capabilities and needs of an individual with developmental disabilities and sets forth clearly defined and measurable goals and behaviorally stated objectives describing an individualized program of care, training, treatment, and therapies designed to attain and/or maintain the physical, social, emotional, educational and vocational functioning of which the individual is presently or potentially capable. Specific contents of an IHP are found in N.J.S.A. 30:6D-11.

"Intelligence quotient (I.Q.)" means a number held to express the relative level of intelligence of a person in terms of scores on standardized intelligence tests.

"Measured intelligence" means the level of an individual's cognitive functioning as measured by a standard intelligence test.

"Mental incompetence" means the state or condition of a person who is impaired by reason of physical disability, mental illness, or mental deficiency to the extent that he or she lacks sufficient capacity to govern himself or herself and manage his or her affairs.

"Mental retardation" means a state of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period (see N.J.S.A. 30:4-23).

10:43-1.4 Scope; applicability

(a) The provisions of this chapter shall apply to persons who have been admitted to functional or other services for 30 or more continuous days or who have been determined eligible and placed on a waiting list for such services.

(b) The Division shall initiate action for the appointment of a guardian of the person only.

SUBCHAPTER 2 GUIDELINES FOR GUARDIANSHIP DETERMINATIONS

10:43-2.1 Approach

(a) ***Not every individual with developmental disabilities needs a guardian.*** Only a person with developmental disabilities who *[is persistently socially dependent]* ***suffers from significant chronic functional impairment such as lack of comprehension of concepts related to personal care, health care, medical treatment; inability to understand money as a medium of exchange; and/or inability to use public transportation*** to such a degree that he or she either lacks the cognitive capacity to make judgments for himself or herself or to communicate decisions in any way may be determined in need of a guardian.

(b) The conclusion that an individual needs a guardian shall be based upon an assessment by a psychologist or a physician that the individual's ability to receive and evaluate information effectively and/or to communicate decisions is impaired to such an extent that he or she lacks the capacity to meet essential requirements for his or her health, safety, and/or well-being.

10:43-2.2 Factors to be addressed

(a) The functional service unit shall address the following basic factors in determining a person's need for a guardian. Each of these factors may lead to a clinical judgment by the functional service unit that the individual lacks the capacity to govern himself or herself and manage his or her own affairs and consequently is in need of a guardian:

1. Measured intelligence, determined by a standardized intelligence test, or clinical estimate of intellectual functioning;

2. Deficits in adaptive behavior with behavioral description; and/or

3. Clinical and social factors.

SUBCHAPTER 3. PROCEDURES FOR DETERMINATION OF GUARDIANSHIP NEED

10:43-3.1 Time for guardianship need assessment

[Between] ***At least*** six and ***no more than*** 18 months prior to the eighteenth birthday of an individual already receiving functional or other services from the Division, the administrative head of the functional service unit shall ensure that an assessment is made as to whether an individual is in need of a guardian. If the individual is determined to be eligible for services in accordance with N.J.A.C. 10:46 after having attained the age of 17, the assessment regarding the need for a guardian shall be *[made]* ***completed*** no later than 30 days after the date of the eligibility determination.

10:43-3.2 Initial screening

(a) The initial assessment as to whether an individual may be in need of a guardian shall be conducted according to the following guidelines:

1. Each individual is presumed competent and not in need of a guardian unless there is significant functional impairment which substantially limits the individual's ability to make decisions and/or to communicate decisions in any way.

2. Depending upon the individual's level of functioning, the assessment may be limited to a simple, informal screening, or it may further involve a formal clinical evaluation.

i. If a screening, consisting of a review of available records and a personal interview by one or more professional staff, such as an intake worker, case manager, or habilitation plan coordinator, leads to a reasonable conclusion that the individual is obviously competent, a written statement to that effect shall be filed in the individual's confidential record.

ii. If the screening raises a question about competency, the matter shall be referred for clinical evaluation of the possible need for a guardian.

10:43-3.3 Clinical evaluation

(a) When a clinical evaluation regarding the need for a guardian is determined necessary according to N.J.A.C. 10:43-3.2(a)2ii above, the following criteria are applicable:

1. A clinical evaluation shall consist of one or both of the following:

i. Review of clinical data; and/or

ii. Examination of the client.

2. An individual whose measured intelligence falls within the profoundly or severely retarded range, or who is clinically estimated by a qualified psychologist or physician to be functioning intellectually within this range, may be determined in need of a guardian on the basis of this clinical measurement or estimate alone.

3. An individual whose measured intelligence or estimated intellectual functioning level is moderately retarded, mildly retarded, or normal may be determined in need of a guardian only if there is significant impairment of adaptive behavior, or persistent clinical and social factors, or both.

(b) If a clinical evaluation has been conducted, the findings of the psychologist or physician, together with a summary of the clinical data and other information upon which it is based, shall be provided to the administrative head of the functional service unit.

1. If the administrative head of the functional service unit concurs with a clinical finding that there is no need for a guardian, the administrative head shall sign a statement to that effect, which shall be filed in the individual's confidential record.

2. If the administrative head of the functional service unit concurs with a clinical finding that there is a need for a guardian, he or she shall initiate the process towards adjudication of incompetence and appointment of a guardian.

3. If the administrative head of the functional service unit disagrees with a clinical finding regarding the need for a guardian, he or she shall direct that a reevaluation be conducted.

SUBCHAPTER 4. COMMUNICATION REGARDING GUARDIANSHIP NEED

10:43-4.1 Communication with client and family

(a) Within 30 days after concurrence by the administrative head of the functional service unit with a clinical evaluation that an individual does or does not need a guardian, functional service unit staff shall notify the individual of the determination. The determination ***and the ramifications of guardianship*** shall be explained at the time of notification. This explanation shall be communicated consistent with the individual's limitations and capabilities. ***Where appropriate, based upon the individual's limitations and capabilities, the explanation shall be made in writing.*** Notification and explanation shall be documented in the individual's record.

(b) The individual's family, or, in their absence, any other interested party reflected in the functional service unit's record, shall also be notified regarding the determination concerning the individual's need for a guardian. Such notice shall be made in writing within 30 days of concurrence by the administrative head of the functional service unit.

1. If the determination is that the individual is in need of a guardian, the written communication to the family or other interested parties shall relate the following options, one of which may be selected by the recipient and indicated on a standardized reply form to be supplied by the Division:

i. The recipient wishes to be designated guardian of the person at no personal expense for the legal costs, as the court action will be processed by the Division of Developmental Disabilities.

ii. The recipient elects to pursue appointment as guardian privately, securing the services of a personal attorney at his or her own expense. This option shall be exercised if guardianship of property as well as person is being sought.

iii. The recipient is not able or willing to serve as guardian of the person, but proposes another prospective appointee. The latter's name, address, telephone number, relationship to the alleged incompetent, and signature of proposed appointee, attesting to his or her willingness to be designated guardian of the person, shall be provided by the recipient to the functional service unit staff.

iv. The recipient is not able or willing to serve as guardian of the person; he or she accepts proposed appointment of the Bureau of Guardianship Services as guardian of the person of the alleged incompetent.

2. The family or other interested party shall be instructed to return the reply form within 30 days. If there is no response within 30 days, a telephone call shall be attempted by a staff member of the functional service unit to the family or other interested party. If the matter is still unresolved, a second letter shall be sent by the functional service unit via certified mail. This second communication shall apprise the family or other interested party that the absence of any response within an additional 30 calendar days from the date of the letter shall occasion an application to Superior Court for the appointment of the Bureau of Guardianship Services as guardian of the person.

3. If the Division's conclusion is that the individual is not in need of a guardian, the functional service unit staff shall notify the family or other interested party. The written communication shall instruct the recipient to contact the functional service unit within 30 calendar days if he or she wishes to discuss the matter.

i. If a family member or interested party disagrees with the determination of the functional service unit, an informal meeting shall be arranged within 20 working days. Participants may include the disagreeing party and his or her representative, if desired; appropriate staff of the functional service unit; and the individual in question. This informal meeting is intended to enable the parties to reach agreement on the need for a guardian.

ii. A written summary of the results of the meeting shall be forwarded to all participants within 20 working days by the functional service unit. If there is continuing disagreement, the summary shall advise of the option of initiating a court action for the purpose of requesting appointment of a guardian. The summary shall also advise that the Division may communicate its findings to the court.

***10:43-4.2 Communication with the Department of the Public Advocate**

The preliminary determination of the Division that an individual is in need of a guardian shall be forwarded to the Department of the Public Advocate along with supportive documentation.*

SUBCHAPTER 5. APPOINTMENT OF GUARDIAN

10:43-5.1 Referral for court appointment of a guardian

(a) When the administrative head of a functional service unit concurs with a clinical finding that an individual is in need of a guardian in accordance with N.J.A.C. 10:43-4.1, and the process of identifying the recommended guardian has been completed, the administrative head shall refer the matter to the Chief, Bureau of Guardianship Services. The referral shall include:

1. An affidavit by the administrative head of the functional service unit attesting to the individual's need for a guardian;

2. An affidavit by a psychlogist, who is either employed by the Division or licensed to practice in New Jersey, or by a practicing physician. The affidavit shall include information as to the clinical basis for the psychologist's or physician's professional judgment that the individual is unable to govern himself or herself or manage his or her own affairs. The affidavit shall include a statement relating a specific date when the psychologist or physician personally examined the individual;

3. A copy of the most current psychological evaluation report or other clinical examination report upon which the psychologist's or physician's affidavit is based. This report shall be no more than three years old;

4. Information and documentation regarding the proposed guardian, which shall consist of any of the following.

i. The original signed and dated reply form (see N.J.A.C. 10:43-4.1 (b)1) from the family member or other interested party indicating his or her intention relative to being appointed guardian;

ii. Copies of letters and certified mail receipts when there has been no response from the family or other interested party. An affidavit by a Division staff person attesting to the communication attempts and lack of any response shall also be developed and forwarded; or

iii. A detailed documentation of facts, events, and other information to support a conclusion by the functional service unit that a family member or other interested party, who has indicated a desire to be appointed guardian, would be unsuitable;

5. Names and addresses of immediate family members to receive notice of the guardianship action;

6. Identification of the county of settlement for the individual, if applicable;

7. A summary of the individual's current functioning and social history; and

8. If the individual is placed in a residential facility outside New Jersey, the last known address of the individual in New Jersey.

10:43-5.2 Procedure for referral to the Attorney General

Upon receipt of the referral package, the Chief, Bureau of Guardianship Services, shall review material for completeness***, as the Commissioner's designated agent in accordance with N.J.S.A. 30:4-165.5, shall sign a Verified Complaint and*** shall refer the matter to the Office of the Attorney General ***for the purpose of bringing a guardianship action in court pursuant to R. 4:83-10***.

SUBCHAPTER 6. INDIVIDUALS RECEIVING GUARDIANSHIP SERVICES WITHOUT COURT APPOINTMENT

10:43-6.1 Procedures for individuals receiving guardianship services without court appointment

(a) Persons who have been receiving guardianship services from the Division without prior judicial review shall be evaluated regarding the continuing need for a guardian, in accordance with the provision of N.J.S.A. 30:4-165.13. The scheduling of these evaluations shall be coordinated with the functional service unit by the Bureau of Guardianship Services.

(b) The same guidelines and criteria shall be applied as are delineated under N.J.A.C. 10:43-2 and 10:43-3.3.

(c) When a conclusion has been reached that an individual does or does not need a guardian, the matter shall then proceed in the same manner as delineated above under N.J.A.C. 10:43-4 and, except that the communication with the family or other party regarding their interest and ability to serve as guardian shall be the responsibility of the Bureau of Guardianship Services.

SUBCHAPTER 7. APPLICATION BY A PARTY OTHER THAN THE DIVISION FOR APPOINTMENT OF A GUARDIAN

10:43-7.1 Procedures

(a) As provided in N.J.S.A. 30:4-165.7, if a family member or other interested party initiates legal action for the appointment of a guardian, and if the functional service unit agrees that the individual is in need of a guardian:

1. The administrative head of the functional service unit shall provide upon request ***within 10 working days*** an affidavit attesting to the individual's need for a guardian.

2. The affidavit of a physician or licensed psychologist shall be arranged by the party filing the guardianship complaint. The standardized format developed by the Division for this affidavit may be made available for this purpose. According to availability of resources, the administrative head of the functional service unit may upon request and, at his or her discretion, direct that the affidavit be completed by a Division psychologist.

(b) If a family member or other interested party shall have filed legal action for the appointment of a guardian, and if the functional service unit does not agree that the individual is in need of a guardian:

1. The administrative head of the functional service unit shall complete and forward to the applicant for guardianship a copy of the statement signed by the administrative head of the functional service unit that the individual is not considered to be in need of a guardian.

2. The applicant for guardianship shall be informed of his or her opportunity to discuss the matter with appropriate staff of the functional service unit.

3. If the administrative head of the functional service unit ascertains that the guardianship action is nevertheless being pursued, he or she shall notify the Chief, Bureau of Guardianship Services. The Chief, Bureau of Guardianship Services, shall determine whether legal action should be initiated.

SUBCHAPTER 8. ADDRESSING SUITABILITY OF PROSPECTIVE GUARDIAN

10:43-8.1 Procedure for questioning prospective guardian suitability

(a) If the functional service unit or the Bureau of Guardianship Services, as applicable, is informed pursuant to N.J.A.C. 10:43-4.1(b)i or ii or any other method, that a family member or other interested party wishes to be appointed guardian, and conclusion is reached by the staff of the functional service unit that the prospective guardian may not be suitable:

1. The Chief, Bureau of Guardianship Services, shall be notified by applicable staff.

2. After consultation with the Chief, Bureau of Guardianship Services, the functional service unit staff may attempt to resolve the matter informally.

3. If attempts at informal resolution are unsuccessful, the administrative head of the functional service unit shall then communicate in writing with the person deemed unsuitable to be the individual's prospective guardian, conveying the Division's intention to recommend that an alternative guardian be appointed. This same correspondence shall clarify the recipient's right to contest the Division's position in a court hearing (see N.J.S.A. 30:4-165.13).

(b) If the functional service unit has some question about the suitability of a prospective guardian, this question shall be communicated in writing to the attorney appointed by the court to represent the alleged incompetent in accord with the provisions of N.J.S.A. 30:4-165.13. All attempts at informal resolution and their outcome shall be documented in the client record.

SUBCHAPTER 9. REVIEW OF GUARDIANSHIP STATUS

10:43-9.1 Procedure

As a part of the annual Individual Habilitation Plan process for each adult with a guardian or receiving guardianship services, the functional service unit shall review the continuing appropriateness of the individual's status with respect to guardianship. A recommendation for a change in guardianship status shall be supported by a clinical evaluation.

10:43-9.2 Individual receiving guardianship services without court appointment; staff review of guardianship

(a) If a determination is reached by the IHP review that the individual continues to require guardianship, this finding shall be noted in the individual's record and the Bureau of Guardianship Services informed within 30 days.

(b) If determination is reached by the IHP review that the individual is no longer in need of guardianship, this finding shall be communicated to the administrative head of the functional service unit. If the latter concurs with the finding, he or she shall sign a statement to that effect. The Bureau of Guardianship Services shall be notified and, if in agreement, written notification of this finding shall be provided to the client and to the client's family.

1. If all parties are in agreement, the Bureau of Guardianship Services shall terminate guardianship services immediately. This disposition shall be communicated to all parties within 30 days with an effective date of termination of guardianship services; or

2. If there is disagreement on the issue by any of the parties involved, the Division's appeal procedure shall be followed, in accordance with N.J.A.C. 10:48, to resolve the dispute.

10:43-9.3 Individual who has a court appointed guardian; staff review of guardianship

(a) If a determination is reached by the administrative head of the functional service unit that the individual continues to require a guardian, a notation to that effect shall be made in the individual's record.

(b) If a determination is made by the administrative head of the functional service unit that the individual's current functioning indicates he or she no longer needs a guardian or that the guardian should be changed:

1. This conclusion shall be communicated in writing within 30 days to the legal guardian and the individual.

2. If the legal guardian agrees with the finding, an attempt shall be made by the functional service unit to obtain a written statement of concurrence.

3. If the legal guardian disagrees with the Division's position, an effort shall be made by the functional service unit to resolve the matter informally. This attempt and the outcome shall be documented in the individual's confidential record.

(c) Whether the legal guardian has agreed or disagreed with the Division's position, the matter shall be referred to the Chief of the Bureau of Guardianship Services for referral to a court of competent jurisdiction. The Chief of the Bureau of Guardianship Services shall inform the administrative head of the functional service unit of the documentation required in each individual case.

10:43-9.4 Special review

Notwithstanding any other provisions of this subchapter, a special review of an individual's guardianship status by the IHP review team may be requested at any time by any interested party. If the administrative head of the functional service unit, or his or her designee determines that the request is appropriate, the special review shall be conducted within 30 days. The same potential disposition would be available as those delineated above under N.J.A.C. 10:43-9.2 and 9.3. Results of the special review shall be documented in the individual's confidential record.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Viral Hepatitis B

Adopted New Rules: N.J.A.C. 10:48-2

Proposed: October 3, 1988 at 20 N.J.R. 2437(a).
Adopted: July 7, 1989 by Drew Altman, Commissioner, Department of Human Services.
Filed: July 10, 1989 as R.1989 d.410, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12 et seq., and 30:6D-5(b).

Effective Date: August 21, 1989.
Expiration Date: January 21, 1991.

Summary of Public Comments and Agency Responses:

Comments were received from the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled; the Association for Retarded Citizens, Somerset County Unit; United Cerebral Palsy of Monmouth and Ocean Counties; Eden Acres, Inc.; the Easter Seal Society of New Jersey; the Gloucester County Association for Retarded Citizens; and the New Jersey Department of Health, Communicable Disease Control Services. The comments and responses follow, grouped by commenter. The agency's response to a comment made by more than one commenter is found the first time that comment occurs. All responses to comments of a technical nature concerning hepatitis B were reviewed with representatives of the Department of Health, Communicable Disease Services.

Division of Advocacy for the Developmentally Disabled

COMMENT: The term "active viral hepatitis B" should be changed to "acute hepatitis B" to avoid confusion and provide for consistency with generally accepted medical usage. Thus, whenever the term "active viral hepatitis B" is used in these rules, the term should be deleted and replaced with "acute hepatitis B."

RESPONSE: The term "active hepatitis B" has been changed to "acute hepatitis B." The definition has been amended. Definitions of "infectious person" and "immune person" were added to provide greater clarity in the rule.

COMMENT: The definition of "anti-HBs" should be amended to read:

"Anti-HBs" means the presence in blood of the antibody to hepatitis B surface antigen which indicates that the person has had hepatitis B or has received either immune globulin or hepatitis B vaccine. Anti-HBs means the person has no serologic evidence of infection.

RESPONSE: The definition of anti-HBs was revised, based upon "Hepatitis Surveillance", Centers for Disease Control Report Number 50, published in March, 1986 (Centers for Disease Control, Atlanta, Georgia 30333). The last sentence in the suggested change could be misleading; depending upon the source of the antibody, the person may or may not have had hepatitis B. When no vaccine has been given, anti-HBs is an indication of past infection. A person could have hepatitis B and anti-HBs at the same time, although this is rare.

COMMENT: The last sentence in the definition of "at risk", stating that "(t)he presence of antigen in the client enhances the risk to a susceptible care giver," should be deleted. It adds nothing to the definition and unnecessarily singles out care givers in contrast to clients.

RESPONSE: This sentence has been deleted from the definition.

COMMENT: In this subchapter, the terms "carrier" and "hepatitis B carrier" are synonymous. Therefore, the terms and definitions should be combined to read as follows:

"Carrier" means a person in whom the surface antigen for hepatitis is found in the blood twice when tested at six-month intervals, possibly in association with progression to chronic hepatitis and indicates that the person is infectious.

RESPONSE: The Department appreciates the comment regarding this redundancy and has elected to delete the definition of "carrier", since we agree that it is not necessary and because its use could possibly create confusion with carriers of other infectious diseases. The Department has based the changes made upon adoption on your recommendation and on the terminology used by the Centers for Disease Control, Atlanta, Georgia 30333. (See also the American Journal of Public Health, July 1980, page 712.) The additional text . . . "in association with progression to chronic hepatitis and indicates that the person is highly infectious",

while true, is not necessary for the purposes of this subchapter and has been deleted upon adoption.

COMMENT: The definition for "susceptible person" should be amended to read:

"Susceptible person" means a person who has an absence of the hepatitis B serological markers (antibodies) and whose surface antigen (HBsAg) is negative.

Having an absence of the hepatitis B surface antibody (Anti-HBs) and a surface antigen (HBsAg) which is negative are mutually exclusive. Therefore using the word "or" is improper.

RESPONSE: The Department agrees that the word "or" is improper and this definition has been revised, based upon your recommendation (See, also, CDC "Hepatitis Surveillance Report number 50, issued March 1986, page 8.)

COMMENT: N.J.A.C. 10:48-2.4 is too vague to adequately protect clients from unreasonable exclusion from programs. Clients should only be excluded if there are extreme and unusual circumstances which warrant exclusion. These circumstances would only arise if the client displays extremely aggressive behaviors, or has a severe and chronic medical condition, such as a severe chronic dermatological disorder in which there exists blood on the client's skin that poses a significant risk of infection to others. Accordingly, subsection (b) should be amended to read:

(b) The placement in programs of clients who have acute hepatitis B or who are carriers of hepatitis B shall be determined on a case-by-case basis. A client shall only be excluded from a program if the client has extremely aggressive behaviors or a severe and chronic medical condition that even with precautionary measures significantly poses a danger of infection to others. Reasonable and appropriate alternate activities shall be provided to clients who are excluded because of a diagnosis of acute hepatitis B or of being a carrier.

RESPONSE: The rule prohibits discrimination solely on the basis of being diagnosed as a hepatitis B carrier. It also requires the interdisciplinary team to determine and document the circumstances under which an individual may be excluded. This would require an indepth review on an individual basis. Exclusion must be related to a direct danger to others.

To exclude only on the basis of extremely aggressive behaviors or severe and chronic conditions may too narrowly define those instances when exclusion may be appropriate.

COMMENT: The term "active hepatitis B" in N.J.A.C. 10:48-2.7, Staff training, appearing in subsection (a) should be changed to "acute hepatitis B."

RESPONSE: N.J.A.C. 10:48-2.7(a), as have the other sections where the word "active" occurs, been amended to reflect this suggested change.

COMMENT: N.J.A.C. 10:48-2.9 Testing and monitoring process must be amended, not only because it provides for overtesting, but also because it unduly emphasizes the use of testing, a more intrusive process from the client's perspective, over the taking of precautionary measures.

Subsection (c) should be amended to read:

(c) If the client is HBsAg positive, the client shall be tested at six-month intervals for the first year. Testing thereafter shall be conducted no more than annually.

RESPONSE: N.J.A.C. 10:48-2.9(c) has been revised on adoption to reduce the frequency of testing. N.J.A.C. 10:48-2.9(d) has been deleted, since requirements for testing after the first six months have been changed on adoption to be based upon the discretion of the attending physician. So many factors enter into the decision that this judgement is best made by the attending physician, so that unnecessary testing will not be done.

COMMENT: N.J.A.C. 10:48-2.9(e) should be amended to read as follows:

(e) No further testing is required if the anti-HBs, the anti-HBc, and/or the HBsAg is negative.

RESPONSE: In the suggested revision, the individual is still susceptible and could contract hepatitis B. By requiring no further testing, the hepatitis B could go undetected.

COMMENT: The Public Advocate urges that N.J.A.C. 10:48-2.10 be rewritten because it allows for the exclusion of clients from admission to developmental centers on the pretext that the developmental centers cannot provide adequate medical care and precautions with respect to a client who has acute hepatitis B or is a carrier. There appears to be no legitimate reason why a developmental center should not be able to provide adequate medical care and precautions for clients with hepatitis. If there is, the circumstances of such should be specifically stated in the rules, so that "unable to provide adequate medical care and precautions" does not become a perfunctory but unsupported reason for excluding such clients.

DDD should take whatever measures are necessary to provide medical care and treatment to clients at developmental centers. Moreover, N.J.A.C. 10:48-2.4 sufficiently states criteria for excluding a client from certain programs.

RESPONSE: In most developmental centers, there would be adequate medical care and precautions to care for an individual with hepatitis B. However, there are certain specialty units such as the Moderate Security Counselling and Treatment Center which treats mentally retarded offenders and the Dually Diagnosed Unit which treats individuals with both mental retardation and mental illness where a hepatitis B carrier could pose an inordinate threat to other individuals in the unit. Therefore, the text has not been rewritten.

COMMENT: Clients who are advised to consult their personal physician to determine if the vaccine is medically contraindicated under N.J.A.C. 10:48-2.13(e), and who reside in DDD facilities and do not have private personal physicians but wish to elect this option, should be specifically provided with the services of a DDD physician to determine whether the vaccine is medically contraindicated.

There is, however, some concern that many physicians are unaware of the actual risks of the vaccine and, without adequate consideration of appropriate medical data, might routinely advise clients to decline immunization. Therefore, the Public Advocate recommends that the rules provide for DDD medical personnel to consult, subject to the client's consent, with the client's personal physician, when the personal physician advises a client that the vaccination is medically contraindicated.

RESPONSE: Individuals who reside in developmental centers do have a physician who is an employee of the Division as the attending physician. Clients who reside in community based programs or private mental retardation facilities generally have attending physicians who are not Division employees.

It is expected that physicians in the community and those employed by the Division would refer to the guidelines issued by the Centers for Disease Control, Atlanta, Georgia 30333, and to the Report of the Committee on Infectious Diseases, 1988 edition, issued by the American Academy of Pediatrics, 141 Northwest Point Blvd., P.O. Box 927, Elk Grove Village, Illinois 60009-0927 and would utilize their own professional judgement regarding any recommendations they may make to individual patients, based upon that patient's particular circumstances.

COMMENT: N.J.A.C. 10:48-2.14(a) should be amended to delete the reference to "HBeAg." This term should be replaced with "Anti-Hbc."

RESPONSE: The Department appreciates that HBcAg was redundant and that Anti-HBc is more appropriate; however, the Department has changed the requirement on adoption to describe the status of the patient and thus to permit the attending physician to elect the most appropriate test, given the factors existing in the patient's particular situation, and based upon the recommendations of the Centers for Disease Control (See Centers for Disease Control Report Number 50, published in March, 1986, by the Centers for Disease Control, Atlanta, Georgia 30333).

COMMENT: N.J.A.C. 10:48-2.14(b)2 should be deleted entirely. An individual does not receive immunization if he or she tests HBsAg positive, HBeAg positive or Anti-Hbs negative.

RESPONSE: This subsection has been revised, in accordance with the recommendations of the Centers for Disease Control, Report 50.

COMMENT: Persons who are exposed to hepatitis are not simply immunized, but are provided with other treatment as well. Treatment should begin as soon as possible and need not be repeated. Therefore N.J.A.C. 10:48-2.15(a)2 should be changed to read:

2. Appropriate Division or agency staff shall inform the client or guardian and staff person that appropriate post-exposure prophylaxis, as determined by a physician, should be given within 24 hours of exposure, or as soon thereafter as possible, but no later than seven days after the exposure.

RESPONSE: N.J.A.C. 10:48-2.15(a)2 has been revised as suggested.

COMMENT: The Public Advocate questions the need for a registry. Such a registry, especially when it is maintained in numerous places, will likely result in undue discrimination against clients with hepatitis, with respect to placement and receipt of services. Because of this potentially severe impact upon such clients, maintaining a medical chart with each client's medical history in his or her central file should be sufficient. DDD, upon reviewing the client's file, need merely notify future service providers of the client's medical condition in advance so that precautionary measures could be taken.

It should be noted that most states do not have such registries.

RESPONSE: The maintenance of a registry is a responsibility of Division staff. It is an additional administrative safeguard in addition to

information readily available in the client's record. It is not intended to be used as a means to discriminate against the individual.

COMMENT: The standard for exclusion of a client from programming in N.J.A.C. 10:48-2.17(a) is too broad and one that is especially vulnerable to subjective, uneven application. Accordingly, the Public Advocate recommends that the language "unless a determination has been made by the IDT" be changed to "unless the client has extremely aggressive behaviors or a severe and chronic medical condition that, even with precautionary measures, poses a significant danger of infection to others."

RESPONSE: N.J.A.C. 10:48-2.17(c) and the definition for "At risk" now require any exclusion to be based upon objective criteria and lists medical and behavioral considerations such as aggressive behavior, self mutilation, accidental injury, frequent bleeding, sexual activity, uncontained menstrual bleeding, seizure disorders, and pathology and skin lesions. The changes on adoption have been made pursuant to the recommendations of the Centers for Disease Control outlined in Centers for Disease Control Report Number 50, March, 1986.

Association for Retarded Citizens, Somerset County Unit

COMMENT: Clarification is needed in relation to the anti-HBc.

RESPONSE: Anti-HBc is an antibody acquired once a person has contracted the disease. That individual is no longer susceptible. The definition has been amended to clarify this.

"Identification of clients and staff susceptible to hepatitis B can be accomplished by utilizing one of two antibody assays that indicate prior infection. The antibody to hepatitis B core antigen (anti-HBc) will identify all previously infected persons, both carriers and non-carriers, but will not discriminate between members of the two groups. Anti-HBs will identify those previously infected, except carriers. For groups expected to have carriage rates of under 2%, such as facility staff members, neither test has a particular advantage. For groups with higher carriage rates, such as clients who have lived in institutions, anti-HBc may be preferred to avoid unnecessary vaccination of carriers.

Frequently, facilities will want to screen to establish both the carriage and susceptibility status of their clients. Any screening strategy that uses both the HBsAg assay and either of the two antibody assays will suffice. The most cost-effective approach, however, is a two-step method in which clients are first screened for anti-HBc and then all persons found to be positive on this assay are tested for HBsAg." (Centers for Disease Control Report Number 50, March 1986, Centers for Disease Control, Atlanta, GA 30333)

COMMENT: N.J.A.C. 10:48-2.3 should add the words "and no longer susceptible".

RESPONSE: The definition has been amended to include this information.

COMMENT: N.J.A.C. 10:48-2.9(a) should include anti-HBsAg, because this may be the only test which is positive.

RESPONSE: This subsection has been amended to include this information.

COMMENT: N.J.A.C. 10:48-2.14(a) should also include anti-HBc negative.

RESPONSE: The Department has changed the requirement on adoption to describe the status of the patient and thus to permit the attending physician to elect the most appropriate test, given the factors existing in the patient's particular situation, and based upon the recommendations of the Centers for Disease Control (See Centers for Disease Control Report Number 50, published in March, 1986, by the Centers for Disease Control, Atlanta, Georgia 30333).

COMMENT: N.J.A.C. 10:48-2.14(a) and (b) are inaccurate.

RESPONSE: N.J.A.C. 10:48-2.14(a) and (b) have been amended on adoption to conform to the recommendations of the Centers for Disease Control (See Centers for Disease Control Report Number 50, published in March, 1986, by the Centers for Disease Control, Atlanta, Georgia 30333).

United Cerebral Palsy of Monmouth and Ocean Counties Inc.

COMMENT: In reading these proposed new rules, one is given the impression that the rules are written for the retarded or that all developmentally disabled people are retarded. In the paragraph defining "private mental retardation facility," (N.J.A.C. 10:48-2.3) the first sentence refers only to the mentally retarded, while the last sentence refers to "developmentally disabled individuals."

The next paragraph, defining "special residential services," refers to Division responsibility for clients in "private mental retardation facilities." This reads as if the special residential services component serves only the retarded segment of the developmentally disabled population. References to Special Residential Services or private mental retardation services appear four more times (see "Regulatory Flexibility Statement", N.J.A.C. 10:48-2.6(a), N.J.A.C. 10:48-2.8(a) and N.J.A.C. 10:48-2.2(b)).

It is not the inclusion of the retarded that misleads as to whom these rules are directed. The exclusion of other developmentally disabled groups might lead one to believe that these rules refer only to the retarded.

The commenter would suggest language which refers to no particular segment of the developmentally disabled citizens of New Jersey. If it is necessary to name one developmentally disabling condition, then each should be named.

RESPONSE: The rules are intended to address all clients of the Division of Developmental Disabilities. The Office of Special Residential Services serves clients in those facilities designated "Private Mental Retardation Facilities", as well as clients in facilities for the developmentally disabled, which category includes those who are mentally retarded, as well as other categories of developmental disabilities. The designation "Private Mental Retardation Facilities" refers to those facilities in New Jersey which are licensed by the Department, pursuant to the authority granted by N.J.S.A. 30:1-15 and 15.1 and the rules at N.J.A.C. 10:47. These facilities also serve those who are developmentally disabled, however, the licensing designation is "Private Mental Retardation Facilities". For the purposes of these rules, only facilities in New Jersey are included in the scope of these rules; therefore, the text in the definitions section is correct as written and has not been amended on adoption.

COMMENT: Is there a medical rationale for a notation on the presence or absence of Downs Syndrome for a registry of hepatitis B carriers, as required by N.J.A.C. 10:48-2.16(c)8?

These rules to protect both clients and workers from hepatitis B will certainly be welcomed by both groups.

RESPONSE: At one time, there were several studies which questioned the response of individuals with Downs Syndrome to the vaccine. More recent studies show no difference between the response of this group and the general population. Therefore, N.J.A.C. 10:48-2.16(c)8 has been deleted.

Eden Acres, Inc.

COMMENT: The proposed rules are a reasonable and acceptable policy. They not only insure the right of developmentally disabled persons with hepatitis B to live in the community, but also provides a mechanism by which an individual, under certain circumstances, can be determined inappropriate for community placement.

RESPONSE: The Division appreciates the support for the proposed rules.

Easter Seal Society of New Jersey

COMMENT: Regarding N.J.A.C. 10:48-2.3, Definitions, at "high risk", is the term currently used to designate programs requiring hepatitis education and screening for staff, participants and their families? There is no such distinction in the proposed new rules. Will all program participants and their families, where a carrier attends, be educated and screened?

RESPONSE: It is the intention of the rule that susceptible persons who are at risk will be offered the opportunity to receive hepatitis B vaccine. Informed consent must be obtained before screening and immunization can be provided.

The Division wishes to make available these protections. The individual, however, must decide whether to avail him or herself of these safeguards.

Gloucester County Association for Retarded Citizens

COMMENT: N.J.A.C. 10:48-2.4, Exclusion from programs, should contain a statement specifying that if the client, family or guardian disagree with the exclusion from a program or service, that individual may appeal the decision.

RESPONSE: As indicated in N.J.A.C. 10:48-2.18, an appeal of exclusion from programs may be requested, pursuant to N.J.A.C. 10:48-1, which outlines the appeal procedure. Any decision of the Division may be appealed.

Communicable Disease Control, New Jersey Deparmtent of Health

COMMENT: N.J.A.C. 10:48-2.11(a) is unclear as written.

RESPONSE: N.J.A.C. 10:48-2.11(a) has been amended to provide clarity.

COMMENT: Hepatitis B vaccine would only be indicated if the client's test is HBsAg negative, and anti-HBs negative. Persons who are HBsAg positive, or HBeAg positive, should not receive the vaccine as they already have hepatitis B infection.

RESPONSE: N.J.A.C. 10:48-2.14(b)2 has been amended.

COMMENT: Add the word "susceptible" before "client or staff person" at N.J.A.C. 10:48-2.15(a)1ii.

RESPONSE: The Department has accepted your comment and has modified the definition to clarify who may be considered a susceptible person, to more clearly conform to the description given by the Centers for Disease Control.

COMMENT: The Immunization Practices Advisory Committee (ACIP) advises "For percutaneous or mucous membrane exposure to blood known to be HBsAg positive or from a bite of an HBV carrier, a single dose of HBIG (0.06 ml/kg or 5 ml for adults) should be given as soon as possible, and a series of three doses of HB vaccine begun within 1 week after exposure." The rule as written would not provide long lasting immunity for the at risk individuals.

RESPONSE: N.J.A.C. 10:48-2.15(a)2 has been amended to include the Department of Health's recommendation, and also to allow for discretion on the part of the attending physician.

COMMENT: The wording of N.J.A.C. 10:48-2.17(c) does not conform to currently accepted medical findings. The following is published in the Centers for Disease Control Report Number 50, issued March 1986. "Factors that increase the risk of disease transmission include aggressive behavior (biting), self-mutilation, accidental injury, frequent bleeding, sexual activity, uncontained menstrual bleeding, seizure disorders, oral pathology and skin lesions." We suggest amendment to include this language.

RESPONSE: N.J.A.C. 10:48-2.17(c) has been amended as requested.

In addition to the changes made in direct response to comments, the Department has made changes to N.J.A.C. 10:48-2.15(a) to conform to the recent recommendations included in the Morbidity and Mortality Report published June 23, 1989 by the Centers for Disease Control, Atlanta, Georgia 30333.

Changes have also been made to N.J.A.C. 10:48-2.3 to include definitions for "infectious person" and for "immune person", in accordance with the Centers for Disease Control Report Number 50, published in March, 1986. A person without any serologic markers for hepatitis B is susceptible and the definition of "susceptible person" at N.J.A.C. 10:48-2.3 has been amended to clearly state this. The definition of "institution" has also been amended on adoption to more clearly represent the scope of these rules.

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

SUBCHAPTER 2. VIRAL HEPATITIS

10:48-2.1 Purpose

The purpose of this subchapter is to delineate Division of Developmental Disabilities policies and procedures regarding the screening, treatment and control of viral hepatitis B in the service components of the Division.

10:48-2.2 Scope

(a) This subchapter applies to those employees and clients within the following service components of the Division of Developmental Disabilities:

1. Developmental Centers;
2. Community Services; and
3. Special Residential Services.

(b) This subchapter also applies to programs offered by private mental retardation facilities licensed in accordance with N.J.A.C. 10:47.

10:48-2.3 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings:

"*[Active]* ***Acute*** viral hepatitis B" means the *[highly infectious phase]* ***recent onset*** of viral hepatitis B which is identified by positive blood tests for HBsAg, *[HBeAg]* and *[other]* elevated liver function tests ***with other clinical symptoms compatible with hepatitis B***.

"Anti-HBc" means the presence of the antibody to hepatitis B core antigen***, acquired once a person has contracted the disease,*** which indicates that the person is no longer susceptible to contracting viral hepatitis B.

"Anti-HBs" means the presence in the blood of the antibody to hepatitis B surface antigen which indicates that the person has had ***a*** hepatitis B ***infection and is immune*** or has received either immune globulin or hepatitis B vaccine. ***Provided that the person has not recently received immune globulin,*** anti-HBs means, ***for the purposes of this subchapter, that*** the person is not *[infectious]* ***susceptible***.

"At risk" means the designation of a person who is neither a carrier of hepatitis B virus, nor has an antibody to hepatitis B, and who is, or may be expected to be, exposed to the blood or body fluids of a client who is hepatitis B surface antigen positive, through either the person's own designated duties or through the behavior of the client, which may include, but is not limited to, *[biting, scratching, or drooling. The presence of antigen in the client enhances the risk to a susceptible care giver.]* ***aggressive behavior (biting), self-mutilation, accidental injury, frequent bleeding, sexual activity, uncontained menstrual bleeding, seizure disorders, oral pathology, and skin lesions.***

["Carrier" means a person in whom the surface antigen for hepatitis is found in the blood twice consecutively, when tested at six-month intervals.]

"Client" means a person who is eligible for, and is receiving, the services of the Division.

"Department" means the Depatments of Human Services.

"Developmental Center" means those State-operated facilities providing residential services to specified clients.

"Division" means the Division of Developmental Disabilities within the Department of Human Services.

"Hepatitis B carrier" means a person *[whose HBsAg is positive, in association with progression to chronic hepatitis and indicates that the person is highly infectious]* ***in whom HBsAg is found in the blood when that person is tested twice six months apart***.

"Individual habilitation plan" ("IHP") means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the goals and objectives being pursued on behalf of the individual and the steps being taken to achieve them by each agency. It identifies a continuum of skill development that outlines progressive steps and the anticipated outcomes of services. The individual habilitation plan is a single, consistent and comprehensive plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a service plan, a treatment plan, and a health care plan. Various aspects of the plan, such as education, rehabilitation, health care, and others, are assigned to those persons or agencies who can provide, or are legally required to provide, the training or services.

"Infectious person" means a person who is hepatitis B surface antigen positive.

"Immune person" means a person who is hepatitis B surface antibody positive.

"Institution" means *[residential schools, homes or specialized facilities]* ***developmental centers operated by the Division or private mental retardation facilities***.

"Interdisciplinary team" ("IDT") means an individually constituted group of relevant individuals responsible to develop a single integrated IHP. The team shall consist of the client, the client's parent (if the client is a minor or an adult who deserves that the parent be included), guardian or advocate, those persons who work most directly with the client and professionals and representatives of service areas who are relevant to the identification of the client's needs and the design and evaluation of programs to meet them.

"Private mental retardation facility" means an institution for the mentally retarded, whether operated for profit or not, which is not maintained, supervised or controlled by any agency of the government, or the state, or any county or municipality and which maintains and operates facilities and collects fees for the residential care and habilitation training of 16 or more, non-related developmentally disabled individuals for periods exceeding 24 hours.

"Special residential services" means that component of the Division which is responsible for client placed in Private Mental Retardation Facilities.

"Susceptible person" means a person *[who has an absence of the hepatitis B surface antibody (Anti-HBs) or whose surface antigen (HBsAg) is negative]* ***who has no serologic marker for hepatitis B virus***.

"Transfer" means the removal of a clients from one service unit and placement into another service unit, as follows:

From	To
Developmental Center	Developmental Center Community Services Special Residential Services
Community Service	Developmental Center Special Residential Services
Special Residential Services	Developmental Center Community Services
Special Residential Service	Special Residential Service (Transfers between New Jersey Private Licensed Mental Retardation Facilities)

"Viral hepatitis B" means a type of inflammation of the liver. Hepatitis B virus is found in the blood, blood products, and to a lesser degree, in other body secretions. The major mode of transmission is blood to blood contact.

10:48-2.4 Exclusion from programs

(a) Clients identified by a physician as hepatitis B carriers, or individuals who have *[active]* ***acute*** hepatitis B, shall not be excluded from regular participation in services solely on the basis of being diagnosed as hepatitis B infected or carriers.

(b) The placement in programs of clients who have *[active]* ***acute*** hepatitis B or who are carriers of hepatitis B shall be determined on a case by case basis. Any exclusion of a client from a program or from program activities shall be based upon objective criteria as determined by the client's interdisciplinary team and shall be related to a direct danger of infection to others. Reasonable and appropriate alternate activities, as determined by the interdisciplinary team, shall be provided to clients who are excluded because of a diagnosis of active hepatitis B or carrier.

(c) If a client is excluded from programming because of a diagnosis of hepatitis B or carrier of hepatitis B, the client, guardian or family shall be advised of the reason for exclusion.

10:48-2.5 Immunization expenses

(a) When clients and/or staff who are considered to be at risk are offered the opportunity to be immunized for hepatitis B, health care benefits and entitlements, medical insurance, or other means of medical coverage shall be utilized first as a means of payment.

(b) To the extent that the immunization costs are not covered by the sources in (a) above, the Division shall incur the expense either partially or totally.

(c) As a prerequisite for admission to a developmental center, appropriate immunization shall be required.

10:48-2.6 Requirements for program participation or placement of persons with hepatitis B

(a) Decisions concerning placement or program participation within community programs or Special Residential Services shall be made jointly by the Division and the service provider, in consultation with the client's physician.

(b) Medical questions may be referred to a mutually agreed-upon expert for consultation.

(c) Clients shall be immunized for hepatitis before placement in a developmental center.

10:48-2.7 Staff training

(a) Before the admission to service of a client who has *[active]* ***acute*** hepatitis B or who is a hepatitis carrier, all staff shall receive instruction in the methods by which hepatitis B is transmitted and how personal hygiene can prevent the transmission of hepatitis.

(b) Staff shall be informed of the various types of hepatitis vaccine and the protection provided by each type and shall be given the opportunity to receive immunization.

(c) The service provider shall provide, or cause to be provided, the required training.

(d) Training shall be repeated as circumstances require.

10:48-2.8 Responsibility for testing and monitoring

(a) The provisions of this subchapter shall be followed in developmental centers and in private mental retardation facilities in New Jersey.

(b) The provisions of this subchapter may be used as guidelines by physicians of clients in community programs.

10:48-2.9 Testing and monitoring process

(a) Except in emergency situations, each client shall have a blood test to determine the presence of HBsAg and anti-HBc, ***or anti-HBs*** using currently accepted techniques, within 60 days before the admission of the client to developmental centers or private mental retardation facilities.

(b) In emergency situations which require that the client be admitted before testing has been completed or before the test results are obtained, the testing and monitoring process shall be completed as soon as possible after the client is admitted.

(c) If the client is HBsAg positive *[and HbeAg negative, the client shall be tested at six-month intervals for the first year. Testing thereafter shall be conducted as medically indicated.]* ***the client shall be tested once more six months later, unless he or she is a known carrier. Testing thereafter shall be at the discretion of the attending physician.***

*[(d) If the client is HBsAg positive and HBeAg positive, testing shall be conducted as follows:

1. Testing shall be conducted at three month intervals for the first year;
2. Testing shall be conducted at six month intervals for the second year;
3. Testing shall be conducted annually for three successive years; and
4. Testing thereafter shall be conducted as medically indicated.]*

*[(e)]**(d)* No further testing is required if the anti-HBs and/or the anti-HBc is positive and the patient is certified by a physician as having a natural immunity.

10:48-2.10 Admission of client

(a) A client may be admitted to a developmental center if he or she has been tested and found to have *[active]* ***acute*** hepatitis B or be a carrier of hepatitis B, if the developmental center can provide adequate medical care and precautions, as determined by the Medical Director of the center.

(b) A client may be admitted to a community program or to a Special Residential Services program if he or she has been tested and found to have *[active]* ***acute*** hepatitis B or be a carrier of hepatitis B, upon evaluation on a case by case basis, by the Division and the program, in consultation with the client's physician.

10:48-2.11 Transfer of client

(a) *[If a client is to be transferred, testing shall be performed if the client has not been identified as immune to hepatitis, or is an identified carrier who has not had hepatitis B testing within 30 days prior to the proposed transfer date. Monitoring and retesting shall be conducted as indicated in N.J.A.C. 10:48-2.8 and 2.9.]* ***If a client is to be transferred, testing shall be performed unless the client has been identified as having natural immunity, is a known carrier or has had testing within 30 days prior to the proposed transfer date. Monitoring and retesting shall be conducted as indicated in N.J.A.C. 10:48-2.8 and 2.9.***

(b) If testing has occurred within 30 days prior to the proposed transfer date, the monitoring and retesting shall be conducted as indicated in N.J.A.C. 10:48-2.8 and 2.9.

(c) Any delays in transferring a client who has *[active]* ***acute*** hepatitis B or who is a hepatitis B carrier shall be reviewed on a case-by-case basis by the sending and receiving programs. A decision to delay the transfer of a client shall be reviewed no less than every 90 days.

10:48-2.12 Immunization of susceptible individuals at risk

(a) All clients in day or residential programs in New Jersey who are not carriers and who do not have natural immunity and are at risk of contracting hepatitis B shall be provided with the opportunity to receive hepatitis B vaccine, under the terms indicated in N.J.A.C. 10:48-2.4 (a) and (b).

(b) Any staff member considered to be at risk contracting hepatitis B while employed in a program operated by, or under contract with, the Division in New Jersey shall be given an opportunity to be tested and to receive hepatitis B vaccine, under the terms of N.J.A.C. 10:48-2.4 (a) and (b).

10:48-2.13 Informed consent

(a) Staff responsible for testing or vaccination shall obtain the client's or client's guardian's , or staff person's, informed consent before testing or vaccination. The informed consent shall be placed in the client's or staff person's file, as appropriate.

(b) Clients who are not mentally deficient or incompetent and staff who are at risk shall be informed of the risk of contracting hepatitis B and of the availability of vaccines, the benefits of the vaccines and possible adverse effects of the vaccines. Written documentation of the information given to the client or staff person shall be placed in the client's or staff person's file, as appropriate.

(c) In the case of minors or mentally deficient or incompetent adult clients who are at risk, the guardian of the person shall be informed of the availability of the vaccine, the benefits of the vaccine, and the possible adverse side effects. Written documentation of the information given to the guardian of the person shall be placed in the client's file.

(d) The person being informed shall be advised to consult his or her personal physician, or the personal physician of the minor or the mentally deficient or incompetent client, as appropriate, to determine if the vaccine is contraindicated in the particular situation.

(e) A staff member, a client who is competent, a guardian of a minor or a guardian of a deficient or incompetent client may elect to decline the offer of vaccination, after receiving information on the vaccine from the staff person designated to obtain consent.

(f) A staff member, a client who is competent, a guardian of a minor or a guardian of a mentally deficient or incompetent client shall sign a statement that he or she understands the benefits and the possible side effects of the vaccine and that he or she either agrees to or refuses the testing and/or the vaccine. The signed statement shall be kept in the employee's or client's file.

(g) The requirements of (a) through (f) above shall be documented and kept in the client's or employee's file. Documentation shall be kept on file of all informed consent forms distributed and whether or not they were returned.

10:48-2.14 Immunization of clients scheduled to be admitted to developmental centers

(a) Prior to the admission of a client to a developmental center, at least one dose of the hepatitis B vaccine shall be administered to any client who has been tested ***pursuant to the recommendations of the Center for Disease Control Report Number 50, published March 1986 and who*** *[and is HBsAg, HBeAg or Anti-Hbs negative]* ***has no antibody or antigen to hepatitis B***.

(b) The following procedures shall be followed for emergency admissions:

1. If admission occurs before testing and immunization can be initiated, then full hepatitis B testing and immunization shall take place as part of the initial admission medical evaluation;

2. If admission occurs after testing is completed, but before immunization, and the *[client's test is HbsAg positive, HBeAg positive or Anti-HBs negative]* ***client has no antibody or antigen to hepatitis B***, the first dose of the Hepatitis B vaccine shall be given within 14 days from admission.

10:48-2.15 Treatment for those who have been exposed to hepatitis and have not been immunized or who have no natural immunity

(a) Treatment for those who have been exposed to hepatitis and *[have not been immunized or who]* have no *[natural]* immunity shall be administered ***pursuant to the Morbidity and Mortality Report published by the Centers for Disease Control, June 23, 1989. (Centers for Disease Control, Atlanta, Georgia 30333)*** as follows:

1. Appropriate Division or agency staff shall inform the client or guardian and staff that immunization is recommended in some cases, including, but not limited to, the following:

i. When the client or staff person has been bitten by an individual who tests positive for HBsAg, if the bite breaks the skin;

ii. When the ***susceptible*** client or staff person has been exposed to the blood or other body fluids of an individual who tests positive for HBsAg.

2. Appropriate Division or agency staff shall inform the client or guardian or staff person that the appropriate *[immunization, as determined by a physician, should be given within 24 hours of exposure or no later than seven days after the exposure, and should be repeated one month later]* ***post-exposure treatment, as determined by a physician, pursuant to the current Morbidity and Mortality Report, published by the Centers for Disease Control, Atlanta, Georgia 30333, should be given***.

10:48-2.16 Registry of carriers of hepatitis B

(a) A registry of hepatitis B carriers shall be maintained by developmental centers, regional Offices of Community Services and the Bureau of Special Residential Services of the Division, which shall contain the names of all clients of the center, office, or bureau who have been determined by a physician to be carriers of hepatitis B.

(b) The registry shall be confidential, in accordance with N.J.A.C. 10:41-2.

(c) The registry shall contain the client's:

1. Name;
2. Date of birth;
3. Guardianship status;
4. Current residential placement name and address;
5. Current day program name and address;
6. Hepatitis B surface antigen status;
7. Hepatitis Be antigen status*[; and]**.*

[8. A notation regarding the presence or absence of Down's Syndrome.]

(d) The Community Services Registry shall contain, for each client on the registry, a history of the person's institutional placement, and shall include psychiatric hospital, developmental center, or other placement, as applicable.

(e) The registry shall be maintained as follows:

1. In the developmental center, by the staff person responsible for infection control;

2. In the Bureau of Special Residential Services, by the Office of the Chief; and

3. In the regional offices, by the Regional Nurse.

(f) A client's name shall be removed from the registry if he or she becomes immune.

10:48-2.17 Limitations to program participation

(a) A client who has *[active]* ***acute*** hepatitis B or who is a carrier of hepatitis B shall be included in all programs designated for the client in the IHP, unless a determination has been made by the IDT that the client should not participate in programming. This determination shall be fully documented in the client's IHP.

(b) Where exclusion from a specific program activity has been determined appropriate by the IDT, reasonable and appropriate alternatives shall be provided to the client, consistent with the recommendations in his or her IHP.

(c) Any exclusion of a client from a program shall be based upon objective criteria, including, but not limited to, medical and behavioral consideration of any of the client's behaviors which result in increased risk of transmission of hepatitis to others (for example, *[biting, scratching, uncontrolled drooling, poor handwashing skills, incontinence).]* ***aggressive behavior (biting), self mutilation, accidental injury, frequent bleeding, sexual activity, uncontained menstrual bleeding, seizure disorders, oral pathology and skin lesions.***

(d) The client or family of the client or the guardian, as appropriate, shall be informed in writing of the client's exclusion and of the reason(s) for the exclusion.

(e) The IDT shall evaluate exclusion of clients from programming every 90 days as long as the exclusion is in effect. The evaluation shall be noted in the client's file.

10:48-2.18 Appeal of exclusion of client from program

If the client, family, or guardian disagrees with the exclusion from programming, an appeal may be made in accordance with the provisions of N.J.A.C. 10:48-1.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Other Governmental Problems/Medicaid Eligibility for Newborns

Adopted Amendments: N.J.A.C. 10:81-8.22 and 8.23

Proposed: April 17, 1989 at 21 N.J.R. 967(a).
Adopted: July 31, 1989 by Drew Altman, Commissioner, Department of Human Services.
Filed: July 31, 1989 as R.1989 d.448, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: August 21, 1989.
Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:81-8.22 Persons eligible for medical assistance

(a) All children and their parents or needy parent-persons who are eligible for AFDC money payments (-C, -F and -N segments) are eligible for Mediciad benefits. If an eligible family chooses not to receive a money payment, members are eligible for Medicaid only. Medicaid coverage commences with the date that eligibility is established.

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1.-2. (No change.)

3. New members added to the eligible family during the 12 month extension period are not included under the extended coverage with the exception of a child born to the family during the 12 month extension period. For children born during this period, the child and the mother may be eligible for additional coverage if the 60-day post-partum period continues beyond the termination of the extension period applicable to the remainder of the household (see N.J.A.C. 10:81-8.22(e).

4.-6. (No change.)

(c) (No change.)

(d) AFDC eligible families which receive no AFDC payments solely because the amount payable would be less than $10.00, are eligible for Medicaid benefits. Likewise, AFDC families which would be ineligible for AFDC solely because of rounding of the amount that would otherwise be payable, are eligible for Medicaid benefits.

(e) For newborns of eligible women who have applied (before or on the date of the birth) and are eligible for Medicaid on the date of birth, eligibility continues for both mother and child through the last day of the month in which the 60-day post-partum period ends, without regard to other program requirements. So long as the mother remains eligible and the child resides with her, the child remains eligible for Medicaid for a period of one year, whether or not application has been made for the child.

(f) Individuals who were admitted to a hospital and were subsequently referred to the CWA through the use of Form PA-1C, Public Assistance Inquiry, may be eligible for Medicaid benefits from the date the PA-1C was completed, provided:

1. (No change.)

2. Except for good cause, the individual applies for Medicaid benefits within three months after the referral is made.

i. (No change.)

ii. Newborns of eligible women are deemed to have applied and shall be added to the Medicaid case, effective the date of birth, upon receipt of a valid Form PA-1C (see N.J.A.C. 10:81-8.22(e) for coverage limits).

10:81-8.23 Medicaid Special

(a) (No change.)

(b) When the individual lives in the same household as his or her natural or adoptive parent(s), financial eligibility will in all cases include the parent's(s') income and resources. If applicable, the deemed income of the stepparent shall be included. For the determination of financial eligibility of an individual under the age of 21, he or she shall be considered to be in an eligible family consisting of the applicant, his or her parent(s) and their dependent children.

(c) When an individual does not live with his or her natural or adoptive parent(s), eligibility shall be determined for an eligible family of one, considering only the individual's income and resources (see N.J.A.C. 10:81-8.24(c) regarding LRRs).

1. If the individual is married and living with his or her spouse, they shall be considered an eligible family of two and all income and resources of both parties shall be considered.

i. Medicaid coverage is not extended to a spouse age 21 or older although his or her income must be considered. If the spouse is under 21, both will be included.

2. (No change.)

(d) Rules concerning pregnant women age 21 and over are:

1. (No change.)

2. Eligibility is determined for an eligible family of two (woman and unborn child) based on her income and available resources only, or, if she is married and living with her spouse, on an eligible family of three (woman, spouse and unborn child) including income and available resources of both spouses. Medicaid coverage does not include the spouse even though his income is included in the eligibility determination.

i. A pregnant woman with other dependent children should be assisted in making immediate application for AFDC. If she is found ineligible for AFDC, the CWA shall determine eligibility for Medicaid Special on behalf of her unborn child. The eligible family shall consist of the woman, her spouse if present, any dependent child(ren) and the unborn child. All income and resources shall be applied to the appropriate AFDC-C or -F standard but only the woman and the unborn child may be eligible for Medicaid coverage.

(1) Coverage under Medicaid Special begins with the medical determination of pregnancy and ends, for the mother and the newborn, with the last day of the month in which the 60-day post-partum period expires. The child may remain eligible for Medicaid Special in accordance with (b) above; he or she will keep the same case number.

(2)-(3) (No change.)

(e) A pregnant woman under age 21 who is eligible for Medicaid Special in her own right as provided in (b) and (c) above is covered for medical care during pregnancy.

1. If the woman is not covered under those provisions, she may be eligible on behalf of her unborn child as provided in (d) above. In that event, eligibility is determined for an eligible family of two (or three if a spouse is present), and the parents of the expectant mother are evaluated as LRRs.

i. (No change.)

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Administration

Adopted New Rules: N.J.A.C. 10:120

Proposed: November 7, 1988 at 20 N.J.R. 2742(a).
Adopted: July 26, 1989 by Drew Altman, Commissioner, Department of Human Services.
Filed: July 26, 1989 as R.1989 d.300, **with substantive and technical changes** not requiring additional public notice and comment, see N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 30:1-9 et seq.

Effective Date: August 21, 1989.
Expiration Date: August 21, 1991.

AGENCY NOTE: The Division has placed a short expiration period of two years from the effective date on these rules, because thorough

review of the Division's policies and practices regarding administrative hearings and reviews is now under way. This review will result in new rules which will be promulgated within the allowed time period of two years.

Summary of Public Comments and Agency Responses:

The Division received one written comment, from the Hunterdon County Board of Social Services, covering four points.

COMMENT: The commenter suggested that the requirement in N.J.A.C. 10:120-3.3(a) that all complaints be acknowledged in writing is unduly burdensome to local agencies in that client complaints can be varied and may have merit or not. The commenter recommends that only complaints regarding a violation of statute, rule or regulation need be acknowledged in writing.

RESPONSE: The Division feels that the intent of this rule can be made clearer by including specific references to earlier sections in the subchapter, that is, N.J.A.C. 10:120-3.1(d), and (e), which detail circumstances under which fair hearings will and will not be granted. Written responses will continue to be made to complaints involving denials, delays in action on applications, eligibility determinations, suspensions or reductions in services, for which fair hearings are granted, and to complaints involving changes in placement and foster parent applications for placement of a child for adoption, for which fair hearings are not granted. Other complaints may be answered orally, if appropriate.

COMMENT: The commenter states that N.J.A.C. 10:120-3.14, describing the role of local agency personnel as agency representations in fair hearings, is not necessary, as agency representations are guided in their conduct by Rule 1:21-1(e) of the New Jersey Court Rules.

RESPONSE: Rule 1:21-1(e)(3) permits county welfare agency employees who are attorneys to appear before the Office of Administrative Law to represent the county welfare agency under certain conditions. This Rule, however, does not describe the responsibilities of the agency representative in the depth that N.J.A.C. 10:120-3.14 does. The Division feels that the proposed rule is necessary and non-duplicative of the Court Rule.

COMMENT: The commenter feels that it is sufficient to notify the Division by telephone of requests for fair hearings, without being required to forward a copy of the request.

RESPONSE: The Division agrees that a telephone call to the Administrative Hearings Unit is sufficient to provide initial notice of receipt of a complaint, and has amended N.J.A.C. 10:120-3.15 accordingly.

COMMENT: The commenter states that N.J.A.C. 10:120-3.15(a)6, which requires special reports prior to the hearing date when such are requested by the Administrative Hearings Unit, is problematic in terms of time and lack of definition, without any clear need for such reports being established.

RESPONSE: The Division infrequently requests special reports prior to hearing, but wishes to retain the right to ask for and receive reports.

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

CHAPTER 120
ADMINISTRATION

SUBCHAPTER 1. AGENCY PURPOSE AND SCOPE

10:120-1.1 Purpose

(a) The Division of Youth and Family Services was created in May, 1972, as part of the Department of Human Services. It assumed the responsibilities of the former Bureau of Children's Services as well as various day care, juvenile justice, licensing, and early childhood development programs then housed in other state government agencies. The Division also assumed responsibility for supervision of the social service units of the county welfare agencies.

(b) The Division of Youth and Family Services (DYFS) serves as the State's comprehensive social services agency for children and families in New Jersey. Its primary goal is to preserve and strengthen the family unit by providing a wide range of supportive and reinforcing services designed to encourage and maintain family stability and self-sufficiency.

10:120-1.2 Scope

(a) The entire service delivery function of the Division is vested in three regional offices. Each regional office is headed by an administrator responsible for local district offices as well as for adoption and foster care units, direct and purchased day care, purchase of service contracts, and supervision of county welfare agency social service units in the counties comprising that region.

(b) The three regional offices are: Northern, which includes Bergen, Hudson, Morris, Passaic, Sussex, and Warren Counties; Central, which includes Essex, Union, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, and Somerset Counties; and Southern, which includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties.

(c) The Central Office in Trenton provides support functions to the regional and local offices. Some of these functions are policy and procedure development and publication, management and fiscal services, monitoring residential placement facilities, and staff training.

(d) Services provided directly to children and their families by the Division include protective services for abused and neglected children, adoption services, foster and institutional placement, day care services, casework and counseling. The Division is responsible for licensing or regulating certain privately operated child care centers, private adoption agencies placing children for adoption in New Jersey, shelters for dependent and neglected children, and children's residential treatment centers and group homes accommodating DYFS children.

(e) The Division supervises the social service units of the County Welfare Agencies. These units provide a wide range of services through the Federal Social Service Block Grant program of the Social Security Act, including home health aid, homemaker, medical transportation, housing related services, counseling and information and referral. Their service population includes public assistance recipients requesting services and other adults and families requesting services who have limited income. The CWA social service units are also designated to be responsible for the provision of adult protective services and services to those in boarding homes or in need of boarding home services.

(f) The Division is the State agency responsible for the administration of both direct and purchased service programs under the Social Service Block Grant program of the Federal Social Security Act. Among the programs provided by such contracts are: day care for children, protective services for battered spouses, adult day care, home delivered meals and transportation for the elderly, homemaker/home health aide services, family planning, personal counseling of all kinds, housing-related services, and legal services in non-criminal matters.

(g) The policies and procedures of the Division of Youth and Family Services are formalized in DYFS Field Operations and Provider Manuals. The DYFS Field Operations and Provider Manuals are available in the DYFS central, regional and district offices for examination or review during regular office hours on regular work days. DYFS issues these manuals and revises them as necessary.

SUBCHAPTER 2. ADMINISTRATIVE HEARINGS

10:120-2.1 Scope of Rules

(a) These rules shall govern the filing of complaints by the Division and the procedure for requests for contested case hearings.

(b) All hearings pursuant to the section shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.

(c) These rules shall not govern fair hearings concerning the Social Security Act which shall be conducted pursuant to N.J.A.C. 10:120-3.1, or employee personnel matters.

10:120-2.2 Subject Matter Jurisdiction

The jurisdiction of the Division shall extend to all complaints arising under any statute, rule or regulation affecting the Division.

10:120-2.3 Construction

These rules shall be liberally construed to allow the Division to discharge its statutory functions. The Director or his or her representative may, upon notice to all parties, relax the application of these rules where the interest of justice and considerations of due process will be furthered thereby.

10:120-2.4 Definitions

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

"Business days" means the five working days of a week other than Saturday, Sunday and State declared holidays.

"Director" means the Director of Division of Youth and Family Services within the Department of Human Services.

"Division" means the Division of Youth and Family Services within the Department of Human Services.

10:120-2.5 Notice of complaint

(a) Whenever it shall appear that a violation of any statute, rule or regulation affecting the Division has occurred or is occurring, the Division may issue a notice of complaint.

(b) The notice of complaint shall contain:

1. A reference to the particular sections of the statute, regulation or rule alleged to have been violated;

2. A concise statement of the facts giving rise to the alleged statutory, regulatory or rule violation. Should the complainant not have details sufficient to state the facts at the time notice is served, a statement of issues involved is sufficient until details are available but a statement of facts must be served upon respondent a minimum of five business days prior to the date of hearing as provided in N.J.A.C. 10:120-1.6;

3. A statement of the relief sought by the complainant; and

4. A statement that the respondent may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1.

10:120-2.6 Service of notice of complaint

(a) Where a party, other than the Division, is an individual, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to the last known place of business, residence or abode, within or without this State of such party from whom said receipt is requested, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return of receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice;

3. By leaving a copy thereof at such person's dwelling house or usual place of abode with a competent member of his or her household of the age of 14 years or over residing therein; or

4. By delivering a copy thereof to a person authorized by appointment or by law to receive service of process on his behalf.

(b) Where a party, other than the Division, is a corporation, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to any person authorized by appointment or by law to receive service of process on behalf of the corporation at the registered office or principal place of business of the corporation, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice on either an officer, director, trustee or managing or general agent;

3. Upon personal delivery thereof on any person authorized by appointment or by law to receive service of process on behalf of the corporation;

4. Upon personal delivery of the notice on the person at the registered office of the corporation; or

5. Upon personal delivery of the notice on any servant of the corporation within this State acting in the discharge of his or her duties.

(c) If personal service cannot be effectuated after due diligence and an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served and submits an affidavit indicating the facts supporting the averment that personal service or service by certified mail has been attempted with due diligence but has failed.

10:120-2.7 Conduct of hearings

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:120-2.8 Director's review and final decision

(a) Upon receipt of the initial decision and any exceptions submitted by any party, the Director shall review the record and issue the final decision.

(b) The Director's final decision shall be rendered not later than 15 business days after the deadline for filing objections. Service shall be either by personal service or by sending a copy of the decision by certified mail, return receipt requested, to the last known address of the party and, where applicable, to counsel no later than five business days following the rendering of such decision. Service shall be effective upon personal service, or upon receipt of the decision by the parties as evidenced by the return receipt.

(c) If an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served.

10:120-2.9 Appeal of final decision

The Director's decision shall be the final determination concerning the subject matter of the hearing. Any appeal of such decision shall be solely to the Appellate Division of the Superior Court within time limits allowed by New Jersey court rules.

SUBCHAPTER 3. FAIR HEARING GUIDELINES

10:120-3.1 Right to fair hearings

(a) It is the right of every applicant for or recipient of a Title XX funded social service to request and have a fair hearing in the manner established by this subchapter. The availability of a local administrative review shall be in addition to an independent of the right to a fair hearing.

(b) A copy of the pamphlet "How to Request a Fair Hearing" shall be furnished to every applicant for services at the time of application and to any client upon his or her request at the time of any adverse action.

(c) The pamphlet shall include an explanation of the client's right to a conference, right to a fair hearing, and the circumstances under which service is continued if a fair hearing is requested. Whenever possible, the client shall be advised verbally of his or her right to a fair hearing in addition to the receipt of the printed pamphlet.

(d) The fair hearing shall include consideration of the following:

1. Any agency action, or failure to act with reasonable promptness, on a request for services, which includes undue delay in reaching a decision on eligibility or in the provision of services;

2. Any agency decision regarding eligibility for services in both initial and subsequent determinations; and

3. Any agency action resulting in a suspension or reduction of services.

(e) The right to a fair hearing shall not extend to cases where there is:

1. A change in the placement of a child without constituting a reduction of social services.

2. An application by foster parents for placement of a child for adoption, pursuant to N.J.S.A. 30:4C-26.7, which gives foster parents, who have cared for a child continuously for a period of two years or more, preference and first consideration to their application over all other applications for adoption placements.

10:120-3.2 Notification of right to fair hearing

(a) All notifications of agency decisions shall state in clear, simple language the nature of the decision, the effective date of the decision, and the factual and legal basis for the decision. In adverse decisions, the notifications shall include, as a basis for agency action, one or more of the following references:

1. Statutory basis; and/or

2. Regulatory reference or citation.

(b) In addition to the basis for the agency action cited above, the notification may also include:

1. State plan (including budgetary provisions);
2. Social service transmittal; and/or
3. Policy memorandum.

(c) Proper notice to a client shall be timely and adequate.

1. Where the decision relates to any action which may entitle a client to a fair hearing, action may not be implemented until 10 days after the mailing of the notice of intent to suspend, reduce or terminate services.

2. Adequate means the notice must be written to include: a statement of the proposed agency action, the reason for the agency action and the specific regulations supporting the agency action; a statement explaining the individual's right to a fair hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Procedure Rules, N.J.A.C. 1:1; and an explanation of the conditions under which services will continue until the date of hearing.

(d) The agency may dispense with timely notice, but shall send adequate notice no later than the date of action when:

1. The agency has factual information confirming the death of the client;

2. The agency received an oral or clearly written statement signed by the client that he or she no longer wishes services or that he or she gives information which requires determination or reduction of services and the client has indicated in writing that he or she understands that this must be the consequence of supplying such information;

3. The client's whereabouts is unknown and agency mail directed to the client has been returned by the post office indicating no known forwarding address, or home visits made and documentation obtained that the client no longer resides there;

4. The client has been accepted for service in a new jurisdiction and that fact has been established by the jurisdiction previously providing services; or

5. A special service which is provided for a specific period of time is terminated and the client has been informed in writing at the time of service initiation that the service shall automatically terminate at the end of the specified period.

10:120-3.3 Complaint procedures

(a) Prompt and courteous attention shall be given to all complaints whether or not such complaints constitute requests for fair hearings. All complaints ***involving a matter described in N.J.A.C. 10:120-3.1(d) or (e)*** shall be acknowledged in writing promptly and, if it is not mentioned in the complaint, the acknowledgement shall inform the client of the right to a fair hearing.

(b) Informal efforts to resolve the problem may be made through field contacts, office interviews with supervisory personnel, and consultation with regional and central office staff. It should be made clear to the client that in no event are these informal efforts to be considered a prerequisite for a hearing and in no event can they delay, interfere with or impede the processing of a fair hearing request.

(c) Any clear expression, oral or written, by a client or a person acting as the client's representative to the effect that the client ***is dissatisfied with an agency decision, action or inaction, as described in N.J.A.C. 10:120-3.1(d) or (e), or that the client*** wants the opportunity to present his or her case to a higher authority constitutes a request for a fair hearing.

(d) Request made to the local agency shall be immediately transmitted to the Division of Youth and Family Services Administrative Hearings Unit no later than one work day after the receipt of the request. An acknowledgement of receipt of the request for a fair hearing shall be sent by the Administrative Hearings Unit to the client immediately.

10:120-3.4 Time limitation on entitlement to a fair hearing

If a request for a fair hearing relates to an agency action or lack of agency action that occurred more than 90 calendar days prior to the date of the request, there shall be no entitlement to a hearing on such action or lack of action unless there are extraordinary extenuating circumstances. The decision that extraordinary extenuating circumstances exist shall be made by the Director of the Division of Youth and Family Services.

10:120-3.5 Eligibility for continued services

(a) When there is a request for a fair hearing within 10 days from the date of mailing of a timely notice of termination, suspension or reduction, services will be reinstated or continued at an unreduced level until the fair hearing is held unless the client requests a postponement. Services will be continued unreduced pending a decision if the judge determines that the issue is one of a fact rather than law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action and the agency determines that the action resulted from other than the application of State or Federal law, assistance shall be reinstated and continued until a decision is rendered.

(b) The agency may terminate, reduce or suspend social services any time during the month, provided that the agency provides a 10 day advance notice to the client.

(c) Upon receipt of a request for a fair hearing, the Administrative Hearings Unit will make a record thereof and will promptly transmit the case to the Office of Administrative Law for a hearing. The Administrative Hearings Unit will send an acknowledgement of the request to the client, along with a copy of the statement entitled "How a Fair Hearing is Conducted". The local agency shall be kept informed of the arrangements for the hearing.

10:120-3.6 Withdrawal of hearing request

The filing of a request for a fair hearing shall not preclude continued effort to accomplish corrective action or interpretation by the Division of Youth and Family Services or by the local agency through informal adjustment procedures. If as a result of satisfactory adjustment or for any other reason, the client desires to cancel the hearing, he or she shall so notify the agency or the Division of Youth and Family Services. The client shall be requested to notify the agency in writing regarding the decision for discontinuance or cancellation of the fair hearing.

10:120-3.7 Local agency responsibility

The local agency is required to assist the client, if necessary, in arranging for attendance at the hearing either directly or through purchase.

10:120-3.8 Accessibility of records

(a) The client or his or her representative, with the client's authorization in writing, shall have adequate opportunity to examine the contents of the client's case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

(b) Information contained in child abuse/neglect records and reports shall not be disclosed except under circumstances expressly authorized by State and Federal law.

10:120-3.9 Hearing involving medical issues

When a hearing involves medical issues, such as those concerning a diagnosis or an examining physician's report, a medical assessment other than that of the person or persons involved in making the original decision may be ordered by the judge. The medical assessment will be obtained at a reasonable expense to the agency from a source satisfactory to the client and shall be made part of the record.

10:120-3.10 Conducting the fair hearing

The fair hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:120-3.11 Adjournments

(a) Adjournments will not affect the client's right to a continuation of the fair hearing. However, an adjournment of a hearing shall not prolong continuation of services at an unreduced level unless such adjournment is due to delay caused by the State or local agency, or unless adjournment is due to unavoidable causes such as an illness on the part of the client or his or her representative or to hear additional testimony. Services will also be continued if the local agency fails to provide requested assistance for transportation.

(b) The total of all adjournments shall not exceed 30 days, unless a greater extension of time is requested for good cause by the client or by the local agency and approved by the judge.

10:120-3.12 Group hearing

The Director of the Division of Youth and Family Services may respond to a series of individual requests by ordering a single group hearing when the sole issue involved is one of State or Federal law or policy changes in State or Federal law. All policies governing the conduct of individual fair hearings must be followed.

10:120-3.13 Decision on fair hearing

(a) The decision of the Director of the Division of Youth and Family Services shall be final and binding on all parties concerned and shall be rendered and implemented within 90 days of the date the request for the hearing was received, unless the hearing was postponed or delayed for good cause.

(b) The fair hearing decision shall be effective on the date of final decision unless another effective date is designated.

(c) An official and complete record of each fair hearing will be maintained in the files of the State Office, Division of Youth and Family Services for at least one year after the date the decision is rendered. During this one year period, the appellant or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the fair hearing.

(d) A decision requiring action by the local agency may apply either prospectively with regard to future action by the agency or retroactively to the date an incorrect action was taken.

(e) The State Division of Youth and Family Services will take such steps as may be necessary to assure that the decision has been carried out. Any corrective action required by the decision must be completed by the agency within 15 days of the date of publication of the decision or within 90 days of the date of the request for hearing whichever comes first, unless otherwise directed by the Division.

10:120-3.14 Role of local agency personnel during the fair hearing

The agency representative is advocate of the agency, supporting the decision that the agency has made, putting aside personal feelings. The agency representative must be able to present the agency case, supplying the judge with that information needed to substantiate the agency action. The agency representative must be attentive to new information coming to light which may impact on the original agency decision. If there is such new information, the agency representative may request a brief recess. If the recess is granted, the agency representative should then present this information to those individuals in the agency who determined the original agency action. If the agency representative feels that he or she must be an advocate of the client and if unable to represent the agency, then another agency staff person must appear at the hearing to fulfill the above identified role.

10:120-3.15 Agency liaison

(a) To assure orderly and expeditious processing of complaints and hearing requests, each agency office will designate a liaison between the agency and the Division of Youth and Family Services whose duties shall include, but not be limited to, the following:

1. *[Providing]***Telephoning*** the Administrative Hearings Unit *[with the information prescribed by the form entitled "Request for a Fair Hearing"]* within one working day after an oral or written request for a hearing ***involving a matter described in N.J.A.C. 10:120-3.1(d) or (e)*** is received***, to advise of the receipt of the request and provide information as requested***;

2. Establishing a system to assure that every written request for a hearing ***involving a matter described in N.J.A.C. 10:120-3.1(d) or (e) which is*** received in the local agency is stamped with the date of receipt and forwarded to the Division of Youth and Family Services within one work day after that date;

3. Reviewing incoming requests for possible corrective action prior to the hearing;

4. Identifying and arranging for participation of staff individuals who are essential to a hearing, assembling all records relevant to a hearing and arranging for an interpreter when the client is non-English speaking;

5. Contacting the client or his or her representative not less than two days prior to a hearing to confirm attendance and arrange for transportation of a client when necessary;

6. Submitting special reports on hearing requests prior to the hearing date when requested by the Administrative Hearings Unit;

7. Submitting reports on implementation of State fair hearing decision as soon as such action is taken; and

8. Serving as the single individual in the agency regarding matters relating to hearings.

CORRECTIONS

(a)

THE COMMISSIONER

Public Information

Adopted New Rules: N.J.A.C. 10A:19

Proposed: June 5, 1989 at 21 N.J.R. 1490(a).

Adopted: July 25, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: July 26, 1989 as R.1989 d.440, **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. 30:1B-6 and 30:1B-10.

Effective Date: August 21, 1989.

Expiration Date: August 21, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Corrections received one comment which is addressed below.

COMMENT: The commenter stated that N.J.A.C. 10A:19-2.3(b) constituted an overbroad restriction on the rights of Department of Corrections' employees to comment on matters of public concern. The commenter suggested that N.J.A.C. 10A:19-2.3(b) be amended to provide that Department employees shall not impart information to the media which will disclose security matters or concerns.

RESPONSE: The Department of Corrections agrees that N.J.A.C. 10A:19-2.3(b) should not unreasonably interfere with the right of Department of Corrections' employees to comment on matters of public concern. N.J.A.C. 10A:19-2.3(b) will be changed to permit Department employees to comment on matters of public concern so long as such comment does not divulge confidential information or interfere with the security or orderly operations of correctional facilities.

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

CHAPTER 19
PUBLIC INFORMATION

SUBCHAPTER 1. INTRODUCTION

10A:19-1.1 Purpose

(a) The purpose of this chapter is to establish policies and procedures for:

1. Disseminating information to the public; and

2. Photographing, interviewing, recording, filming and/or videotaping inmates for public dissemination by the news media.

10A:19-1.2 Scope

This chapter is applicable to all administrative units within the New Jersey Department of Corrections.

10A:19-1.3 Forms

(a) The following forms related to public information shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 283-I INMATE CONSENT;
2. 283-II NEWS MEDIA AGREEMENT; and
3. 283-III JUVENILE CONSENT.

SUBCHAPTER 2. PUBLIC INFORMATION DISSEMINATION

10A:19-2.1 Office of Public Information

(a) The Office of Public Information, within the Office of the Commissioner of the New Jersey Department of Corrections, is responsible for:

1. Maintaining and increasing public knowledge of the Department of Corrections by developing and disseminating information relative to correctional philosophy and programming to the following:
   i. The news media;
   ii. The general public;
   iii. Governmental agencies;
   iv. Community and social organizations; and
   v. Department of Corrections personnel.
2. Publicizing the effectiveness of innovative programs;
3. Responding to public inquiries and complaints; and
4. Coordinating all public communications including, but not limited to:
   i. Speaking engagements;
   ii. Interviews;
   iii. Press releases;
   iv. Tour groups;
   v. Annual reports; and
   vi. Department of Corrections pamphlets.

10A:19-2.2 Responsibilities of the Public Information Officer

(a) The Office of Public Information, New Jersey Department of Corrections, is managed by the Public Information Officer who shall be responsible for:

1. Being accessible to information sources within the Department of Corrections in order to receive and gather information;
2. Keeping abreast of major trends and events within the Department of Corrections;
3. Disseminating accurate and often instant information concerning emergencies, Departmental plans, programs, services and activities to the following:
   i. The news media;
   ii. The general public;
   iii. Governmental agencies;
   iv. Community and social organizations; and
   v. Department of Corrections' personnel.
4. Preparing news releases, fact sheets and reports describing and explaining events, policies and activities of the Department of Corrections;
5. Conferring regularly with the Department of Corrections' Commissioner; and
6. Arranging for news media interviews with personnel and inmates within the Department of Corrections.

10A:19-2.3 Release of information

(a) Personal information concerning inmates and information on matters affecting security within correctional facilities shall be considered confidential and shall not be released to the public (see N.J.A.C. 10A:22-2, release and examination of inmate and parolee records).

(b) To ensure compliance with (a) above, employees of the Department of Corrections shall not impart information to news media representatives or other persons not officially connected with a correctional facility or the Department of Corrections without prior authorization from the Office of Public Information. ***This section shall not restrict the right of employees to comment on public policy or other issues of public concern in a manner which will not interfere with the security or orderly operation of a correctional facility, or result in a breach of necessary confidentiality.***

(c) The Office of Public Information shall consult with the Office of the Commissioner, New Jersey Department of Corrections, whenever possible, before releasing information to the public.

10A:19-2.4 Newsworthy events

(a) The Office of Public Information, New Jersey Department of Corrections, shall be notified of upcoming newsworthy events at least one week before the event.

(b) The Office of Public Information shall evaluate the newsworthiness of events and provide for appropriate news coverage.

(c) Events considered newsworthy shall include, but are not limited to:

1. Supervisory staff appointments;
2. Approval of Federal grants;
3. New construction;
4. Expansion or addition of services;
5. Significant changes in programs;
6. Opening of new correctional facilities;
7. Open houses;
8. Inspection tours;
9. Special events;
10. Volunteer activities and social functions of a commemorative or programmatic nature;
11. Public appearances by Department of Corrections' personnel;
12. Participation of Department of Corrections' personnel at conferences;
13. Publication of books, pamphlets or articles by Department of Corrections' personnel;
14. Creation and/or operation of special programs or projects by inmates; and
15. Any other event worthy of public notice.

10A:19-2.5 Emergency situations

(a) The Office of Public Information, New Jersey Department of Corrections, shall be informed of all incidents of an unusual nature, which occur at a correctional facility or involve inmates, parolees or staff, that may stimulate inquiries from the news media.

(b) In emergency situations, such as disturbances, unusual or unexpected deaths or injuries to inmates or employees, escapes and walkaways, the Superintendent or his or her designee shall immediately notify the appropriate Assistant Commissioner and the Office of Public Information of the incident.

(c) After obtaining full information from the correctional facility, the Office of Public Information may relay the pertinent facts to the news media with the approval of the Commissioner.

(d) Should it be felt that public knowledge of emergency situations or ongoing investigations would threaten the maintenance of order or security within a correctional facility, the Office of Public Information may choose to withhold information from the news media or release the information at a later more appropriate time.

(e) Information concerning the suspension of visiting programs within correctional facilities shall be disseminated in accordance with N.J.A.C. 10A:18-6, Visits.

10A:19-2.6 News media contacts

All news media inquiries shall be processed in the Office of Public Information, New Jersey Department of Corrections, in accordance with N.J.A.C. 10A:19-3, News Media Contacts with Institutions and Inmates.

10A:19-2.7 Division monthly and annual reports

(a) The Assistant Commissioner of each Division within the New Jersey Department of Corrections shall submit a copy of his or her monthly and annual reports to the Office of Public Information.

(b) The annual report for the preceding fiscal year shall be submitted by the Assistant Commissioner to the Office of Public Information, New Jersey Department of Corrections, no later than October 1 of each calendar year.

(c) The institutions, Board of Trustees and Advisory Council shall submit monthly and annual reports to the Office of Public Information.

SUBCHAPTER 3. NEWS MEDIA CONTACTS WITH INSTITUTIONS AND INMATES

10A:19-3.1 Interviewing and photographing adult inmates by the news media

(a) An inmate age 18 or over with the New Jersey Department of Corrections may be photographed, interviewed, recorded, filmed and/or videotaped by the news media:

1. If the inmate has sufficient mental capacity to understand the nature and implication of these activities;

2. If the inmate indicates his or her approval by signing Form 283-I INMATE CONSENT; and

3. If such activity does not interfere with the security or orderly running of an institution, satellite unit or residential facility.

(b) In the event an inmate does not have sufficient mental capacity to understand the nature and implication of being photographed, interviewed, recorded, filmed and/or videotaped by the news media, the written consent of the inmate's guardian shall be required.

10A:19-3.2 Interviewing and photographing juvenile inmates by the news media

An inmate under the age of 18 within the New Jersey Department of Corrections may be photographed, interviewed, recorded, filmed and/or videotaped by the news media only when a parent or guardian indicates his or her approval by signing Form 283-III JUVENILE CONSENT.

10A:19-3.3 Requests by news media representatives and free lancers

(a) All requests by news media representatives and free lancers to photograph, interview, record, film and/or videotape an inmate(s) shall be submitted in writing, in person, or by telephone to the Office of Public Information, New Jersey Department of Corrections for review.

(b) The Office of Public Information shall verify the affiliation of each news media representative or free lancer.

(c) An electronic or print free lancer must have his or her publisher or company submit a statement to the Office of Public Information which indicates that the product of the free lancer will be published or broadcast.

10A:19-3.4 Decision on news media requests

(a) The Office of Public Information, New Jersey Department of Corrections, shall approve or disapprove all requests by the news media to photograph, interview, record, film and/or videotape an inmate(s) and shall notify the Superintendent of the correctional facility of the decision by telephone.

(b) The Superintendent of the correctional facility may override the Office of Public Information's approval to the news media when the Superintendent determines that the interests of security and/or the orderly operations of the correctional facility would be disrupted by news media activity.

10A:19-3.5 Inmate consent

(a) When a request by the news media to photograph, interview, record, film and/or videotape an inmate(s) has been approved by the Office of Public Information and the Superintendent of the correctional facility, a staff member designated by the Superintendent shall provide the inmate with Form 283-I INMATE CONSENT for his or her review.

(b) The inmate shall indicate his or her approval of the news media request by signing Form 283-I INMATE CONSENT in the presence of the staff member.

(c) The Superintendent of the correctional facility shall notify the Office of Public Information of the inmate's decision.

10A:19-3.6 Notification of news media

The Office of Public Information, New Jersey Department of Corrections, shall notify the news media representative, by telephone, of the final decision to approve or disapprove the request to photograph, interview, record, film and/or videotape an inmate(s).

10A:19-3.7 News media agreement

(a) Upon arrival at the correctional facility, the news media representative shall present valid press credentials or other identification approved by the Office of Public Information, New Jersey Department of Corrections, and complete and sign Form 283-II NEWS MEDIA AGREEMENT.

(b) Photographing, interviewing, recording, filming or videotaping of an inmate by any news media representative shall not be permitted to take place prior to the signing of Form 283-II NEWS MEDIA AGREEMENT and the completion of Form 283-I INMATE CONSENT.

(c) The original of Forms 283-I and 283-II shall be retained by the correctional facility. A copy of these forms shall be given to the news media representative, and a copy shall be forwarded to the Office of Public Information, Department of Corrections.

INSURANCE

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Employment Agreements; Commissions; Accounting to Salespersons

Adopted Amendment: N.J.A.C. 11:5-1.10

Proposed: May 15, 1989 at 21 N.J.R. 1308(b).

Adopted: June 20, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Filed: July 18, 1989, as R.1989 d.424, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:15-6.

Effective Date: August 21, 1989.

Operative Date: November 19, 1989.

Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission has adopted an amendment to N.J.A.C. 11:5-1.10. The amended rule clarifies the procedures required to be followed when a broker retains the services of a salesperson. The rule requires that the broker and salesperson formulate a written agreement which specifies the terms of the salesperson's employment with the brokerage firm. Such an agreement must be executed prior to the salesperson's commencement of work under the authority of the broker.

The Commission received five comments regarding the proposed amendment.

COMMENT: Two of the comments received suggested that the Commission extend the time period within which brokers must secure employment agreements which comply with the new requirements with all salespersons currently in their employ beyond the 30 days proposed.

RESPONSE: After considering these comments, the Commission determined to extend the 30 day time period to 90 days (November 19, 1989) following the effective date of the amendment.

COMMENT: Another comment suggested the following changes:

1. That the written agreements between salespersons and brokers be printed on the back of the salesperson's license.

2. That duplicate licenses containing the written agreement be filed with the Real Estate Commission as well as at the office of the broker.

3. That the Real Estate Commission notify all instructors of real estate classes to warn future salespersons of the dangers they might encounter in this area.

RESPONSE: The Commission's responses to these suggestions are:

1. It would be logistically impractical and financially burdensome to print form employment agreements on the back of each salesperson license. Furthermore, the form and content of an agreement may vary according to the policies of individual brokerage firms.

2. The Commission deems it unnecessary to retain a copy of each employment agreement made between an employing broker and his or her salesperson. However, the Commission has the statutory authority to inspect a copy of each such agreement when the need arises.

3. The Commission will distribute notices to all approved real estate schools with respect to this amendment so they can incorporate the requirements of the amended rule into their curriculum.

COMMENT: Another comment inquired as to the rationale behind the amendment because this amendment takes the broker "out of control" of making changes in the agreement.

RESPONSE: The Commission has previously stated that this amendment is designed to memorialize the essential provisions of all agreements under the terms of which a broker retains the services of a salesperson. This amendment requires that the agreement a broker enters into with a salesperson must be evidenced in writing and that any future changes to its terms must also be reduced to a writing signed by both parties. By definition, an "agreement" refers to a meeting of the minds between the parties. Clearly, a requirement to execute an employment agreement would be an exercise in futility if, after it was executed by all parties,

the broker was free to unilaterally alter its terms. The Commission is not prescribing the format or terms that a broker or salesperson should include in the agreement.

COMMENT: One commenter also expressed an objection to subsection (d) of the rule which requires that a broker deposit all funds into the general business account of the broker within five days of receipt by the broker. The commenter believes that it is inappropriate for the Commission to regulate the financial activities of real estate licensees after commissions are received. He further noted that it was his practice to deposit gross commissions received into an "investment account" so as to maximize the interest earned on such funds prior to disbursing a portion of them to salespersons involved in the transaction.

RESPONSE: The Commission believes that all funds received by a broker on behalf of others involving real estate transactions are subject to its regulation. This rule makes licensees accountable for funds obtained as a result of the real estate activities conducted by the broker and those salespersons who are under the authority of the broker. So long as all records of any "investment account" such as that described by this commentator were maintained as required for general business accounts, a broker could continue to handle the receipt and disbursement of commissions in that way and still be in compliance with the provisions of the amended rule.

COMMENT: The final comment received by the Commission supports the new rule but inquires whether it could be further amended to allow a broker to place a commission which was the subject of a dispute between the broker and salesperson in an interest bearing account until the dispute was resolved.

RESPONSE: The Commission has determined not to amend the rule as requested. Under the current rule, the broker is obligated to either pay a commission within 10 days of receipt of the funds or of their clearing his or her bank account, or to promptly provide to the salesperson a comprehensive written explanation of the broker's failure to pay such monies. There is nothing in the rule which would prohibit a broker from escrowing the disputed monies as suggested in this comment.

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

11:5-1.10 Employment agreements; commissions; accounting to salesperson

(a) No salesperson may commence operations as such for a broker and no broker may authorize a salesperson to act as such on his or her behalf until a written agreement as provided in this subsection has been signed by the broker and salesperson. Prior to an individual's commencement of activity as a salesperson under the authority of a broker, the broker and salesperson shall both sign a written agreement which recites the terms under which the services of the salesperson have been retained by the broker. Such terms shall include, but need not be limited to, the following:

1. The rate of compensation to be paid to the salesperson during his or her affiliation with the broker;

2. A promise by the broker to pay to the salesperson his or her portion of commissions earned within 10 business days of their receipt by the broker, or as soon thereafter as such funds have cleared the broker's bank;

3. The rate of compensation payable to the salesperson on transactions which close and, if applicable, on renewals which occur subsequent to the termination of the salesperson's affiliation with the broker; and

4. A provision that any future changes to the agreement will not be binding unless the changes are contained in a writing signed by both parties.

(b) A copy of the fully executed agreement shall be provided to the salesperson upon the commencement of his or her affiliation with the broker, and the original thereof shall be maintained by the broker as a business record in accordance with N.J.A.C. 11:5-1.13.

(c) By *[(the 30th day following the effective date of this amendment)]* ***November 19, 1989***, all brokers shall have secured such agreements with all salespersons licensed through them on that date, which agreements shall comply in all respects with the provisions of this section.

(d) All compensation paid to brokers shall, unless debited from funds held in escrow in accordance with N.J.A.C. 11:5-1.8(d), be deposited into the general business account of the broker within five business days of their receipt by the broker.

(e) In the event that any monies due a salesperson under the terms of the written agreement with their broker are not paid within 10 business days of the broker's receipt of such funds or promptly thereafter upon their having cleared the broker's account, the broker shall provide to the salesperson a complete and comprehensive written explanation of the failure to pay such monies.

(f) Upon the termination of the affiliation of a salesperson with a broker, the broker shall make a complete accounting in writing of all monies due the salesperson as of the date of termination and/or which may become due in the future. In the event any sums so accounted for are not in accord with the terms of the post-termination compensation clause in the written agreement between the broker and the salesperson, the broker shall give a complete and comprehensive written explanation of any difference to the salesperson with the accounting. Such accounting shall be delivered to the salesperson not later than 30 days after termination.

(g) Copies of all written agreements as described in (a) above, of all written explanations of the failure to pay compensation due a salesperson on a timely basis as described in (e) above, and of all accountings and written explanations regarding compensation due a salesperson subsequent to the termination of their affiliation with a broker as described in (f) above shall be maintained by the broker, with adequate proof of the delivery of the same to the salesperson, for a period of six years.

(h) In situations where the Commission confirms that a broker has complied with all of the requirements imposed by this section, the Commission will not further investigate a complaint alleging the nonpayment of a commission by a broker to a salesperson unless such complaint is accompanied by a copy of an arbitration decision or the equivalent, or a copy of a judgment of a court of competent jurisdiction secured by the salesperson against the broker. Unless appealed, the failure by a broker to pay monies awarded to a salesperson under the terms of any such decision or judgment within 30 days of its effective date shall subject the broker to sanctions pursuant to N.J.S.A. 45:15-17.

(i) All references to "salesperson" in this section shall be construed to also include individuals licensed as broker-salespersons.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Permanent Type Records to be Maintained by Brokers

Adopted Amendment: N.J.A.C. 11:5-1.12

Proposed: May 15, 1989 at 21 N.J.R. 1310(a).
Adopted: June 20, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: July 18, 1989 as R.1989 d.425, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:15-6.

Effective Date: August 21, 1989.
Operative Date: November 19, 1989.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The Commission has adopted an amendment to N.J.A.C. 11:5-1.12. The amended rule will clearly specify to licensees and to the public the type of business records brokers are required to maintain.

There were five comments submitted on these proposed amendments. One comment expressed support for the rule.

COMMENT: A second comment suggested that the Commission delete the word "source" contained in paragraphs (b)1 and (b)2 because the word was confusing to the reader.

RESPONSE: The Commission agreed with this commenter and has deleted the word "source" and replaced it with the word "payor" for clarification.

COMMENT: The third comment expressed concern about not having sufficient space and resources to file and maintain the records required to be kept by this rule and about the need to maintain certain records for six years.

RESPONSE: The Commission responds that, although the requirements of this rule may be burdensome to licensees, it is essential that licensees maintain accurate records of their brokerage transactions so as to be able to document all actions they take under the authority of their real estate licenses. This is particularly true with regard to transactions in which they act as trustees or escrow agents of the funds of others. The Commission determined to require such records to be maintained for six years because that is the limitation period applicable to civil suits on contracts in New Jersey.

COMMENT: The fourth commenter raised objections to the proposed amendment which were general in nature and which did not include any specific proposed revisions. Essentially, this person contended that the adoption of this rule would over-burden licensees with excessive and technical recordkeeping requirements which in effect would punish the many for the shortcomings of the few. On this point, the commenter suggested that the Commission make persons who failed to keep adequate escrow records pay for audits of their operations. Furthermore, the commenter contended that compliance with the rule would impose an excessive cost upon licensees, with little benefit to the public. Finally, the commenter disputed the assertions in the statements accompanying the proposed amendment that its adoption would render brokers more accountable.

RESPONSE: The Commission responds that requiring licensees to keep detailed records of the transactions in which they act as escrow agents is essential to insure the integrity of their conduct as such. With regard to assessing offenders who fail to keep comprehensive records for the costs of auditing their accounts, the Commission notes that it is impossible to audit records which do not exist. It is the intent of this rule to specify to licensees the minimum information which they must maintain when acting in the capacity of an escrow agent or trustee. The Commission disagrees that the cost of compliance will be excessive and the benefit secured by this rule minimal. By requiring licensees to keep records of specific information on transactions wherein they act as escrow agents, the Commission will be able to reconstruct the chronology of events in situations where licensees have improperly handled escrow monies or, at a minimum, identify those licensees who are unwilling to maintain such records. In this way, brokers will become more accountable to the Commission because they will be unable to plead ignorance as to the nature of the records they were required to keep on such transactions. Clearly, it is against just such licensees that the public needs the greatest protection which the Commission can provide.

COMMENT: The final comment raised objections to new provisions (c)4 and (d) because the commenter believed that some of the records required to be kept and made available to the Commission would have no rational relationship to the regulatory needs of the Commission and their inspection by the Commission would unduly intrude upon the broker's privacy rights. Concerns regarding the confidentiality of certain internal business records which did not relate to any particular real estate transaction were also raised by this commenter.

RESPONSE: Upon reviewing the comment, the Commission reaffirmed that all records concerning real estate transactions involving the brokerage firm of a licensee are significant and should be maintained and made available for inspection by the Commission. The Commission determined not to revise the language of these provisions because brokers can always seek protection from actions by the Commission which they feel are beyond the scope of its regulatory authority through the courts.

To facilitate licensees compliance with the definite standards established in the amended rule for the maintenance of their records, the Real Estate Commission determined to delay the operative date on this rule change until November 19, 1989.

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

11:5-1.12 Permanent type records to be maintained by broker

(a) Every broker shall keep records as prescribed herein of all funds and property of others received by him or her for not less than six years from the date of receipt of any such funds or property. All such funds shall be deposited by the broker in accordance with the requirements of N.J.A.C. 11:5-1.8.

1. Whenever a broker receives funds to be held in trust in cash, a written receipt signed by the licensee to whom the funds were paid and specifying the date, amount, purpose and from whom those funds were received shall be issued to the payor of the funds. A copy of that receipt shall be retained by the broker as prescribed in this section.

(b) The records required to be kept pursuant to (a) above shall include:

1. Written references on the checkbook stubs or checkbook ledger pages to all deposits into and withdrawals from the account(s) maintained by the broker in accordance with N.J.A.C. 11:5-1.8, which shall specifically identify the date, amount and *[source]* ***payor*** of each item deposited, the property to which the monies pertain and the reason for their being held by the broker. Such records shall also specify the date, amount, payee and purpose of each disbursement. All trust or escrow account withdrawals shall be only by authorized intrastate or interstate bank transfer or by check payable to a named payee and not to cash;

2. An appropriate ledger book for all trustee accounts or escrow accounts showing, in one location in that ledger book for each separate trust transaction, the *[source]* ***payor*** of all funds deposited in such accounts, the date of deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the amounts and dates of all disbursements of such moneys, and the names of all persons to whom such funds were disbursed. The Commission will not deem a regular checkbook ledger as sufficient to constitute an appropriate ledger book. Such a ledger book may be maintained in a computer or similar device, so long as it is capable of reproducing the electronically stored data on paper so as to depict the complete history of all activity in each separate trust transaction, and the data can be maintained in an easily accessible form for the required six year period. A regular running balance of the individual transaction ledger sheets shall be maintained. The total of the running balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust on that transaction, and deducting the total of all moneys disbursed;

3. Copies of all records, showing that at least quarterly a reconciliation has been made of the checkbook balance, the bank statement balance and the client trust ledger sheet balances;

4. All bank statements, cancelled checks and duplicate deposit slips;

5. Copies of all offers, contracts of sale and sale or rental listing agreements;

6. Copies of all leases and property management agreements;

7. Copies of all statements to owners, sellers, purchasers and tenants showing the disbursement of funds to them or on their behalf, which statements shall identify the property and unit, if applicable, for which the disbursement was made and the reason for the disbursement;

8. Copies of all bills paid for owners, sellers, purchasers or tenants by the broker from escrowed funds, which payments may only be made pursuant to written authorization;

9. Copies of all records showing payments to persons licensed with the paying broker and to cooperating brokers, which records shall contain all information required by N.J.A.C. 11:5-1.8(d); and

10. Copies of all receipts issued for all security deposits accepted from tenants, and of checks for and letters accompanying the release of such funds, and/or the duplicate deposit slips evidencing the deposit of such funds by the broker.

(c) With the exception of the materials described in (d) below, on transactions where a broker has not received the property or funds of others, the following records shall be maintained for six years from the earlier of the date of the listing or property management agreement or of the contract or lease:

1. Copies of all fully executed leases, contracts of sale, property management and listing agreements;

2. Copies of bills for brokerage services rendered in such transactions;

3. Copies of all records showing payments to persons licensed with the paying broker and to co-operating brokers; and

4. Copies of all bank statements, cancelled checks and duplicate deposit slips pertaining to the broker's general business account.

(d) Unaccepted offers and expired listing agreements during the term of which no contract of sale was executed or no tenancy was entered into shall be maintained for six months from the date of the offer or the expiration date of the listing agreement.

(e) The financial books and other records as described in (a), (b), (c) and (d) above shall be maintained in accordance with generally accepted accounting practice. They shall be located at the main New Jersey office of each broker or, in situations where separate general business and/or trust or escrow accounts are maintained at licensed branch offices, either at that branch office or at the main office of the broker. All such records shall be available for inspections, checks for compliance with this section and copying by a duly authorized representative of the New Jersey Real Estate Commission.

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Use of License for the Benefit of Others

Adopted Amendment: N.J.A.C. 11:5-1.14

Proposed: May 15, 1989 at 21 N.J.R. 1311(a).
Adopted: June 20, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: July 18, 1989 as R.1989 d.426, **without change.**

Authority: N.J.S.A. 45:15-6.

Effective Date: August 21, 1989.
Operative Date: November 19, 1989.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission has adopted an amendment to N.J.A.C. 11:5-1.14. The Commission proposed the amendment subsequent to its initial proposal to repeal the rule (see 20 N.J.R. 2184(a) and 20 N.J.R. 3019(a)). However, after considering written comments from the industry, all of which opposed a total repeal, and after a further review of the text of the current rule, the Commission determined that an amendment was necessary to ensure that licensed brokers of record and employing brokers fully understand the type of conduct that would constitute prohibited license lending. The amended rule specifies the minimum amount of personal contact which brokers must maintain with their offices and salespeople. It also eliminates a substantial portion of the language in the existing rule which referred to a licensee's lending of their name for the use and/or benefit of others. Two comments were received which supported the adoption of the proposal.

COMMENT: One commenter objected to the Commission permitting a broker of record or employing broker to be present at their main office only one day per week. This person took the position that such brokers should be required to be present five days per week.

RESPONSE: The Commission's response is that given the diversified nature of the business operations of many brokers, it would be too burdensome to require that such brokers be present on a "full-time" basis at their main brokerage offices. However, to assure proper supervision of such offices in the broker's absence, the Commission proposed and has adopted an amendment to N.J.A.C. 11:5-1.18 (published elsewhere in this issue of the Register) which provides that if the broker of record or employing broker is not the full-time, on-site supervisor of the main office, a broker-salesperson licensed through that broker must assume that responsibility. Through the adoption of these companion provisions, the Commission has attempted to balance the interests of brokers who have business interests in addition to their brokerage operations with those of the Commission in curtailing license lending by truly absentee brokers and in assuring that all brokerage offices are under the full-time supervision of a qualified individual, that is, the holder of a broker or broker-salesperson's license.

To facilitate compliance with the definite standards established in the amended rule for personal contact by brokers with their main offices, the Real Estate Commission determined to delay the operative date on this rule change until November 19, 1989.

Full text of the adoption follows.

11:5-1.14 Use of license for the benefit of others

(a) No arrangement, direct or indirect, shall be entered into by any licensee whereby an individual licensee lends his or her license for the benefit of another person, firm or corporation, or whereby the provisions of the real estate statute and rules relating to licensing are circumvented.

(b) Lending a broker's license for the benefit of another person, firm or corporation shall be construed as including any arrangement whereby a broker fails to personally oversee and direct the operations of the business of which he or she is licensed as broker of record or employing broker. For the purposes of this section, personal oversight and direction of the business shall be construed as requiring the broker to be physically present in the main office or branch office locations of the business at least one day each week (excluding vacations and emergencies.) Communication via telephone and/or mail alone for an extended period of time may be considered by the Commission as evidence of prohibited license lending.

(c) Nothing in this section shall be construed to limit a broker's responsibility to insure the adequate supervision of all offices in accordance with the requirements of N.J.A.C. 11:5-1.18 and 1.19.

(b)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Advertising

Adopted Amendment: N.J.A.C. 11:5-1.15

Proposed: May 15, 1989 at 21 N.J.R. 1312(a).
Adopted: July 11, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: July 27, 1989 as R.1989 d.447, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:15-6.

Effective Date: August 21, 1989.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The Commission has adopted an amendment to N.J.A.C. 11:5-1.15. The adopted changes will exempt lawn signs on residential properties from the restrictions imposed on other types of broker advertising by subsection (c) of the rule and will add new subsection (n) to the rule. This new subsection provides that, with the knowledge of the owners, listing brokers can either permit or preclude other brokers from advertising a property on which they hold an exclusive listing.

The Commission received a total of six comments on this rule.

COMMENT: Three of the commenters pointed out that, as proposed, the language of new subsection (n) contained no requirement that the owner be consulted by the listing broker when a determination is made whether to permit other brokers to advertise the owner's property listed with the listing broker. These commenters noted that a listing broker's refusal to allow such advertisements by other brokers could in many cases be contrary to the interests of the property owner.

RESPONSE: In reviewing these comments, the Commission also observed that there could be circumstances where an owner would object to certain other brokers advertising his or her property. Recognizing the validity of these concerns, the Commission determined to add to the text of subsection (n) as proposed another sentence providing that the listing broker's decision on this question must be made with the knowledge of the owner. The Commission does not consider this to be a change which is so substantive as to defeat the efficacy of the initial notice provided on this proposal. Accordingly, the amendment as revised has been adopted without further publication and notice of this revision.

COMMENT: Two other commenters indicated their unqualified support for the adoption of the amendment as initially published.

COMMENT: The sixth commenter conveyed his opposition to certain language contained in subsection (c), which language was not part of the proposed amendment to that subparagraph. This person raised no objections, nor made any specific suggestions with regard to the text of the proposed amendment.

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

11:5-1.15 Advertising

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

(c) All advertising, with the exception of lawn signs placed on residential properties containing four or fewer units, shall clearly indicate after the licensee's regular business name that the advertising licensee is engaged in the real estate brokerage business. Except as prescribed by N.J.S.A. 45:15-17(j), examples of permissible language shall include, but are not limited to, "Realtor," "Realist," "real estate broker," "broker," or "real estate agency". Examples of prohibited language when used alone shall include, but are not limited to, "realty," "real estate," "land sales," and "land investments." This provision shall not apply when the word "agency" appears in the advertisement as part of the licensee's regular business name or when the licensee has legal or equitable ownership of the property.

(d)-(m) (No change.)

(n) No licensee shall publish or cause to be published any advertisement or place any sign which makes reference to the availability of a specific property which is exclusively listed for sale by another broker unless the licensee obtains the prior written consent of the broker with whom the property is exclusively listed. ***Such consent shall not be given or withheld by the listing broker without the knowledge of the owner.***

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Maintained Offices

Adopted Amendment: N.J.A.C. 11:5-1.18

Proposed: May 15, 1989 at 21 N.J.R. 1312(b).
Adopted: June 20, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: July 18, 1989 as R.1989 d.427, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:15-6.

Effective Date: August 21, 1989.
Operative Date: November 19, 1989.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission has adopted an amendment to N.J.A.C. 11:5-1.18 which was reproposed after the Commission incorporated several substantive changes following the receipt and review of public comments on the amendment as initially proposed (see 20 N.J.R. 1160(a)). The adopted amendment clarifies the obligation of employing brokers and brokers of record to supervise their main offices. The Commission received five comments on this proposed amendment. A sixth comment was received in reference to this proposal but its substance dealt with the proposed amendment to N.J.A.C. 11:5-1.14. Therefore, a summary of the comment and the Commission's response to it are contained in the notice of adoption on that rule change published in this issue of the Register. Two of the comments supported the amendment in its present form.

COMMENT: Two commenters expressed concern that the language in the amendment could be interpreted as precluding absences due to vacations and illnesses (emergencies).

RESPONSE: The Commission has inserted language to indicate that absences due to vacations and emergencies will not constitute violations of the amendment.

COMMENT: The final comment expressed opposition to the amendment because it appeared to the commenter that the rule would limit an employing broker or broker of record who also teaches prelicensure courses from teaching during normal business hours.

RESPONSE: Such a broker can continue to teach during those hours so long as the broker's main office is supervised by a licensed broker-salesperson during his or her absence. The Commission determined that if such an arrangement cannot be made, such a broker would have to choose whether they wanted to keep brokerage as their primary occupation and, therefore, relegate their instructional activities to a part-time status, or make education their primary endeavor, in which case they could work as a broker-salesperson for another broker on a part-time basis.

To facilitate compliance with the definite standards established in the amended rule for the supervision of main offices, the Real Estate Commission determined to delay the operative date on this rule change until November 19, 1989.

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

11:5-1.18 Maintained offices

(a) Every resident real estate broker not licensed as a broker-salesperson shall maintain a main office for the transaction of business in the State of New Jersey, which shall be open to the public during usual business hours. This main office and the activities of the licensees working from it shall be under the direct supervision of either the broker himself or herself, or of a person licensed as a broker-salesperson. Such supervision shall be maintained on a full time basis. Maintaining full time supervision shall not be construed as requiring the person performing the supervisory functions to be present at the office location continuously during usual business hours. However, the person performing the supervisory functions shall provide sufficient information so as to allow the personnel at the main office to make communication with that person at all times. Further, the licensee supervising the main office shall be so employed on a full time basis and, when not required to be away from the office for reasons related to the business of the office, shall be physically present at that office during usual business hours at least five days per calendar week ***(excluding vacations and emergencies)*** and shall not be otherwise employed during such time.

1. In the event the main office of a broker is under the direct supervision of a broker-salesperson, the broker who maintains such a main office shall be ultimately responsible for all activities conducted by licensees and employees. Such a broker shall also provide sufficient information to the personnel at such offices so as to allow them to make communication with such broker at all times. Nothing in this section shall be construed to limit a broker's responsibility to comply with the requirements of N.J.A.C. 11:5-1.14.

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

(b)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Branch Office Compliance with N.J.A.C. 11:5-1.18 (Maintained Offices)

Adopted Amendment: N.J.A.C. 11:5-1.19

Proposed: May 15, 1989 at 21 N.J.R. 1313(a).
Adopted: June 20, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: July 18, 1989 as R.1989 d.428, **without change.**

Authority: N.J.S.A. 45:15-6.

Effective Date: August 21, 1989.
Operative Date: February 21, 1990.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission has adopted an amendment to N.J.A.C. 11:5-1.19. The amendment will ensure that every branch office of any real estate business is supervised by an individual who is licensed as a broker and who works as a broker-salesperson for the broker under whose authority the branch office is licensed. The adoption of the amendment will make N.J.A.C. 11:5-1.19 compatible with the requirements in N.J.A.C. 11:5-1.18 as amended (see notice of adoption published elsewhere in this issue of the Register). To be in compliance with the rule as amended, supervisors of branch offices must possess a broker-salesperson's license on or after February 21, 1990, the operative date of this amendment.

COMMENT: The Commission received two comments which supported adoption of the amendment. However, one commenter requested that the Commission provide salespersons presently supervising a branch office who are not broker licensees a reasonable amount of time to obtain their broker's license. This commenter also requested that the Commission exempt from this requirement branch office supervisors of brokers which limit their businesses to residential rental transactions.

RESPONSE: As was noted in the Notice of Proposal on this amendment, the Commission will provide a six-month grace period following the adoption of this amendment during which current branch office supervisors who are not broker licensees may obtain their licenses, or within which qualified branch office supervisors may be retained by brokers. With regard to the suggested exemption for brokers whose operations are limited to residential rentals, the Commission notes that there is no provision in the law which prevents such brokers from, at any time, commencing brokerage operations on other types of transactions. Furthermore, the Commission does not feel it is necessary or efficient for it to pursue the suggestion that some form of limited broker's license be created for such rental operations. Therefore, the Commission determined not to add an exception for offices engaged solely in rental transactions to the requirements of this rule as amended.

Full text of the adoption follows.

11:5-1.19 Branch office compliance with N.J.A.C. 11:5-1.18 (Maintained offices)

(a) (No change.)

(b) No license shall be issued for a branch office situated in the dwelling premises of a salesperson or broker-salesperson.

(c) Any branch office shall be under the direct supervision of a licensed broker employed as a broker-salesperson by the broker maintaining the branch office.

(d) Such individual shall devote his or her full time to management of said office during the usual business hours.

(e) (No change.)

(f) When a branch office license is issued to a broker it shall specifically set forth the name of the broker and the address of the branch office, and shall be conspicuously displayed at all times in the branch office. The branch office shall also prominently display the name of the broker-salesperson licensee in charge as "office supervisor" and the names of all other broker-salespersons and salespersons doing business at that branch office.

(g) (No change.)

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Formal Proceedings by the New Jersey Real Estate Commission

Adopted New Rules: N.J.A.C. 11:5-3, 4 and 5

Proposed: May 15, 1989, at 21 N.J.R. 1315(a).

Adopted: June 20, 1989, by New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Filed: July 18, 1989, as R.1989 d.429, **without change.**

Authority: N.J.S.A. 45:15-6.

Effective Date: August 21, 1989.

Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Response:

The New Jersey Real Estate Commission has adopted proposed new rules N.J.A.C. 11:5-3, 4 and 5. The new rules provide notice to the public and to licensees of the procedural requirements applicable to proceedings by the Real Estate Commission on rulemaking actions, disciplinary actions against licensees and appeals of initial staff decisions denying license applications. The Commission received one comment on the proposed new rules, which expressed the commenter's support.

Full text of the adoption follows.

SUBCHAPTER 3. PETITIONS FOR RULEMAKING

11:5-3.1 Petitions for rulemaking—scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendments or repeal of any rule by the New Jersey Real Estate Commission, as required by N.J.S.A. 52:14B-4(f).

11:5-3.2 Procedure for the submission of petitions for rulemaking

(a) Any interested person may petition the Real Estate Commission to promulgate, amend or repeal a rule. Such petition shall state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and
5. References to the Commission's authority to take the requested action.

(b) Petitions should be sent to the following address:

New Jersey Real Estate Commission
CN 328
Trenton, New Jersey 08625

(c) Filing a petition shall be made by forwarding an original and two copies to the Commission at the address indicated in (b) above.

(d) Any document submitted to the Real Estate Commission which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Commission action pursuant to N.J.S.A. 52:14B(f).

(e) Within 30 days of its receipt of a petition for rulemaking, the Commission shall review the same to ascertain if the submission complies with the requirements of (a) above and, in the event that the Commission determines that the submission is not in substantial compliance with (a) above, the Commission shall notify the petitioner of such noncompliance and of the particular deficiency or deficiencies in the submission on which the decision of the Commission was based. The Commission shall also advise the petitioner that any deficiencies may be corrected and the petition may be re-submitted for further consideration.

11:5-3.3 Procedure for the consideration and disposition of rulemaking petitions

(a) Upon receipt of a petition in compliance with N.J.A.C. 11:5-3.2, the Commission will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Commission will consider the petition and decide upon an action on the petition. The petitioner may be requested to attend a Commission meeting and answer questions concerning the petition. The Commission will mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which will include:

1. The name of the petitioner;
2. The New Jersey Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the Commission that the petition was duly considered pursuant to law;
4. The nature or substance of the Commission's action upon the petition; and
5. A brief statement of reasons for the Commission's action.

(c) Commission action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date.

The results of these further deliberations will be mailed to the petitioner and submitted to the OAL for publication in the New Jersey Register.

11:5-3.4 Public hearings for promulgation, amending or repealing rules

(a) The Commission may hold a public hearing to gather information concerning any proposed rule, amendment, or repeal.

(b) The Commission shall publish a notice of the place, date and time of the hearing at least 15 business days before the date of the hearing.

SUBCHAPTER 4. PROCEEDINGS BEFORE THE COMMISSION

11:5-4.1 Pleadings enumerated and defined

(a) Pleadings before the Commission shall be orders to show cause, complaints, answers, petitions, and motions, which for purposes of these rules are defined as follows:

1. "Orders to show cause" means orders issued by the Director on behalf of the New Jersey Real Estate Commission compelling the persons to whom the order is directed to appear and show cause before the Commission why certain actions, including but not limited to the imposition of sanctions, should not be taken by the Commission pursuant to the Real Estate Licensing Act, N.J.S.A. 45:15-1 et seq. and the rules promulgated thereunder.

2. "Complaint" means a filing by the Office of the Attorney General of New Jersey alleging violations of one or more of the provisions of N.J.S.A. 45:15-1 et seq. and/or of the Commission's rules.

3. "Answer" means the pleading filed by a licensee or other party against whom an order to show cause or complaint is directed which sets forth the respondent's position with the respect to each factual and legal allegation in the order or complaint and specifies all affirmative defenses raised by the respondent.

4. "Petition" means the pleading filed by an interested person to request a rulemaking action or declaratory ruling by the Commission or the pleading filed by an interested person seeking to intervene in any rulemaking or declaratory ruling proceeding.

5. "Motion" means the application filed incidental to an action before the Commission for the purpose of obtaining a ruling or order directing that some action be taken in favor of the movant.

(b) Documents, affidavits or other evidentiary matter submitted with or attached to a pleading other than a motion shall not be deemed evidentiary. Such materials must be offered into evidence at a hearing and admitted as such in order to be considered as part of the evidentiary record.

11:5-4.2 Answers

(a) Any party against whom an order to show cause or complaint is directed and who desires to contest the same or make any representation to the Commission in connection therewith shall file an answer in writing with the Commission.

(b) The answer shall apprise the Commission fully and completely of the nature of all defenses and shall admit or deny specifically and in detail all material allegations of the order to show cause or complaint.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered in the answer.

(d) An answer must be filed within 20 days after service of the order to show cause or complaint unless the deputy attorney general who represents the complainant consents, or the Commission orders an extension of the time, to answer.

(e) Filing of an answer shall be made by forwarding an original and two copies to the Director of the Commission and a copy to the deputy attorney general who represents the Commission.

11:5-4.3 Adversary hearing determination by the Commission

(a) Promptly after the answer is filed, the Commission will review the pleadings at a Commission meeting and decide whether any material fact or issue of law is contested. If the Commission determines that a matter is contested, a hearing will be scheduled. On its own motion or at the request of either party, the Commission may, in its discretion, transmit the case to the Office of Administrative Law for hearing and initial decision.

(b) If, upon review of the pleadings, the Commission determines that no material facts or issues of law are contested, the Commission shall afford the respondent an opportunity to be heard and to present witnesses and documentary evidence, which presentation shall be limited to the issue of the severity of any sanction or penalty to be imposed. By stipulation or other means, the deputy attorney general representing the complainant shall present evidence sufficient to establish the factual basis for all alleged violations and may present documentary evidence or witnesses in rebuttal of any mitigation testimony or evidence presented by the respondent.

11:5-4.4 Motions

(a) In all matters heard by the Commission, motions and replies shall be made in the manner and form prescribed by the rules which establish the procedures for motion practice before the Office of Administrative Law, N.J.A.C. 1:5-1.12. In construing those rules, the terms "Executive Director" and "Commission" are substituted for the terms "Clerk" and "Judge", respectively.

(b) Filing of a motion or reply shall be made by forwarding an original and 15 copies to the Director of the Commission and a copy to all other attorneys and pro se parties, if any, in the matter.

(c) A motion shall be considered by the Commission at a regularly scheduled meeting pursuant to the requirements of N.J.A.C. 1:1-12.

(d) Oral argument on a motion when permitted or directed by the Commission shall be presented to the Commission by the parties or their representatives in person at a Commission meeting; motions will not be heard by telephone conference.

(e) Motions for the reconsideration of sanctions imposed by the Commission must be filed within 30 days of the date upon which notice of the decision imposing sanctions was provided to the movant. Such motions must be accompanied by a recitation of the particular facts and legal basis which purportedly support the application.

11:5-4.5 Conference hearing procedure

(a) The Director may, on behalf of the Commission, issue an order to show cause requiring a licensee or other person to appear before the Commission for a conference hearing as defined in N.J.A.C. 1:1-2.1 in circumstances where violations of N.J.S.A. 45:15-17d, 17o and/or 19.1 are alleged to have occurred or where there is a danger of imminent harm to the public.

(b) The order to show cause shall be served upon the respondent at least 10 days prior to the hearing.

(c) The respondent shall not be required to file a written answer, but shall be required to appear on the return date of the order to show cause and admit or deny the allegations in the order to show cause and present all defenses to the alleged violations.

(d) The respondent may notify the Commission by telephone or letter of any witnesses to be subpoenaed on the respondent's behalf and shall provide to the Commission the addresses at which such witnesses can be served.

(e) Discovery and motions in conference hearings shall be limited in accordance with N.J.A.C. 1:1-10.6 and 1:1-12.1, respectively.

11:5-4.6 Sanctions: failure to answer or appear; default

(a) In all matters heard by the Commission, the imposition of sanctions for the failure to appear and/or to comply with any order of the Commission or the requirements of these procedural rules shall be governed by the procedures established for the imposition of sanctions in matters heard by the Office of Administrative Law at N.J.A.C. 1:1-14.4.

(b) The Commission shall have the discretionary authority to grant extensions of the time to file an answer or appear.

11:5-4.7 Settlements

(a) The parties to a proposed settlement shall present the settlement to the Commission pursuant to the requirements of N.J.A.C. 1:1-19.1.

(b) Such a settlement shall be presented to the Commission during the public session of a Commission meeting. Should a proposed settlement be rejected by the Commission, the proposal shall not be considered or used for any purpose in any subsequent hearing. Any settlement approved by the Commission shall be a public record.

11:5-4.8 Decisions in enforcement actions

All final decisions of the Real Estate Commission on contested and uncontested matters shall be reduced to writing, in the form of an order of the Commission, which shall be served upon all parties to the matter either personally or by registered or certified mail sent to the last known business address of all parties.

SUBCHAPTER 5. APPEALS OF INITIAL DENIALS OF LICENSING APPLICATIONS

11:5-5.1 Procedures applicable to appeals of initial denials of licensing applications

(a) Initial denials of the following applications may be appealed to the full Real Estate Commission through compliance with all of the requirements established in (b) below:

1. License applications, with the exception of reinstatement applications submitted beyond the statutorily established time limitations upon such reinstatements;

2. Applications from disabled veterans for education waivers and/or apprenticeship waivers;

3. Applications for the issuance of education waivers by persons other than disabled veterans;

4. Applications for the issuance of apprenticeship waivers by broker licensees of other states; and

5. Applications by broker license candidates for the Commission's approval of their apprenticeship.

(b) All appeals to the full Real Estate Commission provided for in (a) above shall be filed by the appealing applicant submitting to the Commission within 45 days of the date of the notice of denial an original and 15 copies of all of the documentation noted below:

1. A covering letter stating the factual and legal basis of the appeal, to which shall be attached a copy of the application and the denial letter which forms the basis of the appeal. The said covering letter shall also state whether the applicant desires to appear and present oral argument and/or testimony when the appeal is considered by the Commission;

2. Where the denial was based upon an applicant's prior criminal history and/or their loss of a professional license, all judgments of conviction on the convictions which form the basis of the denial and a letter from their probation or parole officer, if within one year of making the application they were under such supervision, which letter shall state the extent of the applicant's compliance with the terms and conditions of his or her probationary sentence or parole supervision, and/or a copy of the order or memorandum of settlement evidencing the loss of the professional license;

3. On all applications as described in (b)2 above, a letter from the broker with whom the applicant intends to be licensed, evidencing that person's full knowledge of the factors which formed the basis of the initial denial;

4. Any other relevant documentation which the applicant desires the Commission to consider when hearing the appeal; and

5. Any other documentation which the Commission determines is required in order to allow it to make a fully informed decision on the appeal.

(c) Upon the proper filing of an appeal as described in (b) above, the appeal package shall be reviewed and the applicant advised of the following:

1. The date, time and place at which the appeal will be considered by the full Real Estate Commission; or

2. That based upon the content of the appeal documents a determination has been made to approve the application; or

3. The appeal package is deficient in certain respects, which shall be specified to the applicant, with an indication that upon receipt of the missing documentation the appeal will be given further consideration.

(d) All applicants have the opportunity to be represented by counsel when submitting an appeal and/or appearing before the Real Estate Commission and to call witnesses to testify on their behalf at the time of its consideration of their appeal.

(e) Upon the conclusion of a hearing on an appeal, the Commission shall either render a decision or take the matter under advisement and render a decision at a future date. The ruling of the Commission shall be communicated to the applicant in written form promptly upon the decision being rendered.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS LEGALIZED GAMES OF CHANCE CONTROL COMMISSION

Conduct of Bingo; Personnel

Adopted Amendment: N.J.A.C. 13:47-7.1

Proposed: March 20, 1989 at 21 N.J.R. 698(b).

Adopted: June 14, 1989 by the Legalized Games of Chance Control Commission, Robert J. Whelan, Chairperson.

Filed: July 20, 1989 as R.1989 d.431, **without change.**

Authority: N.J.S.A. 5:8-1 et seq., specifically 5:8-6.

Effective Date: August 21, 1989.

Expiration Date: February 2, 1992.

The Legalized Games of Chance Control Commission afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:47-7.1, relating to the conduct of bingo; personnel. The official comment period ended on April 19, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 20, 1989 at 21 N.J.R. 698(b). Announcements were also forwarded to the Star Ledger and Trenton Times, newspapers of general circulation; Unico National; the New Jersey Fireman's Association; the New Jersey Catholic Conference, as well as various diocese; the New Jersey Elks Association; various Veterans Associations; the New Jersey Jaycees; the New Jersey Area Council of Boys Clubs; the Deborah Hospital Foundation; and a number of interested individuals.

A full record of this opportunity to be heard can be inspected by contacting the Legalized Games of Chance Control Commission, Room 518, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

One comment in favor of the proposed amendment was received during the 30-day comment period.

The Commission acknowledges this comment with appreciation.

Full text of the adoption follows.

13:47-7.1 Personnel

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

(e) No person who has conducted or assisted in the holding, operating or conducting of bingo on an occasion shall participate as a player on that occasion.

(f) No person who has participated as a player on an occasion when bingo is played shall conduct or assist in the holding, operating or conducting of bingo on that occasion.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Organization of the Division of Taxation

Adopted New Rules: N.J.A.C. 18:1-1.1 and 1.2

Adopted Amendment: N.J.A.C. 18:7-14.20

Authorized By: John R. Baldwin, Director, Division of Taxation.

Filed: July 21, 1989 as R.1989 d.437, as an exempt organizational rule.

Authority: N.J.S.A. 52:14B-3.

Effective Date: July 21, 1989.

Expiration Date: July 21, 1994 for N.J.A.C. 18:1-1; March 14, 1994 for N.J.A.C. 18:7-14.20.

Take notice that the Division of Taxation has adopted organizational rules, which are exempt from the notice and hearing requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., pursuant to

N.J.S.A. 52:14B-4(b), and are effective upon filing with the Office of Administrative Law. Therefore, there was no opportunity for public comment regarding these new organizational rules. The amendment to N.J.A.C. 18:7-14.20 was, for organizational purposes, an address modification.

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

18:1-1.1 Organization of the Division of Taxation

(a) The Division consists of a Director of the Division of Taxation and such offices and other organizational units as are allowed by law and as are necessary to carry out the Division's statutory mandates.

(b) One or more Assistant Directors, designated deputies by the Director by a certificate filed with the Secretary of State, serves as Acting Director(s) during the Director's absence, disability or as otherwise provided for in N.J.S.A. 54:1-11.

(c) The following functional subunits exist under the Director and are headed by Assistant Directors:

1. Audit;

2. Administration/Processing/Taxpayer Registration;

3. Special Procedures/Investigations; and

4. Office of Inspection.

(d) Beneath the level of Assistant Director, subunits as required are headed by Superintendents.

(e) Beneath the level of Superintendent, subunits as required are headed by Branch Chiefs.

(f) A detailed description of the organizational structure of the Division of Taxation is contained in the Annual Report of the Division of Taxation which is submitted annually to the Legislature and the Governor pursuant to N.J.S.A. 54:1-13.

18:1-1.2 Public information and submissions or requests

The public may obtain general information regarding their responsibilities under the tax laws of the State of New Jersey by contacting the Taxpayer Information Service, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

18:7-14.20 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate

(a) Application forms and instructions relating to Tax Clearance Certificates may be obtained by writing to:

New Jersey Division of Taxation
Tax Clearance Section
[Document Control Center]
420 East State Street, **CN 277**
Trenton, NJ [08638] **08646-0277**

or by making a telephone call to Taxpayer Information Service at (609) 292-6400.

(b) (No change.)

(a)

DIVISION OF TAXATION

Corporation Business Tax

Receipts; Compensation for Services

Adopted Amendment: N.J.A.C. 18:7-8.10

Proposed: May 1, 1989 at 21 N.J.R. 1106(a).

Adopted: July 20, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: July 21, 1989 as R.1989 d.439, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:10A-27.

Effective Date: August 21, 1989.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Through an error in publication, the two references to N.J.S.A. 54A:1-20 in N.J.A.C. 18:7-10(e)2iii are mistaken. The first reference is corrected herein to N.J.S.A. 54A:1-2m, and the second to N.J.S.A. 54A:1-20.

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

18:7-8.10 Receipts; compensation for services

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

(e) Receipts arising from the sale of management, administration or distribution services to a regulated investment company shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the procedure prescribed in this subsection.

1. The portion of receipts deemed to arise from services performed within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes which ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of year balance of shares owned by the regulated investment company shareholders. A separate computation is made to determine the allocation of receipts from each regulated investment company.

2. For the purposes of this section:

i. "Administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for a regulated investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined herein, to such company.

ii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the Federal Investment Company Act of 1940, as amended.

iii. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-***[20]****2m** in the case of an individual and under N.J.S.A. 54A:1-20 in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the shareholder's mailing address on the records of the regulated investment company. In the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

iv. "Management services" means the rendering of investment advice to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of a regulated investment company, or the selling or purchasing of securities constituting assets of a regulated investment company, and related activities but only where such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to section 15(a) of the Federal Investment Company Act of 1940, as amended.

v. "Receipts" shall include amounts received directly from a regulated investment company as well as amounts received directly from the shareholders of such regulated investment company in their capacity as such.

vi. "Regulated investment company" means a regulated investment company as defined in N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code.

(a)

DIVISION OF TAXATION

Sales and Use Tax
Fabricator/Contractor Sales
Adopted Amendment: N.J.A.C. 18:24-5.11

Proposed: February 21, 1989 at 21 N.J.R. 439(a).
Adopted: July 20, 1989 by John R. Baldwin, Director, Division of Taxation.
Filed: July 21, 1989 as R.1989 d.438, **without change.**

Authority: N.J.S.A. 54:32B-24.

Effective Date: August 21, 1989.
Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

18:24-5.11 Fabricator/contractor sale and installation of completed products; tax

(a) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale further agrees to install the product at a location in this State, he or she may not collect tax from his or her customer for charges rendered in connection with the installation if the installation of his or her product results in a capital improvement to real property. In such cases, the fabricator is, however, required to pay use tax directly to the Division of Taxation upon the value of his or her product as hereinafter set forth. The use tax shall be computed on:

1. The price at which items of the same kind are offered for sale by him or her; or

2. If the fabricator/contractor makes no sales of items of the same kind, the tax shall be computed on the cost of all materials used in fabrication.

(b) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale agrees to install the product at a location in this State, and such installation does not result in a capital improvement to real property (see N.J.A.C. 18:24-5.7), he or she is required to pay use tax on the product installed, in the same manner as described in (a) above, and is further required to collect the sales tax on that portion of his or her bill attributable to installation charges.

(c) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale agrees to install the product at a location outside this State, he or she is neither responsible for the payment of use tax as provided in (a) above nor for the collection of sales tax on installation charges as provided in (b) above.

Example: A structural steel fabricator purchases steel which is delivered to his facility in New Jersey. The steel is fabricated as provided in shop drawing specifications for on-site installation. The fabricated structural steel is then shipped to a job site located outside this State. Such fabricated steel is not subject to tax in this State.

OTHER AGENCIES

(b)

NEW JERSEY TURNPIKE AUTHORITY

Organization of the New Jersey Turnpike Authority
Adopted New Rules: N.J.A.C. 19:9-7

Adopted: July 24, 1989 by the New Jersey Turnpike Authority, Frank B. Holman, Executive Director.
Filed: July 24, 1989 as R.1989 d.444, as an exempt organizational rule.

Authority: N.J.S.A. 27:23-1, 27:23-29 and 52:14B-3.

Effective Date: July 24, 1989.
Expiration Date: October 17, 1993.

Take notice that the New Jersey Turnpike Authority herein adopts, pursuant to N.J.S.A. 52:14B-3, new rules describing its organization and setting forth from whom the public may obtain information regarding the Authority. In accordance with N.J.S.A. 52:14B-4(b), no public comment opportunity was provided. These rules were effective upon filing with the Office of Administrative Law.

Full text of the adoption follows.

19:9-7.1 Authority responsibilities

The New Jersey Turnpike Authority is responsible for the design, construction, maintenance and operation of a limited access, high-speed roadway and related projects.

19:9-7.2 Table of organization

A table of organization showing the general course and method of operations within the Authority and the major sections within each Department follows:

19:9-7.3 Functions of departmental units

(a) The functions of the various departments within the New Jersey Turnpike Authority are as follows:

1. Engineering is responsible for design, construction and major rehabilitation of the roadway, bridges and related facilities.

2. Maintenance is responsible for care and maintenance of existing Turnpike facilities.

3. Toll Collection oversees the collection of toll revenue and the activities of the toll collection personnel in providing service to the motoring public.

4. Accounting is responsible for all fiscal matters for the Authority, including financing issues, annual capital and operating budgets, payroll and other disbursements.

5. Public Information coordinates Turnpike interaction with media, provides press information, photographs, etc. and community relations regarding patron and neighbor complaints or requests for information.

6. Operations is responsible for all activities related to day-to-day operation of the Turnpike project including Traffic Engineering, Regulations, Patron Services, Emergency Services, Coordination of Construction and Maintenance Activities, Hazardous Materials Training, Employee Safety, Communications, and the liaison with the New Jersey State Police assigned to the Turnpike.

7. Purchasing is responsible for the procurement of all materials, supplies and services for the maintenance, repair and operation of all New Jersey Turnpike Authority departments. The sale of surplus equipment through bid processes or public auction is also implemented by the Purchasing Department.

8. Risk Management is responsible for obtaining insurance coverage for the New Jersey Turnpike Authority, for the establishment of a loss control program, and for overseeing the administration of employee benefit programs. Processes patron claims and oversees property damage cases.

9. Revenue and Data Management is responsible for toll auditing activities, toll tickets and general clerical service.

10. Management Information Systems is responsible for design, development, and implementation of all real time, on-line and batch information systems; with emphasis on efficiency and cost effectiveness.

11. Law provides legal service to all Turnpike Authority departments, reviews contracts, acquires property, conducts all legal and quasi-legal hearings and deals with labor relations.

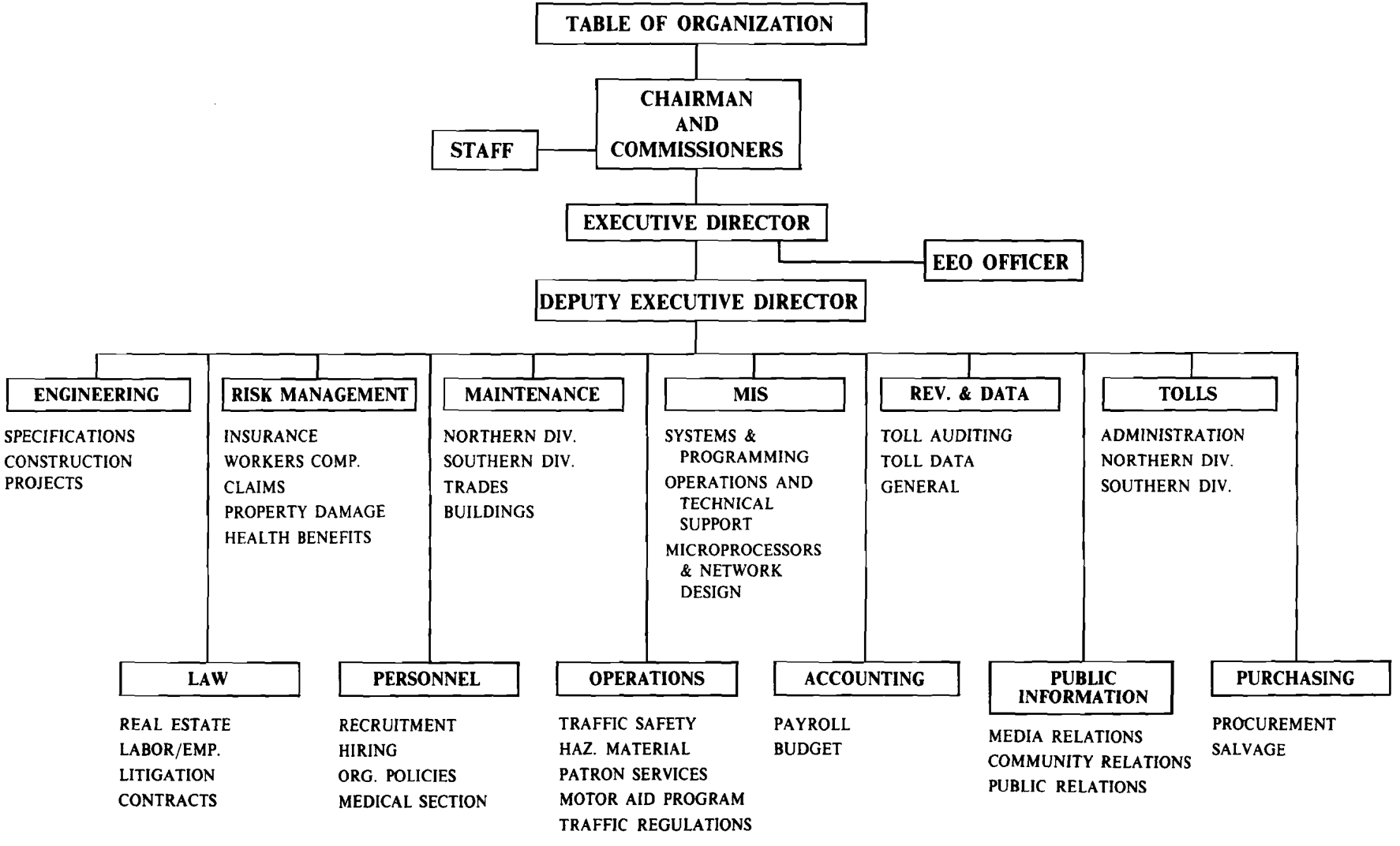
12. Personnel is responsible for all employment decisions (hiring, promotions, etc.).

19:9-7.4 Information

Interested persons can obtain information from the Authority by addressing inquiries to:

Frank B. Holman, Executive Director
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, NJ 08903

Exhibit B


TABLE OF ORGANIZATION
CHAIRMAN AND COMMISSIONERS
STAFF
EXECUTIVE DIRECTOR
EEO OFFICER
DEPUTY EXECUTIVE DIRECTOR
ENGINEERING
SPECIFICATIONS
CONSTRUCTION
PROJECTS
RISK MANAGEMENT
INSURANCE
WORKERS COMP.
CLAIMS
PROPERTY DAMAGE
HEALTH BENEFITS
MAINTENANCE
NORTHERN DIV.
SOUTHERN DIV.
TRADES
BUILDINGS
MIS
SYSTEMS & PROGRAMMING
OPERATIONS AND TECHNICAL SUPPORT
MICROPROCESSORS & NETWORK DESIGN
REV. & DATA
TOLL AUDITING
TOLL DATA
GENERAL
TOLLS
ADMINISTRATION
NORTHERN DIV.
SOUTHERN DIV.
LAW
REAL ESTATE
LABOR/EMP.
LITIGATION
CONTRACTS
PERSONNEL
RECRUITMENT
HIRING
ORG. POLICIES
MEDICAL SECTION
OPERATIONS
TRAFFIC SAFETY
HAZ. MATERIAL
PATRON SERVICES
MOTOR AID PROGRAM
TRAFFIC REGULATIONS
ACCOUNTING
PAYROLL
BUDGET
PUBLIC INFORMATION
MEDIA RELATIONS
COMMUNITY RELATIONS
PUBLIC RELATIONS
PURCHASING
PROCUREMENT
SALVAGE

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of Administrative Correction
Public Financing of General Election for Governor
Candidate Statement of Qualification before Participation in Public Financing
N.J.A.C. 19:25-15.48

Take notice that the Election Law Enforcement Commission has discovered an error in the text of N.J.A.C. 19:25-15.48, the adoption of which was published in the July 3, 1989 New Jersey Register at 21 N.J.R. 1837(a). In paragraph (a)3, the word "primary" rather than "general" is inappropriately used to describe election expenses. As the rule only pertains to a general election for governor, the word usage is patently incorrect. This notice is published pursuant to N.J.A.C. 1:30-2.7(a)3.

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

19:25-15.48 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 September 1 preceding a general election for the office of Governor must on or before September 1 preceding the general election for Governor file:

1.-2. (No change.)

3. Each disbursement submitted in the report required by (a)1 above as evidence that $150,000 has been expended for [primary] **general** election expenses shall include two photocopies of checks, receipted bills, contracts, or similar documents as evidence of the expenditure of at least $150,000.

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

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures for Depositing Checks Received from Gaming Patrons
Adopted Amendment: N.J.A.C. 19:45-1.28

Proposed: May 15, 1989 at 21 N.J.R. 1288(a).
Adopted: July 20, 1989 by the Casino Control Commission, Walter N. Read, Chair.
Filed: July 21, 1989 as R.1989 d.434, **without change.**

Authority: N.J.S.A. 5:22-63(c), 5:12-99(a) and 5:12-101(c).

Effective Date: August 21, 1989.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement supports the proposed amendment to N.J.A.C. 19:45-1.28.

RESPONSE: Accepted.

Full text of the adoption follows.

19:45-1.28 Procedure for depositing checks received from gaming patrons

(a) All checks, unless redeemed or consolidated prior to the time requirements herein, received from gaming patrons in conformity with N.J.A.C. 19:45-1.25 shall be deposited in the casino licensee's bank account in accordance with the casino licensee's normal business practice, and such practice must be submitted in writing to both the Commission and Division, but in no event later than:

1. The banking day after the date of the check for a non-gaming check;

2. Seven calendar days after the date of the check for a check in an amount of $1,000 or less;

3. Fourteen calendar days after the date of the check for a check in an amount greater than $1,000 but less than or equal to $5,000; or

4. Forty-five calendar days after the date of the check for a check in an amount greater than $5,000.

(b) All checks received for consolidation in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account within:

1. Seven calendar days after the date of the initial check for a consolidating check where the consolidating check is in an amount of $1,000 or less;

2. Fourteen calendar days after the date of the initial check for a consolidating check where the consolidating check is in an amount greater than $1,000 but less than or equal to $5,000; or

3. Forty-five calendar days after the date of the initial check for a consolidating check where the consolidating check is in an amount greater than $5,000.

(c) All checks received as part of a redemption in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account within:

1. Seven calendar days after the date of the initial check if the initial check is in an amount of $1,000 or less;

2. Fourteen calendar days after the date of the initial check if the initial check is in an amount greater than $1,000 but less than or equal to $5,000; or

3. Forty-five calendar days after the date of the initial check if the initial check accepted is in an amount greater than $5,000.

(d) In computing a time period prescribed by this section, the last day of the period shall be included unless it is a Saturday, Sunday, or a State or Federal holiday, in which event the time period shall run until the next business day.

(e) In the event of a series of consolidation or redemption transactions with a patron, the initial check shall be the earliest dated check returned to the patron in the first of the series of consolidation or redemption transactions.

(f) (No change in text.)

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF WATER RESOURCES

90 Day Construction Permit Rules
Adopted Amendments: N.J.A.C. 7:1C-1.2, 1.3, 1.4, 1.5, 1.7, 1.8, 1.9, 1.13, 1.14, and 7:14A-12.26

Proposed: April 3, 1989 at 21 N.J.R. 819(a).
Adopted: July 20, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: July 21, 1989 as R.1989 d.436, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9 and 13:1D-29 et seq., specifically 13:1D-33.

DEP Docket Number: 014-89-03.
Effective Date: August 21, 1989.
Expiration Date: June 17, 1990.

Summary of Public Comments and Agency Responses:

A public hearing on these proposed amendments was held at the Labor Education Center, Cook College, New Brunswick, New Jersey on May 1, 1989, to provide interested parties the opportunity to present testimony on the proposal. Testimony was given by two commenters and written comments were received from two other commenters prior to the close of comments on May 3, 1989.

COMMENT: One commenter wanted to know when the hearing required under N.J.A.C. 7:1C-1.5 will be held and what will be the subject of the hearing.

RESPONSE: Anticipating the adoption of these proposed amendments, a public hearing was scheduled at the Labor Education Center Auditorium of Cook College at Rutgers University for 10:00 A.M., July 21, 1989. The purpose of the hearing was to receive comments on the Annual Report and Fee Schedule for treatment works approvals ("TWAs"). The Department will publish a document summarizing the comments received and the Department's responses to the comments.

COMMENT: One commenter raised questions concerning surpluses in the Environmental Services Fund and the TWA account. The commenter questioned the Department's rationale for increasing the TWA fees when a surplus in the account exists. The commenter also raised questions concerning an assessment of the Environmental Services Fund by the Department of the Treasury.

RESPONSE: The proposed amendments called for the adoption of a new formula for determining fees for TWAs which would incorporate the estimated budget of the TWA program into the fee formula. The proposed amendments also call for an annual notice, and in certain circumstances a public hearing, on the estimated TWA budget. As mentioned in the previous response, this hearing was held on July 21, 1989. This comment addresses questions on the TWA budget rather than on the generic fee formula. Accordingly, the Department considered this comment along with the other budget specific comments received at the hearing on July 21, 1989.

COMMENT: The proposed formula for TWA fees in N.J.A.C. 7:1C-1.5 does not reflect treatment of the surplus funds.

RESPONSE: Although surplus funds are not included in the formula, N.J.A.C. 7:1C-1.5(a)5v(3) clearly states that a credit/deficit will be carried to the next fiscal year. By carrying forward the projected credit/deficit, the estimated budget will be adjusted appropriately to prevent either an excess of funds or a deficit. The estimated budget which is the factor "EB" in the fee formula will reflect the estimated budget for the next fiscal year, plus or minus a carry forward.

COMMENT: With the surplus shown in the Environmental Services Fund, why has a problem existed in the hiring of new review staff for the TWA program? If the fees collected under N.J.A.C. 7:1C are kept separate from the general revenues, as required by law, why has the recent hiring freeze affected the TWA program given a surplus in the balance?

RESPONSE: When the hiring for State employees was imposed and the Employment Review Board process was initiated in December of 1988, it was made clear to all operating departments that no new positions and/or new hires could be initiated, including those positions in Federally funded and/or fee funded programs. Exemptions from the hiring freeze were sought by the Department for all fee related programs. The Department made a concerted effort to request 36 positions from the Employment Review Board, six of which are in the TWA program. Although the Department was not granted any exemptions for the six requests for TWA positions, it is worth noting that an estimated $231,000 in additional funds would have been expended if these six positions had been established as requested. Since the hiring freeze was lifted on July 1, 1989, the hiring of additional staff is imminent.

COMMENT: One commenter requested better reporting procedures for the Environmental Services Fund to allow ready oversight of programs that are funded by permit fees under N.J.A.C. 7:1C, specifically a detailed accounting procedure that readily and thoroughly identifies the cumulative surplus of funds as well as the disbursement of the remaining funds.

RESPONSE: As referenced in above responses, the Department does maintain these accounts in identifiable dedicated funds within the general treasury. In those cases where the commenter has requested financial accounting, the Department has been more than willing to provide such a response. If more frequent reporting is desired, the Department is willing and available for further discussion. Reporting practices will be improved in the TWA program by virtue of the Treatment Works Approval Annual Fee Schedule and Report described in N.J.A.C. 7:1C-1.5. The report will include the estimated budget for fiscal year 1989-1990 and will set forth the fee schedule for that fiscal year.

COMMENT: Two commenters stated that the proposal to increase TWA fees by approximately 60 percent has not been justifiably demonstrated. The commenters were concerned that the impact of raising fees for publicly owned treatment works ("POTW") will be passed on to their customers in the form of increased fees or property taxes.

RESPONSE: These fees are to cover the operating costs of the TWA permitting program. The fee formula being replaced by this amendment did not produce enough revenues to match the budgetary needs of the program. Therefore, it has been replaced by the new fee formula in order to achieve the statutory mandate of making the permit fees approximately equal to the program budget for all projects required to obtain a TWA (see N.J.S.A. 58:10A-9). The TWA fees have increased only twice in the past 13 years and the cost of the Department's services has substantially increased. Also, the proposed increase in fees will enable the Department to comply with the requests of the regulated community to process the applications more efficiently. The TWA fees are to be paid by those who wish to construct facilities that discharge or treat domestic and/or industrial wastewater. The adequacy of these facilities must be reviewed and ascertained and the permit fee represents the cost of this service by the Department.

The impact of increased fees for publicly owned treatment works ("POTWs") does not necessarily mean that costs must be passed on to their customers. All TWA applicants seeking construction of connections to POTWs and for construction of expanded treatment capacity will be charged the appropriate fee. Increased connections to a POTW and increased treatment capacity creates an expanded user base, which would equate to increased revenue for the POTW thus reducing the effect of the fee on the POTW's customers.

COMMENT: The Department is encouraged to review the proposed expansion of the TWA program with respect to the cost as compared to the measurable environmental benefits.

RESPONSE: The TWA program is mandated by N.J.S.A. 58:10A-1 et seq. and is necessary to prevent pollution of the State's surface and ground waters. It is imperative that the Department maintain adequate staff to both administer and enforce the program in an efficient and effective manner. The social, economic and environmental impacts of the proposed fees have been adequately addressed in the rule proposal (see the New Jersey Register, April 3, 1989, at 21 N.J.R. 819(a)) and the rationale for the proposed fee formula has been fully explained. Further, the justification for the program budget and the actual TWA fee for any given year will be detailed in the annual fee reports and subject to a hearing in accordance with N.J.A.C. 7:1C-1.5(a)5v.

COMMENT: Past practice of the Department has been to exempt industrial wastewater treatment facilities ("IWTFs") from the requirement to obtain a TWA. IWTFs have shown consistently better performance with respect to meeting their NJPDES discharge permits than POTWs who have been required to follow the TWA program.

RESPONSE: Although IWTFs have previously not been processed pursuant to N.J.A.C. 7:1C, TWAs for such facilities have been required under the NJPDES regulations (see N.J.A.C. 7:14A-12). For a period of time the Department did waive approval of selected cases under N.J.A.C. 7:14A-12.1(c). However, pursuant to N.J.A.C. 7:14A-12.1(e), the applicant was still required to submit all the information specified for a TWA and to comply with all other requirements indicated in N.J.A.C. 7:14A-12. Only the Department's formal approval of the treatment works was waived. Furthermore, in order to grant said waivers, the Department was expending resources to review the treatment works applications against the criteria in N.J.A.C. 7:14A-12. The expenses associated with this effort were not being covered by the benefiting industrial users. Inclusion of IWTFs under this rule should serve to expedite the process of obtaining a TWA as well as insuring that all the benefiting users pay a TWA fee.

COMMENT: Two commenters stated that a TWA should not be required of an IWTF. A certification of adequacy of design and a sealed submission prepared by a New Jersey Licensed Professional Engineer are already required. The Department has acknowledged the sufficiency of this approach in their site remediation program for leaking underground storage tanks by accepting certification by a New Jersey Licensed Professional Engineer as to the adequacy of the clean-up plan without further routine Department review.

RESPONSE: It should be recognized that the underground storage tank ("UST") program involves cleanup of facilities which are much more standardized than industrial treatment works in general. The variety of industrial treatment works normally encountered is much more diverse and complex than that for USTs, which almost always involve cleanup of some form of petroleum product by one or more standardized treatment units. In addition, the large universe of UST facilities makes individual review impractical.

Although Department review of submittals does not gurantee that the facility will meet the effluent limitations established in its NJPDES permit, and the full burden for compliance with such limitations remains with the applicant pursuant to N.J.A.C. 7:14A-12.8, the Department's review during a treatment works approval is aimed at insuring that good engineering practices are being followed and that the design and construction of necessary treatment facilities proceeds along in an orderly and timely fashion. The Department is concerned that the design proposed is reasonably adequate for what it is intended to do, that it includes significant features such as a representative sampling point and appropriate effluent monitoring station, backup equipment and alarms, appropriate design basis (including treatability studies, if necessary), sizing calculations and that it otherwise reasonably complies with the Rules and Regulations for Preparation of Plans for Sewer Systems and Wastewater Treatment Plants, N.J.A.C. 7:9-1, as well as N.J.A.C. 7:14A-12.

The Department believes that its review of TWA applications may help to avoid unnecessary expenditures and lost time in attaining compliance with NJPDES permit limitations and conditions.

COMMENT: IWTFs are designed to meet the discharge limitations set forth in their Discharge Allocation Certificates ("DACs") and NJPDES permits. Under N.J.A.C. 7:14-12.1(e), IWTFs are required to conform to the same requirements of N.J.A.C. 7:14A-12 whether or not they are required to obtain a TWA.

RESPONSE: Regarding N.J.A.C. 7:14-12.1(e), the commenter must have intended to refer to N.J.A.C. 7:14A-12.1(e). It is true that N.J.A.C. 7:14A-12.1(e) requires compliance with all TWA requirements regardless of whether or not a TWA is issued. However, for the reasons stated in the above response, the Department believes that inclusion of industrial treatment works approvals under this rule will insure systemized prompt approvals and that those requiring these approvals will appropriately bear the cost of the administration of the TWA program.

Agency Initiated Changes

When reviewing N.J.A.C. 7:1C-1, the Department discovered that the procedure for requesting an adjudicatory hearing for a denial of a treatment works approval was in need of clarification. The Department has therefore modified the terms used in N.J.A.C. 7:1C-1 and 7:14A-12 to reflect the Department's procedure for requesting an adjudicatory hearing. In order to request an adjudicatory hearing for a denial of a treatment works approval (which includes a construction only treatment works approval) for the construction, change, improvement, alteration or extension of sanitary sewage collection systems, an interested person must comply with the requirements in N.J.A.C. 7:1C-1.9. In order to request an adjudicatory hearing for the denial of a treatment works approval other than an approval to construct or change a sanitary sewage collection system, an applicant must comply with the requirements in N.J.A.C. 7:14A-12.26.

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

7:1C-1.2 Definitions

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

"Act" means N.J.S.A. 13:1D-29 et seq.

"Applicant" means any person requesting a construction permit who has submitted an application to the Department.

"Application" means DEP Application Form CP-1 and the appropriate agency supplement.

"Appropriate agency" means:

1. The Division of Coastal Resources for:

i.-iii. (No change.)

iv. Stream encroachment permits under N.J.S.A. 58:16A-55 or 55.2.

2. The Division of Water Resources for:

i. A treatment works approval for the construction, change, improvement, alteration or extension of sanitary sewage collection systems pursuant to N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14A-12.

. . .

"Construction permit" means:

1.-3. (No change.)

4. A permit issued pursuant to the "Flood Hazard Area Control Act", N.J.S.A. 58:16A-55 or 55.2 and the "Flood Hazard Area Regulations" , N.J.A.C. 7:13 or N.J.S.A. 55.2;

5. A treatment works approval for the construction, change, improvement, alteration or extension of sanitary sewage collection systems issued pursuant to the N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14A-12.

Note: "Construction permit" does not include any approval of or permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels.

. . .

"Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, owners or operators of a domestic or industrial treatment works, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

. . .

"Treatment works approval" means an approval issued pursuant to N.J.S.A. 58:10A-6 or N.J.A.C. 7:14A-12.

7:1C-1.3 Pre-application procedure and requirements

(a) As a means of expediting permit review, potential applicants are encouraged to request an optional pre-application conference with the appropriate agency. At the voluntary pre-application conference a potential applicant may present a conceptual description of the proposed project, discuss the proposed project informally with the appropriate agency, and obtain guidance on the permit process; however, the conference is not a forum for preliminary approval or rejection of the proposed project. However, if the appropriate agency determines that the proposed project is exempt from the permit requirement, the agency shall issue a written statement of such finding which shall bind the agency.

(b) Prior to submitting an application to the Department, the applicant shall, if required by the appropriate agency, notify the following local agencies of intent to file an application by mailing them a completed DEP Application Form CP-1, and shall obtain an acknowledgement of receipt of notification by certified mail, return receipt requested:

1.-5. (No change.)

(c) (No change.)

(d) Applicants for a treatment works approval shall obtain the endorsement of the affected sewerage authority and/or municipality (see N.J.A.C. 7:14A-12.9).

7:1C-1.4 Application for construction permit

(a) To apply for a permit, the applicant shall prepare and submit a formal application to the appropriate agency.

1. The application shall consist of a complete and acknowledged DEP Application Form CP-1, the fee required by N.J.A.C. 7:1C-1.5, and other materials of a format and content as specified by rules or otherwise for individual permit programs.

2. (No change.)

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. (No change.)

2. Wetlands permits:

i. (No change.)

ii. The fee for a Type B permit (N.J.A.C. 7:7-2.2) shall be one half of one percent of the construction costs, or a minimum of $300.00.

3. (No change.)

4. Stream encroachment:

i. As used in this paragraph, the following terms shall have the following meanings:

(1) (No change.)

(2) "Minor stream encroachment project" means an encroachment project that does not require hydrologic and/or hydraulic review to determine the impact on flood carrying capacity; does not require review of any stormwater detention basin for compliance with Stormwater Management Regulations, N.J.A.C. 7:8; does not increase potential for erosion or sedimentation in stream and does not require substantial channel modification or relocation; and does not need to be reviewed for 20 percent "net fill" limitation as specified under N.J.A.C. 7:13-4.7(d). These shall include but are not limited to major desnagging and stream clearing, minor dredging projects, dug ponds without structure, outfall structures, minor water intake facilities, minor regrading, utilities in the flood plain, each channel crossing of utility, bank stabilization at grade, minor bank reestablishment and/or protection projects, footbridges, bridge deck replacements, recreation and habitat management structures of the Division of Fish, Game and Wildlife, farming practices (including ditches) approved by the Soil Conservation Service, and projects whose major purpose is mosquito control pursuant to N.J.S.A. 26:9-1 et seq. Governmental agencies may combine their minor projects for a calendar year and submit them as one project which will be considered a minor project.

(3) (No change.)

ii. For minor stream encroachment projects, the fee shall be $150.00 except that no fee shall be charged for such projects in a

drainage area of less than 320 acres which has been approved by the appropriate municipal or county engineer, or a professional engineer for State agency projects, and the certification of such approval has been submitted to and acknowledged by the Department. An additional $200.00 shall be charged for minor stream encroachment projects that are projects of special concern (see N.J.A.C. 7:13-5.2).

iii. No fee shall be charged for major projects located in a drainage area of less than 150 acres which has been approved by the appropriate municipal or county engineer, or a professional engineer for State agency projects, and the certification of such approval has been submitted to and acknowledged by the Department.

iv. (No change.)

v. For major projects outside the channel but within the 100 year flood plain and requiring the establishment of an encroachment line, the fee shall be $1,500 for each 1,000 feet reach of the channel or portion thereof.

vi.-vii. (No change.)

5. Treatment works approval fees shall be calculated as follows:

i. Applicants for a treatment works approval shall be categorized based on the construction costs of their projects as follows:

(1) Category 1 includes projects where the construction costs are greater than $1,000,000;

(2) Category 2 includes projects where the construction costs are greater than $250,000 but are less than or equal to $1,000,000.

(3) Category 3 includes projects where the construction costs are less than or equal to $250,000.

ii. Fees for treatment works approvals shall be based upon the coefficient "P" where:

$$P = \frac{EB}{T1 + 2(T2) + 4(T3) + 1{,}500{,}000(N1) + 500{,}000(N2)}$$

(1) "P" = T1 + 2(T2) + 4(T3) + 1,500,000(N1) + 500,000(N2);

(2) "EB" = the estimated budget for the Department's treatment works approval program for the forthcoming fiscal year;

(3) "T1" = the sum of the construction costs for all projects in Category 1 from the prior fiscal year;

(4) "T2" = the sum of the construction costs for all projects in Category 2 from the prior fiscal year;

(5) "T3" = the sum of the construction costs for all projects in Category 3 from the prior fiscal year;

(6) "N1" = the total number of projects in Category 1 from the prior fiscal year; and

(7) "N2" = the total number of projects in Category 2 from the prior fiscal year.

iii. All applicants for a treatment works approval shall pay one of the following fees based upon the category in which the project falls as determined by (a)5i above:

(1) Category 1 fee = 4P($250,000) + 2P($750,000) + P(construction cost of the applicant's project - $1,000,000);

(2) Category 2 fee = 4P($250,000) + 2P(construction cost of the applicant's project - $250,000); or

(3) Category 3 fee = 4P(construction cost of the applicant's project).

iv. An applicant for a treatment works approval shall pay a minimum fee of $150.00.

v. The Department shall prepare an annual fee schedule report which will include the following:

(1) The coefficient "P" of the fee formula derived from the equation in (a)5ii above;

(2) A detailed financial statement showing the estimated budget for the forthcoming fiscal year. The statement shall include a breakdown of the treatment works approval program by account title (for example, print and office supplies, vehicular, and maintenance of vehicles); and

(3) A detailed financial statement of the previous fiscal year's actual expenditures including a breakdown by account titles, total by category of permits reviewed, actual revenue and any credit/deficit to be carried forward to the next fiscal year.

vi. The Department shall hold a public hearing concerning the fees to be assessed for the forthcoming fiscal year only when projected fees exceed 10 percent increase as compared to the previous fiscal year's fees. The Department shall hold the hearing prior to the actual assessment of fees. The Department shall provide public notice of the hearing in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

vii. In those years not requiring a public hearing, publication of the forthcoming fiscal year's coefficient "P" together with a synopsis of the annual fee schedule report shall appear in the New Jersey Register, DEP Bulletin and several newspapers with general circulation.

viii. The annual fee schedule report may be obtained, at any time after public notice is published in accordance with (a)5vi or vii above, by submitting a request and a self addressed 10 inch by 13 inch (minimum size) envelope to:

New Jersey Department of Environmental Protection
Division of Water Resources
Wastewater Facilities Management Element
Bureau of Construction and Connection Permits
Annual Report Request
CN-029, 4th floor
Trenton, New Jersey 08625

(b) Each extension of time requested must be accompanied by a $50.00 non-refundable base fee. Each extension, if granted, will be for a maximum period of one year. No permit will be extended beyond a total of five years from the original date of the permit, except for projects of unusual size or scope or for projects which are delayed due to circumstances beyond the permittee's control (such as a delay in the funding of a public works project), in which case the appropriate agency may, upon request of the applicant prior to the expiration of the original permit, extend the permit for a total of 10 years from its original effective date. This exception shall not apply to Stream Encroachment Permits or treatment works approvals.

1. Besides the base fee, an additional $50.00 shall be charged for each extension of time requested for a permit for a minor stream encroachment project and for a Category 3 treatment works approval, and $150.00 for each extension of time requested for a permit for a major stream encroachment project and for a Category 1 or 2 treatment works approval.

(c) Each request for an approval of a major modification of the approved project must be accompanied with a fee equal to one-half of the total permit fee attributable to that portion of the project to be modified, subject to a minimum fee of $100.00. For the purposes of this section, a major modification is one which will result in a significant change in the scale, use, design or impact of the project as approved.

(d) The Department may also charge additional fees to engage such essential expertise as may be necessary for the processing and review of large scale and complex projects. The applicant will be consulted before imposition of such fees.

(e) Where a public hearing is conducted, the cost thereof, including, but not limited to, court reporter attendance fees, transcript costs, hearing officer fees and hearing room rental, shall be borne by the applicant unless otherwise determined by the Department for good cause shown.

(f) (No change.)

7:1C-1.7 Review of application

(a) Within a maximum of 20 working days of receipt of the application, the appropriate agency shall:

1.-4. (No change.)

5. The Department shall consider written initial comments from public agencies and other interested persons, received within five working days of publication of the initial project status report in the DEP Bulletin.

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

7:1C-1.8 Decision on permit application

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

(d) If the Department fails to act within this time period the application shall be deemed to have been approved, to the extent that the application does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions applicable to such permits. The Department shall promptly publish in the DEP Bulletin a notice that the application has been deemed approved.

(e) (No change.)
(f) The effect of the disapproval is as follows:
1. A disapproval without prejudice is a disapproval of the application. However, a subsequent application by the same applicant for the same project on the same site may be submitted within one year of the date of disapproval without additional fees (limited to one resubmittal, without additional fee).
2. (No change.)

7:1C-1.9 Appeals
(a) (No change.)
(b) Any interested person who considers themselves aggrieved by the approval or denial of a stream encroachment permit or ***a*** treatment works approval ***for the construction, change, improvement, alteration or extension of sanitary sewage collection systems*** may, within 10 days of publication of notice of the decision in the DEP Bulletin, or within 10 days of publication of notice of the decision by the permittee pursuant to (c) below, whichever occurs first, request a hearing by addressing a written request for such hearing to the Commissioner, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625.
1.-2. (No change.)
(c)-(e) (No change.)

7:1C-1.13 Over-the-counter processing
(a) As a means of expediting permit review for certain minor projects, the Department will fast process, to the extent possible, reasonable, and practical, and unless emergencies dictate otherwise, minor stream encroachment and treatment works approvals.
(b) Stream encroachment rules are as follows:
1. (No change.)
2. The construction permit DEP Application Form (CP-1) must be properly completed, but it does not need to be forwarded to any county or municipal agency. An Engineering Data Sheet (DWR-086) must be completed for all stream encroachment projects.
3. Minor stream encroachment projects are defined in N.J.A.C. 7:1C-1.5(a)4v(2).
i. Minor stream encroachment projects which may be processed on an over-the-counter basis include, but are not limited to:
(1)-(11) (No change.)
ii. Minor stream encroachment projects which will not be processed on an over-the-counter basis shall include:
(1)-(5) (No change.)
(6) Combined projects of government agencies submitted as one minor project for a calendar year will not be considered as a minor project for over-the-counter permit purposes; and
(7) (No change.)
(c) Rules for treatment works approvals are as follows:
1. The Department of Environmental Protection has a 24-hour processing service for "minor" projects requiring treatment works approvals. "Minor" treatment works approvals must be:
i.-iii. (No change.)
2.-4. (No change.)
5. An "engineer's report" form, available from the Bureau of Construction and Connection Permits of the Division of Water Resources, must be completed and certified by a New Jersey licensed professional engineer and submitted with the application.

7:1C-1.14 Related regulations
(a)-(c) (No change.)
(d) The requirements of this subchapter concerning appeals from the Department's decisions on treatment works approvals ***for the construction, change, improvement, alteration or extension of sanitary sewage collection systems*** supersedes N.J.A.C. 7:14A.

7:14A-12.26 Requests for adjudicatory hearings
(a) ***Except as otherwise provided in N.J.A.C. 7:1C-1.9, an*** *[An]* applicant who is denied a treatment works approval, a construction only approval or a connection ban exemption pursuant to N.J.A.C. 7:14A-12.22 and 12.23 by the Department may request an adjudicatory hearing within 30 days of receipt of the Department's denial of the approval or exemption.
(b)-(e) (No change.)

(a)

DIVISION OF WATER RESOURCES

Standards for Individual Subsurface Sewage Disposal Systems

Adopted Repeals: N.J.A.C. 7:9-2
Adopted New Rules: N.J.A.C. 7:9A

Proposed: August 1, 1988 at 20 N.J.R. 1790(a).
Adopted: July 28, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: July 31, 1989 as R.1989 d.450, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4).

Authority: N.J.S.A. 58:11-23 et seq., N.J.S.A. 58:10A-1 et seq., including 58:10A-16 et seq., N.J.S.A. 13:1D-1 et seq., and N.J.S.A. 26:3A2-21 et seq.

DEP Docket Number: 026-88-07.
Effective Date: August 21, 1989.
Operative Date: January 1, 1990.
Expiration Date: August 21, 1994.

To ensure that the public is provided ample time, the operative date is set at January 1, 1990. The repealed rules, N.J.A.C. 7:9-2 will remain operative until January 1, 1990.

Summary of Public Comments and Agency Responses:

The proposed rules were published in the August 1, 1988 New Jersey Register. The original comment period closed on September 12, 1988; however, it was extended to October 14, 1988. The total comment period was 75 days during which time 884 written comments were received. A public hearing was held at the Labor Education Center at Rutgers University in New Brunswick on September 9, 1988. The public hearing was well attended; however, only 14 persons offered oral comments.

GENERAL COMMENTS

COMMENT: Additional time should be allowed for review and comment by the public on the proposed rule.

Twenty-eight individuals made this comment. It was suggested that the period for submission of written comments be extended by periods of time ranging from 30 days to six months after the original submission deadline (9/12/88) or six months after the extended deadline (10/14/88). It was requested that the public hearing date be postponed and that an additional public hearing be scheduled.

Reasons given to justify the need for more time to review and comment on the proposal included the magnitude of changes in requirements, lack of public awareness regarding these changes, unsuitability of the proposal for adoption without modifications, lack of broad public participation in the Ad-hoc Committee meetings, the impact of the new requirements on local agencies and the general public, difficulty of hiring consultants to review the rule proposal on behalf of a municipality during August which is a "vacation month", problems reviewing the document or attending a day time hearing due to busy schedules of contractors and health officials, and the length and complexity of the document. It was pointed out that the Ad-hoc Committee which developed the standards had agreed on a comment period of two to three months and that the time allotted for public comment was short in comparison with the time spent by the Committee and the Department in developing standards. One Ad-hoc Committee member felt that an additional meeting of the Ad-hoc Committee should have been held prior to proposing the rules because of the revisions which had been made subsequent to the final committee meeting. Several persons experienced difficulty in obtaining a copy of the rule proposal or getting additional copies from the Department for use by office staff.

RESPONSE: As pointed out in several of the comments, an unusually long period of time (more than five years) was spent in developing the proposed rules. This is partly the result of a decision made by the Department to greatly increase public participation beyond the level which is provided in the enabling statute, N.J.S.A. 58:11-23 et seq. and in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In addition to the nine member Advisory Committee appointed to make recommendations to the Commissioner for revision of the standards, as prescribed in N.J.S.A. 58:11-35, an Ad-hoc Committee was formed to assist the nine member Advisory Committee in development of new standards. The Ad-

hoc Committee consisted of 24 individuals including health officers, sanitarians, engineers, soil scientists, builders, environmentalists and others having knowledge and experience related to the use and environmental impact of septic systems. The committee met on a total of 37 occasions over a period of approximately three years. When it is considered that these committee meetings were actually a form of public involvement, the large amount of time spent in this process could hardly be considered as an argument for even more public involvement. At some point a balance must be struck between the desire for public participation and the need to make progress in updating the rules. The 32 day extension of the comment period in addition to the original 43 day public comment period greatly exceeds the minimum time period required by the Administrative Procedure Act. The large volume of comments received (884 comments from 122 individuals) is an indication that the time allowed for submission of comments was adequate to permit an unusually high level of input from the public.

The sparcity of comments at the public hearing held on September 9, 1988 indicates that most of the individuals concerned with this rule proposal prefer to submit their comments in writing and therefore a second public hearing was not needed.

The Department provided ample publicity of the rules and copies were available to the public. For this reason, neither the lack of public awareness or the availability of copies of the proposal can be considered as factors adversely affecting public participation. In addition to the primary notice published in the New Jersey Register, two forms of secondary notice were utilized. To reach the general public, notices were published 30 days or more in advance of the public hearing in 21 major newspapers, one in each county of the State. Notice was also mailed directly to all municipal boards of health, municipal planning boards and health departments in the State as well as to a mailing list consisting of professional engineers who requested information regarding revision of the rules in response to a notice sent to every professional engineer licensed in the State. Copies of the full text of the rules were provided free of charge to all individuals who requested them. Due to the limited supply printed and in the interest of fairness, only one copy was sent to those individuals requesting two or more copies. Firms or offices with two or more persons wishing to review the proposal were able to obtain additional copies by submitting individual requests.

Comments made concerning the length and complexity of the document, inconvenience for those vacationing in August, the magnitude of changes in requirements and the impact of these changes were taken into consideration by the Department in extending the public comment period by 32 days. While some of the individuals requested a longer extension of time, the 32 day extension is considered to be adequate as a means of increasing public participation without unduly delaying the rulemaking process.

COMMENT: The rules appear to be very restrictive and do not allow the design professional enough latitude to evaluate each site as he applies his professional judgment to a design.

RESPONSE: The Department disagrees with this comment. As in the existing standards, design requirements are expressed in terms of minimums or acceptable ranges based upon site and soil limitations, capability of available technology, public health considerations and water quality based requirements. In the new rules, the number of design options available for a given set of conditions is greatly increased over that available under the repealed rules. For example acceptable methods of soil testing now include the tube permeater test, soil permeability class rating test, basin flooding test, pit-bailing test, and the piezometer test. The options for septic tank effluent distribution now include pressure dosing networks. The options for field installations now include soil replacement and mounded systems.

COMMENT: Problems with individual septic systems have not been widespread enough in Atlantic, Cumberland, Gloucester and Salem counties to justify sweeping changes in requirements such as those which will result from adoption of the proposed rules.

RESPONSE: The experience of this Department differs from the experience of the individual making this comment. In the four counties cited, the Department's records show 32 major problem areas each with numerous malfunctioning septic systems and more than 100 major problem areas throughout the State. These records consist of problems reported by local health departments and typically involve a large number of failing septic systems such as 25, 50 or 100. While records of individual malfunctioning septic systems are not maintained at the State level and a high proportion of these are not reported even at the local level, it is estimated based upon the volume of repair applications received by local health departments that individual malfunctioning septic systems number in the thousands each year.

COMMENT: The proposed rules were substantially changed in certain areas from the draft approved by the Advisory Committee and the Committee should be reconvened to discuss these changes.

RESPONSE: The purpose of the Advisory Committee was to recommend proposed standards to the Department as prescribed in N.J.S.A. 58:11-35. The recommendations of the Advisory Committee were considered by the Commissioner of the Department as required in N.J.S.A. 58:11-36, prior to proposal of the new standards. In drafting the rule proposal, the Department adhered to the draft recommended by the Advisory Committee except for minor changes necessary to adapt the draft into the format of the New Jersey Administrative Code and a few more substantive changes required to resolve conflicts with applicable statutes. In developing this proposal, the Advisory Committee and the Department have carried out their functions as prescribed by statute and there is no purpose to be served by reconvening the Advisory Committee.

COMMENT: These rules in combination with the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, will have an adverse environmental impact by promoting suburban sprawl through the increased number of subdivisions and smaller septic systems designed to fall within the size limitations of the proposed rules (see N.J.A.C. 7:9A-1) and thus avoid the stringent requirements of the NJPDES rules.

RESPONSE: The Department disagrees with this comment. The proposed rules were not drafted to impact existing urban sprawl in New Jersey and they will neither aid nor retard future urban sprawl. New construction activity is governed by local zoning requirements and conformance with areawide water quality management plans. The rules will be applied only after local approval has been given for the intended land use. The effect of the rules will be to require more accurate and useful soil evaluations by applying the principles of soil science to the site evaluation procedure and by allowing the use of standardized technologically advanced engineering designs which will be approvable by the administrative authority.

COMMENT: The rules should stipulate "civil engineer" rather than "professional engineer" to ensure that individuals who design septic systems have the appropriate engineering background.

RESPONSE: The qualifications of individuals performing engineering work in New Jersey are governed by statute (see N.J.S.A. 45:8-1 et seq.) and by rules (see N.J.A.C. 13:40) which are administered by the New Jersey State Board of Professional Engineers and Land Surveyors. The term "civil engineer" is not defined in the statute or rules governing engineering and therefore cannot be used in the proposed rules to limit or define the qualifications of a person engaged in engineering work.

COMMENT: The need for a major overhaul of the rules is questionable. Changes in the rules should be phased-in. It would be advisable to make only a few minor changes such as increasing disposal bed and septic tank sizes which would obtain similar results and avoid adopting long and technically complex rules.

RESPONSE: The need for a major overhaul of the rules can be explained by the fact that the rules governing septic systems have not been significantly revised in the 35 years since they were first promulgated. Additionally, there have been major scientific advances in terms of measuring the rate of water movement through soil and geologic strata as well as the biologic renovation of wastewater through a biologic medium.

COMMENT: A number of negative comments of a general nature were made with no supporting reasons or specific examples given. Several individuals indicated that the rules were time-consuming and will be burdensome on health officials, would increase paperwork and delays in processing applications or were too complex to be implemented or properly understood by laymen serving on boards of health or contractors installing systems. Greater emphasis on the mechanics of implementation, consideration of cost factors and explanation are necessary. It was stated that the proposed rules contradict other statutes, are not concise, are administratively inadequate and counter-productive to protection of public health and the environment as well as the economic welfare of the public and municipalities. The proposed rules will have adverse public health effects and a negative impact on the environment, including wetlands, due to inherent administrative weaknesses. Compliance of the proposed rules with the "groundwater strategy plan or Statewide water quality management plan" was not addressed and a Statewide hearing process will be necessary to formulate a proper decision. The proposed new rules are an overkill type of solution to a problem which does not appear to be that horrendous.

RESPONSE: Due to the non-specific nature of these comments, many of which are simply bald statements, the Department cannot respond except by stating that it considers the rules to be a large improvement over the repealed rules and, therefore, disagrees with the negative comments summarized above. A review of the general comments summarized above indicates that there is a sufficient number of positive comments to balance those comments which were negative.

COMMENT: The Department relied on research done in other states in developing the proposed standards.

RESPONSE: In developing the proposed new standards, the Department conducted an extensive review of available scientific and engineering literature. Extensive use was made of published soil survey reports and other data pertaining to soil conditions in New Jersey. In developing soil testing methods, extensive use was made of experience conducting the tests on New Jersey soils. While a good deal of the information used was derived from studies done in other states, care was taken to select only that information which would be directly applicable to conditions encountered in New Jersey.

COMMENT: The proposed standards encourage the hiring of "certified soil scientists" by engineering firms but place responsibility for functioning of the septic system with the design engineer.

RESPONSE: The term "certified soil scientist" is not used anywhere in the proposed rules nor are the services of a soil scientist required. Techniques for soil evaluation and testing which were derived from soil science have been adapted for use in septic system design. For this reason, soil scientists are listed in N.J.A.C. 7:9A-3.17(b)2 along with professional engineers, health officers and sanitarians as individuals who may wish to participate as site evaluators in the Department's voluntary registration program. This does not preclude a professional engineer possessing the necessary knowledge and skills from performing the site evaluation, nor does it relieve him or her of ultimate responsibility for the accuracy of any site evaluation data relied upon in the design. The responsibility of the engineer for the design and the accuracy of supporting data is established by statute (see N.J.S.A. 45:8-1 et seq.) and may not be modified by the rules. Whether engineering firms will hire soil scientists to perform site evaluation procedures required by the rules is a matter of individual preference.

COMMENT: Because Ad-hoc Committee members were precluded from discussing draft standards with organizations which they represented, input expertise into the process was limited and as a result many substantive changes will be needed to make the proposal workable. The Ad-hoc Committee was not privy to the entire document until after publication and there were many objections to the final draft made by Ad-hoc Committee members. Because changes were made to the draft after review by the Ad-hoc Committee, the Ad-hoc and Advisory Committees should be reconvened to discuss the changes.

RESPONSE: The purpose of the Ad-hoc Committee was not to provide representation to specific organizations or broad input from the general public. These purposes are served by the statutorily mandated Advisory Committee and by the public comment process as provided in the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq.). The purpose of the Ad-hoc Committee was simply to provide a larger voluntary work force of individuals with knowledge and experience relating to septic systems which would be capable of drafting a major revision of the septic system rules. It was understood by all members of the Ad-hoc Advisory Committee that any draft they produced would be subject to modification by the Advisory Committee prior to recommendation to the Commissioner and by the Department prior to proposal as a rule. Review of the draft in sections rather than as a complete document is a procedural matter agreed to by the Advisory Committee during the review process. Few provisions of the draft were agreed to unanimously by all Advisory Committee members and certain changes made by the Department were necessary for purely legal reasons. The Department only deviated from the recommendations of the Ad-hoc and Advisory Committees where legal authority was lacking or where there were clear conflicts with applicable statutes. The fact that additional changes will be made as a result of public comment illustrates the value of the public comment process which could never be replaced by any committee review process no matter how large the committee or how much input is received from the organizations they represent.

COMMENT: The proposed rules rely too heavily on information obtained from USDA (United States Department of Agriculture) county soil survey reports and USGS (United States Geologic Survey) topographic contour maps. Only site specific data on soils and topography should be used as a basis for septic system designs.

RESPONSE: Subchapters 5 and 6 of the rules require site specific soil evaluation and testing for all septic system designs. Soil survey maps and USGS topographic contour maps are required only as key maps to show the project location or to give preliminary information regarding site suitability which is subject to verification by onsite investigation.

COMMENT: The proposed rules give too much authority to the administrative authority in review of applications and soil testing procedures. Engineers are licensed and insured, and while it is admitted that there has been unethical conduct in the past, this will be greatly discouraged by the proposed new standards, penalties, and the threat of complaints filed with the Board of Professional Engineers and Land Surveyors.

RESPONSE: The Department disagrees with this comment. The burden of certifying compliance with standards has been placed by statute (see N.J.S.A. 58:11-26) upon a licensed professional acting as the authorized agent of the administrative authority. It is unreasonable to expect an authorized agent to certify where the accuracy or reliability of the data is questionable, and he or she must therefore have the authority to require additional information as identified within the rules in order to make that determination.

COMMENT: The proposed rules are difficult to use due to excessive cross-referencing.

RESPONSE: Cross-referencing was used to avoid repetition of the same information in two or more sections of the rules. For example, requirements for materials and construction of septic tanks apply also to grease traps and to dosing tanks and the requirements for disposal bed construction are the same for conventional, soil replacement, mound, and mounded soil replacement installations. A number of comments were received objecting to the length of the proposed rules. Cross-references were necessary to keep the length of the rules from becoming even longer.

COMMENT: Instead of the proposed rules, shorter rules together with a detailed technical manual, such as those in effect in the state of Pennsylvania, should be developed in New Jersey.

RESPONSE: The format used in Pennsylvania was developed for a situation where regulations are administered by Sewage Enforcement Officers who are certified by the Pennsylvania Department of Environmental Resources. This situation differs markedly from the situation in New Jersey where local officials are not as directly involved in the site evaluation process and are not certified by the Department. For example, the test procedures carried out for septic system designs may, in Pennsylvania, be carried out by the Sewage Enforcement Officer rather than by the applicant's agent. The format used for regulations in Pennsylvania is appropriate for the system employed in that state but is not necessarily appropriate for use in New Jersey.

COMMENT: The effective date of the rules should be postponed until six months or one year after adoption to allow time for the septic tank industry to adapt to the new standards, for processing of applications submitted before adoption of the new standards, and for local regulatory agencies to train their staff to implement the new standards.

RESPONSE: To address these concerns the operative date of the rules has been set at January 1, 1990.

COMMENT: Due to the increased requirements for review of septic system applications which will result from adoption of the proposed rules, the period of time allowed for review by the administrative authority should be increased from 15 days to 30 days.

RESPONSE: The requirements for issuance or denial of certification by the administrative authority within 15 days of submission of a complete application is not a requirement established by or stated in the proposed rules. This requirement is established by the Realty Improvement Sewerage and Facilities Act (1954) (N.J.S.A. 58:11-23 et seq.) and is stated at N.J.S.A. 58:11-28. In proposing or revising rules, the Department does not have the authority to adopt a rule which conflicts with the enabling statute.

COMMENT: The negative economic impact of the proposed new standards has been inadequately addressed, poorly summarized and underestimated.

A number of individuals made these and related comments. It was argued that increased costs will be reflected in the cost of a home, will adversely impact the building industry and aggravate the shortage of affordable housing in unsewered areas. The proposed rules will have a negative impact on senior citizens living on fixed incomes. It was suggested that a pilot project and cost analyses should be conducted to determine the full economic impact on applicants and municipalities prior to adopting the proposed new standards.

A number of individuals made estimates of the increase in costs which will result from the adoption of the proposed rules. These estimates were

extremely variable and ranged from as low as 20 percent to as high as 789 percent. The estimates most frequently given were in the range of 100 percent to 300 percent. Two individuals stated that the increase in costs would be slight relative to the cost of building a home today and would be balanced by the increased potential for developing lots which are not currently suitable due to limitations in present soil testing standards.

Factors cited as having a negative economic impact which was inadequately addressed in the Department's economic impact statement included:

1. Increased inspection, enforcement and clerical responsibilities to be borne by municipalities and taxpayers;
2. More extensive site evaluation and field work resulting in more time and expense for the applicant;
3. Larger disposal beds;
4. New septic tank requirements such as coating, concrete mixture specifications, wall thickness, new tank dimensions and cost of re-tooling, manholes, locking covers, displaying certification on tanks, gas deflection baffles and new baffle sizing requirements;
5. Certification of select fill by a professional engineer;
6. Costs of septic tank pump-outs to be borne by homeowners; and
7. Increased engineering costs.

RESPONSE: The economic impact of the proposed new rules is as complex as the rules themselves. There are a great number of changes in requirements which will have numerous economic impacts some of which will be negative and some of which will be positive. In order to estimate numerically the economic impact for the rules as a whole, each one of these changes would have to be evaluated quantitatively as well as qualitatively. Due to the large and variable number of factors which can influence the cost of any particular aspect of design or construction, it is not possible to place a dollar value on any particular change which would be constant for all areas of the State and would be agreed upon or adhered to by all engineering firms and contractors. This point is demonstrated by the large variation in estimates given for the increased costs which will result from adoption of the proposed rules.

Not one of the estimates of increased costs given by commenters includes any supporting data or other basis. It should be noted also that many of the proposed requirements which are cited as leading to increased costs are practices already in use by a number of engineering firms and contractors who are competing for clients and seeking approval for septic systems under the existing rules.

The Department acknowledges that certain aspects of the rules will have a negative economic impact, but for every negative impact cited by commenters on the rules, the Department can cite a positive economic impact which would tend to compensate or balance the economic impact of the rules. To demonstrate this point, changes expected to have a positive environmental impact are listed below:

1. The new rules allow the administrative authority additional options for design and testing approval thereby reducing the requirement for Departmental review thus saving time and expense for the applicant;
2. Proposed new standards for soil testing will permit testing under conditions where the standard percolation test could not be used to verify acceptable permeability. This will result in the possibility of obtaining approval on lots which would not otherwise be approvable;
3. Proposed disposal field sizing requirements for trenches give consideration to sidewall infiltrative area as well as bottom area. This will result in a nine to 47 percent decrease in disposal field area requirements in the case of narrow trenches which are installed in soils of moderately low permeability;
4. The repealed standards required that when disposal fields were installed in fill material, the size of the disposal bed had to be based on the percolation rate of the underlying soil. The new rules base disposal field size on the percolation rate measured at the infiltrative surface which, in this type of system, would be in the fill material. In cases where the underlying soil is less permeable than the fill material, a substantial decrease in required disposal area will result;
5. The repealed standards required a 20 foot lateral extension of fill material around all disposal fields which were built up more than two feet above pre-existing grade. The new rules do not require this for mounded soil replacement systems or for mounded systems utilizing pressure dosing. This will result in a very large decrease in costs for these types of systems;
6. The repealed rules which prohibited all vehicles used in excavation, backfill and final grading from entering within the disposal area were unnecessarily restrictive. The new rules allow tracked vehicles exerting less than eight psi (pounds per square inch) of ground pressure to enter within the disposal area provided that a minimum of one foot of fill material or filter stone is maintained between the vehicle tracks and the bottom of the excavation. This change will expedite construction and result in reduced costs; and
7. The expense of repairing or replacing a disposal field ruined by septic tank solids carry-over which will be avoided by septic system maintenance requirements will more than balance the cost of the septic system maintenance.

The economic impact is further balanced by the fact that those changes which will result in increased costs will generally result also in increased septic system life or the reduced likelihood of malfunctions which is a major economic benefit associated with the rules.

COMMENT: The need for such a drastic change in requirements was questioned. It was stated that the existing standards are adequate and it was suggested that most of the problems were the result of systems installed prior to the effective date of the existing standards in 1978. Since the existing standards have not been shown to be deficient, the changes in requirements proposed are not justified. If the Department wishes to protect water quality, existing septic systems should be regulated.

RESPONSE: The Department disagrees with this comment. The need for a drastic change in the standards for design, construction and operation of septic systems is based upon the following factors:

1. The septic system standards have not been significantly revised in 35 years;
2. Extensive research and development on septic systems has been conducted over the past three decades resulting in greatly increased knowledge and improved technology which has never been incorporated into the existing standards;
3. Septic system malfunctions have been numerous and widespread in New Jersey; and
4. Factors affecting the use of septic systems in New Jersey have changed drastically over the past 35 years. These factors include the availability of sites with suitable soils, the availability of Federal funds to extend sewers into areas with failing septic systems, the value of real estate and resulting development pressures outside sewerage service areas.

The statement that most problems are caused by systems installed prior to 1978 is not supported by any observed correlation between septic system malfunctions and date of installation. If a high percentage of the malfunctions observed did involve septic systems installed more than 10 years ago, this situation would be readily explained by the amount of time which must elapse before solids in an improperly maintained septic tank accumulate beyond the solids retention capacity, carry over to the disposal field and cause a malfunction due to clogging of the infiltrative surface. This would certainly be a more likely explanation since there were no major changes in requirements in 1978 which could account for a decrease in the rate of septic system malfunctions.

The Department will regulate existing septic systems which are malfunctioning or otherwise violate the New Jersey Water Pollution Control Act N.J.S.A. 58:10A-1 et seq. Due to the fact that these rules represent a tremendous advance in regulation of individual subsurface sewage disposal systems, the Department has determined that the regulation of existing systems is inappropriate at this time. However, the Department will look into this issue in the future.

COMMENT: Increased costs of administration and enforcement will make the rules difficult or impossible to implement by municipalities or local agencies.

Many comments were received regarding the negative impact on local health departments indicating that the impact would be great and had been underestimated by the Department. Factors contributing to increased costs of administration will include more detailed site evaluation and plan reviews, additional record keeping resulting from operation and maintenance requirements, and the costs of hiring and training the required staff. It was pointed out that the proposed rules do not provide financial resources or grants to municipalities to help pay for increased costs and that existing fees as established by statute are inadequate. It was suggested that the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. should be amended to provide funding to municipal as well as county agencies and that the Department should provide free or nominal cost education. The increased requirements will require more staff which will result in increased taxes and the unavailability of staff will result in unwitnessed tests which is not in the public interest.

RESPONSE: The Department acknowledges that there may be an increase in operating costs for some local and county health departments as a result of more detailed site evaluation, design and construction standards as well as new administrative requirements for septic tank licensing. Clearly, these increased costs may be offset through increased

revenue. Increased revenue may be obtained through fees which are established by municipal ordinance or through increased taxes as provided in N.J.S.A. 26:3-41 and N.J.S.A. 26:3A2-19. The new rules do not address the issue of funding because there is no authority to do so in the enabling statute (see N.J.S.A. 58:11-23 et seq.) and because funding is addressed elsewhere in another statute as referenced above.

The actual work of inspecting the septic systems would be handled by the private sector. In this way, the costs of administration can be kept within the funding limits established by N.J.S.A. 26:3-31(g). To provide for higher fees or alternate funding sources would require a revision of the statute and is thus not within the scope of the rulemaking process. Similarly, amendment of the County Environmental Health Act to provide funding for municipal as well as county health departments is beyond the scope of the rulemaking process. However, the Department will support efforts to raise revenues initiated by local administrative authorities.

The purpose of the registration program prescribed in N.J.A.C. 7:9A-3.17 is to address the need for training which will be created by the new rule. This program will provide a means for the Department to assess training needs and to disseminate information regarding availability of training. The Department intends to provide this training to health department personnel at no charge or at the lowest cost possible. To accomplish this, use may be made of County Environmental Health Act funds as well as any other source of funding available to the Department for this purpose.

COMMENT: The Department should consider allowing the health department or the Soil Conservation Service to perform some of the required field investigations. This would decrease the costs of site evaluation.

RESPONSE: Nothing in the new rules would preclude health departments or the Soil Conservation Service from performing part of the site evaluation work provided that this work is carried out by or under the supervision of a licensed professional engineer, as required by statute. It is doubtful that this would decrease costs however, since work carried out by health department and Soil Conservation Service staff must also be funded.

COMMENT: The Department did not adequately identify and summarize the economic impact of the proposed rules. For example, lots in unsewered areas with percolation rates faster than three minutes per inch could not be approved for the construction of a septic system, a fact not mentioned in the economic impact statement.

RESPONSE: This comment is incorrect. N.J.A.C. 7:9A-10.1(f) provides for installation of a disposal field in fill material where existing soils are unsuitable and N.J.A.C. 7:9A-6.1(a) provides for permeability or percolation tests to be performed within the fill material where unsuitable soil horizons (such as those with a percolation rate faster than three minutes per inch) have been removed and replaced with suitable fill material. Therefore, the professional engineer may compensate for limiting soil factors in the design.

COMMENT A: N.J.A.C. 7:9A-1.6(c) requires a NJPDES permit if the subsurface sewage disposal system is used by more than one dwelling or commercial unit within a single structure. In the Regulatory Flexibility Statement, N.J.S.A. 52:14B is cited as granting an exception to the NJPDES permit requirement. This does not appear to be what is stated within the actual rules. This should be reviewed because unless the language is legally precise, almost every structure other than a one family house would be required to file for a NJPDES permit.

COMMENT B: The proposed rules requiring the issuance of a NJPDES permit for any use other than a single dwelling residential unit will stifle development in rural areas. The costs associated with the engineering fees to apply for, obtain, and maintain a NJPDES permit will surely hamper further development.

RESPONSE: The Regulatory Flexibility Statement in the proposed rules was included to describe the effects of the standards upon "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the Regulatory Flexibility Statement does not indicate that N.J.S.A. 52:14B-16 et seq. grants a blanket exception to the NJPDES permit requirements, the rules provide that in certain instances some small businesses will be exempt from the NJPDES permit requirements. The regulation of other than single family dwellings utilizing a single subsurface sewage disposal system is regulated by the Federal Underground Injection Control rules and the State NJPDES rules (see N.J.A.C. 7:14A).

All discharges which are other than solely sanitary sewage require a NJPDES permit.

The discharge of sanitary sewage from two or four realty improvements with a flow of less than 2000 GPD to a single disposal system requires a treatment works approval from the Department. The discharge of sanitary sewage from five or more realty improvements or a discharge of more than 2000 GPD to a single subsurface sewage disposal system requires a treatment works approval and a NJPDES permit.

COMMENT: N.J.A.C. 7:9A-7.6 specifies each system approved by the administrative authority pursuant to this chapter shall consist of a septic tank which discharges effluent through a gravity flow, gravity dosing, or pressure dosing network to a disposal field as hereafter described. There is no mention of holding tanks in this section; therefore, holding tanks should be eliminated from these rules.

RESPONSE: The Department disagrees with this comment. Holding tanks are not permitted under these rules except in the case of a repair of a malfunctioning system and the Department has given prior written approval to the administrative authority for the use of holding tank. Any other use of a holding tank would require a treatment works approval from the Department (see N.J.A.C. 7:9A-3.4 and N.J.A.C. 7:9A-3.12).

COMMENT: Subchapter 6 should state an approved method and leave the testing methods to an enforcement manual. Both subchapters 5 and 6 will be impossible to enforce if legal action is required by local agencies. This subchapter should be condensed down to N.J.A.C. 7:9A-6.1, General provisions, which defines types and number of tests required.

RESPONSE: The Department disagrees with this comment. The proposed rules identify six approved permeability/percolation tests. The rules identify which tests may be utilized under specific site conditions; where multiple methods are available, the professional engineer who is responsible for the project has the option of determining the appropriate test. The Department sees no advantage to having the testing methods identified in an enforcement manual.

The Department disagrees with the comment concerning the enforceability of the rules. The requirements of the proposed rules are no less enforceable than the repealed rules.

COMMENT: While the Department may outwardly acknowledge that the training of regulatory and site evaluation personnel is of the utmost importance, the proposed rules do not establish any training requirements (in order to provide for the interpretation of the rules, or for public agency enforcement, or private sector implementation), except on a voluntary basis.

In other words, as it stands currently, the rules may in fact become effective prior to an individual's ability to be trained or to adequately substantiate training, or professional qualifications. As proposed, the rules do not provide for, nor can they guarantee, proper training of key personnel in either the public or private sectors. This is a glaring shortcoming which must be corrected by the Department.

Enforcement personnel, in addition to possessing a Health Officer or Sanitary Inspector's First Grade license, must additionally be thoroughly trained and schooled, at the Department's expense, prior to the rules going to effect. Private sector field personnel must also be required by the Department to satisfactorily complete training courses administered by the Department or they should not be authorized to serve in the field as site evaluators, except when a licensed professional engineer will do the actual hands-on field evaluation tests and data collections.

The rules as proposed require *no* professional licensed supervision, *direct* or *indirect,* of the private sector field personnel.

RESPONSE: In response to other comments the Department modified the rules to require that soil evaluations be submitted to the Department under the signature and seal of a New Jersey licensed professional engineer.

The Department agrees that increased efforts by the Department are needed in order to train private and public sector employees in the technical skills which are necessary in order to effectively implement the requirements of the proposed rules. To that end, the Department has substantially increased its participation in seminars and technical training sessions. Further increases in Departmental training efforts are anticipated. It has been the Department's experience that *mandatory* training of the various professionals has been met with strong resistance.

COMMENT: There are reservations as to the proper function of a system based upon a pit bail test taken at any time of the year. The ground water table, as well as the perched water table, varies greatly with rainfall as well as evapotransporation during the year. It must be realized that the engineer is the person held responsible for a malfunctioning system, and not the professionals that propose the rules.

RESPONSE: The pit bailing test is usually used only to test the permeability of a regionally saturated soil or rock substratum. It is unlikely that the pit bailing test would ever be utilized to test a soil that was

saturated because of a perched condition. The use of the pit bailing test only determines whether the zone of disposal is sufficiently permeable. The vertical placement of the zone of treatment is specified based on the determination of the seasonal high water table evaluation.

The Department recognizes that the professional engineer is responsible for the work that he or she performs.

COMMENT: Some boroughs have been requiring witnessing of all testing procedures and inspection of all systems for some time. These municipalities are already gaining compliance and these rules will only place a financial burden upon residents which cannot be met.

RESPONSE: The Department is unsure of the intent of this comment. For those municipalities which are already witnessing all testing and installation, these rules represent no additional expense to the applicant. The proposed rules allow the administrative authority the option of waiving the witnessing requirements for testing and installation (see N.J.A.C. 7:9A-3.6(b)), except for the installation of an interceptor drain (see N.J.A.C. 7:9A-10.7(k)2).

COMMENT: Community involvement in the development of these proposed rules has been limited and deficient, therefore, they should be redone.

RESPONSE: The Department disagrees with this comment. The Department has been working for over five years with both the Statutory Committee which is required by N.J.S.A. 53:11-23 et seq. and an Ad hoc committee of environmental professionals in order to develop the best possible technical standards without creating a prohibitive increase in financial burden. In some cases, the financial cost of a subsurface sewage disposal system may be reduced. The Department has also complied with the requirements for the public noticing of proposed rules. In response to the public notice of the proposed rules, the Department received 890 comments from 122 individuals.

COMMENT: There is strong objection to the provisions of the proposed rules which encourage the placement of new septic systems in environmentally sensitive areas such as steep slopes, shallow depth to bedrock, and high water table areas.

RESPONSE: The Department disagrees with this comment. When compared to the repealed rules, the new rules are more restrictive in terms of the site conditions on which a disposal system may be installed.

COMMENT: The certification required at N.J.S.A. 58:11-25.1 is intended to be an integral element in the subdivision application process. Therefore, the new rules should be expanded to fill this void and should include technical standards and overall guidelines for the Department to utilize the 50 or more subdivision certification processes.

RESPONSE: The Department agrees that additional rules are required for the certification of water supplies and sewage disposal systems for major subdivisions. It is the intention of the Department to propose such rules in the near future.

COMMENT: What are the minimum qualifications for a soils laboratory? Will labs be certified by the Department? What is an acceptable lab certification? Can anyone certify a soil analysis? Who certifies a soil sample chain-of-custody?

RESPONSE: The proposed rules do not establish requirements for soils laboratories. The site evaluation work including permeability testing must be signed and sealed by a licensed professional engineer. The licensed professional engineer by his or her signature and seal certifies as to the accuracy of the results and, in effect, ensures the chain of custody.

COMMENT: How can a design engineer be assured that fill delivered to the site for a replaced zone of disposal and/or replaced zone of treatment meets specifications? Requiring a percolation test in the emplaced fill doesn't prove there is sufficient clay content.

Does the engineer take the word of the quarry? Does he take the word of the installer? Does the administrative agent take the word of the quarry owner? Does he take the word of the installer?

How can the administrative authority or its agent know that fill material meets specifications? Do the administrative authorities take the word of the design engineer who has taken the word of an installer, who has taken the word of the quarry operator? Would the Department be comfortable certifying a compliance certificate (given that the issuer could be subject to civil penalties) based on the above scenario?

RESPONSE: The quarry which provides the material will be able to provide a certified analysis of the material. It is not necessary for anyone to rely on verbal assurances as to the composition of the material which has been supplied.

COMMENT: With respect to regulatory controls, and necessary checks and balances, the Department's proposed rules are woefully weak and full of holes. It is submitted that the Department's code is all bark and no bite. It has no teeth with which to bite. The Department has shown no leadership, and no courage. It appears the Department has succumbed to special interests.

RESPONSE: The comment has been noted; however, the Department disagrees with this comment.

COMMENT: If a local authority does not feel it prudent to issue a certificate of compliance because it has doubts as to the qualification of the evaluator, installer, etc., could a local refuse to issue the certificate (in view of the fact the local could be held responsible and subject to civil penalties)? In that case, will the Department issue a certificate of compliance? These questions have to be given full thought before adoption.

RESPONSE: The Certificate of Compliance is issued based on the quality of the work that has been performed, not upon the perceived competence of the person performing the work. Unless the administrative authority delegates the responsibility for inspection to a licensed professional engineer that the work has been performed in accordance with the approved application, the administrative authority must perform the necessary inspections. If the administrative authority will not issue a Certificate of Compliance, it must have a valid technical basis for its refusal to certify and must be prepared to defend its refusal to certify. The Department will not overrule the administrative authority and issue a Certificate of Compliance; that is the responsibility of the administrative authority.

COMMENT A: Regarding N.J.A.C. 7:9A-12.2, since an *annual* inspection of the septic system is required (except for the first three years following installation or pump-out of the septic tank), *who*, if the administrative agency opts not to conduct annual inspections, is perceived by the Department to be qualified to inspect the system and complete and certify the inspection form? Who is responsible for submitting the signed form to the local authority? The inspector? The system owner? What is the local administrative authority supposed to do if an owner does not have his system inspected?

COMMENT B: Who and/or what is a *"septic system inspector"*? Can the Renewal of License to Operate an Individual Subsurface Sewage Disposal System be certified to and signed by someone who calls themselves an inspector, but does not voluntarily become registered/certified? Can a homeowner be their own "septic system inspector"?

RESPONSE: The requirements for a septic system inspector are identified in N.J.A.C. 7:9A-3.14(b). It is a requirement of the owner of the property to submit the inspection report. If the owner of a property fails to have the subsurface sewage disposal system inspected according to the requirements of these rules, the administrative authority may suspend or revoke the License to Operate. The discharge of pollutants without a valid permit is a violation of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10-1 et seq. and these rules. See N.J.A.C. 7:9A-1.7 for the potential penalties for violation of these rules.

COMMENT: Who can perform a soil permeability class rating test? What minimum qualifications would that person have to have, if any? The same questions were asked regarding a tube permeameter test, a percolation test, a pit bailing test, a piezometer test and a basin flooding test.

RESPONSE: The tests must be performed by a licensed professional engineer or an individual working under his or her direct supervision.

COMMENT: If certain people are going to be certifying forms, data, and designs, the certifiers must be defined. Define the following:

Soil Scientist
Soil Evaluator
Site Evaluator
Septic System Inspector
Health Officer
Licensed Professional Engineer
Septic System Installer
Sanitarian First Grade
Septic System Enforcement Officer

RESPONSE: The terms Site Evaluator, Septic System Inspector, Septic System Installer and Septic System Enforcement Officer are used to describe categories of voluntary registration; therefore, no definitions are necessary as they impose no requirements upon the public. The term Soil Evaluator is not used in N.J.A.C. 7:9A and therefore does not require a definition. The term Soil Scientist is not in need of definition as it implies no special meaning. The terms Health Officer and Sanitarian First Grade are those persons who are licensed as such, pursuant to N.J.S.A. 26:1A-41. These terms have been added to N.J.A.C. 7:9A-1 for further clarification. The term Professional Engineer is already defined at N.J.A.C. 7:9A-2.

COMMENT: In the shales, there will be many instances when doubt exists as to whether a horizon or substratum should be considered excessively coarse (see N.J.A.C. 7:9A-5.6(a)3).

RESPONSE: Since the rocky substratum cannot be utilized for the zone of treatment and can only be utilized for the zone of disposal, excessively coarse texture is not a concern. The zone of treatment must meet the requirements of N.J.A.C. 7:9A-10.1(d).

COMMENT: Since the site evaluator has options as to which test to perform, it is conceivable that he or she may opt to verify soil texture by textural analysis. The proposed rules have no quality control standards for that textural analysis process. How can the administrative authority be assured the hydrometer analysis was performed as prescribed by the rules? Who will witness the sieve test? Who will know if the lab has the prescribed proper equipment? Who will know if the lab followed the prescribed procedures? Who will certify the sample? What are the minimum qualifications needed to perform the test? Where are the chain-of-custody quality control safeguards? The rules are abundant with deficiencies. Tighter controls are absolutely necessary.

RESPONSE: The Department has required that the results of the soil permeability testing be signed and sealed by a licensed professional engineer. The professional engineer is responsible for the accuracy of all testing procedures.

COMMENT: Are there adequate Statewide facilities for accepting the septic waste? Has this been calculated in the cost of the homeowner? It would appear that the Department is developing a new industry for inspection, operation and maintenance on the backs (financial) of local residents and local boards of health.

RESPONSE: The availability of facilities to accept septage may affect the cost to the homeowner; however, with proper maintenance such as pumping and inspection, the effective life of the subsurface sewage disposal system will be dramatically increased. This will increase the use of the system without the costs of repairs associated with system neglect which will reduce the long-term costs. Generally, there are adequate Statewide facilities for accepting septic waste. However, the number and location of these facilities changes with time.

COMMENT: The 109 percent increase in the cost to the homeowner, as mentioned in the proposal, is considerably estimated. It is requested that the Department provide the cost comparison breakdown which was conducted in arriving at this figure.

RESPONSE: The commenter has misquoted a portion of the Economic Impact analysis. It was indicated that in some areas with excessively coarse soils, the disposal field may have to be 109 percent larger than the repealed rules require. That does not directly relate to the total costs of the system because the disposal field only constitutes one portion of the design.

SUBCHAPTER 1. GENERAL PROVISIONS

COMMENT: N.J.A.C. 7:9A-1.1 provides goals of prevention and protection of the environment, not just an out-of-sight, out-of-mind disposal mentality.

RESPONSE: The Department agrees with this comment. These purposes are expressed in N.J.A.C. 7:9A-1.1.

COMMENT: If a local or county health department does not adopt these rules, where does the authority for "Operation and Maintenance" come from? Who is responsible for enforcement? Does the Department take action under N.J.S.A. 58:10A-1 et seq.? It appears that these rules have no enforcement teeth as they relate to "Operation and Maintenance" without local health agencies which would not be possible in counties with no board of health.

RESPONSE: The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., authorizes the Department to promulgate rules for "Operation and Maintenance". This Act also provides the Department with enforcement authority.

COMMENT: N.J.A.C. 7:9A-3.1(b) allows the administrative authority to adopt a special ordinance. This eliminates the idea of a uniform code, thereby making this section of the preamble misleading. There is strong objection to any restriction which would not allow certain municipalities to address their special needs.

RESPONSE: The Department does not agree that N.J.A.C. 7:9A-1.2(b) is misleading. The proposed standards are intended to be uniform standards and this intention is clearly stated. The standards will apply uniformly throughout the State except in those cases where special ordinances have been adopted. The authority of local boards of health to adopt more stringent requirements through special ordinances is acknowledged both in N.J.A.C. 7:9A-1.2(b) and in N.J.A.C. 7:9A-3.1(b). The new rule contains no restrictions that would prevent a municipality from addressing its special needs through adoption of a special ordinance.

COMMENT: The proposed rules purport to be "uniform standards in force throughout the State", "except as otherwise provided by N.J.S.A. 58:11-25" (see N.J.A.C. 7:9A-1.2(b)). N.J.S.A. 58:11-25 clearly contemplates that local ordinances may prescribe higher standards than those promulgated by the State. Local boards of health are statutorily created (see N.J.S.A. 26:3-1) and have the express power granted by the Legislature to enact ordinances in this area (see N.J.S.A. 26:3-31). These rules may be sacrificing important and proper local concerns in the interest of uniformity.

RESPONSE: The standards provided in the rules were developed to address the range of soils and geologic conditions encountered throughout the State and it is the Department's policy that these rules should be uniformly applied. N.J.A.C. 7:9A-1.2(b) and N.J.A.C. 7:9A-3.1(b) clearly indicate the authority of local boards of health to address local concerns through adoption of ordinances containing more stringent requirements.

COMMENT: The concept of a "uniform sanitary code" has merit. However, provisions should be made to provide the municipalities with a means by which the minimum standards can be increased as necessary.

RESPONSE: Such a provision is contained in N.J.S.A. 58:11-25 and acknowledged at N.J.A.C. 7:9A-1.2(b).

COMMENT: The requirement that the new standards be established as uniform requirements for all municipalities is commendable. This will greatly improve control over septic system construction and will avoid poorly conceived local ordinances allowing uses that are environmentally damaging. The complexity of the proposed rules will not afford the luxury of disseminating testing requirements and restrictions for each municipality.

RESPONSE: The Department agrees in part with this comment. The provision for uniform application of standards at N.J.A.C. 7:9A-1.2(b) is not an absolute requirement, since N.J.S.A. 58:11-25 provides for enforcement of more stringent requirements through local ordinances. The complexity of the standards is in part a result of an effort made to address the municipality of conditions which exist throughout the State. The Department's intention is to eliminate the need for special local ordinances rather than to make their adoption more difficult.

COMMENT: Environmental conditions within certain townships appear to suggest that a uniform State standard, such as that proposed in these rules, would prove inadequate for regulation of groundwater quality. A township with an extremely high groundwater table and soil with large percentage of shale suggests that the proposed rules may prove inadequate and may justify a special ordinance.

RESPONSE: The Department disagrees with this comment. The proposed standards adequately address the problems of high water tables and stony soils as well as other limitations which are found in various locations throughout the State.

COMMENT: It is important for the proper implementation of these rules that the technical and engineering standards be uniform throughout the State. If municipal boards of health or county health departments are permitted by law to have more stringent standards, the Department must have a procedure established by rule to review, and, if appropriate, approve variances from these standards with supporting facts and proper justification. Without Departmental scrutiny, there will be no predictability or consistency to these rules.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:9A-3.2(b) provides for State review and evaluation of local ordinances. It should be noted, however, that the Department does not have authority to prevent the enforcement of requirements established in ordinances which are more stringent than the Department's standards.

COMMENT: N.J.A.C. 7:9A-1.2(b) is not clear as to whether or not a municipality may make the rules more restrictive by local ordinance. It is understood that under N.J.S.A. 58:11-25, municipal ordinances may be more restrictive than State standards; however, this issue is open to interpretation. Further attempts should be made to resolve this issue with more concise wording in the rules. Municipalities should not have the latitude to create more restrictive requirements except under exceptional circumstances.

RESPONSE: The proposed rule states that the standards provided are intended as uniform standards to be enforced throughout the State, that local boards of health may adopt more stringent ordinances as provided by N.J.S.A. 58:11-25, and that all local ordinances must be submitted to the Department for review. The authority of the Department to prescribe uniform standards is limited, however, and no further state-

ments, conditions or requirements can be added to further restrict the adoption of local ordinances.

COMMENT: These standards should be uniform throughout the State. Since the Department's expert committees have already provided for the expected range of soil conditions throughout the State with an added margin of safety, it is not logical for two adjacent towns with similar soils and geologic conditions to have different standards for septic systems. As proposed, a municipality could easily choose to ignore the thousands of man hours spent on these rules and impose its own excessive standards that are not based upon true health concerns. Only through uniform standards will the public be assured that the cost of housing will not be artificially inflated and that the regulated community will be able to avoid confusion through inconsistencies in this proposal.

RESPONSE: The Department agrees with this comment but, as stated at N.J.A.C. 7:9A-1.2(b), the authority of the Department to prescribe uniform standards is limited by N.J.S.A. 58:11-25.

COMMENT: Although there is a concern to develop uniform standards throughout the State, the soils and conditions are not uniform. This appears to be an attempt on the part of the State to control development and land use on a Statewide rather than local level.

RESPONSE: Requirements for design and construction of septic systems should not be considered as a means for controlling development and land use regardless of whether these standards are set at the State level or at a local level. The purpose of the proposed rules, as stated at N.J.A.C. 7:9A-1.1, is to protect public health and environmental quality. The standards proposed are intended to address the range of soil and geologic conditions which occur throughout the State.

COMMENT: Will municipalities have the right to increase the standards proposed in these rules? If so, there should be some restriction placed upon their ability to do so.

RESPONSE: N.J.S.A. 58:11-25 allows municipalities to adopt ordinances prescribing more stringent standards. As stated at N.J.A.C. 7:9A-3.1(b), such ordinances must be filed with the Department, along with supporting rationale and data, within 10 days after adoption. The Department lacks authority to further restrict adoption of local ordinances.

COMMENT: N.J.A.C. 7:9A-1.4 allows "agency chiefs" to exercise their discretion on items not covered by these rules. There is disagreement that this policy making power should be outside the jurisdiction of the Commissioner or Division Director; these policies should also be subject to the formal rulemaking process.

RESPONSE: The Department agrees that rules should be as comprehensive as possible, but it is inevitable that matters will arise occasionally which fall within the scope of the rules but which are not specifically addressed. In such cases, there must be a way for such situations to be resolved in a timely manner and at an appropriate level in the chain of command. It is not possible or necessary for all such matters to be covered in the rules or handled personally by the Commissioner or Division Director.

COMMENT: N.J.A.C. 7:9A-1.6(a) prohibits any person from operating an individual disposal system without first obtaining the necessary permits, approvals, certifications or licenses required by the rules. N.J.A.C. 7:9A-3.3 allows the use of an existing system to be continued without change as long as it was legally installed and is not malfunctioning. Does or does not the owner of an existing system have to get a license of some sort or be subject to penalty for failure to do so? If every homeowner who "operates" an existing individual disposal system will now have to be licensed, it will create a very substantial social impact affecting a great many people. This issue has not been attended to in the impact statement of the proposal. If this is in fact the Department's intention, the rules should make this clear and the public's attention should be called to the requirement during the comment period.

RESPONSE: The new rules do not require a permit to operate for septic systems which have not been constructed or altered after the operative date of the rules. As stated at N.J.A.C. 7:9A-3.14(a), the license to operate is issued at the time that the certificate of compliance is issued. A new certificate of compliance would not be issued for an existing septic system unless that system was altered.

COMMENT: The requirement of Departmental approval of alterations to existing septic systems which may be malfunctioning (see N.J.A.C. 7:9A-1.6) is overly burdensome. Discretion for such instances should be placed in the hands of the local boards of health. N.J.A.C. 7:9A-3.3 is interpreted to allow local approval of alterations even if all provisions of the standards cannot be met as long as there will be no additional flow generated.

RESPONSE: The new rule does not require Department approval for alterations to existing septic systems. N.J.A.C. 7:9A-1.6(a) prohibits alteration of a septic system without first obtaining the necessary approval. N.J.A.C. 7:9A-3.3(c) requires approval be obtained from the administrative authority and allows approval of alterations to correct a malfunctioning septic system even where strict compliance with the Department's standards is not possible.

COMMENT: If the total gallonage from a subsurface disposal system is less than 2,000 gallons per day, a NJPDES permit should not be required. The change in this requirement will not allow two and three family residential dwellings to remain exempt from the cost of a NJPDES permit. Commercial/retail multi use buildings (small strip malls) that have less than 2,000 gallons per day should also remain exempt from a NJPDES permit. Enforcing the NJPDES permit requirements will dramatically increase the cost of new development in rural areas.

RESPONSE: The Department agrees that a NJPDES permit should only be required for projects where the design sewage flow exceeds 2000 gallons per day. N.J.A.C. 7:9A-1.6(c) allows use of a septic by more than one dwelling unit where a treatment works approval has been issued and does not specifically require a NJPDES permit. The intent of the new rule is not to establish any new requirements for NJPDES permits or treatment works approvals, but rather to clearly indicate the existing requirements of N.J.A.C. 7:14A.

COMMENT: N.J.A.C. 7:9A-1.6(c) should be revised to allow the administrative authority to approve the joint use of an individual sewage disposal system for up to four realty improvements where it is "most impractical or impossible to construct separate systems", where assurances are given that only one legal entity will be responsible for the maintenance and operation of the system, and where this entity will ensure that proper environmental safeguards have been taken (that is, less than 2,000 gallons per day of wastewater discharge, etc.).

RESPONSE: The Department disagrees with this comment. The recommended language is contained in the proposed repeal at N.J.A.C. 7:9-2.14 and, in some areas of the State, has resulted in routine approval of septic systems serving high density development which is inappropriate from the administrative as well as the environmental standpoint. Where septic systems are proposed to serve multi-unit residential or commercial development, a treatment works approval issued by the Department is considered to be a necessary safeguard to insure proper management or oversight of the system by an appropriate governmental agency.

COMMENT: The Regulatory Flexibility Statement mentions that the proposed new rules will affect businesses wishing to locate in areas where sewers are not available. With the 2,000 gallon per day flow rate limitation, maximum building size is 16,000 square feet or 133 employees. The commenters wish to point out that many "small businesses" do not need this size building nor have that many employees and therefore, to limit the individual disposal system to one unit creates a hardship. With respect to a commercial building to be used for offices, the entire building should be considered as one realty unit since most of the waste would be of a domestic type. However, if stores are proposed, there should be some control at the local level over the type of waste going into the system. The definition of "commercial unit" should be revised in light of the above.

RESPONSE: The Department's standards do not limit the use of commercial building to no more than one unit, as this comment suggests. Where more than one unit is proposed in one building, there are two options available. The first option would be to provide a separate septic system for each commercial unit. The second option would be to obtain a treatment works approval from the Department authorizing non-individual use of a septic system. These requirements are not intended to create a hardship for small businesses occupying only a portion of a building. Rather, the requirements are intended to protect small businesses from the serious hardships that can result when several businesses share a common septic system and no permanent responsible agency is present to oversee maintenance of the system. In such cases, malfunctions have occurred which have remained uncorrected due to an inability of the local authorities or the Department to take effective enforcement action against a responsible party. In such situations, the small businesses may suffer loss of business or even be closed down as a consequence of the uncorrected septic system malfunction. There is no basis for treating retail stores differently than other small businesses since the type of wastes discharged can be highly variable in either case. The definition of "commercial unit" provided at N.J.A.C. 7:9A-2 is considered appropriate based upon the considerations discussed above.

COMMENT: Clarification is necessary for the phrase "onto the surface of the ground or into any water course" as set forth at N.J.A.C. 7:9A-1.6(d). Some local authorities interpret this statement to mean that discharge to a perched or regional aquifer that may feed springs or streams is a violation of the rules. This may be clarified by revising the phrase in N.J.A.C. 7:9A-1.6(d) to read "directly onto the surface of the ground or into any water course".

RESPONSE: The Department disagrees with this comment. Even an indirect discharge of septic tank effluent to the surface of the ground or a stream is unacceptable if this discharge has not been assimilated into and diluted by groundwater. If the septic tank effluent has been assimilated into the groundwater prior to surface discharge, then what discharges to the surface of the ground or stream is no longer septic tank effluent. It should also be noted that virtually all groundwater discharges to streams, and therefore, if this were considered a violation of the standards by a health department, they would logically have to deny all septic system applications. While it is acknowledged that a careless interpretation of the proposed standard may lead to inappropriate restrictions, the suggested wording is no less subject to misinterpretation and may result in a reduced degree of protection for public health and the environment.

COMMENT A: N.J.A.C. 7:9A-1.6(e) prohibits approval of construction or alteration of an individual disposal system "where a sanitary sewer line is available to within 100 feet of the property" should be changed to: "where a sanitary sewer line is available to within 100 feet of the building". The relevant distance, for purposes of determining reasonableness of requiring connection should be length of pipe that will have to be run. Property lines do not indicate this.

COMMENT B: What is meant by the phrase "property to be served" as stated at N.J.A.C. 7:9A-1.6(e)? Is it 100 feet from the building or 100 feet from the property line?

COMMENT C: N.J.A.C. 7:9A-1.6(e), relating to sewerline availability, differs with the Uniform Construction code and should be removed from the rules.

RESPONSE: N.J.A.C. 7:9A-1.6(e) conforms with the requirements of the National Standard Plumbing Code/1975 (plumbing subcode) which has been adopted by the Commissioner of Community Affairs pursuant to the authority of N.J.S.A. 52:27D-119 et seq. The plumbing subcode requires that septic systems not be approved to serve a newly constructed building where a public sewer is available within 200 feet or such other reasonable distance as determined by the administrative authority. N.J.A.C. 7:9A-1.6(e) sets the minimum distance requirement at 100 feet. The plumbing subcode requires that this distance be measured from the property line rather than the building. The Department cannot adopt a rule which is in confict with this requirement.

COMMENT A: The conditions established for whether or not a sanitary sewer within 100 feet of a property is available should address the implications of sewage connection bans. It is recommended that the sanitary sewer not be available if it is under a ban.

COMMENT B: Language should be added which would indicate that an existing sanitary sewer line should not be considered to be available if there is not available treatment capacity in the sewer plant, and capacity is not imminent.

RESPONSE: The Department disagrees with these comments. To allow use of a septic system in a designated sewerage service area because the sewers are under ban or there is inadequate capacity, would circumvent the purpose of the ban and the wastewater management plan under which the service area was established. The purpose of such planning is to match the sewage conveyance and treatment capacity with the anticipated volume of sewage, and the purpose of the ban is to prevent further development in the area until capacity or discharge quality problems have been appropriately addressed. Sewage treatment and conveyance facilities are constructed with borrowed money which must be paid back through fees collected from anticipated users in the designated sewerage area. By allowing new development to proceed using septic systems in a designated sewerage service area which is subject to a connection ban due to a lack of treatment capacity or any other reason, undermines the financial stability of the sewerage authority and its ability to correct the problems which led to the sewer ban.

COMMENT A: In determining the availability of sewers, consideration should be given as to whether there is sufficient capacity in collector systems or publicly owned treatment works.

COMMENT B: The term "sewerage service area" should be defined to include the requirement that capacity is available in the sewer system and the owner is permitted by the sewerage authority to hook up to it. Without this requirement, a situation may arise where a sewer line is within 100 feet but an owner is not permitted to hook up to it because there is no capacity in the sewer system.

RESPONSE: The Department disagrees that a sewer line should be considered unavailable for the purposes of N.J.A.C. 7:9A-1.6(e) in cases where a sewer ban is in effect due to inadequate treatment or conveyance capacity. If additional construction is allowed to take place by using private sewage disposal systems in an area which is designated for service by a public sewer system, the intent of the wastewater facilities planning and the sewer ban is circumvented. The appropriate action to be taken in the case of a sewer system lacking adequate capacity to serve its designated service area is to correct the lack of capacity before permitting increased development. Loss of fees due to elimination of potential sewer connections which had been anticipated in the wastewater facilities planning only reduces the financial capability of the sewerage authority to deal with existing capacity problems.

COMMENT: The proposed rules restrict the use of seepage pits. They are the only good method of repairing a system in some areas.

RESPONSE: As indicated at N.J.A.C. 7:9A-7.6 and 7:9A-3.3(c), the use of a seepage pit as a means of repairing an existing septic system is permitted in cases where a disposal field conforming to the Department's standards cannot be used.

COMMENT: The proposed rules cite several statutes as authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 58:10A-16 et seq., N.J.S.A. 58:11-23 et seq., and N.J.S.A. 26:3A2-21 et seq. Only the Realty Improvement Sewage and Facilities Act, N.J.S.A. 58:11-23 et seq., gives enforcement authority to local boards of health. N.J.S.A. 26:3A2-21 et seq. gives penalty authority to county boards of health; however, currently only two county boards of health exist. The remainder of the cited statutes allow for only the Commissioner of the Department of Environmental Protection to take enforcement action unless specifically delegated to a county department under N.J.S.A. 26:3A2-28(b).

RESPONSE: The statement that only the Realty Improvement Sewerage and Facilities Act gives authority to local boards of health to assess penalties for violation of the Department's standards is correct. For this reason the Department encourages the formation of county agencies qualified for delegation of additional authority through the County Environmental Health Act. In cases where existing board of health authority to take action against persons in violation of the Department's standards proves inadequate, the Commissioner can assess penalties independently, using Water Pollution Control Act authority.

COMMENT: The threat of large fines (see N.J.A.C. 7:9A-1.7) will only scare local health departments and engineers into not acting upon problems which are slight violations of the rules.

RESPONSE: The Department disagrees with this comment. There is no threat of fines where local health departments and engineers have arrived at an appropriate solution to an environmental problem. N.J.A.C. 7:9A-3.4 provides requirements for repairs and alterations to malfunctioning systems which will help to ensure that appropriate solutions are selected.

COMMENT A: Will the Commissioner of the Department have to be notified prior to a local health department signing a complaint against an individual, partnership, corporation, etc. for violating the rules?

COMMENT B: N.J.A.C. 7:9A-1.7(b) indicates that only the Commissioner may assess civil penalties for violations of these rules. This subsection should also provide similar authority to the local administrative authority.

COMMENT C: Under N.J.A.C. 7:9A-1.7(a), may the administrative authority levy penalties pursuant to N.J.A.C. 7:14-8?

RESPONSE: The penalties prescribed at N.J.A.C. 7:9A-1.7 are those which would be assessed by the Commissioner of the Department in cases where an individual violates the Department's standards. In cases where the administrative authority becomes aware of a violation, the administrative authority may assess penalties under N.J.S.A. 58:11-39 or refer the violation to the Department for assessment of penalties under N.J.A.C. 7:9A-1.7. No statutory provision exists for delegation of Water Pollution Control Act enforcement authority to the administrative authority.

COMMENT: The penalty of $50,000 as set forth in N.J.A.C. 7:9A-1.7(b) is quite excessive. It is unclear as to whether this penalty will apply to the engineers performing the designs. If this dollar amount is adopted, the public will be hardpressed to find an engineer who is willing to do designs for alteration and repairs. Although some type of penalty may be required, some thought should be given to the amount.

RESPONSE: N.J.A.C. 7:9A-1.7 reflects applicable requirements of the Water Pollution Control Act which holds accountable professional engineers and others involved in work which can have an impact on public

health and environmental quality. It should be noted that the fines prescribed here are maximum fines and that the actual amounts assessed would be chosen in relation to the severity of the violation. Even the maximum fines prescribed here are small compared to the potential liability associated with the practice of professional engineering and are therefore not expected to deter competent engineers from practicing their profession.

COMMENT: The penalties in N.J.A.C. 7:9A-1.7(b) are not only inappropriate, but are much too severe for the scope of the violations which can occur under N.J.A.C. 7:9A-1.7(c)1 through 6.

RESPONSE: The Department disagrees with this comment. The penalties prescribed are maximum penalties and the actual amounts assessed will be determined in relation to the severity of the violation. Considering the potential impact on public health and environmental quality, these penalties are not inappropriate for the violations which might occur.

COMMENT A: If N.J.A.C. 7:9A-1.7(b) and (c)2 are adopted to authorize issuing penalties of $50,000 per day upon an administrative authority, it is suggested that boards of health refer all applications to the Department for review.

COMMENT B: N.J.A.C. 7:9A-1.7(c)2 provides that the issuance of an approval by the local health agency where such action will violate this chapter shall subject the "administrative authority" (which is defined at N.J.A.C. 7:9A-2 as the board of health or its employees) to the penalties specified in N.J.A.C. 7:9A-1.7(a). How can the State mandate that non-paid volunteers on local boards of health be personally liable for actions taken in good faith? Low paid local employees will be afraid to make decisions for fear of being held personally liable.

COMMENT C: N.J.A.C. 7:9A-1.7 provides for a penalty of $50,000 per day, levied against the administrative authority, for issuance of a permit where a system does not comply with the rules. This is quite absurd since the local health authority is functioning as an extension of the Department.

COMMENT D: The municipality and its employees should not be penalized under N.J.A.C. 7:9A-1.7(c)2 if, in its judgment, a good faith effort to assure compliance with the rules has been attempted but the system fails.

COMMENT E: If through no fault of the approval agency, a minor rule is overlooked, the review officer would be subject to a major fine under N.J.A.C. 7:9A-1.7(c)2. Permits for alterations would not be issued since, in effect, all alterations to existing systems would be in violation.

COMMENT F: These rules are very complex; therefore, health departments should not be penalized if they issue a permit in good faith yet in error. The Department should sponsor training seminars or issue news letters to assist local health departments in learning the proper interpretation of these rules. N.J.A.C. 7:9A-1.7(c)2 should be deleted from the adoption.

COMMENT G: Assessment of civil administrative penalties of $50,000 against the administrative authority is counterproductive.

COMMENT H: Are the penalties provided in N.J.A.C. 7:9A-1.7(c)2 an appropriate sanction for one level of a governmental agency (that is, the Department) to impose upon another level of government (that is, municipal or county)? Licensed personnel, health officers, professional engineers and sanitarians are already subject to removal. If this penalty provision is warranted, it should clearly be for reason of negligence and/or malfeasance in office.

RESPONSE: It is apparent that the individuals making these comments have misinterpreted the meaning and intent of N.J.A.C. 7:9A-1.7(c)2 which is to hold individuals accountable for granting approval or issuing permits for sewage disposal systems which are in violation of the Department's standards. A municipality and its employees will be held accountable for violations pursuant to these rules. Assessment of penalties would be in accordance with the principles and criteria set forth in N.J.A.C. 7:14-8 and, therefore, the amount of penalties assessed would be proportional to the nature and consequences of the violation.

There is no basis for the statement that individuals who violate the law should not be held accountable because they are acting on behalf of the Department or are not highly paid. In activities which may impact public health and safety, such accountability is necessary and is not a reason for competent individuals to be afraid to make appropriate use of their authority.

The statement that all alterations to existing septic systems would be in violation of the Department's standards is without basis. On the contrary, N.J.A.C. 7:9A-3.3(c)2 indicates that alterations for reasons other than a change in use are not bound by strict conformance to the standards.

The Department agrees that training should be provided to assist local health departments in proper interpretation of the rules. This is one of the main reasons for the registration program proposed at N.J.A.C. 7:9A-3.17.

COMMENT: The design of a septic system should be prepared by a licensed professional engineer only, and any penalties which are imposed for system failure should be levied upon the system designer. However, this penalty should be in the form of reporting the failure to the State Board of Professional Engineers and allowing them to find out whether or not the designer was qualified, and to take appropriate action.

RESPONSE: The Department agrees that a professional engineer should be the only individual permitted to design a septic system. However, the Department does not agree that the engineer who designed a septic system should be held accountable for occurrences which are beyond his or her control such as failure of the septic system due to improper operation or lack of maintenance. It is the responsibility of the Department, not the Board of Professional Engineers and Land Surveyors, to enforce the requirements of the Water Pollution Control Act and its implementing rules. However, the Department will refer appropriate matters to the Board of Professional Engineers when the action is within their jurisdiction.

COMMENT: Laws should be uniform in their application. Many sections of the proposed rules require either a State permit or State approval. To be uniform in application, the rules should be changed to mandate that any action by a local or State official which violates any requirement of the rules shall subject them to specified penalties. Governmental liability, regardless of whether it is municipal, county, or State, should be limited and designed to encourage efficient service, not to encourage action which will limit personal liability.

RESPONSE: Failure of the rule to discuss violations and penalties applicable to State employees who review applications for State permits does not mean that State employees are not accountable for their actions. The Department will take the appropriate disciplinary action when State employees do not follow the rules. N.J.A.C. 7:9A-3.9, 3.10 and 3.18(d) deal with State permits only from the standpoint of defining what types of projects need permits. These sections are included to inform applicants and local health department officials when State permits are required. There is no personal liability associated with truthful certifications made by competent individuals and, therefore, the rules do not discourage such actions.

COMMENT: N.J.A.C. 7:9A-1.7(c)2 appears to be directed towards health departments which have issued certain permits in error. In the past few years there have been many new and complex rules (such as NJPDES rules) which remain unclear to many persons. Department newsletters would help to alleviate such problems.

RESPONSE: N.J.A.C. 7:9A-1.7(c)2 is not directed toward health departments which have issued inappropriate approvals due to poorly defined permit applicability or failure on the part of the Department to give adequate notification of changes in State permit requirements. To address these problems clear information has been provided at N.J.A.C. 7:9A-1.8, 3.9 and 3.10 to indicate when State permits are required.

COMMENT: A copy of the restricted materials referenced in N.J.S.A. 58:10A-16 should be directly included in the rules. It is common practice in some counties for septic tank cleaners to offer acid treatments as a septic system conditioner.

RESPONSE: The definition of "restricted chemical material" provided at N.J.A.C. 7:9A-2 provides specific criteria for identification of these substances which are quoted directly from N.J.S.A. 58:10A-16. Discharge of acids into a septic system, in toxic concentrations, is prohibited by N.J.A.C. 7:9A-12.1(d).

COMMENT: The term "facility" in N.J.A.C. 7:9A-1.7(c)5 requires definition. Additionally, clarification should be provided in the example regarding the expansion of "dwelling units" or other "realty improvements" so as to avoid any confusion.

RESPONSE: The term facility is not defined because its use at N.J.A.C. 7:9A-1.7(c) is general and not intended to imply any special meaning which differs from common usage. The term "dwelling" is not used because this provision is intended to apply to commercial as well as residential facilities. The term "realty improvement" is inappropriate because it is defined by statute to include newly constructed buildings. Because these terms are not intended to imply any special meaning, there should not be any confusion in their use.

COMMENT: N.J.A.C. 7:9A-1.8(a), (b) and (c) clarifies and includes the past interpretations of the NJPDES rules with respect to the application of individual onsite sewage disposal systems which were previously unavailable.

RESPONSE: The Department appreciates this comment. It is the Department's goal to clearly set forth its rules.

COMMENT A: With reference to N.J.A.C. 7:9A-1.8(a)2, the proposal states that when a single office building contains more than one commercial unit, a treatment works approval and governmental co-permittee (implied) are required. Apparently, one reason why the Department requires these permits is to insure that, should the building go co-op, some entity will be responsible for the maintenance of the disposal system. New Jersey has one of the most stringent co-op regulations in the country. These regulations must be approved by the Division of Consumer Affairs and should guarantee accountability should any maintenance be required. Additionally, the requirements for a treatment works approval and a governmental co-permittee are superfluous, adding unnecessary time delays and costs to projects of this nature. If the Department wishes a co-permittee, the local board of health should be *required* to be the agency so that political or zoning issues are isolated from the approval process.

COMMENT B: The requirement at N.J.A.C. 7:9A-1.8(a)2 requiring a treatment works approval and a governmental co-permittee for a single office building containing more than one commercial unit is overly burdensome and restrictive. Multiple units under common ownership and involving 2000 gallons per day or less should be subject to local review and approval in order to avoid hardships of cost and time involved with such installations.

COMMENT C: The commenters object to the implementation of a rule regarding on-site septic systems for multi-unit dwellings and buildings. This rule would require a treatment works approval, a governmental co-permittee and a NJPDES permit when five or more realty improvements are served or when any on-site subsurface disposal system serves one or more realty improvements or the design flow is greater than 2,000 gallons per day. This will have an enormous impact on projects where a single office building having one owner would be leased to more than one tenant, even though the daily flow would be less than 2,000 gallons. The additional permit process for a treatment works approval and NJPDES permit will significantly increase the time and expense to engineer such projects. These requirements are unreasonable as time and expense for new projects has already reached a premium high and future development and construction will be seriously jeopardized by institution of these rules.

RESPONSE: The Department disagrees with these comments. Septic systems are an appropriate form of waste disposal for low density development in rural areas of the State where public sewers are unavailable. They are generally not appropriate for high density residential or commercial development where it is impossible or impractical to provide separate systems for each dwelling or commercial unit and still maintain required separation distances between the septic systems. The Department's Standards for Construction of Individual Subsurface Sewage Disposal Systems have required individual service (N.J.A.C. 7:9A-2). The economic hardships and delays referred to in these comments do not arise from unreasonable regulatory requirements, but rather, they are caused by individuals who seek to develop land at high density in areas where the necessary infrastructure and facilities are not present.

When a waste disposal system is used by more than one residence or business, that system is essentially a public sewerage facility. Department of Community Affairs rules concerning co-ops do not address the permitting and management of public sewerage facilities. In the past, permits to operate such systems were issued by the Department to private individuals or organizations such as homeowners associations, co-ops or condominiums. In cases where these systems malfunctioned due to lack of maintenance, difficulties were encountered in assigning responsibility for correcting the problem and, as a result, the malfunctions continued for long periods of time while legal proceedings were taking place. In many cases, the owner/operator abandoned the malfunctioning system to be repaired at public expense. For this reason, Department rules now require that a sewerage authority, municipality or other governmental agency be permittee or co-permittee for all community or non-individual sewage disposal systems (N.J.A.C. 7:14A-12.9). Agreements between private individuals or organizations and governmental permittees contain legal and financial assurances which will prevent such problems from occurring. Boards of health generally do not have the resources or authority to enter into such agreements and there is no public benefit to be gained from forcing boards of health to assume these responsibilities or by isolating approvals from applicable zoning requirements.

As indicated in the existing NJPDES rules at N.J.A.C. 7:14A-5.17(f)1, only those septic systems which conform to the Department's standards are permitted by rule and, therefore, not required to obtain a NJPDES permit. A treatment works approval is required for systems which exceed the limitations stated at N.J.A.C. 7:9A-1.8. Generally, a NJPDES permit is not required for systems which are designed to treat less than 2000 gallons per day of sanitary sewage. These requirements are stated in N.J.A.C. 7:9A-1.8(b).

COMMENT: The words "and a permit" should be deleted from N.J.A.C. 7:9A-1.8(c) since this is a discharge permit and relates to discharge quantities. If the discharge is under 2,000 gallons per day a NJPDES permit should not be required.

RESPONSE: Since the statement made at N.J.A.C. 7:9A-1.8(c) includes septic systems which are designed to treat more than 2000 gallons per day as well as those which are designed to treat less, it is correct to state that a NJPDES permit may also be required.

COMMENT: N.J.A.C. 7:9A-1.8(c) will require a treatment works permit and a NJPDES permit based upon standard flow calculations "as prescribed in N.J.A.C. 7:9A-7.4 rather than the actual discharge volume as modified by water conservation or special treatment processes." This will dramatically discourage the use of on-site treatment and recycling technologies in New Jersey because a major incentive for its use will be eliminated. Currently, the State uses the discharge as modified by on-site wastewater treatment and recycling to determine the requirements for a NJPDES permit. For example, a 100,000 square foot office building with an integrated wastewater treatment and recycling system will use and discharge less than 500 gallons per day instead of 12,500 gallons per day as prescribed in N.J.A.C. 7:9A-7.4. Under the current guidelines this application requires a treatment works permit but does not require a NJPDES permit. Under the proposed amendment this application would also require a NJPDES permit.

Meetings were held with the Department which resulted in a decision that a treatment works permit would be required but modified flows could be used to determine if an application falls within the 2,000 gallon per day exemption for a NJPDES permit. The reasons for this decision include:

1. On-site wastewater treatment and recycling systems are not strictly water conserving systems. State of the art recycling systems provide a high level of treatment;
2. Recycling renovated water for toilet and urinal flushing can reduce water use in public and commercial buildings by up to 95 percent;
3. It would be very difficult to by-pass or modify a recycling system once it has been installed. It would also prevent a change in a building's use which causes an increase in wastewater discharge;
4. State of the art recycling technology has been shown to be a cost effective and reliable on-site wastewater alternative;
5. A facility with an integrated wastewater treatment and recycling system producing a 2,000 gallon per day discharge will have far less environmental impact than a facility utilizing a septic tank producing a 2,000 gallon per day discharge; and
6. The treatment works permit requirement would provide adequate review of the process design and mechanical design for each application.

Approval of the proposed rules will discourage the use of on-site treatment and recycling will be discouraged because of the substantial additional cost of time and money required for a NJPDES permit. The rules should be modified to provide credit for recycling and modified flows resulting from the use of integrated on-site treatment. The actual discharge from systems using recycling discharge should be used to determine NJPDES permit requirements and disposal field size requirements.

RESPONSE: The Department agrees in part with this comment. It is true that Department policy has been not to require a NJPDES permit even where the design sewage flow, calculated in accordance with the Department's standards, exceeds 2000 gallons per day, if the following conditions have been met:

1. Treated wastewater is recycled so that the actual daily discharge volume will be less than 2000 gallons;
2. Pollutants are removed in the treatment process so that the actual pollutant loading in the effluent will be less than that associated with 2000 gallons of septic tank effluent from a facility generating normal domestic sewage; and
3. The advanced treatment system used to reduce pollutant levels in the recycled wastewater and effluent is constructed, operated and maintained in compliance with requirements established in a treatment works approval.

COMMENT: The reference at N.J.A.C. 7:9A-1.8(c) to "recycling" and "incineration or composting" systems (which under present rules are considered "alternate design systems") is confusing, inasmuch as these systems are either locally not permitted or permitted only by variance in special circumstances. The reference to these items conveys the im-

pression that their use is routinely available. It is suggested that N.J.A.C. 7:9A-1.8(c) be modified as follows:

In cases where the actual volume of sanitary sewage discharged from a facility will be reduced by use of water-saving plumbing fixtures, recycling of renovated wastewater, incineration or composting of wastes, evaporation of sewage effluent or any other process *where permitted by state, county and local regulations,* the requirement for obtaining a treatment works approval and a NJPDES permit shall be based upon the design volume of sanitary sewage, calculated as prescribed in N.J.A.C. 7:9A-7.4, rather than the actual discharge volume as modified by water conservation or special treatment processes.

RESPONSE: The recommended change is considered unnecessary. The purpose of this section is only to indicate how various methods of reducing water usage or discharge volumes affect the design sewage flow volume in relation to the limitations of N.J.A.C. 7:9A-1.8(a). The need to obtain a variance from the plumbing sub-code for composting or incinerating toilets is indicated at N.J.A.C. 7:9A-7.5. Other factors affecting the need for State permits are addressed in detail at N.J.A.C. 7:9A-3.9 and 3.10.

Local ordinances may place restrictions on any aspect of design or construction covered in the Department's standards as per N.J.S.A. 58:11-25. It is not practical or desirable to specifically reference such local authority to impose restrictions in every case where they may apply. As with other aspects of design and construction covered in the Department's standards, failure to mention that local restrictions may apply to the use of recycling or water less toilets does not imply that such restrictions do not exist or cannot be enforced.

COMMENT A: N.J.A.C. 7:9A-1.8(c) does not give fair credit to builder/developer owners who intend to install and use water saving devices. The purpose for using water saving devices is to reduce the volume of sewage generated in an effort to circumvent the NJPDES requirements. If credit is not given in the rules for the water savings these devices achieve, then builders will have no incentive to reduce water usage.

COMMENT B: The Department should recognize the enormous environmental benefits of wastewater recycling and provide incentives to encourage such use. N.J.A.C. 7:9A-1.8(c) should be modified to provide encouragement for recycling and water conservation. There are simple methods available to predict and verify contaminant loadings on the environment. They should be implemented so that innovative/alternative technology will progress.

RESPONSE: The Department encourages the use of water saving devices and recycling as a means of conserving water but not as a means of circumventing the requirement to apply for applicable State permits. If an applicant for a State permit proposes such measures, reductions in certain permit requirements may be allowed based upon the technical merits of the proposed design, and these reductions in permit requirements may serve as additional incentives for water conservation devices. The majority of recycling and water saving devices reduce only the volume of wastewater discharged and not the actual pollutant loading. For this reason, their use cannot be considered as a valid reason for not requiring a NJPDES permit which is the means by which the Department monitors and controls the impact on groundwater quality of septic systems which exceed the limitations of N.J.A.C. 7:9A-1.8(a).

SUBCHAPTER 2. DEFINITIONS

COMMENT: The definition of "chroma" should be revised to indicate that chroma as a quantity decreases with increasing grayness.

RESPONSE: The definition was taken from the United States Department of Agriculture's methodology and definitions. It was transcribed incorrectly; therefore, the definition of the word "chroma" has been revised.

COMMENT: The definition of "zone of disposal" should be revised to read: "zone of disposal means the permeable layers of soil or rock material below the zone of treatment which permit downward movement of the septic tank effluent or lateral movement of this effluent away from the area of the disposal."

RESPONSE: The Department disagrees with this comment. It is not sufficient for the zone of disposal to permit downward movement of septic tank effluent only. In order to prevent a build-up of effluent below the disposal field which will result in hydraulic failure, effluent must move laterally away from the disposal field to a surface water body or other point of groundwater discharge. For this reason the definition of "zone of disposal" has not been changed.

COMMENT: "Authorized agent" is very specifically defined as either a licensed health officer, a licensed professional engineer, or a first-grade sanitarian. A strict interpretation would mean that these are the only people *qualified* to observe site evaluations, site testing, and septic installations. Is it the intent of the rules to require the administrative authority to have only the above persons act as its agent for the purpose of observations and/or design review? How does that strict requirement balance with the fact that the rules do not *require* any qualifications for a site evaluator, an installer, or an inspector? The rules do not even require supervision of those people. At the very least, why can't the administrative authority have an option to utilize field observers who are not holders of the above licenses, but who would work under the *direct supervision* of holders of those licenses?

RESPONSE: N.J.S.A. 58:11-26 requires that only a licensed health officer, sanitarian or professional engineer certify compliance with the Department's standards. The definition of "authorized agent" reflects this requirement.

Functions carried out by site evaluators, installers or septic system inspectors are not comparable to those carried out by the authorized agent of an administrative authority. To comply with the requirements of N.J.S.A. 45:8-1 et seq., any site evaluation procedures relied upon in the design of a septic system must be carried out by or under the direct supervision of a licensed professional engineer. To clarify this requirement, statements have been added at N.J.A.C. 7:9A-3.5(c), 5.1(b) and 6.1(k). Certifications of compliance made by the authorized agent or licensed professional engineer provide the necessary oversight for work carried out by septic system installers. Septic system inspectors do not perform regulatory functions such as certification of compliance with standards or issuance of permits and the level of responsibility assumed is thus not equal to that of an authorized agent.

Since the requirement for witnessing of site evaluation by the authorized agent can be waived by the administrative authority, the proposed rules would not preclude the use of licensed field observers by the administrative authority to witness site evaluation provided that the actual certification is made by a licensed health officer, sanitarian or professional engineer.

COMMENT: N.J.A.C. 7:9A-2 defines "authorized agent" to include licensed engineers. Will the engineer become the "sanitary inspector" for the municipality? A conflict of interest will arise where an engineer is the designer and enforcing agent on the same property.

RESPONSE: As provided at N.J.S.A. 58:11-26, the administrative authority may employ a professional engineer as its authorized agent. N.J.A.C. 13:40-3.1(a)4ii specifically prohibits the type of conflict of interested referred to. Enforcement of this rule by the State Board of Professional Engineers and Land Surveyors will prevent such conflicts of interest from occurring.

COMMENT: The definition of "bedroom" should also state any room capable of being transformed into a bedroom such as a den, television room, study, etc.

RESPONSE: The Department disagrees with this comment. Whether a room is "capable of being transformed into a bedroom" is highly subjective and, therefore, use of this criterion does not improve the definition.

COMMENT: The definition of "bedroom" is too vague. Everything except a bathroom, closet, or kitchen could qualify as a bedroom. This would affect the sizing of the septic system.

RESPONSE: The Department is aware of no specific criteria for identifying bedrooms which could not be considered subjective or vague. In the absence of such criteria, it is necessary to define the term "bedroom" in a manner which relates to the function of a room and to indicate that this definition must be reasonably interpreted.

COMMENT: The terms "dwelling unit" and "dwelling" are used in the rules. If the two terms are synonymous it should be indicated in the rules. If not, the term "dwelling" should be defined.

RESPONSE: The terms "dwelling unit" and "dwelling" are not synonymous. The term "dwelling unit" is defined at N.J.A.C. 7:9A-2. The term "dwelling" has been changed to "dwelling unit" at N.J.A.C. 7:9A-1.6(c) to avoid confusion.

COMMENT: For consistency with other related definitions, the definition of the term "floodway" should include: "See also N.J.A.C. 7:13".

RESPONSE: The reference to N.J.A.C. 7:13 has been added as recommended.

COMMENT: In the definition of the term "restricted chemical material", the word "significant" should be deleted or defined as it is subjective and vague.

RESPONSE: This definition is taken directly from the Water Pollution Control Act (see N.J.S.A. 58:10A-16). It is not appropriate for a rule to modify a definition established in the enabling statute. The rules for sewage system cleaners have not yet been promulgated; the definition for the term "significant" will be provided at that time.

COMMENT: N.J.A.C. 7:9A-2 appears to have a typographical error. The term "stream water level" should be "Static water level".

RESPONSE: The term "stream water level" has been changed to "static water level" which is the correct term.

COMMENT: In the definition of "permeable", what is the rationale for the ". . . 60 minutes per inch or faster . . ." standard? The present rules have a 120 per minute inch standard.

RESPONSE: In defining the term "permeable", two basic design considerations were considered. First, septic tank effluent must be able to infiltrate through the clogging mat which forms at the interface between the disposal field filter stone and the underlying soil. Secondly, the effluent must be able to move laterally away from the disposal area at a rate equivalent to the rate of application and without the formation of a groundwater mound which will encroach upon the unsaturated zone of treatment below the disposal field and ultimately lead to hydraulic failure. As in the repealed rule, the first concern is addressed by setting a minimum acceptable percolation rate of 60 minutes per inch at the level of infiltration. To address the second concern, a minimum permeability value must also be established in the soil or rock strata (zone of disposal) which underlies the required four feet of groundwater mounding soil (zone of treatment). Hypothetical calculations of groundwater mounding indicate that in the worst case scenarios allowed by the standards, unless the soil permeability is a minimum of 0.2 inches per hour throughout the zone of disposal, an unacceptable level of groundwater mounding will result. Available information relating percolation rates to soil permeability values indicates that a permeability value of 60 minutes per inch corresponds in magnitude to a permeability value of 0.2 inches per hour.

The existing standards set a minimum allowable percolation rate for soil below the disposal field at 60 minutes per inch but define an impervious formation as having a percolation rate of 120 minutes per inch or slower. These conflicting criteria have led to considerable confusion and cannot be justified on a technical basis. This inconsistency is corrected in the new rule by using one criterion to distinguish between acceptable permeable soil and a hydraulically restrictive horizon or substratum.

COMMENT: The definition of "volume of sanitary sewage" should be changed so that the actual water use is represented by the volume calculation. If safety factors are required, they should be specified. Using an inflated volume figure without stipulating the safety factors causes confusion and poor design practices. People will misrepresent the figure as actual flow because it is published in a State standard. All State standards and rules should be made to conform in basic principles such as volume of flow and the appropriate safety factors adjusted accordingly.

RESPONSE: The Department disagrees with this comment. It is accepted engineering practice to estimate design flows conservatively. Actual water usage rates for any facility vary at different times during the day and also from day to day. Actual water usage is therefore not a discreet value, but a range. The safety factor incorporated into design flow criteria insures that the design value will correspond to the top of this range or the maximum expected daily flow. This is the only safety factor provided by the standards to insure that septic systems will function during times of high water usage and not just when flow is at or below the average. Confusion is less likely to be caused by providing a single value for design flow rather than adding an additional step whereby an average flow value must be multiplied by a factor of safety to obtain the required design flow value. The definition for "volume of sanitary sewage" at N.J.A.C. 7:9A-2 clearly explains the concept so that confusion will be eliminated.

COMMENT: The definition of "water course" does not reveal, as per past and present practice, that the actual catch basin is a watercourse if open and below grade of proposed disposal device.

RESPONSE: The Department does not and has never considered a catch-basin to be a watercourse solely on the basis that it is below the grade of the disposal field. The only components of a storm sewer system that would be considered as a water course are those which are below the level of the seasonally high water table and constructed with open joints so that infiltration of groundwater can occur. The definition of the term "water course" which is provided at N.J.A.C. 7:9A-2 reflects these criteria.

COMMENT: The definition of "water course" should be amended to read:

"Water course means any stream or surface water body *shown on the USGS 7.5 minute maps* or any ditch or subsurface drain that will permit drainage into a surface water body. This term does not include swales or roadside ditches which convey only direct runoff from storms or snow melting, and storm sewers designed and constructed in a manner that will prevent infiltration of ground water into the pipe or lateral movement of ground water through the excavation in which the pipe has been laid.

RESPONSE: The Department does not agree with this comment. Intermittent streams which may intercept seasonally high groundwater may not be shown as blue lines on U.S. Geological Survey topographic quadrangle maps. Such streams would function as a watercourse during the wet season and therefore cannot be excluded from the definition of the term "water course" which is provided at N.J.A.C. 7:9A-2.

COMMENT: The definition of "water course" should clarify "groundwater" as "runoff" swales or ditches.

RESPONSE: The definition of "water course" at N.J.A.C. 7:9A-2 makes an appropriate distinction between swales and ditches which intercept groundwater and those which intercept only surface runoff.

COMMENT: The definition of "water course" should be expanded to include clarification as to whether a conventional reinforced concrete culvert pipe, constructed with tight joints but without special gaskets, would be considered a water course. This area has the potential for disagreement between installers and administrative authorities.

RESPONSE: The variations in construction of storm sewers and related structures are far too numerous to be individually mentioned in the definition of the term "water course". For this reason, the criteria used are based primarily on function rather than construction. As stated in the definition, whether or not a storm sewer located below the seasonally high water table will be considered as a water course depends upon whether or not the sewer is designed and constructed in a manner which will permit infiltration of groundwater. Such determinations must be made by the administrative authority based upon the principles established in the rules. It is not possible to develop a rule which will specifically address all cases and thereby eliminate the need for determinations and judgments to be made in the application review process.

SUBCHAPTER 3. ADMINISTRATION

COMMENT: Can a local ordinance establish fees for observations, permit issuance, design reviews, installation inspections, etc. in addition to the license fee (which is limited by statute to $5.00 per year)? The rules must allow "fee for service".

RESPONSE: Municipalities may adopt local ordinances as permitted by law. The Department's authority to charge fees is authorized by the enabling statutes pursuant to which these rules are promulgated.

COMMENT: May a local administrative authority establish a penalty fine other than the civil penalty that the Department would assess, when there are violations of the rules? If so, how and where could that occur?

RESPONSE: In cases where septic systems are constructed or installed in a manner other than in accordance with the approved design, the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq. (1954) gives authority to boards of health to assess fines of $200.00 for each offense and an additional penalty of $25.00 for each day of continued violation after issuance of a notice of violation by the board (see N.J.S.A. 58:11-39).

COMMENT: Better clarification of the administrative authority enforcement and penalties aspect of the rules is needed. Their present form is too vague and could result in confusion.

RESPONSE: The term "administrative authority" is clearly defined at N.J.A.C. 7:9A-2 to mean the board of health or its authorized agent. The purpose of the proposed rules is to provide standards for location, design, construction and operation of individual subsurface sewage disposal systems. Enforcement of the rules and penalties are covered in the statutes at N.J.S.A. 58:11-23 et seq., and N.J.S.A. 58:10A-1 et seq.

COMMENT: The rules should contain a statement recognizing that New Jersey contains some of the most widely varing geologic conditions within short distances on earth and that proper local rules are statutorily authorized and must be complied with.

RESPONSE: While variable geologic conditions do occur within New Jersey, the standards provided are comprehensive and are intended to address the range of conditions normally encountered throughout the State. As indicated at N.J.A.C. 7:9A-1.2(b), the proposed standards are intended to be applied uniformly throughout the State. The authority of local boards of health to adopt and enforce more stringent standards is acknowledged, however, at N.J.A.C. 7:9A-1.2(b) and 3.1(b).

COMMENT: The rules do not state that existing ordinances in conformance with these rules shall remain in effect, if more stringent. This is a requisite since many local ordinances are designed for specific areas where more stringent rules are indeed needed, such as in existing lake areas where the minimum distance of one hundred feet to a watercourse is needed to insure lake water quality.

RESPONSE: The Department disagrees with this comment. Failure of the proposed standards to mention that existing ordinances which are more stringent may remain in effect does not preclude their enforcement as provided in the statute at N.J.S.A. 58:11-25. The purpose of the rules is to set forth minimum requirements for construction and operation of individual subsurface disposal systems. Those portions of local ordinances which are less stringent than this rule will not remain in effect. The remainder thereof, which is at least as stringent as the new rules, will remain in effect.

COMMENT: Municipalities may consider the elimination of pit bail tests and basin flood tests. If this is true, the Department should pressure elected officials to change the law to provide authority to make these rules mandatory.

RESPONSE: The Department does not oppose a legislative change which would decrease unnecessary variability of requirements for individual subsurface sewage disposal systems throughout the State.

COMMENT: The rules should be strongly worded so that they cannot be changed or amended by local ordinance. A uniform code is necessary and will avoid owners and consulting engineers being burdened with conflicting standards and result in cost savings in some municipalities.

RESPONSE: The Department agrees that uniformity of standards is desirable, but the authority of local boards of health to adopt standards which are more stringent is clearly stated in the statute at N.J.S.A. 58:11-25. The Department cannot adopt a rule which is in conflict with the enabling statute.

COMMENT: How are existing ordinances affected by these rules? Municipalities must be advised of the status of existing ordinances upon adoption of N.J.A.C. 7:9A.

RESPONSE: As indicated at N.J.A.C. 7:9A-1.2(b), the proposed rules shall be regarded as uniform standards in force throughout the State, except where local ordinances prescribe higher standards, as allowed by N.J.S.A. 58:11-25. Since both the new rules and the existing ordinances will be in effect after adoption of the new rules, and since both must be complied with, the requirements will be determined by the new State standards or by the existing ordinances, whichever is most stringent.

COMMENT: The Department's ability to adopt these rules must be questioned since there is no indication that the State Department of Health has approved of the format as required by N.J.S.A. 26:3-69.1(3).

RESPONSE: N.J.S.A. 13:1D-7 transfers complete authority for promulgation of these standards from the Department of Health to the Department of Environmental Protection.

COMMENT: Why would a municipality want to adopt these rules by reference as these are State rules.

RESPONSE: This is done to indicate that the local set of requirements in effect in a given municipality consists of any special local requirements which modify or expand upon the Department's standards and which are included in the ordinance together with the Department's standards which are not included but merely referenced in the ordinance. This practice allows the municipality to file only those aspects of the ordinance which deviate from the referenced State standards and avoids the necessity of reproducing the entire document.

COMMENT: Provisions which require the local board of health to provide the Department with statements of differences, explanations and supporting facts and data with regard to local ordinances which differ in any detail from the rules are improper. This is especially true inasmuch as a violation of these rules is a violation of the Water Pollution Control Act.

RESPONSE: The statute requires at N.J.S.A. 58:11-34 that copies of all local ordinances be filed with the Department within 10 days of the date of adoption. The Department interprets this requirement to be to allow the Department to evaluate the ordinances, to determine whether they are more stringent or less stringent than the State standards and to consider the technical merits and possible statewide applicability of any special provisions which differ from the requirements in the State standards. The information required in N.J.A.C. 7:9A-3.2 is needed by the Department to properly evaluate the local ordinances. Compliance with this requirement would not be a burden for any municipality which had valid reasons for adoption of a special ordinance and the information requested would be a matter of public record even if the rules did not require its disclosure.

COMMENT: These standards should be adopted as uniform throughout the State. Municipalities should not be allowed to adopt more stringent standards since expert committees have already provided for the expected range in soil conditions throughout the State with an added margin of safety. Only by having uniform and predictable standards throughout the State will the public be assured that the cost of housing will not be artificially inflated and that the regulated community will be able to avoid the confusion and inconsistencies that may be allowed under this proposal.

RESPONSE: The Department does not dispute this comment; however, the ability to adopt these standards as uniform throughout the State is limited by the statute which provides, at N.J.S.A. 58:11-25, for enforcement of local ordinances which prescribe higher standards. The fact that the standards are intended for uniform application throughout the State is indicated at N.J.A.C. 7:9A-1.2(b).

COMMENT: N.J.A.C. 7:9A-3.1(b) limits the right of local officials to make ordinances that meet local needs. As long as the State sets a minimum standard, there should be no handicaps to prevent action by municipalities to be more stringent. If the State must review, they should conform to the 15 day limit specified for municipalities. It should be easier for the State to comply than for municipalities since the State has far more manpower. At the end of the 15 days, failure by the State to respond by certified mail shall grant automatic approval to more stringent local standards.

RESPONSE: The proposed rules do not limit the ability of municipalities to adopt local ordinances by requiring prior approval by the Department. On the contrary, the ordinance may be adopted and enforced 10 days prior to filing with the Department. Since the municipality does not need prior Department approval to adopt an ordinance the amount of time required for the Department to review the ordinance should not be an issue of concern to the municipality.

COMMENT: Does an ordinance change after the effective date of these rules constitute a special ordinance requiring Department approval?

RESPONSE: The rules define a special ordinance as any ordinance which differs in any detail from the State standards. All such ordinances are subject to the requirement for filing with the Department upon adoption or revision. The rules do not require approval of ordinances by the Department.

COMMENT: Is it necessary to allow towns to adopt different standards in lieu of the benefits gained from both a design and enforcement standpoint by standardization of design criteria?

RESPONSE: N.J.S.A. 58:11-25 allows municipalities to enforce local ordinances which prescribe standards which are more stringent than the State standards.

COMMENT: A municipality should not be precluded from establishing higher standards than those of the Department.

RESPONSE: The rules do not preclude a municipality from adopting higher standards than those of the Department. N.J.A.C. 7:9A-1.2(b) acknowledges that the Department's authority to promulgate uniform standards is limited by N.J.S.A. 58:11-25 which provides for enforcement of local ordinances which prescribe more stringent standards.

COMMENT: Any change in use of an existing system, from seasonal to fulltime, must require recertification.

RESPONSE: There is no basis in the statute, in the previous standards or in the new standards for certification of a sewage disposal system for seasonal use based upon compliance with requirements which differ in any way from those applied to systems which will be used on a year-round basis. As a result, no situation exists where a system could have a certification which is valid for seasonal use but not for year-round use. Therefore, there is no reason for requiring re-certification of systems being covered from seasonal to year-round use.

COMMENT: N.J.A.C. 7:9A-3.3(b) should address expansions of existing structures in building size or use (seasonal to full-time).

RESPONSE: The intent of N.J.A.C. 7:9A-3.3(b) is to include building expansions in the term "change in use" since building expansions often involve an increase in design sewage volume as prescribed in N.J.A.C. 7:9A-7.4. To clarify this requirement, the wording has been modified to specifically mention building expansions. There is no need to address changes in use from seasonal to full-time, since such changes would not affect the daily design sewage volume determined as prescribed in N.J.A.C. 7:9A-7.4.

COMMENT: The State should pursue regulation and monitoring of the hundreds of thousands of existing septic systems. These rules would only directly affect the five to 10 thousand new septic systems added in the State each year (a very small percentage of the total).

RESPONSE: There is currently no legal basis for imposing new requirements on existing septic systems which conform with the requirements which were in effect at the time they were approved and which are not malfunctioning or otherwise in violation of the New Jersey Water Pollution Control Act. Monitoring of existing septic systems falls within the regulatory scope of the New Jersey Pollutant Discharge Elimination System regulations (see N.J.A.C. 7:14A).

COMMENT: Does an existing "evapotranspiration system" with holding tank installed in case of malfunction and previously approved solely by the administrative authority require a treatment works approval after the fact?

RESPONSE: The Department's standards (see repealed N.J.A.C. 7:9-2) which have been in effect since July 1, 1978 give authority to the administrative authority to approve the alteration, repair or replacement of an individual subsurface sewage disposal system. N.J.A.C. 7:14A-12.4 excludes the installation, modification or operation of a subsurface sewage disposal system in conformance with the Department's standards from the requirement for a treatment works approval. Evapotranspiration systems and holding tanks are not subsurface sewage disposal systems as defined in the Department's standards (see N.J.A.C. 7:9-2.4) and there has never been a legal basis for their approval by the administrative authority.

COMMENT: Does an intensification of former use with an increase of volume of sewage (for example, property is to remain residential but a family of ten is to occupy where a family of four has vacated) constitute a "change in the use" requiring conformity with the rules?

RESPONSE: No. N.J.A.C. 7:9A-3.3(b) requires a new approval by the administrative authority only when the change in use will result in an increase in the volume of sanitary sewage determined in accordance with N.J.A.C. 7:9A-7.4. For residences, the volume of sanitary sewage is determined based upon the number of bedrooms rather than the actual number of occupants.

COMMENT: N.J.A.C. 7:9A-3.3(b) should read:

When a change in the use of a building or facility served by an individual subsurface sewage disposal system is proposed and this change will result in an increase in the volume of sanitary sewage *"beyond that for which the system is designed"* (determined as prescribed in N.J.A.C. 7:9A-7.4) or a change in the type of wastes discharged, the administrative authority shall not approve such a change unless all aspects of the location, design, construction, installation, operation and maintenance of the system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with this chapter.

This change will eliminate the need for a duplicate approval by the administrative authority, since they will have already approved the initial design (which in this case would be sufficient to handle the increased volume of sewage).

RESPONSE: The Department agrees that when the flow to a septic system is increased beyond that for which it was originally designed, an application must be made to the administrative authority for that expansion. N.J.A.C. 7:9A-3.3(b) has been modified to reflect this requirement.

COMMENT: Would the addition of a dining room to an existing structure require the septic system to be upgraded to the standards of these rules?

RESPONSE: In the case of a residence, the addition of a dining room would not result in an increase in design sewage flow and would therefore not be considered as a change in use requiring a new approval. N.J.A.C. 7:9A-7.4 requires the determination of design flow based solely on the number of bedrooms. Bedrooms may be distinguished from dining rooms based upon the definition provided in N.J.A.C. 7:9A-2 and by referring to architectural plans which identify intended functions of rooms and show distinguishing features such as wall partitions for closets.

COMMENT: There is no need for a municipality to adopt a more restrictive set of standards. If by chance the Ad-Hoc Committee has overlooked "special limitations due to local soil phenomena", then it is incumbent upon the Department to propose standards to address these conditions.

RESPONSE: The Department does not dispute this comment; however, the right of municipalities to establish more stringent standards is established by statute at N.J.S.A. 58:11-25.

COMMENT: Will current municipal ordinances which are more stringent than State standards be repealed or grandfathered when these rules become effective?

RESPONSE: The new rules will neither repeal nor grandfather municipal ordinances. They will, however, require that the standards prescribed be adhered to as minimum requirements regardless of what local ordinances may be in effect.

COMMENT: Requiring Department approval of alterations to existing septic systems in need of repair will unreasonably delay the correction of failing systems and cause true health emergencies and great difficulty for homeowners.

RESPONSE: The new rules would generally not require Department approval for repairs or alterations to malfunctioning septic systems. The requirement for approval by the administrative authority will not result in health emergencies because such emergencies can be eliminated by pumping out the septic tank while proposed repairs or alterations are under review by the health department.

COMMENT: It is understood that seepage pits will be eliminated under these rules. If so, what will be done with malfunctioning systems in hamlets or villages where the old small lot size will not warrant any other type system?

RESPONSE: The new rules eliminate the use of seepage pits for new construction only. The use of seepage pits would be allowed in the repair of a malfunctioning system on a lot which is too small for a disposal bed or trenches.

COMMENT A: N.J.A.C. 7:9A-3.7 stipulates that a licensed professional engineer shall prepare engineering plans and specifications for construction or alteration of individual subsurface sewage disposal systems. This section apparently requires engineering plans for all septic system alterations. It is suggested that the local health agency retain the authority to require a professional engineer on existing system repairs and/or alterations. There are numerous instances where existing septic system alterations can be initiated without escalating the repair costs by requiring engineering plans.

COMMENT B: N.J.A.C. 7:9A-3.3(c)1 requires a professional engineer to draw plans and specifications for the alteration of a system. In the past, a septic installer or other personnel was allowed to draw such plans. Requiring a professional engineer may place an undue financial burden upon the homeowners.

COMMENT C: Engineer's designs should not be required for simple replacements. Alterations are best handled by the administrative authority as to whether an engineer's design would be required.

COMMENT D: In an effort to protect the environment and eliminate and/or reduce a hardship to a customer, please do not make a repair more costly than it has to be.

RESPONSE: The new rules distinguish between a repair and an alteration and define an alteration as a change in the location, design, construction, installation, size, capacity, type or number of one or more components. Such a change would involve a new or modified design and is therefore subject to the requirements of N.J.S.A. 45:8-1 et seq. which defines the practice of engineering and requires that only a licensed professional engineer perform such functions. The Department cannot adopt a rule which conflicts with this statute. In the case of a repair, where work is carried out in a manner which conforms to the existing engineering design, the work can be carried out without the involvement of a licensed professional engineer.

COMMENT: The majority of alterations are on small properties and high density areas; therefore, most alterations cannot conform to these standards. Consequently, N.J.A.C. 7:9A-3.4(b)3 should read "Alterations to existing structures must be brought into substantial conformance with these regulations."

RESPONSE: N.J.A.C. 7:9A-3.4(b)3 refers to N.J.A.C. 7:9A-3.3(c) which does not require strict conformance with the standards. Rather, it requires that the altered system be no further from conformance than the original system had been prior to the alteration.

COMMENT: How can conformance with setback requirements be required when a septic system is being altered?

RESPONSE: Conformance with setback requirements cannot always be required when an alteration is being made. For this reason, N.J.A.C. 7:9A-3.3(c) does not require strict conformance in those cases where the original system did not conform, provided that the alteration does not result in less conformance with standards.

COMMENT A: Future malfunctions cannot be controlled. Therefore, the statement "and not result in future malfunctions" should be deleted from N.J.A.C. 7:9A-3.3(c)3.

COMMENT B: The administrative authority has no control of the system's use once repaired; therefore, it can not be responsible for the elimination of future malfunctions.

RESPONSE: Malfunctions can, to some extent, be controlled by proper design. The intent of this statement is not to guarantee that a future malfunction will not occur, but rather to prevent approval of a

design with an obvious flaw which will lead to a malfunction. To clarify the intent of this provision, the wording has been changed from "and not result in future malfunctions" to "and which, with proper operation and maintenance, will not result in future malfunctions".

COMMENT: N.J.A.C. 7:9A-3.3(c)3 provides that "alterations shall be made in a manner that will eliminate the cause of the malfunction and not result in future malfunctions." Perhaps a definition for "will" and "shall" should be included to see that this is guaranteed.

RESPONSE: There is no purpose to be served by defining these words since their usage here is standard and not intended to convey any special meaning.

COMMENT: N.J.A.C. 7:9A-3.3(d) allows the administrative authority to approve minor repairs; however, "minor repairs" is not defined.

RESPONSE: The term "repair" is defined at N.J.A.C. 7:9A-2. Since the adjective "minor" is not defined and contributes nothing to the meaning, it has been deleted.

COMMENT: Who will notify owners of existing systems covered by N.J.A.C. 7:9A-3.3(e) and (f) as to the necessity for them to apply for permits? Who will follow up? If the Department notifies, will the local health agency be advised? How will the Department know where the systems are located?

RESPONSE: The purpose of this provision is simply to establish the requirement in the rules. Adoption of these rules and their publication in the New Jersey Register serves as a method of notification. The Department will take appropriate steps in the future to locate these systems and enforce this requirement.

COMMENT: Why is the Department proposing to allow an additional year for discharges of industrial waste into an existing system? It should be removed immediately as it has never been legal before.

RESPONSE: Rules in effect prior to July 1, 1978 allowed the administrative authority to approve systems used for the discharge of industrial wastes. The Department agrees, however, that the allowance of one year for existing industrial discharges to file for a NJPDES permit is inappropriate, especially in the case of those which did not receive the required approvals. Since filing deadlines established in the NJPDES rules (see N.J.A.C. 7:14A) have already elapsed, the requirement at N.J.A.C. 7:9A-3.3(e) has been changed to require immediate filing.

COMMENT: N.J.A.C. 7:9A-3.3(e) and (f) should be deleted. What authority does the Department have to require application of these standards retroactively?

RESPONSE: The Department disagrees with this comment. The Department has clear authority to regulate existing facilities which discharge pollutants into the groundwaters of the State. This authority is derived from the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

COMMENT: The provisions of N.J.A.C. 7:9A-3.3(e) and (f) would require that the administrative authority go out and inspect every industrial site within its jurisdiction to determine whether or not the NJPDES permits have been submitted. This would place a burden upon the administrative authority; therefore, application for the NJPDES permits should be made "within one year upon notification by the administrative authority".

RESPONSE: The Department disagrees with this comment. The requirements in question are directed at the dischargers of pollutants and impose no burden of enforcement on the administrative authority.

COMMENT: Who is responsible for regulating existing subsurface disposal systems serving between two and five houses?

RESPONSE: Existing subsurface sewage disposal systems which were designed and constructed in accordance with applicable rules in effect at the time of their construction are not regulated provided that they do not malfunction or otherwise pose a threat to public health or environmental quality. In the event that these systems do malfunction, local boards of health and their authorized agents are responsible for carrying out their responsibilities with respect to public health as defined in Title 26 of the New Jersey Statutes Annotated. The Department is responsible for enforcement of applicable provisions of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

COMMENT: Systems which require frequent pumping to prevent ponding, backup, or seepage, should be considered malfunctioning under N.J.A.C. 7:9A-3.4(a).

RESPONSE: The criteria for identifying a malfunctioning septic system must be based upon tangible manifestations of system failure or measurable harm to public health or the environment. Unless such manifestations are present, the determination that a system "requires frequent pumping" is subjective and therefore not valid criterion.

COMMENT A: Symptoms of a malfunctioning septic system include emanation of foul odors from any system component. Would this include the common emanation of foul odors from a vent pipe on a dosing tank?

COMMENT B: Emanation of foul odors does not constitute a malfunction. Required vents on pump tanks, vents required by plumbing inspectors, and standard house vents can create odor problems; however, none of these are caused by a malfunction.

RESPONSE: Emanation of foul odors from a vent pipe connected to a dosing tank, plumbing line or other system component does not automatically constitute a septic system malfunction. Therefore, the Department agrees that this criterion should not be used to identify a malfunctioning system. N.J.A.C. 7:9A-3.4(a) has been modified accordingly.

COMMENT A: Allowing a homeowner to make emergency repairs without prior approval is senseless. Permitting a homeowner to install a new system without consultation of the local health department will worsen the situation as many times as it will alleviate the potential health hazard. A much more appropriate method of "emergency repairs" is to pump the septic tank of its contents and implement conservative water usage measures until proper repairs can be made. Inclusion of this "escape clause," as written, will result in widespread abuse of the law in addition to abuse of the environment and human health on a longer timescale. This section should be deleted or changed dramatically in its final draft.

COMMENT B: The term "emergency repair" needs to be defined. Other than having a tank pumped, what type of repairs would have to be done on a weekend that could not wait until Monday when a permit could be issued? The homeowner needs protection against hit-and-run repair contractors who use band aid approaches.

COMMENT C: In many cases, an immediate malfunction can be corrected by pumping the tank. Therefore, the words "suddenness" and "severity" should be deleted from N.J.A.C. 7:9A-3.4(b)2.

COMMENT D: N.J.A.C. 7:9A-3.4(b)1 and 2 provide a loop-hole which will encourage all repairs to be of the emergency nature and done on weekends when the health department personnel are not working. Having the tank pumped would provide adequate relief for the weekend.

COMMENT E: Allowing repairs without supervision completely undermines the attempts of local health departments to upgrade failing septic systems and oversee their repair. Placing the burden on the local health department to go in after a repair was made and attempt to obtain compliance is not feasible.

COMMENT F: Property owners with existing septic systems have been the most flagrant abusers of present review and inspection requirements. It will be extremely difficult for the board of health to enforce the inspection requirements if the "emergency repair" provision of N.J.A.C. 7:9A-3.4(b)2 is adopted.

RESPONSE: The Department agrees that pumping out of the septic tank, dosing tank or other system component will alleviate any immediate threat to public health caused by an overflowing septic system and that "emergency repairs" without prior health department approval are unnecessary and counterproductive. N.J.A.C. 7:9A-3.4(b) has been modified accordingly.

COMMENT: The term "qualified septic system installer" as provided in N.J.A.C. 7:9A-3.4(b)3 needs to be defined.

RESPONSE: The Department agrees that the term "qualified septic system installer" should not be used unless the required "qualifications" have been established or defined in the rules. The term "qualified" has therefore been deleted.

COMMENT: A definition is needed for the term "relatively minor" as referring to alteration under N.J.A.C. 7:9A-3.4(b)3.

RESPONSE: Due to the diversity of situations which are encountered, the term "relatively minor" cannot be readily defined and the exercise of professional judgment or discretion on the part of the authorized agent will be required. To clarify the intent of this provision, a stipulation has been added that plans and specifications prepared by a septic system installer shall be of such a nature as not to involve the "practice of engineering", as defined in N.J.S.A. 45:8-28(b).

COMMENT: The requirement that repairs to existing systems be designed by a professional engineer will slow down an already successful procedure in repairing malfunctioning systems by adding costs and time delays. The experience of the administrative authority along with a reputable septic contractor is and has been a vital tool in gaining conformance by eliminating non-conforming systems and installing systems that are in conformance when possible, or close to when not.

RESPONSE: The requirement for a design prepared by a professional engineer applies to alterations and not to repairs. The term "repair" is defined at N.J.A.C. 7:9A-2 in such a manner that it generally would not

involve the practice of engineering as defined at N.J.S.A. 45:8-28(b). The term "alteration" is defined at N.J.A.C. 7:9A-2 in such a manner that it generally would involve the practice of engineering. N.J.S.A. 45:8-1 et seq. requires that only a licensed professional practice engineering. The Department cannot adopt rules which conflict with this statutory requirement.

COMMENT: Will there be a program for registration and/or certification of septic system installers?

RESPONSE: N.J.A.C. 7:9A-3.17(b)4 provides for the registration of septic system installers by the Department. The proposed rules contain no provision for certification of septic system installers.

COMMENT: With regard to N.J.A.C. 7:9A-3.9(b)4, it is noted that in the Pinelands Area, pressure dosing disposal systems are utilized to reduce nitrate-nitrogen concentration in order to meet ground water quality standards.

RESPONSE: The Department does not recognize septic systems utilizing pressure dosing as being designed to provide or being capable of providing wastewater treatment which is significantly superior to that provided by more conventional types of septic systems.

COMMENT: N.J.A.C. 7:9A-3.4(c) allows for the use of holding tanks to correct problems of malfunctioning septic systems. The rules define an individual subsurface sewage disposal system as a system which is designed and constructed to treat sanitary waste in a manner that will retain most of the settled solids in a septic tank and to discharge the liquid effluent to the disposal field. Since there is no mention of "holding tanks" in this definition, they should not be approved.

RESPONSE: The Department disagrees with this comment. The definition of an "individual subsurface sewage disposal system" at N.J.A.C. 7:9A-2 does not in any way limit or define the scope of the rules.

COMMENT: Will the Department review applications made pursuant to N.J.A.C. 7:9A-3.4(c) on a timely basis?

RESPONSE: The Department reviews treatment works applications within a time-frame of 90 days or less in accordance with the requirements of the Rules and Regulations Governing Ninety Day Construction Permits, N.J.A.C. 7:1C. The time required for review in the case of a permanent holding tank proposed to correct a malfunctioning septic system would generally not be an issue because N.J.A.C. 7:9A-3.4(b)4 allows the administrative authority to approve a holding tank for temporary use without prior approval by the Department.

COMMENT: It will be helpful if "assurances" as provided in N.J.A.C. 7:9A-3.4(d)5 is defined to include posting of cash or surety bond where appropriate and recording a document with the Registry of Deeds, giving the public notice of the use of the tank and the conditions under which such use is permitted.

RESPONSE: Such additional assurances could be required by the administrative authority or the Department where appropriate but are not considered to be necessary in all cases as are the other requirements listed in N.J.A.C. 7:9A-3.4(d).

COMMENT: Who is responsible for establishing the facts required at N.J.A.C. 7:9A-3.4(d), the applicant or the professional engineer?

RESPONSE: It is the responsibility of the administrative authority and Department to determine that these facts have been adequately substantiated by the applicant or the applicant's agent. This substantiation may in some cases be judged to require certification by a licensed professional engineer. In other cases, one or more of the pertinent facts may be self-evident.

COMMENT: N.J.A.C. 7:9A-3.4(d)2 should be changed to read: "Due to site conditions, lot configuration, *total costs* or other constraints, repair or alteration of the system in a manner that will eliminate the cause of the malfunction is *by practical means* not feasible". This will avoid confusion concerning financial feasibility.

RESPONSE: The Department disagrees with this comment. The term "total costs" does not define this consideration as completely as "financial circumstances". For example, total costs may be low, but the owner of a system may still be unable to pay due to extreme poverty. Also the words "by practical means" are highly subjective and add little to the meaning of "not feasible".

COMMENT: The professional engineer should be the person responsible for certifying all data which is submitted to the local board of health regardless of the employees or types of professional engineering employees he hires (for example, soil scientists etc.).

RESPONSE: The Department agrees with this comment. A statement has been added at N.J.A.C. 7:9A-3.5(c) clarifying the need for a licensed professional engineer to certify the accuracy of all data used in the design.

COMMENT: N.J.A.C. 7:9A-3.5(b) should be revised to read:

The administrative authority or its authorized agent shall issue a permit to construct, install or alter an individual subsurface sewage disposal system when an application has been submitted as prescribed in (c) below and, based upon a review of the application submitted, the location and design of the proposed system are found by the administrative authority or its authorized agent to be in conformance with the requirements of this chapter.

This changes the administrative authority's directive regarding the issuance of permits from negative to positive.

RESPONSE: The Department disagrees with this comment. The change suggested is inconsistent with the intent of the provision as well as the enabling statute (see N.J.S.A. 58:11-23 et seq.). Because the statute allows a municipality to establish more stringent requirements than those prescribed in the Department's standards, it is incorrect to state that the administrative authority must issue a permit for any application which meets the requirements of N.J.A.C. 7:9A. Even where an application meets all of these requirements, a permit may be denied by the administrative authority due to a failure of the application to meet additional requirements established by local ordinance and not mentioned in N.J.A.C. 7:9A.

COMMENT: According to N.J.A.C. 7:9A-3.5(c), it appears that detailed system designs for individual lots will be required before either local authorities or the Department grant certifications for subdivisions of any size. Is this correct?

RESPONSE: No, this statement is incorrect. There is no basis in this rule for any certification granted by an administrative authority other than the certification of an individual subsurface sewage disposal system serving a realty improvement which is granted as prescribed at N.J.A.C. 7:9A-3.5, based upon compliance with all requirements of this chapter. Preliminary reviews or other determinations which may be carried out by boards of health or health departments as part of the requirements for a subdivision approval granted by a planning board should not be confused with certification of an individual septic system design which is referred to in N.J.A.C. 7:9A-3.5. Such preliminary reviews are discussed at N.J.A.C. 7:9A-3.18(h). Certifications issued by the department pursuant to N.J.S.A. 58:11-25.1 are not based upon compliance with the requirements of this chapter and, as prerequisites to subdivision approvals, would generally be obtained prior to certifications by the administrative authority.

COMMENT: With regard to N.J.A.C. 7:9A-3.5(c)1, the use of United States Geologic Survey topographic quadrangle map on an individual plan is inappropriate due to scale of 1 inch = 2000 feet and large contour intervals. Moreover, the inherent inaccuracies of the United States Department of Agriculture Soil Maps limit their usefulness. It may be appropriate however, to list the soil type which is shown on the map.

RESPONSE: The Department disagrees with this comment. The U.S. Geological Survey topographic quadrangle maps and U.S. Department of Agriculture soil survey maps are required only to serve as "key maps" showing the location and boundaries of the property to be served by the proposed septic system and not to be used as a source of site specific topographic or soils information.

COMMENT: The application required pursuant to N.J.A.C. 7:9A-3.5 should require, at a minimum, the signature and impression seal of a professional engineer, a reference to the boundary survey, and by whom the survey was prepared.

RESPONSE: The Department agrees with this comment. N.J.S.A. 45:8 defines the practices of engineering and land surveying to include work such as that required in N.J.A.C. 7:9A-3.5 and requires that all such work be carried out by licensed individuals. A statement has been added at N.J.A.C. 7:9A-3.5(c) to clarify the need for these licenses.

COMMENT: In addition to design information, N.J.A.C. 7:9A-3.5 requires that the plan must show boundaries of lots, setbacks from property lines, location of stream encroachment boundaries, and boundaries of wetlands lines. All of these are professional land surveyor functions.

RESPONSE: The Department agrees in part with this comment. Preparation of maps showing the location of lot boundaries and setbacks from property lines falls within the practice of land surveying as defined by N.J.S.A. 45:8-28(e). A statement has been added to N.J.A.C. 7:9A-3.5(c) to clarify the need for a licensed land surveyor to perform certain aspects of the required work.

COMMENT: The site plan required in N.J.A.C. 7:9A-3.5(c)2 should depict the requisite features within a 100 foot radius instead of 150 feet to be consistent with the requirement for major subdivisions in N.J.A.C. 7:9A-3.18. A 100 foot radius is sufficient in order to ensure that minimum

required separation distances are maintained as prescribed in N.J.A.C. 7:9A-4.3.

RESPONSE: The Department disagrees with this comment. The requirements of N.J.A.C. 7:9A-3.18 are in addition to the requirements of N.J.A.C. 7:9A-3.5(c) and in no way conflict with the requirement in N.J.A.C. 7:9A-3.5(c)2 for a site plan with 150 foot radius around the proposed system. A 150 foot radius is necessary to insure compliance with N.J.A.C. 7:9A-4.3 because that section requires a 150 foot separation between seepage pits and water supplies and because 100 foot separation distances between disposal fields and water supplies may be increased where excessively coarse soils or fractured rock substrata are encountered.

COMMENT: The requirement at N.J.A.C. 7:9A-3.5(c)2iv of two foot contours on an existing property is rather extreme and an unbearable expense for a homeowner who has to repair or alter his system.

RESPONSE: The Department disagrees with this comment. The requirement for delineating two foot contours on site plans applies to alterations but not to repairs. In the case of an alteration, it may be possible to re-use the original site plan with appropriate modifications. Where no information is available relative to its topography, it is appropriate that such information be required since topography is an essential consideration in septic system design.

COMMENT: The provisions in N.J.A.C. 7:9A-3.5 requiring data including a topographic map with a two foot contour interval will substantially increase the cost in those instances where a topographic map is not available. For most conventional systems, such detailed data is not necessary and provisions should be given for allowing such plat details. Criteria may include allowing for waivers where the slope does not exceed 10 percent.

RESPONSE: The Department disagrees with the comment. A detailed knowledge of site topography is essential for the design of septic systems. Since the same contour interval (two foot) is required regardless of slope, the level of detail as reflected in the spacing of contour lines is greatly reduced on relatively flat sites where topography is less critical.

COMMENT A: The requirements set forth at N.J.A.C. 7:9A-3.5(c)2x and xi are an extreme hardship for individual lot owners who are not within major subdivisions. To determine a stream encroachment line or a wetland on an individual lot requires an immense amount of engineering work or wetland delineation work. The requirements for wetlands and wetland soils will prohibit the construction of a septic system within a wetland area, and, with regard to a stream encroachment boundary, the requirement that a septic system be located at least 50 feet from a water course will in most cases insure that it is not within the stream encroachment area. However, it would have to be the responsibility of the design engineer and administrative authority to determine if there is a possibility that the flood plain and encroachment line is beyond the 50 foot distance.

COMMENT B: N.J.A.C. 7:9A-3.5(2)xi requires the depicting of boundaries of any wetland areas or transition zones within the boundaries of the property. Some of the proposed transition zones in the New Jersey Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq. could be as much as 150 feet, meaning that the wetlands area could be as much as 150 feet away from the property where a septic system is proposed. This can create problems since one will have to delineate a wetlands area that is not on one's property. The information required to submit a letter of interpretation involves an outbound survey, topographic survey, etc. This will involve a lot of work on someone else's property requiring the obtaining of rights of entry and possibly alteration of the other property as well.

RESPONSE: The Department disagrees with this comment. The Division of Coastal Resources within the Department has established rules for floodplain and freshwater wetlands delineation; such delineations are not within the scope of these rules. The Department has set procedures for these delineations and the information is available to the public.

COMMENT: Submitting all soil borings within 150 feet of the disposal area is impractical. When completing a site evaluation for a septic system, not all soil borings are logged.

RESPONSE: N.J.A.C. 7:9A-5.2(b) requires a minimum of three soil borings where soil borings are substituted for a profile pit. N.J.A.C. 7:9A-3.5(c)2ix requires that the location of the soil borings be shown on the site plan. N.J.A.C. 7:9A-3.5(c)3 requires the submission of soil logs prepared as prescribed in N.J.A.C. 7:9A-5.3. There is no requirement in the proposed rules that information be submitted regarding borings other than those which are required in the sections referenced above.

COMMENT: The word "boundaries" in N.J.A.C. 7:9A-3.5(c)2xi should be replaced by the term "State approved delineations."

RESPONSE: The Department agrees with this comment. The phrase "State approved" better defines the type of information which is being required. N.J.A.C. 7:9A-3.5(c)2xi has been modified accordingly.

COMMENT: N.J.A.C. 7:9A-3.18(c)9 should be changed to require the location of all "State approved" stream encroachment boundaries and 100-year flood plain boundaries which fall within the boundaries of the subdivision.

RESPONSE: The Department agrees with this comment. The phrase "State approved" better defines the type of information which is being required. N.J.A.C. 7:9A-3.18(c)9 has been modified accordingly.

COMMENT: N.J.A.C. 7:9A-3.5 should require information relating to seasonally high water table.

RESPONSE: N.J.A.C. 7:9A-3.5 does require information regarding the seasonally high water table. N.J.A.C. 3.5(c)4 requires the soil suitability class which is an indication of the depth to regional or perched zones of saturation. N.J.A.C. 7:9A-3.5(d) requires the completion of forms provided in Appendix B. Item 4 of Form 2b indicates the depth to the top of the regional or perched zone of saturation which corresponds to the seasonally high water table.

COMMENT: The administrative authority must be given more than 15 days prior notice to witness soil evaluations and testing procedures. Local staffs cannot be easily bolstered in times of heavy observation demands, and since site evaluators do not have to be qualified or certified, the administrative authority must have at least 30 days prior notice to adequately assign staff and schedule observations.

RESPONSE: The Department disagrees with this comment. All aspects of septic system design including the site evaluation fall within the practice of engineering as defined in N.J.S.A. 45:8-28(b) and thus the accuracy of this data is the responsibility of the engineer who designs the system. Statements have been added at N.J.A.C. 7:9A-3.5(c), 5.1(b) and 6.1(k) to clarify this requirement. The lack of certification to ensure the qualifications of site evaluators is thus not a valid argument for extending the amount of prior notice required to facilitate witnessing of soil evaluation by the administrative authority.

COMMENT: If licensed persons are required to witness the soil evaluation and testing, the person conducting the tests or reading the soil logs should also be licensed, not merely someone who works under an engineer's license.

RESPONSE: The Department disagrees with this comment. All site evaluation work which is performed in support of the engineering design and the application must be submitted by a licensed professional engineer who takes responsibility for the accuracy of the work which has been performed. Since the professional is taking the responsibility to ensure that all evaluation work is performed properly, it is not necessary to license the individual persons who may perform the various segments of the site evaluation.

COMMENT A: The 15 day prior written notice requirement for witnessing soil evaluation or testing procedures in N.J.A.C. 7:9A-3.6 should be extended to 60 days. The 15 day notice has been a source of much abuse by engineers who are aware of the heavy workload of witnesses and use this to accomplish unsupervised tests.

COMMENT B: N.J.A.C. 7:9A-3.6 is unnecessary and should be deleted. Professional engineers and others doing site evaluation are well qualified to do so; such duplicative review only increases the cost of the system. Additionally, the administrative authority may not have the staff or ability to witness every pit, boring and percolation test.

COMMENT C: At the very least, the "15 business day" prior written notice requirement in N.J.A.C. 7:9A-3.6 should be reduced to three days as is the case with building inspections.

COMMENT D: The administrative authority should be allowed 30 days written notice to witness soil evaluation. This is necessary since additional tests and time will be required to witness same.

COMMENT E: Due to increased responsibility placed upon local health departments under these rules, the notice requirement under N.J.A.C. 7:9A-3.6(a) should be extended to 30 days or at least 15 working days.

COMMENT F: There are obvious defects in the requirement at N.J.A.C. 7:9A-3.6(b) which provides that the failure of the administrative authority to be present after 15 days written notice of a test constitutes a waiver of the testing requirement. In the busy season of January through April, the inspection resources will be severely pressed. This may come about through natural demand or the contrivance of developers. The public health should not suffer as a result. Additionally, such a waiver could subject local boards to severe legal liability should the system later fail, since the events giving rise to the waiver could be considered "ministerial" in nature. Therefore, this provision should be deleted.

COMMENT G: The notice required at N.J.A.C. 7:9A-3.6 should have to be by certified mail or hand delivery and the time for granting an appointment should be extended to a minimum of 30 days. If the Department wants 15 days, they should provide inspectors to do the witnessing especially during the busy season or when local health agencies are short of staff due to emergencies, sickness, vacation or inability to hire qualified people.

RESPONSE: Many of the comments received regarding the prior notification requirement for soil evaluation and testing indicate a misunderstanding regarding the purpose and intent of the requirement. The authority given to health departments to require 15 days prior written notice for the purpose of witnessing soil evaluation and testing procedures is intended as an added safety factor in assuring the accuracy of soil evaluation and testing data. Due to inherent staff and scheduling constraints, this authority must be exercised with some discretion on the part of the administrative authority. The witnessing requirement is not founded on the assumption that all engineers performing these tests or all persons working under their supervision are incompetent or dishonest and must therefore be closely supervised by a representative of the administrative authority. The requirement for an engineering license is the primary means for controlling the qualifications and conduct of engineers and persons operating under their supervision. In issuing a certification, the administrative authority relies upon the engineer to certify the accuracy of soil evaluation and testing data and assumes no responsibility for the accuracy of such data regardless of whether the procedures were witnessed.

The requirement for prior notification can result in delays in the scheduling of work and associated negative economic impact on the building industry. The 15 day requirement for this notification was chosen based upon consideration of benefits to the public resulting from added protection for public health and environmental quality and the potential adverse economic impact resulting from associated delays in completion of necessary work. Comments from health officials indicating that greater notice is required must be balanced with comments from engineers indicating that even the proposed 15 day requirement is excessive or unnecessary.

To further clarify the meaning of N.J.A.C. 7:9A-3.6, the wording has been modified to indicate that the 15 day prior written notice refers to 15 business days counted from the day on which the notification is received by the administrative authority.

COMMENT: N.J.A.C. 7:9A-3.6 should be clarified to indicate the criteria for waiving the witnessing requirements.

RESPONSE: The witnessing requirement is intended to be optional for the administrative authority. If specific criteria for waiving the witnessing were established, this could lead to problems since there is no guarantee that an administrative authority would have staff available to witness all tests which did not meet the criteria for testing to be waived.

COMMENT: Can a municipality increase the notice requirement in N.J.A.C. 7:9A-3.6 beyond 15 days?

RESPONSE: The ability to provide an inspector upon receiving 15 days prior written notice, in cases where witnessing will not be waived, is a minimum standard of performance which is placed upon the administrative authority. Since increasing the amount of prior notice required would result in a more stringent standard, a municipality may increase the notice requirement in N.J.A.C. 7:9A-3.6(b).

COMMENT: Why is there no requirement that a professional engineer certify any of the soil testing information?

RESPONSE: N.J.S.A. 45:8 requires that a licensed professional engineer carry out or oversee all engineering work. Since soil testing to be used as a basis for a septic system design is considered as being within the practice of engineering, it must be certified by a licensed engineer even if this requirement is not explicitly stated in the Department's standards. To clarify this requirement, a statement has been added to N.J.A.C. 7:9A-3.5(c).

COMMENT: The administrative authority should be required to witness all permeability tests not only those performed in-situ. If this is not possible, split samples should be required.

RESPONSE: The Department disagrees with this comment. Witnessing should not be an absolute requirement, but rather an option which the administrative authority may exercise at its discretion and in a reasonable manner, such as with the requirement for 15 days or less prior written notification. N.J.A.C. 7:9A-6.1(g) gives the administrative authority the option to collect and test replicate samples to verify results in the case of the tube permeameter or soil permeability class rating tests which are not normally conducted in the field.

COMMENT: How is the Department going to train the personnel of the boards of health to know what to look for or how to classify soils in the field?

RESPONSE: N.J.A.C. 7:9A-3.17 establishes a registration program for health officials and others involved in site evaluation, design, construction, inspection and approval of septic systems. The Department will use this registration as a means of assessing training needs and for disseminating information regarding the availability of training.

COMMENT: Will township health department officials be required to witness tube permeameter tests if saturation goes beyond eight hours? In other words, will they be required to come back to the engineer's office to witness the final reading?

RESPONSE: No, the witnessing requirements prescribed at N.J.A.C. 7:9A-3.6 apply only to procedures carried out in the field, which in the case of the tube permeameter test, is limited only to sample collection.

COMMENT: The administrative authority may require only in situ permeability testing rather than allowing the site evaluation people to bring the samples back to their labs to do the required testing. There may be problems in that the administrative authority is going to have to relinquish some of their authority to review the testing, though they will have the opportunity to take samples themselves and have them tested. Some mutual respect between the design engineer's site evaluation people and the administrative authority is going to be necessary.

RESPONSE: The Department agrees with this comment. In implementation of these rules, there will be a need for mutual understanding and cooperation between health officials reviewing applications and engineering staff performing various test procedures in connection with the applications. These rules set certain limits and standards for performance, but where discretion and judgment are required, the Department must rely on the training, abilities and ethics of our licensed professionals.

COMMENT: N.J.A.C. 7:9A-3.7 must be amended to require a time frame (that is, business days) within which the administrative authority must either approve, approve with conditions, or reject modifications or plans.

RESPONSE: Such a time frame is specified at N.J.S.A. 58:11-28.

COMMENT: The term "design engineer" is not defined. What is the intent of N.J.A.C. 7:9A-3.7(a)?

RESPONSE: The Department agrees that the use of this term without a definition is questionable. The term "design engineer" has been replaced by the term "professional engineer" which is defined at N.J.A.C. 7:9A-2.

COMMENT: It is requested that N.J.A.C. 7:9A-3.8 be revised to "The administrative authority shall not approve an application to construct, install or alter an individual subsurface sewage disposal system within the Pinelands Area (as defined in N.J.S.A. 13:18A-1 et seq.) until the Pinelands Commission has issued a Notice of Filing, Certificate of Filing, Certificate of Compliance, Development Approval, or a written statement that no approval from the Pinelands Commission is required." The change is requested in order to include all of the Commission documents which authorize the administrative authority to issue approvals.

RESPONSE: N.J.A.C. 7:9A-3.8 has been modified in accordance with this request which was made by the Pinelands Commission.

COMMENT: The requirements for treatment works approvals (see N.J.A.C. 7:9A-3.9) need to be explained with greater detail and predictability. Apparently, the approval will be required for all pump septic systems and many other systems and yet the standards for the treatment works approval are not specified.

RESPONSE: The Department agrees with this comment. The statement that all septic systems using pumps will require a treatment works approval is apparently based upon a misinterpretation of N.J.A.C. 7:9A-3.9(b)5 which indicates that treatment works approval is required for systems using a pump to transport sewage from the building served to the septic tank, which is a relatively uncommon practice. N.J.A.C. 7:9A-3.9(b)5 does not apply to the vast majority of systems using pumps which are those in which the septic tank effluent is being pumped to the disposal field. There is no purpose to be served by including standards for treatment works approval in these rules since these rules deal only with certifications issued by the local board of health or health department for conventional septic systems. The rules concerning issuance of treatment works approval by the Department are set forth at N.J.A.C. 7:14A-12.

COMMENT: Treatment works approval should only be required when the actual gallonage will exceed 2,000 gallons per day. Alternate technologies such as pumps and water saving devices should not trigger the NJPDES permit requirement if the gallonage output is below 2,000 gallons. The cost of securing and maintaining a NJPDES permit will limit the development and growth of rural and emerging areas.

RESPONSE: A NJPDES permit is not required for single family homes with individual subsurface disposal systems. Therefore, the impact of the NJPDES requirement will not be felt by the potential individual homeowner.

COMMENT: N.J.A.C. 7:9A-3.9(b)3 should be modified to specifically exclude aerobic treatment from any suspicion of "unproven technology". Aerobic treatment is based on extended aeration which is derived from the activated sludge process (a technology known, practiced, and demonstrated for over 50 years in the United States). Individual aerobic units have been performing satisfactorily in New Jersey for over 10 years.

RESPONSE: The Department disagrees with this comment. The technology involved in aerobic treatment units has been proven as a useful and effective pretreatment process for sanitary wastewater which will be discharged into a surface water body. The usefulness or possible adverse effects of this technology as a form of pretreatment prior to subsurface disposal of sanitary wastewater has never been proven to the satisfaction of the Department.

COMMENT: Delete the phrase "otherwise experimental in nature" from N.J.A.C. 7:9A-3.9(b)3 and replace it with "an experimental system" since this term is defined in the rules.

RESPONSE: The term "experimental system" is defined at N.J.A.C. 7:9A-2 with reference intended to the "new technologies" discussed in N.J.A.C. 7:9A-3.11. The Department agrees that the terms used throughout the rules should correspond to those defined in N.J.A.C. 7:9A-2. To correct this discrepancy, the title of N.J.A.C. 7:9A-3.11 has been changed from "new technologies" to "experimental systems".

COMMENT: Is the Pinelands Ruck septic system acceptable and able to be approved locally or is it unproven technology and subject to approval by the Department?

RESPONSE: When used in the Pinelands Area as a means of providing wastewater treatment in order to meet state ground water quality standards, the "Ruck" treatment system is subject to the requirement for a treatment works approval as indicated at N.J.A.C. 7:9A-3.9(b)4. In other cases, the "Ruck" system may be approved by the administrative authority provided that it contains all the required components of a conventional septic system, all of the required components conform to the Department's standards, and provided that its ability to function adequately does not depend upon components or processes not provided for in the Department's standards.

COMMENT: Since effluent discharge limitations are the basis for all designs in the Pinelands, do all applications in the Pinelands have to be directed to the Department for a treatment works approval pursuant to N.J.A.C. 7:9A-3.9(b)4?

RESPONSE: Compliance with ground water quality standards rather than effluent discharge limits is the basis for approval of subsurface sewage disposal systems in the Pinelands Area. Even a conventional septic system with no special nitrogen removal capability can be approved in the Pinelands Area provided that the lot size is adequate to provide an adequate volume of natural recharge to dilute the septic tank effluent and thereby maintain average pollutant concentrations in compliance with applicable ground water quality standards. Only those systems which rely upon advanced treatment processes to remove pollutants prior to discharge on lots which are otherwise too small to provide the required dilution would require a treatment works approval as stated in N.J.A.C. 7:9A-3.9(b)4.

COMMENT: Treatment works approvals for systems that do not have gravity feed will only add to the tedious process of septic system applications.

RESPONSE: A treatment works approval is required in those cases where sewage will not flow by gravity from the building served to the septic tank. Generally, a sewage pump would not be necessary since the septic tank can almost always be placed at an elevation which is lower than the invert of the building sewer. In cases where the disposal area must be at a higher elevation, the septic tank effluent can be pumped to the disposal field and this would not require a treatment works approval. A treatment works approval is required in cases where a grinder pump is used to convey sewage to the septic tank because conventional septic tanks are not designed to function under this condition.

COMMENT A: Exceptions should be made to allow the administrative authority to approve the use of systems which employ the use of a small pump (that is, a grinder pump).

COMMENT B: Why are sewers which do not flow by gravity included in N.J.A.C. 7:9A-3.9(b)5?

COMMENT C: Requiring an applicant to obtain Departmental approval for pump systems is overly cumbersome. Septic systems incorporating pumps should be subject to local review. The designs for pump systems are not so complex as to warrant mandatory Departmental review.

RESPONSE: The Department disagrees that exceptions should be made to allow the administrative authority to approve grinder pumps for the purpose of conveying sewage to the septic tank. When sewage is ground relative to the normal rate of sewage generation, conditions for settling and removal of solids which are provided in a conventional septic tank may be inadequate to prevent excessive solids carry-over into the disposal field which will ultimately lead to excessive clogging and hydraulic failure of the disposal field. Provisions in the rules for the use of a pump to convey septic tank effluent to the disposal field permit a high degree of flexibility in the elevation of the septic tank relative to other system components. Since it is very rarely a necessity to use a sewage pump, standards for their design and approval by the administrative authority have not been provided in these rules. It appears that several of the individuals objecting to the requirement for treatment works approval for sewage pumps have done so because they have confused the relatively common practice of pumping septic tank effluent which can be approved by the administrative authority with the relatively uncommon practice of pumping raw sewage, which does require treatment works approval.

COMMENT: In general, the rules are confusing regarding the interrelationship of NJPDES rules to septic systems and drywells. Perhaps the NJPDES rules regarding septics and drywells should be directly incorporated within these rules or be carefully coordinated.

RESPONSE: Drywells as defined at N.J.A.C. 7:9A-2 are not regulated under N.J.A.C. 7:9A and are mentioned only from the standpoint of minimum separation distances from regulated septic system components or as means of diverting miscellaneous hydraulic loading other than sanitary sewage away from the septic system. There is no need to deal more extensively with the subject of drywells in these rules since drywells are not within the regulatory scope of N.J.A.C. 7:9A. Relevant provisions from the NJPDES rules dealing with septic systems have been directly incorporated into N.J.A.C. 7:9A at N.J.A.C. 7:9A-3.10(a) and (b).

COMMENT: N.J.A.C. 7:9A-3.10(c) should read:

When the proposed system does not fall into either of the categories outlined in (a) or (b) above, the administrative authority shall direct the applicant to apply to the Department for a NJPDES permit.

RESPONSE: The Department acknowledges the incorrect cross-reference pointed out by this comment. This provision has been corrected to eliminate any confusion caused by this typographical error.

COMMENT A: To promote installing dentrification augmentation of aerobic treatment, the Department should establish a quicker permit application review period such as 20 days.

COMMENT B: Requirements to obtain permits to use new technologies should not be so stringent that nobody would even bother to try to design a new system. Therefore, there should be some flexibility by the Department with regard to new technologies.

RESPONSE: Procedures and requirements for treatment works approval issued by the Department are governed by the Rules and Regulations Governing Ninety Day Construction Permits (see N.J.A.C. 7:1C) and by N.J.A.C. 7:14A-12 and are not within the regulatory scope of N.J.A.C. 7:9A.

COMMENT: Are existing holding tanks grandfathered from Departmental approval?

RESPONSE: As stated at N.J.A.C. 7:9A-3.3(a), existing waste disposal systems may continue to be used without being subject to the requirements of N.J.A.C. 7:9A, provided that they are not malfunctioning and provided that they conformed with requirements in effect at the time that they were installed. Prior to the effective date of N.J.A.C. 7:9A, there was never a basis in regulation for approval of a holding tank other than issuance of a treatment works approval by the Department as required at N.J.A.C. 7:14A-12.2.

COMMENT A: The 60 day time limit for holding tank usage is not reasonable. In consideration of these rules, a holding tank might be the only viable alternate for waste water until final NJPDES permits are issued. Provided the holding tank is properly installed and equipped with alarm and monitoring devices, there is no reason why the holding tank alternative should be precluded as a permanent use. Holding tank usage is also very common in the construction industry. Holding tanks are routinely used for temporary field office sites and major construction sites such as bridges, power plants, etc.

COMMENT B: Limited use of holding tanks should be permitted. The administrative authority should be authorized to approve the permanent use of a holding tank to serve a commercial or industrial establishment where the design flow of sanitary sewage is expected to be less than or

equal to 2,000 gallons per day. In these cases assurances shall be given that the tank will be emptied and the contents disposed of in a manner which complies with all applicable local, State and Federal ordinances, statutes and regulations. As a means of confirmation, the administrative authority shall require the installation and monitoring of a water meter, evidence of dates and quantities of sewage, the name of the facility to which the sewage is taken, as well as any other reasonable information that is found to be necessary.

The administrative authority should also have authority to approve the use of a sewage holding tank in lieu of an individual subsurface sewage disposal system, as a temporary means of waste disposal for a realty improvement that is not part of a major subdivision where all of the following criteria are satisfied:

1. Proof that the work required for its elimination is on an approved schedule and is expected to be completed within one year;
2. The tank capacity is such to accommodate 150 percent of the expected design flow as determined by the pumping frequency;
3. An alarm is utilized to signal when 90 percent capacity level is reached;
4. A backflow prevention valve is used;
5. The tank is made of steel with an epoxy coating that has passed a 24 hour air pressure test;
6. A written contract has been signed with two licensed waste haulers, one to be used as a back-up;
7. A performance guarantee (bond or cash) is filed with the administrative authority equal to the cost of a one year service contract; and
8. A plan is submitted to the administrative authority showing the tank's location and the surrounding area for 100 feet.

The use of holding tanks in these instances would allow new construction to take place once sufficient safeguards are in place. The proposed standards only address alterations and malfunctions of existing systems.

COMMENT C: The period of time that a holding tank may be used as a temporary means of waste disposal should be increased from 60 to 90 days.

RESPONSE: The Department disagrees with these comments. Holding tanks are treatment works requiring treatment works approval by the Department pursuant to N.J.A.C. 7:14A-12. Except when used in connection with malfunctioning septic systems, holding tanks are not permitted by and are outside of the regulatory scope of N.J.A.C. 7:9A. Additionally, even considering the criteria outlined in this comment, the use of holding tanks in lieu of an approved individual subsurface sewage disposal system is not an environmentally safe long term alternative to subsurface disposal. In the case of a malfunctioning septic system, 60 days is considered an adequate time in which to make repairs or alterations which will be approved by the administrative authority. Holding tanks used for new construction, whether permanent or temporary, are adequately regulated by N.J.A.C. 7:14A-12.

COMMENT: The use of holding tanks should never be permitted for any purpose or for any length of time where new and/or existing construction is concerned.

RESPONSE: The Department agrees that holding tanks are generally not an economically viable method of waste disposal, but the statement that they should never be approved under any circumstances is unrealistic. In the case of a malfunctioning septic system serving an existing home or commercial building, a holding tank may be the only possible way to correct the problem without abandoning the use of the building. The restrictions placed upon holding tank use by N.J.A.C. 7:9A-3.12 and the requirements for obtaining a treatment works approval pursuant to N.J.A.C. 7:14A-12 are considered adequate to prevent the widespread use of holding tanks in situations where such use is inappropriate.

COMMENT A: N.J.A.C. 7:9A-3.13 should have an additional requirement that the subsurface sewage disposal system be installed before the building itself is constructed in order to assure that the septic system can actually be installed as designed. There have been cases where the soil log was not typical of what was found upon excavation. If the system was put in first without problem, the builder can proceed with the house plans. If the system cannot be put in as designed due to a rock ledge for example, then the proposed house location may have to be moved, or the house damaged if blasting is required, or the plumbing plans changed to meet new circumstances. The local board of health should be authorized to grant a variance if a builder has a special reason to construct in reverse order. The new standards proposed for two soil logs may reduce but not eliminate this possibility.

COMMENT B: Local boards of health sometimes encounter situations where, upon the start of construction of the septic system, the prior testing for such things as permeability, seasonal high groundwater and impervious formations proves to be inaccurate. At times the problems are such that soil conditions are found to be wholly inappropriate for the use of a septic system. When this occurs, it is difficult to remedy, because the house is usually being constructed in advance of, or contemporaneous with, the septic system. The Department should consider having the septic system constructed first, with approval to go forward with the house to be granted only if the system is able to be properly installed.

RESPONSE: N.J.S.A. 58:11-25 requires that no building permit be issued nor shall the construction of a realty improvement begin until the board of health has certified that the proposed septic system is in compliance with the Department standards. The purpose of the statutes which authorize promulgation of these standards is to protect public health and environmental quality. The primary purpose of the suggested provision would not be to protect public health or environmental quality but rather to protect the person building a home from economic hardship which might result if it were subsequently not possible to construct a septic system in conformance with the Department's standards.

COMMENT: With regard to the certificate of compliance, N.J.A.C. 7:9A-3.13, there is concern that health officers may insist on certifications from licensed professional engineers that imply a guarantee. It must be understood that a certificate from a professional engineer must not be construed as a guarantee that a system will function in a satisfactory manner. The engineer does not supervise construction and is not on-site during the entire construction process. Additionally, professional liability insurance will not cover guarantees.

RESPONSE: This section requires a certification that the septic system as installed conforms to the Department's standards and to the approved design. There is no statement made that implies that this certification should be construed as a guarantee that the septic system will not malfunction and this point is clearly indicated at N.J.A.C. 7:9A-3.13(d).

COMMENT: If the administrative authority is to accept the sealed statement from the engineer, this will have to be established in advance so that the administrative authority can grant permission to backfill as required in N.J.A.C. 7:9A-3.13(c).

RESPONSE: N.J.A.C. 7:9A-3.13(a) states that the administrative authority may issue a certification of compliance based upon a professional engineer's certification which indicates that this is an option which may be chosen by the administrative authority. It follows, then, that such an arrangement must be agreed to in advance to prevent the system from being covered from view without the permission of the administrative authority.

COMMENT A: The expanded authority of engineers to conduct regulatory health department functions promotes the potential for regulatory conflict. To a much greater degree, engineers will have the ability to represent client applicants and conduct regulatory activities. There should be a clearer and more distinct separation of regulatory and private engineering functions to minimize the conflict potential.

COMMENT B: The proposed rules contain a provision for the design engineer to certify soil data and septic system construction in the absence of witnessing and inspection by the authorized agent. It is now common practice among the larger development companies to employ an engineering staff in house to provide direct engineering support. The direct employment of design engineers who are asked to certify data for their immediate employer establishes a direct conflict of interest. Independent witnessing and inspection should be the sole method for data certification.

RESPONSE: The Department disagrees with this comment. There is nothing new in the provision for certification to the board of health by a professional engineer who is not employed by the board. Such certification is allowed by the statute at N.J.S.A. 58:11-26 only if the particular board of health does not have a professional engineer within its employ (a provision which has been in effect since 1954). The code of ethics enforced by the New Jersey State Board of Professional Engineers and Land Surveyors requires nothing less than an accurate and objective evaluation of the proposed septic system's conformance with standards.

COMMENT: The designing engineer should have the final say as to whether or not a system is acceptable when a dispute arises involving the opinion of a sanitary inspector.

RESPONSE: The Department disagrees with this comment. Where the burden has been placed upon the authorized agent to certify compliance with standards, it is unreasonable to expect a licensed health officer or sanitarian to make such a certification unless he or she is personally convinced of its validity.

COMMENT: The administrative authority should guarantee that inspectors will conduct inspections in a timely fashion so that excavations

are not left open and that the contractor can build a septic system in a reasonably timely fashion.

RESPONSE: The burden must be shared by the administrative authority and the developer to schedule completion of work and inspections so that they coincide closely enough to avoid leaving components of the system uncovered and unprotected for long periods of time.

COMMENT: In theory, an operational and management plan where the owners of a septic system must verify proper maintenance procedures to the local health department, is good. In practice, this requirement will dramatically increase the amount of time local health departments must spend in the area of septic systems. This is of concern for the following reasons:

1. An already existing, and ever decreasing, supply of licensed sanitarians at the local level;

2. This activity represents another Department of Environmental Protection initiative that may have good intentions but without enforcement will only create confusion between all persons involved. The NJPDES system is besieged with fantastic permits but there is such inadequate follow-up that they are constantly reviewed without ever getting compliance from the first one. Case in point would be a review of NJPDES #0053031, issued for the defunct Fenemore Landfill in Roxbury Township; and

3. What recourse does a local health department have when the owner of a septic system does not comply with the maintenance requirements? Revoke the license? Excavate the system? Evict the persons in the building? Jail?

Unless the State is willing to provide funds and assistance to the local health departments for proper implementation of N.J.A.C. 7:9A-3.14, further review of this requirement is necessary.

RESPONSE: This comment acknowledges the value of an operation license to control the maintenance of septic systems but objects to the requirement because it will be difficult to enforce. The concern regarding the supply of licensed sanitarians is unclear since the only function mandated for the administrative authority to perform is a clerical function which does not require licensed sanitarians. The reference to enforcement of NJPDES permits is irrelevant. In cases where an individual fails to comply with the rules, the health department may assess penalties as provided by N.J.S.A. 58:11-39 or refer the individual to the Department for assessment of penalties pursuant to N.J.A.C. 7:9A-1.7. The Department may utilize funds available through the County Environmental Health Act (N.J.S.A. 26:3A2-21 et seq.) and other sources to provide assistance to local health agencies in implementation of these rules. It will be necessary also for local health departments to use available funding such as fees collected pursuant to N.J.S.A. 26:3-31(g)2.

COMMENT: If the Department would develop a software program for licensing and notification of license renewals, it would ease some of the administrative costs.

RESPONSE: The Department agrees that such a program may be useful where computers are available to maintain records. The Department will consider providing this and other appropriate technical support for local health agencies.

COMMENT: Are pre-existing systems grandfathered regarding inspection requirements?

RESPONSE: N.J.A.C. 7:9A-3.14(a) requires that the license to operate be issued at the time that a certificate of compliance is issued for septic system construction, installation or alteration. Existing systems would not be subject to this requirement unless they were altered after the operative date of these rules.

COMMENT: The definition of "direct supervision" should clearly state that only registered personnel may perform the work. The professional personnel are needed on-site, not in the office directing a "field technician" to carry out the work.

RESPONSE: The Department disagrees with this comment. There is nothing objectionable about a professional relying on the assistance of qualified technicians provided that the level of supervision provided is adequate to insure that the work is carried out properly. The definition of the term "direct supervision" is provided at N.J.A.C. 7:9A-2 to indicate that the licensed professional rather than the assistant performing the test procedures is responsible for the accuracy of the results.

COMMENT A: The commenter objects to N.J.A.C. 7:9A-3.14 because:

1. The manpower requirement will be overwhelming;
2. Enforcement will be difficult;
3. Such permits are not needed; and
4. The license may become a disincentive to needed alterations (because the owner of a "grandfathered" system will not want to be responsible for continued licensing).

COMMENT B: N.J.A.C. 7:9A-3.14 requires the issuance of a license to operate once a "certificate of compliance" has been issued. The certificate is defined to include alterations. This will encourage persons to bypass the license requirement by performing "moonlight" repairs at hours when the local health agency does not work. Some individuals will be licensed forever and others will not have such a requirement if they have no problems with their systems or perform illegal repairs.

RESPONSE: The Department disagrees with this comment. The licensing program established by N.J.A.C. 7:9A-3.14 requires health agencies to perform only the clerical functions associated with issuance of licenses, notification of expiration, renewal of licenses and checking for documentation of compliance. This could hardly be considered as an overwhelming requirement for personnel. It is apparent that many persons making this comment may be under the mistaken impression that the inspection requirements prescribed at N.J.A.C. 7:9A-12.2 and 12.4 must be carried out by health department personnel, though there is no statement in the rules which could be construed to require this.

Most authorities, including many of the individuals who have commented negatively on the proposed licensing requirements, agree that the majority of septic system owners do not properly maintain the systems and that lack of adequate maintenance is a major cause of septic system malfunctions. The fact that requirements may be difficult to enforce is not a valid argument for having no requirements. Even partial compliance with these requirements will be better than a total lack of control over septic system operation and maintenance.

The Department disagrees that the requirement for periodic inspection and maintenance will be a strong disincentive to persons who could otherwise improve the functioning of their septic systems through needed alterations. With a moderate degree of education on the subject, such individuals would understand that there is no point in spending money to alter a septic system if one subsequently fails to maintain that system in proper working condition.

COMMENT: The proposed rules mandate that new septic systems be licensed to operate on a three year cycle, and existing systems which are altered to accept increased gallonage be required to renew their licenses on a three year cycle. These licensing prerequisites would require system pumpage and inspection to verify acceptable system performance. It is suggested that if a licensing provision is considered necessary for the proper operation and maintenance of septic systems, the inspections and licensing be activated by a property transfer transaction which would allow the purchaser to contract with a municipal health department or private consultant. This would alleviate a tremendous administrative burden from the local health authority without significantly compromising the benefit of inspection and maintenance procedures.

RESPONSE: The Department disagrees with this comment. The three year time period for renewal of licenses was chosen to coincide with the average frequency at which septic tanks require pump-out to prevent excessive solids carry-over and clogging of the disposal field-soil interface. By the time a property is sold, it is often too late to prevent irrevocable damage to the septic system. This point is illustrated by the number of septic systems which currently fail inspections which are required by lending institutions at the time of property transfer.

COMMENT A: Are existing septic systems exempt from licensing and inspection requirements? If so, what is the rationale for not requiring at least regular pumping out of existing systems? Would this not extend their useful life expectancy?

COMMENT B: It is not clear whether or not the administrative authority may license existing systems. This option should be afforded to the administrative authorities so as to provide, at their option, for the upkeep and maintenance of existing systems regardless of malfunctions.

RESPONSE: Existing septic systems are exempt from the licensing requirements of N.J.A.C. 7:9A-3.14 unless they are altered after the operative date of these rules. While it is agreed that regular pumping would extend the life expectancy of any septic system, there are compelling legal and administrative reasons for not including them in the licensing program at this time. As set forth in an earlier response, the Department has determined that existing systems will not be regulated at this time except for those which are malfunctioning or are otherwise in violation of the Water Pollution Control Act (see N.J.S.A. 58:10A-1 et seq.) or other State laws. The Department will explore this issue at a future date.

Although the licensing program has been designed to limit direct involvement of health departments in inspecting the systems, even this

limited role would result in an overwhelming personnel requirement if there were an attempt to issue licenses for all existing systems which number more than one million Statewide. By regulating newly constructed and altered systems only, the program will be phased in gradually at a rate of 10,000 to 15,000 systems per year, Statewide, corresponding to the number of systems constructed and altered per year.

COMMENT: N.J.A.C. 7:9A-3.14 requires that local boards of health issue a license to operate a system and such license is renewable on a three year basis. Unfortunately, N.J.S.A. 26:3-31(g) only allows for one year permits with a $5.00 maximum fee. This is a conflict which must be corrected prior to adoption so that the fee will cover all costs associated with the program.

RESPONSE: The Department is aware that N.J.S.A. 26:3-31(g) limits the amount that can be charged for a septic system license to $5.00 annually and, therefore, no more than $15.00 triannually. It is partly for this reason that the license program established at N.J.A.C. 7:9A-3.14 was designed to minimize direct involvement of health department staff in the work which must be done to implement the program. The minimum program required involves only that clerical activities such as license issuance, license renewal and review of inspection/maintenance reports be carried out by the health department and allows the actual maintenance and inspections to be carried out by the private sector. Based upon analogy to similar administrative programs, such as dog licenses, it is not anticipated that the administrative costs will exceed $15.00 for issuance or renewal of a single license. However, the Department will support efforts by local authorities to resolve any funding problems caused by this rule.

COMMENT: The Department should recalculate all costs associated with the "operation and maintenance" of the program and include personnel costs and time spent in local court for non-compliance due to relicensing and pumpouts. It must be recognized that the general citizenry will only perform maintenance when their systems are malfunctioning. N.J.A.C. 7:9A-3.4 fails to mention that not pumping out is considered a malfunctioning system. This section is unenforceable by local boards of health.

RESPONSE: The cost of enforcement actions may be recovered through local fees and local property taxes. Additionally, the Department will work with local authorities to improve funding sources. Recognition that the general citizenry will only perform maintenance when a system is malfunctioning is an argument in favor of the licensing program provided at N.J.A.C. 7:9A-3.14. Not pumping a septic tank is a potential cause of septic system malfunction but cannot, in itself, be considered a malfunction.

COMMENT: N.J.A.C. 7:9A-3.14(a) and (b) is very cumbersome. It would be a full time job for someone just to maintain records and collect fees. Assuming that you start with 100 systems and maintain 100 new systems each year, in 12 years, your 100 per year has grown to 400. It is unreasonable to expect a municipality to assume this task in this format. What will happen when a license is not renewed because the tank was not pumped? Or the fee was not paid? Is time going to be spent in municipal court with attorney fees of $75.00 per hour (minimum) to collect a $5.00 license fee? There has to be a better way to enforce septic management.

RESPONSE: The $5.00 per year license fee may not be adequate to cover the administrative costs of license issuance and renewal. However, the Department will support local authorities in their efforts to resolve this fee limitation. As the number of systems regulated increases there would naturally be an improvement in the cost-effectiveness of staff and equipment used since the revenue collected is directly proportional to the number of licenses issued but the costs of issuing licenses are not. The cost of enforcement actions necessary to collect fees would be recovered by local fees and local property taxes.

COMMENT: Unless the Department is willing to institute a major fund raising program, this section will be impossible to enforce and will probably be ignored. Local agencies do not have the personnel nor the funds to enforce these requirements.

RESPONSE: The licensing program established at N.J.A.C. 7:9A-3.14 was designed to be implemented through fees established by local ordinance and will not depend on a special fund-raising program carried out by the Department. However, the Department will work with local authorities to resolve any funding problems. Recognizing the limited funds available through this method and the limited availability of health department staff, the functions carried out by local health agencies were limited to record-keeping and oversight activities associated with issuance and renewal of licenses.

COMMENT: All newly constructed septic systems will be required to be inspected once every year after a certificate of compliance is issued. Upon inspection, a license to operate the system (that is valid for three years) will be issued by the administrative authority. After the third year, the homeowner must provide proof that the septic tank was pumped and that the system is functioning properly before the operational license can be reissued. The first year of septic operation is most crucial; any inspections should come in the first year and every three years after that. Additionally, fines should be imposed on those homeowners who fail to properly license their septic systems.

RESPONSE: The Department agrees in part with this comment. United States Environmental Protection Agency guidelines indicate that septic tanks need to be pumped on the average every three to five years. The need for an inspection after only one year of operation is not supported by the literature which the Department reviewed in developing these standards. It is agreed that fines should be used as a means of enforcing the licensing requirements prescribed at N.J.A.C. 7:9A-3.14.

COMMENT: The Department is correct that the lack of owner maintenance of a septic system contributes to malfunctions. As pointed out in the economic impact discussion, a long-term savings is not achieved by an automobile owner who fails to change the crankcase oil regularly. Therefore, should we not have the Department of Motor Vehicles license the operation and maintenance of automobiles? This requirement would be a financial, record keeping, and enforcement nightmare for local health departments. Even if fees are charged, income will be based upon the number of permits and renewals issued. If interest rates increase substantially, there will be a dramatic decrease in permits issued and systems installed. Additional clerical staff would need to be hired, computers would have to be purchased, and field staff and attorney time would increase if people failed to renew. Additionally, N.J.S.A. 26:3-31(g) limits the fee amount. There are additional problems such as tracking change of ownership, municipalities changing block and lot numbers, etc. In essence, N.J.A.C. 7:9A-3.14 attempts to make local health departments responsible for maintaining new septic systems by reminding owners to do so. With figures provided by the Department, with one million septic systems in use in 1980 and 5,000 to 10,000 new systems approved each year, it would take at least 100 years to have 50 percent of the systems in New Jersey licensed.

This problem can be dealt with effectively with increased public awareness and education. It should be mandatory for health departments to issue a homeowner maintenance manual with every certification and encourage public awareness through the media, public meetings and mass mailings.

RESPONSE: The analogy made to changing crankcase oil as a basis for licensing of motor vehicles is invalid. Failure to pump septic tanks can result in a disposal field failure which may pose a threat to public health and it is upon this consideration that the proposed licensing requirement is based. Failure to change crankcase oil will result in an economic impact solely on the vehicle owner and is, therefore, not a cause for government regulation. Comparison could be made between septic tank pumping and those aspects of vehicle maintenance which do impact on public health and safety such as emissions and brakes and are mandated by automobile registration and inspection requirements.

If an adequate fee is charged for each license issued, the economic viability of the program will not depend upon issuance of a larger number of new licenses. Considering the limited level of health department involvement in the actual inspection and maintenance work required, the $5.00 per year fee authorized by N.J.S.A. 26:3-31(g)2 may be considered adequate regardless of the number of licenses issued. Increases in interest rates may result in smaller yearly increases in the number of new licenses, but could not decrease the number of licenses renewed or the amount of revenue generated from license renewals. If new construction slowed down, the program would simply stop growing and be maintained at its current workload and level funding.

Enforcement costs may be covered through local fees and local property taxes. Full time staff and computers would not be necessary unless the number of licenses issued and renewed was large, in which case the quantity of fees collected would also be large. Keeping track of changes in ownership or addresses is a basic part of any licensing or registration program and is expected to be covered through fees charged for license renewal.

It is acknowledged that the licensing of only newly constructed or altered septic systems will result in a gradual phase-in of the program. Criticism of this aspect is not consistent with arguments that the program is too extensive or ambitious to be implemented and enforced. In any case, the statement that it will take 100 years to achieve a 50 percent

level of regulation for existing systems is erroneous because it assumes that none of the systems in existence today will require alteration or replacement within the next 100 years.

While the Department does not agree that public education alone is adequate to insure proper operation and maintenance, its value is acknowledged. For this reason, the requirement for public education through distribution of an operation and maintenance manual is prescribed at N.J.A.C. 7:9A-3.14(a).

COMMENT A: Although the importance of proper operation and maintenance is essential to prolonging the life of a septic system, it is inappropriate to include N.J.A.C. 7:9A-12 in these rules. In the alternative, this subchapter and others which deal with operation and maintenance should be published in a homeowners guide which could be distributed by local health departments and building inspection offices.

COMMENT B: What is the public or environmental need of a permit system for an individual (property owner) to operate a toilet or sewage disposal system? This is a clear cut case of unwarranted, unjustified regulation, and is entirely uncalled for. What the Department is attempting to do can best be accomplished through an educational type program. Aside from the increased economic burden that such a requirement would place on the property owner, this would add economic stress upon the local health departments. Realistically, this aspect of the program can best be carried out at the discretion of the property owner.

RESPONSE: The Department disagrees with these comments. Lack of proper operation and maintenance is a major cause of septic system malfunctions which have resulted in severe economic, social and environmental impacts. Experience has shown that education by itself is not adequate to ensure that homeowners will properly operate and maintain their septic systems. A homeowner's guide will be part of the septic system licensing program provided for at N.J.A.C. 7:9A-3.14.

COMMENT: N.J.A.C. 7:9A-3.14, License to operate, will place an undue burden on already under-staffed health departments. Additional employees will be required, adding to borough costs in addition to legal fees and costs of materials.

RESPONSE: The role of health department staff in implementation of this program is limited to clerical and oversight functions involved in issuance and renewal of licenses. Since the maintenance and inspection work will be performed by the private sector, the amount of health department staff necessary to run this program will be minimal and the associated costs should be covered by license fees authorized by N.J.A.C. 7:26-3.31(g)2. However, if a funding problem arises, the Department will support local authorities in their efforts to resolve the problem. The primary expense in materials will be those associated with file maintenance and mailing which could also be covered through license issuance and renewal fees.

COMMENT: It is suggested that the maintenace requirement include complete inspection of septic tank structural components including baffles.

RESPONSE: Inspection of septic tank components including baffles is required by N.J.A.C. 7:9A-12.2(d)4iii and iv.

COMMENT: The requirement of inspections and tank cleaning is commendable and will do more for prevention of future septic failures than any other aspect of these rules. One point of concern is that not all engineers or authorities will perform the inspection with equal care. To avoid careless mistakes or haphazard inspections, it would be very beneficial to stipulate in these rules the items that must be completed as part of the inspection. Suggested inspection items would include internal tank baffles, distribution box and surface water seepage around the disposal field.

RESPONSE: The Department agrees with this comment. Items to be inspected are stipulated at N.J.A.C. 7:9A-12.2(d).

COMMENT: Will State funds be available to local health departments to employ additional personnel to enforce these rules?

RESPONSE: The limited personnel necessary to implement and enforce the septic system licensing program may be supported through license issuance and renewal fees. The Department may make additional funds available to qualified agencies through the mechanisms established under the County Environmental Health Act (see N.J.S.A. 26:3A2-21 et seq.).

COMMENT: There is disagreement with the requirement that an individual owner must receive a license to operate a septic system. Additionally, the right of health officers or the administrative authority to enter a person's property to inspect a system is unwarranted and unconstitutional. This would create greater costs to the administrative authorities for inspectors, as well as record keepers. A better way to handle this would be to provide persons with materials through the attorney or real estate agent regarding the care of septic systems upon closing on property on which a system is located. Such persons should be required to sign a statement that they received this material and if in the future a malfunction occurs due to their negligence, a fine will be imposed. However, this does not imply that the administrative authority cannot issue a license to operate to commercial establishments provided office buildings and stores are considered one realty unit even though there can be five or six stores or 10 offices in a particular building.

RESPONSE: The right of entry of the administrative authority is established by N.J.S.A. 58:11-32; however, this authority would not normally be exercised in implementation of N.J.A.C. 7:9A-3.14, since the rules do not require inspections to be made by the administrative authority. The Department does not agree that a program of homeowner education, in itself, is adequate to insure that homeowners will properly operate and maintain their septic systems. Systems used by five or six stores or 10 offices are not within the scope of these rules as defined at N.J.A.C. 7:9A-1.8.

COMMENT: Requiring a license to install a septic system for one's home will cause an undue burden on the homeowner as well as more red tape and bureaucracy for the average citizen. Septic systems are designed by professional engineers and carefully supervised and installed. The local boards of health are not capable nor do they have the expertise to deal with the added responsibility provided under these rules. They are usually local volunteers with no real education or experience to initiate and handle the permit process. This will further increase costs as a municipality will have to hire and provide the technical inspectors needed to review the permit process.

RESPONSE: The Department disagrees with these comments. Any septic system, no matter how well designed, carefully supervised and installed, will fail if not properly maintained. The person making these comments has apparently misinterpreted the requirements of N.J.A.C. .7:9A-3.14. These rules do not require the administrative authority to perform inspections or any other activity other than clerical functions associated with issuance and renewal of licenses.

COMMENT: The present requirements on percolation tests, septic system designs and inspection requirements are adequately designed and supervised. To further burden citizens with additional costs is ludicrous. There are many senior citizens living on fixed incomes, with existing septic systems that function properly, who are barely able to pay their taxes. These additional costs would represent the straw that breaks the camel's back. Furthermore, these same seniors are not a burden to the community in that there are no children going to school. If they are forced to sell their homes, they are likely to be purchased by young families with children, and the cycle starts again as a burden to the school system resulting in increased taxes.

RESPONSE: The Department disagrees with these comments. The existing septic system standards are severely outdated and malfunctioning septic systems are widespread in New Jersey. The costs associated with a repair or replacement of a septic system which has malfunctioned due to inadequate design, construction or maintenance will be far more of a burden on senior citizens or the public in general than the added costs associated with these rules. Additionally, existing systems are not required to be licensed.

COMMENT: Without some type of incentive or coercion, a homeowner cannot be expected to or be relied upon to maintain a septic system.

RESPONSE: The Department agrees with this comment. This is the primary reason for establishing the septic system licensing program prescribed at N.J.A.C. 7:9A-3.14.

COMMENT: Regardless of the great pressure placed upon local boards of health, individual inspections of residential septic systems should be conducted. Perhaps the municipality should be given some flexibility in the amount of time and review which is conducted. This should not, however, be mandated on a State level.

RESPONSE: The Department agrees with this comment. The program established at N.J.A.C. 7:9A-3.14 represents the minimum degree of regulation necessary to ensure proper operation and maintenance of septic systems. Municipalities have the authority to establish more extensive programs and higher standards.

COMMENT: The Department's operation and maintenance manual should be made available for free or at low cost to the administrative authority. In the case of the permittee not being the party who will "operate" the system, transfer of the license should include the transfer of the manual (from builder to homeowner).

RESPONSE: The Department intends to provide its operation manual to the administrative authority at no cost. The intent of the rule is that the license to operate be issued to the homeowner rather than the builder.

COMMENT: N.J.A.C. 7:9A-3.14(a) states that the administrative authority shall issue a copy of the Department's operation and maintenance manual to the "permittee" (sic-should be "licensee"), at the time a certificate of compliance is issued. Does the Department now have, or will it have on the operative date of these rules, an adequate supply of the manuals? If not, the operative date of these rules must be extended until the manuals are delivered to the local authorities. Will the local authority be charged for these manuals? Considering that local authorities can only charge $5.00 for the license, how can the costs of the manuals be passed on?

RESPONSE: The Department will provide an adequate supply of manuals to the administrative authorities before the operative date of the rules and at no charge to the administrative authority.

COMMENT A: N.J.A.C. 7:9A-3.14(a) should require that a copy of "As-Built Plans" be provided with the license to operate.

COMMENT B: N.J.A.C. 7:9A-3.15(a) should require that "As-Built Plans" with detailed dimensions and distances from a fixed permanent point of reference, should be kept on file. This should be submitted as part of the professional engineer's statement to obtain a "certificate of compliance" as specified at N.J.A.C. 7:9A-3.13(a).

RESPONSE: If certification is made that the septic system has been constructed, installed or altered in conformance with the approved engineering plans, as is required by N.J.A.C. 7:9A-3.13(a), then separate as-built plans are not considered to be necessary. N.J.A.C. 7:9A-3.15(a)1 requires that the approved plans be kept on file by the administrative authority.

COMMENT: The requirement at N.J.A.C. 7:9A-3.14(a) of re-approval of a septic system every three years is an administrative nightmare for approval agencies to be monitoring every system constructed within their jurisdiction.

RESPONSE: N.J.A.C. 7:9A-3.14 does not require "re-approval" of a septic system every three years but rather that the administrative authority renew a septic system operation license every three years based on submittal of evidence that the required inspection and maintenance has been performed. This program has been designed to minimize the role of the administrative authority in implementation of the required septic systems inspections and maintenance.

COMMENT: The three year length of a system operation license appears arbitrary and should be investigated further.

RESPONSE: The Department, in coordination with the Ad-hoc and Advisory Committees, has substantially researched all aspects of septic tank construction and operation. The Department finds that the recommended interval for inspection and/or pumping of a septic tank ranges from two to four years. Therefore the three year time period for operation licenses was not arbitrarily determined but rather based upon this finding.

COMMENT: The requirement at N.J.A.C. 7:9A-3.14(b) that a license shall be renewed every three years is restrictive. Perhaps it should be five years as the maintenance on a septic tank can be done anywhere from three to five years.

RESPONSE: The average range of required septic tank pumping frequency is three to five years according to the U.S. Environmental Protection Agency. Because the purpose of this program is to prevent malfunctions due to inadequate maintenance and because the actual pumping requirement for any particular system cannot be predicted, it is considered prudent to use the more conservative end of the range. Some flexibility is provided, however, because pumping is not required to renew the license when inspection shows thas it is unnecessary.

COMMENT: There is a problem with licensing in that the person certifying that the septic system is still in compliance has little to go on other than the information provided by the homeowner.

RESPONSE: The certification made by the septic system inspector is based entirely upon information which can be obtained through visual inspection as prescribed in N.J.A.C. 7:9A-12.2(d).

COMMENT: Will the regular pumping of a septic system every three years preclude the need for annual inspections?

RESPONSE: Yes, as stated at N.J.A.C. 7:9A-12.2(a), the requirement for annual inspection begins three years after the last pump-out of the septic tank.

COMMENT: N.J.A.C. 7:9A-3.14(b)2 specifies that system inspection reports be prepared by a licensed professional engineer, sanitarian, licensed health officer, or other qualified person. It is recommended that the provision of "other qualified person" be eliminated on the basis that no mechanism for professional accountability could be applied and the current provision is far too ambiguous in defining minimum qualifications.

RESPONSE: The Department disagrees with this comment. It is at the discretion of the administrative authority to allow persons other than licensed professional engineers, sanitarians, or licensed health officers to complete system inspection reports. As indicated at N.J.A.C. 7:9A-1.7(c)6, and on the inspection report form provided in Appendix B, any person who provides inaccurate information would be subject to penalties under the Water Pollution Control Act, see N.J.S.A. 58:10A-1 et seq., and N.J.A.C. 7:14-8 and there is thus a mechanism for accountability.

COMMENT: Although N.J.A.C. 7:9A-3.14(b)3 allows for the collection of a fee by local ordinance for a license to operate, N.J.S.A. 26:3-31g(1) and (2) fixes the license fee at a maximum of $5.00 per year. This will not provide sufficient compensation to offset the administrative costs of issuing an initial license, notifying for renewal thereof, reviewing inspection reports, and maintaining files. The operating license requirement imposes a financial burden on local health agencies; therefore, the maximum limit must be increased to allow license fees which more realistically reflect the local administrative costs of implementing the program.

RESPONSE: The Department does not agree that $5.00 per year is necessarily inadequate funding to cover the costs of issuing a license, notifying for renewal, reviewing an inspection report and renewing a license once every three years. The Department would, however, support efforts to increase the $5.00 limit prescribed at N.J.S.A. 26:3-31(g)2.

COMMENT: If a homeowner fails to meet any of the requirements of N.J.A.C. 7:9A-3.14, the administrative authority shall not renew the license. How is the relief sought? Are penalties to be levied? By whom? Is the home condemned if the owner continues to discharge into an unlicensed system? Will this stand up in court?

RESPONSE: In cases where a homeowner fails to comply with the requirements of N.J.A.C. 7:9A-3.14, penalties could be levied by the administrative authority. Authority does not exist for an administrative authority to condemn a home unless there is a clear and substantial threat to public health. In cases where there is a legal dispute between the administrative authority and a homeowner, relief would be sought in the courts.

COMMENT: Revocation of a license to operate a septic system is too harsh a penalty for someone who denies right of entry to the administrative authority, especially without notice. Therefore, N.J.A.C. 7:9A-3.14(d)3 should be deleted.

RESPONSE: The appropriateness of this penalty would depend upon the situation in which it is used. N.J.A.C. 7:9A-3.14(d)3 correctly indicates that this is an option which may be exercised by the administrative authority in cases where the property owner wrongfully denies right of entry.

COMMENT: N.J.A.C. 7:9A-3.15(c) requires the administrative authority to maintain records until such time as the sewage disposal system is removed and connected to a public sewer. This conflicts with the Department of State, Division of Archives and Records Management in relation to record retention and disposition. Currently, these rules require that all plans, permits, etc., be maintained for 10 years, while inspections are maintained for three years. Changes in these rules could create a burden on municipal and county facilities for the storage of documents. Therefore, it is suggested that this discrepancy be corrected.

RESPONSE: The Department disagrees with this comment. If the requirements of N.J.A.C. 7:9A-3.15(c) are more stringent than other existing rules relative to the length of time required for maintenance of records, then there is no conflict in requirements. The rules referred to require that records be kept for certain minimum periods of time but do not prohibit the records from being held for longer periods of time as required in these rules. It is considered absolutely essential that records be maintained for the life of the septic system since the probability of malfunctions and thus the need for accurate records in dealing with the malfunctions only increases with the age of the septic system.

COMMENT: It is grossly unfair to void every test performed prior to the effective date of the rules. A one year lead in period would be more appropriate.

RESPONSE: The person making this comment apparently did not take notice of proposed N.J.A.C. 7:9A-3.16(a) which provides a one year period, beginning on the effective date these rules, for the use of prior tests which do not conform with the requirements of these rules but which do conform to the requirements in effect at the time that they were performed. The Department has set an operative date for the new rules at January 1, 1990. The time period for the use of test results obtained prior to the operative date of these rules has been extended from one to two years following the operative date (see N.J.A.C. 7:9A-3.16).

COMMENT: N.J.A.C. 7:9A-3.16 should include prior tests and outstanding permits. This will enable the health departments to inform applicants in a timely manner.

RESPONSE: As indicated at N.J.A.C. 7:9A-3.13, the requirements of these rules apply only to systems approved after the operative date of the rules. Systems previously approved are not subject to these requirements regardless or whether or not they have actually been constructed.

COMMENT A: N.J.A.C. 7:9A-3.16 provides for the use of percolation or infiltration test results for a period of one year after the effective date of these rules. This is too restrictive as it might take two to four years to implement the data. Therefore, the data should be good for three to five years.

COMMENT B: The continued use of percolation and other soil tests made prior to the effective date of these rules should be extended to two years. This is reasonable since many projects can take up to two years to be approved by the local planning board and these tests are generally done up front. Additionally, the applicant was complying with standards in effect at the time.

COMMENT C: The one year time limitation for prior tests at N.J.A.C. 7:9A-3.16 is unreasonable. The larger subdivisions are taking 12 to 18 months to be approved before construction of improvements can begin which will take three to six months. This makes test results approximately two years old before applications are submitted with designs for approval. The two and one half year grandfather testing in the 1978 revision was reasonable.

COMMENT D: Tests and logs taken prior to the adoption of these rules should be valid for at least three years. Under State statute, a major subdivision has three years from preliminary to final approval without any extensions.

COMMENT E: The use of previous soil log and percolation data as provided in N.J.A.C. 7:9A-3.16 should be extended to at least three years provided that no major movement of soil has occurred within a reasonable area of the original testing.

RESPONSE: In response to the comments which were submitted on the use of prior test results, the Department has extended the time period to two years following the operative date, in order to allow the smooth transition of active projects currently in process. A longer period of time is undesirable because it could be used for lots which are not actively being developed and which might not meet the more stringent soil evaluation criteria of the new rules. It was appropriate to allow a longer period for acceptance of prior tests when the Department's standards were revised in 1978 because, at that time, the changes being made with respect to previous requirements were minor. As a point of information, it would generally not be possible to use the same percolation tests and soil borings for both planning board subdivision approval and board of health construction approval unless the exact location of each disposal field were known prior to application for subdivision approval. This is seldom the case.

COMMENT: Can "prior tests" as covered by N.J.A.C. 7:9A-3.16 be used during the grace period without penalty? By penalty, reference is made to the proposed requirement to design the disposal field size by an additional 25 percent (see N.J.A.C. 7:9A-6.1(c)).

RESPONSE: The 25 percent increase in disposal field size, required in cases where the percolation test was used, is a design requirement that would apply to all systems approved after the operative date of the rules including those systems which were designed based upon prior tests as allowed in N.J.A.C. 7:9A-3.16.

COMMENT: N.J.A.C. 7:9A-3.16(a)2 is confusing since it conditions the grandfathering of certain soil tests on the condition that they are "substantially in compliance" with these proposed standards. This is interpreted to mean that a system designed to percolation tests taken prior to the effective date of these rules and for which the design received approval within the one year grace period, is exempt from the remaining portions of this rule as proposed. Is this correct? How does the Department plan to interpret this provision?

RESPONSE: The Department interprets N.J.A.C. 7:9A-3.16(a)2 to mean that aspects of the septic system design other than the prior percolation must conform to the new standards. The wording of this section has been modified to clarify this meaning.

COMMENT: It is recommended that the Department obtain the explicit regulatory authority for mandatory certification. Existing licensing requirements do not necessarily provide the qualified personnel. Any licensed person who has not kept abreast of changes in the field or does not have practical experience in the field should not be qualified.

RESPONSE: The Department disagrees with this comment. Licenses governing the qualifications and conduct of professional engineers, health officers and sanitarians are adequate to ensure that these individuals will not practice these professions without acquiring and updating the necessary knowledge and skills. To obtain explicit authority to certify licensed professionals would require legislative changes and is thus beyond the scope of the rulemaking process.

COMMENT A: The free or low cost training should be open to all health departments, not just those agencies approved under the County Environmental Health Act. Funding should be available to all municipalities.

COMMENT B: Quality, convenient training should be provided on a statewide basis for all health officers. There may be a problem with regard to counties that have implemented the Environmental Health Act, and are deriving a good deal of State financial support and counties that, perhaps through no fault of their own, have not implemented the Act. Training should be sponsored by the Department at nominal or no cost rather than an exorbitant price that no local health departments can afford. This is necessary as all local health departments will be expected to implement these rules.

RESPONSE: The Department agrees with these comments and will explore all possible funding mechanisms for the proposed registration and training program. The Department strongly encourages the formation throughout the entire state of county health departments or regional or municipal health departments certified under N.J.S.A. 26:3A-33 which may be eligible to receive training funded through the County Environment Health Act.

COMMENT: The proposed rules establish a voluntary registration program associated with various phases of system installation, inspection, design, etc. How can a voluntary program be placed in a rule? Since the registration program is voluntary, why are there so many specified types of positions in the rules? The current system is workable, with the engineer responsible for design, plan preparation, etc. This certification program will drive up costs of system design and inspection. Perhaps this subsection should be changed to require additional training by specific groups and the training should be monitored by their respective professional organizations. Since the Department does not have the regulatory authority to require this registration, it should be deleted from the rules. What can be done if engineers and health officers fail to comply? If this subsection is not enforceable, it should be deleted.

RESPONSE: The Department disagrees with these comments. There is no principle of law which precludes the establishment of a voluntary program within a rule. The number of registration categories specified has no bearing on whether the program is voluntary. The Department agrees that the present mandatory licenses are adequate to control the qualifications of engineers, health officers and sanitarians, and it is therefore not necessary for the proposed registration program to be mandatory. It is unclear how a voluntary registration program could drive up costs of design and inspection if professionals can choose to not participate in cases where their ability to provide cost-effective services is not increased through the training opportunities offered.

COMMENT: The terms "qualified septic system installer" (see N.J.A.C. 7:9A-3.4(b)3) and "qualified person acceptable" (see N.J.A.C. 7:9A-3.14(b)2) should be defined.

RESPONSE: The Department agrees that the term "qualified" is subjective and should not be used without being defined. The term has been deleted from N.J.A.C. 7:9A-3.4(b)3 and N.J.A.C. 7:9A-3.14(b)2. The term is of little consequence since a septic system installer cannot engage in the practice of engineering and the ultimate approval lies with the administrative authority.

COMMENT: Licensing should be required of the categories outlined at N.J.A.C. 7:9A-3.17. This should not be voluntary without examinations or licensing requirements. Additionally, if "soil scientists" are to be included in N.J.A.C. 7:9A-3.17(b)2, it should be required that they be licensed. This will determine professional competency for all evaluations.

RESPONSE: The Department disagrees with these comments. Due to conflicts with existing licensing statutes, it is inappropriate to require special licenses and examinations for persons involved in site evaluation, design, review, construction and inspection of septic systems. The term "soil scientists" is used in N.J.A.C. 7:9A-3.17(b)2 only to indicate that such a background is appropriate due to the heavy reliance of the rules on terminology, techniques and procedures derived from the discipline of soil science. There is no statement made in the rules to indicate that the accuracy of soil evaluation data, or any other data used as a basis for septic system design, is the responsibility of any person other than the professional engineer who designs the septic system and whose qualifi-

cations and conduct are adequately controlled by existing licensing requirements.

COMMENT: The voluntary registration and training program should be mandatory for health officers and sanitarians.

RESPONSE: The Department disagrees with this comment. The registration program proposed at N.J.A.C. 7:9A-3.14 is intended as a means of assessing training needs and disseminating information regarding the availability of training and not as a means of controlling professional qualifications. Existing licenses for health officers and sanitarians control qualifications.

COMMENT: The rules should be clear in order that no conflict of interest arises when licensed professional engineers are designated as "septic system enforcement officers" and "authorized agents."

RESPONSE: Conflicts of interest which may arise are administered by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8-1 et seq. Falsification of application information or data, for any purpose, is identified at N.J.A.C. 7:9A-1.7(c)6 as a violation of the New Jersey Water Pollution Control Act and as grounds for assessment of substantial penalties.

COMMENT: The proposed rules may be unenforceable at both the State and local levels. They provide no safeguards which will prevent unqualified personnel from performing on-site tests and complex site evaluations, or installing and inspecting septic systems.

RESPONSE: The Department disagrees with this comment. A licensed professional engineer is responsible for the accuracy of site evaluation data as well as any other data used as a basis for a septic systems design. N.J.A.C. 7:9A-3.13(a) requires that installation of septic systems be certified by the authorized agent of the administrative authority or by a licensed professional engineer as being in compliance with the rules. Statements have been added to the rules at N.J.A.C. 7:9A-5.1(b) and 6.1(k) to clarify these requirements.

COMMENT: N.J.A.C. 7:9A-3.17 makes no provision for persons to register or pass a test to allow them to perform field work under the supervision of a professional engineer. Are persons who have taken courses and hold certificates qualified to register?

RESPONSE: N.J.A.C. 7:9A-3.17 does not at this time prescribe any special qualifications for persons performing site evaluation work under the supervision of a licensed professional engineer. Any person involved in the work described in a registration category may apply for registration in that category.

COMMENT A: There is a need for intense training of existing county health department staff **before** such a highly technical plan is implemented. This training should also be extended to engineers and contractors.

COMMENT B: Courses or seminars should be offered to educate the public, engineering firms, contractors, and local and county regulatory agencies regarding these rules once they are adopted. This will assist with their implementation.

RESPONSE: The Department agrees that there will be a need for training. It is for this reason that the registration program provided at N.J.A.C. 7:9A-3.17 is proposed.

COMMENT: Installers of septic systems, sanitarians, health officers and engineers should be licensed.

RESPONSE: The establishment of new licensing requirements or the modification of existing licensing requirements will be explored by the Department in the future. Since the new rules represent a tremendous advance in standards for individual subsurface sewage disposal systems, the Department has determined that it is overly burdensome upon the public to establish licensing requirements at this time.

COMMENT: It should not be the responsibility of an engineer to act as a regulatory agency. This is why we have a board of health and the Department.

RESPONSE: N.J.S.A. 58:11-26 does not permit a board of health to certify compliance with the Department's standards unless the board has a licensed health officer, sanitarian or professional engineer in its employ. In cases where the board does not have an employee meeting these qualifications, the statute provides that the board may issue certification if a professional engineer certifies compliance with the standards. N.J.S.A. 7:9A-3.13(a) reflects these provisions of the statute.

COMMENT: The voluntary registration and training program as proposed does not insure that a minimum level of competence will be demonstrated by individuals involved in subsurface sewage disposal system site evaluation, design, construction, inspection and regulation. It has not been demonstrated that the Department's "successful experience with voluntary training courses" has included participation from all jurisdictions throughout the State including both the public and private sectors. Many areas of the State are not represented in the voluntary training programs.

RESPONSE: The Department disagrees with these comments. The registration program is one means of providing necessary training. Qualifications of individuals are insured through existing license requirements for engineers, health officers and sanitarians who perform or provide oversight for all aspects of site evaluation, design and construction. The Department's past experience with voluntary training programs has shown that such programs can be an effective means of training individuals in the public and private sector throughout the State.

COMMENT: The voluntary registration program at N.J.A.C. 7:9A-3.17 gives the public the impression that unless one is registered, he is not qualified to perform the work. This must be addressed prior to adoption.

RESPONSE: There is no statement in the rules which indicates or implies that persons not participating in the proposed registration program are unqualified to perform these functions.

COMMENT: The proposed rules intend to provide low cost training to local health departments but not to laymen who sit on the boards. This will cause confusion, delay, and subsequent higher costs of housing.

RESPONSE: The rules require that only licensed health officers, sanitarians or engineers, acting as agents of the board of health, certify compliance with standards or make determinations relied upon in granting such certifications. It is not the intent of the rules or of the enabling statute that such determinations should be made by laymen who sit on the board of health. The registration program is intended as a means of training those individuals who will be performing these functions.

COMMENT: Septic system designers should be required to be experienced in on-site sewage disposal before certifying a septic system design.

RESPONSE: The qualifications of engineers who design septic systems are regulated under N.J.S.A. 45:8-1 et seq. and implementing rules. Requirements regarding the experience of septic system designers are not within the scope of these rules.

COMMENT: The term "soil scientist" should be defined. Is there a license required?

RESPONSE: The term "soil scientist" is used only for the purpose of describing a category of the proposed voluntary registration program. Since it is not part of any specific requirement, there is no need to define the term. At the present time, soil scientists are not licensed by the State of New Jersey.

COMMENT: The categories set forth in N.J.A.C. 7:9A-3.17(b)1 through 5 list personnel who are included within each category. However, it is not indicated that each category is limited to those professionals listed.

RESPONSE: The observation made is correct. The categories for registration are not intended to be exclusionary or limited by any specific qualifications except where the limitations of other statutes or rules apply.

COMMENT: N.J.A.C. 7:9A-3.17(b)1, 2 and 5 list "first-grade sanitarians". All sanitarians are first-grade as second-grade licenses are no longer issued. Therefore, the title should be changed to "licensed sanitarian."

RESPONSE: The Department agrees with this comment. This rule and N.J.A.C. 7:9A-3.15(b)2 have been modified to reflect this comment.

COMMENT: The registration program at N.J.A.C. 7:9A-3.17 includes individuals currently and actually involved in enforcement, site evaluation, designing, installation and inspection. Provision should be made to include individuals that have been, have an interest in, or may become involved in these areas. This would serve to broaden the knowledge of all individuals who have an interest in this field.

RESPONSE: While there are no restrictions on who may participate in the proposed registration program, due to the limited availability of training resources, this program will be directed primarily at those actively involved in implementation of the Department's standards.

COMMENT: Engineers should be deleted from the categories of "septic system enforcement officer" and "septic system inspector" at N.J.A.C. 7:9A-3.17(b)1 and 5 respectively. Use of the township engineer is notorious for pushing through the approval. Now, these rules will allow the engineer to run the tests, and design and inspect the system.

RESPONSE: The Department disagrees with this comment. Any individual who represents a regulatory agency has the possibility of entering into business relationships which may lead to a conflict of interest. There is no basis for using this possibility as a reason from excluding professional engineers as a group from any function which they are qualified to perform. N.J.A.C. 13:40-3.1(a)4ii specifically prohibits licensed engineers from entering into the type of conflict of interest referred to here.

The Department will rely upon enforcement of this rule by the New Jersey Board of Professional Engineers and Land Surveyors as the means of insuring that such conflicts of interest do not occur. The Department will bring such violations to the attention of the appropriate authority.

COMMENT: The category of "site evaluator" at N.J.A.C. 7:9A-3.17(b)2 should not include the term "soil scientist". Since no soil scientist license exists, for purposes of consistency it should not be included with licensed professional engineers, licensed health officers, and first-grade sanitarians.

RESPONSE: The Department disagrees with this comment. Due to the heavy reliance on the use of soil science terminology, criteria and test procedures which have been incorporated into the soil evaluation and testing standards, soil science is considered by the Department as a highly appropriate background for persons performing site evaluation work under the supervision of a professional engineer. The lack of a license or other specific criteria for defining soil scientists should not preclude the use of the term in this context since the term is not used to define an exclusionary requirement and since the ultimate responsibility for the accuracy and reliability of soil evaluation results must still be assumed by a licensed engineer who places his or her signature and seal on the septic system design.

COMMENT: The category of "site evaluator" at N.J.A.C. 7:9A-3.17(b)2 should include geologists, who are experienced in this area.

RESPONSE: The site evaluation category does not exclude geologists or any other profession provided that the work is carried out under the supervision of a licensed professional engineer. Geologists are not specifically mentioned because the terminology, criteria and test procedures used are derived from the discipline of soil science rather than geology.

COMMENT: The use of a "soil scientist" will be an asset for site evaluation. The criteria for "soil scientist" should be included in the rule and it should include geologists.

RESPONSE: Specific criteria for the term "soil scientist" have not been included because such criteria have not been established.

COMMENT: "Soil scientists" should not be included as site evaluators in N.J.A.C. 7:9A-3.17(b)2. They are not licensed professionals such as engineers, health officers, and sanitary officers. If a designer utilizes information provided by a soil scientist in designing a system, the designer can be liable for civil penalties. Additionally, it is probable that soil scientists will not carry liability insurance. Therefore, they should be removed from N.J.A.C. 7:9A-3.17(b)2 until they become licensed or until a mandatory certification of soil scientists and geologists is approved. If soil scientists are to be utilized as site evaluators, they should be certified through a testing procedure to assure their minimum competence in this area.

RESPONSE: The Department disagrees with this comment. Any site evaluation or soil testing data used in a septic system design must be carried out under the supervision of a licensed professional engineer and it is the licensed professional engineer who will be responsible for its accuracy. The majority of persons carrying out soil and site evaluation procedures are not licensed professional engineers, but rather persons working under the supervision of a licensed professional engineer. There is no requirement for such person to be licensed, certified or insured and therefore there is no basis for applying such requirements to soil scientists who are acting in a similar capacity.

COMMENT: A definition of the term "soil scientist" has been omitted with the clear potential that anyone may declare themselves as soil scientists and perform the functions delineated in these rules whereas engineers, sanitary inspectors, and health officers are licensed and regulated titles.

RESPONSE: Soil scientists or persons claiming to be soil scientists may not perform soil evaluation functions prescribed in these rules except under the supervision of a licensed professional engineer. The qualifications of engineers, health officers and sanitarians are regulated by licensing requirements and for this reason the rules assign oversight authority and ultimate responsibility to these licensed individuals.

COMMENT: There is concern that the only persons who will be permitted to be "site evaluators" under N.J.A.C. 7:9A-3.17(b)2 are those who have a college degree in either public health or engineering, a soil scientist or a first grade sanitarian. Persons who have been performing soil tests for years and have taken courses would fail to qualify because they are not members of the listed professions.

RESPONSE: There is no requirement stated or implied in the proposed rules which indicates that any specific qualifications are necessary for persons performing site evaluation work under the direction of a licensed professional engineer. N.J.A.C. 7:9A-3.17(b)2 lists professions of persons who are included in the site evaluator category. This list is not all encompassing since the registration program is voluntary.

COMMENT A: A sanitarian is involved throughout the site evaluation process and often redesigns the system for engineers. Therefore, the category of "septic system designer" should include individuals with a sanitarian license.

COMMENT B: If a licensed sanitarian can perform the field work, witness the field work, review, approve, or reject a septic system application, then a licensed sanitarian should be permitted to design the system. This would create competition and perhaps lower the costs which will be astronomical after these proposed regulations are approved.

COMMENT C: The category of "septic system designer" at N.J.A.C. 7:9A-3.17(b)3 should include licensed health officers and sanitarians since they witness tests, review plans, inspect construction, issue certificates of compliance, and in many cases redesign the systems.

RESPONSE: N.J.S.A. 45:8-1 et seq. requires that no person other than a licensed engineer engage in the practice of engineering. The Department cannot adopt a rule which conflicts with this statutory requirement.

COMMENT: N.J.A.C. 7:9A-3.17(b)3 should be adopted as proposed, that is, only professional engineers should be allowed to design subsurface sewage disposal systems.

RESPONSE: The Department agrees with this comment.

COMMENT: Where are the requirements for licensing and registration of septic system contractors? The rules are very comprehensive making it impossible for an engineer to place all of the various requirements upon the construction drawings. A comprehensive system of education, testing, licensing and registration is necessary to help assure that systems are constructed correctly. If the system is designed correctly what assurance is there that it will be constructed properly?

RESPONSE: The rules do not establish qualifications for persons who install or construct septic systems. Establishment of such qualifications would require legislative and regulatory changes which are beyond the scope of these rules. To address the issue of proper construction, N.J.A.C. 7:9A-3.13(a) provides for oversight by the administrative authority or by a licensed professional engineer.

COMMENT: A definition is needed for "septic system installer." What are the qualifications?

RESPONSE: The rules establish no special qualifications for septic system installers and there is thus no need for a special definition for the term "septic system installer" other than that provided in N.J.A.C. 7:9A-3.17(b)4 which describes a category in the proposed registration program.

COMMENT: N.J.A.C. 7:9A-3.17(a) lists "septic tank pumpers" as persons subject to the registration program. However, they are not included in N.J.A.C. 7:9A-3.17(b). A provision for the registration of septic tank pumpers should be included.

RESPONSE: The wording in N.J.A.C. 7:9A-3.17(b)5 has been modified to include specific mention of persons who are registered with the Department as solid waste haulers in accordance with N.J.A.C. 7:26-3.

COMMENT: The State Board of Licensed Professional Engineers and Land Surveyors requires that the engineer or land surveyor utilized in connection with a subdivision or improvement must be licensed. N.J.A.C. 7:9A-3.18 has no provision for this requirement.

RESPONSE: A statement has been added to N.J.A.C. 7:9A-3.18(c) indicating that site plans must be prepared by licensed professional engineers and land surveyors.

COMMENT: N.J.A.C. 7:9A-3.18 requires further clarification. The proposed rules speak of certification of a subdivision regardless of the number of lots while N.J.S.A. 58:11-25 only addresses subdivisions of 50 or more realty improvements.

RESPONSE: This comment is incorrect. N.J.S.A. 58:11-25 requires that no building permits be issued until the board of health has certified that the proposed septic system and water supply comply with State standards. N.J.S.A. 58:11-25 makes no mention of 50 or more realty improvements as a condition for this requirement to be applied. The person making this comment has apparently confused this requirement for board of health certification of all realty improvements with the requirements of N.J.S.A. 58:11-25.1 or N.J.S.A. 58:11-27 which require State certification or review of projects involving 50 or more realty improvements. N.J.S.A. 58:11-25.1 provides that no subdivision approval shall be granted by any municipality or other authority in the State to cover 50 or more realty improvements until the Department has certified that the proposed water supply and sewerage facilities comply with applicable State standards.

COMMENT: N.J.A.C. 7:9A-3.18(a), (b) and (c) contain clearly erroneous references to N.J.S.A. 58:11-25. The statute deals with building

permits, not "certification of subdivisions". N.J.S.A. 58:11-25 relates to the permits that are required prior to the issuance of a building permit or the commencement of construction of a realty improvement. The only certification procedure mentioned in the statute is limited to N.J.S.A. 58:11-25.1 relating to subdivisions of 50 lots or more. Therefore, it is requested that all references to certification of subdivisions of less than 50 lots be deleted.

RESPONSE: The Department agrees that the phrase "certification of subdivisions" is inappropriate because the Statute refers only to certification of realty improvements. Even in the case of N.J.S.A. 58:11-25.1, the certification required applies to the water supply and sewerage facilities rather than the subdivision of land. The wording in N.J.A.C. 7:9A-3.18 has been modified to eliminate any references to the certification of subdivisions.

COMMENT: According to N.J.A.C. 7:9A-3.18(a), when a subdivision will result in 10 or more realty improvements, designs will have to be submitted and approved before the subdivision can be approved by the planning board. Generally, this would not be a problem for a developer who is developing all 10 lots; however, it may present a problem if the developer wishes to sell lots individually.

RESPONSE: The intent of N.J.A.C. 7:9A-3.18(a) and (c) is to require additional information shown on a general site plan in cases where certification is sought for a group of ten or more realty improvements in one development. The requirements are not a prerequisite to subdivision approval by the planning board. To clarify the meaning of these requirements, all references to certification of subdivisions have been eliminated and the wording has been modified to clearly indicate that the requirements for additional information depends on the number of proposed realty improvements rather than the number of proposed lots. These requirements would, therefore, not apply to a person subdividing land unless that person were also proposing to construct 10 or more realty improvements.

COMMENT A: Requiring all of the basic data in N.J.A.C. 7:9A-3.18(c) at the time of subdivision approval is not appropriate as it is premature to submit septic system components for a site where a site-specific realty improvement is not yet proposed.

COMMENT B: N.J.A.C. 7:9A-3.18(a) requires that on subdivisions with greater than 10 lots, all 10 lots must have approved septic designs before approval can be granted. There is a problem with this requirement if the current land owner is developing the lots for subdivision purposes only and is not planning to build houses on the lots. What if he merely wants to sell the lots?

RESPONSE: The problem referred to in these comments has been corrected by eliminating the reference to certification of subdivisions. The requirements will apply at the time that certification is sought for 10 or more realty improvements and not at the time that approval is sought for subdivision of 10 or more lots.

COMMENT: Does N.J.A.C. 7:9A-3.18(b) and (d) apply to 50 or more total realty improvements that may be submitted by the same applicant in multiple phases, each of less than 50 realty improvements on a total land parcel?

RESPONSE: Yes, the requirements for state certification of sewerage facilities serving subdivisions of 50 or more realty improvements applies regardless of whether the realty improvements are constructed in phases or all at one time.

COMMENT: Is the certification for subdivisions of more than 10 realty improvements required from the Department or the local authority? If it is required from the Department, there is no statutory authority for this deviation from the realty improvement statute. Therefore, it should be deleted from the rules. If it is required from the local authorities, the standards of approval should be changed and the time of approval specified.

RESPONSE: The additional requirements for certification of 10 or more realty improvements, which are stated at N.J.A.C. 7:9A-3.18(c), apply to certifications issued by the board of health pursuant to N.J.S.A. 58:11-25. The Department sees no reason to change the standards of approval and no reason is given in this comment. The time allowed for review by the administrative authority is specified at N.J.S.A. 58:11-28.

COMMENT: The information required for subdivisions of more than 10 realty improvements should likewise be required for subdivisions of 10 improvements or fewer. Locations of water supplies, watercourses, wetlands, etc., are of vital importance for any subdivision, not only those of more than ten units.

RESPONSE: The Department disagarees with this comment. Information necessary to ensure adequate separation distances between septic system components and water supplies, watercourses, wetlands, etc. is required for applications involving less than 10 realty improvements by N.J.A.C. 7:9A-3.15(c) and must be adequately shown on site plans which are required for each individual lot. The additional information required for an application involving more than 10 realty improvements relates to the location of proposed septic systems relative to cultural and landscape features and larger soil distribution and drainage patterns which can best be evaluated on maps covering areas which encompass a number of adjacent lots. Areas occupied by less than 10 lots are typically too small to justify the need for a site plan of overall subdivision.

COMMENT A: There is a question as to the Department's authority to require additional information such as drainage rights of way, proposed storm sewers, etc. for subdivisions of greater than 10 units that are going to be served by septics. While the Realty Improvement Act requires the Department to develop standards for subdivisions of more than 50 units, there is no mention of this lower threshold for 10 units. What is the Department's rationale for imposing this requirement at the 10 unit threshold?

COMMENT B: Where does the Department derive its authority to impose additional requirements for subdivisions of 10 units or more (see N.J.A.C. 7:9A-3.18(a) and (c)). The Realty Improvement Act authorizes the Department to develop standards for subdivisions of 50 or more therefore, N.J.A.C. 7:9A-3.18(a) and (c) should be changed from "10" to "50".

RESPONSE: The Department disagrees with these comments. The authority given to the Department under N.J.S.A. 58:11-36 to promulgate standards and set requirements for approval of septic systems by the board of health is not limited by the number of realty improvements proposed. Only the requirements for State review under N.J.S.A. 58:11-27 and State certification under N.J.S.A. 58:11-25.1 are limited to certifications involving 50 or more realty improvements. The additional requirements proposed at N.J.A.C. 7:9A-3.18(c) for certifications involving more than 10 realty improvements are based upon considerations which arise when larger numbers of septic systems must be located relative to cultural and landscape features and soil drainage patterns which are present within the larger area of a subdivision and which cannot be satisfactorily evaluated on a lot by lot basis.

The Department's authority to set standards for septic systems and application requirements for their certification is derived from N.J.S.A. 58:11-36. This authority to set standards is not limited to projects involving any particular number of realty improvements and thus applies to any certification involving one or more septic systems. Fifty or more realty improvements is a criterion used in N.J.S.A. 58:11-25.1 to identify which projects require State certification and N.J.S.A. 58:11-27 to indicate which projects are subject to State review. The requirements of N.J.A.C. 7:9A-3.18(c) are appropriate for projects involving more than 10 realty improvements and are established under the authority of N.J.S.A. 58:11-36.

COMMENT: N.J.A.C. 7:9A-3.18(c) and 3.5(c) have different review process standards. The review process should be the same for all lots regardless of the number involved.

RESPONSE: The Department disagrees with this comment. There are a number of technical considerations which arise when larger numbers of septic systems are proposed in a multi-lot development which are not considerations in the case of a single septic system on one lot. The additional requirements for certifications covering more than 10 realty improvements are intended to insure the information obtained from soil evaluation on adjacent lots can be related to larger soil distribution patterns and that patterns of surface and subsurface drainage can be considered in the relative location of septic system components, buildings, roadways, drainage improvements and other cultural and landscape features which are present throughout the area of the subdivision.

COMMENT: N.J.A.C. 7:9A-3.18(b) states that subdivisions of 50 or more units will require two separate certifications. Are both certifications made by the Department? What is the "water quality standards certification", and when will it be available for public review? It is recommended that this section be clarified to state that the criteria on which this certification is based will be limited to compliance with the standards for the design and construction of individual subsurface sewage disposal systems. Reference to the aforementioned water quality standards should be deleted until they are formalized through the rulemaking process as is the case for proposed hearing procedures for Departmental certifications as described at N.J.A.C. 7:9A-3.20. Otherwise, these standards must be included in this proposal to afford the regulated community an opportunity to comment. Therefore, there is objection to the adoption of such standards within the context of these rules without additional information and adequate opportunity to comment.

RESPONSE: As N.J.A.C. 7:9A-3.18(b) clearly states, one of the required certifications for 50 or more realty improvements is made by the State and the other is made by the administrative authority. The water quality standards related certification referred to is the certification required by N.J.S.A. 58:11-25.1 which relates to all applicable State standards. The Department is developing standards for review of sewerage facilities for subdivisions involving 50 or more realty improvements. In the interim, the Department is conducting these reviews pursuant to its best engineering judgment. The Department will issue no approval which fails to meet Ground Water Quality Standards, N.J.A.C. 7:9-6. It would be incorrect to say that the Department's certification under N.J.S.A. 58:11-25.1 would be limited only to compliance with design and construction standards for individual subsurface sewage disposal systems because the Ground Water Quality Standards are also applicable State standards and govern review by the Department of any project which involves the discharge of pollutants into the groundwaters of the State.

The water quality standards which are referred to have already been adopted in accordance with the Administrative Procedure Act and are found in the New Jersey Administrative Code at N.J.A.C. 7:9-6; therefore, there is no reason to include them in these rules for public comment or to delete any reference to them. N.J.A.C. 7:9A-3.20 prescribes hearing procedures for certifications issued by the administrative authority, not the Department. These procedures are established by statute at N.J.S.A. 58:11-31.

COMMENT: The requirement for 10 realty improvements at N.J.A.C. 7:9A-3.18 will impose a hardship. The administrative authority has reviewed the individual septic systems on a continual basis in developments of 10 lots or greater. Why was this provision added to the rules?

RESPONSE: The requirement of N.J.A.C. 7:9A-3.18(c) for additional information for certifications of more than 10 realty improvements is not a new requirement being added in the standards. This requirement is prescribed in the repealed standards at N.J.A.C. 7:9-2.96 and has been in effect since December 7, 1954. This requirement should generally not cause a hardship because such information is required for subdivision approvals which are normally obtained prior to certification of septic systems by the administrative authority. The administrative authority could certify septic system designs on an individual basis provided that information regarding the overall subdivision were provided, as required in N.J.A.C. 7:9A-3.18(c).

COMMENT A: The standards contained in N.J.A.C. 7:9A-3.18(b) should be more specific in relating Department approval of projects involving 50 or more realty improvements to the procedures contained in the Municipal Land Use Law N.J.S.A. 40:55D-1 et seq. It is suggested that Department approval be required as a condition of preliminary subdivision approval and this must be obtained prior to final subdivision approval.

COMMENT B: N.J.A.C. 7:9A-3.18(a) indicates that no subdivision approval should be granted for a major subdivision until approval is given by the Department. This provision should be revised to indicate that no approval shall be granted unless it is either approved by the Department or expressly conditioned upon approval by the Department. The Municipal Land Use Law contains a specific provision requiring municipalities to grant approval subject to a condition where there are additional governmental approvals required (see N.J.S.A. 40:55D-22). The statute requires conditional approvals within the time frame of the Statute. Failure to act within 45 to 120 day time periods for approval can result in an automatic approval. It may be possible to state that no *final* major subdivision approval of 50 or more lots shall be granted without Departmental approval since all conditions of preliminary approval, including Departmental approval, must be met prior to final major subdivision approval and recording of the final plat.

COMMENT C: Preliminary major subdivision approvals by a municipal planning or zoning board do not authorize the applicant to sell or separate lots within the approved subdivision to other persons. It is only upon the recording of the final major subdivision approval (often referred to as a final plat) and the recording of the plat with the county clerk's office that the owner is authorized to separate the approved lots from each other and seek to construct structures. Therefore, due to the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., regarding time deadlines for approvals and the requirement of N.J.S.A. 40:55D-22(b) that local boards approve applications for development subject to other governmental approvals, these rules should be revised to require preliminary major subdivisions to be conditioned upon Departmental certification of the realty improvements and to prevent *final major subdivision approval* until the certification has been issued by the Department.

COMMENT D: N.J.A.C. 7:9A-3.18(d) is contrary to Municipal Land Use Law and should therefore be revised to read that the "municipal or other authority in the State *shall provide for approval subject to*" (not "no approval shall be granted") a determination by the Department that the site is suitable for individual subsurface sewage disposal systems.

RESPONSE: N.J.S.A. 58:11-25 provides that no building permit shall be issued by any municipal or other authority in this State, nor shall the construction of any realty improvement begin, until the local board of health has certified that the proposed water supply system and sewerage facilities are in compliance with N.J.S.A. 11:23 et seq. and these rules. This requirements is also set forth in the Uniform Construction Code, N.J.A.C. 5:23. Clearly, board of health approval of the water supply system and sewerage facilities are a condition precedent to obtaining a building permit. The Department will take enforcement action against local administrative authorities who issue permits in violation of this requirement.

Regarding subdivisions, N.J.S.A. 58:11-25.1 provides that no subdivision approval shall be granted by any municipal or other authority in the State to cover 50 or more realty improvements until the Department has certified that the proposed water supply and sewerage facilities comply with applicable State standards. This is clearly a condition precedent to obtaining subdivision approval and is consistent with Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The Department will likewise take enforcement action against any municipal or other authority which fails to comply with this requirement.

COMMENT A: Mapping wells within 500 feet of a proposed subdivision as per N.J.A.C. 7:9A-3.18(c)4 is excessive. Separation from wells is normally set at 100 feet. A distance of 150 feet (the same as for an individual lot plan (see N.J.A.C. 7:9A-3.5(c)), would be appropriate since it would show that proper separation distances would be maintained. Will 150 feet mapping be permitted?

COMMENT B: The submittal of information on the location of all water supply wells within 500 feet as per N.J.A.C. 7:9A-3.18(c)4 should be modified by lowering this distance to 100 feet. This is consistent with the setback requirements in N.J.A.C. 7:9A-4.3.

COMMENT C: N.J.A.C. 7:9A-3.18(c)4 should contain the phrase, "where readily available", since the location of wells off-site may not be known due to inaccurate records or restricted access.

RESPONSE: The Department disagrees with these comments. The potential impact from more than 10 septic systems is greater than that from one septic system and, therefore, it does not follow that the requirements of N.J.A.C. 7:9A-3.18(c) dealing with subdivisions of more than 10 lots should be the same as those of N.J.A.C. 7:9A-3.5(c) which deals with individual site plans. Showing wells within only a 100 foot radius of disposal fields to coincide with the minimum setback distance prescribed at N.J.A.C. 7:9A-4.3 is not consistent with N.J.A.C. 7:9A-4.3 because this section also allows that distance to be increased by the administrative authority in certain circumstances. Use of the term "where readily available" is unacceptable because this term is highly subjective and will make the requirement extremely difficult to enforce.

COMMENT: N.J.A.C. 7:9A-3.18(c)5 and 9 should include the words "and their classification" to identify types of streams and wetlands of exceptional resource value.

RESPONSE: The Department disagrees with this comment. There is no purpose served by making this distinction since the rules provide no basis for applying different requirements for septic system location in relation to streams or wetlands "of exceptional resource value".

COMMENT: N.J.A.C. 7:9A-3.18(c)11 allows use of a United States Department of Agriculture County Soil Survey Report as information required for a general site plan subdivision. The soil maps are not accurate to a fine enough degree to be used exclusively.

RESPONSE: N.J.A.C. 7:9A-3.18(c)11 allows the use of United States Department of Agriculture soil survey reports as a means of obtaining soil distribution patterns for presentation on general subdivision site plans, but does not allow this information to be used as a basis for septic system designs where more accurate and detailed information is required. The information required by N.J.A.C. 7:9A-3.18(c) is required in addition to the information required by N.J.A.C. 7:9A-3.5(c). N.J.A.C. 7:9A-3.5(c) requires detailed onsite soil evaluation and testing data to be used as a basis for each septic system design.

COMMENT: What are the Department's State standards that will be utilized for certification of 50 or more realty improvements? In view of the fact that there must be simultaneous approvals of the State and the local authority, why are the water quality standards not specifically included in the proposed rules? How can a local authority exercise home-

rule and adopt "more stringent" standards locally if there are no benchwork standards in this code?

RESPONSE: The Department is currently developing standards for review of sewerage facilities for subdivisions involving 50 or more realty improvements. In the interim, such reviews are being conducted in accordance with the Department's best engineering judgment. No such approval will be granted if it fails to meet Ground Water Quality Standards, N.J.A.C. 7:9-6. These standards are not included in the proposed rules because they are not a basis for any determination made by the administrative authority in implementation of the rules. The person making this comment has apparently confused the certification issued by the administrative authority under N.J.S.A. 58:11-25, which is reviewed simultaneously by the Department, with the certification issued by the Department under N.J.S.A. 58:11-25.1 which is not a function of the administrative authority and is only referenced for informational purposes in the rules. The administrative authority can establish more stringent standards for design and construction of septic systems. Standards for ground water quality are promulgated and enforced by the Department only and are not part of septic system certifications issued by the administrative authority in accordance with the rules.

COMMENT: The Department must draft and establish standards if N.J.A.C. 7:9A-3.18(b) and (d) are to be enforced. Without them, the practice of 49 lot subdivisions will continue.

RESPONSE: The Department intends to promulgate specific rules governing certifications issued under N.J.S.A. 58:11-25.1. Such rules are not within the scope of these rules which deal only with certifications issued by the administrative authority pursuant to NJ.S.A. 58:11-25.

COMMENT A: N.J.S.A. 58:11-25.1 currently charges the Department with the responsibility to review and certify onsite water and sewerage facilities for subdivisions containing 50 or more realty improvements. The Department has reversed its position on those subdivision certifications having previously reviewed and certified them. The Department now states that they are "unable to review and certify (the) application(s) at this time and until such time as there are rules promulgated and in effect. The only rules promulgated and in effect, which relate specifically to the installation of individual subsurface sewage disposal systems are the Standards for Construction of Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9-2."

COMMENT B: N.J.A.C. 7:9A-3.18(b) and (d) merely repeats that the certification is needed before subdivision approval is granted and then leaves the issues hanging. N.J.A.C. 7:9A-3.18(e) is "reserved" and would be the logical place to locate the procedure and requirements for certification under N.J.S.A. 58:11-25.1.

RESPONSE: The Department is reviewing applications for certifications for water supply and sewerage facilities for subdivisions containing 50 or more realty improvements pursuant to its best engineering judgment. The Department is currently developing rules governing such certifications which will be promulgated through the rule making process.

COMMENT A: Soil conditions in Warren Township are far too variable to permit only one soil log for every five acres; each lot of a subdivision must be shown to be capable of sustaining adequate sewerage and water facilities.

COMMENT B: According to N.J.A.C. 7:9A-3.18(h), a local board of health does not have the option to grant preliminary approvals on more than one set of soil logs and one permeability test for every five acres. That option must remain open. How would a person know that there would be soils different from that which is mapped by the Soil Conservation Service or what limiting factors are prevalent if they are required to vest a preliminary approval based on tests so sparsely located as every five acres? It is strongly urged that in N.J.A.C. 7:9A-3.18(h), the word "shall" be deleted, and the word "may" be inserted in its place. This would provide local agencies (who have the best knowledge about soils and limitations in their domain) with an option to require as much data as they deem necessary about a site prior to granting approval. Preliminary approvals, absent sufficient data are fraught with problems.

RESPONSE: N.J.A.C. 7:9A-3.18(f) prescribes one soil log per five acres as a minimum requirement and, by requiring at least one boring for every soil type indicated in the United States Department of Agriculture soils map, provides that more borings will be required where soil conditions are variable. The language used in this provision, therefore, does not preclude the requirement for more soil borings in cases where soil variability is large.

COMMENT: Regarding N.J.A.C. 7:9A-3.18(h), board of health approval can clearly be made a condition subsequent to the planning board approval, but not a condition precedent. The Department does not have the authority to establish this rule, but if it does so, it should follow the Municipal Land Use Law which clearly indicates that any approval by the administrative authority (board of health) be a condition subsequent to the planning board approval, but not a condition precedent.

RESPONSE: N.J.A.C. 7:9A-3.18(h) does not establish a requirement for board of health review preliminary to subdivision approval, but merely acknowledges that such a requirement may exist in certain municipalities as part of the subdivision approval process. The Department encourages local ordinances which are more stringent than the rules in this regard.

COMMENT: The use of the term "minimum" in N.J.A.C. 7:9A-3.18(h) is confusing. If one test per five acres is sufficient, that should be clearly stated. Otherwise the local administrative authority may well establish a requirement for more than one test every five acres. What are needed are "bright line" rules that can be easily followed by everyone. If the Department feels that the local administrative authority should have the power to require more tests in certain areas, even for preliminary determinations (which there is disagreement with), then it is respectfully suggested that any such standard in excess of the Department's standards be subject to review by the Department prior to its establishment.

RESPONSE: The right of the administrative authority to establish requirements more stringent than those prescribed in the Department's standards is established by statute at N.J.S.A. 58:11-25. The Department cannot adopt rules which are in conflict with the statute.

COMMENT: It is proposed at N.J.A.C. 7:9A-3.18(h) that soil survey maps be used for certification of major subdivisions. A minimum of one soil log and one percolation or permeability test should be required for every five acres and this provision should not be waived.

RESPONSE: The Department disagrees with this comment. Due primarily to limitations in presentation of data at the mapping scales used, United States Department of Agriculture soils maps are not sufficiently accurate for determining soil properties as basis for a septic system design. For the purpose of making a preliminary determination of the suitability of soils on a tract of land which will be subdivided into several lots, the level of detail and reliability of the information provided by the United States Department of Agriculture soils maps is considered adequate. Due to the variability of soil conditions normally encountered, a soil boring and percolation test performed on every five acre portion of a subdivision would be no more reliable than the soils maps unless the exact location of each disposal field were known in advance of the subdivision approval and the borings and tests were performed exactly at those locations.

COMMENT: On site tests should be mandated on each proposed lot and not for every five acres as permitted in N.J.A.C. 7:9A-3.18(h). The acreage testing procedure may or may not conform to the building lots.

RESPONSE: Such detailed site-specific information is required for certification of septic system designs by the administrative authority. There is no legal basis, however, to require such information as a prerequisite to subdivision approval.

COMMENT: There is a question as to the Department's right of entry, without notification to a property owner, to inspect a septic system. The nature of septic systems do not warrant such searches and entries into private property without notification. Requiring notice to the landowner is necessary to protect their rights. No harm would result from an announced search as there is nothing to hide.

RESPONSE: The Water Pollution Control Act (see N.J.S.A. 58:10A-1 et seq.) grants the Department right of entry as indicated at N.J.A.C. 7:9A-3.19.

COMMENT: The 15 day requirement for hearings by local boards should be qualified so as to apply only to hearings under the Realty Improvement Sewerage and Facilities Act. The present rule could be construed as requiring such hearings for numerous other certifications issued by the local board. Such constraints are not necessary as the regularly scheduled meetings of the boards are sufficient for such other matters.

RESPONSE: The Department disagrees with this comment. It is not possible to construe N.J.A.C. 7:9A-3.20 as applying to certifications other than those issued under N.J.S.A. 58:11-25, since the scope of the proposed rule is clearly indicated at N.J.A.C. 7:9A-1.2(a).

COMMENT A: The enabling statutes referred to in the proposal of N.J.A.C. 7:9A do not grant the Department any authority to adopt rules which modify the Municipal Land Use Law:

1. The Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq. does not grant the Department the authority to adopt rules which specifically bear upon the procedures for obtaining municipal subdivision approval. N.J.S.A. 58:11-36 gives the Department authority to "promulgate standards for the construction of water supply systems and sewerage facilities . . .". The provisions of N.J.S.A. 58:11-44 regard-

ng critical areas determination and N.J.S.A. 58:11-47 relating to the promulgation of rules affecting critical areas cannot be construed to give the Department the power to adopt rules regulating the procedures for obtaining subdivision approval.

2. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., particularly 58:10A-4, 5 and 6 comprehensively treat the types of rules which the Department is authorized to adopt. The Act contains no suggestion that the Department may affect the Municipal Land Use Law. It is not that the developer of realty improvements may avoid the provisions of the Water Pollution Control Act by relying upon the Municipal Land Use Law, but rather that compliance with the Water Pollution Control Act is a collateral matter which must be undertaken. Without a specific grant of authority to promulgate rules affecting the Municipal Land Use Law, the Department is without power to adopt certain provisions of N.J.A.C. 7:9A-3.18.

3. The rules cite N.J.S.A. 58:10A-16 as authority. This apparently deals with "sewerage system cleaners" and does not bear any upon the subject matter of these proposed rules.

4. There is nothing in N.J.S.A. 13:1D-9 or N.J.S.A 13:1D-15 which suggests that the Department has the authority to adjust the procedure requirements and rights established by the Municipal Land Use Law. It is clear that the regulatory powers of the Department lie in adopting rules for processing those permits that come before it not to regulating how applications are handled before Municipal Planning Boards.

5. N.J.S.A. 26:3A-2.21 et seq. is cited as authority for the promulgation of these rules. The Department's authority to adopt regulations is clearly set forth at N.J.S.A. 26:3A-2.28 and does not extend to adopting procedural requirements otherwise covered and preempted by the Municipal Land Use Law.

COMMENT B: Nowhere in Article 6 of the Municipal Land Use Law, N.J.S.A. 40:55D-37 through N.J.S.A. 40:55D-58, nor in any other article thereof, is there a suggestion that the municipality may require any other agency to approve any collateral matter relating to an application prior to the granting of subdivision approval by the municipal planning board.

COMMENT C: N.J.A.C. 7:9A-3.18(d) runs entirely counter to N.J.S.A. 40:55D-22(b). The proposed rules prohibit the granting of "subdivision approval" where 50 or more realty improvements are involved ". . . until the Department has certified that the proposed sewerage facilities for realty improvements comply with the applicable state standards". This language, which is taken directly from N.J.S.A. 58:11-25.1 which preceded the Municipal Land Use Law, does not grant the Department the power to create rules affecting Municipal development approval processing. Therefore N.J.A.C. 7:9A-3.18(d) should be removed or modified to assist in creating a "bright line" of procedure which would help to avoid confusion in the Municipal planning process. It is recommended that N.J.A.C. 7:9A-3.18(d) be rewritten to read:

Any subdivision approval that is granted by any municipal or other authority in the State covering fifty (50) or more realty improvements, or less than fifty (50) where the subdivision extends into an adjoining municipality or municipalities and will, in the aggregate, cover fifty (50) or more realty improvements, shall be conditioned upon the obtaining from the Department of a certification that the proposed sewerage facilities for realty improvements comply with applicable state standards.

The Department should attempt to differentiate between the three types of approvals available under the Municipal Land Use Law: the general development plan, the preliminary subdivision, and the final subdivision. Simply referring to "subdivision" is confusing. Subsection (d) should relate to "final subdivision approval", otherwise review by the Department would be premature.

If the Department is going to regulate in this area (without authority to do so) careful attention should be given to the definitions and procedures set forth in the Municipal Land Use Law. N.J.A.C. 7:9A-3.18, to the extent which it seeks to modify the procedures set forth in N.J.S.A. 40:55D-22 is ultra vires.

COMMENT D: The Municipal Land Use Law, N.J.S.A. 40:55D-22 expressly requires Municipal Planning Boards to act within 95 days and to condition their approvals on any other approvals which are needed.

RESPONSE: The provisions cited as being in conflict with the Municipal Land Use Law are those which correspond to statements made in the Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq.). It is the duty of the local administrative authority to insure that N.J.S.A. 58:11-23 et seq. and N.J.S.A. 40:55D-1 et seq. are complied with. The provisions of N.J.A.C. 7:9A-3.18 are based upon the Realty Improvement Sewerage and Facilities Act, specifically N.J.S.A. 58:11-25 and 58:11-25.1.

N.J.S.A. 58:11-25 provides that no building permit shall be issued by any municipal or other authority in this State, nor shall the construction of any realty improvement begin, until the board of health has certified that the proposed water supply system and sewerage facilities are in compliance with N.J.S.A. 58: 11-23 et seq. and these rules. This requirement is also set forth in the Uniform Construction Code, N.J.A.C. 5:23. Clearly, board of health approval of the water supply and sewerage facilities are a condition precedent to obtaining a building permit. The Department will take enforcement action against local administrative authorities who issue permits in violation of this requirement.

Regarding subdivisions, N.J.S.A. 58:11-25.1 provides that no subdivision approval shall be granted by any municipal or other authority in the State to cover 50 or more realty improvements until the Department has certified that the proposed water supply system and sewerage facilities comply with applicable State standards. This is clearly a condition precedent to obtaining subdivision approval and is consistent with Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The Department will likewise take enforcement action against any municipal or other authority who fails to comply with this requirement.

There was a typographical error in the Notice of Proposal heading in the citation for the County Environmental Health Act, N.J.A.C. 26:3A2-21 in the proposal. It has been corrected to indicate the proper citation.

N.J.S.A. 58:10A-16 was properly cited as authority for the rule as it impacts upon the operation and maintenance of individual subsurface disposal systems.

COMMENT: N.J.A.C. 7:9A-3.14 should be deleted until such time as septic management districts are formed for each area of individual sewage disposal systems. Local agencies do not have the funding nor personnel to accomplish this scheme.

RESPONSE: The Department disagrees with this comment. While there may be other advantages to the community if there were a septic management district, the absence of such a district would not make the issuance of a license to operate more difficult. The review required prior to the issuance of a license to operate is an administrative check to determine whether the homeowner has performed an inspection and/or pumping of the subsurface sewage disposal system. Licensed personnel are not required for this review and the fee which is authorized by statute is adequate to fund the review.

COMMENT: There is strong disagreement that municipalities should be allowed to adopt standards which are more stringent than these rules since there is no technical basis to do so and the Ad-Hoc Committee comprised of Statewide septic experts has already proposed standards to provide for the expected range in soil conditions throughout the State with an added margin of safety. Local variations in standards would cause confusion, inconsistency, and inconvenience to the professional and regulated communities who work with septics. The Department should ensure that these "standards" are uniform Statewide, and as such, the term "may" at N.J.A.C. 7:9A-3.1(a) should be replaced by "shall".

RESPONSE: The Department lacks the legal authority to prohibit the adoption of municipal ordinances which are more stringent than the rules (see N.J.S.A. 58:11-25).

COMMENT: If work can be performed without supervision nor permit, why is N.J.A.C. 7:9A-3.5 so specific as to what is required?

RESPONSE: The Department disagrees with this comment. The construction of a subsurface sewage disposal system cannot be performed without a permit (see N.J.A.C. 7:9A-3.5(a) and 3.13).

COMMENT: There is objection to N.J.A.C. 7:9A-3.4, Malfunctioning systems. All repairs with the exception of a "relatively minor" nature will require a plan prepared by a licensed engineer. In most cases this will add a substantial cost to the homeowner for the repair. The engineering fees may cost in excess of $1,000. Would it not be more advisable to use the monies expended to engineering fees to enlarge an already malfunctioning system? This is directed toward the repair situation, there is agreement that there is need for licensed engineers to prepare plans for new systems. The Department is placing a substantial burden on a homeowner who is suddenly faced with fees for engineering and system repair. The preparation of a plan adds time to the repair process. If our environment is our primary concern, would it not be in everyone's best interest to remedy the situation as expeditiously as possible?

RESPONSE: The Department disagrees with this comment. There is no technical basis for the belief that simply enlarging an existing failing system will cause the system to operate properly. Only a competent professional evaluation of the cause of malfunctioning and the development of a design or procedure to overcome those causes of failure will enable the malfunctioning system to operate properly.

COMMENT A: Regarding N.J.A.C. 7:9A-3.17, Registration of personnel, with all the complexities of the new rules, it simply does not make sense *not* to require mandatory certification of enforcement officers, site evaluators, designers, installers, or system inspectors. The whole purpose of the rules is being wiped out by the fact that the rules allow, and nowhere prohibit, unqualified people from performing those functions.

COMMENT B: The administrative Ad hoc Committee unanimously agreed that because of all the complexities of the new site evaluation procedures, and the intricacies of the design technical standards, supervision and training of field personnel, designers and enforcement officers was of uppermost importance. The proposed rules are very deficient in that respect. Training will be given to those, the Department says, who volunteer to become registered.

RESPONSE: The Department recognizes the advantages of mandatory registration, but has not yet developed the appropriate requirements for the various categories of individuals which were identified. Until such time as the requirements have been developed, the registration will be voluntary.

COMMENT A: The Department is inconsistent in thought, because on the one hand, the Department recognizes that in order to be "registered" (see 7:9A-3.17(b)) as an enforcement officer, a site evaluator, a designer, an installer, and/or inspector, one must have certain prerequisite qualifications. On the other hand, however, because registration is voluntary, one with no discipline qualifications at all could opt not to become registered, but still go out and perform the functions of an evaluator, an installer, an inspector, and/or an enforcement officer. The rules, as proposed, open the door for unqualified people to perform tests, make field decisions, review designs, and inspect systems, and as proposed, even allows those functions without any supervision. The purposes of the rules are circumvented.

The Department must take the lead in requiring minimum personnel standards for all categories. The Department cannot rely on local special ordinances to establish (and defend) personnel standards. One of the code's stated goals is for uniformity and therefore, there must be uniformity of personnel caliber.

The proposed rules must clearly state:

1. Who is allowed to perform site tests? It just can not be any "John Doe";
2. What is meant by "other qualified persons"? and
3. Who can identify limiting zones; that is, can it be a 16 year old high school drop-out, who works part-time for a realtor? The Department's rules do not preclude that. If they do, where?

COMMENT B: How can a local administrative authority know that a non-certified person is properly trained?

RESPONSE: Site evaluation reports and system designs must be signed and sealed by a licensed professional engineer. Septic system enforcement officers must be licensed professional engineers, or licensed health officers or sanitarians. Site evaluators may be licensed professional engineers, licensed health officers or sanitarians or soil scientists, but the work must be signed and sealed by a professional engineer. A septic system inspector may be a licensed professional engineer, or a licensed health officer or sanitarian. There are no current requirements for septic system installer, but the completed work must be certified as meeting the design approved by the administrative authority. This certification may be made by a licensed professional engineer or the administrative authority. Clearly, the work will not be performed by unqualified personnel.

COMMENT: The proposed rules state that the Department will properly train people to utilize and administer the rule. Yet the Department says it will only train those who "voluntarily" want to be certified. Who will train those who do not want to be certified?

RESPONSE: The Department disagrees with this comment. The Department is conducting a voluntary registration program, not a voluntary certification program. The proposed rules do not state or imply that only those who voluntarily register will receive training. The Department will provide training opportunities without regard to either voluntary or mandatory registration of an individual.

COMMENT: Regarding N.J.A.C. 7:9A-3.17(b)2, what is the definition of "soil scientist"?

RESPONSE: Because the registration of individuals is currently voluntary, the Department has purposely not provided an identification of the qualifications necessary for a person to be called a soil scientist. Lacking mandatory registration, the Department considers a person who, by nature of his or her training, education and experience, possesses a high level of expertise in the field of soil science to be a soil scientist.

SUBCHAPTER 4. SITE EVALUATION AND SYSTEM LOCATION

COMMENT: The proposed rules indicate that disposal systems determined to be irreparably malfunctioning, as defined in N.J.A.C. 7:9A-3.4, should be replaced. The proposed rules provide for the permanent use of a holding tank in the event that a replacement system cannot be installed. The permanent use of a holding tank, with associated homeowner responsibility for maintenance, is a potentially negative remedy that should be permitted only as a last resort. Consequently, provisions should be made (including lot size) so that site plans for new development include the location and support data for a reserve disposal field. Existing developments should be required to document that the alternative of a reserve disposal field is not suitable prior to permitting a holding tank.

RESPONSE: The Department agrees in part with this comment. The recommended requirement that replacement of the disposal field be shown to be impossible prior to approval of a holding tank is implicit in N.J.A.C. 7:9A-3.4(d)2 which requires a demonstration that the malfunctioning septic system cannot be altered in a manner that will eliminate the malfunction. The term "alter" as defined at N.J.A.C. 7:9A-2.1 includes replacement of the disposal field or other system components.

The Department disagrees that provisions for a reserve disposal area be required as part of the design for a new septic system. In the proposed rules, requirements for soil evaluation, design, construction and maintenance of septic systems have been substantially increased in order to prevent septic systems from malfunctioning. These increased requirements are proposed in lieu of reserve disposal areas as a way of preventing rather than correcting the problem of a malfunctioning septic system. Prevention is considered to be better than correction as a means of dealing with this problem because, even where a reserve disposal area is provided, it is likely that this reserve area also will eventually malfunction if measures are not required to prevent septic system malfunctions. Since such requirements have been incorporated into the proposed standards, and will result in increased costs to the applicant, the imposition of reserve area requirements which are based on the premise that the septic system will eventually fail, is not considered necessary or appropriate.

COMMENT A: According to the proposed rules, an applicant need not demonstrate the availability of a reserve disposal area for use in the event of a system failure. A reserve area should be tested and required for all new development sites. Systems will fail as a result of user abuse and/or neglect. It is imperative that a reserve area be available to permit construction of a new system which will satisfy all conditions relative to minimum distances and soil suitability. Without a predetermined reserve site, lot sizes and site improvements may severely limit system repair/replacement options, particularly on lots which provide less than three-quarters of an acre (32,670 square feet).

COMMENT B: The requirement of a secondary system, in the event of failure of the primary system, is specifically excluded from the new rules, although this requirement may increase the amount of necessary land in communities which cannot anticipate the installation of sewers in the future. If the primary septic system fails, the property owner has no alternative but to abandon his or her property; a result far more burdensome than the initial reservation of a future secondary area. The lack of such a reserve area often causes hardship for the property owner who is unable to find a satisfactory area to construct an addition or repair to his or her septic system. Additionally, the reserve area should be required to remain clear of obstructions such as garages, pools, or other accessory uses which might hinder future septic repairs or alterations.

If the rules are adopted as proposed, some boards of health will be asked to approve septic installations on properties presently unavailable for development. This causes concern because, due to some existing groundwater and soil conditions, these systems may fail and therefore the reservation of a secondary expansion area is essential.

RESPONSE: The Department disagrees with these comments. Substantial increases in the requirements for soil evaluation, design, construction and maintenance will greatly reduce the likelihood of septic system malfunctions and thereby eliminate the primary justifications for requirements of reserve disposal areas. The intent of the standards is to require that septic systems be designed, constructed and maintained to function indefinitely. To require provision of a reserve disposal area is a means of designing for failure and therefore is in conflict with the intent of the standards.

The only provision in the standards which the Department anticipates may result in the opportunity to develop lots which would otherwise be

undevelopable is the provision for use of permeability tests which can be performed in soil conditions which would not preclude the proper functioning of a septic system but which would preclude demonstration of adequate permeability using the standard percolation test. The permeability tests proposed are, however, more accurate and reliable than the percolation test as a means of determining soil suitability and will therefore reduce rather than increase the likelihood of septic system malfunctions on such lots. Other provisions in the standards, such as the use of soil suitability criteria prescribed at N.J.A.C. 7:9A-10.1(c), will result in a reduction in development on lots which meet existing soil evaluation criteria but which are not conducive to the proper functioning of septic systems.

COMMENT: What is the meaning of "reasonable maintenance" as set forth at N.J.A.C. 7:9A-4.2? This term must be defined as it is subject to different interpretations. What is the intent of this section? What is the relationship of this subsection to the operation of a disposal system?

RESPONSE: The intent of N.J.A.C. 7:9A-4.2 is to indicate generally the requirements contained in N.J.A.C. 7:9A-4 which pertain to the location of individual subsurface sewage disposal systems. Since issues may arise which are not specifically addressed by the standards, it is important that the intent of the standards be clearly stated so that appropriate decisions can be made in such cases. To clarify the meaning of "reasonable maintenance" and to indicate the relationship to standards prescribed for operation and maintenance, a reference to the requirements of N.J.A.C. 7:9A-12 has been added at N.J.A.C. 7:9A-4.2(a).

COMMENT: The proposed locations of disposal fields in areas serviced by domestic wells should be assessed based on potential impacts on water quality, especially with respect to nitrate loading. Consequently, evaluations involving lot size, precipitation, infiltration, and depth and slope of the water table should be completed by the applicant to ensure that adequate dilution occurs before off site migration of septic effluent. This is extremely important in areas underlain by shallow bedrock which posssess a low infiltration capacity.

RESPONSE: The problem referred to here arises when large numbers of septic systems are present at densities which exceed the capacity of soils and groundwater to attenuate or dilute nitrate and other pollutants. Such problems cannot be addressed on a lot by lot basis or in design and construction requirements for individual septic systems and are thus beyond the scope of the rule. To protect groundwater quality, it will be necessary to develop rules which relate acceptable density and distribution of development in unsewered areas to soils and hydrogeologic conditions which influence the movement and fate of contaminants. Authority to develop such rules exists at N.J.S.A. 58:11-25.1 and N.J.S.A. 58:11-44. When promulgated, rules for this purpose will be implemented by the Department rather than the administrative authority and will be separate from the design and construction standards proposed at N.J.A.C. 7:9A.

COMMENT: N.J.A.C. 7:9A-4.2(b) states: "Individual subsurface sewage disposal systems shall not be located near or adjacent to . . .". This language is difficult to interpret and should be more specific.

RESPONSE: To clarify the meaning of N.J.A.C. 7:9A-4.2(b), the phrase "near or adjacent to" has been replaced by the phrase "in such a manner that their functioning may be adversely affected by".

COMMENT A: The language ". . . or areas with excessive stones . . ." at N.J.A.C. 7:9A-4.2(b)1 should be deleted. It is unclear and will invite abusive interpretations.

COMMENT B: The phrase ". . . or with deep wheel ruts . . ." should be deleted since it is unclear and subject to abusive interpretations.

RESPONSE: The Department disagrees with these comments. The presence of stones at the surface of the ground is an indication that underlying soils contain excessively coarse horizons or substrata which are definite limitations for the proper functioning of septic systems. The presence of deep wheel ruts is an indication of disturbed ground which may also constitute a limitation for the proper functioning of septic systems. These indications should not be ignored when identified during site evaluation prior to the selection of a site for the proposed septic system. To say that such areas should be avoided unless their limitations are adequately addressed in the septic system design is not unclear and does not invite abusive interpretation.

COMMENT: The terms "bedrock" and "sinkholes" at N.J.A.C. 7:9A-4.2(b) should be defined.

RESPONSE: Definitions for the terms "bedrock" and "sinkholes" have been added at N.J.A.C. 7:9A-2.1. Addition of these definitions does not impose any additional requirement upon the public; therefore, this is not a substantive change. They are being added to further clarify these physical features of the site which must be addressed in the engineering design for the subsurface disposal system.

COMMENT: N.J.A.C. 7:9A-4.2(b)9 describes freshwater wetlands and should therefore use the term "freshwater wetlands."

RESPONSE: The word "freshwater" has been added as recommended.

COMMENT: The term "occupied building" at N.J.A.C. 7:9A-4.3 (Table 4.3) should be defined. Is a deck or patio part of the building?

RESPONSE: The term "occupied building" is not a technical term, is not intended to convey any special meaning which differs from common usage and, therefore, does not need to be defined. Since people do not generally live on structures commonly referred to as "decks" or "patios", these structures cannot reasonably be considered as part of an occupied building for the purpose of determining required separation distances from septic system components. To clarify the intent of the standards with respect to location of such structures relative to septic system components, N.J.A.C. 7:9A-4.8 has been modified to specifically mention decks and patios as encroachments not permitted over or within the actual disposal field.

COMMENT A: Regarding N.J.A.C. 7:9A-4.3 (Table 4.3), the 10 foot set-back to the property line is inadequate, especially when such set-back is on the downhill side. Additionally, such set back does not allow for expansion space if necessary. A minimum distance of 15 feet is recommended, subject to increase at the discretion of the administrative authority.

COMMENT B: N.J.A.C. 7:9A-4.3 allows a disposal field to be as close as 10 feet to the property line. Engineers have a habit of placing systems in the downhill corner of the property because of the ease of access and it being out of the way. The difficulty is when it malfunctions it cannot be repaired by a gravity flow system since there is no downhill land. It is recommended that a 35 foot setback be required from downhill boundaries to allow room for gravity flow future repairs.

RESPONSE: Assuming that a septic system is designed, constructed, operated and maintained in compliance with the standards, there is no technical basis for increasing the minimum required disposal field/property line separation distance from 10 feet to 15 feet or to 35 feet on the downhill side. The intent of the standards is to prevent septic system malfunctions rather than to provide for an area in which to expand the disposal area in the event of malfunction. The recommended requirement for larger setback distances may preclude the use of a lot in order to address a problem which, if the standards are complied with, is not expected to occur. If an applicant anticipates future expansion of the building served which will require expansion of the disposal area, or if the administrative authority adopts more stringent requirements through local ordinance, the standards do not preclude the provision of larger separation distances.

COMMENT: Experience strongly suggests that the minimum distance between a septic field and a watercourse should be 100 feet.

RESPONSE: Repealed N.J.A.C. 7:9A-2 set the minimum required separation distance between a disposal field and a watercourse at 50 feet. This requirement has been in effect since July 1, 1978. The Department is aware of no technical basis for increasing this distance to 100 feet as a general requirement. The rules do allow this distance to be increased by the administrative authority where excessively coarse soil or fractured rock substrata are encountered.

COMMENT: Regarding N.J.A.C. 7:9A-4.3, where a watercourse is a FW2 trout production stream or wetlands of exceptional resource value, the minimum separation distance should be the same as a reservoir.

RESPONSE: The increased separation distance required between a watercourse and a disposal field in the case of a water supply reservoir is based upon concerns for drinking water quality and public health. Freshwater wetlands, while not addressed in N.J.A.C. 7:9A-4.3, are adequately protected through N.J.A.C. 7:9A-4.7 which references the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and N.J.A.C. 7:7A.

COMMENT: N.J.A.C. 7:9A-4.3 neglects to prescribe a minimum separation between a dry well and a well. It is possible that the materials disposed in a dry well will create a problem on an individual potable water supply.

RESPONSE: The rule does not specifically regulate the location of dry wells except as their presence may impact the hydraulic functioning of a disposal area from septic tank effluent. Dry wells which discharge pollutants that may adversely affect a potable water supply are classified as underground injection wells in the NJPDES rules (see N.J.A.C. 7:14A) and their use without a NJPDES permit is prohibited by those rules.

COMMENT A: N.J.A.C. 7:9A-4 is in conflict with current rules for water supplies. N.J.A.C. 7:9A utilizes the words "to a depth of 50 feet or more or where said casing is sealed." N.J.A.C. 7:10-1 states "to a depth of 50 feet or more and where said casing is sealed". This disparity must

be corrected. There is no reason why two State rules relating to the same law should conflict.

COMMENT B: N.J.A.C. 7:9A-4.3 footnote (4) creates discrepancy between these rules and N.J.A.C. 7:10-1. The proposed rules will be less stringent and will allow for the reduction in the distance between a well and a disposal field if the well is provided with a casing to a depth of 50 feet or where said casing extends to, and is sealed into, a confining layer separating the aquifer from the stratum of soil used for sewage disposal.

COMMENT C: The distance between a well and disposal field exception to the 100 foot separation requirement (see N.J.A.C. 7:9A-4.3 footnote (4)) is in direct conflict with N.J.A.C. 7:10-12.13(a)2 which states:

Distance of a well from disposal fields and seepage pits may be reduced to a minimum of 50 feet, when approved by the administrative authority but only when the well is provided with a casing to a depth of 50 feet or more, and where said casing extends to, and is sealed into, a confining layer separating the aquifer from the stratum of soil used for sewage disposal.

Under N.J.A.C. 7:10-12.13, both conditions must be met prior to approval. Due to the fact that there is no technical definition of an impervious stratum or confining layer (permeability, thickness) and the fact that many clay layers in Southern New Jersey are discontinuous, the exception to the 100 foot separation should be deleted from the rules for new construction.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:9A-4.3 has been modified to conform with N.J.A.C. 7:10-12.13.

COMMENT: N.J.A.C. 7:9A-4.3 footnote (7) allows reduction from sewage disposal systems on "slab portions" of a dwelling. The term "slab portions" should be defined.

RESPONSE: The Department agrees that this provision needs clarification. The requirement has been clarified by modifying the wording at N.J.A.C. 7:9A-4.3 rather than by adding a definition to N.J.A.C. 7:9A-2.1.

COMMENT: N.J.A.C. 7:9A-4.3, Distances, indicates relative distances from inground swimming pools to various parts of the sewage disposal system. Unfortunately, in most cases a swimming pool is not installed when a new septic system is being installed. Therefore, it is impossible to see the correlation between the requirements for distances between the swimming pool and septic system. Is the Department stating that these rules govern pre-existing facilities even though the rules use the term "new construction"? The requirements for proposed inground swimming pools to existing septic systems should be under the jurisdiction of the Building Officials and Code Administrators International, Inc. (B.O.C.A.) code.

RESPONSE: The Department disagrees with this comment. Because the presence of an in-ground swimming pool in close proximity to a disposal field may adversely impact the functioning of the disposal field and may also result in contamination of the swimming pool water by septic tank effluent, it is necessary and appropriate to set a minimum required separation distance between the disposal field and an in-ground swimming pool. As indicated at N.J.A.C. 7:9A-3.3, the standards prescribed in the proposed rule would apply to alteration of existing septic systems as well as to newly constructed septic systems. The location of septic system components relative to natural or man-made features which may affect their adequate functioning falls within the regulatory scope of N.J.A.C. 7:9A and is not covered in the B.O.C.A. code.

COMMENT: Regarding N.J.A.C. 7:9A-4.3, a minimum of 50 feet from a dwelling will be required between the disposal system and the footing drain if the footing drain is to be considered a water course. This will have an impact on set-backs and lot size requirements. The average footing drain will be approximately six to seven feet in depth.

RESPONSE: The purpose of this requirement is to prevent the interception of septic tank effluent by footing drains which could then discharge contaminated groundwater or stormwater to the surface of the ground. In cases where the footing drain is well above the seasonally high water table, the requirement would not apply. On lots with a shallow depth to the seasonally high water table, basements and footing drains would generally be installed at depths shallower than six to seven feet, unless the intent is to use the footing drain as a means of lowering the water table. In cases where the footing drain intercepts groundwater in addition to stormwater which collects around the perimeter of the foundation, a separation distance of 50 feet is necessary to protect public health.

COMMENT: Since most footing drains are lower than disposal beds, the distance should be reduced to 25 feet in all cases, with a clay barrier between the disposal bed and the level of the drain.

RESPONSE: The Department disagrees with this comment. Assuming that there is a permeable soil below or surrounding a clay seepage barrier, such a barrier would not prevent the flow of septic tank effluent into the footing drain. If the hydraulic head is raised on one side of the barrier by recharge of septic tank effluent and lowered on the opposite side by discharge into the footing drain, flow will take place under or around the seepage barrier in response to the gradient produced. In simpler terms, water seeks its own level and will flow around barriers from areas where the water level is being raised to areas where the water level is being lowered.

COMMENT: Does water course (see N.J.A.C. 7:9A-4.3) include detention or retention basins?

RESPONSE: The definition of the term "watercourse" provided at N.J.A.C. 7:9A-2.1 includes any surface water body. If water remains at the surface within a storm water retention or detention basin, then that basin would be considered a watercourse.

COMMENT: It should be specified how N.J.A.C. 7:9A-4.3(b) relates to a garage (attached or detached) and other structures in relation to distances from system components.

RESPONSE: The distance separation requirements in N.J.A.C. 7:9A-4.3 relate to an "occupied building". A garage cannot reasonably be considered as an occupied building; it refers to human occupation.

COMMENT: Please indicate if N.J.A.C. 7:9A-4.3 footnote (7) includes slab on grade construction or crawl spaces and basements with slab poured floors.

RESPONSE: Footnote 7 of Table 4.3 refers only to portions of a building constructed on a slab foundation and not to buildings with basements or crawl spaces on footings with poured concrete floors. The wording at N.J.A.C. 7:9A-4.3 has been modified to clarify this meaning.

COMMENT: With reference to N.J.A.C. 7:9A-4.3 footnote (8), if less than five realty improvements with a combined flow of less than 2,000 gallons per day is proposed utilizing an individual system for each unit, is a 50 foot separation required between each system?

RESPONSE: The requirement for a 50 foot separation distance between adjacent disposal fields is intended to apply to all disposal fields except those which are part of a split system serving one realty improvement. The wording of footnote 8 in Table 4.3 has been modified to clarify this meaning.

COMMENT: The specified minimum protective distances between disposal fields and wells should be qualified to include wells located on abutting properties.

RESPONSE: The requirement for a minimum separation distance between a disposal field and a well, as it is stated at N.J.A.C. 7:9A-4.3, applies to wells on abutting properties. By referring to wells without any qualifications, it is clear that all wells are included.

COMMENT A: The minimum distance from a disposal field to a property line is proposed to remain at 10 feet. It is suggested this distance be increased to 25 feet as a 100 foot setback automatically places an incumberence upon an adjoining property, effectively requiring a 40 foot setback on a lot adjoining another which contains a disposal field which is setback the minimum 10 feet.

COMMENT B: Regarding N.J.A.C. 7:9A-4.3 (Table 4.3), the proposed minimum separation distance between a disposal field and a property line is 10 feet. It is suggested that this distance be increased to 25 feet. The reasoning being that all septic systems have to have a minimum separation distance of 50 feet. By increasing this separation distance to 25 feet, it will not penalize the property owner who installs a system subsequent to an adjacent property owner who installs a system as well.

COMMENT C: The proposed rules require 50 foot distances between disposal fields in addition to a 10 foot offset from the property line. There is a bit of duplicity in this standard. If there is a 50 foot separation between beds, why not require a 25 foot offset from the property? This problem comes to light when one has an existing lot with an existing septic system which is 10 feet off of the property line and an adjacent lot (which is not built upon) which is 100 feet wide. This would preclude the use of the adjacent undeveloped lot.

RESPONSE: The Department disagrees with these comments. The requirement of a 25-foot property line/disposal field separation distance would apply to all portions of the property line on all sides of a lot, regardless of whether or not a disposal field was present within 50 feet on the adjacent lot. Lots which are too small to accommodate a disposal field and still maintain the required separation distance from an existing disposal field on an adjacent lot, which is located at a distance of 10 feet from a portion of the property line, are inappropriately small for the use of septic systems. It is not the intent of the proposed rule to further

constrain the use of all lots in order to accommodate the use of septic systems on lots which are inappropriately small.

COMMENT: The distances to a well at N.J.A.C. 7:9A-4.3 (footnote 4) should be 50 feet if watertight casing is provided for a depth of 50 feet or more. It should not be left up to the discretion of the administrative authority that this distance be increased.

RESPONSE: The Department disagrees with this comment. In many cases, depending upon the stratigraphy and hydrogeologic conditions of a site, the provision of a well with 50 feet of watertight casing will not be as effective in protecting drinking water quality as provision of the required 100 foot separation distance from adjacent disposal fields, and in such cases, the distance requirement should not be reduced. In order to provide the maximum possible protection for public health, even where the well has the required 50 feet of casing, this distance should not be reduced unless it can be demonstrated that provision of the standard 100 foot separation distance is not possible, and, where the criterion is met, the distance should be reduced by as little as possible. Application of these criteria, in the interest of public health, requires the exercise of judgment on the part of the administrative authority. The intent of the standards is not served when the distance requirement is reduced automatically in cases where such reduction is unnecessary or where hydrogeologic conditions are conducive to contamination of the well by septic tank effluent.

COMMENT: Regarding N.J.A.C. 7:9A-4.3, the distance between fields on the same lot is not defined. Does this mean that disposal fields on the same lot are now able to abut one another?

RESPONSE: N.J.A.C. 7:9A-4.3 does not require a minimum separation distance between disposal fields which are part of a split system serving a single realty improvement. The minimum required separation does apply to disposal fields on the same lot if these disposal fields serve different realty improvements. If the disposal fields are part of a split system they may be placed immediately adjacent to each other, without any separation distance, which would have the effect of providing a single disposal of equal total area. The wording in footnote 8 has been modified to clarify this meaning.

COMMENT: The Department indicates that the minimum distance for the setback from disposal fields to occupied buildings should be 25 feet. However, this distance could be reduced to 15 feet in cases of building on a slab. What happens in the case of a building with a crawl space when you have poured a dust cap or a building which is on piles and a concrete slab on grade has been poured?

RESPONSE: The wording of footnote 7 of table 4.3 has been modified to indicate that the separation distances may be reduced when the building is constructed on a concrete slab or over a continuous dust cap and the slab or dust cap is at or above natural or finished grade, whichever is higher. In cases where a building is constructed on footings and a concrete floor or "dust-cap" is poured between the footings, this condition would not be met.

COMMENT: What is the rationale for the increase in the minimum distances for seepage pits. It now becomes very restrictive to install seepage pits on lots of two acres.

RESPONSE: The hydraulics, mode of operation and potential groundwater quality impact of seepage pits is essentially the same as that of cesspools and, for this reason, the setback requirements for seepage pits have been modified to correspond with those required for cesspools. Distance requirements between seepage pits and watercourses, occupied buildings or property lines have been increased so that they are no longer the same as those required for disposal fields. Since the potential groundwater quality impact from seepage pits is considered to be greater than the impact of disposal fields, it is not appropriate for the separation distance to be the same.

COMMENT: The rules require clarification because, in their present form, a footing drain is classified as a subsurface drain. This must be 50 feet; however, a septic system can be placed 25 feet from the house. How can this be done?

RESPONSE: No clarification is required. As stated at N.J.A.C. 7:9A-4.3, a disposal field may be placed within 25 feet of a footing drain, provided that the invert of the footing drain is higher than the bottom of the disposal field or four feet above the level of the seasonally high water table. If this condition is not met, the minimum required setback distance between the footing drain and the disposal bed is 50 feet. The 50 foot requirement does not conflict with the 25 foot requirement for separation between the building and the disposal field because all distance requirements stated are minimums. By providing a distance of 50 feet, both requirements are satisfied and there is no conflict.

COMMENT: The terms "dumps" and "landfills", as contained in N.J.A.C. 7:9A-4.2(b)7, should be defined.

RESPONSE: The Department disagrees with this comment. Since these terms are not technical and are not used to convey any special meaning which differs from common usage, it is not necessary to define them.

COMMENT: The term "adjoining" as used at N.J.A.C. 7:9A-4.2(b)10 is too vague. This provision should be modified to read: "Flat low-lying areas within 50 feet of streams".

RESPONSE: The Department disagrees with this comment. The intent of this provision is to indicate that areas which may be subject to flooding as a result of stream overflow are to be avoided in selecting a site for a septic system. Such areas may extend more than 50 feet beyond the banks of a stream.

COMMENT: Does N.J.A.C. 7:9A-4.4(a) mean that one cannot, under any circumstances, install a system on slopes greater than 25 percent or does N.J.A.C. 7:9A-4.4(c) permit modification of these steep slopes and subsequent installation of systems?

RESPONSE: As stated at N.J.A.C. 7:9A-4.4(c), slopes may be modified for the purpose of installing a septic system, subject to the restrictions of N.J.A.C. 7:9A-10.3(b) which prohibits the installation of disposal fields in areas which have been filled in or covered during rough grading.

COMMENT: N.J.A.C. 7:9A-4.6 makes no mention of properties which may be subject to flooding due to proximity to tidal waters. N.J.A.C. 7:9A-4.6(b)2 should include Coastal Beach (Cu) soil types. N.J.A.C. 7:9A-4.2(b)6 does mention sand dunes but does not prohibit the installation of a system in a coastal area subject to tidal flooding and severe erosion.

RESPONSE: N.J.A.C. 7:9A-4.6 has been modified to mention flooding in coastal areas subject to inundation by tides or ocean waves. Coastal Beach and Dune Land soil mapping units are not included in the list given at N.J.A.C. 7:9A-4.6(b)2 because these soil mapping units may contain areas not subject to flooding.

COMMENT A: Exceptions to N.J.A.C. 7:9A-4.6(b)1 should be provided for those areas with flood prone soils that no longer flood due to improvements. An area which was subject to flooding should not be regarded as a site which is subject to flooding or a site with limitations due to the presence of "flood-prone" soils.

RESPONSE: Cases were sites have a history of past flooding or having soil types which are normally subject to flooding, but which no longer flood due to improvements other than the addition of fill, are relatively uncommon. In such cases, determination of the extent of flooding as modified by such improvements is likely to involve a highly technical analysis. Since no standards have been provided for review of such information by the administrative authority, it is not appropriate for exceptions to the site criteria of N.J.A.C. 7:9A-4.6(b) to be approved at the local level. To insure an adequate review of the technical aspects of septic system designs involving location in areas previously subject to flooding, a treatment works approval issued by the Department must be required as provided at N.J.A.C. 7:9A-3.9.

COMMENT: The list of soils in N.J.A.C. 7:9A-4.6(b)2 should include Hibernia and Ridgebury Soils which are found in stream drainageways in the New Jersey Highlands.

RESPONSE: The soil types listed at N.J.A.C. 7:9A-4.6(b)2 are those which are rated by the Soil Conservation Service as being subject to frequent or common flooding. Ridgebury and Hibernia soils do not meet these criteria and are therefore not included in the list.

COMMENT: Septic systems should not be permitted in wetlands or the flood fringe areas.

RESPONSE: The Department agrees with this comment. The requirement for a minimum depth of two feet from the existing ground surface to a regional zone of saturation which is stated at N.J.A.C. 7:9A-10.1(c), would preclude the installation of a septic system in a wetland area. Additionally, N.J.A.C. 7:9A-4.6 precludes the construction of a septic system in areas known historically to be subject to flooding or having soil types which are known to be subject to flooding which includes the flood funge area. The rules clearly require that the provisions of N.J.A.C. 17:7A and N.J.A.C. 7:13 must be complied with.

COMMENT: N.J.A.C. 7:9A-4.7 should be amended to include the sentence: "In the Pinelands Area, the administrative authority shall require evidence that the applicant has complied with N.J.A.C. 7:50-6.1". This addition is requested in order to indicate that wetlands within the Pinelands are subject to regulation.

RESPONSE: It is not necessary to add this statement to N.J.A.C. 7:9A-4.7, which deals exclusively with projects regulated under the Freshwater Wetlands Protection Act, since the need to comply with all

Pinelands Commission requirements is clearly indicated at N.J.A.C. 7:9A-3.8.

COMMENT A: The proposed rules should utilize the tripartite test for triggering the need for a wetlands approval prior to the septic approval. The proposed rules would require an approval for an individual septic system to obtain a wetlands determination approval prior to the septic tank approval even if two of the three definitional requirements of a "wetland" were not present. This may be appropriate in large scale developments and yet totally unnecessary and inappropriate in situations involving pre-existing individual lots and/or existing homes needing alterations. The delay and cost associated with the individual lot and home situations would appear to substantially outweigh the minimal benefit of requiring a wetlands delineation approval from the Department. The new septic tank suitability testing methods will adequately help prevent the location of septic systems in areas with shallow depth to seasonal high water table and unsuitable soils.

COMMENT B: N.J.A.C. 7:9A-4.7 should be brought into conformance with The Freshwater Wetlands Protection Act.

COMMENT C: It appears that a wetlands determination approval would be required prior to septic system approval if only one of the definitional requirements of a wetland is present. This would be unnecessarily burdensome for larger developments or existing properties with existing realty improvements needing system alterations. Departmental approval should be required only where all three criteria set forth in N.J.S.A. 13:9B-1 et seq. are present.

COMMENT D: The wetlands provision of the proposed rules should be reviewed and coordinated more closely with the Department's and the Corps of Engineers' definitions and regulations regarding wetlands. For example, N.J.A.C. 7:9A-4.7(b) defines wetlands merely by seasonal high water table whereas the definition of "wetlands" utilizes the tripartite wetland definition including hydrology, saturated soils and vegetation as defined by the New Jersey Wetlands Act and the Corps of Engineers' regulations. Also note the definition of "filled wetlands".

RESPONSE: The persons making these comments have apparently misinterpreted the intent of N.J.A.C. 7:9A-4.7. A freshwater wetlands determination made as required by N.J.A.C. 7:7A is based upon consideration of three criteria which involve substantial effort and expense on the part of the applicant. While it is necessary to insure compliance with applicable rules prior to issuance of a septic system approval, it would not be reasonable to require that such an analysis be performed on all lots, since information already available as a result of site evaluation carried out for the purposes of septic system design may indicate that the presence of a freshwater wetland on many lots is highly unlikely. It is the intent of N.J.A.C. 7:9A-4.7 to identify sites where compliance with the requirements of N.J.A.C. 7:7A should be demonstrated prior to issuance of a septic system approval, and to do this at no additional cost to the applicant by using data already available as part of the required septic system site evaluation. Since the determination made here is not a wetlands delineation or identification as required by N.J.A.C. 7:7A, there is no reason why the criteria used must be the same as those used in N.J.A.C. 7:7A. A freshwater wetlands permit is not necessarily required prior to septic system approval for a lot exhibiting one of these criteria. A determination made by the Department that a freshwater wetlands permit is not required would also satisfy the requirements of this section.

What freshwater wetlands permit requirements apply to individual lot development or alterations to existing homes is a matter determined by N.J.A.C. 7:7A and not by this rule. N.J.A.C. 7:9A-4.7 only indicates when a determination by the Department of the applicability of N.J.A.C. 7:7A should be required prior to issuance of a septic system permit. N.J.A.C. 7:9A-4.7 will result in no delay or costs other than those associated with compliance with N.J.A.C. 7:7A.

Because the rule may permit installation of a septic system in a freshwater wetland resulting from a perched zone of saturation, it is incorrect to state that compliance with the rule alone would preclude construction in a freshwater wetland.

COMMENT: N.J.A.C. 7:9A-4.7(b)3 should read: "surface ponding is not related to recent precipitation of the surface of the ground."

RESPONSE: The Department disagrees with this comment. Surface ponding is sufficient cause to suspect the possible presence of a freshwater wetland even in cases where it has rained recently. Surface ponding of rainwater during or immediately following precipitation is not characteristic of well drained soils.

COMMENT: No septic system should be permitted where the seasonal high groundwater is less than three feet below the surface of the natural ground.

RESPONSE: The limitation of disposal field installation to sites with a depth to seasonally high water table of two feet or greater is based upon U.S. Environmental Protection Agency guidelines for mounded septic systems which are supported by considerable technical data. The Department is aware of no technical basis for requiring a minimum of three feet from the natural soil surface to seasonally high groundwater.

COMMENT: Is it correct to interpret the proposed rules as stating that whenever the soil conservation service map indicates that one of the listed soil types is present, and an onsite evaluation confirms the presence of the mapped soil, a written determination (see N.J.A.C. 7:9A-4.7(c)5) from the Department is "required prior to local approval"?

RESPONSE: Yes, the Department agrees with this interpretation of N.J.A.C. 7:9A-4.7.

COMMENT: Regarding group two hydric soils (see N.J.A.C. 7:9A-4.7), they should be subject to the same verification as defined by Ralph Tiner, Jr., in his 1985 wetlands book.

RESPONSE: Some of the soils listed at N.J.A.C. 7:9A-4.7(b)3 are classified as "group two" hydric soils in Wetlands of New Jersey (1985) by Ralph W. Tiner and are indicated by the author to require verification as being hydric soils. Sites considered as potential freshwater wetlands based upon the presence of these soils should be verified by at least two of the wetland identification parameters.

COMMENT: Hydric soils should be verified with a combination of at least two of the parameters in the wetlands determination process.

RESPONSE: N.J.A.C. 7:9A-4.7 only establishes the possibility of wetlands being present. Verification is part of the actual freshwater wetland delineation process and would normally be done as part of the requirement for a freshwater wetland permit.

COMMENT: A fee is required for a letter of interpretation. It is unclear how this fee could be calculated on someone else's property. For example if you own a one acre piece of property upon which you are proposing a septic system, and your neighbor owns 100 acres with wetlands within 100 feet, will you have to survey his piece of land along with a topographic survey of the entire site? Based on the fee schedule, this could be expensive.

RESPONSE: There is no specific requirement in the proposed rule for delineation of wetlands which are not on the applicant's property.

COMMENT: N.J.A.C. 7:9A-4.7(c) should be modified to read: "Letter of Exemption from the Bureau of Freshwater Wetlands".

RESPONSE: The wording in N.J.A.C. 7:9A-4.7(c) was chosen to correspond with the terminology used in N.J.A.C. 7:7A.

COMMENT: N.J.A.C. 7:9A-4.7(d) should be amended to read as follows:

Use of the criteria given in (b) above to identify the presence of a potential freshwater wetland does not constitute an official freshwater wetlands delineation by the Department's "three-parameter approach" in accordance with N.J.A.C. 7:7A. As a result, sites which do not meet these criteria may still be subject to regulation under N.J.A.C. 7:7A or other Federal, State, or local laws. The applicant shall contact the appropriate agencies and *provided proof of compliance* with all applicable statutes or regulations or ordinances.

RESPONSE: The requirement that the applicant provide proof of compliance with N.J.A.C. 7:7A is stated at N.J.A.C. 7:9A-4.7(a). The intent of N.J.A.C. 7:9A-4.7(d) is not to repeat the requirement stated at N.J.A.C. 7:9A-4.7(a), but rather to indicate the need to comply with all requirements of other applicable laws and regulations.

COMMENT: It is recommended that the Pocomoke (Ps) soil be included in the soils list in N.J.A.C. 7:9A-4.6(b)2 under the heading of "Surface Flooding".

RESPONSE: The Department disagrees with this comment. The Department has conferred with the Soil Conservation Service of the United States Department of Agriculture and the Pocomoke soil is described as one which forms in depressions and may have the seasonal high water table at or near the surface. Water may drain into the depression and create a temporary ponded condition, but this does not fit the definition of surface flooding. For a soil to be characterized as subject to surface flooding, moving water such as a stream overflowing its banks must create the standing water condition.

COMMENT A: N.J.A.C. 7:9A-4.7(c) should be modified to read: "a Letter of Interpretation from the Bureau of Freshwater Wetlands confirming the: (a) absence of wetlands, or (b) the delineation of the wetlands and/or the transition area."

COMMENT B: N.J.A.C. 7:9A-4.7(c) should be revised to read: "An approved wetlands and/or transition area permit."

COMMENT C: N.J.A.C. 7:9A-4.7(c) should be revised to read: "A transition area waiver."

COMMENT D: N.J.A.C. 7:9A-4.7(c) should be replaced to read: "A copy of notification from the Bureau of Freshwater Wetlands that the activity is covered by the Statewide General Permit."

RESPONSE: The Department disagrees with these comments. The Department believes that the categories identified in N.J.A.C. 7:9A-4.7(c) more accurately delineate the status of a proposed application in relation to the potential impact of freshwater wetlands.

SUBCHAPTER 5. DETERMINATION OF SOIL SUITABILITY

COMMENT: The soils in the southern area of New Jersey are mostly sand; therefore, the type of soil sampling proposed is not appropriate for southern New Jersey.

RESPONSE: The proposed standards include sampling methods which are appropriate for sandy-textured soils at N.J.A.C. 7:9A-6.2(e) and 6.3(c).

COMMENT A: The technical complexity, in particular as it pertains to soil profiles, is so excessive that it is likely that even experienced soil scientists will differ on a common profile description. Although it is recognized that these technical soil profiles are proposed to standardize site analysis procedures, such complexity may in fact promote increased variability of reported results. Therefore, it is suggested that the Department consider a major revision to the soil profile analysis requirements which would enhance simplification.

COMMENT B: There is such a variety of different terms in N.J.A.C. 7:9A-5.3 that it can be confusing. According to students of previous soil courses at Rutgers University, there have been many conflicts in interpretation. Is the Department going to act as the arbitrating agency when such conflicts occur?

COMMENT C: The terminology in N.J.A.C. 7:9A-5.3 is too refined. The installation of a septic system does not require such refining. For example, six different terminologies for mottling are not necessary.

COMMENT D: The many types of mottles in N.J.A.C. 7:9A-5.3(f) makes it more subjective for separate personnel to agree upon and interpret.

COMMENT E: The many degrees of hardness or firmness make it more subjective for separate personnel to agree upon and interpret.

RESPONSE: The Department disagrees with these comments. Soils are inherently complex and their accurate evaluation requires consideration of a number of properties. Because existing standards provide little guidance regarding what properties are to be evaluated and what terminology is to be used, many soil logs currently submitted lack information about important soil properties and contain terminology which is vague, subjective and difficult to interpret. The proposed standards for soil description are detailed and provide extensive guidance which will serve to standardize soil logs and make the complexity of soils less difficult to unravel. The terms provided make it possible to distinguish between soil horizons which differ significantly in properties which affect the treatment and disposal of septic tank effluent. While many terms are used, each term is clearly defined based on characteristics which can be readily determined in the field. The terminology used was developed by the Soil Conservation Service for use in soil surveys where uniform results must be obtained by a large number of individuals working under a wide range of conditions throughout the United States.

COMMENT: Subchapter 5 should be deleted from the rules and placed in a manual for site evaluation. Rules should specify requirements, not explain how to meet them.

RESPONSE: The Department disagrees with this comment. The terminology and criteria for description and evaluation of soil profiles are requirements rather than recommendations and directly affect the type of septic system design which may be approved. The standards prescribed for determination of soil suitability at N.J.A.C. 7:9A-5 are thus regulatory in nature and belong in the chapter.

COMMENT: The requirement of an engineers' certification for the determination of the seasonal high water table (see N.J.A.C. 7:9A-5.8) has been omitted. Said certification should be required. Why was this requirement omitted?

RESPONSE: The Department disagrees with this comment. Statements have been added at N.J.A.C. 7:9A-5.1(b) and 3.5(c) indicating that all soil evaluation data used in the design of a septic system must be obtained through procedures carried out under the supervision of a licensed professional engineer and must be signed and sealed by a professional engineer when included as part of an application for certification.

COMMENT: Profile pits should be required to a minimum depth of 10 feet and the reference to eight feet should be deleted. If the profile pit cannot be dug to a depth of 10 feet, it should require special findings (as in section 10.8 of the 1963 code) that the experience of the administrative authority has indicated that disposal fields in the immediate area, being a similar nature and size and handling equal volumes of sewage, have functioned satisfactorily for a reasonable period of time.

RESPONSE: The Department disagrees with this comment. In cases where a mounded or mounded soil replacement system is proposed, there is no basis for requiring a soil profile pit to a depth of 10 feet below existing grade. In such cases, all or part of the minimum required four-foot zone of treatment will be provided by placement of suitable fill material above existing grade, and the presence of an adequate four-foot zone of disposal can generally be established without carrying the excavation for soil logs to a depth of 10 feet below existing grade.

COMMENT A: The new standards suggest that two backhoe test pits be conducted in a proposed disposal bed area. In accordance with figure 2 and a 4 to 1 slope, a 10 foot deep backhoe test pit would require a top width of 40 feet. If two backhoe test pits were required could you imagine the amount of displaced soil there would be? This is certainly impractical and unjustified. In most cases percolation tests and soil borings are done to determine if a lot meets the building standards of the client with that contingency written into the agreement of sale. Some clients will accept septic systems that have to be excavated, others will not. Imagine the destruction to a wooded lot with backhoe test pits if the property in question went through two or three clients, all wanting their septic systems in a different location? This would create a substantial loss of trees and damage to the lot. Keep in mind that it is also illegal to remove trees on a lot that you do not own. This may also impact the Pinelands where there are minimum land clearing requirements.

COMMENT B: There is concern regarding the requirement of two profile pits for each disposal field. Due to sandy soils encountered in Cape May County, the walls of these pits have a high probability of caving in after they are dug. A recommended cross-section is provided in Appendix A, Figure 2. This pit is still unsafe and it violates Occupational Safety and Health Administration (O.S.H.A.) standards in sands and sandy loam soils. If three soil borings can be performed in lieu of the second profile pit, could six borings be performed in lieu of both pits?

COMMENT C: "Each" of the two required soil profile pits should be able to be substituted by a minimum of three borings versus only a partial substitution (for one pit). The commenters do not believe that the additional information on soil structure (obtained with a pit) warrants the added expense or site disturbance (tree removal).

COMMENT D: The backhoe test pit required by the proposed rules is not safe. In South Jersey sands, a backhoe test pit of 10 feet deep should be shored. The test pit and methodology proposed in the Department's standards are not safe and are impractical.

COMMENT E: Regarding N.J.A.C. 7:9A-5.2(e), Figure 2 of Appendix A shows Recommended Cross-Section of Soil Profile Pits with a "Safe Slope" labelled at one horizontal (min.) to four vertical. Maximum depth is noted at 12 feet. The text mentions that sides of pits should be stepped and sloped to "allow safe access". The commenters believe that it is a general safety hazard to allow individuals to enter pits this steep and deep unless they are properly braced and shored or cutback at very flat slopes. The proposed new rules should probably defer to O.S.H.A. criteria on the subject of trench excavations.

RESPONSE: The Department agrees that a profile pit carried out to depth of 10 feet and excavated with slopes of 4 to 1 or less would result in an excessive amount of site disturbance, that it is unsafe to enter pits of this depth which have not been properly shored and braced, especially in the case of saturated cohesionless sands, and that requirements of applicable laws and regulations governing occupational safety should be complied with. The Department does not agree that the requirement for at least one soil profile pit as a means of determining soil suitability is unnecessary and should therefore be eliminated. Features such as soil structure, soil consistence, faint patterns of soil mottling and irregular boundaries between soil horizons cannot always be adequately evaluated in soil borings. Evaluation of such features is of importance primarily at depths of five feet or less below the surface where soil genetic processes which result in the development of these features are most intense. Based upon these considerations, N.J.A.C. 7:9A-5.2 and figure 2 of Appendix A have been modified to address valid concerns raised by persons commenting on the requirements for excavation of soil profile pits. The revisions made will eliminate the need for profile pits to be excavated below a depth of five feet where soil conditions are unfavorable and permit soil evaluation below that depth to be accomplished safely by use of soil borings or by examination of samples removed by excavation equipment from deeper portions of soil pits. A statement has also been

added to indicate the need to comply with applicable safety laws and regulations.

COMMENT: N.J.A.C. 7:9A-5.2(b) should be revised to apply the requirement for a profile pit on an area/basis. As such, it should read: "one profile pit is required for each 1500 square feet of disposal field. Three soil borings may be performed in lieu of the second or any other profile pit provided that the soil horizons and substrata observed in the borings are not significantly different from those observed in the first profile pit".

RESPONSE: The Department disagrees with this comment. The number of soil pits or borings needed depends on the amount of soil variability encountered within the area of a proposed disposal filed. By comparing the results of soil logs performed at opposite ends of the disposal field, the variability of soils and the need for further soil borings is apparent. Requirements for profile pits which are set arbitrarily based on the size of the disposal area may result in more profile pits than are necessary being performed in the case of large disposal fields constructed in areas of uniform soils, or an inadequate number of profile pits in the case of smaller disposal fields constructed in areas of highly variable soils.

COMMENT: Regarding N.J.A.C. 7:9A-5.2(b), only one profile pit is necessary to determine the soils for a disposal field. This position is based upon the fact that the majority of one particular county's disposal field sizes are within the 350 square foot to 500 square foot areas. Furthermore, if two profile pits are taken, most of the disposal field will already have been excavated. But, most significantly, this requirement for two profile pits can only cause unnecessary and undue economic harm to the homeowner.

RESPONSE: The Department disagrees with this comment. Due to the inherent variability of soils, it is not possible to reliably infer soil conditions throughout a disposal area by excavating a pit at a single location and extrapolating the results in one or more directions. By excavating pits on opposite sides of the disposal area, however, features observed on either side can be used as a basis to infer the presence of the similar features in the area between the pits. The requirement for two profile pits is based on the principal that it is more reliable to interpolate between two known data points than to extrapolate beyond a single known point.

COMMENT: A provision should be added to N.J.A.C. 7:9A-5.2(c) and (d) to authorize the administrative authority to extend the distance of "15 feet" to "25 feet" where it can be demonstrated to be more practical.

RESPONSE: The Department disagrees with this comment. The maximum allowable distance of 15 feet between the margin of the disposal field and the soil profile pit or boring was chosen by balancing practical considerations, such as problems in predicting the location and dimensions of the disposal field prior to the completion of soil evaluation and testing, with considerations regarding the decrease in reliability of results as the profile pits or borings are performed at greater distances beyond the boundaries of the disposal field.

COMMENT A: Regarding N.J.A.C. 7:9A-5.2(c)1, why are tests permitted to be conducted 15 feet away from the disposal field? All tests and soil logs should be located within the disposal field.

COMMENT B: The two main determinants of soil suitability are the percolation test and the soil log. The proposed rules allow disposal fields to be designed and constructed using soil logs that are 15 feet beyond the boundaries of the disposal field (see N.J.A.C. 7:9A-5.2(c)3). Princeton Township contains soils that may change significantly within 15 feet. Only those soil logs located within the area intended for sewage disposal should be considered during design. Any soil logs located outside of the proposed field should be considered additional field data.

RESPONSE: The rule requires the excavation of soil profile pits or borings on opposite sides of the proposed disposal field as a means of determining soil properties throughout the area of the disposal field. Due to the disturbance in soil structure resulting from excavation of soil profile pits, it is preferable that the pits be excavated adjacent to rather than within the boundaries of the disposal field. Since location of the exact boundaries of the disposal field is generally not known at the time that profile pits or borings are excavated, some flexibility is necessary in the relative location of soil profile pits or borings and disposal fields. The 15 foot allowable distance between soil profile pits or borings and the disposal field provides the required flexibility.

Two soil profile pits or borings located 15 feet beyond the boundaries of a disposal field, on opposite sides of the disposal field, are considered to provide more reliable data regarding soil conditions throughout the disposal field than would be obtained by a single boring located within the area of the disposal field, as required by the repealed N.J.A.C. 7:9-2.

COMMENT: Soil borings should not be required to be within the area of disposal. Using a backhoe, soil borings can be as long as 15 feet. Too much disturbance will occur in the disposal area. Replacing material in the same order in which it was taken, and expecting it to have the same properties is unrealistic.

RESPONSE: The rule does not require that soil profile pits be excavated within the area of the disposal field. N.J.A.C. 7:9A-5.2(c)1 allows the profile pits to be a maximum of 15 feet beyond the boundaries of the disposal field.

COMMENT: Who will certify that the pit was properly backfilled according to N.J.A.C. 7:9A-5.2(c)2? This is an unenforceable requirement.

RESPONSE: Soil evaluation procedure must be carried out under the direct supervision of a licensed professional engineer, and may also be witnessed by the administrative authority. As with other aspects of site evaluation, design and construction, certifications made by the administrative authority or a licensed professional engineer, as required by N.J.A.C. 7:9A-3.13, are the primary mechanism for enforcement.

COMMENT: It is suggested that N.J.A.C. 7:9A-5.2(c)2 require that the pits be backfilled with select fill.

RESPONSE: The use of select fill material to backfill profile pits in the case of disposal field installations which do not involve excavation and removal of the surrounding native soil, can result in a major discontinuity below the disposal field. In cases where the native soil underlying the remainder of the disposal field is less permeable than the select fill, this can result in a concentration of flow in the area of the backfilled soil profile pit and a short-circuiting of the treatment zone provided by native soil throughout the remainder of the disposal field. For this reason, the use of select fill to backfill soil profile pits is not specified at N.J.A.C. 7:9A-5.2(c)2.

COMMENT A: In addition to the sandy soils encountered, a high seasonal water table is also common to Cape May County. This can limit the depth of your pit if you encounter ground water close to the surface. The requirement that the depth of the profile pit shall never be less than eight feet below the proposed level of infiltration may be difficult to achieve if you encounter groundwater at a depth of four feet or less.

COMMENT B: N.J.A.C. 7:9A-5.2(e)1 states: ". . . The depth of the profile pit shall never be less than eight feet below the proposed level of infiltration." Many areas of Atlantic County have water tables that rise to within inches of the ground surface. If the profile pit was dug in a sand formation with a shallow watertable, it would be virtually impossible to complete the pit eight feet below the proposed level of infiltration. The use of hand augers with casings from the top of the water table to a depth of 10 feet would be a useful alternative in this part of New Jersey. This may avoid potential accidents in unstable profile pits.

RESPONSE: N.J.A.C. 7:9A-5.2(e) has been modified to eliminate the need to excavate soil profile pits below the water table in sandy soils where such pits would be unstable. In such cases, the requirement that soil evaluation be carried out to a minimum depth of eight feet below the proposed level of infiltration can be satisfied by the use of soil borings.

COMMENT: It would seem that the absolute minimum depth of a profile pit should be six feet below the zone of infiltration to allow a four foot zone of treatment and a two foot zone of disposal when adequate deep permeability is established.

RESPONSE: The proposed standards, as modified in response to other comments received, will provide a good deal of flexibility with regard to the depth of soil profile pits, provided that soil evaluation is carried out by means of soil borings to a depth of at least eight feet below the proposed level of infiltration when the pit is terminated at the shallower depths due to unfavorable soil conditions. Even where soils are favorable to the excavation of deeper pits, profile pits are required only for the upper five feet of the soil evaluation.

COMMENT: The term "minimum" should be deleted from N.J.A.C. 7:9A-5.2(e)1 to ensure consistency Statewide.

RESPONSE: The Department disagrees with this comment. In certain cases, such as where permeable soil is present at depth below a thick hydraulically restrictive horizon, it may be necessary to excavate soil profile pits to depths greater than 10 feet in order to demonstrate the presence of an adequate zone of disposal. A requirement that soil profile pits be excavated to a "depth of 10 feet" rather than "a minimum depth of 10 feet" would preclude the excavation of deeper pits in cases where they are appropriate. The proposed standards provide a minimum depth requirement which may be enforced consistently throughout the State.

COMMENT: N.J.A.C. 7:9A-5.2(e)1 should be modified to require that a profile pit should never be less than six feet below the proposed

vel of infiltration. An eight foot pit will be nearly impossible to dig many areas where shale exists, even using equipment such as a backhoe.

RESPONSE: The Department disagrees with this comment. A soil rofile pit or soil boring extending a minimum of eight feet below the roposed level of infiltration is necessary to demonstrate the presence of zone of treatment and a zone of disposal of an adequate thickness below ıe proposed disposal field. In cases where solid bedrock is encountered t a shallower depth, the excavation can be terminated at the bedrock. n some cases the level of infiltration can be raised above existing grade y the use of select fill material. Alternatively, if the bedrock is to be onsidered as a suitable zone of wastewater disposal so that the disposal eld can be installed at the normal depth below existing grade, a means ıust be found to excavate into the bedrock in order to establish its uitability as a zone of disposal.

COMMENT: The requirement at N.J.A.C. 7:9A-5.2(e)1 that profile its be excavated to a minimum depth of 10 feet below the existing ground urface or solid bedrock when encountered, may be abused. A machine perator will stop at eight feet when shale is encountered and digging ecomes difficult.

RESPONSE: In determining the presence of an adequate zone of reatment and disposal below a proposed disposal field, no credit is given or soil or rock strata which are below the depth of soil profile pits or orings. As a result, there is no advantage to be gained by terminating oil profile pits at depths shallower than 10 feet in cases where it is ossible to extend the excavation to the standard 10 foot depth. It is herefore unlikely that applicants will abuse the provision which allows oil profile pits to be terminated at depths shallower than 10 feet where olid bedrock is encountered.

COMMENT: The depth of a profile pit should be 10 feet in the northern region of the State and 10 feet in the southern region if possible. In unstable soil, eight feet should be acceptable.

RESPONSE: The Department agrees that 10 foot deep soil profile pits should not be required where soil conditions make excavations of this depth impossible. N.J.A.C. 7:9A-5.2(e)1 allows soil profile pits to be terminated at depths less than 10 feet in cases where the pit becomes unstable due to lack of soil cohesion, groundwater infiltration, or both.

COMMENT: What benefit will be reaped by changing soil log recording from the unified soils system used by engineers to the system generally used by soil scientists? It seems that the color of soils need not be so defined as to use the color chart in the field. Also, it seems that descriptions such as dense and loose are equally descriptive when compared to firm and friable. The ultimate goal of soil identification in a test pit for a septic system is to yield adequate data whereby the designer can complete his task correctly. It is suggested that rather than mandating the soil scientists morphology system (see N.J.A.C. 7:9A-5.3), possibly this type of recording should be recommended, or offered as an alternative to the current engineers' system.

RESPONSE: The United States Department of Agriculture system of classifying soil morphology was chosen as a basis for determining the suitability of soil for treatment and disposal of septic tank effluent based upon the following considerations:

1. The United States Department of Agriculture system was developed as a means of classifying and evaluating soils in a manner which would relate primarily to agricultural use. The growth of field crops depends upon essentially the same physical, chemical, and biological soil properties and processes as those which affect the treatment of septic tank effluent. Of particular concern both in agriculture and in septic system design are those soil properties which influence the vertical movement of rainfall, irrigation water, or septic tank effluent through the unsaturated soil horizons above the water table.

2. Soil properties which relate directly to the functioning of systems include the relative proportions of sand, silt and clay, soil structure, soil consistence and soil drainage as indicated by soil color patterns. The United States Department of Agriculture system of soil classification is the only accepted classification system which provides non-subjective criteria for field evaluation and description of all these properties.

3. Soil Survey Reports published by the Soil Conservation Service for most of the counties of the State contain a great deal of information about each soil series in the State which can be used as a basis of evaluating the suitability of a particular soil type for treatment and disposal of septic tank effluent. Use of the United States Department of Agriculture system of classification in soil evaluation permits the septic system designer to correlate information obtained in the soil evaluation to information contained in the Soil Survey Report, and thereby utilize extensive soil characterization data for each soil series as well as engineering interpretations which are based on extensive research and experience.

Soil color patterns are the only reliable method of estimating depths to seasonally high water tables, particularly when soil evaluation is carried out during the summer and fall. Terms such as "dense" and "loose" are not valuable as a means of reporting soil properties unless a standard set of criteria have been established for their use, as is the case for United States Department of Agriculture terminology for soil consistence. The Unified System of soil classification which is specified in the repealed N.J.A.C. 7:9A-2 was developed primarily as a means of evaluating the suitability of soils as a substrata for roads, air fields and foundation and does not contain criteria for evaluation of clay content, soil structure or soil color, all of which are important properties affecting the functioning of septic systems.

COMMENT: N.J.A.C. 7:9A-5.3 through 5.9 are too interpretive and need clarification in order for the interpretation to be consistent.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-5.3 provides standard terminology for description of soil morphology based upon properties which can be observed in the field. N.J.A.C. 7:9A-5.4 provides a soil suitability classification system based upon the type and depth of soil limiting zones. N.J.A.C. 7:9A-5.5 through 5.9 provide detailed non-subjective criteria for identification of soil limiting zones based upon soil morphological properties or measurements of hydraulic head and piezometers. The result is a comprehensive, logical and non-subjective method for relating soil properties measurable in the field to the suitability of the soil for various disposal field installation options.

COMMENT: Regarding N.J.A.C. 7:9A-5.3, mottling could have been created centuries ago. Is it that important? In Hunterdon County, between Flemington and Frenchtown, many old deeds call for a road leading through "The Great Swamp", which shows that area has changed, and has left evidence that it might have been a swamp in the centuries past.

RESPONSE: Soil color and mottling are the most reliable criteria for recognition of zones of seasonal saturation and determination of the depth to the seasonally high water table. The presence of mottling generally indicates prolonged and repeated periods of soil saturation of a degree that would adversely effect the ability of the soil to provide adequate treatment and disposal of septic tank effluent. In some cases, the mottling may be a relict condition which has persisted in a soil which was formerly subject to saturation but has, due to some change in drainage or hydrologic conditions, become well-drained. Cases of relict mottling are relatively rare and the fact that such situations may occasionally be encountered does not justify disregarding this important soil morphological feature in the vast majority of cases where its presence does indicate an actual soil limitation.

COMMENT: The criteria for recognition of rock substrata at N.J.A.C. 7:9A-5.5(a)1 includes rock fragments as small as two millimeters in diameter. The Department should increase this minimum size as two millimeters is too small.

RESPONSE: The Department disagrees with this comment. Two millimeters is the accepted upper size limit for particles which are considered as soil in the United States Department of Agriculture system of soil classification and this size limit is recognized by soil scientists throughout the world. Unconsolidated mineral deposits or weathered rock strata which are composed predominantly of particles larger than two millimeters in diameter do not possess adequate surface area per unit volume to support the physical, chemical and biological processes which are characteristic of soils and which make soils a suitable medium for treatment of septic tank effluent.

COMMENT: "Pit-bail test" should be added to the list of allowable tests in N.J.A.C. 7:9A-5.5(a)2.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:9A-5.5(a) has been modified to indicate that the pit-bailing test is an acceptable method of distinguishing between fractured rock substratum and a massive rock substratum. This allows an additional testing option and does not impose additional requirements; therefore, this is not a substantive change requiring reproposal.

COMMENT: N.J.A.C. 7:9A-5.8 should be revised to state that mottling does not always indicate a zone of saturation.

RESPONSE: The Department disagrees with this comment. In the vast majority of cases, the presence of mottling corresponds to a condition of recurrent and prolonged soil saturation. Those relatively rare cases where mottling is not related to such a condition cannot be distinguished without highly specialized knowledge and skills possessed by trained soil scientists. Persons with this background and training are not normally available to perform soil evaluations or to witness such evaluations on behalf of the administrative authority, nor are such qualifications a re-

quirement of the proposed rule for persons performing these functions. In the majority of cases, identification of zones of saturation based upon the presence of mottling will be accurate, and in those cases where errors result, those errors will be conservative ones which do not result in a decreased degree of protection for public health and environmental quality. To state that all mottling does not indicate a zone of saturation without providing a means for distinguishing when mottling does or does not indicate a zone of.saturation, can only lead to confusion and disputes which are not readily resolved. In cases where mottling can be interpreted by causes other than soil saturation, it is appropriate that such interpretations be reviewed by the Department through the treatment works approval process as provided by N.J.A.C. 7:9A-3.9(b)2.

COMMENT: The proposed rules make no distinction between chroma values of soil matrix or solid or soil mottling when evaluating zones of saturation. The rules should be amended to distinguish chroma values of two or less as representing saturation while those with values greater than two requiring case by case evaluation.

RESPONSE: Mottling is a complex and imperfectly understood phenomenon which varies in appearance and degree of development depending upon a number of factors including climate, hydrology, soil chemistry, soil mineralogy, soil microbiology, soil texture and soil structure. As a result, there are no generalizations which can be made regarding mottling that will be true for all sites except that mottles are absent in well drained soils and that mottling of any type is related to prolonged and repeated periods of soil saturation or moisture contents close to saturation. It is true that, in many cases, mottles of high chroma occur above law chroma mottles and, in such cases, the low chroma mottles are more indicative of the average position of the seasonally high water table. In other cases, high chroma mottles are the only type of mottles present in soils which are known to be poorly drained. Because there are no accepted rules for interpreting the significance of different types of mottles, there is no basis for a provision in the rules that mottles with a chroma greater than two are to be evaluated on a case by case basis in determining the presence of a zone of saturation. By regarding all mottling as an indication of soil saturation, the rule provides for a conservative estimate of the depth to seasonally high water table which can be made by professional engineers, health officers and sanitarians without extensive training in soil science.

COMMENT: Under N.J.A.C. 7:9A-5.8 there are two items of concern, 7:9A-5.8(a)1 and 2, and 7:9A-5.8(b)1. These interpretations of seasonal high water table are extremely restrictive and do not take into consideration the many variable site conditions which may exist. Under these definitions, no allowance has been made for a hanging water table condition, in which water temporarily "hangs" at the boundary of two permeable horizons due to the difference in porosity; also ignored is capillary action in which the water in a perched condition is drawn up to a level several inches above the zone of saturation producing faint, isolated mottles. Several inches can be critical in whether or not a system may even be considered. Although relict mottles are indistinguishable from any other mottle, knowledge of the history of a site may lead the investigator to believe that mottled horizon may contain relict mottles. Former agricultural sites may have been drained in the past and have been dry for years.

Furthermore seepage is not always indicative of seasonally high water, and may in fact be a very temporary condition, since water moves through the soil horizons after rainfall at various rates. Observation of seepage or mottling should raise questions and cause further investigation, not simply shut the door. Provisions should be made to monitor the site through the wet season which will result in a more accurate and true picture of the suitability of the site.

RESPONSE: The purpose of N.J.A.C. 7:9A-5.8 is to provide a means for identification of zones of soil saturation which may limit the ability of the soil to provide adequate treatment for septic tank effluent. A zone of near saturation caused by a hanging water table or the capillary rise above the water table is no less a limitation than a zone of saturation resulting from any other cause. There is no basis for treating these conditions any different.

Relict mottling is a relatively uncommon condition and its recognition can involve complex technical considerations. Where relict mottling has been established, determination of the true seasonally high water table becomes a problem since the evidence of soil morphology can no longer be used. In some cases, knowledge of site history may indicate that mottling is a relict condition, but such knowledge rarely includes detailed measurements of how the water table level has changed as a result of site drainage. Since standard criteria for evaluation of relict water tables have not been developed, it is appropriate that such cases be reviewed by the Department through the treatment works approval process, as provided by N.J.A.C. 7:9A-3.9(b)2, rather than by the administrative authority as a standard design approvable under N.J.A.C. 7:9A.

Groundwater seepage into a soil profile pit during soil evaluation can only occur if a zone of saturation occurs in the soil. It is true that such a condition may be present in well drained soil for short periods of time during or immediately following a heavy rainfall. It is a poor practice however, to conduct soil evaluation during such periods of time and the problem referred to by this comment can be avoided simply by waiting several days after a heavy rainfall before conducting site evaluation. Seepage which continues more than several days after a rainfall event is indicative of a soil limitation which must be addressed in the disposal field design.

The proposed rule provides standards for soil evaluation which can be used for most sites and which provide an objective basis for approval by the administrative authority without the need to evaluate highly complex procedures or analyses. In special cases where these criteria are not valid and where wet season monitoring or other more elaborate procedures are required, it is appropriate for these procedures and analyses to be evaluated by the Department as part of the treatment works approval process. Failure of the proposed rule to address the special cases referred to does not "shut the door" on these applications since a provision for State review and approval has been provided.

COMMENT: To change the soil identification methods presently employed by thousands of professional engineers to a method favored by 60 unlicensed soil scientists appears to have limited merits.

The pivotal point of concern is the present treatment of "mottled soil" as a new religion. Mottled soil is described on page 6 of the Waste Treatment Handbook "Individual Household Systems", New York State Department of Health, as: "Gray or variegated colorations are formed when soil pores become filled with water for extended periods of time. This is called mottling and begins when the soil pores are filled with water and oxygen is restricted. Generally yellow, brown and red soils indicate the passage of air through the soil, and hence, an ability to permit water percolation. A gray color often indicates lack of operation and resistance to the passage of water. A soil profile in which upper layers are brightly colored but diminish to a washed out color with increasing depth indicates progressively less aeration and the probable presence of groundwater at certain times of the year. Many times it is extremely difficult to identify mottling, due to inherent color properties of the soil."

From experience, "mottled soil" has usually been encountered at a level of 12 to 18 inches below the surface in fields formerly and presently being used for agricultural purposes. It appears, as a result of repeated cycles of ploughing/disking to an unusual depth of 12 to 18 inches, followed by the spreading of lime (a great soil stabilizer) and fertilizers, a band of discolored reasonably impervious soil is developed. Because surface water is slowed during the percolation process through the discolored soil, sometimes resulting in a lateral movement of the moisture above the discolored soil, it should not result in the classifying of the discolored soil as a water table. When a soil, identical in all respects, extends through a field where mottling is observed into a wooded area where no mottling is found, it leaves room for discussion.

When a test pit is excavated to a depth of eight to 10 feet below the surface and a soil profile of the pit walls indicates top soil and sandy loom for a depth of 18 inches, discolored soil (moist) for the next three inches, sand and gravel (dry) for the next eight feet, it does not appear logical to reject a proposed residential use for the property because the discolored soil is classified "a water table within the top twenty-four inches."

The subject of mottled soil/water table has been discussed with practicing engineers, persons with graduate degrees in soils from Columbia University and Polytech, and Orange County Health Department official, and farmers. No one agrees with, or is ready to embrace, the "new religion".

It is suggested that before this matter of heavy handedly discounting the practical residential use of property because of the appearance of mottled soil goes into litigation, that a committee of qualified, concerned persons convene and decide the issue.

RESPONSE: The United States Department of Agriculture system of soil classification was chosen as a basis for soil evaluation because this is the only established system which provided criteria for evaluation of all soil properties important as indicators of soil limiting zones and because use of this system will make it possible to relate onsite investigations to information and interpretations contained in county soil survey reports published by the Soil Conservation Service.

The person making this comment has apparently misinterpreted the proposed standards for soil evaluation and has drawn erroneous conclusions regarding the lack of acceptable septic system design options when certain types of mottling is observed. The condition referred to is a perched zone of saturation caused by a thin hydraulically restrictive horizon which is underlain by permeable soil and which is indicated by a band of mottling at a shallow depth in the soil. Using the criteria provided in the rule, this condition would be identified as a perched zone of saturation which could be addressed by extending the bottom of a conventional disposal field beyond the bottom of the hydraulically restrictive horizon and providing a shallow interceptor drain on the upslope side of the disposal field to intercept recharge which moves laterally above the hydraulically restrictive layer. No statement or provision contained in the proposed rule would indicate that the condition described is unsuitable for the installation of a septic system. The interpretation of mottling which is disagreed with by the commenter and persons he has spoken with is not contained in the proposed rule.

COMMENT: The proposed rules make references that, with no conditions, soil mottling is an indication of seasonal high water. This directly conflicts with the United States Environmental Protection Agency Design Manual, "Onsite Wastewater Treatment and Disposal Systems". The manual shows a soil mottling example with the statement that the example does not indicate a seasonal soil saturation. The rules should address this obvious conflict.

RESPONSE: The United States Environmental Protection Agency publication referred to was intended to be used as a guidance document. As stated at the beginning of the manual, it does not contain standards, rules or regulations. Many of the statements made in the manual are appropriate for inclusion in a guidance document but are not appropriate to be included in regulations. It is not appropriate to include a statement in the rules that not all mottling observed is related to soil saturation unless non-subjective criteria are provided which will enable all persons who collect and review soil evaluation data to distinguish which types of mottling are related to soil saturation and which types are not. Since no such criteria are given in the United States Environmental Protection Agency manual, and since cases of mottling which are not related to soil saturation are relatively uncommon, it is appropriate for the purpose of the rules to consider all mottling an a indication of soil saturation.

COMMENT: N.J.A.C. 7:9A-5.8(a) requires further clarification. Mottling can be spotty and not indicative of a zone of saturation. The mottling should be uniform and somewhat consistent to truly indicate a perched water condition.

RESPONSE: The Department disagrees with this comment. The degree to which mottling will develop is as much a function of soil properties as it is a function of wetness. Certain soils will develop only weak or spotty mottling even though they are subject to prolonged and recurrent periods of saturation.

COMMENT A: N.J.A.C. 7:9A-5.8(a)2 should be modified to read as follows:

(a) Criteria for recognition of zones of saturation shall include but not be limited to the follows:

. . .

2. Any layer within or below the soil profile from which ground water is observed, *unless it is found to be a perched zone of saturation,* shall be considered a zone of saturation.

COMMENT B: N.J.A.C. 7:9A-5.8(b)1 should be amended to read as follows:

(b) The upper limit of the zone of saturation, which is the seasonally high water table, shall be determined by one of the following means:

1. Where motting is observed, at any season of the year, the seasonally high water table shall be taken as the highest level at which mottling is observed, except when the water table is observed, *unless it is found to be a perched zone of saturation,* at a level higher than the level of the mottling.

RESPONSE: The recommended change in wording is inappropriate. A perched zone of saturation which is indicated by mottling is just as much a limitation for the treatment and disposal of septic tank effluent as a regional zone of saturation, and there is no basis for disregarding this limitation. The proposed rule does provide criteria for distinguishing between perched and regional zones of saturation as well as special design options which may be used to address the limitations associated with a perched zone of saturation.

COMMENT: These rules lack methods for determining seasonal or tidal high water in coastal areas. Some persons presently utilize mean high water elevations closest to the property.

RESPONSE: The Department agrees with this comment. A statement has been added at N.J.A.C. 7:9A-5.8(b)2i to address measurement of static water level in areas of tidally influenced groundwater to provide a method for determining the level of groundwater which responds to tidal activity. This does not impose any additional requirements and is not considered a substantive change requiring reproposal.

COMMENT: Regarding N.J.A.C. 7:9A-5.8(b)1, mottling is a term used to describe certain color patterns within a profile pit. Mottles are formed during a chemical reaction. Seasonal saturation is one possible catalyst for this reaction. It appears irresponsible to have a rule in place which emphasizes a more scientific approach to describing soil characteristics and an elementary approach to assigning the depth to the seasonal high water table. Many factors should be taken into consideration before making a determination, such as color values, abundance of mottles, topography, water table, vegetation, and other documented information that may be available. Identifying the seasonal high water table is a science. It is not absolute nor black and white. It is suggested that the Department's technical staff review this section with soil scientists from southern New Jersey. It is suggested that either a more technical, all inclusive definition of seasonal high water be developed or some checklist of criteria to prove or disprove findings (similar to a three parameter approach to defining wetlands).

RESPONSE: The Department agrees that the formation of mottling is a highly complex phenomenon and that a rigorous scientific evaluation would consider mottling in relation to a number of other factors. There are, however, regulatory considerations in addition to the technical considerations. For the purpose of the rule, what is needed is a set of criteria which are non-subjective and which can be used by health officers, sanitarians and professional engineers who may have limited training in the principles of soil science. The criteria given will result in an interpretation of mottling which is simplified but conservative from the standpoint of public health and environmental quality. It would be irresponsible to permit less conservative interpretation requiring soil science expertise unless a qualified soil scientist was required to perform the evaluation. Such a requirement is considered inappropriate and impractical due to the lack of statutory authority to define qualifications for soil scientists and the lack of an adequate number of qualified soil scientists to perform these evaluations.

The Department agrees that mottling may occur as a result of factors other than seasonal saturation, but it does not agrees that such cases are widespread. The criteria provided in the proposed rule will result in estimations of seasonal high water table depth with are accurate in most cases and conservative in all cases. In cases where scientific data can be provided to show that the seasonally high water table is lower in elevation than the mottling or that the mottling is not caused by seasonal saturation, such data can be evaluated by the Department as part of the treatment works approval process, as provided at N.J.A.C. 7:9A-3.9(b)2.

COMMENT: N.J.A.C. 7:9A-5(b)2 appears to suggest that if no mottling is observed in a 10 foot profile pit, something is wrong. Many areas of Atlantic County have well drained soils with seasonal high water tables in excess of 10 feet. Also, the Atlantic County Soil Survey soil classifications are only described to a depth of five feet. In other words if no mottling or water table is observed within 10 feet, should the pit be continued until either one is located? Limiting determination of seasonal high to these two methods is too restrictive, unrealistic and impractical.

RESPONSE: Because mottling does not develop in all poorly drained soils or may be difficult to discern, the absence of mottling in itself does not provide conclusive evidence for determination of the depth to seasonally high water table. In the case of a soil which does not exhibit mottling, N.J.A.C. 7:9A-5.8(b)2 allows determination of depth to seasonally high water table by direct measurement during the wet season or by correlation with a soil series described in the county soil survey report. Seasonally high water table depths for well drained Atlantic County soils are reported in the soil survey report as greater than five feet. This provides an adequate basis for disposal field design because zones of saturation below a depth of five feet are not a limitation for installation of a conventional disposal field. If the soil type present can be positively identified based upon soil morphology as a soil series known to be well drained, there is no need to extend soil borings below a depth of 10 feet.

COMMENT: Regarding N.J.A.C. 7:9A-5.8(b)2i, Atlantic County water tables usually reach the seasonal high in the months of February to June. Every county may be different. This determination should be left up to the local health department.

RESPONSE: There is no basis for the statement that water tables in Atlantic County are highest in the months of February to June. In Atlantic County, as elsewhere in the State, water tables generally begin

to rise in October when evapotranspiration by deciduous plants ceases and begin to drop in April when trees leaf-out and evapotranspiration resumes. To permit measurement of seasonally high water table in May or June would greatly underestimate soil limitations due to seasonally high water tables. It is the Department's statutorily mandated role to set minimum State standards for design and construction of septic systems and to delegate this function to local health departments.

COMMENT: Regarding N.J.A.C. 7:9A-5.8(b)2ii, there is strong opinion that reliance upon the Soil Conservation Service County Soil Survey Report alone for determinations of seasonal high water table is improper and that such determinations should be based upon actual measurements during the January through April season. Local conditions have demonstrated that sole reliance upon the soil survey report is ill-advised.

RESPONSE: The method for estimation of depth to seasonally high water table which is prescribed at N.J.A.C. 7:9A-5.8(b)2ii does not rely solely on the United States Department of Agriculture county soil survey report. This method involves detailed evaluation of soil morphology in a soil profile pit and correlation of the observations made with soil profile characteristics of soil series described in the soil survey report. Based upon this correlation, the actual soil series present at the site can be identified using site specific data. Once the soil series has been identified in this manner, information provided in the soil survey regarding depth to seasonally high water table for that specific soil series can be used as a basis for disposal field design. Inherent inaccuracy of soil survey maps resulting from limitations in presentations of information at the mapping scales used would not affect the reliability of this determination since the soil type is identified based upon site specific data rather than by relying on the accuracy of the maps. Information contained in the soil survey reports concerning seasonally high water table depths for the various soil series is based upon extensive field work and practical experience and is considered to be a reliable basis for design provided that the soil type has been accurately identified in the field.

COMMENT A: N.J.A.C. 7:9A-5.8(a)1 and (b)1 do not differentiate between perched or regional seasonally high water table (SHWT) or zone of saturation. N.J.A.C. 7:9A-5.8(e)1, 2 and 3 along with Table 10.1 indicates that the Department is recognizing that in an area of a perched zone of saturation, a septic treatment and disposal system can be installed; albeit one with a cut-off trench and one which must include both soil removal and a mounded installation. Sussex County issued a directive on January 29, 1987 quoting a policy determination by the Department of Environmental Protection which eliminated previously potential septic fields where mottling occurred within two feet of the surface. This directive did not consider perched versus regional SHWT conditions. At that time, it was requested that the Department grant, at a minimum, a grace period or transition period to allow many existing persons to proceed under the old rules. The Department denied the request. It is now good to see that the Department is recognizing that if varying discolorations (which may not even be mottling according to the soil scientists who conducted soil log demonstrations) are encountered in the top two feet, then the question of perched or SHWT must be resolved.

Are the commenters correct, then, to assume that they may advise their clients that where this condition exists, further study and testing must be done to determine perched versus regional SHWT? If so, they would like this further clarified to the extent that Sussex County will also follow the State Department guidelines. In order to determine when a dense layer at one and a half to three feet is truly indicative of a regional or perched zone of saturation, they would propose to their clients two possible methods of proof, both to be monitored at least through the March and April months:

1. Pairs of piezometers—one set in the upper horizon and one set in the lower region, sealed through the dense "mottled" layer; and

2. A cut-off trench upslope of a specific area, with a shallow open excavated area monitored for any "perched" lateral flow.

It would be the commenter's intent to install either of these types of test programs beginning in the fall and continuing with regular monitoring through April of the following year. The commenters feel confident that in site-specific instances, especially where they are testing in United States Department of Agriculture Soil Series, such as Nassau (SHWT> 3 feet), Bath (SHWT>3 feet) and Swartswood (SHWT>3 feet), that their programs will yield results which indicate that the variances in soil colors were incorrectly viewed as mottling or that any seepage found directly above this layer is in fact perched.

COMMENT B: It appears from the wording of N.J.A.C. 7:9A-5.9(c) that any artesian zones cannot be drained. In complex substrata, multiple perched layers of groundwater are often found. There may be some artesian characteristics to the intermediate perched zones as evident by intermittent springs. This condition would seem appropriate for certain drains although the code seems to preclude their use in this case.

RESPONSE: These comments call for further clarification of the proposed criteria for distinguishing between perched and regional zones of saturation, but do not show any ambiguity or lack of clarity in the proposed rules. N.J.A.C. 7:9A-5.8(e) provides criteria for distinguishing between perched and regional zones of saturation. N.J.A.C. 7:9A-10.1(c) provides for the installation of a conventional disposal field in conjunction with an interceptor drain where the limiting zone is identified as a perched zone of saturation. The procedures for identification of a perched zone of saturation which are proposed by these comments are provided for in the proposed rules at N.J.A.C. 7:9A-5.9 and N.J.A.C. 5.8(e)3. It must be pointed out, however, that N.J.S.A. 58:11-25 allows the administrative authority to enforce criteria which are more stringent than those contained in the proposed rules.

COMMENT: The phrase ". . . and shall be witnessed by the administrative authority or its authorized agent" should be deleted from N.J.A.C. 7:9A-5.9(d). A duplicative review will only drive up the cost of the system. Additionally, the administrative authority may not be adequately staffed to witness each test.

RESPONSE: The Department disagrees with this comment. Witnessing the test does not duplicate review since the data must be reviewed by the administrative authority or its authorized agent whether the test is witnessed or not. The wording in N.J.A.C. 7:9A-5.9(d) has been modified to indicate that witnessing of this test is subject to the same prior notification limitations as other site evaluation procedures, as prescribed at N.J.A.C. 7:9A-3.6(b). This change will address the concern regarding inadequate health department staff.

COMMENT: With the amount of laboratory analysis required throughout the rules (for example, N.J.A.C. 7:9A-5.10(d)3), laboratories should be certified by the Department.

RESPONSE: The Department disagrees with this comment. Where laboratory soil test data is relied upon as a basis for septic system design, it is appropriate that this data be certified by a licensed professional engineer as prescribed in the proposed rules. The Department has determined that certifying soil testing laboratories which perform this type of analysis is unnecessary at this time. However, the Department will examine this issue in the future to determine if such action should be taken.

COMMENT: With reference to N.J.A.C. 7:9A-5.10(f), who certifies or verifies that abandoned subsurface drainage systems are removed or sealed prior to disposal field installation?

RESPONSE: As indicated at N.J.A.C. 7:9A-3.13(a), a certificate of compliance may be issued only after the administrative authority or a licensed professional engineer has certified that the septic system has been installed in compliance with the Department's standards.

COMMENT: If a subsurface drain's invent elevation is higher than that of the proposed disposal field's bottom, is the drain still considered a watercourse?

RESPONSE: As indicated at N.J.A.C. 7:9A-2.1, subsurface drains are considered as watercourses. The only exceptions to this rule are interceptor drains designed in accordance with N.J.A.C. 7:9A-10.7 and footing drains which meet the criteria given at N.J.A.C. 7:9A-4.3.

COMMENT: N.J.A.C. 7:9A-5.10(f) needs clarification. It is presumed to be referring to old farm fields that may have had subsurface drainage systems in them.

RESPONSE: N.J.A.C. 7:9A-5.10(f) is intended to refer to subsurface drains installed for agricultural as well as other purposes. The Department sees no need for clarification of this subsection.

SUBCHAPTER 6. PERMEABILITY TESTING

COMMENT: The existing rules state at N.J.A.C. 7:9-2.60 that "all percolation tests shall be performed under the supervision of a licensed professional engineer, a licensed health officer, or a first grade sanitarian, and witnessed by the Administrative Authority or Authorized Agent". This minimal control in the old rules is taken away as the proposed rules are silent with respect to requiring supervision of tests and/or determination of soil limiting factors. Hopefully, this is an oversight because there is a definition for "direct supervision" in the proposed rules but no use of the term in the text. The proposed rules should be revised to reinstate the supervision and certification requirements contained in the existing rules.

RESPONSE: The Department agrees that failure to include a statement in the proposed rules indicating that soil testing must be carried out under the direct supervision of a professional engineer is an oversight. The data obtained is part of the septic system design which must be signed

nd sealed by a professional engineer. The definition of the term "direct upervision" was included for this purpose. A statement has been added .t N.J.A.C. 7:9A-6.1(k) to clarify this requirement.

COMMENT: N.J.A.C. 7:9A-6.1(a) allows six different soil permeability tests to be used as determinations of soil suitability. Local ıealth departments have little training to witness the pit-bailing test, tube ›ermeameter test, soil permeability class rating test, basin flooding test ınd piezometer test. Adequate training by the Department must be ›rovided for sanitarians who will be responsible for witnessing these tests. Otherwise private engineering firms will be allowed to conduct tests that ıre not familiar to the sanitarians.

RESPONSE: The Department agrees with this comment. The intent ›f N.J.A.C. 7:9A-3.17 is to establish a program through which training :an be provided to health department personnel and other persons in-/olved in site evaluation, design, construction, inspection and approval ›f septic systems.

COMMENT: The proposed rules, which offer alternate testing nethods for marginal soil types, will inevitably allow disposal fields to ›e constructed in environmentally sensitive areas. The resultant risk will ›e a degradation in groundwater quality and the destruction of sensitive :cological zones. The acceptance of the alternate testing methods will not redirect development away from prime agricultural land as predicted in the current proposal preface. The current practice of accepting only percolation testing should remain in place for its inherent growth management benefits.

RESPONSE: The Department disagrees with this comment. The purpose of a percolation test as well as the proposed new soil testing methods is to provide a method for establishing acceptable soil permeability and for determining the required disposal field size. The purpose of percolation or permeability tests has never been to control development. Site suitability criteria prescribed in the proposed rule will prevent installation of septic systems in environmentally sensitive areas which would result in a threat to public health or environmental quality. For example, N.J.A.C. 7:9A-4.4(a) precludes disposal field installation where slopes exceed 25 percent and N.J.A.C. 7:9A-10.1(c) precludes the installation of a disposal field where the regional water table rises within two feet of the ground surface. These and other restrictions will limit the inappropriate use of septic systems in environmentally sensitive areas to a much greater extent than any provision in the repealed rules.

COMMENT: It is a pleasure to see that the alternate testing and alternate type designs can be done at a local level and not burden the Department with a lot of needless paperwork which now occurs.

RESPONSE: Due to the widespread use and availability of established standards for these soil testing procedures and septic system designs, it is appropriate that they be incorporated into the Department's standards for review and approval by local health departments.

COMMENT A: Regarding N.J.A.C. 7:9A-6.5, the method of testing should be expanded to include groundwater diversion tests. This method has been found to be very effective (especially in the Spring) and more economical than the pit bailing method and other testing procedures outlined in the new rules. It is obviously not always practical, but having it mentioned in the code as an acceptable method would provide additional latitude in determining the most appropriate way to do testing.

COMMENT B: The Department should consider including groundwater diversion tests as an alternate form of permeability testing, as it may be considered an effective test to be conducted in the spring and may be more economical to conduct than other testing methods.

RESPONSE: The Department is not familiar with any accepted soil testing procedure known as a "groundwater diversion test."

COMMENT: There is objection to N.J.A.C. 7:9A-6.1(a). Obviously the Department has no realization of the fact that engineering firms do not immediately respond to requests to go into the field. The requirement will result in disposal fields being open to the elements for one and two week time periods before an engineer will arrive to conduct the required percolation tests. The requirement here should be that the select fill be stockpiled on site, composite samples should be taken of the fill, and a textural analysis of the fill should be performed to verify specifications prior to the fill being emplaced in the system. If it is not done this way, if improper fill were emplaced it would then have to be removed. The removal process could easily have adverse effects on the field.

RESPONSE: N.J.A.C. 7:9A-6.1(a) allows a tube permeameter test or a soil permeability class rating test to be performed on a sample of the select fill material as an alternative to conducting a percolation test in the fill material after it has been emplaced. The soil permeability class rating method is essentially the same procedure as that suggested in this comment. The proposed rule does not preclude this test from being done prior to emplacement of the fill material.

COMMENT: It is a good practice to test the fill material in place; however, with the large number of installations being installed on a daily basis, it would be very time consuming waiting for the engineer and, therefore, allowing the system to remain open for a longer period of time during installation. Although there is agreement with the requirement, there should be some leeway.

RESPONSE: N.J.A.C. 7:9A-6.1(a) provides two other testing options which may be used in cases where it is impractical to perform a percolation test in the fill material after it has been emplaced. These tests are the tube permeameter test and the soil permeability class rating test.

COMMENT: Regarding N.J.A.C. 7:9A-6.1(a), what representative test may be used to determine a design rate for "suitable fill" prior to actual design of the system?

RESPONSE: As part of the disposal field design process, when the use of fill material is proposed, the textural composition of the fill should be specified. If the textural classification is known, then the permeability can be determined by the soil permeability class rating method, as prescribed at N.J.A.C. 7:9A-6.3, and the design hydraulic loading rate for the disposal field can be determined in accordance with N.J.A.C. 7:9A-10.2.

COMMENT: N.J.A.C. 7:9A-6.1(a) has confusing wording regarding design permeability tests. The confusion relates to the "level of infiltration" for mounded systems. In a mound system, the "level of infiltration" would be above the existing ground level, thus precluding permeability testing at the "level of infiltration".

RESPONSE: N.J.A.C. 7:9A-6.1(a) clearly states that when a mounded disposal field is proposed, the percolation test shall be conducted in the fill material after it is emplaced or a tube permeameter or soil permeability class rating test shall be conducted on a sample of the fill material. By doing a test in the fill material which, in the case of a mounded disposal field, is placed above existing ground level, the requirement for a test at the level of infiltration is satisfied.

COMMENT: Regarding N.J.A.C. 7:9A-6.1(a), reference should be made to the depth of the permeability tests for soil replacement or mounded soil replacement systems. The level of infiltration or depth of infiltration is not defined.

RESPONSE: N.J.A.C. 7:9A-6.1(a) indicates that in the case of soil replacement or mounded soil replacement disposal field installations, percolation or permeability tests are to be conducted in the fill material. The term "level of infiltration" is defined at N.J.A.C. 7:9A-2.1. The allowable range of depth of infiltration is specified at N.J.A.C. 7:9A-10.1(d) and figures 22, 23, and 24 of Appendix A.

COMMENT: Permeability tests at a depth of one to three feet (see N.J.A.C. 7:9A-6.1(a)) may be adequate in South Jersey but in North Jersey, especially northwest, one will encounter a clay layer at this depth. How was this depth determined?

RESPONSE: The depth of percolation or permeability tests for conventional disposal fields is specified as one to three feet below the ground surface to correspond with the level of infiltration in this type of disposal field. In cases where a clay layer is encountered at this depth, a soil replacement system would be required. As indicated at N.J.A.C. 7:9A-6.1(a), when a soil replacement system is proposed, the percolation or permeability test is conducted in the fill material.

COMMENT: If a contemplated zone of disposal horizon is wet during certain times of the year, and dry during other times of the year, is it acceptable to perform a percolation test in that horizon when the horizon is dry, and then use the results of the percolation test to establish a design rate?

RESPONSE: Such a procedure is valid and is not precluded by the proposed rules.

COMMENT: Regarding N.J.A.C. 7:9A-6.1(c) Table 6.1, why is the identification of a hydraulically restrictive substratum (above the water table) restricted to the use of only a permeability class rating test (or percolation test) when an undisturbed sample cannot be taken? Why can't the basin flooding test be used to determine that an unsaturated excessively coarse substratum is not hydraulically restrictive? It is suggested that the basin flooding test can be used for that purpose and therefore, the table should reflect that.

RESPONSE: The basin flooding test was developed specifically for determination of adequate permeability in a rock substratum where a percolation test or a permeability test cannot be performed due to physical constraints. There is no justification for its use in an unconsolidated horizon or stratum above the water table where a standard percolation test or a permeability test could be performed. Permeability tests are more

accurate and reliable than the basin flooding test. The percolation test is preferable in unconsolidated horizons because the area around the smaller test hole can be more thoroughly saturated resulting in less inaccuracy due to capillary effects.

COMMENT: Why does Table 6.1 not include test options for identifying permeability in the proposed zone of disposal? For example, a pit bailing or a basin flooding test is useful to identify a permeable substratum for a zone of disposal. It would be helpful to include this in Table 6.1 which in essence is a summary of the various types of tests and their appropriate applications.

RESPONSE: Table 6.1 indicates appropriate methods for identification of different types of limiting zones in different soil conditions. Testing to show the absence of limiting zones is the process by which an acceptable zone of disposal is established.

COMMENT: In reference to N.J.A.C. 7:9A-6.1, some health departments have always required that the slowest test be used for design, plus a 50 percent over design. The proposed rules will allow for the installation of a smaller system than is presently being proposed.

RESPONSE: In most cases, the minimum disposal field size required by the rule will be greater than that required by the proposed repealed. As is the case under the existing rules, the administrative authority will have the ability to enforce local ordinances which prescirbe more stringent standards than those contained in the State rules.

COMMENT: Regarding N.J.A.C. 7:9A-6.1, the past history of percolation testing (if done according to N.J.A.C. 7:9A, the septic system is designed accordingly, and installed properly) has revealed satisfactory results. Have studies done by the Department proved otherwise?

RESPONSE: The Department agrees that, if carried out properly, the percolation test can give satisfactory results and, for this reason, it is included as an option for permeability testing in the proposed rule. Engineering literature reviewed by the Department and results of research carried out throughout the country indicate that the percolation test is not as accurate or reliable as the other permeability tests proposed. In addition, the percolation test cannot be used to demonstrate adequate permeability in soil horizons or strata below the water table or in rock substrata.

COMMENT: The requirement of a 25 percent increase in the minimum required disposal field size (see N.J.A.C. 7:9A-6.1(c)), when a percolation test is used as the basis of design should be deleted. The increased number of percolation tests along with other proposed changes should rule out the need for "over design". Why is a 25 percent increase necessary if the percolation test is done in accordance with the rules? There is no reason to burden an applicant by automatically and arbitrarily increasing the size of the system by 25 percent.

RESPONSE: The 25 percent increase in disposal field size when the percolation test is used as a basis for disposal field sizing is required as a means of compensating for the inherent inaccuracy of this test method. Increasing the number of tests required does not improve the accuracy of the results.

COMMENT: Due to the abundance of lateral fractures inherent in several of the dominant bedrock (weathered and unweathered) units underlying areas with potential for future disposal system installation, design permeability should be obtained using a method which is directed towards establishing vertical, not lateral hydraulic characterstics. Consequently, in these areas, the Department should specify the sole use of the tube permeameter test unless otherwise justified.

RESPONSE: The Department disagrees with this comment. When a disposal field is installed in a fractured rock substratum, treatment of the septic tank effluent is accomplished by vertical percolation through select fill material, and the underlying rock substratum functions primarily as a zone of disposal. Disposal is accomplished by lateral flow from the area of recharge (disposal field) to an area of groundwater discharge such as a stream or surface water body. For this reason, horizontal flow rather than vertical flow is of primary concern in the zone of disposal and test methods which measure horizontal permeability are appropriate.

The tube permeameter method generally cannot be performed in a rock strata. It is inappropriate to specify the sole use of this test in a situation where its use is physically impossible.

COMMENT: N.J.A.C. 7:9A-6.1(c) does not clearly address "fractured rock substrata" as related to test method.

RESPONSE: N.J.A.C. 7:9A-6.1(c) indicates acceptable test methods for identification of a massive rock substratum. Rock substrata are considered to be either massive or fractured, depending on the outcome of these tests.

COMMENT: There is agreement that the newly proposed permeability tests are technically superior to the percolation tests; however, the Department is being unnecessarily restrictive by excluding all failing percolation rates greater than 60 minutes per inch from being used in sizing and locating the disposal field.

RESPONSE: A percolation rate slower than 60 minutes per inch is an indication that the soil tested is unsuitable for treatment and disposal of septic tank effluent. The sizing criteria contained in the proposed standards do not consider the effects of groundwater mounding which can lead to disposal field failure when percolation rates are slower than 60 minutes per inch. There is no basis for locating or sizing a disposal field where the minimum required permeability has not been established.

COMMENT: N.J.A.C. 7:9A-6.1(c) note (2) calls for a 25 percent design increase as opposed to a 50 percent increase under the present rules. This will result in smaller systems than are being presently installed.

RESPONSE: The rules proposed for repeal contain no provision for a 50 percent increase in disposal field size. In most cases, the minimum disposal field size required by the new rules will be greater than that required by the repealed rules. As in the case under the repealed rules, the administrative authority will have the ability to enforce local ordinances which prescribe more stringent standards than those contained in the State rules.

COMMENT: The word "minimum" should be deleted throughout N.J.A.C. 7:9A-6.1(d) and (e) where it applies to the number of percolation tests. The stated number of tests calculated by the Ad-Hoc Committee is sufficient for determining design permeability.

RESPONSE: Deletion of the word minimum as recommended would preclude the use of additional percolation tests in cases where, in the judgment of the design engineer or the administrative authority, more tests are necessary. In developing the proposed standards, it was not the intention of the Department or the Ad-Hoc Committee to preclude the use of more percolation tests in cases where the minimum required number of tests is insufficient.

COMMENT: N.J.A.C. 7:9A-6.1(d)2 appears to state that when these tests are used in identifying a limiting zone, they must be performed in the proposed disposal field. If a test is used for another purpose, for example, proving that there is a zone of disposal with a permeability of 0.2 inches per hour or greater, why must the test be done in the field? Why can't it be located 15 feet from the perimeter as in the case of profile pits?

RESPONSE: As indicated at N.J.A.C. 7:9A-6.5(b)1 and 6.7(b)3, the intent of the rules is to permit pit-bailing tests and basin flooding tests to be performed in soil profile pits located in or adjacent to the disposal field as prescribed at N.J.A.C. 7:9A-5.2(c)1. The wording at N.J.A.C. 7:9A-6.1(d)2 has been modified to coincide with N.J.A.C. 7:9A-5.2(c)1.

COMMENT: When the tests are performed in the field, must they be backfilled in accordance with N.J.A.C. 7:9A-6.2(c)? If so, who will certify that it has been accomplished properly?

RESPONSE: The intent of N.J.A.C. 7:9A-5.2(c)2 is to prevent short-circuiting of the zone of treatment by septic tank effluent as a result of zones of high permeability resulting from improper backfill of excavations made within the disposal field. This concern applies to excavations made for pit-bailing or basin flooding tests as well as to profile pits. A provision has been added at N.J.A.C. 7:9A-6.1(d)3 to clarify the applicability of this requirement.

Soil testing procedures must be carried out under the direct supervision of a licensed professional engineer and may also be witnessed by the administrative authority. As with other aspects of site evaluation, design and construction, certifications made by the administrative authority or a licensed professional engineer, as required by N.J.A.C. 7:9A-3.13, are the primary mechanism for enforcement.

COMMENT A: N.J.A.C. 7:9A-6.1 presents a "catch-22" situation: The number of percolation tests is to be determined based upon the size of the system; however, before one can size a system, they must know the percolation rate. The requirements for the configuration of the system is not known until the designer reviews the topography and percolation rates etc. to design the system. Perhaps the wording of the percolation test requirement should be modified. For example, if the percolation rate is a certain rate then two are required, if it is a higher rate then three are required within a 10, 20, 30 foot spacing, etc.

COMMENT B: N.J.A.C. 7:9A-6.1 requires percolation tests and soil logs taken at various configurations depending on the permeability and size of the system. How can one determine the size of the system without conducting the permeability test? The time spent attempting to perform the testing will greatly increase the cost of the system.

RESPONSE: Location and sizing of the disposal field using the percolation test is an iterative procedure which requires that the design engineer be directly involved with the soil evaluation and testing

procedures and may be accomplished as follows. First, based upon the results of soil profile pits and borings, a general area is selected which is large enough to accommodate the disposal field size which would result from the estimated volume of sewage generated by the proposed facility assuming that the percolation rate falls within the slowest acceptable range. This will give a rough preliminary idea of the number of percolation tests which may be required. The general shape of the disposal field can also be determined at this stage based upon information already obtained through preliminary site evaluation. Next, a percolation test is performed at one end of the contemplated disposal area and, based upon the results of this test, the size of the disposal field and number of required tests is adjusted, if necessary. This process is repeated until the required number of percolation tests have been performed based upon the disposal field size determined using the slowest of the results obtained. In adjusting the disposal field size, it will generally be easier if the short dimension of the disposal area is kept constant and only the length is varied. Patterns for percolation test placement which are prescribed in Appendix C allow considerable flexibility in the distance between percolation tests and disposal field boundaries.

COMMENT: It is wrong to average the test results as per N.J.A.C. 7:9A-6.1(e)2. It has been implied that the system be designed on the slowest rate and the deepest percolation with a 50 percent overdesign.

RESPONSE: The Department disagrees with this comment. In the case of the percolation test, the test procedure itself may be a source of variability which is not reflective of true soil variability. In such cases, the average of several replicate tests is a more reliable indication of soil permeability than the results of a single test. Because the design limiting factor for disposal field sizing is infiltration through the clogging mat which forms at the level of infiltration, and since the infiltration rate of this clogging mat is related to the permeability of the soil horizon in which it forms, there is no basis for sizing the disposal field based upon test results obtained at depths other than that corresponding to the level of infiltration. The 25 percent design safety factor required by N.J.A.C. 7:9A-6.1(c) is considered adequate to compensate for inherent inaccuracies of the percolation test.

COMMENT A: It is suggested that the results of percolation tests taken at different locations (see N.J.A.C. 7:9A-6.1(e)3) may be averaged.

COMMENT B: When a percolation test is being used, a weighted average of the required number of percolations necessary should be allowed with certain provisions.

COMMENT C: While there is no disagreement that the newly proposed permeability tests are technically superior to the percolation tests, the Department is being unnecessarily restrictive by excluding all failing percolation rates (greater than 60 minutes per inch) from being used in the sizing and location of the disposal field. When a percolation test is being used, a weighted average rate of the required number of percolation tests should be permitted, with certain provisions.

COMMENT D: N.J.A.C. 7:9A-6.4(f)1 and 6.1(e) should be amended to allow for the use of a conditional weighted average percolation rate as outlined in the submitted joint position paper dated August 21, 1985. The average should be allowed whenever the percolation test is selected as the means of determining the design permeability.

RESPONSE: In the case of several replicate percolation tests performed at the same location in the disposal field, it is valid to average the results of the tests because the variability observed will be due only to the inconsistencies inherent in the test procedure and the person performing the tests. In cases where variability is observed between test results obtained at different locations in the disposal field, a large part of the variability may be due to actual differences in the type of soil at the different locations. Because the actual distribution of these soil types is not known, it is invalid to take an average of the results. If, for example, on one end of the disposal field a fast percolation rate is obtained and on the opposite end of the disposal field a slow rate is obtained, an average of these two rates would yield a moderate rate for the entire field. In reality, it is possible that the boundary between these two soil types is very close to the end of the field where the fast percolation rate was obtained, so that the major portion of the field has a slow percolation rate.

In the position paper referred to, it is suggested that a weighted average be used which would give double weight to percolation rates which are greater than 60 minutes per inch. The use of a weighted average is only valid if the weighting factor assigned to a particular value is proportional to the relative area occupied by the soil type which gives that value. Such a weighted average cannot be calculated, however, because quantitative knowledge of the soil distribution pattern is not obtainable through the number of soil tests which may practically be performed. It is possible, for example, that the percolation rate which was greater than 60 minutes per inch may actually be representative of a soil type which underlies more than two thirds of the disposal area, in which case the arbitrarily assigned double weight would be inadequate. As a result of these uncertainties, a conservative design must be based on the most restrictive percolation rate measured, as required in the proposed rule.

A failing percolation test is an indication that the soil at the location of the test is unsuitable for treatment and disposal of septic tank effluent. Since the entire disposal field must be suitable, no percolation test obtained within a disposal field should have a failing rate.

COMMENT: N.J.A.C. 7:9A-6.1(e)4 requires that when a percolation test is abandoned due to lack of measurable percolation, it may be disregarded only if at least three replicate tests are taken at the same location and yield acceptable results. Experience in the field has demonstrated that results of percolation tests can be highly variable even within similar soils. Tests with rates which are too slow are commonly conducted in an area where several acceptable tests are made. For these reasons, requiring replicate tests is considered overly restrictive, and such tests should be allowed to be simply abandoned.

RESPONSE: The Department disagrees with this comment. A failing percolation test is an indication that the soil at the location of the test is unsuitable for treatment and disposal of septic tank effluent. While it is true that the failing result may not be truly representative of the soil permeability, there is no basis for simply assuming this to be the case. When the only information available indicates that the soil is unsuitable, it is illogical to assume that the soil is suitable.

COMMENT: The proposed rules will allow percolation rates of up to 60 minutes per inch to be considered for design of new septic disposal fields. The present permissible percolation rate of 40 minutes per inch in the Princeton Township Code is much more desirable.

RESPONSE: The Department is aware of no technical basis for considering percolation rates in the range of 40 to 60 minutes per inch to be unacceptable for disposal field design purposes.

COMMENT: N.J.A.C. 7:9A-6.1(g) specifies that the administrative authority may collect and test replicate samples. A stipulation should be included that this will be done at the applicant's expense.

RESPONSE: Health departments commonly charge fees for witnessing site evaluation and testing. The authority for these fees is not derived from the Department's rules or from the enabling statutes. As is the case with witnessing of site evaluation and testing, fees charged for replicate sampling and testing are not addressed in the proposed rules. Failure of the proposed rules to address this issue does not preclude the administrative authority from establishing appropriate fees through an ordinance.

COMMENT A: N.J.A.C. 7:9A-6.1(g) states that when the results of the permeability test or percolation test are suspect, the administrative authority or its authorized agent may require that the test be repeated. Problems can be foreseen where the site evaluator takes a sample back to the laboratory and performs the test and the administrative authority declares it to be suspect automatically. If the administrative authority is going to state that the results are suspect, they must do so in writing stating the basis on which the requirement is being imposed. This should be done prior to repeat testing to avoid additional costs.

COMMENT B: The requirement in N.J.A.C. 7:9A-6.1(g) for repeating tests should be set forth in writing stating the basis on which the requirement is being imposed.

RESPONSE: The Department sees no advantage in specifying that all determinations by the administrative authority regarding the need to repeat soil tests be made in writing. In many cases, during the course of site evaluation procedures which are being carried out in the presence of the authorized agent, a situation involving suspect test results may be resolved on the spot through a verbal agreement that the test procedure should be repeated. To require a written notification in such cases would only result in an unnecessary delay as well as an additional visit to the site. Regardless of whether the notification was verbal or written, the applicant has the right to appeal any denial of certification for this or any other reason through the hearing procedure prescribed at N.J.S.A. 58:11-31.

COMMENT: There is a problem with the term "suspect" in N.J.A.C. 7:9A-6.1(g). From a symantics point of view, the word lends to a connotation of dishonesty and deception and should, therefore, be defined or replaced.

RESPONSE: The Department agrees with this comment. The word "suspect" has been replaced with "questionable" at N.J.A.C. 7:9A-6.1(g) to avoid any connotation of dishonesty and deception.

COMMENT: The results of all permeability tests or percolation tests required (see N.J.A.C. 7:9A-6.1(i)) would require an immense amount

of paperwork. It is understood that the administrative authority and reviewer would like to know the results of the tests in the area; however, perhaps it would be more preferable to require an indication that the test has failed and a statement by the site evaluator as to why. This would eliminate the need to fill out all of the required forms of paperwork.

RESPONSE: As acknowledged by this comment, the results of all tests performed in the vicinity of the disposal field are of significance in determining whether the proposed location of the disposal field is appropriate. The requirement that the results be reported on standard forms is necessary to ensure that the information will be reported completely and in a manner which can be readily evaluated. Tests results improperly reported are of little value.

COMMENT: The off-site soil permeability analysis should only be conducted by a certified soil laboratory. The reasoning is that there should be a separation between the design and the soil testing function which provides for a checks and balances system. Without this vital control mechanism, a potential conflict will be permitted which, in some cases, will result in improper system design.

RESPONSE: The Department disagrees with this comment. Soil testing must be carried out by or under the supervision of a licensed professional engineer. Laboratories are not certified to perform the test procedures prescribed in the proposed standards. The Department sees no conflict in a licensed professional engineer who performs or supervises soil testing which he or she will use as the basis for a septic system design. As required by State law, a professional engineer is responsible both for design and the test results used in the design, thus there is no conflict.

COMMENT: The tube permeameter test should be deleted from N.J.A.C. 7:9A-6.2 as an approved means of evaluating soil permeability. There is no question that this test, if properly conducted, will give an accurate measure of soil permeability. However, the test must be conducted under careful control to yield valid results. The actual testing will be conducted outside of the board of health's control and without observation by their witness. All of the other tests included in the regulations are amenable to witnessing by the local authority.

RESPONSE: The Department disagrees with this comment. The requirement that all test results be signed and sealed by a licensed professional engineer is considered to be an adequate control to ensure that the test will be performed properly. In cases where additional verification is considered necessary, N.J.A.C. 7:9A-6.1(g) provides for the collection and testing of replicate samples by the administrative authority.

COMMENT: It is difficult to use the tube permeameter test in Morris County and northern Passaic County due to the fact that most of the soils contain scattered coarse aggregates such as rock fragments, cobbles, and rocks which preclude pounding the tube into the soil. It is preferable to test undisturbed soil rather than separate out the coarse fragments and then reconstitute the remaining soil as specified. The cost of this procedure would appear to be excessive.

RESPONSE: The soil testing methods included in N.J.A.C. 7:9A-6 were selected to provide the most reliable and cost effective method for the variety of soil conditions encountered throughout the State. In cases where an undisturbed soil sample cannot be obtained, the soil permeability class rating method is considered to be the most reliable and economical alternative for determination of soil permeability above the water table.

COMMENT: The soil permeability class rating at N.J.A.C. 7:9A-6.3 requires a well equipped laboratory.

RESPONSE: The soil permeability class rating method prescribed at N.J.A.C. 7:9A-6.3 is a simplified version of the standard hydrometer method used by soil scientists for determination of soil texture and described in Methods of Soil Analysis, 2nd Edition, (1986), edited by Arnold Klute and published by the American Society of Agronomy, Madison, Wisconsin. The required equipment is not highly sophisticated or expensive and can be obtained from laboratory supply companies.

COMMENT: Regarding laboratory test methods, for example N.J.A.C. 7:9A-6.3(b)2ii, some individuals have been unable to find 300-mesh sieves of eight inch diameter and have been using 325-mesh sieves, since this is close and gives conservative results. Will the use of 325-mesh sieves be permitted? If not, where can the 300-mesh wire clot be obtained to make an eight inch diameter sieve?

RESPONSE: N.J.A.C. 7:9A-6.3(b) does not require that the 300-mesh sieve be eight inches in diameter, N.J.A.C. 7:9A-6.3(b) does not permit substitution of a 325-mesh sieve for a 300-mesh sieve. The Department will provide assistance to individuals who are having trouble locating a source for the required equipment.

COMMENT: N.J.A.C. 7:9A-6.3(b)4 lists an "oven" as required equipment. Will a microwave oven suffice?

RESPONSE: Any oven which can maintain a temperature of 105 degrees centigrade for 24 hours, as required in N.J.A.C. 7:9A-6.3(e)1, will be adequate for the purpose of N.J.A.C. 7:9A-6.3(b)4.

COMMENT: Regarding percolation tests (see N.J.A.C. 7:9A-6.5(a)8) newspapers outside of hardware cloth have been used for lining test holes. This prevents siltation. Is this permitted under the new rules?

RESPONSE: Various methods used to prevent siltation in percolation test holes can adversely affect the reliability of the test results. For this reason, a standard procedure for preventing siltation is prescribed at N.J.A.C. 7:9A-6.4(b)3. This method is considered to be superior to the use of newspaper.

COMMENT: To require two days to perform one percolation test will severely limit the amount of soil testing that an engineer can accomplish. This may be unnecessarily long for most sites.

RESPONSE: Overnight pre-soaking is required for medium and heavy textured soils with well-developed structures which may require substantial time to saturate and which may yield erroneous percolation rates when unsaturated. In the case of sandy-textured soils which do not exhibit this behavior, the over-night pre-soak is not required. For cases where the time required for over-night pre-soaking is considered excessive, N.J.A.C. 7:9A-6 provides other less time-consuming alternatives to the percolation test.

COMMENT: The requirement in N.J.A.C. 7:9A-6.4(b)4 and (c)2 to pre-soak a percolation test for four hours by maintaining a constant flow to the hole and allowing it to drain for a period of 16 to 20 hours is rather excessive. There is too much time between the starting of the test after the pre-soaking in addition to the liability for the open holes during this time. Leaving a hole open for 16 to 20 hours would create liability for the backhoe operators, property owners, site evaluators and perhaps the administrative authority. Percolation tests have proved adequate and should not be abandoned even though permeability tests may be a better procedure. It is suggested that following the pre-soaking period, the percolation test should be started immediately in order to simulate the actual system operating conditions. The pre-soaking should be reduced to two hours.

RESPONSE: The Department disagrees with this comment. The proposed pre-soak procedure is necessary to ensure that percolation test results are not influenced by capillary effects.

Pecolation test holes are eight to 12 inches in diameter and would normally be excavated at depths of 12 to 36 inches. It is the responsibility of the owner and the person leaving the hole open overnight to prevent the risks involved. Percolation holes may be covered with plywood and weighted down to reduce the potential for anyone accidentally stumbling into the hole. Also, the area of the test may be fenced in order to reduce access.

It is impractical to require that the percolation test be started immediately after pre-soaking because it will often be nighttime when the test hole actually finishes draining. A two hour pre-soak period is considered inadequate to insure saturation because, at rates slower than 10 minutes per inch, this length of time would be too short to allow the test hole to drain completely even once.

COMMENT: The percolation test is currently the most widely used, and in many cases, the only accepted method for determining site suitability. It will take time and training to convince most municipalities and clients of the merits of the other methods of testing included in the proposed rules. Few firms or municipalities are prepared to make the switch and it is likely that percolations will continue to be the most widely used method. The proposed rules will cause confusion and create problems. The pre-soaking procedure requires that amounts of water and equipment be brought to the site. While former agricultural sites and areas in the coastal plain may be readily accessible, sites in the northern part of the State are not. Steep slopes, rock outcrops and dense woodlands prevent access by all but truck vehicles and some four wheel drive vehicles which in itself raise an entire spectrum of environmental concerns relating to site damage. The need for large amounts of water under the proposed rules as well as siphons and float valves make this method of testing impossible on some sites; however, most municipalities will not have the trained personnel to interpret the results of other testing methods. Additionally, the requirement at N.J.A.C. 7:9A-6.4(c)2 that the hole be left open to drain for 16 to 24 hours raises serious liability issues. Percolation tests are generally done at some level within the pit although the pit may be backfilled to a depth of three, four, or six feet. Whatever is required below the level of the test, there will still be an unattended excavation of some type open on the site. Even covered, these excavations present an irresistible temptation to children. This places persons' lives and health at risk as well as the reputation and financial security of propety owners,

engineers and contractors. Additionally, it leaves municipalities as well as the State open to liability since the procedure is State mandated.

If the percolation test is considered inaccurate or unreliable, an alternate approach would be to leave the current procedures (or very similar procedures) in place and phase out the percolation test by a specified date allowing time for transition and training. Provisions for adequate public notice and a grandfather clause for sites in progress should also be provided.

RESPONSE: The proposed pre-soak procedure will increase the amount of water used to conduct percolation tests, but it is necessary to ensure that the reliability of the results is not adversely affected by capillarity. In many cases, other types of permeability tests will be more practical. The Department disagrees that these tests will be rejected by the majority of engineering firms and health departments in cases where the percolation test procedure is less practical. Even under the repealed rules which provide no standards for permeability tests other than the percolation test, such tests are commonly performed in cases where the percolation test cannot be used and are approved by the Department. Voluntary registration (see N.J.A.C. 7:9A-3.17) was developed in order to address the anticipated need for training.

The proposed rules require that sites with steep slopes (greater than 25 percent) and rock outcrops be avoided as a location for a disposal field. In the worst case situation, the volume of water needed to accomplish the pre-soak procedure and run the percolation test would not exceed 50 gallons. The Department does not agree that it will be impossible to bring such a quantity of water to a suitable site without creating more disturbance than that normally required to gain access by machinery used to excavate the soil profile pit.

Percolation test holes are eight to 12 inches in diameter and would normally be excavated at depths of 12 to 36 inches. There would not be a substantial risk in leaving such an excavation unattended overnight. Again, weighted plywood covers and fencing may be utilized in order to reduce the potential for personal injury.

COMMENT: Specification of four hours for percolation tests plus an additional 16 to 24 hours to drain is excessive. Present procedures involving saturation to steady state conditions should be considered acceptable practice.

RESPONSE: The Department disagrees with this comment. The proposed pre-soak procedure is considered necessary to eliminate errors due to capillary effects in medium and heavy-textured soils. In an unsaturated soil, a relatively constant flow rate may develop in response to a capillary gradient. While this gradient and the resultant flow rate will decrease as the test progresses, the rate of decrease may be too slow to be noticeable without carefully plotting the measurements over a relatively long period of time. For this reason, the percolation test procedure in the repealed rules is considered inadequate.

COMMENT: A brief article was submitted regarding the proper recording of percolation test data that is based on the known relationship that the logarithm of the elapsed time in minutes when plotted against the fall in inches results in a straight line graph regardless of soil type. The percolation technician (health officer or engineer) is advised to try this method and compare the results with a full duration and fall test for various soils encountered until confidence in its reliability is realized. In the long run, it can save at least one day of the two or three days usually required to properly perform the percolation test as required by the proposed rules.

RESPONSE: The Department is aware of no field data or experience to support the statement that the described mathematical relationship between fall of infiltrating water and elapsed time holds true for all soil types.

COMMENT A: The commenters disagree that a percolation rate faster than three minutes per inch is reason for disapproval of a septic system (see N.J.A.C. 7:9A-6.4(f)1). The use of select fill has been successful in slowing down three minute per inch percolation rates resulting in adequately designed systems. Rates which are faster than three minutes per inch require special consideration and should not be automatically disapproved.

COMMENT B: Regarding N.J.A.C. 7:9A-6.4(f)1, an application showing three minutes per inch cannot be approved under any circumstances including "special designs" to address same. Please clarify.

COMMENT C: N.J.A.C. 7:9A-6.4(f)1 indicates that tests with a three minute or less permeability cannot be used. There has been success using tests for three minutes or less by using a select fill material and then designing the system based on the percolation or permeability of that select fill. The three minute requirement should not be eliminated.

RESPONSE: N.J.A.C. 7:9A-6.4(f)1 indicates that percolation rates slower than 60 minutes per inch or faster than three minutes per inch are unacceptable. This provision does not preclude the use of select fill where the permeability of the native soil is unacceptable. As indicated at N.J.A.C. 7:9A-6.1(a), in the case of a soil replacement, mounded or mounded disposal field installation, the percolation test is to be performed in the select fill material rather than the native soil.

COMMENT: Regarding N.J.A.C. 7:9A-6.4(f)1, if percolation rates slower than 60 minutes per inch or faster than three minutes per inch are measured, an application will not be approved. This provision inadequately takes into account the variable nature and inaccuracies inherent in the percolation test and is overly restrictive; therefore, it is recommended that this requirement be eliminated from the standards.

RESPONSE: N.J.A.C. 7:9A-6.4(f)1 takes into account the variability and inaccuracy of the percolation test by allowing the acceptability of a test site to be based upon an average of several replicate test results rather than disqualifying a test location based upon a single failing test result.

COMMENT: There is a simpler means of performing the pit bailing test (see N.J.A.C. 7:9A-5). By excavating a test pit and obtaining a 24 hour static water level prior to bailing water out, and measuring the rate of rise, the following complications are eliminated:

1. There is no piezometer. Therefore, there is no concern about groundwater contamination from an unsealed or poorly sealed piezometer which is left after testing. There is also no problem with surface flooding or siltation of a piezometer, which gives false readings of static water levels; and

2. The answer calculated during the test is the correct one, since the final static water level is used. This eliminates a false positive test, in which an assumed static water level is used, the test is acceptable and a day later, after recalculating based on 24 hour static water level, the test fails.

The only possible drawback of this method is safety, but this is easily resolved. Fencing the test pit and stationing a technician overnight to guard the pit bail test will assure accuracy and safety. Will this method be permitted?

RESPONSE: The procedure for determining the static water level after completion of a pit-bailing test was chosen primarily for safety reasons as suggested in this comment. The installation of a piezometer is considered to be more practical than fencing the pit and stationing an overnight guard. Also, the piezometer is less conducive to groundwater contamination than an open pit and less susceptible to errors due to silting or inflow of surface water.

It is true that, by measuring the static water level before the test, a failing test can be recognized based upon the initial calculations. There is an advantage, however, to measuring the static water level afterwards as prescribed in the proposed rule. Since the initial results calculated using an assumed static water level are generally higher than those calculated using the 24-hour static, in cases where the initial results are below 0.2 inches per hour, there is no need to install the piezometer and wait 24 hours to obtain a reading. In the cases of soils where the permeability is well below 0.2 inches per hour, the method prescribed in the proposed rule requires less time and effort to find out that the soil permeability is unacceptable.

COMMENT: A study should be performed throughout the State on systems which have been installed for a period of at least five years which utilized the pit bail test results for a design, in order to see if they are still functioning properly without polluting the waters of the State. If this study cannot be performed, it is recommended that a pilot plan be set up and checked by the State for at least three years (in the various soil types throughout the State). This should be done prior to adoption instead of taking test results and reports from others.

RESPONSE: The pit-bailing test is relied upon only as a means of demonstrating adequate permeability in horizons or strata below the water table and is not relied upon to predict long-term impact of the septic system on groundwater quality. For its intended use, the pit-bailing test has been demonstrated to be reliable through research and field testing reported in the engineering literature as well as through extensive experience in New Jersey as an alternative test procedure approved by the Department pursuant to N.J.A.C. 7:9-2.10. The Department sees no reason to distrust research carried out by qualified investigators and published in reputable engineering and scientific journals.

COMMENT: The pit bail test, as proposed, is really what is called a reverse percolation test taken in the ground water table. It was used on lots with malfunctioning systems and high water tables. The basin flood test is really a large scale percolation test. Both test rates are based

upon rates comparable to percolation tests which the Department has frowned upon in the past.

RESPONSE: The pit-bailing test is not a percolation test in reverse. Unlike the percolation test, the pit-bailing test is based upon established principles of hydrology and takes into consideration the hydraulic gradient and area of flow as well as the observed rate of flow. The basin flooding test is similar in principle to the percolation test but is considered more reliable because it measures infiltration over a much larger area and is thus more representative of permeability in heterogeneous strata such as fractured rock.

COMMENT: Regarding N.J.A.C. 7:9A-6.5, if the piezometer (standpipe) is used, it should be a solid pipe rather than perforated, and placed in a ball of 3/8 inch to 3/4 inch stone at the bottom to allow free entry of groundwater. It may be desirable to place salt hay over the stone to prevent infiltration of fines. The perforated pipe allows seepage of mud from the backfill material which will impair the true function of the piezometer.

RESPONSE: The use of a piezometer with perforation in its lower four inches is proposed for situations where sandy cohesionless soils will not permit excavation of a four inch long unlined cavity. In such soils, infiltration of fines will generally not be a problem.

Placement of the end of the piezometer into a ball of stone would require a cavity considerably wider than the diameter of the piezometer which would be even more difficult to excavate and would invalidate the equation for permeability which assumes a cavity of the same diameter as the piezometer.

COMMENT: The measurement at N.J.A.C. 7:9A-6.5(c)4ii should be changed to the nearest tenth of an inch to be consistent with N.J.A.C. 7:9A-6.4(e)1.

RESPONSE: The Department sees no compelling reason why the units of measurement should be the same in two entirely different test procedures. In the case of the percolation test, relatively small measurements are being made, and one tenth of an inch accuracy is appropriate. In the case of the pit-bailing test, larger measurements are being made over greater distances in which case a somewhat larger unit of measurement is appropriate.

COMMENT: Regarding the criterion for a correct answer (see N.J.A.C. 7:9A-6.5(c)5ii), it has been found that an increasing trend in permeability (k) is all right. If you use the lowest permeability value, a hydraulically restrictive zone will be identified. This change has already been made in Montgomery Township after consultation with the Department. Is this merely an error in the text?

RESPONSE: The Department disagrees with this comment. If the test is working properly, a consistent value should be obtained. Inconsistent values are an indication that the true permeability has not been measured and should not be accepted regardless of whether the trend is rising or failing.

COMMENT: Regarding N.J.A.C. 7:9A-6.7, Basin flooding test, there is difficulty in preparing a suitable bottom.

RESPONSE: In excavating a basin for the basin flooding test, it is necessary to obtain a uniform bottom so that it will be possible to determine exactly when the basin has been completely drained. The presence of pockets of water remaining in low areas of the basin will make this determination difficult.

COMMENT: N.J.A.C. 7:9A-6.6(a)6ii is structured to allow only single manufacturers of piezometer electronics to "qualify". It is recommended that a more generic description be adopted in the rules, to include all manufacturers.

RESPONSE: N.J.A.C. 7:9A-6.6(a)6ii provides a description which will allow the fabrication of a measuring device using materials which are available from numerous suppliers. This provision makes no reference to a particular brand or manufacturer.

COMMENT: Regarding N.J.A.C. 7:9A-6.7, siltation of the basin during filing may cause sealing of the soil surface.

RESPONSE: Siltation is not considered to be a problem in the case of the basin flooding test since any errors which might result form siltation would be conservative errors and would be reflective of a factor which might also influence disposal field performance.

COMMENT: Regarding N.J.A.C. 7:9A-6.1(a), what qualifications are necessary for a person to perform a permeability test? Who may perform the permeability class rating test? What qualifications should they have? Will a laboratory be certified?

RESPONSE: Any person performing a permeability test which will be used as a basis for septic system design must be a licensed professional engineer or must be directly supervised by a licensed professional engineer. The Department does not certify laboratories for the purpose of performing these tests.

SUBCHAPTER 7. GENERAL DESIGN AND CONSTRUCTION REQUIREMENTS

COMMENT: N.J.A.C. 7:9A-7.1(a) should specify professional engineer.

RESPONSE: The Department agrees with this comment. The terminology used at N.J.A.C. 7:9A-7.1(a) has been modified to be consistent with that used throughout the proposed rules.

COMMENT A: Regarding N.J.A.C. 7:9A-7.1, is an engineer the only person recognized in the rules as being qualified to design a system? The present rules allow health officers and sanitarians to design systems. Why have they been excluded from the proposed rules?

COMMENT B: The qualifications for a septic system designer need to be addressed. Persons licensed to evaluate and oversee installation should also be allowed to design systems.

COMMENT C: The current rules permit septic system design plans to be prepared only by professional engineers licensed in New Jersey, without differentiation between sanitary/civil engineers, chemical engineers, packaging engineers, electrical engineers, etc. It is suggested that the rules be amended to permit septic system design plans to be prepared by New Jersey licensed sanitarians, health officers, and professional engineers, noting that all three are empowered to review plans, require revisions, and issue approvals for septic system designs. Please note the success experienced by Pennsylvania in permitting septic designs to be prepared by their sewage enforcement officers.

RESPONSE: N.J.S.A. 45:8-1 et seq. requires that only a licensed professional engineer may engage in the practice of engineering. The repealed rule requires at N.J.A.C. 7:9-2.5 that all engineering data bear the seal and signature of a licensed professional engineer. The Department cannot adopt a rule which is in conflict with N.J.S.A. 45:8-1 et seq.

COMMENT: N.J.A.C. 7:9A-7.1 should be modified to read that licensed engineers shall design all "new" individual subsurface sewage disposal systems.

RESPONSE: To permit any activity which constitutes the practice of engineering to be performed by individuals other than licensed professional engineers would be in conflict with N.J.S.A. 45:8-1 et seq. The statute does not make an exception for engineering work done in connection with existing septic systems.

COMMENT: N.J.A.C. 7:9A-7.1(a) limits the design function only to those engineers who are licensed in New Jersey. Professional engineers who are licensed in other states should also be allowed to design systems especially with the shortage of engineers which exists today and may continue into the future.

RESPONSE: N.J.S.A. 45:8-40 does exempt, to a limited extent, engineers licensed in other states from the requirement that only a professional engineer licensed in New Jersey may practice engineering in this State. That provision does not permit an engineer who is not licensed in the State of New Jersey to submit final plans or reports in connection with engineering designs and therefore such a person cannot design a septic system. The Department cannot adopt a rule which conflicts with N.J.S.A. 45:8-1 et seq.

COMMENT: N.J.A.C. 7:9A-7.1 does not indicate that "stake out" including distances, setbacks from the property, stream encroachments and wetlands boundaries must be completed by a licensed land surveyor.

RESPONSE: N.J.A.C. 7:9A-3.5(c)2 has been modified to indicate the need for a licensed land surveyor.

COMMENT: N.J.A.C. 7:9A-7.2 requires that all construction be in accordance with the approved engineering design and that any modification required due to construction conditions shall be "approved" by the design engineer. The term "approved" is not defined. If any modifications are required, the plans must be revised, indicating the modification or change and the plan must then be dated, signed, and sealed by a professional engineer.

RESPONSE: The meaning of this provision has been clarified by reference to N.J.A.C. 7:9A-3.7.

COMMENT: One particular problem which affects a number of pool operators in rural communities is the disposal of backwash water from the pool filter. It is understood that under the current rules there are only two approved methods for disposing of this type of wastewater. One is sanitary sewers and the other is to apply for a NJPDES permit and discharge onto the ground surface or into natural waters. Pools which are located near sanitary sewer lines have experienced no problems with the disposal of this type of waste. However, where sanitary lines are not always available to the operators, the NJPDES permit system does not always provide a reasonable nor practical solution to their problems. Why

s backwash water from pools not treated by the Department in the same nanner as the disposal of laundry wastewater? The proposed rules would illow a laundromat to dispose both organic material, blackwaters and aundry wastewater directly to a subsurface system. Additionally, the proposed rules allow laundry water to be discharged directly into the eepage pit if it is the only waste entering the system.

One would find that pool water contains lower concentrations of chlorine, one to five parts per million, as compared to laundry water which may contain concentrations of one thousand parts per million. Backwash water has a relatively neutral pH level that ranges from five o nine. Algicides, which are chemically similar to detergents, are found n low concentrations of 10 to 20 parts per million. Additionally, backwash waters are virtually free of any pathogenic organisms. The disposal of backwash water from swimming pools into seepage pits pose no more of an enivronmental or health threat than the disposal of laundry wastewater. The rules should be expanded to include this type of water.

RESPONSE: The Department agrees that from the water quality standpoint, swimming pool backwash water would generally have an mpact similar to that caused by laundry wastes and that existing rules do not always provide a practical method for its disposal. The Department does not, however, agree that requirements for disposal of swimming pool backwash water is within the regulatory scope of the rules. The scope of the proposed rules is identified at N.J.A.C. 7:9A-1.2 to include standards for location, design, construction, installation, alteration, operation and maintenance of individual subsurface sewage disposal systems which are defined at N.J.A.C. 7:9A-2.1 as systems for disposal of sanitary sewage. Swimming pool backwash water is not sanitary sewage and it is therefore not appropriate to include provisions for its disposal in the rules. Systems designed to dispose of this type of wastewater into the subsurface are considered as "class V underground injection wells" and are regulated by the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A.

COMMENT: There is concern regarding the use of water softeners. The discharge from such units should be run into an entirely separate gray water drainage system. This will help to not overburden the regular septic system and will prevent undue corrosion of the septic tank caused by the salt left in the discharge water. A small seepage tank may be one possible solution to the problem. This may even be tied to the sump pump discharge.

RESPONSE: The Department agrees that water softener backwash should not be disposed of in a septic system. Water softener backwash is not sanitary sewage and it is therefore not appropriate to include provisions in the rules for its disposal. Systems designed to dispose of this type of wastewater into the subsurface are considered Class V underground injection wells and are regulated by the NJPDES rules, N.J.A.C. 7:14A.

COMMENT: N.J.A.C. 7:9A-7.3(c) concerns the discharge of industrial waste into a septic system. Several specific types of establishments are mentioned, such as dry cleaning, photo processing, and print shops. Hair salons are not mentioned and may produce several types of industrial discharges (that is, bleaches and dyes). For this reason, hair salons should be considered industrial establishments and should not be permitted to operate septic systems.

RESPONSE: The Department agrees that in some cases beauty salons may generate industrial wastes. The examples of establishments generating industrial wastes which are given at N.J.A.C. 7:9A-7.3(c) are not intended as a comprehensive listing and, therefore, the failure to specifically mention beauty salons does not exempt them from restrictions on the types of wastes which may be disposed of in the septic system.

COMMENT: There should be some reduction in the volume of water if water saving devices are installed and used in either a home or commercial establishment. If the intent is to conserve on water usage, then these water saving devices should be encouraged and the only means of accomplishing this is to afford the designers and users the opportunity to minimize their costs by decreasing their volume of sewage. This requirement to use water saving devices should become part of the contract which is issued for a dwelling or commercial unit. To check on the usage in a single family home may be more difficult than checking a commercial unit. If a failure occurs in a single family home and it is discovered that the inhabitants have changed to a non water saving device, penalties and fines should be issued.

RESPONSE: The Department disagrees with this comment. Septic systems must be designed based upon the maximum potential water usage by the facility served. Where water saving plumbing fixtures are installed in a dwelling or commercial facility, the potential always exists for these fixtures to be replaced with standard plumbing fixtures. Reduced water bills in the case of public water supply systems and decreased pumping costs in the case of private wells provide an economic incentive for water conservation. The long term costs of monitoring compliance and enforcement where maintenance of water conservation plumbing fixtures is a condition for approval of a septic system design would generally exceed the savings associated with designing for a smaller volume of sewage.

COMMENT A: The values for gallon per user or gallon per unit per day contained in N.J.A.C. 7:9A-7.4 appear to be overly conservative. The criteria results in a flow of 650 gallons per day for a four bedroom dwelling. This should be more closely aligned to realistic values such as 200 gallons per day for the first bedroom, 75 gallons per day for each additional bedroom; 0.125 gallons per foot may be acceptable as a general parameter for office buildings but often is found to greatly exceed true conditions. If very conservative values are to be used in this section of the standards, then greater latitude should be offered to the design engineer in exercising his judgment in determining the design flow for a particular site. Note that elsewhere in the standards, should a subsequent change in use result in an increase in the anticipated flow, additional review and approval of the existing system and any alterations thereto will be required, thereby providing sufficient safeguard against overloading a pre-existing system with flow emanating from a different use.

COMMENT B: For residential sources, single or multiple family dwellings, the volume for each additional bedroom should be lowered from "150" to "100" gallons per day. The use of this lower value is readily supported by statistical data for household consumption of water.

COMMENT C: In N.J.A.C. 7:9A-7.4(b)1, the volume for each additional bedroom should only be 100 gallons per day. One bedroom usually reflects one occupant and under other criteria used by the Department for sanitary sewer design, the flow rate is usually considered as 100 gallons per person per day.

RESPONSE: The Department disagrees with these comments. The rationale for the proposed design flow criterion of 150 gallons per day for bedrooms other than the first bedroom in a dwelling is as follows. In the worst case likely to occur, each bedroom in a home would be occupied by two persons. Each person contributes an average of 50 gallons per day of sewage resulting in an average flow of 100 gallons per bedroom. Septic systems must be designed on the maximum expected daily sewage flow volume rather than the average flow because, in general, the average flow is a value that will be exceeded 50 percent of the time. A design based upon the average flow will result in the system being hydraulically overloaded 50 percent of the time. Thus, to provide for adequate functioning of the system on those days where the daily flow volume is above the average, a 50 percent design flow safety factor is added resulting in a design flow of 150 gallons per day per bedroom.

Similarly, the observed difference between average flow volumes reported for stores and offices and the flow volume calculated based upon a factor of 0.125 gallons per day per square foot of floor space is attributed to the 50 percent criterion to insure that systems will function properly on every day of operation and not just on those days when flow is at or below average. The need for the 50 percent design flow safety factor which is incorporated into the Department design sewage flow criteria is a concern which is independent of that which arises due to changes in the use of a building which may result in increased sewage flows.

COMMENT: Regarding N.J.A.C. 7:9A-7.4(b), the reduced minimum volume of sanitary sewage (200 gallons/day) that is allowed for design purposes in deed restricted senior citizen communities and mobile home parks with dwelling units less than 500 square feet in size, should also be extended to manufactured homes. In addition, this 500 square foot threshold should be increased to 850 square feet. The rationale is based on the fact that many municipalities have zoning ordinances that require minimum floor area requirements for one bedroom units within retirement communities of between 800 and 900 square feet.

RESPONSE: The Department disagrees with this comment. The lower number of occupants associated with smaller dwellings in deed restricted senior citizen communities and mobile home parks is not a characteristic of manufactured homes. Where floor space is greater than 500 square feet, regardless of the reason, the potential exists for higher occupancy and increased sewage volumes and therefore it is appropriate to limit the reduction in design sewage flow values to dwellings which fall below the 500 square foot threshold.

COMMENT A: N.J.A.C. 7:9A-7.4(c) allows for the basing of the design flow volume on the number of plumbing fixtures present or proposed. Nowhere in the proposed rules does it use criteria for plumbing fixtures, therefore this should be deleted.

COMMENT B: Regarding N.J.A.C. 7:9A-7.4(c), sizing of disposal fields is done mainly by evaluating the number of people using the establishment or the number of bedrooms in the proposed dwelling. The section which concerns the sizing of disposal fields for commercial and institutional establishments uses the type and number of plumbing fixtures present and number of people but does not set forth criteria for the former.

RESPONSE: The criterion for calculation of design sewage flow for beauty salons that was given at N.J.A.C. 7:9A-7.4(d)7 is based upon the number of sinks. In response to another comment based on the Department's prior experience with the chemical nature of discharges associated with beauty salons and the requirements of the NJPDES rules, the Department has deleted N.J.A.C. 7:9A-7.4(d)7 from the rule because it is not sanitary sewage. Therefore, the Department has also modified N.J.A.C. 7:9A-7.4(c) to eliminate the reference to the number of plumbing fixtures.

COMMENT: N.J.A.C. 7:9A-7.4(c)1 should include a method of including maximum occupancy load which would be calculated by a building inspector or fire marshal. Additionally, hours of operation in relation to the seating capacity turnover rate should be recognized.

RESPONSE: The design flow criteria listed in N.J.A.C. 7:9A-7.4(d) are accepted values obtained from standard design references. These values are not arbitrarily selected, but are based upon documented relationships between water consumption and the specific facility characteristics listed. The Department cannot modify these criteria without a technical basis for doing so. The Department is aware of no published relationships between water use and maximum building occupancy as specified by the fire marshal. Similarly, in the case of assembly halls, churches, stadiums and theaters, where design sewage volumes are estimated based upon the number of seats, the Department is aware of no published criteria relating water usage to daily hours of operation.

COMMENT: N.J.A.C. 7:9A-7.4(c)2 does not make sense.

RESPONSE: N.J.A.C. 7:9A-7.4(c)2 has been modified to clarify its meaning.

COMMENT: There is documentation that lower water usage can be accomplished from a type of facility other than that which is required by N.J.A.C. 7:9A-7.4. Why is it being automatically increased by 50 percent? If an applicant wishes to go through the trouble of performing studies to determine that their flow rate from similar facilities is less, that should be the number which is used. The number should not have to be arbitrarily increased by 50 percent. There have been problems sizing warehouses and attempts were made to use a per person per day number. This should be looked into by the Department and perhaps a suitable number for estimating the gallonage can be determined.

RESPONSE: When actual water usage records are available for a facility, these records normally consist of water meter readings taken at specific times and dates or at a specific time interval. By dividing the difference between successive readings by the number of days between the readings, an average daily water use rate is obtained. When the time period is sufficiently long, the average value normally falls near the middle of the range of values which actually occur so that in reality the actual flow rate is higher than the average flow rate approximately 50 percent of the time.

If one designs a septic system based upon the average flow the system will thus be hydraulically overloaded 50 percent of the time. Since the system must function properly all of the time, a standard design safety factor of 50 percent is added to the average design flow rate to ensure proper functioning during periods when actual flow exceeds the average flow. This design safety factor is incorporated into all of the standard design flow criteria provided at N.J.A.C. 7:9A-7.4(d) and it is appropriate that it also be added to any average flow value determined based on actual water use records.

The Department is not aware of any problems associated with the calculation of design sewage flow volumes for warehouses based on the estimated number of employees as prescribed at N.J.A.C. 7:9A-7.4(d)23. Note that this method of estimation was proposed as N.J.A.C. 7:9A-7.4(d)24; however, the numbering has been changed.

COMMENT: Regarding N.J.A.C. 7:9A-7.4(d), the proposed volume of sewage generated by an auto service station is 10 gallons per car served. It is not clear whether the intent is per car served at a pump or at a service bay or both. In either case, the commenters recommend revising the figure. The commenters' firm has designed over 200 retail gasoline stations throughout the northeastern United States. During their work, they have made surveys of the patronage of service stations which show that typically 10 to 13 percent of all vehicles entering a service station will make use of its motorist convenience facilities, for example air, rest rooms, telephones or to ask directions. Table A attached summarizes the data they obtained along with data obtained by other engineers. The notes to the table explain that 2.8 percent (of the 10 to 13) actually used rest rooms.

The commenters have also occasionally reviewed water use records which typically indicate usage of several hundred gallons per day at service stations. If the proposed standard were meant to apply to "car served at pump", a station pumping say, 60,000 gallons per month would generate 2,000 gallons per day of sewage (at 10 gallons of gas per car). Consequently, a NJPDES permit would be required. Many gas stations typically pump well over 60,000 gallons per month. The amount of sewage generated by this interpretation is far too high based upon our experience with patronage studies and water use records.

If the standard were meant to apply to "car served at bay", it would probably yield a more accurate (but perhaps low) estimate of sewage. Unfortunately, the number of cars serviced per day at service bays is not a design parameter convenient to engineers designing septic systems (whereas, the monthly through-put of gasoline is available) and this interpretation would not provide for convenience store/gas stations which have no bays.

It is recommended that the standard be one gallon per car serviced (at pump) per day.

RESPONSE: The Department is not aware of any problems associated with the calculation of design sewage flow for automobile service stations based on the estimated number of vehicles which are served. The United States Environmental Protection Agency, Design Manual for Onsite Wastewater Treatment and Disposal Systems and the majority of the septic codes for other states which allow automobile service stations to discharge to subsurface disposal systems rely on the flow figure given in N.J.A.C. 7:9A-7.4(d)3. If there is an error in the proposed estimated volume, based on the information supplied by the commenter, the system design flow will yield a conservative value.

COMMENT: N.J.A.C. 7:9A-7.4(d) permits beauty salons to discharge into a regular system. Since many hair dyes and other chemicals are used in beauty salons, should that not be considered part of an industrial waste flow?

RESPONSE: The Department agrees with this comment. The chemicals used to dye, curl and/or relax hair represent a potential source of contamination to groundwater above and beyond that which may reasonably be expected to be attenuated or treated by a subsurface disposal system. Due to the greater potential environmental and health risks associated with discharges from beauty salons, construction approval is only given through a treatment works approval and groundwater monitoring may be required through a NJPDES permit. The design flow for a beauty salon has been removed from the rules.

COMMENT: It is recommended that the rules include a design flow of 1,000 gallons per day for a warehouse. The Department should examine some studies showing the number of employees in a warehouse in order that they may aid designers and reviewers in properly designing systems for warehouses.

RESPONSE: The Department disagrees with this comment. The Department is aware of no published basis for estimating the flow from a warehouse to be 1,000 gallons per day. The procedures identified in N.J.A.C. 7:9A-7.4(c) and (d) provide an appropriate basis for estimating flow from warehouses.

COMMENT: What is the rationale for the reduction of office personnel waste water flow from 25 gallons per day to 15 gallons per day?

COMMENT: Regarding N.J.A.C. 7:9A-7.4(d)32, the flow rate for office buildings is totally unrealistic. These numbers are taken from textbooks which are 40 to 50 years old. The rates are too high. This is a case of overdesigning.

RESPONSE: The flow estimate for office buildings was reduced from 25 to 15 gallons per employee per eight hour shift in order to more accurately reflect the flows generated by office buildings. This reduction of estimated flow is consistent with the United States Environmental Protection Agency, Design Manual for Onsite Wastewater Treatment and Disposal Systems. Note that the design of the subsurface disposal system must incorporate the greater of 15 gallons per employee per day or 0.125 gallons per square foot. This conservative approach has been retained from the repealed rules (see N.J.A.C. 7:9-2.1) in order to provide for an unanticipated growth in the number of employees within a building without a change in use of the building which would require a permit pursuant to N.J.A.C. 7:9A-3.3(b).

COMMENT: N.J.A.C. 8:26-1 requires showers and toilets for the bathers and filter backwash to be discharged into the disposal system. The 10 gallons per person set forth at N.J.A.C. 7:9A-7.4(d)41 is inade-

quate to cover these items. Therefore, it should be increased to 25 gallons per person.

RESPONSE: The Department disagrees with this comment. The relevant rules of the New Jersey Department of Health (see N.J.A.C. 8:26-6.5) do not require that the discharge of filter backwash be to the same subsurface disposal system which receives the sanitary sewage. The estimated flow of 10 gallons per person per day applies solely to the discharge of sanitary sewage. Swimming pool backwash water is not sanitary sewage and it is therefore not appropriate to include provisions for its disposal in the proposed rule. Systems designed to dispose of this type of wastewater into the subsurface are considered as Class V injection wells under the NJPDES rules, N.J.A.C. 7:14A.

COMMENT: Due to potential groundwater pollution of untreated wash water from chemical additives, laundry detergents and stain removers, untreated water should not be discharged into seepage pits.

RESPONSE: The Department disagrees with this comment. Subsurface sewage disposal systems provide little or no additional treatment to chemical additives, laundry detergents and stain removers beyond that which may occur within a seepage pit. These chemical compounds are normally a small part of all household sanitary sewage. For that reason, there is no significant additional environmental or health based risk posed by the discharge of laundry wastewater to seepage pits.

COMMENT: The Department must consider the use of seepage pits for repairs and alterations in a borough such as Hopatcong which has very small lots with severe limitations such as slope, ledge, etc. To have these boroughs meet the proposed rules is impossible and will result in totally sealed systems which are economically oppressive and do not work.

RESPONSE: The Department agrees with this comment. Seepage pits are authorized for repairs or alterations of existing systems, consistent with the limitations of N.J.A.C. 7:9A-3.4 and 7.6.

COMMENT: Regarding N.J.A.C. 7:9A-7.3, laundry waste is extremely hazardous due to the wide range of laundry additives. Since a seepage pit is in effect a groundwater infusion well, this section must be deleted.

RESPONSE: The Department does not agree that laundry wastewater is extremely dangerous. The rule allows the discharge of laundry wastewater into seepage pits only in the case of an existing malfunctioning system (see N.J.A.C. 7:9A-7.3(b)). For new construction where blackwater and greywater is separated, disposal fields must be utilized. The Department is, however, continuing to evaluate whether the discharge of laundry wastewater to a seepage pit should be continued.

SUBCHAPTER 8. PRETREATMENT UNITS

COMMENT: The new rules do not address oil and sand interceptors. Floor drains which discharge from a garage or similar space require such interceptors as listed in the National Standard Plumbing Code, 6.3 and 6.4. Does the absence of a requirement in these rules waive the requirement?

RESPONSE: Oil and sand interceptors or the discharge from garage floor drains are not addressed in these rules because the material collected and/or treated by these systems is not sanitary sewage as defined in N.J.A.C. 7:9A-2.1. The collection, conveyance, treatment and subsurface disposal of material collected by garbage drains would require a treatment works approval and a NJPDES permit.

COMMENT A: N.J.A.C. 7:9A-8.1 as written will not permit the use of prefabricated engineered type grease traps which are permitted in buildings by the National Standard Plumbing Code at 6.2 (see N.J.A.C. 5:23-3.15). These types of grease traps, such as those manufactured by the Jay R. Smith Co., are engineered on a gallon per minute basis. Which code governs—N.J.A.C. 7:9A-8.1 or N.J.A.C. 5:23-3.15? A portion of the catalog is attached to this comment.

COMMENT B: N.J.A.C. 7:9A-8.1, relating to grease traps, differs from the Uniform Construction Code and should be deleted from the rules.

RESPONSE: The Department disagrees with these comments. The plumbing code covers grease interceptors which are installed within the building and are typically limited in capability under all flow conditions. The proposed rules cover grease traps which are a component of the subsurface sewage disposal system. Grease traps by their design are better able to handle both low and high flow conditions. The requirements for grease traps were derived from the United States Environmental Protection Agency, Design Manual for Onsite Wastewater Treatment and Disposal Systems. The rules of the Department of Community Affairs adopt the Uniform Construction Code and the National Plumbing Code with certain exceptions which include onsite sewage disposal.

COMMENT: What will the ID status of the material collected in the grease traps be? Will it be classified as ID 73 septic tank pump-out waste or a new classification ID for grease trap pump-out waste? Currently, grease trap waste is not classified in the Statewide sludge and septage management plan as having any specific waste ID type. The majority of publicly owned treatment works will not accept grease trap waste for disposal.

RESPONSE: This comment has been referred to the New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, Bureau of Registration, Classification and Technical Assistance, CN-414, Trenton, New Jersey 08625.

COMMENT: Regarding N.J.A.C. 7:9A-8.1(c), grease traps are under the jurisdiction of the plumbing inspector. Although the rules and health departments require the installation of grease traps for food establishments, etc., the sizing is covered under the National Standard Plumbing Code, section 16:10.2. This duplication is unnecessary. If the Department has determined that the present code is deficient, recommendations should be made to the Department of Community Affairs.

RESPONSE: The Department disagrees with this comment. The Department of Community Affairs' rules adopt by reference the National Standard Plumbing Code (see N.J.A.C. 5:23-3.15(b)iv) with the exception of those portions which relate to onsite sewage disposal. The authority of the plumbing inspector includes all piping within the realty improvement, but stops at the point where the building sewer meets the first component of the septic system.

COMMENT: The importance of grease traps as an integral part of sewage disposal systems, both commerical and individual, cannot be underestimated. It is no less important in domestic systems where little effort is made to remove grease from cooking equipment before washing and disposal of the waste through sewers. One particular county has recently released a homeowner's guide which makes no mention of grease traps. This matter cannot be ignored.

RESPONSE: The Department agrees that grease traps are an important design feature for restaurants, cafeterias and other facilities which generate large quantities of grease. The Department does not agree, however, that separate grease traps should automatically be required for all homes. For homes, a properly maintained septic tank functions as an effective grease trap. All persons should routinely remove excess amounts of grease from cooking utensils prior to washing, whether the disposal of wastewater is accomplished by a municipal sewer or subsurface disposal system.

COMMENT A: The proposed minimum required size for grease traps (see N.J.A.C. 7:9A-8.1(e)) is too large and not supported by actual data (that is, 750 gallon capacity for restaurants). It is recommended that the capacity be determined based upon the estimated quantity on a case by case basis.

COMMENT B: N.J.A.C. 7:9A-8.1(e) provides that in no case shall a grease trap be smaller than 750 gallons. It is recommended that this be increased to 2,000 gallons. Experience indicates that grease traps are almost always undersized. The United States Environmental Protection Agency's design manual on grease tanks (which is submitted with this comment) indicates at page 325 that a restaurant with 75 seats which is open only eight hours per day requires a 2,040 gallon trap.

RESPONSE: The Department disagrees with these comments. The United States Environmental Protection Agency, Design Manual for Onsite Wastewater Treatment and Disposal Systems, indicates that 750 gallons should be the minimum design capacity for restaurants. The Department believes that, based on the prior EPA research, this is an appropriate minimum value to be utilized for design purposes. Utilizing the figures given in the example presented by the commenter, the proposed rules would require a grease trap of 1,875 to 4,678 gallon capacity depending on the restaurant location. Therefore, there would be no purpose served in this example by increasing the minimum size for grease traps to 2,000 gallons.

COMMENT: Regarding N.J.A.C. 7:9A-8.2, there is a concrete septic tank manufacturer in western Morris County who produces round septic tanks in two pieces, essentially cutting the height of the tank in half. Reference to this type of construction should be included in this section.

RESPONSE: This type of construction is not prohibited by the proposed rule. The joining of the two halves of the prefabricated construction is governed by N.J.A.C. 7:9A-8.2(e)1 which requires, in part, that "all joints below the liquid level of the tank or below the seasonally high water table shall be provided with a permanent water-tight seal." In cases where the septic tank is to be installed partially or totally below the seasonally high water table, the professional engineer who designs the disposal system will have to evaluate whether this is an appropriate type of construction for the individual site.

COMMENT: The American Society of Testing and Materials ("ASTM") is presently working with the National Precast Concrete Association in developing standards for septic tanks. The Department should review the ASTM specifications, and if they are found to be suitable, the rules should be amended to set standards which "meet or exceed the ASTM standards".

RESPONSE: Since the ASTM standards have not been finalized, the Department cannot, at this time, reference those standards.

COMMENT: N.J.A.C. 7:9A-8.2(a) should be amended to read "Properly sized Aerobic Treatment Units may be placed preceding and in series with Septic Tanks". Such a statement would codify the Department's precedents and provide technical clarification to local municipalities who incorporate aerobic treatment in their rules. (Some local officials have incorrectly required septic tanks placed prior to aerobic units.)

RESPONSE: The Department agrees with this comment. The rule has been modified to clarify this point.

COMMENT: The commenter does not understand why aerobic treatment units are not approvable under N.J.A.C. 7:9A-8.2(a). In certain instances, especially near lakes, these units are a better form of treatment than septic tanks, and their blanket disapproval is wrong and should be looked into further by the Department.

RESPONSE: The use of aerobic treatment units in lieu of a septic tank is outside of the scope of these rules because they represent a more complicated design requiring operations and maintenance requirements beyond those necessary for a septic tank. Aerobic treatment rules are approved through the issuance of a treatment works approval. See also the prior comment and response.

COMMENT: N.J.A.C. 7:9A-8.2(b)1 addresses expansion attics. Who is responsible for determining the number of bedrooms to be calculated when an expansion attic exists?

RESPONSE: It is the responsibility of the professional engineer to design the subsurface disposal system based upon the characteristics of the site and the proposed realty improvement. The administrative authority has the responsibility of determining whether the design of the subsurface disposal system complies with the rules.

COMMENT A: At least 100 percent greater capacity is recommended when a garbage grinder is installed. Testing has indicated that in a system which has two septic tanks in series, in less than five years the second tank is half full of solids. This test involved a household with two adults and two children and did have a garbage grinder. This leads one to conclude that it was due to the garbage grinder that the tremendous solid build up had occurred.

COMMENT B: In stressing the lack of maintenance of tanks as a major reason for failure, the allowance of garbage grinders seems contradictory to the overall goal of maximizing system life expectancy. It is the experience of some that garbage grinders contribute substantially to premature system failure. This is observed even when tanks are emptied frequently due to the nature of ground up food particles. Accordingly, it is recommended that garbage grinders be prohibited.

RESPONSE: The Department disagrees with these comments. The requirement for 50 percent greater capacity in the septic tanks when garbage grinders are utilized is carried forward from the repealed regulations. Additionally, the Department is now requiring that multiple compartment septic tank be utilized when garbage grinders are utilized. The operation and maintenance requirements of N.J.A.C. 7:9A-12 will help to prevent the problems described by the commenters.

COMMENT: Regarding N.J.A.C. 7:9A-8.2(c), how does one determine if the installation of a garbage grinder is "contemplated" when dealing with developers who will ultimately sell the home to individual home buyers?

RESPONSE: The Department agrees with this comment. The terminology used at N.J.A.C. 7:9A-8.2(c) has been modified for purposes of clarity.

COMMENT: Concerning the three inch minimum wall thickness requirement (see N.J.A.C. 7:9A-8.2(c)3), it has been observed that establishing limits favors the less qualified producer and may lead to inferior quality. A three inch wall, improperly reinforced on a 1,500 gallon tank with a nine foot wall span would not be satisfactory. On the other hand a two and one half inch wall on a cylindrical tank with even minimum reinforcing would be adequate. The point is that unless you are going to establish design criteria for the tank (that is, concrete strength, reinforcing, loads imposed, etc.) it is better to leave the design up to each manufacturer.

RESPONSE: The Department disagrees with this comment. The section of the rules cited requires that the sides and bottom of the tank ". . . shall be adequately reinforced." Additionally, N.J.A.C. 7:9A-8.2(e)4 requires that the construction of the tank be certified by either the professional engineer or manufacturer for built-in-place or precase tanks, respectively. The Department has determined that the concerns expressed by the commenter have been adequately addressed by the rule.

COMMENT: The provision for multiple compartment septic tanks does not include a provision for snaking the outlet baffle line. The elbow shown on the sanitary outlet of the tank should be replaced by a "T" fitting so that a snake can be directed to clear any obstructions.

RESPONSE: The Department disagrees with this comment. The design of the outlet baffles shown in Figure 12 was derived from the United States Environmental Protection Agency Design Manual for Wastewater Treatment and Disposal Methods. With proper operation and maintenance of the septic tank, snaking of the outlet baffle lines is not required. The purpose of the operation and maintenance requirements of N.J.A.C. 7:9A-12 is to require periodic inspection of the septic tank and its contents so that the septic tank solids and floating oil, grease, and scum are removed before they are carried through the outlet lines in such an amount that the outlet lines become clogged.

COMMENT: If the tank manufacturer has to certify, why not have him certify that his tank complies with all of the rules' requirements for the tank?

RESPONSE: The tank manufacturer can only certify as to the construction of the tank, not the use to which the tank is put. It is the responsibility of the professional engineer to specify a tank which complies with the requirements of the rules and it is the responsibility of the administrative authority to ensure that the requirements of the rules have been met.

COMMENT: Regarding N.J.A.C. 7:9A-8.2(e)2, precast slabs should be a minimum of four inches in thickness, not three. Although the load may not require four inches, the stress during transportation demands it. There are no known manufacturers who do not make slabs at least four inches thick.

RESPONSE: The Department disagrees with this comment. The portion of the rules which is cited refers to the use of precast slabs as covers. The cover of a septic tank serves three purposes. First, it must provide a sufficiently strong base for the overlying soil and pedestrian traffic. The commenter has acknowledged that a three inch thick cover is adequate for this purpose. Additionally, the cover must prevent the escape of gasses from the tank or the entry of water from the soil into the tank. These last two requirements are met by providing a seal between the vertical surfaces of the tank and the cover. The administrative authority, pursuant to the authority of N.J.A.C. 7:9A-3.13, will determine whether the requirements of these rules have been met.

COMMENT: Regarding N.J.A.C. 7:9A-8.2(e)2 and (1)1, please clarify when manhole risers need to be used and when just a concrete reinforced cover will suffice.

RESPONSE: N.J.A.C. 7:9A-8.2(1)2. reads: "All manholes shall be extended flush with finished grade by means of a riser fitted with a removable water-tight cover. Covers shall be bolted or locked to prevent access by children. Covers shall be cast iron when a concrete riser is used." As stated, all manholes must be extended to the finished grade by use of a riser. This requirement has been included within the rules so that the homeowner will be aware of the location of the septic tank and to make pumping of the tank easier. It has been the Department's experience that when a home or commercial operation changes ownership, the new owner is often unaware of the location of the individual components of the subsurface disposal system.

When a concrete riser is utilized, the cover must be made of cast iron. When other materials are utilized for construction of the riser, a cast iron cover is not required, but may be made of other suitable material.

COMMENT A: Rectangular tanks should have a minimum bottom and wall thickness of three inches but this is unnecessary for a round septic tank. A round tank of two and one half inches in thickness would be more than sufficient and is in fact structurally able to take as much or more loading than a three inch rectangular tank (see drawing of 1,000 gallon tank attached to this comment). The additional weight will create increased cost in both the product and its delivery and is not necessary for a round tank.

COMMENT B: It has been found that tank wall thickness of two and one half inches is acceptable to give the necessary support with normal loads, provided they are adequately reinforced. No failures have been noted due to inadequate wall thickness.

RESPONSE: The Department will continue to evaluate these two comments. Unfortunately, the statements relative to the structural integrity of round versus rectangular septic tanks were not supported by a professional engineer's report with the necessary supporting calculations.

acking that technical documentation, the Department will not agree ith this comment at this time.

COMMENT: Do cylindrical septic tanks have the same thickness in ıe sidewall and the base? If yes, why?

RESPONSE: The Department has relied upon the United States En-ronmental Protection Agency Design Manual for Wastewater Treat-ıent and Disposal Methods for septic tank construction. This document oes not differentiate in the requirements for wall versus base thickness.

COMMENT A: Regarding N.J.A.C. 7:9A-8.2(e)5, to coat all inside ɔncrete surfaces with two coatings of a bituminous coating would be stronomical in cost. In addition, it would be extremely difficult (if not npossible) to meet O.S.H.A. standards at the commenter's plant in ttempting to do this. This requirement is not necessary providing the affles are protected from corrosion as is already stated in N.J.A.C. :9A-8.2(j)1. The commenter never saw any damage from the sulfuric ɔids other than the baffles or occasionally the distribution box. As long s these components are protected it is the commenter's feeling that .J.A.C. 7:9A-8.2(e)5 will do nothing to protect the tank but will possibly ouble the cost of a tank.

COMMENT B: Regarding N.J.A.C. 7:9A-8.2(e)5, bituminous coating, eing a petroleum based product and applied to the inside of concrete ɛptic tanks may create a potential for pollution when exposed continu-usly to sanitary waste in the septic tank, which will ultimately flow into ıe disposal area.

COMMENT C: Multiple layer bituminous coating on the inside of ınks so as to minimize corrosion is a good idea up to a point. Experience ıdicates that the concrete septic tank does not generally corrode and eteriorate and in fact gets "coated" quite nicely by itself. To use two pplications of a bituminous coating would be extremely labor intensive nd hence very costly. Additionally it could be dangerous to the health f employees of tank manufacturers having physical contact with the ıaterials as well as vapor and fumes. Precautions would naturally be ıken, however, no system is perfect. While the majority of the septic ank does not corrode and deteriorate, it has been found that the baffles nd cast iron "T"s' have been trouble spots and therefore, they should ave a coating on the inside surfaces. Finally, the inside of the distribution oxes sometimes present problems. This is an easy area to apply a ituminous coating as to alleviate any potential corrosion problems vithout greatly increasing the cost of these items.

COMMENT D: Regarding N.J.A.C. 7:9A-8.2(c)5, experience in-licates that the coating of quality cured concrete is redundant. If the Department is attempting to specify quality it would be better to discuss uring, entrapped air, and other items, rather than covering bad concrete vith a coating that will probably fall off in short order and foul up the ystem.

COMMENT E: The Department has developed new criteria with re-ard to "tar" on the inside of a septic tank. Presently, there are many ommon household chemicals which will adversely affect the "tar" in the ank and will lead to clogging in the field. It cannot be seen how tarring tank (in lieu of other additives which can be put into concrete to reduce orrosion) could possibly be beneficial.

RESPONSE: The Department agrees with these comments. The De-ıartment has conducted additional research and has found that the ituminous coating may react with the detergents, solvents, fats and lcohols which may be expected to be discharged into a septic tank. The Department has modified N.J.A.C. 7:9A-8.2(e)5 to specify a coating with ın appropriate inert material in order to protect the concrete surfaces. The additional cost of the coating over the life of the septic system is nsignificant compared to the cost of replacement of the septic tank, listribution box, and disposal field or trenches.

COMMENT: Regarding N.J.A.C. 7:9A-8.2(i)1, the depth below liquid evel will more than likely exceed 72 inches for tanks with capacities of ,000 gallons or larger (see drawing of 3,000 gallon tank attached to this comment). Otherwise, these larger tanks would be too long to manufac-ure and transport.

RESPONSE: The Department disagrees with this comment. For a single family home to require a 3,000 gallon septic tank, it would have o have 12 bedrooms. For installations other than single family homes, ı 2,000 gallon per day flow would result in the requirement for only a 2,625 gallon capacity septic tank. Therefore, the concerns relative to septic anks of greater than 3,000 gallon capacity are not germain to the proposed rules.

COMMENT A: Rectangular tanks with an inside length at least twice its width are in the minority. There are no known major manufacturers who will totally meet this requirement except with tanks of 3,000 gallons or larger (a specification sheet for 1,000, 1,250, 1,500 and 2,000 gallon tanks accompanied this comment). There has been no observed test data which shows a configuration such as this to be better than the more standard dimensional tanks. There is also some concern with hectagon, octagon or oval tanks. Perhaps the attached United States Environmental Protection Agency design manual for septic tanks will assist in this area.

COMMENT B: While it is easy to state that the length of a septic tank shall be equal to or greater than twice its width, it is impractical because it is not convenient for the various capacity septic tanks. Some manufacturers do not already have forms or molds in this type of configuration because they are not available. The cost of modifying existing equipment or purchasing new equipment will be staggering. Another not so obvious cost would be the loss of previous inventory stockpiles. Another problem would be a three to four week shutdown while waiting for new models. This would create a dangerous chain of events and costs which would be extremely detrimental to everyone concerned.

COMMENT: Why is there a minimum length to width ratio of two to one for rectangular tanks and one to one for other tanks?

RESPONSE: The Department disagrees with these comments. The proposed rule does not require the use of a rectangular septic tank. In situations where a rectangular tank is specified by the professional engineer, it must meet the design specifications identified in N.J.A.C. 7:9A-8.2(i)3. Minimum length and width are specified in order to provide a greater surface area in order to increase the surge storage capacity of the tank. The requirement for the inside length to be at least twice the inside width is not new; it is a requirement of the repealed rules, N.J.A.C. 7:9-2.32.

Reduced surges of flow from the septic tank enables a better separation of sludge and scum within the tank, resulting in a "clearer" discharge to the distribution box or the disposal field.

COMMENT: Regarding the inlet baffle (see N.J.A.C. 7:9A-8.2(j)2), whenever possible, a "range" is more economical for the manufacturer and consumer. For example, if the baffle for the inlet would be a minimum of 15 percent and maximum of 25 percent of the liquid depth, it would be functional as well as assist manufacturers in standardizing their tanks.

RESPONSE: The Department agrees that it would be very difficult to ensure that the septic tank inlet tee extends to exactly 25 percent of the liquid depth. The Department has modified N.J.A.C. 7:9A-8.2(i)2 to require that the inlet baffle extend to a depth of 25 to 33 percent of the liquid depth. In literature referenced by the United States Environmental Protection Agency Design Manual for Onsite Wastewater Treatment and Disposal Systems, it is recommended that the inlet tee invert should be lowered rather than raised in order to reduce peak velocities which will ensure a clearer effluent is discharged from the septic tank.

COMMENT A: Regarding the outlet baffle (see N.J.A.C. 7:9A-8.2(j)3)), the baffle should have a range from a minimum of 25 percent to a maximim of 40 percent. (Please refer to the copy of Pennsylvania's Department of Environmental Regulation which accompanied this comment.)

There has been a wide range of dimensions recommended on outlet baffles but no conclusive evidence as to which length is best. Having a range would allow some standardization between states.

COMMENT B: Regarding N.J.A.C. 7:9A-8.2(j)3, it is suggested that the definite figure of 25 percent be given some limits. A more common figure is one third plus or minus 10 percent.

RESPONSE: The Department agrees with this comment. In light of this comment and as a result of the Department's further review of the appropriate literature, N.J.A.C. 7:9A-8.2(j)3 has been modified to incorporate the suggestion by providing a range for baffle depth.

COMMENT: Regarding N.J.A.C. 7:9A-8.2(j)2, constructing the inlet flow to a four inch diameter pipe with a 90 degree bend into the sewage seems to invite plugging. An open flow into the tank is suggested with a baffle wall 12 inches more or less away from the inlet. Return gas flow will not be a problem if the house is properly vented.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-8.2(j)2 only specifies a miniumum diameter of four inches. Obviously, larger diameters may be specified by the professional engineer. The cited portion of the proposed rule allows the use of either a baffle or a tee.

COMMENT: Regarding gas deflection baffles in tanks (see N.J.A.C. 7:9A-8.2(j)3), a simpler design is enclosed with this comment. Please consider adding it to figure 12 of Appendix A.

RESPONSE: The design which was submitted is very similar to a design included within Figure 12 of Appendix A. The Department does not find sufficient merit to include two designs which are so similar.

COMMENT: N.J.A.C. 7:9A-8.2(j)3 allows tees in lieu of baffles or alternative devices such as septic solids retainers. It is understood that septic solids retainers are patented items. Has the Department considered the cost associated with the requirement of a patented item?

RESPONSE: The Department disagrees with this comment. The use of a patented devise has not been required, but was listed as one of the alternatives which may be specified by the professional engineer.

COMMENT: It is not certain if the gas deflection baffle is advantageous and therefore worth the added cost.

RESPONSE: The Department disagrees with this comment. The United States Environmental Protection Agency Design Manual for Onsite Wastewater Treatment and Disposal Systems indicates that gas deflection baffles should be utilized in order to prevent gas-disturbed sludge from entering the rising leg of the outlet.

COMMENT: Access openings (see N.J.A.C. 7:9A-8.2(1)1 should be a minimum of 30 inches in diameter to conform to O.S.H.A. and B.O.C.A. requirements.

RESPONSE: The Department partially agrees with this comment. The National Standard plumbing Code and the B.O.C.A. Basic/National Private Sewage Disposal Code (1984) call for a manhole a minimum of 24 inches square or 24 inches in diameter. The Department has been unable to find any applicable O.S.H.A. standard. N.J.A.C. 7:9A-8.2(1)1 has been modified to require an opening 24 inches square or 24 inches in diameter.

COMMENT: Multiple compartment septic tanks must be designed and installed in such a manner that the pumper has access to all the individual compartments. Failure to provide this access will prevent the pumper from properly cleaning the compartments.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-8.2(1)1 requires that each septic tank or each compartment of a multiple compartment tank have at least one access manhole opening.

COMMENT A: There is no need for bolts or locks on castings as they are extremely heavy. In fact, there is great difficulty in lifting the manhole covers in order to service the systems. This is sufficient for discouraging children from opening the tank.

The necessity of locks or bolts causes further problems. Bolts must and would most likely not be replaced once cut off and keys are easily lost. Furthermore, if these items are required it would open the door to covers of lesser quality to cut contractor costs.

COMMENT B: Requiring a cast iron cover (especially water tight) would be very costly to the homeowner. Perhaps specifying cast iron or concrete with a minimum weight of 100 pounds would suffice. This would minimize the risk of children lifting the covers off but have little affect on the cost to the homeowner. Installing a strip of butyl mastic under the lid (as per brochure attached to this comment) would prevent the influx of surface or subsurface water.

COMMENT C: Manhole covers of either concrete or cast-iron weigh in excess of 100 pounds. Bolting or locking may be unnecessary. Most manhole covers in the street require special pry bars to be lifted and are not locked. If the covers are properly placed over the manhole or tank, access by children is unlikely.

RESPONSE: The Department agrees that there are trade-offs associated with every desgin, but the Department also thinks that because of the safety risks associated with the potential entry to the system by children or others who may not be aware of the dangers, a locking mechanism is necessary.

Even though a cover weighing 100 pounds would deter entry by most persons, a group of older children could, with some effort, remove a cover of that weight. Once a cover has been removed by older children, there is no reasonable guarantee that it would be replaced so that younger children cannot enter the septic tank.

COMMENT: For residential and light commercial use, it is unreasonable to require the expense and obnoxious appearance of manhole covers at grade. With two inspection ports to grade, the access opening's location is obvious. The manhole should be extended to within 12 inches of finished grade but not extended up to finished grade as required for seepage pits in N.J.A.C. 7:9A-11.3(d).

RESPONSE: The Department disagrees with this comment. The Department has found that with time or with a change in ownership, people often forget where the septic tank is located. When this occurs, the tank obviously is not being inspected. Also, the pumping of the septic tank cannot be easily accomplished. Accordingly, the probability of failure for such a subsurface disposal system is much higher than for one which routine inspections can be easily performed.

COMMENT: Inspection ports should be six inches in diameter so they can be inspected. Additionally, they should have a screwed cap, not a bolted cap.

RESPONSE: The Department disagrees with this comment. An opening of four inches in diameter is adequate to check on the integrity of the baffles or tees and to insert an instrument to check on the depth of sludge in the septic tank. The Department has determined that a locking mechanism is necessary in order to prevent children from removing the caps and dropping rocks or other material into the septic tank. Also, when the cap has been removed without replacement, surface runoff may enter the septic tank with the result that the disposal field or trench may become hydraulically overloaded.

SUBCHAPTER 9. EFFLUENT DISTRIBUTION NETWORKS

COMMENT: N.J.A.C. 7:9A-9.2 requires the pump to be placed on a pedestal above the dosing tank bottom to prevent the pump from drawing air. This should be clarified because it is not understood how this will draw air.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-9.2(f)4. states "Pumps shall be set on a pedestal so that the intake is elevated several inches above the bottom of the dosing tank." The pump is required to be placed on an elevated pedestal in order to prevent the pumping of sludge from the bottom of the dosing tank into the disposal field.

COMMENT: The manholes required for dosing tanks should be 30 inches in diameter to conform to O.S.H.A. and B.O.C.A. requirements.

RESPONSE: The Department partially agrees with this comment. National Standard Plumbing Code and the BOCA National Private Sewage Code (1984) call for manhole openings and a minimum of 24 inches square or 24 inches in diameter. The Department is not aware of any applicable O.S.H.A. requirements. Therefore, N.J.A.C. 7:9A-9.2(d)7. has been modified to increase the minimum access opening to 24 inches in diameter or 24 inches square.

COMMENT: The proposed rules require that ground level or above ground manholes have bolted lids and/or inspection ports. What enforcement mechanism does the State plan to use for persons who cover or remove same?

RESPONSE: The administrative authority will ensure that the disposal system complies with the rules at the same time of the final inspection. Also, the annual inspections will be during a time when security devices must be accessed in order to perform the inspection. Enforcement actions may be taken by the administrative authority and the Department pursuant to local ordinances and appropriate State statutes.

COMMENT: Dosing tanks should be allowed to be smaller in diameter than septic tanks. This refers back to the requirement that upright cylindrical tanks shall have a minimum diameter of 52 inches. This is acceptable for septic tanks, but for a dosing tank of 30 inch diameter would be sufficient. Additionally, 48 inch diameter sewer manholes are frequently sold for pump tanks and should certainly be allowed since they make excellent pump tanks.

RESPONSE: The Department disagrees with this comment. There is no requirement in the proposed rule which specifies that the minimum diameter of dosing tank be 52 inches. N.J.A.C. 7:9A-9.2(b) and (c) address only tank volume, not tank dimensions. N.J.A.C. 7:9A-9.2(d) requires that the material used in the construction of the dosing tank be the same as that of a septic tank.

COMMENT: N.J.A.C. 7:9A-9.2(d)7 and (f)6 appear to indicate that the discharge rate must be at least equal to the peak inflow rate. It is not necessary for these flows to be equal. If the tank has adequate surge capacity, it is often better to have the discharge rate set independent of the inflow rate.

RESPONSE: The Department disagrees with this comment. Subsurface sewage disposal systems are designed on the basis of average daily flow, with the addition of a safety factor. There is no available published literature which reports facility flows in terms of short term peak flows. Even given that data, there is no assurance that historical data would cover all expected situations. Therefore, the design specifications must include the situation where the dosing tank is full or nearly full and the system receives a peak inflow of sewage. Under these circumstances, the pump discharge rate must exceed the peak inflow rate in order to prevent the system from failing.

COMMENT: Regarding dosing tanks, N.J.A.C. 7:9A-9.2, the National Electrical Code, N.J.A.C. 5:23-3.16, requires a disconnect switch adjacent to the pump.

RESPONSE: The Department disagrees with this comment. Because of the presence of highly corrosive gases within the headspace of the dosing tank, it is ill advised to include any unnecessary switches or other electrical devices within the dosing tank. The United States Environmental Protection Agency Design Manual for Onsite Wastewater Treatment and Disposal Systems states: "All electrical contacts and relays must be mounted outside the chamber to protect them from corrosion. Provisions should be made to prevent the gases from following the electrical conduits into the control box."

COMMENT: N.J.A.C. 7:9A-9.2 should require all electrical work to conform with the National Electrical Code, N.J.A.C. 5:23-3.16.

RESPONSE: The Department has modified N.J.A.C. 7:9A-9.2 to be consistent with the National Electrical Code, requiring that all equipment be identified and listed for the intended use as determined by the design.

COMMENT: Regarding dosing tanks, N.J.A.C. 7:9A-9.2, a gas-tight sealed switch is permitted in the pumping chamber.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-9.2(f)7i identifies permissible types of switches. Pressure-diaphragm switches are prohibited because of their high rate of failure within this operating environment.

COMMENT: Regarding N.J.A.C. 7:9A-9.4, past experience indicates that uneven settling of distribution boxes often causes overloading of individual laterals. This problem can be avoided by eliminating the distribution box, using a non-perforated pipe as a manifold and connecting (looping) the distal ends of the laterals. A clean out to the surface is recommended at each corner.

RESPONSE: The suggestion submitted is allowed under the proposed rule.

COMMENT: Does N.J.A.C. 7:9A-9.5(a) say that a distribution box is not required for a network of "two or more laterals connected by means of elbows or tees"? How does this type of network differ from "two or more separate distribution laterals connected independently to a distribution box"? The wording of these phrases must be more concise in establishing a distinction, if that is the intent of these rules.

RESPONSE: A distribution box is not required when the laterals are fed off manifold by elbows or tees (see N.J.A.C. 7:9A-9.5(a)) and the laterals are connected at the distal end (see N.J.A.C. 7:9A-9.4(a)).

COMMENT: The proposed rules do not specify that pressure distribution laterals with hole diameters of one quarter inch to one inch be deburred. The rules should require deburring.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:9A-9.6(a)4 has been modified to reflect this comment, insuring that effluent will flow through the holes at the rate expected.

SUBCHAPTER 10. DISPOSAL FIELDS

COMMENT: Regarding N.J.A.C. 7:9A-10, the depth to impervious formations is indicated as 10 feet. It should be clarified if this is 10 feet below final grade or existing surface elevations. It would appear that many designs could adequately address the required four foot zone of treatment and four foot zone of disposal with an impermeable formation less than 10 feet below the original surface elevation.

RESPONSE: The commenter is correct that the proposed rule requires a minimum of 10 feet from the finished grade to any limiting zone. The 10 feet must be composed of, at a minimum, a four foot zone of disposal, a four foot zone of treatment, one foot of gravel filter material below the laterals, two inches of gravel filter material covering the laterals, a filter material covering and nine to 18 inches of backfill soil.

COMMENT: Some township ordinances provide for the use of disposal trenches rather than disposal beds. In one particular instance this was based upon experience with the use of trenches and a determination that they were substantially more successful than beds. The proposed rules will routinely permit the use of disposal beds. Disposal beds should be permitted under certain circumstances and by variance granted by the appropriate board of health. Disposal beds should be permitted in the following situations only:

1. When curtain drains are used to control ground water; or
2. Physical constraints of the lot such as topography, lot size and wells permit; or
3. When repairs are made to existing systems designed for beds.

Experience has indicated that systems which have been installed based upon disposal trenches have been highly successful.

RESPONSE: The Department disagrees with this comment. While there may be an economic advantage to installing trenches instead of beds and trench systems have a greater ratio of sidewall to bottom area, there appears to be no apparent technical basis for prohibiting disposal beds.

COMMENT: Regarding N.J.A.C. 7:9A-10.1(b), it appears there could be another category of disposal field that is neither a mounded field, a mounded soil replacement field, nor a bottom-lined soil replacement field. For example, it is perceived that it is conceivable that a level of infiltration in some circumstances could be somewhere between 11 inches above ground surface and 11 inches below ground surface. How would that type field be categorized? For example, suppose a site evaluation revealed that in or within 15 feet of the proposed disposal area, a soil profile pit encountered refusal at 90 inches, and it was determined that at 90 inches and below there was bedrock, and above 90 inches there was an excessively coarse horizon. Allowing for a 48 inch filled zone of disposal, and a 48 inch filled zone of treatment, the level of infiltration would have to be at six inches above existing ground surface. There is no category or cross-section in the appendix for that type of system in the proposed code. What do you want to call it?

RESPONSE: It is the intent of the Department to prohibit the placement of the level of infiltration within the zone between one foot below existing ground surface and one foot above existing ground surface.

It is well documented that up to one foot of effluent may accumulate within the gravel filter material above the level of infiltration. For that reason, the level of infiltration must not fall within the vertical interval from existing ground surface to one foot below existing ground surface. In this way, the discharge of effluent at the elevation of the existing ground surface is effectively prevented.

For sites in which the level of infiltration is not from one to three feet below the existing ground surface, fill must be added in order to raise the level of infiltration to one to four feet above existing ground surface. This requirement is contained within the proposed rule for two reasons. First, there is a significant problem in characterizing the permeability and infiltrative capacity of soil at or immediately below the existing ground surface. Variation in soil textural and structural properties, soil compaction due to pedestrian or vehicular traffic, localized rapid infiltration due to worm holes and animal burrows, and potential changes in permeability due to the decay of root material make the determination of permeability in topsoil far more difficult than in a clean graded fill material. Also, the extension of fill beyond the lateral extent of the gravel filter material as shown in Figures 19 and 20 of Appendix A substantially reduces the potential for the daylighting of effluent at the downslope toe of the disposal bed.

COMMENT: Regarding N.J.A.C. 7:9A-10.1(b), given the enumerated disposal field types as the only acceptable types of disposal field installations, how would a system with a level of infiltration at existing grade be categorized? This circumstance is a common occurrence.

RESPONSE: A system such as the one which was described would require the addition of one foot of suitable fill and would have to meet the requirements of a mounded installation.

COMMENT A: It is unclear as to whether the intent of Table 10.1 is to indicate that no disposal fields may be permitted in soils exhibiting a regional zone of saturation within zero to two feet of the surface. If this is the intent, it is suggested that this registration be indicated in the text of N.J.A.C. 7:9A-10.1 so that there is no confusion. •

COMMENT B: The proposed rules do not state that no disposal systems shall be permitted where the seasonal, periodic, or fluctuating seasonal high water table is within two feet of the natural ground surface. This existing policy of the Department should be specified in the new standards.

COMMENT C: Regarding N.J.A.C. 7:9A-10.1(c), for suitability classes IIISr and IIIWr, clarification should be provided that no system is suitable unless a treatment works approval is obtained.

COMMENT D: Regarding Table 10.1 Zone of Regional Saturation should state that no system is permitted where the zone is less than two feet.

RESPONSE: The Department agrees with these comments. Table 10.1 has been modified in order to clarify the rules.

COMMENT: With regard to systems designed on the basis of pit-bailing tests, will four feet of so-called "select fill" remove all bacteria, viruses, and other pollution from entering the water table which is only four feet from the top of the select fill? The effluent from these systems, after traveling through only four feet of select fill many times, will flow directly to the nearby stream in an underground channel which has little or no filtering ability.

RESPONSE: The Department disagrees with this comment. There is an implied statement in the comment that if the soil is so saturated that a pit bail test must be employed, the system will not work properly. The pit bailing test measures the rate at which water will move laterally within the zone of disposal. The design of a subsurface sewage disposal system

also requires, among other things, an accurate determination of seasonal high water table and the specification of the correct hydraulic loading rate. When a four foot zone of treatment is maintained, a properly designed subsurface sewage disposal system which utilized a pit bailing test in order to characterize the permeability of the zone of disposal, will operate as efficiently as a system designed on the basis of any other approved testing method.

COMMENT: It is unclear as to the minimum distance between the depth to seasonal high water table and bottom of the disposal bed of a conventional system. N.J.A.C. 7:9A-11.1(a)3 clearly defines four feet for a seepage pit. However, it is not clearly indicated for a conventional system.

RESPONSE: The Department disagrees with this comment. The limitations are identified in N.J.A.C. 7:9A-10.1(d). See also Figure 17 in Appendix A.

COMMENT: In order to allow for the variability of seepage paths inherent in different geologic materials (for example, layered weathered and unweathered rock; stratified silt and sand), there should be a requirement for the assessment of continuation of hydraulic characteristics between the overlying "zone of treatment" and the underlying "zone of disposal" as well as surrounding undisturbed geologic materials. This is of particular importance in areas where the zone of treatment and disposal are completed within weathered shales which have a tendency to vary locally with respect to vertical and lateral hydraulic characteristics. Consequently, the following conditions should be met: 1. the permeability of the zone of disposal should be equivalent to or greater than that of the zone of treatment; 2. the relationship between the horizontal and vertical permeability between each of these zones and the surrounding soil should be characterized in order to address the potential for premature lateral movement of disposal field effluent; and 3. the slope of regional or perched zones of saturation which may occur within the "zone of disposal" should be determined in order to establish that an effluent mound will not be formed within the zone of treatment.

RESPONSE: Based on the results of soil pits, soil borings or other information obtained from prior testing, the administrative authority may require additional tests pursuant to the authority of N.J.A.C. 7:9A-6.1(b), (d), (g) and (j). There is, therefore, adequate authority for the administrative authority to require additional testing in cases where a limiting zone or horizon of reduced permeability is believed to occur. Because the sizing of the disposal bed is based on the long term acceptance rate of the biologic mat which occurs at the level of infiltration, the Department believes that the rate of movement of liquid through the zone of treatment will be significantly less than the saturated permeability of the zone of disposal. The rule assumes no slope exists at the surface of the level of perched or regional saturation. The presence of any slope would increase the hydraulic gradient, (i), and would thus increase the movement of liquid away from the zone of disposal.

COMMENT: If by allowing a basin test to determine permeability of bedrock, will the 10 foot requirement from the top of the disposal bed to bedrock be reduced?

RESPONSE: The basin flooding test does not determine the permeability of the bedrock, it merely determines whether the bedrock should be considered to be massive for design purposes. A zone of disposal which meets the requirements of N.J.A.C. 7:9A-10.1(e) will constitute four of the required 10 feet from the finished grade to the bottom of the zone of disposal.

COMMENT: Regarding N.J.A.C. 7:9A-10.1(d)4, even though the rules state that the zone of treatment shall not extend to a depth greater than eight feet, Figure 24 shows a zone of treatment greater than eight feet.

RESPONSE: The Department disagrees with this comment. The level of infiltration is shown to be a maximum of three feet below the finished grade and the zone of treatment is shown to be four feet in thickness. Therefore, the zone of treatment is no deeper than seven feet below finished grade.

COMMENT A: The proposed rules for establishing an adequate "zone of disposal" require clarification. Particularly, N.J.A.C. 7:9A-10.1(e)1 indicates that the "zone of disposal shall be composed of native soil or rock material which has permeability more rapid than 0.2 per hour or a percolation rate more rapid than 60 minutes per inch" yet N.J.A.C. 7:9A-10.1(e)3 allows the replacement of an encountered hydraulically restrictive horizon within the zone of disposal with specified fill material. These two provisions appear contradictory in that the consistency and permeability of the "native soil and rock" cannot be assuredly preserved if it is disturbed for replacement purposes. Consequently, confirmation testing should be required if placement is necessary.

COMMENT B: N.J.A.C. 7:9A-10.1(e)1 provides that a "zone of disposal shall be composed of native soil or rock material. . ." This means that one cannot use a fill material in the zone of disposal. Yet the rules contain specifications for a zone of disposal fill (see N.J.A.C. 7:9A-10.1(f)1). This is contradictory. Which is correct?

COMMENT C: Regarding N.J.A.C. 7:9A-10.1(e)2, a two foot depth for the zone of disposal below the treatment zone would be adequate in most cases.

COMMENT D: The last sentence in N.J.A.C. 7:9A-10.1(e)3 should be deleted. It does not allow the thickness of any restrictive horizon (that has been removed) to be counted as part of the zone of disposal.

RESPONSE: The two sections of the proposed rules are correct as stated. N.J.A.C. 7:9A-10.1(e)1 states that only native material which has a permeability more rapid than 0.2 inch per hour or a percolation rate more rapid than 60 minutes per inch may be used for the zone of disposal. N.J.A.C. 7:9A-10.1(e)3 states that when there is a hydraulically restrictive interval within the zone of disposal, the hydraulically restrictive interval shall be removed and replaced with a material possessing the textural properties described in N.J.A.C. 7:9A-10.1(f)5. The thickness of the replaced hydraulically restrictive interval shall not be considered when determining the required four foot vertical extent of the zone of disposal. The rule requires that there be four feet of permeable native soil or rock within which the effluent which has passed through the zone of treatment can flow laterally away from the disposal bed.

COMMENT A: N.J.A.C. 7:9A-10.1(e)1 should provide a percolation rate less than or faster than 60 minutes per inch, not "greater than".

COMMENT B: N.J.A.C. 7:9A-10.1(e)1 should read "less than 60 minutes per inch".

RESPONSE: The Department will modify N.J.A.C. 7:9A-10.1(e)1 for clarity.

COMMENT A: The rules allow the reduction of a zone of disposal to two feet in thickness when permeability has been determined to be two inches per hour or faster. Yet the rules do not recognize any test in a shale formation (other than a pit bailing test) to measure that permeability. In the shales therefore, unless the zone of disposal is saturated, there could never be a reduction in the thickness of the zone of disposal. Why can't an acceptable test be found for the shales? Why can't the percolation test be utilized? As the rules now read, many systems in the shale will have to be mounded, and will probably have to be pumped. Costs of those systems will be disproportionately high when the shale is permeable, but where no testing options are available to prove that permeability two inches per hour or faster exists. How can one prove there is sufficient permeability for the purposes of reducing the zone of disposal from four feet to two feet in an unsaturated shale?

COMMENT B: Regarding N.J.A.C. 7:9A-10.1(e), what method may be used to determine the permeability in a zone of disposal above the water table in rock?

COMMENT C: There is agreement that the zone of disposal thickness should be reduced to two feet if its permeability is two inches per hour or faster. However, percolation tests should be allowed as a method of testing to determine the permeability or percolation of that zone.

RESPONSE: The proposed rules for subsurface sewage disposal systems, while they allow the standardized use of more technically complex testing and disposal systems than the repealed rules, are intended for the treatment and disposal of sanitary sewage in a soil medium. There has been some accommodation for the testing of the presence of hydraulically restrictive conditions in rock, but the rules look upon fractured or unfractured rock as a site limitation which must be overcome.

In situations where the rock is saturated, the Department has approved the use of the pit bailing and piezometer tests. These tests call for the removal of limited amounts of ground water. The basin flooding test which merely determines whether rock above the water table is massive requires a minimum of 375 gallons of water per basin filling.

There are acknowledged problems with reproducibility of the percolation test in soil and the Department is aware of no publication which accepts the use of this test in rock. In order to determine the permeability rate in unsaturated rock, orders of magnitude more water would be required than is used in the basin flooding test in order to saturate the connected joints or solution cavities which cumulatively determine the lateral rate of water movement. Such testing is beyond the technical scope of these rules. If a potential applicant wishes to test the permeability of unsaturated rock, application may be made for a treatment works approval pursuant to N.J.A.C. 7:14A-12.

COMMENT: The proposed rules provide a textural analysis requirement for select fill material specifying percentage ranges for coarse fragments and the individual soil separates without specifying a uniform or

iomogeneous distribution of each soil fraction. A statement regarding iomogeneity, particularly for clay particle distribution, should be included in the revised standards.

RESPONSE: The Department is unable to be more specific within the particle size separates because of a lack of availability of fill material which would meet those specifications.

COMMENT: It is understood that the proposed rules preclude the development of an on-site sewage disposal system on a lot that contains a percolation rate more rapid than three minutes per inch. If this area is outside of a sewage service area (which is altogether likely), then the owner is unable to use this particular property. This may effect a "taking" of property where a very simple solution exists: use select fill to decrease the percolation rate. The Department should consider modifying the proposed rules to allow for the use of select fill in these instances. The rules appear to allow for the use of select fill in other cases and it would appear sensible to allow its use here.

RESPONSE: The Department disagrees with this comment. The proposed rules state at N.J.A.C. 7:9A-6.4(f)3 that if the percolation rate is more rapid than three minutes per inch, the horizon or substratum in question shall be considered excessively coarse. Table 10.1 of N.J.A.C. 7:9A-10.1(c) indicates that in the case of fractured rock or an excessively coarse horizon within five feet of existing ground surface, soil replacement fill-enclosed installations, mound installations or mounded soil replacement installations are allowed.

COMMENT: Regarding N.J.A.C. 7:9A-10.1(f)4, the proposed rules indicate textural analyses and permeability analyses are required to meet the standard. Is this the intention?

RESPONSE: When the design of a system calls for the replacement of the natural soil or the addition of fill material, it is necessary that the fill material meet the textural requirements identified in N.J.A.C. 7:9A-10.1(f)4, and also have a permeability or percolation rate within the range specified.

COMMENT A: Is the use of "septic tank" at N.J.A.C. 7:9A-10.1(g) intended?

COMMENT B: N.J.A.C. 7:9A-10.1(g) should read "disposal field" not "septic tank".

RESPONSE: The commenters are correct. N.J.A.C. 7:9A-10.1(g) will be modified to replace the term "septic tank" with "disposal field".

COMMENT A: Regarding N.J.A.C. 7:9A-10.1(g)3, the proposed rules limit mound and bed construction to slopes of 10 percent or less. This should be increased to 15 percent or less, providing additional latitude for the proper and most suitable design method. For example, a 14 foot wide disposal bed on a 15 percent slope will have 2.1 feet of fall across the bed area. By raising the lower side of the bed 0.8 feet out of the ground, the minimum and maximum cover over the disposal bed can be maintained.

COMMENT B: Regarding N.J.A.C. 7:9A-10.1(g)3, maximum slope permitted for disposal beds of 10 percent should be increased to 15 percent in order to provide greater latitude in design. Relatively narrow disposal beds can be constructed successfully on slopes up to 15 percent.

RESPONSE: The Department disagrees with these comments. The restriction when the slope is between 10 and 25 percent applies only to mound and mounded soil replacement systems. The Department is concerned that in cases of steep slopes there is a much higher potential for daylighting of the effluent when mounded or soil replacement systems are utilized. Under the best circumstances, the toe of a mounded system using pressure distribution on a 10 percent slope with the infiltrative surface one foot above existing grade would extend approximately 23 feet downslope from the edge of the gravel infiltrative surface. Such a system using gravity distribution with an infiltrative surface four feet above existing grade would have a toe extending approximately 70 feet down slope from the edge of the gravel infiltrative surface. On the sites previously described, trench systems may be utilized, or the applicant may apply for a permit through the treatment works approval process.

COMMENT: Regarding Table 10.2, garbage grinders or sewage grinder pumps are a major source of malfunctions. If used, disposal size should be increased 50 percent not 25 percent.

RESPONSE: The Department has determined that an increase in disposal field size of 25 percent accompanied by the increased inspection and maintenance requirements which are included within the rules are adequate in order to ensure the long term functioning of a subsurface sewage disposal system. The Department will continue to monitor the long term operation of systems which use a garbage disposal.

COMMENT: The proposed rules penalize the use of a percolation test for sizing of the septic system by requiring a 25 percent overdesign. Such drastic steps are unwarranted in sandy material in southern New Jersey.

RESPONSE: The Department disagrees with this comment. The body of published literature indicates that the percolation test has limitations associated with its reproducibility. Thus, a single percolation test, by itself, will not provide an accurate estimation of the rate at which water will flow through the soil. A safety factor of 25 percent has therefore been required when this test is utilized for system sizing purposes.

COMMENT: Some current township ordinances rely upon computation of side wall area for determination of the size of the septic field. The determination to rely upon the use of side wall areas is based upon the characteristics of the soils within the township. The soil consists mainly of shale which has laminated characteristics (a horizontal layer with intermittent vertical fissures or cracks). Based upon this soil composition, it is believed that water flows primarily in a horizontal direction with only secondary vertical movement. These ordinances rely upon the height or thickness of the side wall area from the soil log. The layer selected from the soil log is the depth at which the percolation tests penetrated the layer. The minimum thickness of the side wall is 18 inches by definition. Both sides of the trench are used in the computation in sizing the septic field. This method has proved highly successful and there have been few, if any, recorded failures of septic systems installed based upon this calculation method.

RESPONSE: The rule utilized the sidewall area for purposes of trench and bed sizing. Therefore, an additional allowance for saturated sidewall area should not be allowed.

COMMENT: Table 10.2(b) and 10.2(c) should be clarified to indicate that percolation rates in excess of 60 minutes per inch are unacceptable.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-6.4(f)2 states that when the percolation rate is slower than 60 minutes per inch, the horizon or substratum shall be considered to be hydraulically restrictive. Table 10.1 indicates the potential design alternatives which are available depending upon the depth of the hydraulically restrictive horizon or substratum.

COMMENT: It has been determined that currently, soil exhibiting a percolation rate of 16 minutes per inch for a three bedroom dwelling in good sand would require a disposal bed of 520 to 540 square feet. Under the proposed rules, the same three bedroom dwelling in the same soil with a percolation rate of 16 minutes per inch would require a disposal bed of approximately 1,300 square feet. This substantial increase in the size of the disposal bed translates to substantial cost increase. This cost is not justified.

RESPONSE: The Department recognizes that the proposed rules will significantly increase the size of disposal beds which will be installed in soils with high sand contents.

The 16 minute per inch percolation rate which was utilized in the example presented by the commenter is approximately equivalent to a permeability rate of two inches per hour. Using this permeability, in order for the long term acceptance rate to not be exceeded, the hydraulic loading rate should be no greater than approximately 0.5 gallons per square foot. This would result in a disposal bed of 1,000 square feet. Because the percolation test was utilized, an additional 25 percent must be added to the calcuated bed size. This results in the 1,300 square foot disposal bed which is given in the example presented by the commenter.

The improper functioning of a subsurface sewage disposal system installed in a sand with a deep water table is often difficult to determine prior to the recognition of potable well contamination. This situation commonly exists because the effluent is so easily infiltrated into the soil and transported laterally away from the area of the disposal bed. The hydraulic overloading which is occurring under the repealed rules significantly reduces the capability of the gravel envelope biologic mat, and zone of treatment, to renovate the wastewater. The existing public health problems created by poorly treated effluent may not be readily apparent in areas of isolated development, but it has become a common problem in areas of higher building density. Reduced hydraulic loading rates are necessary in this case to solve the problem.

COMMENT A: Regarding Table 10.2(c) for A/Q (ft^2/gal per day) at permeability range of six to 20 inches per hour, states "0.61 ft^2/gal per day" and appears to deviate from A/Q factors specified for the slower permeability ranges.

COMMENT B: Regarding N.J.A.C. 7:9A-10.2, Table 10.2(c), the minimum required disposal field bottom area per gallon of daily sewage volume, A/Q, for the percolation rate of three to 15 minutes per inch is designated as 0.61 sq. ft./gal per day. Using this figure, the minimum disposal field area for a three bedroom home would be 213 square feet, and 305 square feet for a four bedroom home.

Experience indicates that this size disposal field is inadequate. The currently accepted practice in this area is for a minimum disposal field

area of 432 square feet for a three bedroom home and 576 square feet for a four bedroom home to accommodate the anticipated clogging of the soils below the disposal field. Experience has shown that homes constructed with sewage systems smaller than this experience an increased rate of failure.

It is recommended that the A/Q for the percolation rate of three to 15 minutes per inch be increased to at least 1.25. This would bring the minimum disposal field sizes in line with currently accepted practice.

RESPONSE: The Department agrees with these comments. The correct value is 1.61 square feet per gallon per day. Table 10.2(c) will be modified to reflect this typographical error.

COMMENT: Regarding Table 10.2(c), there are currently only four categories proposed for calculating the required disposal field bottom area. Since this required bottom area is a function of the infiltration rate, the commenter would suggest that this table be replaced by a graph which accurately shows this relationship.

RESPONSE: The Department disagrees with this comment. The interpretation of the loading rate from a graph creates an additional potential for error which is not present in the presentation of data in tabular form. Also, an inspection of the graphical presentation of the acceptance rate plotted against soil permeability will show that an order of magnitude change in the soil permeability will result in a relatively small percentage change in the long term acceptance rate. Therefore, there is no significant advantage in presenting the requirements for disposal bed area in a more detailed manner. Large groupings will result in virtually the same size disposal bed as a more detailed grouping.

COMMENT: The proposed rules do not require the use of multiple compartment septic tanks. United States Environmental Protection Agency Onsite Wastewater Design Manual (October 1980) states that multiple compartment tanks provide increased protection against solids, carry over and improved BOD and suspended solid removal. It is suggested that the new rules require multiple compartment tanks.

RESPONSE: The rules only require multiple compartment septic tanks for institutional and commercial installations where the daily volume of sewage is greater than 1,000 gallons per day (see N.J.A.C. 7:9A-8.2(d) or homes with garbage grinders (see N.J.A.C. 7:9A-8.2(c)). Restaurants, cafeterias, institutional kitchens and other installations discharging large quantities of grease must also use grease traps (see N.J.A.C. 7:9A-8.1(a)). Also, the minimum size for septic tanks has been increased from 900 to 1,000 gallons, and the Department through the proposed rules is requiring more frequent inspection of the subsurface sewage disposal system. The Department has determined that these additional requirements are adequate and that the universal requirement for multiple compartment tanks is not justified at this time.

COMMENT: Regarding N.J.A.C. 7:9A-10.3, no specific reference is made to paving over a septic system disposal field, though this activity is generally not permitted. The inclusion of such a requirement is beneficial for enforcement purposes.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-4.8 prohibits the paving over of any portion of the disposal area.

COMMENT: The proposed rules will not allow septic systems to be placed within fill areas of a regraded site. This is an unreasonable and unnecessary requirement, particularly with respect to moderate and large subdivision applications. A more reasonable approach would be to require the fill to be 95 percent procter density and require disposal fields be excavated through any fill and penetrate to the elevation of soil permeability or percolation testing.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-4.2(b) states that in cases of highly disturbed ground, approval may not be granted unless the design addresses this limitation. N.J.A.C. 7:9A-10.1(b) addresses the type of systems which may be installed under specific site conditions.

COMMENT: Regarding the installation of garbage disposals (see N.J.A.C. 7:9A-10.2), it is unclear as to what the word "contemplated" refers to. It should be deleted.

RESPONSE: The Department agrees with this comment. The notes to Table 10.2(b) and Table 10.2(c) have been changed for the purposes of clarity.

COMMENT: Regarding N.J.A.C. 7:9A-10.3(d)2, is it correct that the spacing between laterals will be reduced to three feet?

RESPONSE: The commenter is correct.

COMMENT: The proposed rules will allow distribution lines to exceed two feet in depth due to the requirement that "at least two inches" of filter material be provided over the materials and that 18 inches of backfill be placed over the drainage fabric. It is suggested that the words "at least" be eliminated from the standards.

RESPONSE: The Department disagrees with this comment. The level of infiltration may be a maximum of three feet below existing ground and a minimum of one foot of gravel filter material is required below the distribution laterals. Therefore, the distribution laterals cannot be installed more than two feet below existing ground. See also Figures 17, 18 and 19 of Appendix A.

COMMENT: Regarding filter materials sizing and grading, enclosed with this comment is a stone analysis of material available in the southern New Jersey area. Pennsylvania Department of Transportation standards differ from those of New Jersey and the quarries that service South Jersey do not comply with New Jersey Department of Transportation. Additionally, a certain amount of dust and fines is present in any stones involved in a crushing operation. More liberal wording regarding fines and dust can eliminate much of the misunderstanding on behalf of inspectors who take the wording too seriously.

RESPONSE: The Department disagrees with this comment. The Department has contacted professional engineers in the southern portion of the State who served on the statutory and Ad hoc advisory committees to determine whether they had experienced any problems with obtaining course aggregate which meets the required New Jersey Department of Transportation standards. They have experienced no such identified problem with the availability of materials.

COMMENT: The proposed rules state that the backfill cover shall be between nine and 18 inches over the top of the filter fabric or salt-hay material. Salt-hay is required four to eight inches thick (see N.J.A.C. 7:9A-10.3). This appears to be in conflict with the various figures depicting the different types of septic disposal systems, which show nine to 18 inches of cover above the stone or gravel bed material. This requires clarification.

RESPONSE: The Department disagrees with this comment. The proposed rule requires that sufficient backfill be added so that the finished grade is nine to 18 inches above the gravel filter material. In cases where four to eight inches of salt-hay or straw is used, it is recognized that the salt-hay or straw will compress in response to the addition of the backfill. Therefore, the addition of backfill has been stated in terms of distances between the gravel filter material and finished grade.

COMMENT: Regarding N.J.A.C. 7:9A-10.3(f)1, it has been found that suitable grass growth can be achieved with four inches of topsoil. Nine inches appears excessive and adds unnecessary height to elevated systems.

RESPONSE: The Department disagrees with this comment. The addition of only four inches of backfill is inadequate to prevent cracking or uneven settling of the soil which may occur, especially in cases where salt-hay or straw is utilized as a filter material. The increased depth of backfill will provide additional water storage capacity for the grass to utilize during periods of low rainfall. Also, the greater depth of backfill will provide additional protection against exposure of the gravel filter material of the channeling of surface water into the gravel filter material due to the burrowing activities of small animals.

COMMENT: Regarding N.J.A.C. 7:9A-10.3(f)5iv, for final grading it is proposed to require seed, sod, or stabilizing in a manner which is acceptable to the administrative authority. Since the expertise of the administrative authority is not in the field of vegetative cover and erosion control, the commenter recommends "mulching with seeding, or sod in accordance with the State Soil Erosion and Sediment Control Standards (see N.J.A.C. 2:90-1.1)".

RESPONSE: The Department disagrees with this comment. The State Soil Erosion and Sediment Control Standards exempt single family dwellings and commercial units where the soil disturbance is less than 5,000 square feet.

COMMENT: What is the technical justification for requiring a minimum diameter of six inches for the interceptor drain pipe? Why is a four inch pipe unacceptable? Is this requirement not an unnecessary overdesign requirement?

RESPONSE: The Department agrees with this comment. The Department has recalculated the expected discharge from four and six inch pipes under half full flow at a velocity of two feet per second and the Department has determined that a four inch pipe is adequate for the majority of the site conditions which will require the use of an interceptor drain. N.J.A.C. 7:9A-10.7(h)3 has been modified to reflect this comment.

COMMENT: The conjunction "or" should be placed at the end of N.J.A.C. 7:9A-10.4(a)1i.

RESPONSE: The Department disagrees with this comment. The term "or" is implied at the end of N.J.A.C. 7:9A-10.4(a)1i.

COMMENT: Regarding Appendix A, Figure 24 does not address the situation where doubt exists as to whether or not the substratum is

fractured rock. In that circumstance, the administrative authority may require that a basin flooding test be conducted to verify a permeable zone of disposal. Would the subsequent disposal area design be as in this figure if the test were conducted in the questionable horizon? Should not the limit of excavation extend to the bottom of the basin flooding test pit?

RESPONSE: The methodology to be used in determining the required depth of soil pits or borings is specified in N.J.A.C. 7:9A-5.2(e) and 7:9A-5.2(f), respectively, and the requirements of the zone of disposal are presented in N.J.A.C. 7:9A-10.1(e). In the example presented by the commenter, the excavation would not have to extend to the bottom of the basin flooding test pit if all overlying material met the requirements of N.J.A.C. 7:9A-10.1(e).

COMMENT: N.J.A.C. 7:9A-10.4(f)3, Specific requirements for soil replacement disposal field installation, states that compaction of fill material shall be carried out under the direction of a professional engineer. Upon final inspection the professional engineer shall certify by signature and seal that compaction has been done in a correct manner, also that the fill cannot be compacted in layers greater than one foot or more. Has consideration been given what this will create in additional cost specifically in southern New Jersey? Many of the sewage disposal systems will contain select fill since their percolation rate will be faster than three minutes per inch. The rule requires select fill in these cases.

RESPONSE: The Department disagrees with this comment. There is no evidence to suggest that there will be a disproportionate economic burden on southern New Jersey as compared to other parts of the State.

The design of a subsurface sewage disposal system as was allowed under the repealed rule (see N.J.A.C. 7:9-2) did not take into consideration the permeability of the biologic mat which forms at the level of infiltration. Because the permeability of the biologic mat is less than that of the more rapid percolation test results which were allowed under the repealed rules, the repealed sizing requirements for disposal fields resulted in hydraulic overloading of the biologic mat. Consequently, the gravel filter material, biologic mat and zone of treatment did not operate as effectively as they would under the increased sizing requirements of the new rule.

COMMENT: N.J.A.C. 7:9A-10.4(f)3i should be revised to include a "septic system installer" to assume responsibility for compaction of fill below the disposal field. This is an area in which he or she is probably an expert and perhaps more expert than the design engineer. This can be accomplished by adding the phrase "or septic system installer" following the term "engineer".

RESPONSE: The Department disagrees with this comment. It is the responsibility of the professional engineer to ensure that the system has been constructed according to the requirements of the approved application. This requirement is reinforced by the requirement in N.J.A.C. 7:9A-10.4(f)3ii for the professional engineer to certify by signature and seal that the system has been installed in conformance with the approved plans.

COMMENT: The proposed rules will allow puddling as an approved method for consolidation of fill material. It is recommended that puddling only be allowed if and when coupled with a dewatering operation which is to provide uptake wells at the base of the fill material to assure positive and uniform consolidation. Consolidation of fill by any method should require certification of modified proctor densities prior to acceptance by the administrative authority.

RESPONSE: The Department disagrees with this comment. The purpose of the controlled installation of the fill material is not to achieve maximum proctor densities. The requirement is to install the fill material in a manner such that there will be no settling of a magnitude which will cause failure or poor operation of the system, but yet will maintain the maximum amount of pore space in order to provide for treatment and disposal.

COMMENT: Regarding mound installations, generally it has always been a point to remove existing topsoil. Is this not the case any longer?

RESPONSE: In regard to mounded systems, it is necessary to remove the native topsoil in cases where a mounded soil replacement disposal field is to be installed. If there are no hydraulically restrictive horizons present, there is no purpose served by removing the topsoil.

COMMENT: In the event that an interceptor drain is proposed, the slope of hydraulically restrictive horizons and substratums responsible for perched groundwater conditions should be identified, based on appropriately located subsurface explorations. This consideration precludes the sole use of topography as a method for determining the "upgradient" location, and aids in reducing the potential for intercepting disposal field effluent.

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:9A-10.7(d)3 will be modified to reflect this comment.

COMMENT: N.J.A.C. 7:9A-10.7(d)1 requires a minimum horizontal separation distance between a disposal field and an interception drain of 50 feet in some cases. There is concern that with the other required setbacks, the drains may not fit on the lots. Exemptions from this requirement should be allowed where a professional engineer can demonstrate that a closer drain will not exert any adverse influence on the performance of the septic system.

RESPONSE: The Department disagrees with this comment. The method of demonstration for a shorter separation distance is specified in N.J.A.C. 7:9A-10.7(d)3. In cases where a different demonstration method is utilized, an application must be made to the Department for a treatment works approval.

COMMENT: N.J.A.C. 7:9A-10.7(i)1 should be amended to include "storm sewer" on the list of areas into which an interceptor drain can discharge.

RESPONSE: The Department agrees with this comment. The Department has modified N.J.A.C. 7:9A-10.7(i)1 to permit the discharge of interceptor drains into a storm sewer. This will provide consistency with previously allowed options for discharge.

COMMENT: Regarding N.J.A.C. 7:9A-10.7(k), satisfactory performance of an interceptor drain is required prior to a local administrative authority granting of final approval. Why is confirmation of performance required in the proposed rules whereas current treatment work approvals being granted by the Department do not contain special provisos for performance monitoring? Why is a final Department treatment works approval permit being granted prior to curtain drain performance? If local administrative authorities cannot issue a permit prior to performance, why can the Department?

RESPONSE: The Department disagrees with this comment. The treatment works approval in the context of repealed the alternate design option of repealed N.J.A.C. 7:9-2 is not a permit to construct. The Department's review of the treatment works approval application is limited to those portions of the design which are not in strict conformance with repealed N.J.A.C. 7:9-2. Approval of the design for purposes of construction is given by the administrative authority. When the new rules become operative, the administrative authority will assume the entire review responsibility for interceptor drains which are designed in conformance with N.J.A.C. 7:9A-10.7. Therefore, it is entirely appropriate that the administrative authority inspect the interceptor drain system to ensure its proper operation.

COMMENT: N.J.A.C. 7:9A-10.7(k) deals with the confirmation of interceptor drain performance and presents a difficult timing problem for those applicants that select interceptor drain use. It is recommended that this section be deleted since it is unnecessarily restrictive and could easily present a severe financial hardship to the property owner if he or she must wait eight or nine months (until the perched zone of saturation is present) prior to doing the confirmatory tests. The fact that a professional (engineer, etc.) has certified the installation should suffice. Should the drain not work and a malfunction develop, then corrective action can be taken. Using the "logic" proposed for testing an interceptor drain, why aren't tests required to determine whether the septic system is operating satisfactorily?

RESPONSE: The Department disagrees with this comment. The hardship suffered by an applicant by having to wait to determine whether the interceptor drain is working properly is minor compared to the hardship which may be suffered by the family occupying a residence if the interceptor drain does not work properly and the septic system fails. The Department has determined that it is a much wiser course to determine whether the interceptor system will operate effectively prior to construction and occupancy of the realty improvement. Before the license to operate is issued, the administrative authority has the authority (see N.J.A.C. 7:9A-3.13) to determine conformance with the approved design.

COMMENT: The drain should be observed and certified as working by the administrative authority prior to construction. Said drains should be installed at least 30 days prior to contemplated construction.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:9A-10.7(k) requires inspection of the interceptor drain system prior to granting of the final approval of the system. The Department has determined that this is an adequate safeguard. The requirement for installation of the interceptor drain system at least 30 days prior to other construction, while well intentioned, may not be adequate during dry periods. The Department will monitor this area in the future to determine whether this section of the rules needs to be modified.

COMMENT: The proposed rules leave no room for interpretation of the performance monitoring of interceptor drains. For example, a drain might be deemed necessary because a mottled layer was encountered

indicating a perched zone saturation. If a drain is installed and performance pits are dug when saturation is expected, and neither test pit exhibits a saturated zone, either upslope or downslope of the drain, can the observed mottling be considered relic? How can those results be interpreted? Is the drain performing satisfactorily? Is this case an exception? This must be addressed. Is there not a need for a definition of "relic mottling"?

RESPONSE: Perched zones of saturation are not determined solely on the basis of the presence of mottling within the soil. It is also necessary to have an accurate soil log which describes, among other things, the soil texture and structure. If there is no textural or structural basis for the presence of a zone of reduced permeability, the presence of mottling alone does not suggest the presence of perched water table conditions. The problem may be one of a shallow depth to regional water table.

The absence of free water within a piezometer on a single inspection date neither confirms or denies the presence of a seasonal perched condition. Observations may be required to be continued for a period of time in order to confirm saturated soil conditions above a confining horizon.

The determination as to whether mottling is the result of prior climatic conditions or is the result of current climatic conditions is beyond the scope of these rules. That determination is best left to a soil scientist who has experience in field identification of soil morphological properties.

COMMENT: The last sentence of N.J.A.C. 7:9A-10.7(k)2 should be amended to read: "The administrative authority may require that the test be witnessed by the administrative authority or its authorized agent."

RESPONSE: The Department disagrees with this comment. The proper operation of an interceptor drain system, when it is required, is of such importance to the proper operation of a subsurface sewage disposal system that the Department has determined that the inspection required in N.J.A.C. 7:9A-10.7(k)2 should not be optional.

COMMENT: The phrase "a minimum of" should be deleted from N.J.A.C. 7:9A-10.2 and 10.4(c). The two foot value is sufficient and the proposed language would encourage inconsistency.

RESPONSE: The Department disagrees with this comment. When the requirement is stated in the manner of the rule, there is no regulatory burden to exceed the minimum requirements. When minimum distances are specified, the requirements for more exacting construction standards are reduced.

COMMENT: N.J.A.C. 7:9A-10.2(1)b should be deleted. The requirement for a 25 percent increase in the minimum required disposal field size, when the percolation test is used as the basis of design, is not necessary since the increased number of percolation tests along with other proposed changes should rule out the need for "over design".

RESPONSE: The Department disagrees with this comment. The percolation test suffers from a lack of reproducibility of the results. Because of the variation of the properties of a soil over a horizontal distance, the requirement for additional testing locations does not solve the problem of lack of reproducibility at a specific location. That problem can only be solved with a large number of replicate tests at each testing location. The Department has determined that the requirement for a 25 percent increase in bed sizing is an acceptable alternative to a requirement for much more site testing.

COMMENT: Many of the new technical standards appear to be the result of a desire to accommodate developers. Specifically, there is objection to the provisions in N.J.A.C. 7:9A-10 for mounded and soil replacement field installations in new subdivisions. These systems are unsuitable and potentially unhealthful for municipalities dependent upon potable groundwater. The proposed standards will result in proliferation of poorly designed and constructed systems as well as the temptation for graft and corruption. The Department should eliminate mounded and soil replacement systems for new installations in municipalities dependent upon potable groundwater.

RESPONSE: The Department disagrees with this comment. Many of the requirements of the rules will restrict the options available in cases of marginal or poor soil conditions. For example, when the regional zone of saturation is within two feet of existing grade or massive rock substratum which is hydraulically restrictive is within four feet of existing grade, the site is unsuitable whereas under the repealed rules, construction could be approved. In other situations in which the site is buildable, but has site limitations, the inclusion of additional design requirements the rules will ensure that an adequate level of treatment is provided to the wastewater. There is no technical basis for the prohibition of mounded and soil replacement disposal fields.

SUBCHAPTER 11. SEEPAGE PITS

COMMENT: What are the proposed rules regarding seepage pits? Do the proposed rules eliminate the sale of seepage pits to both new and existing dwellings?

RESPONSE: For new construction, seepage pits may only be utilized to receive the discharge of greywater (see N.J.A.C. 7:9A-7.6). For existing malfunctioning subsurface sewage disposal systems, seepage pits may be installed as an alteration or repair to eliminate the malfunction. For existing non-malfunctioning systems, a seepage pit may only be approved when the installation of the seepage pit will comply with the requirements of these rules or cause the system to be closer in compliance with these rules (see N.J.A.C. 7:9A-3.3).

COMMENT: The commenter understood that the Department is attempting to eliminate seepage pits except in emergency instances of where nothing else could work. N.J.A.C. 7:9A-11.3(a) should include precast concrete units. Why are they not listed?

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:9A-11.3 has been modified to include precast concrete units.

COMMENT: The proposed rules should be expanded to permit backwash from pools to discharge into seepage pits. Currently it is necessary to obtain a NJPDES permit to discharge this water or discharge to a sanitary sewer which many times is not available.

RESPONSE: The Department disagrees with this comment. Swimming pool backwash is not sanitary sewage. Therefore, it is outside of the scope of these rules. A treatment works approval and a NJPDES permit would be required for the discharge of swimming pool backwash.

COMMENT: Regarding seepage pits (see N.J.A.C. 7:9A-11.3), the access opening should be 30 inches in diameter to conform to O.S.H.A. and B.O.C.A. requirements.

RESPONSE: The Department disagrees with this comment. The National Standard Plumbing Code and the B.O.C.A., National Private Sewage Code (1984) call for manhole openings a minimum of 24 inches square or 24 inches in diameter. The Diameter is not aware of any applicable O.S.H.A. requirements.

SUBCHAPTER 12. OPERATION AND MAINTENANCE

COMMENT: Since the Department proposes to begin requiring certain activities by homeowners, that is, licensing and maintenance of septic systems, the Department should also commence a public awareness and education program to alert people of their new responsibilities.

RESPONSE: The Department agrees that greater public awareness is necessary about the periodic inspection and maintenance that is necessary in order for a subsurface sewage disposal system to operate effectively over the long term. Along those lines, the Department is in the preliminary stages of developing newsletters and informational packets about subsurface sewage disposal systems.

The proposed rules only require licensing for new subsurface sewage disposal systems which are approved or altered after the operative date of the rules. Existing systems which are operating properly are not required to be licensed.

COMMENT: There is a question as to whether or not consideration has been given to permitting backwash from swimming pools to discharge into a subsurface disposal system. Perhaps an explanation as to why this is not permitted will adequately answer this inquiry.

RESPONSE: Swimming pool backwash does not fit the definition of sanitary sewage given in N.J.A.C. 7:9A-2.1, and thus the discharge of swimming pool backwash cannot be approved under these rules.

COMMENT: Since the septic system license is renewable at three-year intervals, why is it necessary for the homeowner (in the absence of pumping) to have their system inspected annually? That inspection will cost the homeowner a minimum of $150.00 per year. Why not require an inspection (and pumping, if the inspection finds pumping to be necessary) as a prerequisite for license renewal? Keep the option for the local authority to require pumping more often if it is deemed necessary. The majority of homeowners would then only have the $150.00 inspection expense (and pumping costs, if necessary) every three years, and the local administrative authority would have their follow-up workload for the licensing program reduced by two-thirds. Requiring an annual inspection is over-regulating.

RESPONSE: The Department disagrees with this comment. An annual inspection is required only if it has been more than three years since the septic tank was pumped out or if the system has a history of malfunctioning, one or more components do not comply with current requirements, water usage is greater than the design flow, occupancy is greater than the design flow, or the facility requires a grease trap. Other systems need only be inspected every three years.

Proper maintenance by qualified personnel is vital to the long term operation of the subsurface sewage disposal system. This is especially important when it is recognized that many areas of the State will never become sewered. Successful operation of the system is more than just not having effluent discharging to the surface of the ground; it is also the removal of bacteria and the oxidation of organic material so that ground water quality is protected.

The commenter's estimation of $150.00 for an inspection which will be conducted every three years is far lower than homeowners in most sewered areas of the state are paying for sewer service.

COMMENT A: Who or what agency is responsible to perform the annual system inspection? Who completes the standard reporting form? Who submits those reports for local filing? The inspector? The licensee? Who certifies them? Can a homeowner inspect and certify their own system?

COMMENT B: Who certifies that a system is working? What should be checked for at the inspection?

RESPONSE: The rules require that the inspection be performed by a licensed health officer, licensed professional engineer, first-grade sanitarian, or other person acceptable to the administrative authority. The person performing the inspection must complete the form "Report of Septic System Inspection/Maintenance" (see Appendix B of the rules). This form identifies the components of the septic system which must be inspected.

COMMENT: The engineer who designs a system should be responsible for the functioning of the system for a given period of time. Some system design companies assume responsibility for the functioning of a system for one year following its installation. These companies also demand the right to inspect the system for a period of three to four years after installation. It should be the designing engineer's responsibility to notify the appropriate health officials of any problems.

RESPONSE: If the design engineer wishes to be the person who inspects the system for a specified period of time, this is a contractual matter between that engineer and the person who employs his or her services.

COMMENT: The proposed rules state that only commercial or large systems require yearly inspections. The individual residential systems should be controlled and inspected at least every two or three years. Most failures come from residential systems.

RESPONSE: Based on the Department's experience, there is no basis for the statement that individual home septic systems fail at a rate which is higher than that of industrial or commercial facilities. Any system which is not designed and/or operated properly will fail. N.J.A.C. 7:9A-12.2 identifies when an annual inspection is required.

COMMENT: Please clarify N.J.A.C. 7:9A-12.2(a) to indicate if an existing system which is pumped out is or is not included in the inspection requirements.

RESPONSE: An existing system which is operating properly does not have to meet the requirements for inspection. An existing system would only have to meet the requirements for a License to Operate if it were to undergo a change in use (see N.J.A.C. 7:9A-3.3(b)) or an alteration (see N.J.A.C. 7:9A-3.3(c)).

COMMENT: Septic system inspection proposals sound good but do not work. The only way to inspect a septic system is to pump it. A regular scheduled pumping is the only means of ensuring continued operation of the system.

RESPONSE: The Department disagrees with this comment. The construction requirements in the new rules for manholes and access ports within septic tanks and dosing tanks will make possible the determination of the depth of scum and sludge. This will make it easier to compare the tank condition at the time of inspection with engineering plans.

COMMENT: Although regular inspections of existing systems are important, the proposed requirement of yearly inspections (N.J.A.C. 7:9A-12.2(a)) appears excessive. The appropriate board of health should have the discretion to conduct such inspections, as necessary, every one to three years. Moreover, the proposed rules should specify the minimum criteria for such inspections and permit local boards to expand these criteria in certain necessary circumstances.

RESPONSE: The Department disagrees with this comment. Not all septic systems require annual inspections. N.J.A.C. 7:9A-12.2(a) and (b) determine the inspection frequency for septic systems. Appendix B of the rules contains the form "Renewal of License to Operate an Individual Subsurface Sewage Disposal System." This form includes those items which must be inspected. The Realty Improvement Sewerage and Facilities Act (see N.J.S.A. 58:11-23 et seq.) allows the administrative authority the option of making the rules more stringent. The requirements of the proposed rule represent the minimum requirements which must be met.

COMMENT: There is a question as to the need to have septic systems inspected annually, following the first three years after installation or pump out. Generally, inspections made every three to five years should be sufficient for all but the most severe instances. Furthermore, high use installations such as restaurants may require inspection or pump out more often than once per year. However, in the case of most residences, less frequent inspections would be more practicable to expect of the public.

RESPONSE: The Department disagrees with this comment. While a five year frequency between inspections and/or pumping of the septic tank may be adequate for some installations, this frequency will be inadequate for many others. The United States Environmental Protection Agency Design Manual for Onsite Wastewater Treatment and Disposal Systems states that inspection frequencies should be "at intervals of no more than every 2 years to determine the rates of scum and sludge accumulation. If inspection programs are not carried out, a pump-out frequency of once every 3 to 5 years is reasonable." Lacking a mandatory pump-out schedule, the Department has determined that the requirement for an annual inspection, if it has been three years since the septic tank has been pumped out, is a reasonable alternative.

COMMENT: An engineer should design a septic system, and perform an inspection after the first year. After the first year inspection, the engineer can determine how frequently the tank should be pumped.

RESPONSE: The Department disagrees with this comment. By statute, a licensed professional engineer is the only person who can be responsible for the design of a subsurface sewage disposal system. The Department has determined, however, that licensed health officers, first-grade sanitarians and other individuals are capable of inspecting a septic system. The inspection frequency included within these rules represents the minimum requirements and may be made more stringent by the administrative authority. The Department has determined, however, that not all individuals within the groups which may perform inspections should have the authority to determine minimum regulatory requirements.

COMMENT: Who determines when pumping is necessary? Can it be the homeowner? How is compliance with code requirements assured during pumping of septic tanks? Must pumping be witnessed and equipment inspected? If so, by whom? If there is a violation of the rules, who is the violator? Who takes action against the violator?

RESPONSE: The minimum requirements for pump-out frequency are included in N.J.A.C. 7:9A-12.3(a). The homeowner may obviously determine that the pump-out be performed before it is required by N.J.A.C. 7:9A-12.3(a) become governing. There is no requirement for the witnessing of the pump-out. The trucking and disposal of the seepage is governed by the appropriate Solid Waste Management Plan and the Solid Waste Management Act. Enforcement of the Solid Waste Management Act is provided by the Department.

COMMENT: Regarding N.J.A.C. 7:9A-12.3, the trucks which are utilized for pumping out septic tanks are already regulated under the Bureau of Solid Waste; therefore, there is no need to include this N.J.A.C. 7:9A-12.3(b) in these rules.

RESPONSE: The inclusion of N.J.A.C. 7:9A-12.3(b) adds no additional burden for compliance on the septic tank pumper. It is included for informational purpose only.

COMMENT: N.J.A.C. 7:9A-12.4 and 12.8 are both contained in the National Standard Plumbing Code, sections 16.15-1, 16.15-7, and 16.1-7 respectively. This duplication is unnecessary and may result in needless confusion, therefore, they should be deleted from these rules.

RESPONSE: The Department disagrees with this comment. The portions of the National Standard Plumbing Code which relate to septic systems are not included within the rules of the Department of Community Affairs because the rules of the Department of Environmental Protection govern septic systems.

COMMENT: Grease trap waste is not addressed in the Statewide Sludge Management Plan. N.J.A.C. 7:9A-12.4(f) should be amended to include grease trap waste disposal.

RESPONSE: The Department disagrees with this comment. The proposed rules require that the grease trap waste must be pumped, trucked, and disposed of in accordance with the requirements of the Solid Waste Management and the Statewide Sludge Management Plan (see N.J.A.C. 7:9A-12.4).

COMMENT A: When excessive hydraulic loading will be used to test a system, who insures that the septic tank and/or grease trap has been pumped prior to the test? Who is the violator if that is not done? Who takes action against the violator? What is the penalty? Must the person who tests the system be certified, and if so, how?

COMMENT B: Regarding the requirements for the testing of subsurface disposal systems after they are installed (see N.J.A.C.

7:9A-12.7), there is not sufficient data or standards for system testing and many of the firms that perform tests use different methods. Some methods may induce a premature failing of the septic system. The Department should review the methods of testing and come up with a standard so future testing can be carved out in a more adequate way. Furthermore, mortgage companies require septic certifications.

RESPONSE: The owner of the realty improvement is responsible for the proper operation of the subsurface sewage disposal system. Cases in which hydraulic loading in excess of the design flow is applied to the subsurface sewage disposal system and is a threat to the public health and safety and the environment, are enforced under the appropriate local ordinances by the administrative authority and by the Department as violations of the Water Pollution Control Act. The penalties for violation of the Water Pollution Control Act are identified in N.J.A.C. 7:9A-1.7.

The testing of a subsurface sewage disposal system by the application of hydraulic loading in excess of the design loading and the interpretation of those results obtained from that testing constitutes the practice of engineering. All such testing must be done under the supervision of a licensed professional engineer. N.J.A.C. 7:9A-12.7 has been modified to reflect this legal requirement.

The Department agrees that the identification of appropriate testing procedures would be advantageous. Unfortunately, that work is not at a point where it could be included within these rules.

COMMENT A: N.J.A.C. 7:9A-12.8 differs from the Uniform Construction Code and should therefore be removed from the rules.

COMMENT B: All provisions of the proposed rules which conflict with the Uniform Construction Code, subchapters 1, 2, and 3 (see N.J.A.C. 5:23-1.1, 5:23-2.1, and 5:23-3.1) as well as the National Standard Plumbing Code should be deleted from these rules. Copies are attached for this comment.

RESPONSE: The Department disagrees with this comment. The Department of Community Affairs' rules adopt by reference both the Uniform Construction Code and the National Standard Plumbing Code with certain exceptions including those portions which relate to onsite sewage disposal. The Department of Environmental Protection has jurisdiction over the onsite sewage disposal system.

COMMENT: Subchapter 12, Operation and Maintenance, should be deleted from the rules as it is unenforceable by local boards of health.

RESPONSE: The Department disagrees with this comment. The failure to properly maintain a subsurface sewage system will create a condition which will result in the failure of the system and which ultimately will create a threat to the public health and safety and the environment. The creation of a threat to the public health and safety is an action which is fully enforceable by the administrative authority.

COMMENT: N.J.A.C. 7:9A-12.8 should be deleted since it is already covered under the National Standard Plumbing Code and is the responsibility of the plumbing inspector.

RESPONSE: The Department disagrees with this comment. The rules of the Department of Community Affairs adopt by reference the National Standard Plumbing Code with the exception of those portions relating to the subsurface sewage disposal system. The subsurface sewage disposal system is regulated by these rules.

APPENDICES

COMMENT: It is recommended that a limitation be placed upon the percent of slope for mounded systems in Appendix A, Figure 20. A 25 percent slope should be the maximum allowed.

RESPONSE: N.J.A.C. 7:9A-4.4(a) limits the installation of disposal fields or seepage pits to areas where the slope is 25 percent or less.

COMMENT: Is an assumption made in Figure 24 that the fractured rock substrata (in the two feet between the bottom of the zone of disposal fill material and the two feet of native soil) is permeable? Is that a subjective call? If a basin flooding test is utilized in that two-feet native horizon, does the coarse sand have to extend to the bottom of the basin flooding hole?

RESPONSE: N.J.A.C. 7:9A-10.1(e) requires that the zone of disposal have a minimum of four feet of material which has a permeability more rapid than 0.2 inch per hour or a percolation rate more rapid than 60 minutes per hour. When the permeability in the zone of disposal is more rapid than 2.0 inches per hour, the zone of disposal may be reduced to two feet.

If the native material in Figure 24 were fractured rock, a basin flooding test would have to be performed. That testing method is defined in N.J.A.C. 7:9A-6.7 and the results of that test are not a subjective call. If the native soil which overlies the fractured rock substratum has a permeability more rapid than 0.2 inch per hour or a percolation rate more rapid than 60 minutes per inch, the native material does not have to be replaced with fill material.

COMMENT: Figure 21 should be reviewed for correctness. The drawing as shown with no level extension is a major cause of mound malfunctions in Pennsylvania. The surrounding fill should extend at least 10 feet level then taper to the original ground.

RESPONSE: The Department disagrees with this comment. The design requirements are significantly different from the Pennsylvania code. With a percolation rate of six to 15 minutes per inch, a three bedroom home in Pennsylvania would require a 900 gallon septic tank and a 525 square foot disposal field. The New Jersey rules would require a 1,000 gallon septic tank and a disposal field of 805 square feet. Because of the substantially larger septic tank and disposal field required by the proposed rules, the Department has determined that a 10 foot buffer is not required.

COMMENT: Regarding Appendix B, the proposed application does not allow room for multiple soil log results. Additionally, it is unclear if applications to construct, operating licenses and certification forms are separate from one another. If not, they should be separated.

RESPONSE: One copy "Form 2B Soil Log and Interpretation" should be used for each soil log. Appendix B contains separate forms for an application to construct and an application for license to operate or renewal of license to operate. The form for the Certificate of Compliance is included in the rule. The addition of the form in the promulgated rule represents no additional regulatory burden because the requirements for the Certificate of Compliance were proposed in N.J.A.C. 7:9A-3.13.

COMMENT A: Regarding Appendix B, Forms 1 and 2, the mailing address of he project should be included. This will make notification of license renewals easier.

COMMENT B: Regarding Appendix B, Forms 1 through 3 should include the applicant's mailing address.

RESPONSE: The Department agrees with these comments. The street address of the project is included on the form. For clarity, the proposed Appendix B has been deleted and replaced with new forms reflecting this change.

COMMENT: Regarding Appendix B, Forms 2a through 7d should include the license number of the person witnessing the test.

RESPONSE: The Department agrees with this comment. The license number of the person submitting the information has been included on the form. For clarity, the proposed Appendix B has been deleted and replaced with new forms reflecting this change.

COMMENT: Regarding Appendix B, Form 2a, 2b, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 4 and 5 should include block and lot number on each page.

RESPONSE: The Department agrees with this comment. The lot and block numbers have been added to each of the form. For clarity, the proposed Appendix B has been deleted and replaced with new forms reflecting this change.

COMMENT A: N.J.A.C. 7:9A-3.5(d) refers to standard forms in Appendix B. Two of the forms require the "Signature of Design Engineer". This term is not defined. The form should require the signature, seal and license number of a New Jersey Professional Engineer.

COMMENT B: The forms regarding "Construct/Alter/Repair" require the signature of a "soil evaluator". This term is not defined, therefore, the State Board of Professional Engineers and Land Surveyors will be unable to determine if the duties of the soil evaluator will conflict or impact upon the realm of engineering or land surveying regulated by this Board.

RESPONSE: The Department agrees with this comment. The forms have been modified to require the signature and seal of a New Jersey licensed professional engineer. For clarity, the proposed Appendix B has been deleted and replaced with new forms reflecting this change.

COMMENT: Appendix B, Form 1 requires the applicant to certify that technical data is correct. It would appear unwarranted to have the applicant certify compliance with this particular technical section.

RESPONSE: The Department disagrees with this comment. Form 1 includes only administrative information as to the type of application and the proposed wastes to be discharged to the system. It is entirely appropriate that the applicant sign the form.

COMMENT A: The signature on Form 2a should be that of "site" not "soil" evaluator.

COMMENT B: What are the qualifications for a "site evaluator"?

RESPONSE: The application of the information obtained by the site evaluation process constitutes the practice of engineering. Consequently, this work must be submitted to the administrative authority under the signature of a professional engineer.

COMMENT: The application forms are rather lengthy, though if the engineers are given more of a leeway to perform the test at their basic time and convenience in an office, perhaps the forms should be lengthy so a reviewer can reveiw the data in a more thorough manner. Hopefully, that is the reason for the length of the application forms.

RESPONSE: While the forms may appear to be lengthy, the information which must be completed is necessary in order to properly design a subsurface sewage disposal system.

COMMENT: The Soil Series should be provided on Form 2b.

RESPONSE: The Department disagrees with this comment. The soil series identified in Appendix D as having potential limitations for the design and construction of a subsurface sewage disposal system are provided for general information only. The data from the site-specific soil evaluation which is conducted at the site of the proposed disposal system is governing in the design of the system.

COMMENT: If the administrative authority will not be reviewing the testing period, then the application forms are adequate. However, if they are going to witness every step of the testing period, the application forms are too lengthy.

RESPONSE: The Department disagrees with this comment. The information which is necessary in order to completely fill out the application is necessary in order to determine the percolation/permeability rate and design the disposal system.

DEPARTMENT INITIATED CHANGES

At N.J.A.C. 7:9A-2.1, the definition of the term "commercial unit" has been changed to correct a typographical error. The word "defined" was incorrectly printed as "deferred".

N.J.A.C. 7:9A-3.5(c)2xi has been modified by replacing the term "transition zones" with the term "transition areas". This change is made for purposes of consistency with N.J.A.C. 7:7A and does not alter any requirements contained in the proposed rule.

N.J.A.C. 7:9A-4.7(b)3 has been modified to correct two typographical errors in the names of the soil types "Albia" and "Hummaquepts."

N.J.A.C. 7:9A-5.8(b)2ii has been modified to require that when the determination of seasonal high water table is based upon a soil series description in the County Soil Survey Report, the highest elevation shall be utilized when a range of values is given. This will result in a more conservative basis for system design. This will provide additional protection of the public health, safety and environment without imposing any additional requirements upon individuals.

N.J.A.C. 7:9A-6.1(c), Table 6.1 has been modified to correct a typographical error. The term "Other" was obviously incorrectly printed as "Oil". This change does not alter the rules nor does it impose any additional requirements.

N.J.A.C. 7:9A-6.2(d)3 has been modified to further clarify the procedure by which the tube permeameter test is performed. This does not alter any requirement of the tube permeameter test; rather, it assists the individual who performs the test by explaining the procedure.

N.J.A.C. 7:9A-6.4(e) has been modified to correctly indicate the maximum amount of time which may elapse after the start of the percolation test, following the presoak procedure. N.J.A.C. 7:9A-6.4(c) describes the presoak period which allows a maximum time of 28 hours following the start of the test. This requirement was incorrectly stated at N.J.A.C. 7:9A-6.4(e) as 24 hours. Since the time limit of 28 hours was set forth in N.J.A.C. 7:9A-6.4(c), this change imposes no additional requirements.

N.J.A.C. 7:9A-7.3(b) has been modified to remove the allowing of water softener backwash into drywells. The rule provides that sanitary sewage can be discharged into a seepage pit only in the case of the alteration or repair of a malfunction. Since water softener backwash is not included in the definition of sanitary sewage, its discharge into drywells is not permitted. Therefore, N.J.A.C. 7:9A-7.3(b) is modified for consistency with this requirement as set forth at N.J.A.C. 7:9A-1.6(f).

N.J.A.C. 7:9A-10.2(a) has been modified to provide a title for Table 10.2(a). This is necessary to provide the proper identification of Table 10.2(a) and provides no substantive change to the rule.

N.J.A.C. 7:9A-6.5(e) and 6.6(e) have been modified to reference the Department's procedures and standards for well drilling and sealing. This is a clarification which imposes no additional burden nor does it relax any requirement in the proposed rule. Therefore, it is not considered to be a substantive change.

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

CHAPTER 9A
STANDARDS FOR INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEMS

SUBCHAPTER 1. GENERAL PROVISIONS

7:9A-1.1 Purpose

(a) The purpose of this chapter is to:

1. Prevent pollution of the waters of the State that results from improper location, design, construction, installation, alteration, operation or maintenance of individual subsurface sewage disposal systems;

2. Provide standards for the proper location, design, construction, installation, alteration, operation and maintenance of individual subsurface sewage disposal systems;

3. Protect the public health and safety and the environment;

4. Protect potable water supplies; and

5. Safeguard fish and aquatic life and ecological values.

7:9A-1.2 Scope

(a) This chapter prescribes standards for the location, design, construction, installation, alteration, operation and maintenance of individual subsurface sewage disposal systems.

(b) Except as otherwise provided by N.J.S.A. 58:11-25, the following shall constitute the rules of the New Jersey Department of Environmental Protection and shall be regarded as uniform standards, in force throughout the State, governing individual subsurface sewage disposal systems.

7:9A-1.3 Construction of rules

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions.

(b) All appendices attached to this chapter are incorporated into this chapter and are made a part hereof.

7:9A-1.4 Practice where rules do not govern

The Commissioner, the Director of the Division of Water Resources, or any other appropriate management employee within the Department, shall exercise his or her discretion in respect to any matters not governed by this chapter.

7:9A-1.5 Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this chapter, and to this end, the provisions of this chapter are declared to be severable.

7:9A-1.6 General prohibitions

(a) A person shall not install, construct, alter or operate an individual subsurface sewage disposal system without first obtaining the necessary permits, approvals, certifications or licenses as required by this chapter.

(b) An administrative authority shall not issue an approval, permit, certification, or license for installation, construction, alteration, or operation of an individual subsurface sewage disposal system where such installation, construction, alteration or operation will violate or otherwise not be in compliance with the requirements of this chapter.

(c) The use of a subsurface sewage disposal system for more than one property, dwelling ***unit***, commercial unit or other premises is prohibited unless a treatment works approval or a NJPDES permit has been issued by the Department.

(d) Individual subsurface sewage disposal systems shall not be located, designed, constructed, installed, altered or operated in a manner that will allow the discharge of an effluent onto the surface of the ground or into any water course.

(e) The administrative authority shall not approve the construction or alteration of individual subsurface sewage disposal systems or other means of private sewage disposal where a sanitary sewer line is available within 100 feet of the property to be served. For the purpose of this subsection, an existing sanitary sewer line shall be considered to be available when the following conditions are met:

1. Connection of the facility to the sanitary sewer line may be accomplished without installing a pump station, blasting bedrock, acquiring an easement or right-of-way to cross an adjoining property,

or crossing a watercourse, railway, major highway or other significant obstacle; and

2. The property to be served is located within the designated sewerage service area of the sewage treatment plant to which the sanitary sewer line is connected.

(f) The discharge of sanitary sewage or the effluent from any individual subsurface sewage disposal system into any abandoned well or any well constructed for the purpose of sanitary sewage disposal is prohibited. The administrative authority shall not approve the discharge of sanitary sewage or septic tank effluent into an existing well or the construction of a new well for the purpose of waste disposal.

(g) The construction or installation of cesspools is prohibited.

(h) The administrative authority shall not approve the construction or installation of seepage pits except as provided by N.J.A.C. 7:9A-7.6.

(i) The discharge of industrial wastes into an individual subsurface sewage disposal system is prohibited unless such discharge has been authorized by a treatment works approval or a NJPDES permit issued by the Department.

(j) The administrative authority shall not approve the construction, installation or alteration of any individual subsurface sewage disposal system used for the discharge of industrial wastes.

7:9A-1.7 Penalties

(a) Violation of any provision of this chapter shall be a violation of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the violator shall be subject to assessment of civil administrative penalties pursuant to the provisions of N.J.A.C. 7:14-8.

(b) Pursuant to N.J.S.A. 58:10A-10(a), the Commissioner may assess a civil penalty of not more than $50,000 for each violation, and each day during which such violation continues shall constitute an additional, separate, and distinct offense.

(c) Examples of violations of the requirements of this chapter which are subject to the assessment of civil administrative penalties pursuant to the provisions of N.J.A.C. 7:14-8 include but are not limited to:

1. Installing, constructing, altering or operating an individual subsurface sewage disposal system without first obtaining the necessary permits, approvals, certifications or licenses as required by this chapter;

2. Issuance by an administrative authority of a permit, approval, certification or license for installation, construction, alteration or operation of an individual subsurface sewage disposal system where such installation, construction, alteration or operation will violate the requirements of this chapter;

3. Discharge of industrial wastes into an individual subsurface sewage disposal system without a valid NJPDES permit issued by the Department pursuant to N.J.A.C. 7:14A;

4. Distribution, sale, offer or exposure for sale, or use of any sewage system cleaner containing restricted chemical materials, as defined in N.J.S.A. 58:10A-17;

5. Failure of the facility owner to report to the administrative authority any expansion or change in use of a facility which may result in an increase in the volume of sanitary sewage discharged into the individual subsurface sewage disposal system; or

6. Failure of the applicant, or the applicant's agent, to provide complete and accurate information to the administrative authority or its authorized agent, or to the Department, in accordance with the requirements of this chapter.

7:9A-1.8 Limitations

(a) The administrative authority shall not approve the installation, construction or alteration of an individual subsurface sewage disposal system unless the proposed system falls within the limits defined as follows:

1. Systems serving one single family home on one individual property; or

2. Systems serving facilities other than single family homes where the total daily volume of sewage generated, calculated as prescribed in N.J.A.C. 7:9A-7.4, is no greater than 2,000 gallons per day, the type of waste discharged consists of sanitary sewage only, and the system is connected to a single building, commercial unit or other realty improvement on the same individual property.

(b) When an individual subsurface sewage disposal system exceeds the limitations in (a) above, a treatment works approval issued by the Department will be required and a NJPDES permit may also be required.

(c) In cases where the actual volume of sanitary sewage discharged from a facility will be reduced by use of water-saving plumbing fixtures, recycling of renovated wastewater, incineration or composting of wastes, evaporation of sewage effluent or any other process, the requirement for obtaining a treatment works approval and a NJPDES permit shall be based upon the design volume of sanitary sewage, calculated as prescribed in N.J.A.C. 7:9A-7.4, rather than the actual discharge volume as modified by water conservation or special treatment processes.

SUBCHAPTER 2. DEFINITIONS

7:9A-2.1 Definitions

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

"A-horizon" means the uppermost mineral horizon in a normal soil profile. The upper part of the A-horizon is characterized by maximum accumulation of finely divided, dark colored organic residues, known as humus, which are intimately mixed with the mineral particles of the soil.

"Administrative authority" means the board of health having jurisdiction or its authorized agent acting on its behalf.

"Alteration" means any change in the physical configuration of an existing individual subsurface sewage disposal system or any of its component parts, including replacement, modification, addition or removal of system components such that there will be a change in the location, design, construction, installation, size, capacity, type or number of one or more components. The term "alter" shall be construed accordingly.

"Applicant" means the person who signs and submits an application to construct, install or alter an individual subsurface sewage disposal system.

"Approved" means accepted or acceptable under applicable specifications stated or cited in this chapter, or accepted as suitable for the proposed use under the procedures of this chapter. The word "approval" shall be construed accordingly.

"Approved engineering design" means the engineering plans and specifications for construction, installation or alteration of the individual subsurface sewage disposal system which have been reviewed and approved by the administrative authority.

"Artesian zone of saturation" means a zone of saturation which exists immediately below a hydraulically restrictive horizon, and which has an upper surface which is at a pressure greater than atmospheric, either seasonally or throughout the year.

"Authorized agent" means a licensed health officer, licensed professional engineer or first-grade sanitarian who is delegated to function within specified limits as the agent of the administrative authority.

"Bedrock" means any solid body of rock, with or without fractures, which is not underlain by soil or unconsolidated rock material.

"Bedroom" means any room within a dwelling unit, finished or unfinished, which may reasonably be expected to serve primarily as a bedroom or dormitory. The term bedroom shall be considered to include any room or rooms within an expansion attic.

"Blackwater" means any sanitary sewage generated within a residential, commercial or institutional facility which includes discharges from water closets, toilets, urinals or similar fixtures alone or in combination with other wastewater. Blackwater generally does not include laundry or kitchen wastewater.

"Building sewer" means the pipe extending from the outer wall of the building, or as defined in the State Uniform Construction Code, N.J.A.C. 5:23, to the septic tank or approved place of disposal other than a public sewer.

"Certificate of compliance" means a formal determination in writing by the administrative authority or its authorized agent that an

individual subsurface sewage disposal system has been constructed, installed or altered in conformance with the requirements set forth in this chapter as well as any other applicable local ordinances.

"Cesspool" means a covered pit with open-jointed lining into which untreated sewage is discharged, the liquid portion of which is disposed of by leaching into the surrounding soil, the solids or sludge being retained within the pit.

"Chroma" means the relative purity or strength of a color, a quantity which *[increases]* ***decreases*** with increasing grayness. Chroma is one of the three variables of soil color as defined in the Munsell system of classification.

"Clay" means a particle size category consisting of mineral particles which are smaller than 0.002 millimeters in equivalent spherical diameter. Also, a soil textural class having more than 40 percent clay, less than 45 percent sand, and less than 40 percent silt, as shown in Figure 3 of Appendix A.

"Clay loam" means a soil textural class having 27 to 40 percent clay and 20 to 45 percent sand, as shown in Figure 3 of Appendix A.

"Commercial unit" means one or more buildings, or one or more rooms within a building, which will be occupied by a single individual, corporation, company, association, society, firm, partnership or joint stock company, and used for non-residential purposes. Within a commercial building, each room or suite of rooms having its own separate sanitary facilities as well as a separate entrance to the outside, or to a hallway, lobby, foyer or other common area, shall be considered to be a separate realty improvement, as *[deferred]* ***defined*** in this section.

"Coarse fragment" means a rock fragment contained within the soil which is greater than two millimeters in equivalent spherical diameter or which is retained on a two millimeter sieve.

"Construct" means to build, install, fabricate or put together on-site one or more components of an individual subsurface sewage disposal system.

"Conventional disposal field installation" means a type of disposal field installation described in N.J.A.C. 7:9A-10.1(b)1.

"Cobble" means a coarse fragment which is rounded or subrounded in shape and which is between 76 millimeters (three inches) and 254 millimeters (10 inches) in diameter.

"County soil survey report" means a report prepared by the U.S. Department of Agriculture, Soil Conservation Service which includes maps showing the distribution of soil mapping units throughout a particular county together with narrative descriptions of the soil series shown and other information relating to the uses and properties of the various soil series.

"D-box" means a distribution box.

"Delineated stream" or "delineated floodplain" means a stream or flood plain for which the flood hazard areas have been officially specified by the State of New Jersey.

"Department" means the Department of Environmental Protection.

"Design permeability" means the permeability or percolation rate measured at the level of infiltration, as prescribed in N.J.A.C. 7:9A-6. For the purpose of this chapter, a percolation rate measured at the level of infiltration, though not a true measurement of permeability, may be considered to be a form of design permeability.

"Direct supervision" means control over and direction of work carried out by others with full knowledge of and responsibility for such work.

"Disposal bed" means an individual subsurface sewage disposal system component consisting of a closed excavation made within soil or fill material to contain filter material in which two or more distribution laterals have been placed for the disposal of septic tank effluent.

"Disposal field" means a disposal bed or a group of one or more disposal trenches. The perimeter of the disposal field corresponds to the perimeter of the disposal bed, or a line circumscribing the outermost edges of the outermost disposal trenches and including the area between the disposal trenches.

"Disposal trench" means an individual subsurface sewage disposal system component of a covered excavation made within soil or fill material to contain filter material in which a single distribution lateral has been placed for the disposal of septic tank effluent.

"Distribution box" means a water-tight structure which receives sanitary sewage effluent from a septic tank and distributes such sewage effluent in equal portions to two or more pipelines leading to the disposal field.

"Distribution lateral" means a perforated pipe or one of several perforated pipes used to carry and distribute septic tank effluent throughout the disposal field. The term "distribution line" is equivalent in meaning.

"Distribution network" means two or more inter-connected distribution laterals.

"Disturbed ground" means any site or portion of a site which has been modified in its suitability for absorption or disposal of septic tank effluent, or its ability to physically support the system components, as a result of activities carried out by man other than those specified in the approved engineering design. Except for artificial drainage, ground disturbed only for cultivation or related agricultural activities, shall not be considered disturbed ground. Disturbed ground includes those conditions set forth in N.J.A.C. 7:9A-5.10(b).

"Dosing tank" means a water-tight receptacle located between the septic tank and the disposal field, equipped with a siphon or pump, and designed to store and deliver doses of septic tank effluent to the disposal field.

"Dry well" means a covered pit with open-jointed lining through which drainage from roofs, basement floors or areaways may seep into the surrounding soil.

"Dwelling unit" means any building or portion of a building, permanent or temporary in nature, used or proposed to be used as a residence either seasonally or throughout the year.

"Encroachment line" means a line encompassing the channel of a natural stream and portions of the 100-year flood plain adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream. It is approximately equal to the floodway line along delineated streams.

"Equivalent spherical diameter" of a particle means the diameter of a sphere which has a volume equal to the volume of the particle.

"Excessively coarse horizon" means a horizon of limited thickness within the soil profile which provides inadequate treatment of septic tank effluent due to a high coarse fragment content, excessively coarse texture and/or excessively rapid permeability.

"Excessively coarse substratum" means a substratum below the soil profile which extends beyond the depth of soil profile pits and borings and which provides inadequate treatment of septic tank effluent due to a high coarse fragment content, excessively coarse texture and/or excessively rapid permeability.

"Existing ground surface" means the natural surface of the ground at the site of a proposed individual subsurface sewage disposal system after the completion of re-grading in accordance with an approved engineering design.

"Expansion attic" means that part of a dwelling unit left unfinished but which is capable of being finished as a bedroom or bedrooms and which is accessible by permanent stairways or designed so that stairways can be installed.

"Experimental system" means an individual subsurface sewage disposal system which does not conform in location, design, construction or installation to standard engineering practice as set forth in this chapter.

"Extremely firm consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Fill material" means any soil, rock or other material which is placed within an excavation or over the pre-existing surface of the ground. The term "fill" is equivalent in meaning.

"Filter material" means washed gravel or crushed stone, free of fines such as dust, ashes or clay, and meeting the size requirements of N.J.A.C. 7:9A-10.3(e)2 or 10.7(f).

"Finished grade" means the surface of the ground after completion of final grading.

"Firm consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Flood fringe" means that portion of the flood hazard area not designated as the floodway. See N.J.A.C. 7:13.

"Flood hazard area" means the floodway and the flood fringe area of a delineated stream. See also N.J.A.C. 7:13.

"Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream. ***See also N.J.A.C. 7:13.***

"Footing drain" means a subsurface drain installed below the foundation of a building to prevent the accumulation of surface and ground water below the foundation of the building.

"Fractured rock substratum" means a rock substratum which contains an adequate number of open and inter-connected fractures to allow unimpeded absorption of applied wastewater and transmission of this wastewater away from the disposal area.

"Gal/day" or "gpd" means U.S. gallons per day, which is a measure of rate of flow or hydraulic loading.

"Gravel" means a rounded or subrounded coarse fragment which is between two millimeters (0.1 inches) and 76 millimeters (three inches) in diameter.

"Gravity dosing" means a type of effluent distribution which is defined in N.J.A.C. 7:9A-9.1(a)2.

"Gravity flow" means a type of effluent distribution which is defined in N.J.A.C. 7:9A-9.1(a)1.

"Grease trap" means a device in which the grease present in sanitary sewage is intercepted, congealed by cooling, accumulated and stored for pump-out and disposal.

"Greywater" means that portion of the sanitary sewage generated within a residential, commercial or institutional facility which does not include discharges from water closets or urinals.

"Ground water" means water below the land surface in a zone of saturation.

"Hard consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Health Officer" means an individual licensed as such pursuant to N.J.S.A. 26:1A-41.

"Holding tank" means a closed water-tight structure designed and operated in such a manner as to receive and store sanitary sewage or septic tank effluent but not to discharge sanitary sewage or septic tank effluent to the surface or ground water or onto the surface of the land.

"Hue" means the dominant spectral color, one of the three variables of soil color defined within the Munsell system of classification.

"Hydraulically restrictive horizon" means a horizon within the soil profile which slows or prevents the downward or lateral movement of water and which is underlain by permeable soil horizons or substrata. Any soil horizon which has a saturated permeability less than 0.2 inch per hour or a percolation rate slower than 60 minutes per inch is hydraulically restrictive.

"Hydraulically restrictive substratum" means a substratum below the soil profile which slows or prevents the downward or lateral movement of water and which extends beyond the depth of profile pits or borings or to a massive substratum. A substratum which has a saturated permeability less than 0.2 inch per hour or a percolation rate slower than 60 minutes per inch is hydraulically restrictive.

"Individual subsurface sewage disposal system" means a system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field. The term "system" is equivalent in meaning.

"Industrial wastes" means solid or liquid wastes resulting from processes employed in industrial establishments or in any commercial establishment engaged in processes which use or generate any of the pollutants or any substance containing any of the pollutants regulated under section 307(a), (b), or (c) of the Federal Clean Water Act of 1977, 33 U.S.C. §§1251 et seq., and the regulations promulgated pursuant thereto and any amendments thereto.

"Infiltrative surface" means the interface or contact between the filter material and the soil or fill at the bottom and sidewalls of the disposal bed or each individual disposal trench.

"Install" means to assemble, put in place or connect components of an individual subsurface sewage disposal system in a manner that will permit their use by the occupants of the realty improvement served.

"Interceptor drain" means a subsurface drain designed and constructed to intercept laterally moving perched ground water.

"Invert" means the floor, bottom or lowest portion of the internal cross-section of a closed conduit, used with reference to pipes or fittings conveying sanitary sewage.

"Level of infiltration" means the elevation of the horizontal interface or contact between the filter material and the soil or fill material at the bottom of the filter material.

"Limiting zone" means any horizon or combination of horizons within the soil profile, or any substratum or combination of substrata below the soil profile, which limits the ability of the soil to provide treatment and/or disposal of septic tank effluent. Limiting zones include rock substrata, hydraulically restrictive horizons and substrata, excessively coarse horizons and substrata, perched and regional zones of saturation. Criteria for recognition of limiting zones are given in N.J.A.C. 7:9A-5.5 through 5.9.

"Loamy sand" means a soil textural class, as shown in Figure 3 of Appendix A, that has a maximum of 85 to 90 percent sand with a percentage of silt plus 1.5 times the percentage of clay not in excess of 15; or a minimum of 70 to 85 percent sand with a percentage of silt plus 1.5 times the percentage of clay not in excess of 30.

"Lower plastic limit" means the moisture content corresponding to the transition between the plastic and semi-solid states of soil consistency. This corresponds to the lowest soil moisture content at which the soil can be molded in the fingers to form a rod or wire, one-eighth of an inch in thickness, without crumbling.

"Malfunctioning system" means an individual sewage disposal system which pollutes ground or surface waters or which creates a nuisance or hazard to public health or safety or the environment and includes, but is not limited to, the situations described in N.J.A.C. 7:9A-3.4.

"Massive rock substratum" means a rock substratum which does not contain an adequate number of open and inter-connected fractures to allow unimpeded absorption of applied wastewater and transmission of this wastewater away from the disposal area.

"Massive structure" means one of the soil structural classes which is described in N.J.A.C. 7:9A-5.3(h).

"Mottling" means a color pattern observed in soil consisting of blotches or spots of contrasting color. The term "mottle" refers to an individual blotch or spot. Mottling is an indication of seasonal or periodic and recurrent saturation.

"Mounded disposal field installation" means a type of disposal field installation which is described at N.J.A.C. 7:9A-10.1(b)4.

"Mounded soil replacement disposal field installation" means a type of disposal field installation which is described at N.J.A.C. 7:9A-10.1(b)5.

"Munsell system" means a system of classifying soil color consisting of an alpha-numeric designation for hue, value and chroma, such as "7.5 YR 6/2", together with a descriptive color name, such as "strong brown".

"NJPDES permit" means a permit issued by the Department pursuant to the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.A.C. 7:14A for a discharge of pollutants.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System as set forth in N.J.S.A. 58:10A-1 et seq. and in N.J.A.C. 7:14A.

"O-horizon" means a surface horizon, occurring above the A-horizon in some soils, which is composed primarily of undecomposed or partially decomposed plant remains which have not been incorporated into the mineral soil.

"One hundred year flood plain" means the area inundated by the 100-year flood. A 100-year flood is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year. See also N.J.A.C. 7:13.

"Operate" means to use or convey a building or facility served by an individual subsurface sewage disposal system or to own a building or facility where such use or occupation exists.

"Perched zone of saturation" means a zone of saturation which occurs immediately above a hydraulically restrictive horizon and

which is underlain by permeable horizons or substrata which are not permanently or seasonally saturated.

"Percolation rate" means the rate of fall of water measured in a test hole as prescribed in N.J.A.C. 7:9A-6.4

"Permeability" means the rate at which water moves through a unit area of soil or rock material at hydraulic gradient of one, determined as prescribed in N.J.A.C. 7:9A-6.2, 6.3, 6.5 or 6.6.

"Permeable" means having a permeability of 0.2 inches per hour or faster or a percolation rate of 60 minutes per inch or faster. The terms "permeable soil", "permeable rock" and "permeable fill" shall be construed accordingly.

"Permit" means a written approval issued by the administrative authority or the Department for the construction, installation, alteration or operation of an individual subsurface sewage disposal system.

"Person" means an individual, corporation, company, association, society, firm, partnership and joint stock company as well as the State and any political subdivision thereof.

"Piezometer" means a device consisting of a length of metal or plastic pipe, open at the bottom or perforated within a specified interval, and used for the determination of depth to water, permeability or hydraulic head within a specific soil horizon or substratum.

"Platy structure" means one of the soil structural classes described in N.J.A.C. 7:9A-5.3(g).

"Pre-existing natural ground surface" means the former level of the ground surface in an area of disturbed ground prior to the disturbance.

"Pressure dosing" means a type of effluent distribution which is described in N.J.A.C. 7:9A-9.1.

"Pre-treatment unit" means a septic tank or a grease trap.

"Professional engineer" means a person licensed to practice professional engineering in this State pursuant to N.J.S.A. 48:8-27 et seq.

"Realty improvement" means any proposed new residence, commercial building or other premises (including but not limited to condominiums, garden apartments, town houses, mobile homes, stores, office buildings, restaurants, hotels and so forth) not served by an approved water supply and approved sewerage system, the useful occupancy of which will require the installation or erection of a water supply system or sewerage facilities. Each dwelling unit in a proposed multiple-family dwelling or each commercial unit in a commercial building shall be construed to be a separate realty improvement.

"Regional zone of saturation" means a zone of saturation which extends vertically without interruption below the depth of soil borings and profile pits.

"Re-grading" means modification of a land slope by cutting and filling with the native soil or re-distribution of the native soil which is present at the site.

"Repair" means to fix, refurbish or replace one or more components of an individual subsurface sewage disposal system in a manner that will restore, preserve and not change the original location, design, construction and installation, size, capacity, type, or number of the components of the system.

"Replicate" means one of two or more soil samples or tests taken at the same location (within five feet of each other), and depth, within the same soil horizon or substratum. In the case of fill material, replicate tests are tests performed on sub-samples of the same bulk sample packed to the same bulk density.

"Reservoir" means a surface water body used to store a public drinking water supply or any portion of a tributary water course within one mile upstream of such a surface water body.

"Restricted chemical material" means any chemical material which contains concentrations in excess of one part per hundred, by weight of any halogenated hydrocarbon chemical, aliphatic or aromatic, including but not limited to trichloroethane, trichloroethylene, tetrachloroethylene, methylene chloride, halogenated benzenes and carbon tetrachloride; any aromatic hydrocarbon chemical, including but not limited to benzene, toluene and napthalene; any phenol derivative in which a hydroxy group and two or more halogen atoms are bonded directly to a six-carbon aromatic ring, including but not limited to trichlorophenol or pentachlorophenol; or acrolein, acrylonitrile, or benzidine. Restricted chemical material does not, however, include any chemical material which is biodegradable and not a significant source of contamination of the ground waters of the State.

"Rock substratum" means a solid and continuous body of rock, with or without fractures, or a weathered or broken body of rock fragments overlying a solid body of rock, where more than 50 percent by volume of the rock fragments are greater than two millimeters in diameter or large enough to be retained on a two millimeter sieve.

"Sand" means a particle size category consisting of mineral particles which are between 0.05 and 2.0 millimeters in equivalent spherical diameter. Also, a soil textural class having 85 percent or more of sand and a content of silt and clay such that the percentage of silt plus 1.5 times the percentage of clay does not exceed 15, as shown in Figure 3 of Appendix A.

"Sandy clay" means a soil textural class having 35 percent or more of clay and 45 percent or more of sand, as shown in Figure 3 of Appendix A.

"Sanitarian First Grade" means an individual licensed as such pursuant to N.J.S.A. 26:1A-41.

"Sanitary sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, or the water carried wastes resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or any other source of water carried wastes of human origin or containing putrescible material. This term specifically excludes industrial, hazardous or toxic wastes and materials.

"Scum" means a mass of sewage solids floating at the surface of sewage and buoyed up by entrained gas, grease, or other substances. The term "scum layer" shall be construed accordingly.

"Seasonally high water table" means the upper limit of the shallowest zone of saturation which occurs in the soil, identified as prescribed in N.J.A.C. 7:9A-5.8.

"Seepage pit" means a covered pit with open-jointed lining through which septic tank effluent may seep into the surrounding soil.

"Septic tank" means a water-tight receptacle which receives the discharge of sanitary sewage from a building sewer or part thereof, and is designed and constructed so as to permit settling of settleable solids from the liquid, partial digestion of the organic matter, and discharge of the liquid portion into a disposal field or seepage pit.

"Septic tank effluent" means the primary treated wastewater or sewage discharged through the outlet of a septic tank. The term "effluent" is equivalent in meaning.

"Serial distribution" means a method of distributing septic tank effluent between a series of disposal trenches so that each successive trench receives effluent only after the preceding trenches have become full to overflowing.

"Sewage system cleaner" means any solid or liquid material intended or used primarily for the purpose of cleaning, treating, degreasing, unclogging, disinfecting or deodorizing any part of a sewage system but excluding those liquid or solid products intended or used primarily for manual cleaning, scouring, treating, deodorizing or disinfecting the surface of common plumbing fixtures.

"Sewage system" means any part of a wastewater disposal system, including but not limited to all toilets, piping, drains, sewers, septic tanks, grease traps, distribution boxes, dosing tanks, disposal tanks, disposal fields, seepage pits, cesspools or dry wells.

"Silt" means a particle size category consisting of mineral particles which are between 0.002 and 0.05 millimeters in equivalent spherical diameter. It also means a soil textural class having 80 percent or more of silt and 12 percent or less of clay, as shown in Figure 3 of Appendix A.

"Silty clay" means a soil textural class having 40 percent or more of clay and 40 percent or more of silt, as shown in Figure 3 of Appendix A.

"Silty clay loam" means a soil textural class having 27 to 40 percent of clay and less than 20 percent of sand, as shown in Figure 3 of Appendix A.

"Silt loam" means a soil textural class having 50 percent or more of silt and 12 to 27 percent of clay; or 50 to 80 percent of silt and less than 12 percent of clay, as shown in Figure 3 of Appendix A.

"Single grain structure" means one of the soil structural classes which are described in N.J.A.C. 7:9A-5.3(h).

"Sink hole" means a topographic depression the origin of which may be attributed to the dissolution and collapse of underlying limestone or dolomite bedrock.

"Sludge" means a relatively dense suspension of sewage solids which settle to the bottom of a septic tank, are relatively resistant to biological decomposition, and which collect in the septic tank over a period of time. The term "sludge layer" shall be construed accordingly.

"Soil" means any naturally occurring unconsolidated body of mineral and organic particles derived from the weathering in place of consolidated rock or unconsolidated mineral deposits and the decay of living organisms.

"Soil aggregate" means a naturally occurring unit of soil structure consisting of particles of sand, silt, clay, organic matter, and coarse fragments held together by the natural cohesion of the soil.

"Soil color" means the soil color name and Munsell color designation determined by comparison of the moist soil with color chips contained in a Munsell soil color book.

"Soil consistence" means the resistance of a soil aggregate or clod to being crushed between the fingers or broken by the hands. Terms for describing soil consistence described are in N.J.A.C. 7:9A-5.3(h).

"Soil horizon" means a layer within a soil profile differing from layers of soil above and below it in one or more of the soil morphological characteristics including color, texture, coarse fragment content, structure, consistence and mottling.

"Soil log" means a description of the soil profile which includes the depth, thickness, color, texture, coarse fragment content, mottling, structure and consistence of each soil horizon or substratum.

"Soil mapping unit" means an area outlined on a map in a County Soil Survey Report and marked with a letter symbol designating a soil phase, a complex of two or more soil phases, or some other descriptive term where no soil type has been identified.

"Soil material" means soil as well as any naturally occurring unconsolidated mineral deposit which is not a rock substratum.

"Soil phase" means a specific type of soil which is mapped by the Soil Conservation Service and which belongs to a soil series described within the County Soil Survey Report.

"Soil profile" means a vertical cross-section of undisturbed soil showing the characteristic horizontal layers or horizons of the soil which have formed as a result of the combined effects of parent material, topography, climate, biological activity and time.

"Soil profile pit" means an excavation made for the purpose of exposing a soil profile which is to be described.

"Soil replacement disposal field installation" means a disposal field installed as prescribed in N.J.A.C. 7:9A-10.1(b)2 and 3.

"Soil series" means a grouping of soil types possessing a specific range of soil profile characteristics which are described within the County Soil Survey Report. Each soil series may consist of several "soil phases" which may differ in slope, texture of the surface horizon or stoniness.

"Soil structural class" means one of the shape classes of soil structure described in N.J.A.C. 7:9A-5.3(g).

"Soil structure" means the naturally occurring arrangement, within a soil horizon, of sand, silt and clay particles, coarse fragments and organic matter, which are held together in clusters or aggregates of similar shape and size.

"Soil texture" means the relative proportions of sand, silt and clay in that portion of the soil which passes through a sieve with two millimeter openings.

"Soil textural class" means one of the classes of soil texture defined within the USDA system of classification. (Soil Survey Manual, Agricultural Handbook No. 18, U.S.D.A. Soil Conservation Service 1962.)

"Soil suitability class" means one of the classes of soil suitability with regard to the installation of an individual subsurface sewage disposal system which are defined based upon the type and depth of limiting zones present, as prescribed in N.J.A.C. 7:9A-5.4.

"Special ordinance" means an ordinance which sets requirements for the location, design, construction, alteration or use of individual subsurface sewage disposal systems which differ from the requirements of this chapter.

["Stream] ***Static*** water level" means the depth below the ground surface or the elevation with respect to some reference level of the water level observed within a soil profile pit or boring, or within a piezometer, after this level has stabilized or become relatively constant with the passage of time.

"Stone" means a coarse fragment which is rounded or subrounded in shape and greater than 254 millimeters (10 inches) in diameter.

"Subsurface drain" means any open pipe, layer of gravel, stone or coarse sand, or any combination of these elements placed below the surface of the ground and designed or constructed in such a manner as to allow movement of ground water into any surface water body, water course or onto the surface of the ground.

"Substratum" means a layer of soil or rock material present below the soil profile and extending beyond the depth of soil borings or profile pits.

"Suitable soil" means unsaturated soil, above the seasonally high water table, which contains less than 50 percent by volume of coarse fragments and which has a permeability between 0.2 and 20 inches per hour or a percolation rate between three and 60 minutes per inch.

"Suitable fill" means fill material which meets the requirements of N.J.A.C. 7:9A-10.1(f).

"Surface water" means any waters of the State which are not ground water.

"System" is an abbreviated designation for "individual subsurface sewage disposal system" and is equivalent in meaning.

"Test replicate" means one of two or more soil tests performed using the same procedure on each of several soil samples taken within the same soil horizon and at the same location within the proposed disposal field. The term "replicate sample" shall be construed accordingly.

"Textural analysis" means the determination of soil texture by means of a hydrometer analysis and a sieve analysis.

"Treatment works approval" means a permit issued by the Department pursuant to N.J.A.C. 7:14A-12.3 for a subsurface sewage disposal system which is beyond the scope or not in strict conformance with the requirements of this chapter.

"Undisturbed soil sample" means a soil sample in which the natural soil structure, porosity and cohesion are preserved intact, and in which the only cracks or planes of separation evident are those occurring naturally between soil aggregates.

"Value" means the relative lightness or intensity of a color, one of the three variables of soil color defined within the Munsell system of classification.

"Very firm consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

Very hard consistence" means a type of soil consistence which is described in N.J.A.C. 7:9A-5.3(h).

"Volume of sanitary sewage" means the maximum volume of sanitary sewage which may reasonably be expected to be discharged from a residential, commercial or institutional facility on any day of operation, determined as prescribed in N.J.A.C. 7:9A-7.4 and expressed in gallons per day. The volume of sanitary sewage shall not be considered as an average daily flow, but shall incorporate a factor of safety over and above the average daily flow which is adequate to accommodate peak sewage flows or facilities which discharge greater than the average volumes of sanitary sewage either occasionally or on a regular basis. The use of water saving devices shall not be used as a basis for reducing estimates of the volume of sanitary sewage.

"Water course" means any stream or surface water body, or any ditch or subsurface drain that will permit drainage into a surface water body. This term does not include swales or roadside ditches which convey only direct runoff from storms or snow melting, and storm sewers designed and constructed in a manner that will prevent infiltration of ground water into the pipe or lateral movement of ground water through the excavation in which the pipe has been laid.

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface and ground water, whether natural or

artificial, within the boundaries of this State or subject to its jurisdiction.

"Water table" means the upper surface of a zone of saturation.

"Well" means a bored, drilled or driven shaft, or a dug hole, which extends below the seasonally high water table and which has a depth which is greater than its largest surface dimension.

"Wetland" means any area inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and which under normal circumstances does support, a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

"U.S.D.A. system of classification" means the system of classifying soil texture used by the United States Department of Agriculture which defines 12 soil textural classes based upon the weight percentages of sand, silt and clay in that portion of the soil which passes through a sieve with two millimeter openings. The soil textural classes are shown graphically on the soil textural triangle, Figure 3 of Appendix A.

"Zone of disposal" means the permeable layers of soil or rock material below the zone of treatment which permit downward movement of the septic tank effluent and lateral movement of this effluent away from the area of the disposal field.

"Zone of treatment" means the upper four feet of suitable soil or fill material, below the level of infiltration, which remove pollutants from the septic tank effluent by processes which include physical filtration of bacteria, adsorption of viruses and bacteria by clay and organic matter, biological destruction of pathogens by soil microorganisms, chemical fixation or precipitation of phosphorous, biochemical transformations of nitrogen compounds and biological assimilation of phosphorous and nitrogen.

"Zone of saturation" means a layer within or below the soil profile which is saturated with ground water either seasonally or throughout the year.

SUBCHAPTER 3. ADMINISTRATION

7:9A-3.1 Ordinances

(a) The administrative authority may adopt this chapter by reference as allowed by N.J.S.A. 26:3-69 to 69.6.

(b) For the purpose of this chapter, the term "special ordinance" means any ordinance which differs in any detail from this chapter. Within 10 days after adoption of a special ordinance, the administrative authority shall forward to the Department a copy of the ordinance together with a written statement in which all provisions which differ from this chapter are identified, the reasons for the differences are explained and all supporting facts and data are provided. Where requirements differing from the requirements of this chapter are proposed in order to conform with the requirements of the Pinelands Comprehensive Management Plan, the appropriate section(s) of the Plan shall be cited.

(c) The administrative authority shall not adopt an ordinance which is less stringent than this chapter.

7:9A-3.2 New systems

All aspects of the location, design, construction, installation, operation, maintenance, and alteration of individual subsurface sewage disposal systems approved after the effective date of this chapter shall comply with the requirements of these standards.

7:9A-3.3 Existing systems

(a) The use of systems in existence prior to the effective date of this chapter may be continued without change provided that these systems were located, designed, constructed and installed in conformance with the standards in effect at the time when they were installed and provided that such systems are not malfunctioning.

(b) When ***an expansion or*** a change in the use of a building or facility served by an individual subsurface sewage disposal system is proposed and this ***expansion or*** change will result in an increase in the volume of sanitary sewage (determined as prescribed in N.J.A.C. 7:9A-7.4) or a change in the type of wastes discharged, the administrative authority shall not approve such *[a]* ***an expansion or*** change unless all aspects of the location, design, construction, installation, operation and maintenance of the system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with this chapter.

(c) Alterations made to a system for reasons other than a change of use ***or expansion*** as described in *[N.J.A.C. 7:9A-3.3]* (b) ***above*** may be approved by the administrative authority provided that all of the following conditions are met:

1. Alterations are made in conformance with plans and specifications prepared by a licensed professional engineer. All plans shall be signed and sealed by the licensed professional engineer.

2. Alterations are made in such a way that those components of the system altered are in conformance with the requirements of this chapter or are closer to being in conformance with this chapter than the original components prior to the alteration; and

3. When alterations are made to correct a malfunctioning system the alterations shall be made in a manner that will eliminate the cause of the malfunction and ***which, with proper operation and maintenance, will*** not result in future malfunctions.

(d) *[Minor repairs]* ***Repairs*** may be made in the same manner as in the original system provided that all repairs are approved by the administrative authority.

(e) A person who discharges industrial wastes by means of an existing subsurface sewage disposal system and who has not already applied to the Department for a NJPDES permit shall apply *[within one year of the effective date of this chapter]* ***immediately***.

(f) A person who discharges sanitary wastes by means of an existing community onsite subsurface disposal system as defined in N.J.A.C. 7:14A-1.9, who has not already applied to the Department for a NJPDES permit, shall apply within two years of the effective date of this chapter.

7:9A-3.4 Malfunctioning systems

(a) Indications that an individual subsurface sewage disposal system is malfunctioning include but are not limited to the following:

1. Contamination of nearby wells or surface water bodies by sewage or effluent as indicated by the presence of fecal bacteria where the ratio of fecal coliform to fecal streptococci is four or greater;

2. Ponding or breakout of sewage or effluent onto the surface of the ground;

3. Seepage of sewage or effluent into portions of buildings below *[grund;]* ***ground; or***

[4. Emanation of foul odors from any component of the system; or]

*[5.]***4.*** Back-up of sewage into the building served which is not caused by a physical blockage of the internal plumbing.

(b) When an individual subsurface sewage disposal system has been determined to be malfunctioning, the owner shall take immediate steps to correct the malfunction. When it becomes necessary to repair *or replace* one or more system components or to make alterations to the system, all of the following requirements shall be met:

1. The owner or owner's agent shall notify the administrative authority or its authorized agent immediately upon detection of a malfunctioning system. *[Except in the case of emergency repairs or alterations made as allowed in (b)2 below, the]* ***The*** owner shall obtain prior approval from the administrative authority or its authorized agent for any repairs or alterations made.

[2. In cases when the suddenness and severity of a system malfunction are such that prior notice is not practical, the owner may make emergency repairs or alterations without prior approval provided that the administrative authority is notified no later than one working day after the work is begun. If the administrative authority or its authorized agent determines that emergency repairs or alterations are inadequate to correct the malfunction, the administrative authority may require further repairs or alterations.]

*[3.]***2.*** Alterations made to correct a malfunctioning system shall meet the requirements of N.J.A.C. 7:9A-3.3(c), except that in cases where the alteration is relatively minor***, and does not involve the practice of engineering as defined by N.J.S.A. 45:8-28(b),*** the administrative authority or its authorized agent may approve plans and specifications prepared by a *[qualified]* septic system installer rather than a licensed professional engineer.

*[4.]**3.* When the malfunction involves continuous discharge of sewage or septic tank effluent onto the surface of the ground or into a watercourse, the use of the system shall cease until repairs or alterations have been completed in a manner which is satisfactory to the administrative authority. In such cases, the administrative authority may permit continued occupation of the building served provided that further surface discharge of sewage or septic tank effluent is prevented by installation of a holding tank or use of an existing septic system component as a holding tank. The latter may be accomplished by pumping-out the septic tank, dosing tank, seepage pit or other system component at an adequate frequency to prevent overflow.

(c) The administrative authority may, under certain circumstances, approve as a last resort, the permanent use of a holding tank to correct the problem of a malfunctioning system which cannot be repaired or altered in a satisfactory manner. Such approval may be granted by the administrative authority only if prior written approval has been granted by the Department and one of the following criteria is met:

1. The malfunctioning system serves a single family dwelling or other facility falling within the limitations set forth in N.J.A.C. 7:9-A1.8 and the system was constructed prior to the effective date of this chapter; or

2. The malfunctioning system serves a facility which exceeds the limitations set forth in N.J.A.C. 7:9A-1.8 but was constructed prior to March 6, 1981, the effective date of the NJPDES rules (N.J.A.C. 7:14A).

(d) The Department and the administrative authority may approve the permanent use of a holding tank to correct the problem of a malfunctioning system only when all of the following facts have been established to the satisfaction of the administrative authority and the Department:

1. The present malfunctioning system poses a threat or a potential threat to ground or surface water quality or public health or safety or the environment;

2. Due to site conditions, lot configuration, financial circumstances or other constraints, repair, or alteration of the system in a manner that will eliminate the cause of the malfunction is not feasible;

3. Public sewers are by practical means not available;

4. Reduction of disposal field hydraulic loading by means of water-saving plumbing fixtures will not correct the malfunction; and

5. Assurances are given that the holding tank will be emptied and the contents disposed of in a manner which complies with all applicable local, State and Federal ordinances, statutes and regulations. As a means of confirmation, the owner of the system shall install a water meter and shall submit to the administrative authority on a quarterly basis, evidence of dates and quantities of sewage removed, name of person(s) or firm(s) contracted to remove the sewage, the name of the facility(s) to which the sewage is taken, as well as any other evidence or information which is requested by the administrative authority.

7:9A-3.5 Permit to construct or alter

(a) A person shall not construct, install or alter an individual subsurface sewage disposal system until the administrative authority or its authorized agent has issued a permit for such construction, installation or alteration.

(b) The administrative authority or its authorized agent shall not issue a permit to construct, install or alter an individual subsurface sewage disposal system until an application has been submitted as prescribed in (c) below and, based upon a review of the application submitted, the location and design of the proposed system are found by the administrative authority or its authorized agent to be in conformance with the requirements of this chapter.

(c) The applicant shall submit a complete, accurate and properly executed application to the administrative authority. ***All soil logs, soil testing data, design data and calculations, plans and specifications, and other information submitted in connection with the subsurface sewage disposal system design shall be signed and sealed by a licensed professional engineer.*** The application shall include the following information:

1. Key maps showing the approximate boundaries of the lot on a U.S. Geological Survey (U.S.G.S.) topographic quadrangle or other accurate map and on a U.S.D.A. soil survey map, which is available from the Soil Conservation Service ("SCS"). A good quality photo-copy reproduction of the U.S.G.S. quadrangle or U.S.D.A. soil survey map may be used for this purpose. The requirement for a soil survey map does not apply to Essex or Hudson counties, where no modern soil survey is currently available;

2. A site plan ***signed and sealed by a licensed land surveyor and*** drawn at a scale adequate to depict clearly the following features within a 150 foot radius around the proposed system:

i. Location of all components of the proposed system including, but not limited to, septic tanks, grease traps, dosing tanks, distribution boxes, distribution laterals, disposal fields, interceptor drains and seepage pits;

ii. Boundaries of lot;

iii. Locations of existing and proposed buildings roadways, subsurface drains, wells and disposal areas on same lot and on adjacent lots;

iv. Existing and finished grade topography (two foot contour interval) using absolute elevations or relative elevations referenced to a permanent bench-mark;

v. Location of all surface water bodies, natural and artificial, and all springs or areas of ground water seepage;

vi. Location of existing and proposed surface water diversions;

vii. Location of all outcrops of bedrock;

viii. Conformance with setback requirements as required in N.J.A.C. 7:9A-4.3;

ix. Location of all soil profile pits, soil borings and permeability tests;

x. Location of stream encroachment boundaries for streams within the near vicinity of the site; and

xi. *[Boundaries]* ***State approved boundaries*** of any wetland areas or transition *[zones]* ***areas*** within the boundaries of the property.

3. Soil logs prepared as prescribed in N.J.A.C. 7:9A-5.3;

4. Soil suitability class(es) determined as prescribed in N.J.A.C. 7:9A-5.4;

5. Results of permeability tests performed as prescribed in N.J.A.C. 7:9A-6, including all test data and calculations;

6. Maximum expected daily volume of sanitary sewage and method of calculation;

7. Detailed engineering plans and specifications for all components of the systems; and

8. All data and calculations used in the design of the sewage system.

(d) Applications shall be made using standard forms provided in Appendix B of this chapter or forms provided by the administrative authority which contain all of the information required on the standard forms in Appendix B. The administrative authority or its authorized agent may require additional data or the completion by the applicant of additional application forms.

7:9A-3.6 Witnessing of soil evaluation and testing

(a) The administrative authority or its authorized agent shall witness the excavation of soil profile pits and borings, in-situ permeability testing or soil sample collection and any other site evaluation procedure relied upon in the design or location of the system. The administrative authority or its authorized agent may require a maximum of 15 ***business*** days prior to written notice for the purpose of witnessing of soil evaluation or testing procedures.

(b) The administrative authority may waive the requirements for witnessing of soil evaluation or testing procedures ***which are identified in (a) above***. Failure of the administrative authority or its authorized agent to be present when 15 ***business*** days prior written notice has been given shall be construed to be a waiver of the witnessing requirements.

7:9A-3.7 Modification of plans

(a) Modification of plans or specifications for an individual subsurface sewage disposal system made subsequent to approval of the plans shall not be carried out unless the revisions are noted on a revised set of plans which have been signed, sealed and dated by

[the design] ***a licensed professional*** engineer and approved by the administrative authority or its authorized agent.

(b) Any modification to plans or specifications made without approval of the administrative authority shall render the original approval null and void and a new application shall be required.

(c) The administrative authority or its authorized agent may require the revision of plans or specifications as it deems necessary if conditions found prior to or during construction warrant such change in order to obtain conformance with the provisions of this chapter.

7:9A-3.8 Pinelands area approvals

The administrative authority shall not approve an application to construct, install or alter an individual subsurface sewage disposal system within the Pinelands area (as defined in N.J.S.A. 13:18A-1 et seq.) until the Pinelands Commission has issued a Notice of Filing, Certificate of Compliance, ***Certificate of Filing, development approval,*** or a written statement that no approval from the Pinelands Commission is required. All approvals issued by the administrative authority shall be consistent with the requirements of N.J.A.C. 7:50-5 and 6, and shall be reported to the Pinelands Commission in accordance with N.J.A.C. 7:50-4.

7:9A-3.9 Treatment works approvals

(a) A treatment works approval issued by the Department is required for any subsurface sewage disposal system other than a system serving a single dwelling unit, building, commercial unit or other realty improvement, located on a single property, generating less than 2000 gpd of sanitary sewage only, which is designed, constructed, operated and maintained in conformance with this chapter.

(b) Whenever a proposed subsurface sewage disposal system meets any of the following criteria, the administrative authority shall direct the applicant to apply to the Department for a treatment works approval.

1. The system will exceed any of the limitations set forth in N.J.A.C. 7:9A-1.8;

2. The design or construction of one or more components of the system will not be in conformance with this chapter;

3. The system utilizes unproven technology or is otherwise experimental in nature, so that adequate functioning of the system will depend upon the installation, operation or maintenance of components or treatment processes not provided for in this chapter;

4. The system is designed to provide wastewater treatment in order to meet effluent discharge limitations or ground and surface water quality standards as prescribed by applicable State or Federal regulations or statutes;

5. Sewage will not flow by gravity from the realty improvement served to the septic tank; or

6. The system will serve multiple units in a campground or mobile home park or a portion thereof.

(c) Applications for treatment works approval shall be made on forms available from the Department and shall be accompanied by the required application fee. Application forms and instructions regarding administrative and technical submission requirements may be obtained by contacting the Bureau of Construction and Connection Permits at the following address:

Bureau of Construction and Connection Permits
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, N.J. 08625

7:9A-3.10 NJPDES permits

(a) Individual subsurface sewage disposal systems which serve single family dwelling units and which are located, designed, constructed, installed, altered, operated and maintained in conformance with the requirements set forth in these standards are exempt from NJPDES permit requirements in accordance with N.J.A.C. 7:14A-5.1(b)2ii.

(b) Subsurface sewage disposal systems which serve facilities other than single family dwelling units and which are located, designed, constructed, installed, altered, operated and maintained in conformance with the requirements set forth in this chapter, and N.J.S.A. 58:11-43 et seq. where these restrictions are applicable, are authorized by rule.

(c) When the proposed system does not fall into either of the categories outlined in *[(b) or (c)]* ***(a) or (b)*** above, the administrative authority shall direct the applicant to apply to the Department for a NJPDES permit.

7:9A-3.11*[New technologies]* ***Experimental systems***

The Department encourages the development and use of new technologies which may improve the treatment of sanitary sewage prior to discharge or allow environmentally safe disposal of sanitary sewage in areas where standard sewage disposal systems might not function adequately. Where the design, location, construction or installation of the system or any of its components does not conform to this chapter, the administrative authority shall direct the applicant to apply to the Department for a treatment works approval. Depending upon the volume and quality of the wastewater discharged, a NJPDES permit may also be required.

7:9A-3.12 Holding tanks

(a) The administrative authority may approve the use of a sewage holding tank in lieu of an individual subsurface sewage disposal system, as a temporary means of waste disposal, for a period not to exceed 60 days, where alteration or repair of an existing system is being completed as approved by the administrative authority.

(b) The administrative authority may approve permanent use of a holding tank in the case of a malfunctioning system, subject to aproval by the Department, as allowed in N.J.A.C. 7:9A-3.4(c).

7:9A-3.13 Certificate of compliance

(a) Prior to issuance of a certificate of compliance, the administrative authority or its authorized agent shall make sufficient inspections during the course of construction and installation or alteration of the individual subsurface sewage disposal system to determine that the system has been located, constructed and installed or altered in compliance with the requirements of this chapter and the approved engineering design. Alternatively, the administrative authority may issue a certificate of compliance if a licensed professional engineer submits to the administrative authority, a statement in writing, signed and sealed by him or her that the said system has been located, constructed, installed or altered in compliance with the requirements of these standards and the approved engineering design.

(b) The administrative authority or authorized agent may require additional permeability tests to be conducted, the disposal field excavation to be deepened, fill material to be added or other changes to be made in the installation of the system if, during the course of excavation, soil limitations not identified previously are discovered. Such changes shall be made as prescribed in N.J.A.C. 7:9A-3.7.

(c) A component of an individual subsurface sewage disposal system shall not be backfilled or otherwise concealed from view until a final inspection has been conducted by the administrative authority or its authorized agent, or a licensed professional engineer, and permission has been granted by the administrative authority to backfill the system. Any component of the system which has been covered without such permission shall be uncovered upon the order of the administrative authority or its authorized agent.

(d) A person shall not commence operation or use of an individual subsurface sewage disposal system until a certificate has been issued by the administrative authority or its authorized agent indicating that said system has been located, constructed, installed or altered in compliance with this chapter. The issuance of a certificate of compliance shall constitute only certification that the individual subsurface sewage disposal system has been constructed, located, installed or altered in conformance with this chapter. It shall not be construed as a guarantee that the system will function satisfactorily, nor shall it in any way restrict the powers or responsibilities of the administrative authority or the Department in the enforcement of any law or ordinance relating to public health and safety or environmental protection.

(e) The administrative authority or its authorized agent shall give to the building inspector or similar official of the municipality who is responsible for the issuance of occupancy permits a copy of the certificate of compliance.

7:9A-3.14 License to operate

(a) The administrative authority or its authorized agent shall issue a license to operate and a copy of the Department's operation and maintenance manual to the permittee at the time that a certificate of compliance is issued.

(b) The license to operate shall expire three years after issuance. The applicant shall be notified by the administrative authority or its authorized agent before the license expires and shall be directed to apply for a renewal of the license. The administrative authority shall not renew the license unless the licensee has submitted the following to the administrative authority:

1. Evidence that the necessary maintenance has been performed as prescribed in N.J.A.C. 7:9A-12.3;

2. A system inspection report, prepared by a licensed health officer, licensed professional engineer, *[first-grade]* ***licensed*** sanitarian, or other *[qualified]* person acceptable to the administrative authority, indicating that the system has been maintained and is functioning in conformance with the requirements of this chapter; and

3. Payment of any fees which are required by a local ordinance.

(c) The license shall be transferable upon change of ownership of the property which is served by the system for which the license was issued.

(d) The administrative authority or its authorized agent may suspend or revoke the license to operate in the following circumstances:

1. It has been determined that the system is malfunctioning based upon criteria outlined in N.J.A.C. 7:9A-3.4(a) and the licensee fails to take steps to correct said malfunction as directed by the administrative authority or its authorized agent;

2. The owner or occupant of the premises served by the system violates any provision of this chapter with respect to operation and maintenance of the system; or

3. The owner or occupant of the premises served by the system denies right of entry to the administrative authority or its authorized agent, or the Department, as required in N.J.A.C. 7:9A-3.19, or in any way interferes with the administration or enforcement of this chapter.

7:9A-3.15 Records

(a) The administrative authority or its authorized agent shall maintain records and shall keep on file copies of the following documents:

1. Applications and plans and specifications for the construction, installation or alteration of individual subsurface sewage disposal systems, including all forms and data submitted by the applicant;

2. Permits issued for the construction, installation or alteration of individual subsurface sewage disposal systems;

3. Modifications to plans made subsequent to the issuance of a permit to construct, install or alter individual subsurface sewage disposal systems;

4. Reports of construction inspections made prior to issuance of a certificate of compliance for an individual subsurface sewage disposal system;

5. Certificates of compliance issued for individual subsurface sewage disposal systems;

6. Applications, inspection reports, forms and information connected with licenses to operate individual subsurface sewage disposal systems or license renewals; and

7. Inspection reports, plans and specifications for repair or alteration of malfunctioning individual subsurface sewage disposal systems or components of malfunctioning systems.

(b) Files containing records or documents listed in (a) above shall be available upon request for inspection by personnel of the Department.

(c) The administrative authority or its administrative agent shall maintain records until such time as the realty improvement served by the proposed or existing subsurface sewage disposal system is removed or connected to a public sewer.

7:9A-3.16 Prior tests

(a) Percolation test results, soil logs and determinations of seasonally high water table made prior to *[the effective date of this chapter]* ***January 1, 1990*** may be used as a basis for design and location of an individual subsurface sewage disposal system for *[one year]* ***two years*** following *[the effective date of this chapter,*] ***January 1, 1990*** provided that the following conditions are met:

1. Such tests complied with the rules in effect at the time they were performed; and

2. *[The]* ***All other aspects of the*** system proposed *[is substantially]* ***are*** in compliance with the requirements of this chapter.

7:9A-3.17 Registration of personnel

(a) The Department will establish a voluntary registration program for individuals involved in subsurface sewage disposal system site evaluation, design, construction, inspection and regulation. The purpose of the registration will be to provide a means for the Department to disseminate technical information and training to professional engineers, health officers, sanitarians, soil scientists, contractors, septic tank pumpers and other individuals involved in implementation of these standards.

(b) Individuals wishing to be registered shall contact the Department in writing and indicate the categories for which registration is sought. Registration categories shall be as follows:

1. The "septic system enforcement officer" category includes licensed professonal engineers, licensed health officers or *[first-grade]* ***licensed*** sanitarians, acting as the authorized agent for the administrative authority, who approve, permit, certify or license the construction, installation, alteration, repair or operation of individual subsurface sewage disposal systems or who review engineering plans, witness site evaluation and testing, inspect construction or make any determinations relied upon for the granting of such approvals, permits, certifications or licenses.

2. The "site evaluator" category includes licensed professional engineers, licensed health officers, *[first-grade]* ***licensed*** sanitarians or soil scientists who perform site evaluation, soil evaluation or soil testing as prescribed in N.J.A.C. 7:9A-4, 5 and 6.

3. The "septic system designer" category includes licensed professional engineers who prepare engineering plans and specifications for the construction or alteration of individual subsurface sewage disposal systems.

4. The "septic system installer" category includes persons who construct, install or alter individual subsurface sewage disposal systems in accordance with approved engineering plans and specifications or who repair systems as allowed in N.J.A.C. 7:9A-3.3(d).

5. The "septic system inspector" category includes ***solid waste haulers registered with the Department in accordance with N.J.A.C. 7:26-3,*** licensed professional engineers, licensed health officers or *[first-grade]* ***licensed*** sanitarians who perform inspections of individual subsurface sewage disposal systems as required in N.J.A.C. 7:9A-12.2.

7:9A-3.18 Additional requirements for certification of ***sewerage facilities serving*** subdivisions ***involving more than 10 realty improvements***

(a) Applications for certification *[of subdivisions]* by the administrative authority, pursuant to N.J.S.A. 58:11-25, ***of sewerage facilities serving subdivisions,*** regardless of the number of realty improvements involved, shall contain the basic information required in N.J.A.C. 7:9A-3.5(c) for each individual realty improvement contained in the subdivision. Where more than 10 realty improvements are involved, additional information is required as set forth in (c) below.

(b) Where 50 or more realty improvements are involved, two separate certifications are required. The first of these is a water quality standards related certification issued by the Department pursuant to N.J.S.A. 58:11-25.1, prior to planning board approval, as prescribed in (d) below. The second of these is a design and construction certification, issued by the administrative authority pursuant to N.J.S.A. 58:11-25, prior to issuance of building permits and reviewed by the Department and the administrative authority simultaneously, as prescribed in (f) below.

(c) For certifications pursuant to N.J.S.A. 58:11-25, of ***sewerage facilities proposed to serve*** subdivisions consisting of more than 10 realty improvements, the following information is required in addition to the information required by N.J.A.C. 7:9A-3.5(c). This

additional information shall be provided on a general site plan of the subdivision*, **signed and sealed by a licensed land surveyor***:

1. Lots with their dimensions and acreage;
2. Contours of existing topography (at an appropriate contour interval) using absolute elevations or relative elevations referenced to a permanent bench-mark;
3. Drainage right of way and any contemplated diversion thereof;
4. Location of all existing and proposed water supply wells within 500 feet from the boundaries of the subdivisions;
5. Streams and surface water bodies;
6. Existing and proposed storm sewers and subsurface drains;
7. Above and below ground power transmission lines, gas pipe lines and associated right-of-ways:
8. Location of all stream encroachment boundaries and 100-year flood plain boundaries which fall within the boundaries of the subdivision;
9. Location of all ***State approved*** wetlands or transition *[zone]* ***area*** delineation lines which fall within the boundaries of the subdivision;
10. Location of all profile pits, soil borings, permeability or percolation tests made within the area of the subdivision; and
11. Boundaries of all soil types or mapping units, obtained from detailed onsite soil investigations or transferred from USDA County Soil Survey Report.

(d) No subdivision approval shall be granted by any municipal or other authority in the State to cover 50 or more realty improvements, or less than 50 where the subdivision extends into an adjoining municipality or municipalities and will, in the aggregate, cover 50 or more realty improvements, until the Department has certified that the proposed sewerage facilities for realty improvements comply with applicable State standards.

(e) (Reserved)

(f) Copies of all applications and accompanying engineering data for certifications submitted under N.J.S.A. 58:11-25 to cover 50 or more realty improvements shall be filed with or mailed to the Department on the date the application is made to the administrative authority.

(g) Copies of all certifications issued by administrative authorities under N.J.S.A. 58:11-25 covering 50 or more realty improvements shall be mailed to the Department by the administrative authority issuing the same on the date of issue.

(h) In cases where preliminary determination by the administrative authority regarding the acceptability of the proposed sewage disposal systems may be required prior to the granting of subdivision approval by the planning board or other municipal agency, such determinations may be made based upon the type of disposal field installations proposed and the soil suitability classification determined by use of Soil Conservation Service soil survey maps in conjunction with Appendix D of this chapter. Alternatively, onsite soil evaluation consisting of soil logs and permeability tests may be required. Where onsite soil evaluation is required, a minimum of one soil log for every five acres or fraction thereof shall be sufficient provided that at least one soil log is provided for every soil series present within the area of the subdivision as shown on Soil Conservation Service soil survey maps. The number of permeability tests required shall be a minimum of one test for every five acres or fraction thereof.

7:9-3.19 Entry and inspection

The administrative authority and its agent and the Department shall have power to make, or cause to be made, such inspections and tests as may be necessary to enforce these standards and they and their authorized representatives shall at all times have the right to enter upon lands of realty improvements for these purposes. The system owner shall not refuse, prevent or otherwise prohibit such tests and inspections to determine compliance with this chapter.

7:9A-3.20 Hearing procedures

In case any certification is denied by the administrative authority, a hearing shall be held thereon before the administrative authority within 15 days after request therefor is made by the applicant. Upon such hearing, the administrative authority shall affirm, alter or rescind its previous determination and take action accordingly within 15 days after the date of such hearing.

SUBCHAPTER 4 SITE EVALUATION AND SYSTEM LOCATION

7:9A-4.1 General provisions for site evaluation and system location

(a) Selection of a location for each individual subsurface sewage disposal system shall be based upon evaluation of all site characteristics which may affect the functioning of the system. Site characteristics to be evaluated shall include, but may not be limited to, minimum required separation distances as prescribed in N.J.A.C. 7:9A-4.3, slope, surface drainage and flood potential.

(b) A site plan shall be required as part of each application and shall, as a minimum, provide the information outlined in N.J.A.C. 7:9A-3.5(c)2.

7:9A-4.2 Location generally

(a) The location and installation of each individual subsurface sewage disposal system and every part thereof shall be such that with reasonable maintenance *, **as required by N.J.A.C 7:9A-12,*** it will function in a satisfactory manner and will not create a nuisance or source of foulness, pose a threat to public health or safety or the environment, or otherwise adversely affect the quality of surface water or *[ground water]* ***groundwater***.

(b) Individual subsurface sewage disposal systems shall not be located *[near or adjacent to]* ***in such a manner that their functioning may be adversely affected by*** the following features unless the design adequately addresses the special limitations associated with these features and complies with all applicable local, State and Federal laws, regulations and ordinances.

1. Bedrock outcrops or areas with excessive stones;
2. Sink-holes;
3. Steep slopes showing signs of unstable soil such as landslide scars, slump blocks, fence posts or lower trunks of trees bending downslope;
4. Bare eroded ground, denuded of vegetation, or with deep wheel ruts;
5. Highly disturbed ground indicated by such features as remnants of foundations or pavements, buried building debris or buried plant remains;
6. Sand dunes;
7. Mine spoils, borrow pits, dumps or landfills;
8. Low-lying coastal areas exhibiting signs of tidal inundation or tidal marsh vegetation such as cordgrass (Spartina alterniflora), salt-meadow grass (Spartina patens) or spike grass (Disticlis spicata);
9. Low-lying inland areas showing signs of ponding or ***freshwater*** * wetland vegetation such as skunk cabbage (Symplocarpus foetidus), tussock sedge (Carex stricta), cat-tails (Typha spp.)*,* alders (Alnus spp.), or white cedar (Chamaecyparis thyoides); and
10. Flat low-lying areas adjoining streams.

7:9A-4.3 Distances

The minimum separation distance between the various components of the system and the other features listed shall conform with Table 4.3 below. The location of a new well must be in conformance with the requirements of N.J.A.C. 7:10-12.13.

Table 4.3 Minimum Required Separation Distances (feet)

Component	Reservoir, Well or Suction Line	Water Service Line, Pressure	Watercourse[1]	Occupied Building	Property Line	Disposal Field	Existing Seepage Pit or Cesspool	Inground Swimming Pool
Building Sewer	25[2]	5	—	—	—	—	—	—
Septic Tank	50[2]	10	25[2,5]	10[6]	5	—	—	10
D-*[Dox]**Box*	50[2]	10	25[2,5]	10	5	—	—	10
Disposal Field[11]	100[2,4]	10	50[2,3,5]	25[7]	10	50[8]	50	20
Seepage Pit[9]	150[2]	25	100[2,5]	50[7]	20	50	50[10]	30
Dry Well	—	—	—	—	—	50	50	—

(1) Includes subsurface drains with an above-ground or surface water outlet.

(2) Where excessively coarse soils or fractured rock substrata are encountered, these distances may be increased by the administrative authority.

(3) This distance may be decreased only in the case of an interceptor drain as allowed in N.J.A.C. 7:9A-10.7(d).

(4) This distance may be decreased by the administrative authority ***to a minimum of 50 feet*** only when the well is provided with a water-tight casing to a depth of 50 feet of more, *[or]* ***and*** where the casing is sealed into an impervious stratum which separates the water-bearing stratum from the layer of soil used for sewage disposal. ***N.J.A.C. 7:10-12.13 shall govern whenever the well under consideration has been installed after July 13, 1979.***

(5) These distances may be reduced by one-half if the water course is a footing drain with an invert elevation higher than the bottom of the disposal field or more than four feet above the level of the seasonally high water table.

(6) May be reduced to five feet with special approval of the administrative authority.

(7) May be reduced to 15 feet from disposal field and 30 feet from seepage pit for *[slab]* portions of *[dwelling]* ***the building constructed either on a slab foundation or over a continuous dust cap which is at or above natural or finished grade, whichever is higher*** only.

(8) This distance applies to disposal fields *[on adjacent lots]* ***serving separate realty improvements*** but not to ***disposal fields which are part of*** a split system *[on a single lot]* ***serving a single realty improvement***.

(9) Applies only to seepage pits allowed as prescribed in N.J.A.C. 7:9A-7.6.

(10) In no case shall the distance be less than three times the pit diameter.

(11) These distances shall be measured from the margin of the filled area in the case of soil replacement and mounded soil replacement installations or the edge of the required lateral fill extension in the case of mounded installations.

7:9A-4.4 Slope

(a) The disposal field or seepage pit shall not be located in an area where the slope is greater than 25 percent.

(b) Where the slope is greater than 10 percent, no disposal field or seepage pit shall be placed less than 50 feet upslope of any bedrock outcrop where signs of ground water seepage can be detected.

(c) Modification of slopes by re-grading shall meet the requirements of N.J.A.C. 7:9A-10.3(b).

7:9A-4.5 Surface drainage

(a) No disposal area shall be placed within a topographical depression or in any area where surface runoff or ground water is likely to accumulate unless measures adequate to address these limitations are incorporated in the approved engineering design and implemented when the system is constructed.

(b) The use of swales to divert surface run-off away from the disposal field shall be carried out only as prescribed within the engineering design which has been approved by the administrative authority.

7:9A-4.6 Surface flooding

(a) No part of a subsurface sewage disposal system shall be constructed in ground subject to surface flooding. For the purposes of this chapter, a site shall be considered to be subject to surface flooding when any of the criteria given in (b) below are satisfied. This determination shall be made whenever the proposed site is located adjacent to a stream ***or coastline***, and the distance and relative elevation of the site with respect to the stream ***or sea level*** are such that it is reasonable to expect that the site may be subject to flooding as a result of stream overflow***, tides or ocean waves***.

(b) For the purpose of compliance with (a) above, a site shall be considered subject to flooding whenever any of the following criteria are met:

1. Flooding is observed during a site inspection made by the administrative authority or its agent or the administrative authority has records or knowledge of past flooding at the site or in adjacent contiguous areas; or

2. Maps contained in a Soil Conservation Service County Soil Survey Report indicate the presence of one or more of the following soil types:

Alluvial Land	Muck Shallow Over Clay
Atsion Tide Flooded	Muck Shallow Over Loam
Berryland	Mullica Loamy Substratum
Berryland-Othello Complex	Parsippany
Bowmansville	Plummer
Carlisle Muck	Pompton Fine Sandy Loam
Colemantown	Pope High Bottom
Colemantown-Matlock	Portsmouth Thin Surface Varient
Fluvaquents	Preakness
Fredon	Raritan
Humaquepts Flooded	Rowland
Manahawkin	Sloan and Wayland
Middlebury	Tioga

i. Where the accuracy of the Soil Survey Report mapping is questioned, the soil series actually present at the site shall be identified by comparing the soil profile characteristics observed in a soil profile pit with the range of soil profile characteristics given in the County Soil Survey Report for a particular soil series.

(c) When fill material is proposed to elevate the ground surface above the level which is subject to flooding, the requirements and

restrictions of (d) below as well as the requirements and restrictions of N.J.A.C. 7:9A-10.3(b) shall apply.

(d) Development within a flood plain area is subject to the restrictions and requirements of the Flood Hazard Area Rules N.J.A.C. 7:13. N.J.A.C. 7:13 prohibits the construction of an individual subsurface disposal system within the floodway of a delineated stream or within the encroachment line of a non-delineated stream and may require a stream encroachment permit for the construction of a system within the flood fringe of a delineated stream or the area between the encroachment lines and the boundary of the 100 year flood plain of a non-delineated stream.

(e) The criteria for delineation of flood hazard areas used in the Flood Hazard Area Rules, N.J.A.C. 7:13, are different from the criteria used in this chapter for identification of areas subject to flooding. Consequently, a site which does not meet the criteria given in (b) above may still be subject to N.J.A.C. 7:13. It is the responsibility of the applicant to comply with all applicable requirements of N.J.A.C. 7:13 regardless of whether the site of the proposed individual subsurface sewage disposal system meets the criteria given in (b) above. Compliance with this or any other provision of this chapter does not exempt the applicant from compliance with the requirements of N.J.A.C. 7:13.

7:9A-4.7 Freshwater wetlands

(a) As part of the initial site evaluation process, prior to selection of a site for a proposed subsurface sewage disposal system, the applicant shall take into consideration the possible presence of freshwater wetlands which are protected by the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:7A. In cases where available information submitted as part of the application requirements for approval under this chapter indicate the potential presence of a freshwater wetlands within the proposed area of disturbance, the administrative authority shall require evidence that the applicant has complied with applicable regulations. This evidence shall meet the requirements of (c) below and shall be required whenever the criteria given in (b) below are satisfied. This section shall not apply to projects located within areas under the jurisdiction of the Pinelands Commission pursuant to N.J.S.A. 13:18A-1 et seq. and areas under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to N.J.S.A. 13:17-1 et seq.

(b) For the purpose of compliance with (a) above, the proposed site of a subsurface sewage disposal system shall be tentatively considered to be located within a potential freshwater wetland whenever any of the following criteria are met:

1. Surface ponding is observed, or the vegetation, topography or relative elevation with respect to adjacent surface water bodies is such as to indicate the likelihood of periodic or seasonal surface ponding;

2. Soil profile evaluation carried out as prescribed in N.J.A.C. 7:9A-5 indicates a seasonally high water table at a depth shallower than 1.5 feet below the existing ground surface; or

3. Maps contained in a Soil Conservation Service County Soil Survey Report indicate the presence of one or more of the following soil types:

Abbottstown	Haledon (wet variant)	Pocomoke
Adrian	Halsey	Portsmouth
*[Abia]**Albia*	Hammonton	Preakness
Alluvial Land	*[Hummuepts]**Hummaquepts*	Raynham
Amwell	Keansburg	Reaville (wet variant)
Atherton	Klej	Ridgebury
Atsion	Lamington	Rowland
Bayboro	Lenoir	Shrewsbury
Berryland	Leon	Sloan
Bibb	Livingston	St. Johns
Biddeford	Lyons	Sulfaquents
Bowmansville	Manahawkin	Sulfihemists
Carlisle	Marsh	Swamp
Chalfont	Matlock	Tidal Marsh
Chippewa	Muck	Turbotville
Cokesbury	Mullica	Venango (Albia)
Colemantown	Norwich	Wallkill
Croton	Othello	Watchung
Doylestown	Parsippany	Wayland
Elkton	Pasquotank	Weeksville
Fallsington	Passaic (Parsippany variant)	Whippany
Fluvaquents	Peat	Whitman
Fredon	Plummer	Unnamed
Fresh Water Marsh		

i. In addition to the soil types listed above, wet phases of soils classified by the Soil Conservation Service as somewhat poorly drained may also indicate the presence of a freshwater wetland.

ii. Where the accuracy of the Soil Survey Report mapping is questioned, the soil series actually present at the site shall be identified by comparing the soil profile characteristics observed in a soil profile pit with the range of soil profile characteristics given in the County Soil Survey Report for a particular soil series.

(c) Evidence that the applicant has complied with applicable State freshwater wetland rules shall consist of any of the following documents:

1. A "letter of interpretation" or "transition area waiver" issued by the Department, indicating that the proposed development is not subject to N.J.A.C. 7:7A;

2. A written notification from the Department indicating that the wetlands aspects of the proposed development are covered by a Statewide General Permit;

3. A freshwater wetlands permit issued by the Department for the wetlands aspects of the proposed development;

4. A permit issued by the U.S. Army Corps of Engineers ("Corps") prior to July 1, 1988 or an approval letter from the Corps indicating that the wetlands aspects of the proposed development were authorized under a Nationwide Permit prior to July 1, 1988; or

5. A written determination from the Department that the proposed development is not subject to regulation under the Freshwater Wetlands Protection Act.

(d) Use of the criteria given in (b) above to identify the presence of a potential freshwater wetland does not constitute an official freshwater wetlands delineation by the Department's "three-parameter approach" in accordance with N.J.A.C. 7:7A. As a result, sites which do not meet these criteria may still be subject to regulation under N.J.A.C. 7:7A or other Federal, State or local laws. The applicant shall contact the appropriate agencies and comply with all applicable statutes or regulations or ordinances.

7:9A-4.8 Area reserved for sewage disposal

The area used for sewage disposal shall be selected and maintained so that it is free from encroachments by driveways, accessory buildings, additions to the main building*, **patios, decks*** and trees or shrubbery whose roots may cause clogging of any part of the system. The area of sewage disposal shall not be located under driveways, parking lots (paved or otherwise), accessory buildings, additions to main buildings or any other form of encroachment which may adversely affect the functioning of the system or interfere with system maintenance.

SUBCHAPTER 5. DETERMINATION OF SOIL SUITABILITY

7:9A-5.1 General provisions for the determination of soil suitability

(a) When a site meeting the requirements of N.J.A.C. 7:9A-4 has been chosen for location of the proposed individual subsurface wastewater disposal system, the suitability of the soil for treatment and disposal of the effluent shall be determined as prescribed below. This determination shall be made based upon soil profile characteristics observed in soil profile pits and borings as prescribed in N.J.A.C. 7:9A-5.2, criteria for determination of soil suitability classes which are given in N.J.A.C. 7:9A-5.4, criteria for recognition of soil limiting zones which are given in N.J.A.C. 7:9A-5.5 through 5.9, as well as any other related data that may be required by the administrative authority.

(b)* All soil evaluation procedures relied upon as a basis for the design of an individual subsurface sewage disposal system shall be carried out by or under the direct supervision of a licensed professional engineer.

7:9A-5.2 Requirements for soil profile pits and borings

(a) Soil profile pits shall be excavated at the site of each proposed disposal field for the purpose of determining the suitability and distribution of soil types present at the site. Partial substitution for soil profile pits may be made using soil borings as outlined in (b) below.

(b) A minimum of two profile pits are required for each disposal field. A minimum of three soil borings may be performed in lieu of the second profile pit, provided that the soil horizons and substrata observed in the borings are not significantly different from those observed in the first profile pit.

(c) The location of soil profile pits and borings for disposal fields shall be as follows:

1. As shown in Figure 1 of Appendix A, profile pits shall be located at either end of the disposal field, within or no further than 15 feet beyond the boundaries of the disposal field.

2. In cases where a profile pit or part of a profile pit has been excavated within the boundaries of a proposed disposal trench or bed, the pit shall be backfilled after use in a manner that will not result in a major discontinuity with respect to soil horizonation, density or permeability in the soil below the disposal trench or bed.

3. When soil borings are substituted for the second profile pit these shall be located as shown in Figure 1 of Appendix A, at the approximate center of the disposal field and at corners opposite the profile pit. All soil borings shall be within the boundaries of the disposal field, or no further than 15 feet beyond the boundaries of the disposal field.

(d) When a seepage pit(s) is proposed, as allowed in N.J.A.C. 7:9A-7.6, a minimum of one profile pit or two soil borings shall be performed for each seepage pit. Profile pits shall be located within or no further than 15 feet from the proposed seepage pit. Borings shall be located on opposite sides of the seepage pit, no further than 15 feet from the seepage pit.

(e) Profile pits shall be prepared as follows:

1. Profile pits shall be excavated, if possible, to a minimum depth of 10 feet below the existing ground surface or to solid bedrock, where encountered. If the profile pit becomes unstable due to lack of soil cohesion or the presence of *[ground water]* ***groundwater***, or both, the pit may be terminated at a depth less than 10 feet ***and soil evaluation below the depth of the pit may be carried out by means of three or more soil borings, performed as prescribed in (f) below***. The depth of the *[profile pit]* ***soil evaluation*** shall never be less than eight feet below the proposed level of infiltration.

2. When a seepage pit is proposed, the profile pit shall extend a minimum of eight feet below the bottom of the seepage pit or to solid bedrock, when encountered. In cases where the minimum required depth is deeper than that practically attainable using ordinary excavating equipment, soil borings should be used rather than a profile pit. Alternatively, borings may be used to extend the depth of profile pits beyond the range of the excavating equipment.

3. *[The]* ***It is recommended that the*** sides of the profile pit *[shall]* be stepped and sloped as shown in Figure 2 of Appendix A, to prevent caving-in and to allow safe access ***to the upper portion of the pit***. An undisturbed face, a minimum of one foot wide and extending from the top *[to the bottom]* of the pit ***to a depth of five feet***, shall be exposed by means of hand tools, for observation of the soil profile characteristics. ***Evaluation of soil properties below a depth of five feet may be accomplished by examination of samples removed by excavating equipment or by examination of three or more borings, performed as prescribed in (f) below.***

4. It is recommended that persons performing soil evaluation not enter into portions of a soil profile pit which have been excavated to depths greater than five feet below the surrounding ground surface. It is the responsibility of persons performing or witnessing soil evaluation to comply with all applicable Federal, State and local laws and regulations governing occupational safety.

(f) Soil borings shall be performed as follows:

1. Soil borings shall be completed to a minimum depth of 10 feet below the existing ground surface or to solid bedrock, where encountered. In no case shall the depth of the borings be less than eight feet below the proposed level of infiltration. Where a seepage pit is proposed, the borings shall extend a minimum of eight feet below the bottom of the seepage pit or to solid bedrock, where encountered.

2. Soil borings shall be made in a manner that will provide a continuous sample of the soil profile without mixing the soil from different depths. Hand augers may be used provided that the hole remains open and does not slump.

(g) In soil profile pits and borings, the following characteristics of each recognizable soil horizon or substratum (not including rock substrata) shall be determined:

1. Depth and thickness of horizon;

2. Soil color, using the Munsell system of classification which includes an alpha-numeric symbol together with a descriptive color name;

3. Estimated soil textural class, using the USDA system of classification;

4. Estimated volume percentage of coarse fragment, if present;

5. Abundance, size and contrast of mottles, if present;

6. Soil structural class (soil profile pits only); and

7. Soil consistence.

(h) Soil profile characteristics shall be reported in log form, using terminology as prescribed in N.J.A.C. 7:9A-5.3.

7:9A-5.3 Terminology required for soil logs

(a) A soil log shall be prepared for each soil profile pit or soil boring. The soil profile characteristics listed in N.J.A.C. 7:9A-5.2(g) shall be described using the terminology specified in (b) through (h) below.

(b) Depth and thickness of each district soil horizon or substratum shall be reported in inches. A distinct soil horizon or substratum is any soil horizon or substratum which differs from horizons or substrata above or below it in color, texture, coarse fragment content, mottling, structure or consistance.

(c) Color shall be described using the Munsell system of classification which includes a descriptive color name such as "strong brown" or "pale red", together with an alpha-numeric designation of hue, value and chroma such as "7.5 YR 5/6" or "2.5 YR 6/2". When mottling is encountered, report the dominant or background color and the mottle colors.

(d) Texture shall be reported as the name of the appropriate textural class which is shown on the USDA textural triangle, Figure 3 of Appendix A, determined based upon the relative proportions of sand, silt and clay in that portion of the soil which excludes the coarse fragment. Texture shall be estimated in the field by feel, or determined by textural analysis as prescribed in N.J.A.C. 7:9A-6.3.

(e) The volume percentage of coarse fragments shall be estimated in the field visually using volume percentage estimation charts provided in Figure 4 of Appendix A. Coarse fragments which are rounded or subrounded in shape shall be classified based upon size, as indicated in (e)1 through 3 below. In the case of shale, slate, or other thin rock fragments, the rock type and the average length and thickness of the rock fragments shall be reported.

1. "Gravel" means a rock fragment from two millimeters (0.1 inches) to 76 millimeters (three inches) in diameter;

2. "Cobble" means a rock fragment from 76 millimeters (three inches) to 254 millimeters (10 inches) in diameter; and

3. "Stone" means a rock fragment greater than 254 millimeters (10 inches) in diameter.

(f) When mottling is observed, the abundance, size, and contrast of the mottles shall be reported using the following terminology:

1. Abundance shall be estimated visually, by using the volume percentage charts provided in Figure 4 of Appendix A, to estimate the percentage of the exposed surface which is occupied by mottles. Abundance of mottles shall be classified as follows:

i. Mottles are "few" when less than two percent of the exposed surface is occupied by mottles;

ii. Mottles are "common" when from two percent to 20 percent of the exposed surface is occupied by mottles; and

iii. Mottles are "many" when more than 20 percent of the exposed surface is occupied by mottles.

2. Size shall be classified based on the estimated average longest dimension of the mottles, as follows:

i. Mottles are "fine" when they are less than five millimeters in size;

ii. Mottles are "medium" when they are from five to 15 millimeters in size; and

iii. Mottles are "course" when they are greater than 15 millimeters in size;

3. Contrast shall be described as follows:

i. Mottles are "faint" when they may be distinguished only on close examination;

ii. Mottles are "distinct" when they are readily seen but not prominent; and

iii. Mottles are "prominent" when they are obvious and one of the outstanding features of the soil horizon.

(g) Soil structure shall be described using the following terms which refer to the shape of the natural soil aggregates:

1. Structure is "spheroidal" when the aggregates are more or less equi-dimensional and lack sharp corners, sharp edges or well-defined faces. This term includes crumb and granular structure as defined by the USDA;

2. Structure is "subangular blocky" when the aggregates are more or less equi-dimensional and possess well-defined flat or somewhat curved faces, but lack sharp corners or edges;

3. Structure is "angular blocky" when the aggregates are more or less equi-dimensional in shape and possess well-defined flat or somewhat curved faces, sharp corners and sharp edges;

4. Structure is "prismatic" when the aggregates have one axis distinctly longer than the other two and are oriented with the long axis vertical;

5. Structure is "platy" when the aggregates have one axis distinctly shorter than the other two and are oriented with the short axis vertical. Soil horizons with platy structure generally show numerous well-defined horizontal structural faces and lack well defined vertical structural faces;

6. Structure is "massive" when the soil consists of a dense, compact mass showing no recognizable natural aggregates or structural faces; and

7. Structure is "single grain" when the soil consists of loose individual sand grains which lack cohesion and are not bound together into recognizable soil aggregates.

(h) Soil consistence shall be described using the following terminology which refers to the ease with which a soil clod or aggregate may be crushed with the fingers in either the dry or moist condition.

1. In the dry soil condition, soil consistence is characterized as:

i. "Loose" when the soil is non-coherent;

ii. "Soft" when the soil mass breaks to a powder of individual grains with slight pressure;

iii. "Slightly hard" when the soil mass is easily broken between thumb and forefinger;

iv. "Hard" when the soil mass can be broken in the hands without difficulty, but is barely breakable between thumb and forefinger; and

v. "Very hard" when the soil mass can be broken in the hands with difficulty, but is not breakable between thumb and forefinger.

2. In the moist soil condition, soil consistence is characterized as:

i. "Loose" when the soil is non-coherent;

ii. "Friable" when the soil material crushes easily between thumb and forefinger;

iii. "Firm" when the soil material crushes under moderate pressure between thumb and forefinger;

iv. "Very firm" when the soil material is barely crushable under strong pressure between thumb and forefinger; and

v. "Extremely firm" when the soil material cannot be crushed between thumb and forefinger, but can only be broken apart bit by bit.

3. For any moisture condition, soil consistence is characterized as "cemented" when the soil mass is brittle and hard, and cannot be broken by hand.

7:9A-5.4 Criteria for determination of soil suitability classes

(a) The soil suitability class shall determine what type(s) of standard disposal field installation(s), if any, may be approved on a given site. The soil suitability class is determined based upon the type and depth of limiting zone(s) present. In the case of disturbed ground, additional factors must be considered, as outlined N.J.A.C. 7:9A-5.10.

(b) The depth to the limiting zone shall be measured from the existing ground surface to the top of the limiting zone. In the case of disturbed ground, depth to the limiting zone shall be measured from the pre-existing natural ground surface or the existing ground surface, whichever is lowest. Criteria for recognition of the pre-existing natural ground surface are given in N.J.A.C. 7:9A-5.10(c).

(c) As shown in Table 5.4 below, the soil suitability designation consists of a Roman numeral from I to III which designates the severity of the soil limitation, together with a letter symbol which designates the type(s) of limitation. When more than one limiting zone is present, the following practice shall be followed:

1. The primary classification of the soil is based upon whichever limiting zone presents the most severe limitation (highest number value). Secondary classifications are given based upon limitations which are less severe (lower number values). The primary classification is stated first followed by secondary classifications in parentheses. For example, the classification for a soil with a seasonally high water table (top of the zone of saturation) at a depth of 1.5 feet and a massive rock substratum at seven feet would be III Wr (II Sr).

2. When two or more limiting zones are present with the same degree of limitation, a compound symbol is used, in primary or secondary classifications, consisting of a Roman numeral showing the degree of limitation followed by a letter symbol for each limiting zone. For example, the classification for a soil with a seasonally high water table at 2.5 feet and a fractured rock substratum at three feet would be II Wr, Sc.

TABLE 5.4 SOIL SUITABILITY CLASSIFICATION

Type of Limiting Zone	Depth[1], Ft.	Suitability Class
Fractured Rock or	>5	I
Excessively Coarse Substratum	0-5	IISc
Massive Rock or	>9	I
Hydraulically Restrictive	4-9	IISr
	<4	IIISr
Hydraulically Restrictive	>9	I
Horizon,	4-9	IIHr
Permeable Substratum	<4	IIIHr
Excessively Coarse Horizon	>5	I
	0-5	IIHc
Zone of Saturation, Regional	>5	I
	2-5	IIWr
	<2	IIIWr
Zone of Saturation, Perched	>5	I
	2-5	IIWp
	<2	IIIWp

(1) Depth is measured from the existing natural ground surface to the top of the limiting zone. In the case of disturbed ground, the depth to the limiting zone shall be measured from the pre-existing natural ground surface, identified as prescribed in N.J.A.C. 7:9A-5.10, or the existing ground surface, whichever is lowest.

7:9-5.5 Rock substrata

(a) Criteria for recognition of rock substrata shall include but not be limited to the following:

1. Any solid and continuous body of rock, with or without fractures, or any weathered or broken body of rock fragments overlying a solid body of rock, in which more than 50 percent by volume of the rock fragments are greater than two-millimeters in diameter or large enough to be retained on a two millimeter sieve shall be considered to be a rock substratum. In cases where the content of coarse fragments increases downward in a soil profile underlain by a rock substratum, the upper limit of the limiting zone shall be taken as the depth above which 50 percent or more of the soil material consists of particles less than two millimeters in diameter or small enough to pass through a two millimeter sieve.

2. A rock substratum shall be considered ***as a*** fractured ***rock substratum*** if, based upon the judgment and experience of the soil evaluator, the rock substratum in question is determined to contain an adequate number of open and inter-connected fractures to allow unimpeded absorption of applied wastewater and transmission of this wastewater away from the disposal area. Any rock substratum which does not contain an adequate number of open and inter-connected fractures shall be considered a massive rock substratum. When doubt exists as to whether the limiting zone should be considered a fractured rock substratum or a massive rock substratum, the administrative authority may require a ***pit-bailing test or a*** basin flooding test to be performed as prescribed in N.J.A.C. 7:9A-6.*****[7.]*****

3. Whenever the presence of a perched zone of saturation, immediately above the rock substratum, is inferred based upon observation of soil morphology, as prescribed in N.J.A.C. 7:9A-5.8, or confined, by direct observation or by testing, as prescribed in N.J.A.C. 7:9A-5.9, the rock substratum shall be considered massive.

7:9A-5.6 Excessively coarse horizons and substrata

(a) Criteria for recognition of excessively coarse horizons or substrata are as follows:

1. Soil horizons or substrata which have a course fragment content greater than 50 percent by volume shall be considered excessively coarse regardless of their measured permeability or percolation rate.

2. Sand textured soil horizons or substrata which contain less than 50 percent by volume coarse fragments shall be considered excessively coarse if they are composed primarily of coarse-very coarse sand (from 0.5 to two millimeters in diameter) and lack detectable amounts (two percent or more) of silt and clay. Soils which lack detectable amounts of silt and clay are soils which are dominantly gritty to the touch, lack cohesion when moist, lack stickiness when wet and do not stain the fingers when rubbed in the hand.

3. When doubt exists as to whether a horizon or substratum should be considered excessively coarse, the administrative authority may require a soil permeability or percolation test to be performed within the horizon or substratum in question. Soil horizons or substrata which are tested shall be considered excessively coarse when the measured permeability is faster than 20 inches per hour or the measured percolation rate is faster than three minutes per inch. Alternatively, soil texture may be verified by textural analysis as prescribed in N.J.A.C. 7:9A-6.3.

7:9A-5.7 Hydraulically restrictive horizons and substrata

(a) Criteria for recognition of hydraulically restrictive horizons and substrata shall include but not be limited to the following:

1. Any soil horizon or substratum which exists immediately below a perched zone of saturation shall be considered hydraulically restrictive. The perched zone of saturation may be observed directly, inferred based on observation of soil profile morphology as prescribed in N.J.A.C. 7:9A-5.8, or confirmed by testing as prescribed in N.J.A.C. 7:9A-5.9.

2. Any soil horizon or substratum possessing a clay, silty clay, or silty clay loam texture, as defined in the U.S.D.A. system of classification, shall be considered to be hydraulically restrictive.

3. Any soil horizon or substratum shall be considered hydraulically restrictive if it possesses a sandy clay, clay loam, silt loam or silt texture together with:

i. A massive or platy structure; or

ii. A hard, very hard, firm, very firm or extremely firm consistence.

4. Any cemented horizon or substratum such as ironstone, which remains hard even when soaked in water, shall be considered hydraulically restrictive.

(b) When doubt exists as to whether a soil horizon or substratum should be considered hydraulically restrictive, the administrative authority may require that the soil horizon or substratum in question be tested by an appropriate method, as prescribed in N.J.A.C. 7:9A-6. The soil horizon or substratum shall be considered to be hydraulically restrictive if the measured permeability is slower than 0.2 inch per hour or the percolation rate is slower than 60 minutes per inch.

7:9A-5.8 Criteria for recognition of zones of saturation

(a) Criteria for recognition of zones of saturation shall include but not be limited to the following:

1. Any layer within or below the soil profile which exhibits mottling shall be considered a zone of saturation.

2. Any layer within or below the soil profile from which ground water seepage is observed shall be considered a zone of saturation.

3. Any layer within or below the soil profile which is below the static water level observed within a soil profile pit or boring shall be considered to be a zone of saturation.

(b) The upper limit of the zone of saturation, which is the seasonally high water table, shall be determined by one of the following means:

1. Where mottling is observed, at any season of the year, the seasonally high water table shall be taken as the highest level at which mottling is observed, except when the water table is observed at a level higher than the level of the mottling.

2. Where mottling is not observed, the seasonally high water table shall be determined based upon either of the following methods:

i. During the months of January through April, inclusive, water levels may be measured directly within soil profile pits or borings. Whenever the Department determines that there has been a significant departure from normal climatic conditions the Department may, with due notice to the administrative authority, lengthen or shorten the period allowed for direct measurement during any given year*****. **In low lying coastal areas where ground water levels fluctuate with the tides, measurements shall be taken at the time of highest groundwater elevation in response to tidal fluctuation*** ; or

ii. During other times of the year, the depth to the seasonally high water table may be obtained from the Soil Conservation Service County Soil Survey Report provided that the soil series present at the site is identified based upon comparison of soil profile morphology observed within a soil profile pit, and the soil profile description provided for the soil series in question within the County Soil Survey Report. ***In cases where the seasonal high water table is shown as a range of elevations in the County Soil Survey Report, the highest elevation of the range shall be used as the seasonal high water table.***

3. When the determination of seasonally high water table must be made in disturbed ground recognized as prescribed in N.J.A.C. 7:9A-5.10, direct observation during the months of January through April inclusive is the only method which shall be permitted.

(c) When a hydraulically restrictive horizon, a hydraulically restrictive substratum, or a massive rock substratum is not present throughout or immediately below the zone of saturation, the zone of saturation shall be considered a regional zone of saturation.

(d) Any zone of saturation which occurs above a hydraulically restrictive horizon, a hydraulically restrictive substratum, or a massive rock substratum shall be considered a regional zone of saturation unless a perched zone of saturation is identified based upon the criteria given in (e) below. When doubt exists as to whether the zone of saturation is regional or perched, and an interceptor drain is proposed to remove the zone of saturation below the disposal field, the administrative authority may require a hydraulic head test to be performed as prescribed in N.J.A.C. 7:9A-5.9.

(e) A zone of saturation shall be considered to be perched whenever any of the following conditions are met:

1. The zone of saturation is present immediately above a hydraulically restrictive horizon underlain by a layer of permeable unsaturated soil which is free of mottling and has a chroma of four or higher;

2. Water is observed ponded above a hydraulically restrictive horizon at the bottom of the soil profile pit but this water drains away naturally when the depth of the pit is extended below the bottom of the hydraulically restrictive horizon; or

3. Water is observed seeping into a profile pit immediately above a hydraulically restrictive horizon, a hydraulically restrictive substratum or a massive rock substratum and this seep is eliminated by means of a trench excavated upslope of the profile pit which intercepts and diverts laterally moving ground water away from the profile pit.

(f) Any zone of saturation which is present below a hydraulically restrictive horizon shall be considered an artesian zone of saturation whenever any of the following conditions are met:

1. Artesian conditions have been observed in contiguous geologic formations or are known to exist in adjacent areas underlain by similar soils and/or geologic substrata;

2. Water-bearing strata which are present below the hydraulically restrictive horizon are known to be inclined and to have outcrop areas upslope or at elevations higher than the elevation of the site; or

3. An unsaturated zone of substantial thickness and continuity is not observed below the hydraulically restrictive horizon. To prove the absence of an artesian condition, the unsaturated zone must be free of mottling and have a chroma of four or higher. When this determination is made during the months of January through April inclusive, the unsaturated zone must be a minimum of one foot in thickness. At times of the year other than January through April inclusive, the unsaturated zone must be a minimum of four feet in thickness. Whenever the Department determines that there has been a specific departure from normal climatic conditions, the Department may, with prior written notice to the administrative authority, adjust or modify the length of seasons for application of the criteria set forth in this paragraph.

(g) When any of the conditions in (f) above are met, the administrative authority shall not approve the removal of the hydraulically restrictive horizon for the purpose of installing a soil replacement disposal field unless it is determined by means of a hydraulic head test, as prescribed in N.J.A.C. 7:9A-5.9, that an artesian zone of saturation is absent below the hydraulically restrictive horizon.

7:9A-5.9 Hydraulic head test

(a) When a hydraulic head test is required by the administrative authority to determine the presence or absence of a perched or artesian zone of saturation, piezometers shall be installed and monitored by the applicant as follows:

1. Piezometer A shall consist of a steel or plastic casing, a minimum of two inches in diameter, perforated or open at the bottom, and extending from above the ground surface to a point immediately above but not penetrating into the hydraulically restrictive horizon.

2. Piezometer B shall consist of a steel or plastic casing, a minimum of two inches in diameter located two to five feet from Piezometer A and extending from above the ground surface to a minimum of one foot below the bottom of the restrictive horizon. Peizometer B must be:

i. Open at the bottom or perforated only below the bottom of the restrictive horizon and within the underlying permeable horizon or stratum; and

ii. Installed or sealed in such a manner that no ground water may move upward or downward through the hydraulically restrictive horizon by flowing around the outside of the casing. When the hydraulically restrictive horizon is a horizon of high clay content and plastic consistence, this may be accomplished by use of a steel wellpoint which may be driven through the restrictive horizon and into the permeable soil below. In other cases, the piezometer shall be installed within an over-sized borehole with a bentonite pellet seal, a minimum of one foot thick, placed at the appropriate level.

(b) The piezometers shall be developed by pumping or surging. After a period of 24 hours the water levels in both piezometers shall be accurately measured and recorded.

(c) Water level measurements shall be interpreted as follows:

1. An equal water level in both piezometers means that the water level above the hydraulically restrictive horizon is due to the presence of a regional rather than a perched zone of saturation. Interceptor drains shall not be relied on as a means of providing an unsaturated zone below the disposal field.

2. Where water levels are different in piezometers A and B:

i. A water level in piezometer B which is above the bottom of the hydraulically restrictive horizon means an artesian zone of saturation is present below the hydraulically restrictive horizon. Excavation and removal of the hydraulically restrictive horizon in order to install a soil replacement or mounded soil replacement disposal field shall not be allowed.

ii. A water level in piezometer B which is below the bottom of the hydraulically restrictive horizon means that the water level, if observed, in piezometer A is due to the presence of a perched zone of saturation. No artesian zone of saturation is present below the hydraulically restrictive horizon. Interceptor drains may be proposed as a means of providing an unsaturated zone below the disposal field. Excavation and removal of the restrictive horizon in order to install a soil replacement or mounded soil replacement disposal field may be allowed.

(d) When it is required, the hydraulic head test shall be conducted only during the months of January through April inclusive, and shall be witnessed by the administrative authority or its authorized agent ***in accordance with N.J.A.C. 7:9A-3.6***. Whenever the Department determines that there has been a significant departure from normal climatic conditions, the Department may, with prior written notice to the administrative authority, lengthen or shorten the period allowed for use of this test during any given year.

(e) When piezometers are installed for the purpose of conducting this test, the piezometers shall be removed or filled with cement grout after completion of the test except in those cases where the piezometers will be utilized for monitoring ground water levels or for ground water sampling as required by the administrative authority or by the Department. Piezometers used for monitoring ground water levels over extended periods of time, or for ground water sampling in connection with water quality monitoring, may be considered to be monitoring wells requiring installation by a licensed well driller and a permit issued by the Department pursuant to State law (N.J.S.A. 58:4-1 et seq.). The applicant shall contact the Department for a determination of whether or not a permit is required.

7:9A-5.10 Disturbed ground

(a) When placement of a disposal field is proposed in an area of disturbed ground, the type and depth of soil limiting zones as well as a variety of additional factors must be considered in determination of soil suitability, depending on the nature of the soil disturbance, as outlined in (b) below. Types of soil disturbance which shall be addressed within the soil evaluation and engineering design include but are not limited to filled areas, excavated areas, re-graded areas, artificially drained areas and pre-existing wastewater disposal areas.

(b) A site shall be considered disturbed ground when any of the following conditions are present:

1. Displaced or man-made objects such as tree stumps, branches, plant stems, leaves, building debris or trash of man-made origin, are observed below the ground surface in profile pits or soil borings;

2. Soil profile pits or borings reveal A-horizons or O-horizons which are buried by layers of soil or other material;

3. Soil horizons are absent or mixed in a manner which cannot be explained as a result of natural processes;

4. Mounded areas or depressions in the land surface are observed which do not conform with surrounding topography and which show signs of recent disturbance such as lack of vegetation, weedy vegetation, severe erosion, wheel ruts, etc.;

5. Remnants of building foundations, pavement or other man-made structures are observed at the surface or uncovered in profile pits or soil borings;

6. Subsurface drains or their remnants are observed in profile pits or borings or the outlets of drains are observed at the surface; or

7. Components of an existing wastewater disposal system, or remnants of an abandoned sewage disposal system are present below the site of a proposed new system.

(c) When evidence is found that the surface of the ground may have been modified by a disturbance such as addition of fill material, removal of soil horizons or re-grading, the pre-existing natural ground surface shall be identified based upon the following criteria:

1. When a buried A- or O-horizon is present, the pre-existing natural ground surface shall be taken as the top of the A-horizon or the bottom of the O-horizon.

2. When a buried A- or O-horizon is not present, the level of the pre-existing natural ground surface shall be determined by extrapolation from adjacent areas beyond the limit of soil disturbance. When this method is relied upon, the nature of the pre-existing topography as well as the nature of the ground disturbance shall be described,

using topographic contour maps and profiles where appropriate, to the satisfaction of the administrative authority.

(d) In cases where disturbed soil or other fill material are present at the site, the suitability of this material shall be evaluated based upon its composition and its physical stability as follows:

1. Fill materials containing more than trace amounts of the following types of materials, or any other materials which are subject to disintegration or change in volume, shall be considered unsuitable:

i. Tree stumps, plant stems, leaves, food or animal remains or wastes, wood chips, saw dust, or any organic materials which may be subject to decay;

ii. Trash, discarded furniture, building or demolition debris or any bulky objects containing large voids or subject to collapse or reorientation; or

iii. Cans, bottles, drums or any containers which are empty or filled with liquids.

2. Layers of fill material which do not contain materials as described in (d)1 above but which do contain course fragments in excess of 50 percent by volume shall be considered excessively coarse horizons or substrata. In the case of disturbed ground, coarse fragments may include man-made or artificial materials as well as rock fragments which are larger than two millimeters in diameter, provided that the man-made materials are limited only to physically and chemically inert materials without large voids, such as brick, concrete or glass fragments.

3. When construction of a wastewater disposal field is proposed within disturbed ground, an acceptable state of compaction of the soil or fill material shall be verified by laboratory tests of samples taken from within the area of the proposed disposal field. Based upon the results of these tests, the design engineer shall certify to the administrative authority that the in-place dry density of the soil or fill material above which the proposed system will be located is a minimum of 90 percent of the Standard Procter Density determined by laboratory analysis.

(e) In cases where the surface of the ground has been raised by the addition of fill material or lowered by the removal of pre-existing soil horizons, soil suitability shall be determined based upon the depth to limiting zones measured from the pre-existing natural ground surface determined as prescribed in (c) above, or the existing ground surface, whichever is lowest.

(f) Ground containing subsurface drainage systems or remnants of abandoned subsurface drainage systems shall be considered unsuitable for the installation of a disposal field unless the drains will be removed or the outlets of the drainage system permanently sealed. Any subsurface drain which has a surface outlet shall be considered as a watercourse and is subject to minimum horizontal setback distances from waste disposal system components as set forth in N.J.A.C. 7:9A-4.3.

(g) Ground containing existing wastewater disposal systems or remnants of abandoned systems shall be considered unsuitable for the installation of a disposal field unless the pre-existing system will be removed prior to installation of the proposed new system.

SUBCHAPTER 6. PERMEABILITY TESTING

7:9A-6.1 General provisions for permeability testing

(a) The design permeability is the basis for determining the minimum required area of the disposal field. Tests shall be required at the site of each disposal field, at the level of infiltration, for determination of the design permeability. Where a conventional disposal field will be installed, tests shall be conducted at a depth of one to three feet below the ground surface, within the soil horizon in which the bottom of the disposal field will be placed. When a soil replacement, mound, or mounded soil replacement installation is proposed, a percolation test shall be conducted within the fill material after it has been emplaced and compacted, or a tube permeater test shall be conducted using samples of the fill material which have been compacted to a bulk density equivalent to that achieved in the construction of the disposal field. In lieu of this, the permeability class rating method may be used to determine whether the fill material used meets the requirements of N.J.A.C. 7:9A-10.1(f)4.

(b) The administrative authority may require additional tests at depths other than the depth of infiltration when doubt exists regarding the presence or the type of a limiting zone.

(c) The type of tests which may be used shall be determined based upon the purpose of the test and the soil conditions at the depth of the test as shown in Table 6.1 below.

Table 6.1 Type of Test

Test Options:
1—Tube *[Permeater]* ***Permeameter*** Test
2—Soil Permeability Class Rating Test[i]
3—Percolation Test[ii]
4—Basin Flooding Test
5—Pit-bailing Test
6—Piezometer Test

Purpose of Test and Soil Conditions at Depth of Test	Acceptable Test Options
I. Determination of Design Permeability at Level of Infiltration, Identification of Hydraulically Restrictive or Excessively Coarse Horizons or Substrata Above the Water Table	
A. Sands and loamy sands with single grain structure	1, 2 or 3
B. *[Oil]* ***Other*** soil textures	
1. Undisturbed sample can be taken	1, 2 or 3
2. Undisturbed sample cannot be taken	2 or 3
II. Identification of Massive Rock Substrata Above the Water Table	4
III. Identification of Hydaulically Restrictive Horizons or Substrata and Massive Rock Substrata Below the Water Table	5 or 6
IV. Design of Seepage Pits	3

[i]This test shall not be used in soil horizons or substrata containing coarse fragments in excess of 50 percent by volume or 75 percent by weight.

[ii]When the percolation test is used as a basis of design, a 25 percent increase in the minimum required disposal field size shall be required as a factor of safety to compensate for the poor reliability of this test method.

(d) The number ***and location*** of permeability tests required shall be as follows:

1. When the tube permeameter test or the soil permeability class rating test are used to determine the design permeability at the level of infiltration, a minimum of one test shall be conducted within each disposal field and each test shall consist of a minimum of two test replicates. The administrative authority shall require additional tests or more than two replicates per test where the variability of test results exceeds the limits allowed in N.J.A.C. 7:9A-6.2(i)2, or where the results of soil profile pits or borings, made as prescribed in N.J.A.C. 7:9A-5.2, indicate the presence of more than one soil type within the area of the disposal field. When soil tests taken in different parts of the disposal field yield different results, the system shall be designed based upon the most restrictive conditions found within the area of the disposal field.

2. When the basin flooding test, the pit-bailing test or the piezometer test are required for identification of limiting zones, a minimum of one test shall be required *[in]* ***within or no further than 15 feet beyond the boundaries of*** each disposal field. The administrative authority may require more than one test where conditions vary from one part of the disposal field to another.

3. In cases where a pit-bailing or basin flooding test pit or part of a test pit has been excavated within the boundaries of the proposed disposal trench or bed, the pit shall be backfilled after use in a manner that will not result in a major discontinuity with respect to soil horizona-

on, density, or permeability in the soil below the disposal bed or 'ench.*

(e) When the percolation test is used the following requirements ıall be met:

1. When the percolation test is used to determine the design per-ıeability at the level of infiltration, the administrative authority shall :quire a minimum number of percolation tests based upon the size f the proposed disposal field, as follows:

ize of Disposal Field Square feet)	Minimum Number of Tests
Less than 1500	2
1500-3000	3
3000-4000	4
4000-6000	5

2. When the accuracy of a percolation test is questioned, one or ıore replicate tests may be performed at the same location within ıe disposal field as a means of better defining the true soil conditions t that particular location. The average of the results obtained from :plicate tests at a given location within the disposal field shall be sed for design purposes or for determination of soil suitability at ıat location.

3. The results of percolation tests taken at different locations ithin the disposal field shall not be averaged.

4. When a percolation test is abandoned due to lack of measurable ercolation, this test may be disregarded provided that a minimum f three replicate tests taken at that same location yield acceptable esults and provided that all subsequent test replicates taken at that ɔcation yield measurable percolation rates.

5. All percolation tests shall be located within the boundaries of he proposed disposal field and only the most restrictive percolation ate obtained within the disposal field shall be utilized for design ırposes.

6. Percolation tests shall be uniformly spaced within the area of he disposal field. Acceptable patterns of percolation test placement re shown in Appendix C.

7. When a seepage pit is proposed, as allowed in N.J.A.C. ':9A-7.6, a minimum of one percolation test shall be performed vithin each soil horizon or substratum between the invert of the inlet ınd the bottom of the seepage pit. The administrative authority may equire additional tests below the bottom of the seepage pit where he presence of a limiting zone is in question.

(f) The administrative authority or its authorized agent shall wit-ıess permeability tests in accordance with the requirements of N.J.A.C. 7:9A-3.6.

(g) When ***the*** results of a permeability test or a percolation test ıre *[suspect]* ***questionable***, the administrative authority or its ıuthorized agent may require that the test be repeated. When the ube permeameter test or the soil permeability class rating method s used, the administrative authority may collect and test replicate ;amples for verification of soil permeability. In cases where the results ɔbtained by the applicant differ from those obtained by the adminis-rative authority, the results obtained by the administrative authority ;hall be used for design or determination of soil suitability.

(h) Except as provided in N.J.A.C. 7:9A-6.3, only unadulterated vater to which no foreign substances or chemical additives have been ıdded shall be used to conduct permeability or percolation tests. The ıddition of foreign substances or chemical additives to water used 'or permeability testing shall be considered as a falsification of data subject to penalties as outlined in N.J.A.C. 7:9A-1.7.

(i) The results of all permeability tests or percolation tests, com-plete or incomplete, including all test replicates, taken within the disposal field or less than 150 feet beyond the boundaries of the proposed disposal field shall be reported to the administrative authority using data submission forms as provided in Appendix B. Results shall be reported regardless of whether or not they are accep-table and regardless of whether or not they are used as a basis for the disposal field design. Failure to report test results shall be con-sidered a falsification of data and may subject the violator to penal-ties as outlined in N.J.A.C. 7:9A-1.7.

(j) The administrative authority may allow the use of test methods other than the standard test options outlined in N.J.A.C. 7:9A-6.1(c), subject to review and approval of the test method by the Department.

(k) All soil testing procedures relied upon as a basis for the design of an individual subsurface sewage disposal system shall be carried out by or under the direct supervision of a licensed professional engineer.

7:9A-6.2 Tube permeameter test

(a) The following equipment is required for the tube permeameter test:

1. A thin-walled (one millimeter or less in thickness) metal tube, from one and one-half to three inches in diameter, six inches in length, beveled on the lower outside edge;

2. A wooden block with dimensions broader than the diameter of the tube in (a)1 above and a hammer, to drive the tube into the soil;

3. A small trowel;

4. A knife (to trim core);

5. Muslin or similar open-textured cloth and a rubberband;

6. A soaking basin of adequate size and depth to soak cores as prescribed in (c) below;

7. Fine gravel (from two to 10 millimeters in diameter);

8. A test basin of adequate length (generally 10 inches or greater) and width (generally four inches or greater) to accommodate one or more replicate samples at a time. The depth of the basin should be adequate to allow placement of the sample on a layer of gravel while keeping the bottom of the core several inches below the rim of the basin, as prescribed in (d) below (See Figure 5 of Appendix A);

9. A stopper which fits water-tight into the top of the sample tube and which is fitted with a glass standpipe from three to five inches long and from 0.25 to 0.75 inches in diameter (See Figure 5 of Appendix A). The standpipe should have a scale for measuring changes in water level over time as required in (d) below;

10. A small laboratory wash bottle for refilling standpipe;

11. A clock or watch with second hand;

12. A ruler (engineering scale is best);

13. One gallon of water per test. The water should be allowed to stand in an open container until clear of dissolved air. Boiling may be used to remove air provided that the water is allowed to cool down to room temperature before use; and

14. A two millimeter sieve.

(b) When the tube permeameter test is used, undisturbed samples shall be collected as prescribed in (d) below. When the texture of the soil to be tested is a sand or loamy sand and lack of soil cohesion or the presence of large amounts of coarse fragments, roots or worm channels prevent the taking of undisturbed samples, disturbed samples shall be taken as prescribed in (e) below. When the texure of the soil is other than a sand or loamy sand and undisturbed samples cannot be taken, the tube permeameter test shall not be used.

(c) When the tube permeameter test is used, a minimum of two replicate samples shall be taken and the procedures outlined in this section shall be followed for each replicate sample to be tested. It is recommended that more than two replicate samples be taken to avoid the necessity of re-sampling in the event that samples are damaged in transport or the results of one or more replicate tests must be rejected due to extreme variability of results, as required in (i) below. Replicate samples shall be taken from within the same soil horizon at the same location within the area of the proposed disposal field.

(d) The following procedure shall be used to collect each replicate sample:

1. Step One: Expose an undisturbed horizontal surface within and a minimum of three inches above the bottom of the soil horizon or layer to be tested.

2. Step Two: Position the sampling tube on the soil surface at the point chosen for sampling. Care should be taken to avoid large gravel or stones, large roots, worm holes or any discontinuity which might influence results. If the soil is excessively dry it may be moistened, but not saturated, provided that the force of falling water is not allowed to act directly upon the soil surface.

3. Step Three: Hold the wooden block on the top of the sampling tube and drive the tube into the soil a distance of from two to four

inches ***(but not entirely through the horizon)*** using light even blows with the hammer. Care should be taken to hit the block squarely in the center and to drive the tube straight down into the soil. Do not attempt to straighten the tube by pushing or by hitting the tube on the side with the hammer.

4. Step Four: When the tube has been driven to the desired depth, carefully remove the soil around the outside of the tube, insert a trowel into the soil below the tube and, exerting pressure from below, lift the sampling tube out of the soil.

5. Step Five: Trim the bottom of the soil core flush with the sampling tube using a knife and taking care not to smear the soil surface. Carefully invert the sampling tube and tap the side lightly with the handle of the knife or similar implement to remove any loose soil which may be resting on the top of the soil core and to verify that an undisturbed sample has been obtained. Omit this step in the case of sandy-textured non-cohesive soils with single grain structure. Check the top and bottom surfaces of the core sample and discard any sample which has worm holes or large cracks caused by handling.

6. Step Six: After the core has been checked for worm holes or signs of disturbance, stretch a piece of muslin cloth over the bottom of the tube and secure with a strong rubberband.

(e) The following procedure shall be used for the collection of disturbed samples for the tube permeameter test:

1. Step One: Collect an adequate volume of the soil or fill material to be tested. Spread the soil on a clean surface and allow to dry in the air until dry to the touch. An oven may be used to accelerate drying provided that the soil is allowed to cool down to room temperature before testing.

2. Step Two: Pass the soil through a two millimeter sieve to remove gravel and stones.

3. Step Three: Stretch a piece of muslin cloth over the bottom of the sampling tubes and place the tubes on a flat surface. Slowly pour the soil into each sampling tube while gently tapping the side of the tube with a hard instrument. Fill the tubes to a depth of three to four inches. Check the bulk density of the sample by dividing the weight of the sample (weight of sample tube containing sample minus the weight of empty sample tube) by the volume of the sample (length of sample multiplied by 3.14 r^2, where r is the internal radius of the sample tube). The minimum acceptable bulk density for disturbed samples is 1.2 grams per cubic centimeter.

(f) The following procedure shall be used for pre-soaking undisturbed or disturbed core samples for the tube permeameter test:

1. Step One: Place the soil core in the pre-soak basin and fill the basin with water to a point just below the top of the soil core. Never fill the basin to a level which is higher than the top of the soil core. Never use water directly from the tap to soak cores. Use only de-aired water as prescribed in (a)13 above. Allow the sample to soak until the top surface of the core is saturated with water. This may require only a few minutes of soaking for sandy textured soils or several days for clay textured soils. Failure to soak the sample for sufficient time may result in greatly reduced permeability measurements due to entrapped air.

2. Step Two: When the sample has soaked for sufficient time, place a one inch layer of fine gravel (from two to 10 millimeters in diameter) on top of the soil core in the sampling tube. Slowly fill the tube with de-aired water taking care not to disturb the surface of the core. A small spatula or similar implement may be used to break the fall of the water as it is poured into the tube.

3. Step Three: Immediately transfer the soil core to the test basin in which a layer of gravel has been placed and gently press the soil core into the gravel so that it stands vertically with its base positioned at the desired depth below the rim of the test basin.

(g) The following procedure shall be used to conduct the tube permeameter test:

1. Step One: When the soil core has been positioned at the desired height within the test basin (see Figure 5 of Appendix A), fill the test basin to overflowing with de-aired water. (Note: The hydraulic head used in the test depends upon the height of the top of the sample tube or standpipe above the rim of the test basin as shown in Figure 5. In general, a higher hydraulic head should be used for heavy textured soils to expedite the test and a lower head should be used for sandy textured soils to prevent an excessively fast flow rate).

2. Step Two: Fill the tube to overflowing with de-aired water and record the time, in minutes, required for the water level in the tube to drop a standard distance such as one-half inch, one inch, or two inches. Repeat this step until the rate of fall becomes constant or the difference between the highest and lowest of three successive readings is less than five percent. When the readings are less than 20 minutes in length the time should be reported to the nearest second.

3. Alternate Step Two: When the rate of fall observed in "Step Two" ((g)2 above) is slow, the flow rate may be increased by use of a standpipe as shown in Figure 5. Carefully insert the standpipe into the top of the sample tube and fill with de-aired water. The apparatus should be checked for leaks where the standpipe fits into the sample tube. Silicon jelly, petroleum jelly or a similar material may be used to prevent leakage. Measure the rate of fall of the water level in the standpipe as in Step Two.

(h) The permeability of each replicate sample tested shall be calculated using the following formula:

1. $K\ (in/hr) = 60\ min/hr \times L(in)/T(min) \times r^2/R^2 \times \ln (H_1/H_2)$

Where:

K is the permeability of the soil sample;

L is the length of the soil core, in inches;

T is the time, in minutes, required for the water level to drop from H_1 to H_2 during the final test interval;

r is the radius of the standpipe, in centimeters or inches;

R is the radius of the soil core, in the same units as "r";

ln is the natural logarithm

H_1 is the height of the water level above the rim of the test basin at the beginning of each test interval, in inches; and

H_2 is the height of the water level above the rim of the test basin at the end of each test interval, in inches.

Note: When the standpipe is not used, the term r^2/R^2 is omitted from the equation.

(i) Variability of test results shall be evaluated as follows:

1. Soil permeability classes are defined as follows:

Measured Permeability	Soil Permeability Class
Greater than 20 inches per hour ("in/hr")	K5
6-20 in/hr	K4
2-6 in/hr	K3
0.6-2 in/hr	K2
0.2-0.6 in/hr	K1
Less than 0.2 in/hr	K0

2. The variability of soil permeability test results shall be considered acceptable only where the results of all replicate tests fall within one soil permeability class or two adjacent permeability classes.

3. Where the results of replicate tests differ by more than one soil permeability class, the samples shall be examined for the following defects:

i. Cracks, worm channels, large root channels or poor soil tube contact within the sample yielding the highest permeability value(s);

ii. Large pieces of gravel, roots or unsaturated soil within the interior of the sample yielding the slowest permeability value(s); or

iii. Smearing or compaction of the upper or lower surface of the sample yielding the lowest permeability value(s).

4. If any of the defects described in (i)3 above are found, the defective core(s) shall be discarded and the test repeated using a new replicate sample for each defective replicate sample.

(j) When test results have been obtained with an acceptable range of variability as defined in (i) above, the results shall be interpreted as follows:

1. When the purpose of the test is to determine the design permeability at the level of infiltration, the slowest of the test replicate results shall be used for design purposes.

2. When the purpose of the test is to identify a hydraulically restrictive horizon or substratum above the water table, the horizon or substratum in question shall be considered hydraulically restrictive if the average permeability of the replicate samples tested falls within soil permeability class KO as defined in (i)1 above.

3. When the purpose of the test is to identify an excessively coarse horizon or substratum above the water table, the horizon or substratum in question shall be considered excessively coarse if the average permeability of the replicate samples tested falls within permeability class K5 as defined in (i)1 above.

(k) Where results of replicate tests exceed the limits of variability allowed in (i)2 above, the results shall be interpreted as follows:

1. When the purpose of the test is to determine the design permeability at the depth of infiltration, the slowest of the test replicate results shall be used for design purposes.

2. When the purpose of the test is to identify a hydraulically restrictive horizon or substratum above the water table, the horizon or substratum in question shall be considered hydraulically restrictive if the slowest permeability of the replicate samples tested falls within soil permeability class KO as defined in (i)1 above.

3. When the purpose of the test is to identify an excessively coarse horizon or substratum above the water table, the horizon or substratum in question shall be considered excessively coarse if the fastest permeability of the replicate samples tested falls within permeability class K5 as defined in (i)1 above.

7:9A-6.3 Soil permeability class rating

(a) Determination of permeability by the soil permeability class rating technique is based upon a hydrometer analysis performed as prescribed in (f) below, and a sieve analysis performed as prescribed in (g) below, together with evaluation of soil morphological properties as prescribed in N.J.A.C. 7:9A-5.2 and 5.3. As an alternate to the hydrometer analysis procedure prescribed in (f) below, the hydrometer analysis procedure given in ASTM STANDARD D 422, published by the American Society for Testing and Materials, may be used to determine the percent by weight of sand and the percent by weight of clay in the sample.

(b) The following equipment is required:

1. A two-millimeter sieve, with an eight inch or larger diameter frame;

2. A set of two sieves, with five inch or larger diameter frames, with covers and pans. The sieves shall meet the following specifications:

i. The first sieve shall be 0.25 millimeter, 60-mesh, Bureau of Standards, phosphor bronze wire cloth; and

ii. The second sieve shall be 0.047 millimeter, 300-mesh, Bureau of Standards, phosphor bronze wire cloth (0.0015wire);

3. A wooden rolling pan or mortar with rubber-tipped pestle;

4. An oven;

5. A scale (0.1 gram accuracy);

6. Distilled water;

7. A sodium hexametaphosphate solution of 50 grams of the salt dissolved in one liter of distilled water;

8. The electric mixer (see section 2.1.1 of ASTM Standard D 422) or mechanical shaker;

9. A 1000 milliliter graduated cylinder with rubber stopper;

10. A soil hydrometer calibrated to read in grams per liter at 68 degrees Fahrenheit (ASTM #152H);

11. A thermometer;

12. A clock with second hand; and

13. A sieve shaker

(c) A loose sample of soil, 200 grams or more, shall be collected from the soil horizon or substratum to be tested.

(d) The soil sample shall be prepared as follows:

1. Pass the soil sample to be tested, which has been allowed to air dry, through a two millimeter sieve to remove coarse fragments. Use moderate pressure with a wooden rolling pin or mortar with rubber-tipped pestle to break soil aggregates (but not soft rock fragments) which are larger than two millimeters.

2. Weigh both the material retained and the material which passes through the sieve. This method shall not be used where the weight of coarse fragments retained on the sieve exceeds 75 percent of the total sample weight.

3. Discard the coarse fragments.

(e) Dispersion of the soil sample shall be accomplished using a motor-mixed or a reciprocating shaker as prescribed below. This procedure shall be followed for each replicate sample tested.

1. Step One: Place 40 grams of air dry soil which has been passed through a two millimeter sieve into a mixing cup or one liter shaker bottle together with 100 milliliters of sodium hexametaphosphate solution and 400 milliliters of distilled water. Weigh out an additional 40 gram sample for determination of oven dry weight. Re-weigh the latter sample after keeping it in an oven at 105 degrees Centigrade for 24 hours. (Only one sample is required for determination of oven-dry weight regardless of the number of replicate samples used for the hydrometer analysis).

2. Step Two: If a motor mixer is used, allow the soil to soak in the cup for 10 minutes, place the cup on the mixer and mix the sample for five minutes. Next, transfer the suspension completely to the cylinder. Rinse the mixing cup with distilled water and pour the rinse water into the cylinder so that none of the suspension is left in the mixing cup. Bring the volume of the suspension in the cylinder up to the 1000 milliliter mark with distilled water. Allow the suspension to reach room temperature.

3. Alternate Step Two: If a reciprocating shaker is used in lieu of the mixer, shake the sample for 12 hours, at a rate of approximately 120 strokes per minute, and transfer to the cylinder rinsing the shaking bottles with distilled water. Bring the volume of the suspension in the cylinder to the 1000 milliliter mark with distilled water. Allow the suspension to reach room temperature.

(f) The following procedure shall be used for the hydrometer analysis:

1. Step One: Calibrate the hydrometer as follows: Add 100 milliliters of sodium hexametaphosphate solution to a 1000 milliliter cylinder and fill to the 1000 milliliter mark with distilled water. Place the stopper in the cylinder and shake vigorously in a back and forth motion. Place the cylinder on the table and lower the hydrometer into the solution. Determine the scale reading at the upper edge of the meniscus surrounding the hydrometer stem. This is the hydrometer calibration, Rc. Record the temperature in degrees Fahrenheit (°F).

2. Step Two: Place a stopper in th cylinder containing the dispersed soil sample, shake the cylinder using a back and forth motion (avoid causing circular currents in the cylinder) and place the cylinder on the table. Record the time immediately. After 20 seconds carefully lower the hydrometer into the cylinder and, after exactly 40 seconds, read the hydrometer. Repeat this step until two successive readings are obtained which agree within 0.5 gram per liter.

3. Step Three: Determine the temperature of the suspension and correct the hydrometer reading as follows:

i. Subtract the reading obtained in Step One, Rc, from the hydrometer reading.

ii. For each degree Fahrenheit above 68 add 0.2 gram to the reading or for each degree Fahrenheit below 68 subtract 0.2 gram.

4. Step Four: Remove the hydrometer, stopper the cylinder, and shake the hydrometer as in Step Two. Remove the stopper and immediately place the cylinder on a table where it will not be disturbed. Take a hydrometer reading after exactly two hours and correct the hydrometer reading as in Step Three.

5. Step Five: Using test data reporting forms provided in Appendix B, record, the following data:

i. Oven dry weight of soil, Wt (from Step One of (e) above);

ii. Hydrometer calibration, Rc (Step One);

iii. Hydrometer reading at 40 seconds, R1 (Step Two);

iv. Temperature of suspension (Step Three);

v. Corrected hydrometer reading, R1′ (Step Three);

vi. Hydrometer reading at two hours, R2′ (Step Four); and

vii. Corrected hydrometer reading, R2′ (Step Four);

6. Step Six: Calculate the percent of sand and percent of clay as follows:

i. Percent of sand = (Wt. - R′)/Wt. x 100

ii. Percent of clay = R2′/Wt. x 100

NOTE: The hydrometer analysis may not be carried out in a room where the temperature varies more than two degrees during the time required to perform the test.

(g) A sieve analysis shall be performed as prescribed below for each replicate sample used in the hydrometer analysis except when the content of sand determined as prescribed in Step Six of (f) above is less than 25 percent.

1. Step One: After the completion of Step Four in (f) above, pour the suspension from the sedimentation cylinder into a 0.047 millimeter sieve and wash the fine material through the sieve using running water.

2. Step Two: Dry the sieve and its contents in an oven. Cool the sieve and transfer the sand to a pre-weighed evaporating dish (or similar heat resistant vessel) carefully, using a soft brush.

3. Step Three: Place the dish and its contents in an oven at 105 degrees Centigrade, for two hours, to dry. Cool the dish and its contents and weigh to the nearest 0.01 gram. Determine the weight of the sand by subtracting the weight of the dish.

4. Step Four: Assemble a stack of sieves as specified in (a)2 above, consisting of the pan, the 0.047 millimeter sieve and the 0.25 millimeter sieve, from bottom to top, respectively. Inspect sieves carefully before using to make sure that they are clean and undamaged. Transfer the sand from the evaporating dish to the top sieve using a soft brush to complete the transfer.

5. Step Five: Put the cover on the top sieve, firmly fasten the sieves to the sieve shaker and shake for three minutes. Disassemble the stack of sieves, transfer the contents of each sieve to a weighing dish separately. Weigh the contents of each sieve to the nearest 0.01 gram. Record the following data:

i. Total weight of sand fraction, from Step Three;

ii. Weight of sand passing the 0.25 millimeter sieve (retained in the 0.047 millimeter sieve);

iii. Percent fine plus very fine sand: Divide weight of stand passing 0.25 millimeter sieve by total weight of sand fraction and multiply this value by 100.

(h) The following procedure shall be used to determine the soil permeability class:

1. Step One: Using the soil permeability/textural triangle, Figure 6 of Appendix A, determine the soil permeability class of the soil horizon being tested, based upon the average percentage of sand and the average percentage of clay in the replicate samples tested as prescribed in (f) above.

2. Step Two: If the average percentage of fine plus very fine sand in the replicate samples tested, determined as prescribed in Step Five of section (g) above, is 50 percent or greater, adjust the permeability class determined in Step One of this subsection to the next slowest class.

3. Step Three: If the soil horizon being tested is found to have a massive or platy structure or a hard, very hard, firm, very firm or extremely firm consistence, determined as prescribed in N.J.A.C. 7:9A-5.3, adjust the permeability class determined in Step One of this subsection to the next slowest class.

7:9A-6.4 Percolation test

(a) The following equipment is required for the percolation test:

1. A soil auger, post-hole digger or other means of preparing a test hole as prescribed in (b) below;

2. A knife or trowel for removing smeared or compacted surfaces from the walls of the test hole;

3. Fine (from two to 10 millimeter in diameter) gravel (optional);

4. A water supply (50 gallons is generally adequate);

5. A straight board (to serve as fixed reference point for water level measurements);

6. A clock and a ruler (12 inches or longer, engineering scale);

7. An automatic siphon or float valve (optional); and

8. A hole liner consisting of a 14 inch section of slotted pipe or well screen, or a 14 inch length of one-quarter inch hardware cloth or other similar material rolled into a tube (optional). The hole liner shall be no smaller than two inches in diameter less than the test hole.

(b) Percolation tests shall not be conducted in frozen ground or in holes which have been allowed to remain open to the atmosphere for periods greater than three days. The required configuration of the test hole is illustrated in Figure 7 of Appendix A. The following procedure shall be used in preparation of the test hole.

1. Step One: Excavate a test hole having horizontal dimensions of eight to 12 inches at a depth such that the lower six inches of the test hole are contained entirely within the soil horizon or layer of fill material being tested. In order to facilitate access to the lower portion of the hole, the test hole may be excavated from the bottom of a shallow pit provided that the vertical axis of the test hole is a minimum of 14 inches measured from the bottom of the pit to the bottom of the test hole.

2. Step Two: In soil textures other than sands or loamy sands, remove smeared or compacted soil from the sides and bottom of the test hole by inserting the tip of a knife or trowel into the soil surface and gently prying upward and outward. Remove loose soil from the test hole.

3. Step Three: At this point, a one-half inch layer of fine gravel may be placed in the bottom of the hole to protect the soil surface from disturbance or siltation when water is added to the hole. If additional protection is desired, a hole liner as described in (a)8 above may be placed in the hole and the space between the liner and the sides of the hole may be filled with fine gravel.

4. Step Four: Place and secure a straight board horizontally across the top of the test hole, as shown in Figure 7 of Appendix A, to serve as a fixed point for depth of water measurements to be made at appointed time intervals throughout the test.

(c) All soils, except for sandy textured soils which meet the requirements of (d) below, shall be pre-soaked using the following procedure. Any soil which exhibits cracks or fissures between soil aggregates shall be pre-soaked regardless of the texture. Pre-soak as follows:

1. Fill the test hole with water and maintain a minimum depth of 12 inches for a period of four hours by refilling as necessary or by means of an automatic siphon or float valve.

2. At the end of four hours, cease adding water to the hole and allow the hole to drain for a period of from 16 to 24 hours.

(d) In sandy textured soils, including sands, loamy sands and sandy loams, where a rapid percolation rate is anticipated, fill the test hole to a depth of 12 inches and allow to drain completely. Refill the hole to a depth of 12 inches and record the time required for the hole to drain completely. If this time is less than 60 minutes, the test procedure may begin as prescribed in (e) below without further pre-soaking. If water remains in the test hole after 60 minutes, the hole must be pre-soaked as prescribed in (c) above before proceeding with the test.

(e) Immediately following the pre-soak procedure (no more than *[24]* ***28*** hours after the start of the pre-soak procedure), the percolation rate shall be determined using the following procedure:

1. Step One: If water remains in the test hole after the completion of the pre-soak period, the test shall be terminated and the percolation rate shall be reported as greater than 60 minutes per inch. If no water remains in the test hole, fill to a depth of seven inches. At a five to 30 minute time interval, depending upon the rate of fall, record the drop in water level to the nearest one-tenth of an inch. Refill the hole at the end of each time interval and repeat this procedure using the same time interval until a constant rate of fall is attained. A constant rate of fall is attained when the difference between the highest and lowest of three consecutive measurements is no greater than two-tenths of an inch.

2. Step Two: Immediately after the completion of Step One, refill the test hole to a depth of seven inches and record the time required for exactly six inches of water to seep away. This time divided by six will be the percolation rate in minutes per inch.

(f) The results of the percolation test shall be interpreted as follows:

1. When the purpose of the test is to determine the design permeability at the level of infiltration, the slowest percolation rate determined within the proposed disposal field shall be used for design purposes. If any of the measured percolation rates are slower than 60 minutes per inch or faster than three minutes per inch the application shall not be approved. A percolation rate may be the result of a single percolation test or the average of several replicate tests, as allowed in N.J.A.C. 7:9A-6.1(e)2.

2. When the result of the test(s) is an average percolation rate slower than 60 minutes per inch, the horizon or substratum in question shall be considered hydraulically restrictive.

3. When the result of the test(s) is an average percolation rate faster than three minutes per inch, the horizon or substratum in question shall be considered excessively coarse.

4. When a seepage pit is proposed, the design percolation rate shall be calculated by adding the products of the percolation rate and the thickness of each individual horizon tested and dividing the result by the total thickness of all the horizons tested. Any horizon with a percolation rate slower than 40 minutes per inch shall be excluded from this computation.

7:9A-6.5 Pit-bailing test

(a) The following equipment is required for performing a pit-bailing test (see Figure 8 in Appendix A):

1. A back-hoe;
2. Wooden or metal stakes, string and a hanging level;
3. A steel measuring tape;
4. A pump (optional);
5. A stop-watch; and
6. A perforated pipe, with a three inch diameter or greater.

(b) The following procedure shall be used for preparation of the test pit:

1. Step One: Excavate a test pit extending into but not below the soil horizon or layer to be tested. The bottom of the pit should be a minimum of 1.5 feet below the observed water level and a minimum of six feet below the proposed level of infiltration. The bottom of the pit should be relatively flat and level. The shape of the pit within the depth interval tested should be approximately square or round. A rectangular or elliptical pit may be used provided that, within the depth interval tested, the length of the long dimension is no more than twice the length of the short dimension. The excavation made for a soil profile pit as prescribed in N.J.A.C. 7:9A-5.2 may be used provided that all the above requirements are met.

2. Step Two: Allow the water level to rise in the pit for a minimum of two hours and until the sides have stabilized. If large volumes of soil have slumped into the pit, this soil must be removed before proceeding with the test. If the sides of the pit continue to slump and cannot be stabilized, the test shall be abandoned. If water is observed seeping into the pit from soil horizons above the zone of saturation in which the test is being conducted, adequate means shall be taken to intercept and divert this water away from the test pit, otherwise the pit-bailing test shall not be used. If, during the excavation of the pit, the water level in the pit rises suddenly after a hydraulically restrictive horizon is penetrated, and continues to rise above the bottom of the hydraulically restrictive horizon, the pit-bailing test shall not be used.

(c) The following procedure shall be used for performance of the pit-bailing test and the calculation of test results:

1. Step One: Establish a fixed reference point for depth to water level measurements which will not be disturbed during removal of water from the pit or which can be temporarily removed and later re-positioned in exactly the same place. One way to establish a removable reference level mark is as follows:

i. Drive stakes firmly into the ground on opposite sides of the test pit, several feet beyond the edge, where they will not be disturbed.

ii. Next, stretch a string with hanging level from stake to stake, over the pit, and adjust the string to make it level.

iii. Finally, secure the string to the stakes and mark or notch the positions on the stakes where the string is attached so that the string may be removed temporarily and later repositioned exactly in its place.

2. Step Two: Measure the distance from the reference level to the bottom of the pit and to the observed water level.

3. Step Three: Lower the water in the pit by at least one foot, by pumping or bailing. If the back-hoe bucket is used to remove water from the pit, it may be necessary to remove the reference level marker prior to bailing and re-position it in its original position prior to beginning step four.

4. Step Four: Choose a time interval, based upon the observed rate of water level rise. At the end of each time interval, measure and record the information indicated in (c)4 i through iii below and repeat these measurements until the water level in the pit has risen a total of one foot or more.

i. Time, in minutes (the time interval, in minutes, between measurements should be chosen to allow the water level to rise by several inches);

ii. Depth of water level below the reference string at the end of each time interval, to the nearest eighth of an inch or one-hundredth of a foot; and

iii. Area of water surface, in square feet. Measure appropriate dimensions of the water surface, depending on the shape of the pit, to permit calculation of the area of the water surface at the time of each water level depth measurement. Entering a soil pit excavated below the water table can be extremely dangerous and should be avoided unless the pit is relatively shallow and the sides of the pit have been stepped and sloped as prescribed in N.J.A.C. 7:9A-5.2(e)3 to eliminate the likelihood of sudden and severe cave-in of the pit. The distance between two opposite edges of the water surface can be measured accurately, without entering the pit, as follows. Place a board on the ground, perpendicular to the side of the pit and extending out over the edge. Using a plumb-bob, position this board so that its end is directly over the edge of the water surface in the pit, below. Position a second board, in the same manner, on the opposite side of the pit. Measure the distance between the ends of the boards to determine the length of the water surface below.

5. Step Five: Determine whether an adequately consistent set of data has been obtained in accordance with (e)5i and ii below.

i. Calculate the permeability for each time interval using the following equation:

$$K_a = (h_{rise}/t) \times [A_{av.}/2.27\ (H^2-h^2)] \times 60\ min/hr$$

where:

K_a = permeability, in inches per hour;

h_{rise} = difference in depth to water level at the beginning and end of the time interval, in inches;

t = length of time interval, minutes;

$A_{av.}$ = average of water surface area at the beginning of time interval (end of previous time interval) and at the end of the time interval, in square feet;

H = difference between depth to assumed static water level and actual or assumed depth to impermeable stratum, in feet (Depth to impermeable stratum, if unknown, is assumed to be one and one-half times the depth of the pit.); and

h = difference between average depth of water levels at beginning and end of time interval and actual or assumed depth to the impermeable stratum, in feet.

ii. If the calculated values of K_a for successive time intervals show either an increasing or a decreasing trend, repeat Steps Three and Four until consecutive values of K_a are approximately equal.

6. Step Six: Remove as much water as possible from the pit. Continue excavating the pit until an impermeable stratum is encountered or as deep as possible considering the limitations of the excavating equipment used and the nature of the soil conditions encountered. Where no impermeable stratum is encountered, the impermeable stratum shall be assumed to be at the bottom of the excavation.

7. Step Seven: Immediately place upright in the pit a piezometer consisting of a perforated pipe, three inches in diameter or larger, of sufficient length to extend from the bottom of the pit to above the ground surface. Cap and hold the piezometer vertical while backfilling the pit. When the pit is almost completely filled and the piezometer is secure in its position, record the height of the piezometer above the reference level. Finish backfilling the pit and mound soil around the piezometer and over the pit to divert surface water.

8. Step Eight: Return 24 hours or more later and record the depth from the top of the piezometer to the static water level. Correct this depth by subtracting from it the height of the piezometer above the reference level measured in Step Seven.

9. Step Nine: Re-calculate the permeability, K, using the following formula:

$$K = (h_{rise}/t) \times [A_{av.}/2.27\ (H^2-h^2)] \times 60\ min/hr$$

where:

K = permeability, inches per hour;

The values of h_{rise}, t, and $A_{av.}$ are the values recorded for these parameters in the last time interval of Step Four of this subsection;

H = difference between depth to actual corrected static water level and actual or assumed depth to impermeable stratum, recorded in Steps Six and Eight, in feet; and

h = difference between the average depth of water levels at the beginning and end of the last time interval recorded in Step Four and the actual or assumed depth to the impermeable stratum recorded in Step Six, in feet.

(d) When the permeability calculated in Step Eight of (c) above is slower than 0.2 inch per hour, the horizon(s) being tested shall be considered a hydraulically restrictive horizon and shall not be considered an acceptable zone of wastewater disposal.

(e) *[When piezometers are installed for the purpose of conducting this test, the piezometers shall be removed or filled with cement grout after completion of the test except in those cases where the piezometers will be utilized for monitoring ground water levels or for ground water sampling as required by the administrative authority or by the Department. Piezometers used for monitoring ground water levels over extended periods of time, or for ground water sampling in connection with water quality monitoring, may be considered to be monitoring wells requiring installation by a licensed well driller and a permit issued by the Department pursuant to State law (N.J.S.A. 58:4-1 et seq.). The applicant shall contact the Department for a determination of whether or not a permit is required.]* ***When piezometers are used for conducting this test, they shall be installed and removed in accordance with the Department's procedures pursuant to N.J.S.A. 58:4A-4.1 et seq.***

7:9A-6.6 Piezometer test

(a) The following equipment is required for the piezometer test:

1. A screw type soil auger, minimum of one inch in diameter, with extensions;

2. A piezometer tube consisting of a metal pipe beveled on the outside lower edge, with an inside diameter about one-sixteenth of an inch larger than the diameter of the soil auger;

3. A maul or hammer, to drive pipe into the ground;

4. A pump with tubing, to evacuate water from piezometer tube;

5. A stop watch;

6. A means for accurately measuring the water level within the piezometer tube as a function of time, which may consist of one of the following:

i. A light-weight rod with measuring scale mounted on a cylindrical float with a diameter one-quarter inch or more smaller than the inside diameter of the piezometer tube;

ii. An electric probe consisting of a thin wire embedded in and protruding from the tapered end of a wooden rod, graduated in inches, and connected in series to a limiting resistor, a millimeter and a 33-volt hearing-aid battery, the opposite terminal of which is connected to the piezometer tube; or

iii. For depths greater than six feet, an electric sounder or the "wetted tape" method should be used.

(b) The following procedure shall be used for the piezometer test:

1. Step One: Remove any sod, vegetation or leaf litter from the ground surface where the test hole will be excavated. The test hole may be excavated from the existing ground surface or from the bottom of a larger excavation or soil profile pit.

2. Install the piezometer in accordance with Step Two A and Two B outlined in (b)2i and ii below or Alternate Step Two outlined in (b)2iii below.

i. Step Two A: Using the soil auger, drill the test hole down to a depth of six inches. Remove the auger and drive the piezometer tube into the hole to a depth of five inches. Re-insert the soil auger through the piezometer tube and into the test hole and drill down six inches further. Remove the soil auger, drive the piezometer tube six inches deeper, re-insert the auger and drill six inches deeper, repeating this procedure until the test hole reaches the top of the soil horizon or zone within a soil horizon to be tested.

ii. Step Two B: Using the soil auger, extend the test hole exactly four inches below the bottom of the piezometer tube (see Figure 9 of Appendix A). In coarse-textured soils lacking cohesion, where the unlined cavity at the bottom of the test hole may be unstable, use a piezometer tube with closely spaced perforations in the lower four inches of its length and drive the tube down to the bottom of the test hole.

iii. Alternate Step Two: Power equipment may be used in lieu of the hand auger to drill the test hole and install the piezometer casing provided that the casing fits tightly into the hole or the installation is sealed with bentonite so that leakage does not occur around the outside of the casing and provided that a suitable unlined cavity is provided at the bottom of the bore hole as required in Step Two B above.

3. Step Three: Allow the lower portion of the test hole to fill with ground water and pump the water out one or more times to minimize the effect of soil puddling and to flush the soil pores in the unlined portion of the test hole.

4. Step Four: Allow the water level to rise within the piezometer until the water level becomes relatively stable. Note the approximate rate of rise and record the static water level using the top of the piezometer tube as a reference point.

5. Step Five: Pump most of the water out of the piezometer tube. Record the time and the depth of the water level below the top of the tube. After an appropriate interval of time, record the new depth of the water level. Choose the length of the time interval based upon the rate of rise observed in Step Four so that the difference in water levels at the beginning and end of the time interval will be large enough to permit an accurate measurement, but do not allow the water level to rise to within eight inches of the static level determined in Step Four.

6. Step Six: Repeat Step Five of this subsection, lowering the water level to approximately the same depth and using the same time interval, until consistent results are obtained.

7. Step Seven: Allow the water level in the piezometer tube to rise and, a minimum of 24 hours later, record the depth of the water table for use in the calculation of permeability.

(c) The permeability of the soil horizon tested shall be determined as follows:

1. Step One: Determine the value of the A-parameter from Figure 10 of Appendix A based upon D, the diameter of the soil auger (or drill bit).

2. Step Two: Calculate the permeability, K, in inches per hour, using the following formula:

$K = 60 \text{ min/hr} \times (3.14R^2)/At \times \ln (d_1 - D_{stat}/d_2 - D_{stat})$ where:

K = the permeability of the soil horizon tested, in inches per hour;

R = the inside radius of the piezometer tube, in inches;

ln = the natural logarithm;

D_{stat} = the depth of the static water level below the top of the piezometer tube determined in Step Seven, in inches;

d_1 = depth of the water level below the top of the piezometer tube at the beginning of the last time interval, in inches;

d_2 = depth of the water level below the top of the piezometer tube at the end of the last time interval, in inches;

t = length of time interval, in minutes; and

A = value determined in Step One above, in inches.

(d) When the permeability calculated in (c)2 above is less than 0.2 inch per hour, the horizon or substratum in question shall be considered hydraulically restrictive and shall not be considered an acceptable zone of wastewater disposal.

(e) *[When piezometers are installed for the purpose of conducting this test, the piezometers shall be removed or filled with cement grout after completion of the test except in those cases where the piezometers will be utilized for monitoring ground water levels or for ground water sampling as required by the administrative authority or by the Department. Piezometers used for monitoring ground water levels over extended periods of time, or for ground water sampling in connection with water quality monitoring, may be considered to be monitoring wells requiring installation by a licensed well driller and a permit issued by the Department pursuant to state law (N.J.S.A. 58:4-1 et seq.). The applicant shall contact the Department for a determination of whether or not a permit is required.]* ***When piezometers are used for conducting this test, they shall be installed and removed in accordance with the Department's procedures pursuant to N.J.S.A. 58:4A-4.1 et seq.***

7:9A-6.7 Basin flooding test

(a) The following equipment is required for basin flooding test:

1. Excavating equipment capable of producing a test basin as prescribed in (b) below;

2. A water supply (minimum of 375 gallons per basin filling); and
3. A means for accurately measuring the water level within the basin as required in (c) below.

(b) A test basin meeting the following requirements shall be excavated within or immediately adjacent to the proposed disposal field.

1. The bottom of the test basin shall be at a depth between six and eight feet below the bottom of the proposed level of infiltration.
2. The bottom area of the basin shall be a minimum of 50 square feet.
3. A soil profile pit excavated as prescribed in N.J.A.C. 7:9A-5.2 may be utilized for this test provided that the requirements of (b)1 and 2 above are satisfied.
4. The bottom of the basin should be made as level as possible so that high areas of rock do not project above the water level when the basin is flooded as prescribed in (c) below.
5. If ground water is observed within the test basin, the basin flooding test shall not be used.

(c) The following test procedure shall be used for the basin flooding test:

1. Step One: Fill the test basin with exactly 12 inches of water and record the time. Allow the basin to drain completely. If the time required for the basin to drain completely is greater than 24 hours, the test shall be terminated and the limiting zone in question shall be considered to be a massive rock substratum.
2. Step Two: If the basin drains completely within 24 hours after the first flooding, immediately refill the basin to a depth of 12 inches and record the time. If the basin drains completely within 24 hours of the second filling, the limiting zone in question shall be considered to be fractured rock substratum. If water remains in the basin after 24 hours the limiting zone in question shall be considered to be a massive rock substratum.

(d) Due to the potential safety hazards which are posed by the excavation of a large test basin such as that required for this test, adequate safety measures shall be taken including the use of stepped and sloped sidewalls as shown in Figure 2 of Appendix A to permit safe access to the test basin during the test procedure as well as the use of warning signs or a fence to limit access to the basin by the public during periods when the basin is left unattended, or both.

(e) The basin flooding test shall not be conducted in rock strata which have been blasted with explosives.

SUBCHAPTER 7. GENERAL DESIGN AND CONSTRUCTION REQUIREMENTS

7:9A-7.1 Design requirements

(a) *[An]* ***A professional*** *engineer who is licensed in the State of New Jersey shall design all individual subsurface sewage disposal systems.

(b) The engineer shall take into consideration slope, surface drainage, soil characteristics, the presence and depth of limiting zones within the soil, soil permeability, type of wastes and the expected volume of sanitary sewage in the design of all individual subsurface sewage disposal systems.

(c) Individual subsurface sewage disposal systems shall not be designed in a manner that will permit a direct discharge of sanitary sewage or septic tank effluent onto the surface of the ground, into a subsurface drain, or into any water course.

7:9A-7.2 Construction

(a) The system and all its component parts shall be constructed and installed to conform in all details to the requirements set forth in this chapter and to the engineering design which has been approved by the administrative authority. Departures from the approved design which become necessary due to circumstances which arise during construction and installation shall be approved by the design engineer and the administrative authority ***in accordance with N.J.A.C. 7:9A-3.7**** and shall meet or exceed the requirements of this chapter.

(b) Construction and installation shall be performed in such a manner that the capacity of the soil or fill material to adequately absorb or purify the septic tank effluent is not adversely affected.

7:9A-7.3 Type of wastes

(a) The system(s) shall be designed to receive all sanitary sewage from the building served except in the following cases:

1. Separate systems may be designed to receive only greywater, or only blackwater, as allowed in N.J.A.C. 7:9A-7.5.
2. Laundry wastes may be discharged into a seepage pit when approved by the administrative authority as a means of reducing hydraulic loading on an existing disposal field which has been malfunctioning.

(b) Drainage from basement floors, footings or roofs shall not enter the individual subsurface sewage disposal system and shall be diverted away from the area of the disposal field. Backwash from water softeners shall not be disposed of within the ***subsurface sewage disposal*** system *[but may be discharged into a drywell located away from the area of the disposal field]*.

(c) Discharge of industrial wastes onto the land, into the soil, or into the ground water is prohibited. The administrative authority shall not approve any system serving any establishment engaged in activities such as photo-processing, dry-cleaning, printing, furniture stripping and refinishing, manufacturing, automobile painting, or any other process or activity which may result in discharge of industrial wastes into the system, without prior approval from the Department. Where doubt exists as to whether or not a waste generated by a particular facility may be considered as an industial waste, the administrative authority shall instruct the applicant to contact the Department for a determination of whether or not a NJPDES permit will be required.

(d) The administrative authority shall report to the Department any discharge of industrial wastes into an individual subsurface sewage disposal system. Use of sewage system cleaners which contain restricted chemical materials shall be considered to be a discharge of industrial wastes and is prohibited.

7:9A-7.4 Volume of sanitary sewage

(a) Each component of the individual subsurface sewage disposal system shall be designed and constructed to adequately treat and dispose of the expected volume of sanitary sewage to be discharged from the premises to be served. The expected volume of sanitary sewage from private residential sources shall be determined based on the criteria set forth in (b) below. The expected volume of sanitary sewage from commerical or institutional establishments shall be determined based on the criteria set forth in (c) below.

(b) The criteria for estimating the volume of sanitary sewage from private residential sources shall be as follows:

1. The daily volume for each bedroom or dwelling unit shall be:

Volume, first bedroom	200 gallons per day ("gal/day")
Volume, each additional bedroom	150 gal/day
Minimum volume per dwelling unit	350 gal/day
Minimum volume per apartment	350 gal/day

2. The minimum volume for a dwelling unit shall be reduced to 200 gallons per day in the case of deed restricted senior citizen communities or mobile home parks with dwelling units less than 500 square feet in size.

(c) The volume of sanitary sewage *[for]* ***from*** commercial or institutional establishments shall be based upon the type and size of the facility*[, the type and number of plumbing fixtures present or proposed,]* and the maximum expected number of persons that may be served during any single day of operation. The volume shall be estimated as follows:

1. Depending upon the method of estimation selected from (d) below, multiply the number of gallons per person (user) by the maximum expected number of persons per day, or multiply the number of gallons per facility (unit) per day by the number of facilities (units) present or proposed.
2. *[When employees will be present at the establishment, estimate]* ***Estimate*** the maximum number of employees which may be present during a single day of operation and add an additional 15 gallons per employee per ***each additional*** eight hour shift, except *[where otherwise indicated]* ***in the case of (d)24, (d)32, (d)38 and (d)40 below****.

(d) The criteria listed below are minimum standards for average facilities of the categories listed. In cases where a facility does not fall within any of the categories listed or where actual water use data is available relating to the facility, the administrative authority may approve the use of other documented criteria provided that the value used for design is at least 50 percent greater than the average daily volume of sewage.

Type of Establishment	Method of Estimation (gallon per user or gallon per unit per day)
1. Airport	5 gal/passenger
2. Assembly Hall	3 gal/seat/day
3. Auto Service Station	10 gal/car served
4. Bar	5 gal/patron
5. Bathhouse with shower	25 gal/person
without shower	10 gal/person
6. Beach Club	25 gal/person
*[7. Beauty Salon	120 gal/sink/day]*
*7.**[8.]* Boarding House, Meals	75 gal/guest[2]
	15 gal/non-resident boarder
*8.**[9.]* Bowling Alley, no food	125 gal/lane/day
with food, add	5 gal/patron
*9.**[10.]* Bus Stop Rest Area	5 gal/passenger
*10.**[11.]* Cafeteria	5 gal/customer
*11.**[12.]* Camp, Cottage (barracks type)	65 gal/person
*12.**[13.]* Camp, Day, no meals	20 gal/person
*13.**[14.]* Camp, Resort	100 gal/site/day[2]
*14.**[15.]* Camp, Trailer	100 gal/site/day[2]
with toilets, add	10 gal/person/day
*15.**[16.]* Church, with or without kitchen	3 gal/seat/day
*16.**[17.]* Cocktail Lounge	5 gal/customer
*17.**[18.]* Coffee Shop	5 gal/customer
*18.**[19.]* Comfort Station/Picnic Grounds, with toilets	10 gal/person
with toilets and showers	15 gal/person
*19.**[20.]* Cottages	100 gal/person[2] minimum 350 gal/dwelling unit/day
*20.**[21.]* Country Club	60 gal/member/day
	25 gal/non-member
*21.**[22.]* Dining Hall	5 gal/customer
*22.**[23.]* Dormitory, Bunkhouse	40 gal/bed/day
*23.**[24.]* Factory/Industrial Building	15 gal/employee per eight hour shift
with showers, add	15 gal/employee per eight hour shift
*24.**[25.]* Hospital, Medical	250 gal/bed/day
*25.**[26.]* Hospital, Mental	150 gal/bed/day
*26.**[27.]* Hotels	130 gal/room/day
*27.**[28.]* Institution, Other than hospital	150 gal/bed/day
*28.**[29.]* Laundry, Self-service	50 gal/wash
*29.**[30.]* Motel	130 gal/room/day
*30.**[31.]* Nursing/Rest Home	150 gal/bed/day
*31.**[32.]* Office Buildings	15 gal/employee per eight hour shift or 0.125 gal/ft², whichever is greatest
*32.**[33.]* Prison	150 gal/inmate/day
*33.**[34.]* Restaurant	
sanitary wastes only	5 gal/patron
kitchen wastes, add	5 gal/patron
*34.**[35.]* Rooming House, no meals	65 gal/bed/day
*35.**[36.]* School, Boarding	100 gal/student/day
*36.**[37.]* School, Day	
No cafeteria or showers	10 gal/student/day
Cafeteria only	15 gal/student/day
Cafeteria and showers	20 gal/student/day
Cafeteria, showers and laboratories	25 gal/student/day
*37.**[38.]* Shopping Center	0.125 gal/square ft./day[1]
*38.**[39.]* Stadium	3 gal/seat/day
*39.**[40.]* Store	0.125 gal/square ft./day[1]
*40.**[41.]* Swimming Pool	10 gal/person
*41.**[42.]* Theater, Indoor	3 gal/seat/day
*42.**[43.]* Theater, Outdoor	10 gal/parking space
*43.**[44.]* Visitor Center	5 gal/visitor

[1]Volume of sanitary sewage for employees included within method of estimation indicated.

[2]If laundry wastes are anticipated, increase the estimated flow by 50 percent.

7:9A-7.5 Separate disposal of greywater and blackwater

A greywater system may be approved by the administrative authority provided that all of the requirements of these standards are satisfied and provided that an acceptable means for disposal of the blackwater from the building served is indicated in the system design. When the blackwater from the building served by a greywater system is to be disposed of into a waterless toilet, a variance from the Uniform Construction Code, Plumbing sub-code, N.J.A.C. 5:23-3.5, must be obtained by the applicant prior to approval of the greywater system by the administrative authority and the volume of sanitary sewage to be used in the design of the greywater system shall be determined as prescribed in N.J.A.C. 7:9A-7.4. When the blackwater from the building served by a greywater system is to be disposed of into a separate subsurface sewage disposal system, the blackwater system shall meet all the requirements of this chapter and the volume of sanitary sewage used in the design of both the greywater system and the blackwater system shall be a minimum of 75 percent of the volume of sanitary sewage determined as prescribed in N.J.A.C. 7:9A-7.4.

7:9A-7.6 Type of system

Each system approved by the administrative authority pursuant to this chapter shall consist of a septic tank which discharges effluent through a gravity flow, gravity dosing or pressure dosing network to a disposal field as hereafter described. Seepage pits shall not be approved for new installations except in the case of a greywater system as provided by in N.J.A.C. 7:9A-7.5. Installation of a seepage pit may be approved as an alteration for an existing system subject to the requirements of N.J.A.C. 7:9A-3.3.

7:9A-7.7 Building sewer

The building sewer shall be designed and constructed in accordance with the provisions of the State Uniform Construction Code, N.J.A.C. 5:23, adopted pursuant to the Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq.

SUBCHAPTER 8. PRETREATMENT UNITS

7:9A-8.1 Grease traps

(a) Restaurants, cafeterias, institutional kitchens and other installations discharging large quantities of grease shall use a grease trap. A garbage grinder shall not be used when a grease trap is required.

(b) The grease trap shall be installed in a separate line serving that part of the plumbing system into which the grease will be discharged. The grease trap shall be located close to the source of the wastewater, where the wastewater is still hot, to facilitate separation. Grease traps shall be located, designed and constructed in a manner that will permit easy access and cleaning.

(c) The following equation shall be used to determine the minimum size required for grease traps serving restaurants:

$$Q = (D) \times (HR/2) \times (12.5) \times (LF), \text{ where:}$$

Q = size of grease trap in gallons;
D = number of seats in dining area;
HR = number of hours open per day; and
LF = loading factor depending on restaurant location:
1.25 for interstate freeways;
1.0 for other freeways;
1.0 for recreation areas;
0.8 for main highways;
0.5 for other highways.

(d) The following equation shall be used to determine the minimum size required for grease traps serving cafeterias and institutional kitchens:

$$Q = (M) \times (11.25) \times (LF), \text{ where:}$$

Q = size of grease trap, gallons;
M = total number of meals served per day; and
LF = loading factor depending on type of facilities present:
1.0 with dishwashing;
0.5 without dishwashing.

(e) In no case shall a grease trap serving a restaurant, cafeteria or institutional kitchen be smaller than 750 gallons in capacity.

(f) The minimum requirements for construction, materials and foundations of grease traps shall be the same as those required for septic tanks, as prescribed in N.J.A.C. 7:9A-8.2.

(g) The inlet and outlet of the grease trap shall be provided with "T" baffles extending to a depth of 12 inches above the tank floor and well above the liquid level.

(h) To facilitate maintenance, manholes extending to finished grade shall be provided. Covers shall be of gas-tight construction and shall be designed to withstand expected loads and prevent access by children.

7:9A-8.2 Septic tanks

(a) The use of a septic tank shall be required for all subsurface wastewater disposal systems. Use of an aerobic treatment unit or any other device in lieu of a septic tank shall not be approved by the administrative authority without prior approval by the Department. ***An aerobic treatment unit may precede the septic tank if the septic tank and all other components of the subsurface wastewater disposal system are sized in strict conformance with this chapter and:**

1. For batch processing aerobic treatment units the septic tank precedes in series the aerobic treatment unit; or,

2. For gravity flow aerobic treatment units the septic tank follows in series the aerobic treatment unit.*

(b) The minimum capacity of the septic tank shall be determined in accordance with the following criteria:

1. When serving single family dwelling units, septic tanks shall have the minimum capacity of 250 gallons per bedroom. Expansion attics shall be considered additional bedrooms. In no case shall the capacity be less than 1000 gallons.

2. When serving installations other than single family dwelling units, the minimum capacity shall be 1.5 times (150 percent) the volume of sanitary sewage, Q, when Q, determined as prescribed in N.J.A.C. 7:9A-7.4, in less than 1,500 gallons per day. When Q is greater than 1,500 gallons per day, the minimum capacity in gallons shall be 1,125 plus 0.75Q. In no case shall the capacity be less than 1000 gallons.

3. Two or more septic tanks may be connected in series in order to obtain the minimum required liquid capacity providing that each tank is at least as large as the succeeding tank. When a multiple compartment tank is used, the requirements of (d)3 below shall be satisfied.

(c) When domestic garbage grinder units are installed or *[contemplated]* ***proposed***, a multiple compartment septic tank is required and the liquid capacity of the septic tank(s), exclusive of air space, shall be at least 50 percent greater than the minimum capacity required in (b)1 above.

(d) Multiple compartment septic tanks shall be required for institutional and commercial installations where the daily volume of sewage determined as prescribed in N.J.A.C. 7:9A-7.4 is greater than 1000 gallons. When multiple compartment tanks are used the following shall be required:

1. The total capacity of multiple compartment tanks shall not be less than 1000 gallons. The first compartment shall have a liquid capacity of two-thirds the total required liquid capacity determined as prescribed in (b) above.

2. Not more than two compartments shall be provided in tanks having liquid capacities of less than 1250 gallons. Tanks having liquid capacities of over 1250 gallons may be provided with more than two compartments.

3. Multiple compartments may be provided by partitions within a single tank as shown in Figure 11 of Appendix A, or by connecting individual tanks in series. When a single partitioned tank is used, vent holes shall be provided near the top of each partition to allow free exchange of evolved gases between compartments and the two compartments shall be connected by means of a pipe tee, baffle or septic solids retainer, as shown in Figure 11.

(e) Septic tanks shall be designed and constructed according to the following requirements:

1. Septic tanks shall be water-tight and constructed of sound and durable materials which are resistant to corrosion, decay, frost damage or to cracking or buckling due to settlement or backfilling. All joints below the liquid level of the tank or below the seasonally high water table shall be provided with a permanent water-tight seal.

2. Covers shall be designed and constructed so as not to be damaged by any load which is likely to be placed on them. Precast slabs used as covers shall be water-tight, a minimum of three inches in thickness and adequately reinforced.

3. The walls and base of poured-in-place concrete tanks shall not be less than six inches in thickness. The sides and bottom of precast concrete tanks shall be a minimum of three inches in thickness and shall be adequately reinforced.

4. Concrete used in the construction of septic tanks shall conform to the American Concrete Institute (ACI) standards for frost resistance (ACI 318-16-4.5.1) and water-tightness (ACI 318-16-4.5.2). In the case of built-in-place tanks, certification that these standards have been met shall be provided by the design engineer and the certification shall be signed, sealed and attached to the approved engineering design. In the case of precast tanks, certification shall be provided by the manufacturer and the certification displayed on the tank.

5. All inside concrete surfaces shall be sealed with two coatings of *[a bituminous]* ***an appropriate inert*** coating to minimize corrosion. Coating of pre-cast tanks shall be applied by the manufacturer prior to delivery to the job site.

6. The base of poured-in-place tanks shall be cast in one piece and shall extend beyond the side and end walls of the tank. Such tanks shall not be emplaced until 48 hours after the base has been poured.

7. Pre-fabricated polyethylene septic tanks shall conform with the standards for materials, wall thickness, fastening of fittings and maximum deformation under load as prescribed by the Canadian Standards Association in CSA Standard CAN3-B66-M79.

8. Pre-fabricated fiberglass septic tanks shall conform to ASTM Standard D4021.

(f) A pre-fabricated septic tank constructed of any material which may be floated or shifted by water or ground cave-in shall be filled with water immediately after it is set in its proper position. When a septic tank is installed below or partially below the level of the seasonally high water table, the design engineer shall show by means of appropriate calculations that the tank is of sufficient weight or will be otherwise secured or anchored so that it will not shift or float if emptied during the time of seasonally high groundwater. Perforating or otherwise damaging the water-tight integrity of a septic tank for the purpose of installation below the water table is prohibited.

(g) Septic tanks shall be placed upon a firm and stable foundation so that the potential for uneven settlement or shifting is minimized. Tanks shall be constructed or installed directly on undisturbed natural soil. If the excavation is dug too deep, it shall be backfilled to the proper elevation with sand. When the tank must be constructed or installed on a layer of fill material greater than one foot in thickness, the fill shall be properly emplaced and compacted as prescribed in N.J.A.C. 7:9A-10.4(f)3.

(h) Metal septic tanks are prohibited. Septic tanks may be constructed of the following materials:

1. Poured-in-place concrete;
2. Precast reinforced concrete;
3. Fiberglass;
4. Polyethylene; or
5. Other materials as approved by the Department.

(i) Septic tanks shall conform to the following specifications:

1. The depth below the liquid level of the tank shall not be less than 36 inches or more than 72 inches.

2. Inlets and outlets shall be arranged so that all flow is directed along the longest horizontal dimension of the tank.

3. Tanks which are rectangular in cross-section shall have an inside length at least twice the inside width. The inside length, measured from the inlet side to the outlet side, shall not be less than 72 inches. The inside width of the tank shall not be less than 36 inches.

4. Upright cylindrical tanks shall have a minimum diameter of 52 inches. Horizontal cylindrical tanks shall have a minimum length of 72 inches and a minimum width at the liquid level of 36 inches.

(j) Inlets and outlets of septic tanks shall conform to the following specifications:

1. Inlet and outlet connections of each tank or compartment shall be arranged so as to obtain effective retention of scum and sludge and shall be fastened with and constructed of, or coated with, materials which are resistant to corrosion by sulfuric acid. Where pipe tees are used, the tees shall be sanitary tees and shall be installed in a manner that will provide a lasting water-tight seal between the tee and the wall of the tank. For this purpose, a manufactured waterproof pipe coupling which is incorporated into the wall of the tank may be used, or an expanding grout which will adhere both to the tee and to the body of the tank where the tee is installed.

2. A baffle or a pipe tee, not less than four inches in diameter, is required at the inlet of the tank. The bottom of the baffle or the bottom of the vertical leg of the tee shall extend below the liquid level a distance equal to 25 ***to 33*** percent of the liquid depth. The invert elevation of the inlet shall not be less than two inches higher than the invert elevation of the tank outlet or the outlet of the first compartment. The inverts of the inlets of subsequent compartments shall be a minimum of one inch higher than their outlets.

3. Outlet connections of the tank or each compartment thereof shall be provided with a tee not less than four inches in diameter or a durable baffle equivalent in size. They shall be permanently fastened in place with the bottom opening extending below the liquid level by a distance equal to 25 ***to 40*** percent of the total liquid depth. Outlet baffles or tees shall be provided with a gas deflection baffle installed as shown in Figure 12 of Appendix A. In lieu of a baffle or tee connection, an alternative device such as a septic solids retainer may be used provided that this device bears the seal of the National Sanitation Foundation ("NSF") certifying that the device has been approved by NSF for the specific use proposed and provided that the installation conforms to the manufacturer's recommendations. Where a septic solids retainer is used, a gas deflection baffle is not required.

(k) The space between the liquid surface and the top of the outlet tee or baffle shall not be less than 15 percent of the total liquid depth.

(l) Access openings for septic tanks shall meet the following requirements:

1. Each septic tank or each compartment of a multiple compartment tank shall be provided with at least one access opening which shall be a manhole a minimum of *[20]* ***24*** inches square or *[20]* ***24*** inches in diameter.

2. All manholes shall be extended flush with finished grade by means of a riser fitted with a removable water-tight cover. Covers shall be bolted or locked to prevent access by children. Covers shall be of cast-iron when a concrete riser is used.

3. An inspection port extending to finished grade shall be provided over each tank or compartment inlet and outlet which is not directly below a manhole except for those outlets where a septic solids retainer is used. Inspection ports shall extend to finished grade, shall be constructed of four inch cast iron or Polyvinyl Chloride (PVC), and shall have a locked or bolted cap.

4. Manhole risers and inspection ports on fiberglass or polyethylene tanks shall be constructed of the same material as the tank.

(m) Backfill around septic tanks shall be free of large stones, roots or foreign objects, shall be placed in thin layers, not to exceed eight inches, and shall be thoroughly tamped in a manner that will not produce undue strain on the tank. In the case of pre-fabricated plastic or fiberglass tanks, backfill shall be no thicker than the maximum depth recommended by the manufacturer.

SUBCHAPTER 9. EFFLUENT DISTRIBUTION NETWORKS

7:9A-9.1 General requirements for effluent distribution

(a) Discharge of effluent from the septic tank or grease trap to the disposal field and distribution of effluent within the disposal field shall be accomplished by one of the following methods:

1. The gravity flow method whereby the pretreatment unit discharges directly to a single distribution lateral, an inter-connected network of distribution laterals or to a distribution box discharging to two or more individual distribution laterals;

2. The gravity dosing method whereby the pretreatment unit discharges to a dosing tank with a pump or siphon which in turn discharges to a single distribution lateral, an inter-connected network of distribution laterals or to a distribution box discharging to two or more individual distribution laterals; or

3. The pressure dosing method whereby the pretreatment unit discharges to a dosing tank with a pump or siphon which in turn discharges to an inter-connected network of distribution laterals designed to discharge effluent under pressure.

(b) Each lateral in the distribution network shall receive an equal hydraulic loading. The use of serial distribution is prohibited.

(c) The use of gravity flow is restricted to those cases where less than 600 linear feet of distribution laterals are used and where the relative locations and elevations of the system components will allow gravity flow from the building sewer to the pretreatment unit and on through the distribution network.

(d) Alternating siphons or pumps may be used to alternately dose and rest two or more disposal fields provided that no field or portion of a field receives more than the maximum daily hydraulic loading rate allowed in N.J.A.C. 7:9A-10.2. Soils with a permeability faster than six inches per hour or a percolation rate faster than 15 minutes per inch shall not be rested for periods longer than one day unless pressure distribution is used and shall not receive more than 25 percent of the maximum allowed daily hydraulic loading in a single dose.

7:9A-9.2 Dosing tanks

(a) A dosing tank using a siphon or pump is required for systems using gravity or pressure dosing and shall meet the requirements of (b) through (f) below.

(b) The minimum capacity of dosing tanks using pumps shall be determined as follows:

1. Dosing tanks using pumps shall have sufficient capacity to distribute septic tank effluent equally to all parts of the disposal field during each dosing cycle and to provide adequate reserve storage capacity in the event of a pump malfunction. The total liquid capacity shall be great enough to accommodate the minimum required dose volume determined as prescribed in (b)2 below, plus the minimum required reserve storage capacity determined as prescribed in (b)3 below. Additional volume must be provided above the pumping level to accommodate the volume of water displaced by the pump and controls as well as any quantity of effluent which will drain back into the dosing tank when the pump shuts off at the end of a dosing cycle. Additional volume must be provided below the pumping level so that the pump may be placed on a pedestal, above the dosing tank bottom, to prevent the pump from drawing in air or whatever solids may accumulate in the bottom of the dosing tank.

2. The dose volume shall be determined based upon the soil permeability or percolation rate, daily volume of sewage (Q) and the total internal volume of the distribution network (V), as shown below. In the case of pressure dosing systems, the volume of the distribution network, V, shall include the volume of the delivery pipe, the manifold and the laterals.

Soil Permeability (in/hr)	Percolation Rate (min/in)	Required Dose Volume Gravity Dosing	Required Dose Volume Pressure Dosing
6-20	3-15	minimum of 75 percent V,[1] maximum of 25 percent Q	minimum of 10V[2] maximum of 25 percent Q
0.2-6	15-60	minimum of 75 percent V maximum of 100 percent Q	minimum of 10V maximum of 100 percent Q

[1]In cases where 75 percent V is larger than 25 percent Q, the 25 percent Q maximum rather than the 75 percent minimum shall be observed.
[2]In cases where 10V is larger than 25 percent Q, the 25 percent Q maximum rather than the 10V minimum shall be observed.

3. Reserve capacity is the inside volume of the dosing tank which lies between the level at which the high-water alarm switch is set and the invert elevation of the tank inlet, as shown in Figure 13 of Appendix A. A minimum reserve capacity equal to the daily volume of sewage shall be required except where a stand-by pump is provided which is equivalent in performance capacity to the primary pump and which will switch on automatically in the event that the primary pump malfunctions.

(c) The capacity of dosing tanks using siphons shall be adequate to provide the required dose volume determined as prescribed in (b)2 above. No reserve capacity is required when a siphon is used.

(d) All dosing tanks shall meet the following requirements regardless of whether a pump or siphon is used.

1. The requirements for the construction of dosing tanks shall be the same as those prescribed for septic tanks in N.J.A.C. 7:9A-8.2(e). Dosing tanks may be constructed as a separate unit or may share a common wall with the pretreatment unit.

2. Materials used for the construction of dosing tanks shall be the same as those allowed for septic tanks as prescribed in N.J.A.C. 7:9A-8.2(h).

3. Dosing tanks shall be constructed in a manner that will permit venting of the disposal area.

4. Installation requirements for pre-fabricated dosing tanks shall be the same as those for septic tanks, as prescribed in N.J.A.C. 7:9A-8.2(f).

5. Dosing tanks shall be placed on a firm and stable foundation so that the potential for differential settling or shifting is minimized.

6. Inlets shall be above the highest water level attained when the entire reserve capacity is full. Outlets for dosing tanks using siphons shall conform with the manufacturer's recommendations.

7. Dosing tanks shall be readily accessible for service and repair. A removable water-tight cover or a manhole with a removable water-tight cover shall be provided. Manholes shall be a minimum of *[20]* ***24*** inches in diameter or *[20]* ***24*** inches square and shall be located directly over the pump or siphon. The top of the tank or manhole riser shall be extended to or above finished grade and the cover shall be bolted or locked to prevent access by children. When a concrete riser is used, the cover shall be of cast-iron.

8. Requirements for backfilling around dosing tanks shall be the same as for septic tanks, as prescribed in N.J.A.C. 7:9A-8.2(m).

(e) Dosing may be accomplished by means of an automatic siphon when the low water level in the dosing tank is at a higher elevation than the invert of the highest distribution lateral. When a siphon is used the following requirements shall be met:

1. Siphons shall be constructed of durable materials not subject to corrosion by acid or alkali.

2. Extreme care shall be utilized in the installation of siphons. The installation shall conform exactly and in all details to the manufacturer's recommendations and specifications.

3. The horizontal dimensions of the dosing tank shall be adjusted so that the volume obtained by multiplying the manufacturer's rated siphon drawing depth by the internal horizontal area of the tank will be equal to the required dose volume determined as prescribed in (b)2 above.

4. When installation is complete, the siphon shall be primed by filling it with water at which time the siphon shall be checked for leaks as evidenced by air bubbles rising from the bell casing or piping. Any leaks shall be repaired before final approval is given.

5. In gravity dosing systems, when the delivery pipe between the dosing tank and the distribution box or distribution network is long, the siphon invert shall be set at an elevation sufficiently higher than the invert of the highest distribution lateral to compensate for any head losses due to friction in the connecting pipe. Friction head shall be determined using Figure 16 of Appendix A.

6. In pressure dosing systems, the invert of the siphon shall be set higher than the invert of the distribution laterals by a distance equal to the total operating head determined as prescribed in N.J.A.C. 7:9A-9.7(a)ii.

7. For facilities from which large quantities of septic tank effluent may be discharged at one time, the design engineer shall make certain that the siphon discharge rate will not be exceeded by the maximum expected rate of inflow at time of peak flow.

8. Each dosing tank shall be equipped with a cycle counter activated by a weighted float or mercury switch to facilitate monitoring of siphon performance.

9. Dosing tanks using siphons shall be equipped with an overflow to the distribution box or distribution network and a high-water alarm meeting the requirements of (f)7iii below. The invert of the overflow shall be just above the level of the high-water alarm switch which shall be several inches above the normal high-water level of the dosing tank.

(f) Dosing may be accomplished by means of a pump when either gravity dosing or pressure dosing is used. Duplicate pumps may be required by the administrative authority. The following requirements shall be met:

1. The pump must be rated by the manufacturer to handle septic tank effluent ***and all equipment must be listed and identified for the intended use as determined by the design***.

2. Pumps used for gravity dosing systems must be rated by the manufacturer, as indicated by the manufacturer's pump performance curve, to be capable of delivering the total required dose volume within a period of 15 minutes or less when working against a total dynamic head equal to the total design operating head. For the purpose of making this determination, the total design operating head shall be considered as the sum of the elevation head and the friction head calculated as prescribed in N.J.A.C. 7:9A-9.7(a)7.

3. Selection of an adequate pump for pressure dosing is part of the design procedure for pressure dosing systems and shall be performed in conformance with N.J.A.C. 7:9A-9.7(a).

4. Pumps shall be set on a pedestal so that the intake is elevated several inches above the bottom of the dosing tank.

5. Easy or "quick-disconnect" couplings shall be used to facilitate removal of the pump for servicing.

6. For facilities from which large quantities of septic tank effluent may be discharged at one time, the design engineer shall make certain that the pump discharge rate will not be exceeded by the maximum expected rate of inflow at times of peak flow.

7. The operation of the pump shall be controlled by means of automatic switches which are activated by the rising and falling level of effluent in the dosing tank. Such switches shall meet the following requirements:

i. Switches shall be able to withstand the humid and corrosive atmosphere in the dosing tank. Mercury or weighted float type switches are suitable for this purpose. Pressure-diaphragm type switches are prohibited.

ii. The pump-on and pump-off switches shall be set at appropriate levels to provide a dose volume as required in N.J.A.C. 7:9A-9.2(a)2. The pump-off switch shall be set six inches above the pump intake. The pump-on switch shall be set at a distance, d, above the pump-off switch, which is calculated by means of the following formula:

d, in = $(V_d + V_{cp} + V_{pd})$ x (1 ft^3/7.48 gal) x (12 in/1 ft)/(A), where:

V_d is the required dose volume, in gallons, determined as prescribed in N.J.A.C. 7:9A-9.2(a)2;

V_{cp} is the internal volume of all pipes which will drain back into the dosing tank at the end of a dosing cycle, in gallons;

V_{pd} is the volume displacement, in gallons, of the pump and controls; and

A is the internal horizontal area of the dosing tank, in square feet.

iii. A high-water alarm switch shall be set four inches above the pump-on switch and shall activate visible and audible alarms which can be readily seen and heard by occupants within the building served. The high-water alarm switch shall meet the same requirements prescribed for pump-control switches in (f)7i above. The alarm and its switch shall not be on the same electrical circuit as the pump and its switches.

iv. All electrical contacts and relays shall be located outside of the dosing tank and a gas-tight seal shall be provided where electrical conduits enter the tank.

v. All electrical service lines from the home or facility to the pump control panel shall be protected by electrical conduit.

7:9A-9.3 Connecting pipes and delivery pipes

(a) Connecting pipes between pretreatment units and dosing tanks, distribution boxes or distribution networks, and delivery pipes discharging effluent from dosing tanks shall be of such size as to serve the connected fixtures but in no case less than three inches in diameter. Delivery pipes from dosing tanks using siphons shall be one nominal size larger than the siphon to facilitate venting.

(b) Delivery pipes for pressure dosing networks shall be constructed of Polyvinyl Chloride (PVC) plastic (ASTM D 2665), schedule 40, SDR-21 or SDR-26; or Acrylonitrile-Butadiene-Styrene (ABS) plastic (ASTM 2661). Connecting pipes may be constructed of any of the following materials:

1. Plastic meeting the following criteria:

i. PVC (ASTM D 2665)—schedule 40, SDR-21 or SDR-26; or

ii. ABS (ASTM 2661).

2. Cast-iron; or

3. Other material acceptable to the administrative authority.

(c) All pipe joints in connecting pipes and delivery pipes shall be made water-tight and protected against damage by roots.

(d) Connecting pipes and delivery pipes shall be laid on a firm foundation satisfactory to the administrative authority.

(e) The alignment and grade of connecting pipes shall meet the following requirements:

i. Connecting pipes shall have a minimum grade of one-quarter inch per foot unless otherwise authorized by the administrative authority.

ii. Connecting pipes shall be laid in a continuous grade and, as nearly as possible, in a straight line. Drop manholes may be installed if found necessary. Horizontal bends, where required, shall not be sharper than 45 degrees. The inside angle between adjacent sections of pipe shall be no less than 135 degrees.

(f) In cases where the delivery pipe from the dosing tank will be installed higher than the maximum expected depth of frost penetration, measures shall be taken, as outlined in this subsection, to insure that the delivery pipe will drain at the end of each dosing cycle.

1. In the case of dosing tanks using pumps, when the low-water level in the tank is lower than the invert of the distribution box or distribution network, the delivery pipe shall be sloped back towards the dosing tank and there shall be no check-valve at the pump so that the delivery pipe will drain back into the dosing tank at the end of each dosing cycle. Also, a one-eighth inch weep hole shall be provided, at the invert of the pump discharge pipe, at a point which is above the high water level in the dosing tank.

2. In the case of dosing tanks using siphons, or when a pump is used and the elevation of the low-water level in the dosing tank is higher than the invert of the distribution box or distribution network, the distribution network must be designed so that the delivery pipe (as well as the manifold pipe, in pressure distribution systems) will drain out through the distribution laterals at the end of each dosing cycle. In the latter case, where a pump is used, a one-eighth inch weep hole shall be drilled in the delivery pipe, at its highest point within the dosing tank, to prevent effluent from siphoning out of the tank between dosing cycles.

7:9A-9.4 Distribution boxes

(a) A distribution box shall be required for all gravity flow systems and all gravity dosing systems where the effluent shall be distributed between two or more distribution laterals which are not inter-connected. The following requirements shall be met:

1. Distribution boxes shall be water-tight and constructed of sound and durable materials which will resist decay or corrosion by sulphuric acid, frost damage, cracking or buckling due to backfilling or other anticipated stresses.

2. The distribution box shall be set perfectly level and shall be installed as follows:

i. In the case of disposal beds, the distribution box shall be installed directly on the filter material within the disposal bed.

ii. In the case of disposal trenches, the distribution box shall be set on a layer of gravel or a concrete footing extending downward below the maximum expected depth of frost penetration. Where gravel is used, the gravel shall extend laterally a minimum of six inches beyond the sides of the distribution box.

3. A separate outlet shall be provided for each distribution lateral. The inverts of all outlets shall be rigidly set at the same level which shall be a minimum of two inches above the bottom of the box. When installation is complete the distribution box shall be filled with water at which time the installation shall be checked to make sure that it is level. Adjustments shall be made as necessary so that all outlets are permanently and securely fixed at exactly the same elevation prior to backfilling.

4. The invert of the inlet shall be at least one inch above the invert of the outlets. Where dosing is employed, or where the connecting pipe from the pre-treatment unit has a steep slope, measures shall be taken to prevent direct flow of effluent across the distribution box resulting in unequal distribution of effluent among the distribution box outlets. This may be accomplished by installation of a baffle or elbow within the distribution box or by use of two distribution boxes connected in series. In the latter case, all outlets of the first distribution box shall be sealed off except for the outlet which discharges to the second distribution box.

5. Distribution boxes shall be provided with a means of access which may be a removable lid in the case of smaller boxes. Access to larger boxes may be provided by means of manholes and inspection ports with removable water-tight covers. In any case, the following requirements shall be met:

i. Access openings must be adequate in size and located to facilitate removal of accumulated solids and inspection of the inlet and all outlets.

ii. All access openings shall be extended to within 12 to 18 inches of the finished grade surface.

iii. Access openings shall be constructed in such a manner as to prevent the entrance of surface water.

7:9A-9.5 Laterals; gravity distribution

(a) Gravity flow networks and gravity dosing networks may consist of a single distribution lateral, two or more laterals connected by means of elbows or tees, or two or more separate distribution laterals connected independently to a distribution box. Distribution laterals shall meet all the following requirements:

1. Distribution laterals shall be a minimum of three inches in diameter.

2. Distribution laterals shall consist of lengths of rigid perforated pipe connected with tight joints.

3. Spacing and arrangement of distribution laterals shall conform with N.J.A.C. 7:9A-10.3(d).

4. Perforations shall be evenly spaced along two rows running the length of the pipe, on each side, midway between the invert and the center-line which separates the upper and lower halves of the pipe. Perforations shall be no smaller than three-eighth inch and no longer than three-quarter inch in diameter.

5. Each individual distribution line shall be approximately level and shall be capped at the end, except where the laterals are connected together by loops. In no case shall the slope of the distribution lines be greater than two inches per 100 feet.

6. An inspection port shall be provided near the end of each lateral or near corners of the distribution network where the laterals are

joined in a loop. Inspection ports shall consist of a perforated pipe with a removable cap, extending from the level of infiltration to finished grade.

(b) The following materials are acceptable for distribution laterals:

1. Clay pipe, standard and extra strength perforated (ASTM C-211); or

2. Plastic:

i. Acrylonitrile-Butadiene-Styrene (ABS) (ASTM D-2751);

ii. Polyvinyl Chloride (PVC) (ASTM D-2729, D-3033, D-3034);

iii. Styrene-Rubber (ASTM D-2852, D-3298); or

iv. Polyethylene, straight wall (ASTM D-1248).

7:9A-9.6 Pressure dosing networks

(a) Pipe networks for pressure dosing systems shall consist of two or more distribution laterals connected to a central or end manifold. The following requirements shall be met:

1. The size of laterals shall be no less than one but no greater than three inches in diameter and shall be chosen in conformance with N.J.A.C. 7:9A-9.7(a)3. The size of the manifold pipe shall be chosen in conformance with N.J.A.C. 7:9A-9.7(a)5.

2. Spacing and arrangement of laterals shall conform with the requirements of N.J.A.C. 7:9A-10.3(d).

3. All joints and connections shall be water-tight. Solvent-weld joints shall be used.

4. Holes shall be spaced evenly, in a straight line along the invert of each lateral. Hole diameter and spacing may vary from one-quarter to one-half inch and from 30 to 60 inches, respectively, and shall be chosen in conformance with N.J.A.C. 7:9A-***[13.7(a)2]** 9.7(a)2***. In bed systems, holes in adjacent laterals shall be off-set by one-half the hole spacing so that the distance between holes in adjacent laterals is maximized. ***All holes shall be deburred.***

5. The ends of the laterals shall be capped. A small hole shall be drilled horizontally in the end-cap of each lateral, near the crown, to facilitate venting at the beginning of each dosing cycle.

6. Each individual distribution line shall be approximately level. In no case shall the slope of the distribution lines be greater than two inches per 100 feet.

7. An inspection port shall be provided near the end of each lateral. Inspection ports shall consist of a perforated pipe with a removable cap, extending from the level of infiltration to finished grade.

8. Pressure dosing networks shall be constructed of PVC plastic (ASTM D-2662), schedule 40, SDR-21 or SDR-26, or ABS plastic (ASTM 2661) pipe.

7:9A-9.7 Design procedure for pressure dosing systems

(a) The following procedure shall be used for disposal fields consisting of a disposal bed or disposal trenches which are at equal elevations.

1. Step One: Determine the length, number and spacing of distribution laterals based upon the required size of the disposal field, determined as prescribed in N.J.A.C 7:9A-10.2, and the requirements for spacing of disposal trenches or the requirements for spacing of distribution laterals within disposal beds as prescribed in N.J.A.C. 7:9A-10.3(d). The number of distribution laterals will also depend upon whether a central or end manifold arrangement is used.

2. Step Two: Select the hole diameter and spacing. The hole diameter shall be a minimum of one-quarter inch but no larger than one-half inch. The minimum allowed hole spacing shall be 30 inches. The maximum allowed hole spacing shall be 60 inches, except in the case of systems installed in soils or fill material with a permeability faster than six inches per hour or a percolation rate faster than 15 minutes per inch, in which case the maximum allowed hole spacing shall be 36 inches.

3. Step Three: Based upon the hole diameter and hole spacing selected and the length of the laterals, determine the required diameter of laterals using Figure 14 of Appendix A.

4. Step Four: Pressure distribution systems shall be designed so that a minimum pressure head of 2.5 feet shall be maintained at the supply end of the laterals. Based upon the hole diameter and the design pressure head at the supply end of the laterals, determine the hole discharge rate from the table below. Determine the lateral discharge rate by multiplying the hole discharge rate by the number of holes per lateral.

Pressure Head (ft.)	Discharge Rate (gallons per minute) based on Hole Diameter (inches) 1/4	5/16	3/8	7/16	1/2
2.5	1.18	1.85	2.66	3.63	4.73
3.0	1.28	1.99	2.87	3.91	5.10
3.5	1.40	2.19	3.15	4.29	5.60
4.0	1.47	2.30	3.31	4.51	5.89
4.5	1.59	2.48	3.57	4.86	6.35
5.0	1.65	2.57	3.71	5.04	6.59

5. Step Five: Based upon the number of laterals and the lateral spacing, determine the manifold length. Based upon the manifold length, the lateral discharge rate and the number of laterals, using Figure 15 of Appendix A, determine the required manifold diameter.

6. Step Six: Determine the necessary system discharge rate by multiplying the lateral discharge rate by the number of laterals; and

7. Step Seven: For pump systems, select the proper pump as follows:

i. Using Figure 16 of Appendix A, determine the friction head based upon the system discharge rate and the diameter and length of the delivery pipe.

ii. Calculate the total operating head, H_t, using the following formula:

H_t, ft = $H_f + H_e + H_p$

where:

H_f is the friction head, in feet, determined in (a)7i above;

H_e is the elevation head, in feet, calculated by subtracting the dosing tank low water elevation from the elevation of the invert of the distribution laterals; and

H_p is the design pressure head to be maintained at the supply end of the laterals, in feet.

iii. Choose a pump which is rated by the manufacturer to deliver a flow rate equal to or greater than the system discharge rate calculated in Step Six when working against a total dynamic head equal to the total operating head calculated in (a)7ii above.

8. Alternate Step Seven: For systems using syphons, determine the syphon elevation as follows:

i. Determine the friction head in the delivery pipe as in (a)7i above.

ii. Calculate the velocity head using the following formula:

H_v, ft = $(D/A)^2/2g$

where:

D = System Discharge Rate, ft^3/sec.

= System Discharge Rate, gpm) × (1 ft^3/7.48 gal) × (1 min/60 sec)

A = pipe area, ft^2

= [(internal pipe diameter, in/2) × (1 ft/12 in)]^2 × (3.14)

g = 32.2 ft/sec^2

iii. Calculate the total operating head, H_t, by the following equation:

H_t, ft = $H_f + H_v + H_p$

where:

H_f is the friction head, in feet, determined from Figure 16 of Appendix A.

H_v is the velocity head, in feet, determined in (a)8ii above.

H_p is the design pressure head to be maintained at the supply end of the laterals, in feet.

iv. Choose a siphon rated to discharge at a flow rate equal to or greater than the system discharge rate. Install the siphon at an elevation such that the siphon invert is higher than the invert of the distribution laterals by a distance equal to the total operating head calculated in (a)7iii above.

(b) If a trench system is proposed where the elevation of the infiltrative surface will not be the same in all trenches, the design engineer must demonstrate by means of appropriate calculations to the satisfaction of the administrative authority, that all portions of all trenches will receive equal hydraulic loading in conformance with the requirements of N.J.A.C. 7:9A-10.2. One way of accomplishing this would be to divide the disposal field into sections consisting of individual trenches or groups of trenches which are at the same

elevation and which are dosed individually in conformance with the requirements of this section.

SUBCHAPTER 10. DISPOSAL FIELDS

7:9A-10.1 General design requirements for disposal fields

(a) A disposal field shall be required for all new systems except as allowed in N.J.A.C. 7:9A-7.6, in which case a seepage pit may be approved in lieu of a disposal field. The disposal field shall consist of one or more disposal trenches or a disposal bed designed, constructed and installed as hereafter prescribed.

(b) The disposal field installation shall be such that the disposal field is underlain by a suitable zone of treatment as prescribed in (d) below and a suitable zone of disposal as prescribed in (e) below. Acceptable options for disposal field installation are as follows:

1. Conventional installation: The disposal field shall be installed directly within the native soil and the level of infiltration shall be from one to three feet below the existing ground surface, as shown in Figure 17 of Appendix A.

2. Soil replacement, bottom-lined installation: The excavation for the disposal bed or each individual trench shall be extended below the level of infiltration and back-filled up to the level of infiltration with suitable fill. The disposal bed or trenches shall be installed on top of the fill with the level of infiltration one to three feet below the existing ground surface, as shown in Figure 18 of Appendix A.

3. Soil replacement, fill-enclosed installation: An excavation shall be made below the level of infiltration and extending laterally a minimum of two feet beyond the perimeter of the disposal field on all sides. This excavation shall be back-filled with suitable fill, the disposal bed or trenches installed within the fill, and the level of infiltration shall be one to three feet below the existing ground surface, as shown in Figure 19 of Appendix A.

4. Mounded installation: Fill material shall be placed above the ground surface; the disposal field shall be installed within the fill; and the level of infiltration shall be one to four feet above the existing ground surface (measured on the upslope side of the disposal bed or each individual disposal trench), as shown in Figure 20 of Appendix A.

5. Mounded soil replacement installation: An excavation shall be made below the ground surface; fill material shall be placed within this excavation and mounded up above the existing ground surface; the disposal field shall be installed within the fill; and the level of infiltration shall be between one foot and four feet above the ground surface (measured on the upslope side of the disposal bed or each individual disposal trench), as shown in Figure 21 of Appendix A.

(c) The type of disposal field installation permitted shall be determined based upon the soil suitability class as outlined in Table 10.1, below.

TABLE 10.1 TYPE OF DISPOSAL FIELD INSTALLATION

C = Conventional Installation
SRB = Soil Replacement, Bottom-lined Installation
SRE = Soil Replacement, Fill-enclosed Installation
M = Mound Installation
MSR = Mounded Soil Replacement Installation[1]

Type of Limiting Zone	Depth[2], Ft.	Suitability Class	Type of Installation Permitted[3]
Fractured Rock or	>5	I	C, (SRB,SRE,M,MSR)
Excessively Coarse	0-5	IISc	SRE, M, (MSR)
Substratum			
Massive Rock	>9	I	C, (SRB,SRE,M,MSR)
Hydraulically	4-9	IISr	M, (MSR)
Restrictive Substratum	<4	IIISr	*UNSUITABLE*
Hydraulically	>9	I	C, (SRB,SRE,M,MSR)
Restrictive Horizon,	4-9	IIHr	SRB, SRE, M, (MSR)
Permeable Substratum	<4	IIIHr	SRB, SRE, (MSR)
Excessively	>5	I	C, (SRB,SRE,M,MSR)
Coarse Horizon	0-5	IIHc	SRE, M, (MSR)
Zone of Saturation,	>5	I	C, (SRB,SRE,M,MSR)
Regional	2-5	IIWr	M, (MSR)
	<2	IIIWr	*UNSUITABLE*
Zone of Saturation,	>5	I	C, (SRB, SRE,M,MSR)
Perched	2-5	IIWp	C[4], (SRB[4], SRE,M,MSR)
	<2	IIIWp	C[4], (SRB[4], SRE,M,MSR)

[1]Mounded soil replacement systems are genrally required only in cases where several limiting zones are present as, for example, in compound soil suitability classes such as IIScWr, IIIHr (IISr) or IIIHr (IIWr).

[2]Depth is measured from the existing ground surface to the top of the limiting zone. In the case of disturbed ground, the depth to the limiting zone shall be measured from the pre-existing natural ground surface, identified as prescribed in N.J.A.C. 7:9A-5.10(c), or the existing ground surface, whichever is lowest.

[3] Installations shown in parentheses are allowed but are generally not the most cost-effective type of installation for the soil suitability class unless other soil limitations are present.

[4] An interceptor drain or other means of removing the perched zone of saturation is required.

Note: In soils with a compound soil suitability class, where more than one limiting zone is present in the soil, a disposal field installation shall not be approved unless the type of installation proposed is listed in Table 10.1 as an acceptable option for each of the soil suitability classes which apply.

(d) A zone of treatment (see Figures 22, 23 and 24 in Appendix A), a minimum of four feet in thickness, shall be present below the disposal field and shall meet all of the following requirements:

1. The zone of treatment shall be composed of suitable soil which meets all of the criteria listed in (d)2 below, suitable fill material which satisfies the requirements of (f) below, or a combination of suitable soil and suitable fill.

2. Suitable soil within the zone of treatment shall meet the following criteria:

i. Coarse fragment content less than 50 percent by volume;

ii. Permeability less than 20 inches per hour and greater than 0.2 inches per hour, or a percolation rate slower than three minutes per inch and faster than 60 minutes per inch.

3. The zone of treatment shall not contain or be interrupted by fractured or massive rock substrata, hydraulically restrictive horizons or substrata, perched zones of saturation or regional zones of saturation. When excessively coarse horizons or substrata are present above, within or below the zone of treatment, these horizons shall not be considered part of the zone of treatment.

4. For design purposes, the top of the zone of treatment shall be considered to be the bottom of the disposal field or the bottom of an excessively coarse horizon when such a horizon is present immediately below the bottom of the disposal field. The bottom of the zone of treatment shall be considered to be whichever of the features listed below occurs at a shallower depth below the disposal field, except that in no case shall the bottom of the zone of treatment extend to a depth greater than eight feet below finished grade.

i. An imaginary horizontal surface at a depth of four feet below the top of the zone of treatment, excluding the thickness of any intervening excessively coarse horizons;

ii. The top of the shallowest limiting zone which is present in the soil below the disposal field; or

iii. The bottom of the shallowest soil profile pit or boring made within the area of the disposal field.

(e) A zone of disposal (see Figures 22, 23 and 24 in Appendix A), a minimum of four feet in thickness, shall be present below the zone of treatment and shall meet all of the following requirements:

1. The zone of disposal shall be composed of native soil or rock material which has a permeability *[greater]* ***more rapid*** than 0.2 inch per hour or a percolation rate *[greater]* ***more rapid*** than 60 minutes per inch;

2. When the permeability in the zone of disposal has been determined, as prescribed in N.J.A.C. 7:9A-6, to be two inches per hour or faster, the minimum required thickness of the zone of disposal may be reduced to two feet. This determination shall not be made using the percolation test or basin flooding test;

3. The zone of disposal shall not contain or be interrupted by any hydraulically restrictive horizon unless the entire thickness of this horizon has been removed throughout the entire area of the disposal field and has been replaced with fill material meeting the requirements of (f)5 below. The thickness of any restrictive horizon which has been removed shall not be counted as part of the zone of disposal; and

4. For design purposes, the top of the zone of disposal shall be taken as the bottom of the zone of treatment. The bottom of the zone of disposal shall be considered to be whichever of the following features is present at a shallower depth below the disposal field:

i. The top of any massive rock or hydraulically restrictive subtratum;

ii. The top of the shallowest hydraulically restrictive horizon which occurs below the bottom of the disposal field, except when the hydraulically restrictive horizon is to be removed and replaced with suitable fill materials; or

iii. The bottom of the shallowest soil profile pit or boring made below the disposal field.

(f) When fill material is used in disposal field construction, the following requirements shall be met:

1. When a soil replacement installation is proposed, the zone of treatment may consist partly or entirely of fill material provided that the requirements of N.J.A.C. 7:9A-10.4 are satisfied and the fill material used meets the requirements of (f)4 below. The zone of disposal may contain a layer of fill provided that the fill material used within the zone of disposal meets the requirements of (f)5 below.

2. When a mound installation is proposed, the zone of treatment may consist partly or entirely of fill material provided that the requirements of N.J.A.C. 7:9A-10.5 are satisfied and the fill material used meets the requirements of (f)4 below.

3. When a mounded soil replacement installation is proposed, the zone of treatment may consist partly or entirely of fill material provided that the requirements of N.J.A.C. 7:9A-10.6 are satisfied and the fill material used meets the requirements of (f)4 below. The zone of disposal may contain a layer of fill provided that the fill material used within the zone of disposal meets the requirements of (f)5 below.

4. When fill material is utilized within the zone of treatment, the fill shall meet the following requirements:

i. Coarse fragment content less than 15 percent by volume or less than 25 percent by weight;

ii. Textural analysis (composition, by weight, of size fraction passing the two millimeter sieve): from 85 to 95 percent sand, from five to 15 percent silt plus clay, minimum two percent clay; and

iii. Permeability from two to 20 inches per hour; or percolation rate from three to 30 minutes per inch.

5. When fill material is placed within the zone of disposal, the fill material shall meet the following requirements:

i. Textural analysis (composition, by weight, of size fraction passing the two millimeter sieve): 85 percent or more sand; and

ii. Permeability greater than two inches per hour; or percolation rate faster than 30 minutes per inch.

(g) The following requirements shall be met when installing a *[septic tank]* ***disposal field*** in sloping ground*[.]**:*

1. The interface between filter material and the underlying soil or fill material at the bottom of each individual trench or bed shall be level;

2. On strongly sloping sites the shape of the disposal field shall be elongated with the long axis parallel to the topographic contour;

3. When the slope is greater than 10 percent, trenches shall be used rather than beds;

4. Mound or mounded soil replacement installations shall be restricted to slopes less than 10 percent; and

5. When disposal trenches are installed at different elevations and gravity flow or gravity dosing are used, the distribution of effluent between trenches shall be accomplished by means of a distribution box.

(h) When a conventional or soil replacement installation is proposed, the bottom of the disposal field shall be at a depth of from one to three feet below the existing ground surface. When a mound or mounded soil replacement installation is proposed, the level of infiltration shall be at an elevation no higher than four feet above the existing ground surface, measured on the upslope side of the disposal bed or each individual disposal trench. In no case shall the level of infiltration be greater than three feet below the finished grade.

7:9A-10.2 Disposal field sizing requirements

(a) The minimum required disposal field size or the maximum allowable hydraulic loading rate shall be determined, using sizing criteria as prescribed below, based upon the volume of sanitary sewage, determined as prescribed in N.J.A.C. 7:9A-7.4, and the results of permeability tests or percolation tests performed as prescribed in N.J.A.C. 7:9A-6.

1. The disposal field sizing criteria to be used shall be determined based upon the type of disposal field, disposal field installation and the method of effluent distribution used, as follows:

TABLE 10.2(a) APPLICABLE DISPOSAL FIELD SIZING CRITERIA

Type of Disposal Field Installation	Type of Disposal Field	Method of Distribution	Applicable Sizing Criteria
Conventional	Trench	Gravity	N.J.A.C. 7:9A-10.2(b)
		Pressure	N.J.A.C. 7:9A-10.2(b)
	Bed	Gravity	N.J.A.C. 7:9A-10.2(c)
		Pressure	N.J.A.C. 7:9A-10.2(c)
Soil Replacement, Bottom-lined	Trench	Gravity	N.J.A.C. 7:9A-10.2(c)
		Pressure	N.J.A.C. 7:9A-10.2(d)
	Bed	Gravity	N.J.A.C. 7:9A-10.2(c)
		Pressure	N.J.A.C. 7:9A-10.2(d)
Soil Replacement, Fill-enclosed	Trench	Gravity	N.J.A.C. 7:9A-10.2(b)
		Pressure	N.J.A.C. 7:9A-10.2(b)
	Bed	Gravity	N.J.A.C. 7:9A-10.2(c)
		Pressure	N.J.A.C. 7:9A-10.2(d)
Mound *, **Mounded Soil*** Replacement	Trench	Gravity	N.J.A.C. 7:9A-10.2(b)
		Pressure	N.J.A.C. 7:9A-10.2(b)
	Bed	Gravity	N.J.A.C. 7:9A-10.2(c)
		Pressure	N.J.A.C. 7:9A-10.2(d)

(b) All disposal fields using trenches, except for bottom-lined soil replacement installations, shall meet the following size requirements:

1. The minimum required length of trenches per gallon of daily sewage volume, L/Q, shall be determined from Table 10.2(b) below, based upon the trench width selected and the results of permeability tests or percolation tests, performed as prescribed in N.J.A.C. 7:9A-6.

2. The minimum required length of trenches, L, shall then be determined by multiplying the value of L/Q obtained from the table by the daily volume of sewage, Q, determined as prescribed in N.J.A.C. 7:9A-7.4.

(c) All disposal beds using gravity flow or gravity dosing, all conventionally installed disposal beds using pressure dosing and all bottom-lined soil replacement trench installations using gravity flow or gravity dosing shall meet the following size requirements.

1. The minimum required bottom area of disposal field per gallon of daily sewage volume, A/Q, shall be determined from Table 10.2(c) below, based upon the results of permeability tests or percolation tests performed as prescribed in N.J.A.C. 7:9A-6.

2. The minimum required bottom area shall then be determined by multiplying the value of A/Q obtained from the table by the daily volume of sewage, Q, in gallons, determined as prescribed in N.J.A.C. 7:9A-7.4.

(d) All disposal beds using pressure dosing except for conventional installations and all bottom-lined soil replacement trench installations using pressure dosing shall have a minimum size of 1.33 square feet of bottom area per gallon of daily sewage volume.

TABLE 10.2(b) MINIMUM REQUIRED DISPOSAL TRENCH LENGTH PER GALLON OF DAILY SEWAGE VOLUME, L/Q (ft/gal per day)

Permeability (in/hr)	Percolation Rate (min/in)	Trench Width (ft):	L/Q (ft/gal per day)[1] 1.5	2.0	2.5	3.0
6-20	3-15		0.65	0.54	0.46	0.40
2-6	16-30		0.83	0.69	0.59	0.52
0.6-2	31-45		1.03	0.85	0.73	0.64
0.2-0.6	46-60		1.18	0.98	0.84	0.74

TABLE 10.2(c) MINIMUM REQUIRED DISPOSAL FIELD BOTTOM AREA PER GALLON OF DAILY SEWAGE VOLUME, A/Q (ft^2/gal per day)

Permeability (in/hr)	Percolation Rate (min/in)	A/Q[1] (ft^2/gal per day)
6-20	3-15	***[0.61]****1.61**
2-6	16-30	2.08
0.6-2	31-45	2.56
0.2-0.6	46-60	2.94

[1] Additional Requirements:

a. Where garbage disposal units are installed or *[contemplated]* ***proposed***, the value obtained from this table shall be increased by a factor of 25 percent for use in disposal field sizing.

b. When the size of the disposal field is determined based upon the results of a percolation test, the value obtained from this table shall be increased by a factor of 25 percent as a design safety factor to compensate for the inherent inaccuracy of the test method.

7:9A-10.3 Specific requirements for conventional disposal field installations

(a) A conventional installation shall be made by placing the disposal bed or each individual disposal trench in an excavation made directly within the natural soil or, in the case of disturbed ground, within pre-existing fill material.

(b) All rough-grading shall be in accordance with the following requirements:

1. Sites which have been re-graded prior to site evaluation, soil evaluation or permeability testing shall be considered to be disturbed ground and all requirements relating to disturbed ground shall be met.

2. When a site is re-graded after site evaluation, soil evaluation or permeability testing, this re-grading shall be carried out in conformance with an engineering design which has been approved by the administrative authority.

3. On a re-graded site, the disposal field shall be placed only in those areas which have been lowered by cutting and no portion of the disposal field shall be placed within those areas which have been raised by filling.

(c) Excavation for the disposal field shall be in accordance with the following procedures:

1. Adequate measures shall be used to insure that the bottom of the disposal bed or each individual disposal trench is level.

2. In soil textures other than sands or loamy sands, excavation which exposes the infiltrative surface of the disposal field shall not be carried out when the soil moisture content is above the lower plastic limit. This means that when a small lump of soil, taken from the depth of the proposed excavation, can be rolled out with the fingers to form a wire or rod, one-eighth of an inch in thickness, and does not crumble when handled, the soil is too wet to proceed with the excavation.

3. Excavation shall be carried out in a manner that will avoid unnecessary compaction of the disposal field bottom and sidewalls. Heavy equipment such as bulldozers or front-end loaders shall not be driven over the exposed infiltrative surface of the disposal field. Excavation should be carried out with a backhoe operating from between disposal trenches or from outside the perimeter of previously excavated portions of the disposal bed. If it becomes necessary to walk on the disposal field bottom, a suitable board shall be laid over the soil to avoid trampling.

4. Any smeared or compacted soil surfaces which have been produced on the bottom or sidewalls of the excavation shall be removed to expose a fresh soil surface which is rough and uneven.

5. Work should be scheduled so that the bottom and sidewalls of the excavation will not be exposed to rainfall or wind-blown silt between the time of excavation and the time of final inspection and backfilling. Any loose soil or debris which is washed into or otherwise deposited within the excavation as a result of the excavation remaining open to the elements shall be carefully removed prior to backfilling.

(d) The construction of the distribution network shall be in accordance with N.J.A.C. 7:9A-9.5, when gravity flow or gravity dosing is used, or N.J.A.C. 7:9A-9.6, when pressure dosing is used. Additional requirements for disposal trenches or beds are given in (d)1, and 2 below, respectively.

1. Disposal trenches shall be constructed in accordance with the following requirements:

i. The minimum spacing between trenches (sidewall to sidewall) shall be six feet.

ii. The minimum width of trenches shall be 1.5 feet.

iii. The maximum width of trenches shall be three feet.

iv. There shall be one distribution line per trench.

2. Disposal beds shall be constructed in conformance with the following requirements:

i. There shall be a minimum of two distribution lines per bed.

ii. The maximum distance from edge of bed to nearest distribution line shall be three feet.

iii. The minimum distance from edge of bed to nearest distribution line shall be one foot.

iv. The maximum spacing between distribution lines for gravity distribution shall be three feet.

v. The required spacing between distribution lines for pressure distribution shall be from 3/4 to 5/4 of the hole spacing;

vi. The spacing between all distribution lines shall be equal and uniform; and

vii. Holes in pressure distribution lines shall be aligned so that holes in adjacent laterals shall be off-set by one-half the hole spacing.

(e) Filter material shall meet the following requirements:

1. Filter material shall cover the distribution lines and extend the full width of the trench or bed, shall extend between 12 and 18 inches deep beneath the bottom of the distribution lines and shall extend at least two inches above the top of the lines.

2. The filter material shall be washed gravel or crushed stone, free of fines, dust, ashes or clay. Refer to the New Jersey Department of Transportation standard sizes for coarse aggregates as shown in Figure 26 of Appendix A. The filter material shall conform in size and gradation to size number 24, size number three or size number four.

3. The filter material shall be covered with drainage fabric, untreated building paper or a four to eight inch thickness of salt-hay or straw, as the laying of the distribution lines progresses. When drainage fabric or untreated building paper is used, the following requirements shall be met:

i. Edges of adjacent sheets shall be overlapped by a minimum of six inches.

ii. Drainage fabric shall be specified in the engineering design and shall have adequate tensile strength to prevent ripping during installation and backfilling, adequate air permeability to allow free passage of gases, and adequate particle retention to prevent downward migration of soil particles into the filter material.

iii. Use of water-proof paper is prohibited.

4. The filter material may be laid into the excavation using a backhoe, front-end loader or dump truck provided that this operation is carried out from sides of the system rather than by driving out onto the exposed disposal field infiltrative surface. In the case of large beds, tracked equipment may be operated within the disposal bed provided that the equipment does not exert a ground pressure in excess of eight pounds per square inch and provided that the filter material is pushed out in front of the vehicle while maintaining a minimum thickness of one foot of filter material below the vehicle tracks at all times.

(f) Backfill and final grading shall be carried out in accordance with the following requirements:

1. A minimum of nine inches and no more than 18 inches of backfill shall be placed over the top of the disposal field filter material.

2. Backfill material shall be of earth similiar to that found at the site and free of large stones, tree stumps, broken masonry or other waste construction material.

3. In no case shall the backfill material be more permeable than the surrounding soil.

4. Backfill shall completely cover the entire disposal bed or each of the disposal trenches and shall be graded smoothly into the surrounding topography on all sides.

5. The following practices shall be followed:

i. Heavy machinery, rubber-tired vehicles or other vehicles exerting a ground pressure in excess of eight pounds per square inch shall not be permitted to pass over the disposal field after the filter material and distribution network have been installed.

ii. Tracked equipment may be used for the purpose of backfilling and final grading provided that this equipment does not exert a pressure on the underlying soil in excess of eight pounds per square inch.

iii. Final grading shall be completed in accordance with the approved engineering design and in such a manner that surface water will not collect over the disposal field.

iv. After completion of backfilling and final grading, the backfilled area over the disposal field shall be seeded or sodded to establish a vegatative cover or otherwise stabilized against erosion in a manner acceptable to the administrative authority.

7:9A-10.4 Specific requirements for soil replacement disposal field installations

(a) A soil replacement disposal field installation shall be made by installing the disposal bed or each individual disposal trench on top of or within suitable fill material which has been placed in an excavation made below the existing ground surface. In a bottom-lined installation, the fill material shall be placed below the disposal field only, as prescribed in (b) below. In a fill-enclosed installation, the fill shall be placed around the sides as well as below the disposal field, as prescribed in (c) below. The type of soil replacement disposal field installation required depends upon the soil limitations present and the slope across the disposal area as follows:

1. A fill-enclosed installation shall be required when:

i. The limiting zone is a perched zone of saturation underlain by a hydraulically restrictive horizon and the slope across the disposal field is less than five percent;

ii. The limiting zone is a excessively coarse horizon or substratum; or

iii. The limiting zone is a fractured rock substratum.

2. A bottom-lined installation may be permitted where:

i. The limiting zone is a hydraulically restrictive horizon and no perched zone of saturation is present; or

ii. The limiting zone is an perched zone of saturation underlain by a hydraulically restrictive horizon and the slope across the disposal field is five percent or greater.

(b) Bottom-lined soil replacement disposal field installations shall be constructed as follows:

1. An excavation shall be made within the area occupied by the disposal bed or by each individual disposal trench and, where the limiting zone is a hydraulically restrictive horizon, the excavation(s) shall extend a minimum of two feet below the bottom of the hydraulically restrictive horizon.

2. The excavation shall be backfilled to the level of infiltration with suitable fill material.

3. The disposal field shall be constructed on top of the fill material within the excavation(s).

4. An interceptor drain designed and constructed as prescribed in N.J.A.C. 7:9A-10.7 shall be provided to divert away from the disposal field laterally moving ground water which may be perched above any hydraulically restrictive horizon penetrated by the excavation.

(c) Fill-enclosed soil replacement disposal field installations shall be constructed as follows:

1. An excavation shall be made to the required depth extending throughout the entire area to be occupied by the disposal field and beyond the perimeter of the disposal field a minimum of two feet in all directions. In cases where the limiting zone is a fractured rock substratum and a pit-bailing or basin flooding test has been used to establish adequate permeability, the depth of the disposal field excavation shall be no less than the depth of the test pit.

2. The excavation shall be backfilled with suitable fill material.

3. The disposal field shall be constructed within the fill material so that the entire disposal bed or each individual trench is surrounded by a minimum of two feet of fill material on all sides.

(d) Requirements and restrictions relating to site regrading shall be the same as those prescribed for conventional installations in N.J.A.C. 7:9A-10.3(b).

(e) Excavation prior to the placement of fill material shall be carried out in accordance with the requirements of N.J.A.C. 7:9A-10.3(c)2 through 5.

(f) Fill material used in soil replacement disposal field installations shall meet the following requirements:

1. The fill material used below the disposal field shall meet the requirements for texture and permeability which are prescribed in N.J.A.C. 7:9A-10.1(f).

2. The minimum depth of fill below the disposal field shall be one foot.

3. Compaction of fill material shall be required whenever fill material is used below the disposal field and shall be carried out in accordance with the following requirements:

i. Compaction of fill shall be carried out as directed by a professional engineer and as indicated on the approved engineering design.

ii. Based upon a final inspection, a professional engineer shall certify by signature and seal that compaction of the fill has been performed adequately to prevent failure of any component of the system due to excessive settlement or differential settlement.

iii. Fill material shall be spread and compacted in layers one foot or less in thickness.

iv. Compaction may be accomplished manually or mechanically, by tamping or rolling, or by driving over the filled area in a controlled pattern using tracked or rubber-tired vehicles. Compaction may also be accomplished by puddling.

v. When heavy excavating equipment is operated within the excavation for the purpose of placement of compaction of the fill material, this equipment shall not be driven directly on the exposed bottom of the excavation. A minimum of one foot of fill material shall be maintained below the vehicle tracks or wheels at all times.

(g) Construction of the disposal field and distribution network shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(d).

(h) Filter material shall be as prescribed for conventional installations, in N.J.A.C. 7:9A-10.3(e).

(i) Backfill and final grading shall be as required in N.J.A.C. 7:9A-10.3(f) and shall extend a minimum of five feet, in all directions, beyond the perimeter of the filled area.

7:9A-10.5 Specific requirements for mounded disposal field installations

(a) A mounded disposal field installation shall be made by installing the disposal field as prescribed below, within suitable fill which has been placed above the existing ground surface.

(b) Requirements and restrictions relating to site regrading shall be the same as those prescribed for conventional installations in N.J.A.C. 7:9A-10.3(b).

(c) On sloping sites, the disposal field shall be elongated in shape with the long axis parallel to the topographic contour.

(d) Prior to placement of fill material, the ground surface shall be prepared as follows:

1. Excessive vegetation shall be cut and removed. Large trees including the stumps shall be removed. If large holes are left as a result of stump removal these shall be filled with fill material meeting the requirements of N.J.A.C. 7:9A-10.1(f)4.

2. The delivery pipe from the dosing tank shall be installed and the excavation backfilled and compacted prior to preparation of the ground surface for fill placement.

3. The area within the perimeter of the mound shall be plowed or disked to produce a thoroughly roughened surface. Plowing shall be done using a two bottom or larger moldboard plow or chisel plow and shall be parallel to the topographic contour in such a direction that each plow furrow will be thrown upslope. The soil should be broken-up to a depth of six to eight inches. Alternatively, a rototiller may be used provided that the surface soil is of sand or loamy sand texture.

(e) A mound shall be constructed by placing a layer of fill material over the ground within and adjacent to the area of the disposal field. The method of emplacement and lateral extent of the fill material shall be as follows:

1. The area of the fill layer shall include the area of the disposal field plus a lateral extension of fill material surrounding the disposal field on all sides.

2. The minimum required width of the lateral fill extension shall be 20 feet where gravity distribution is to be used and five feet where pressure distribution is to be used.

3. Within the area of the lateral fill extension, the top surface of the fill material shall be kept level with or higher than the invert of the distribution laterals.

4. On sloping sites, the width of the lateral fill extension may be reduced on the upslope side of the disposal field provided that the top surface of the fill material is kept level with or higher than the invert of the distribution laterals up until the point where the top surface of the fill material intersects with the existing slope.

5. At the outside edge of the lateral fill extension, the mound shall be terminated by sloping the top surface of the fill layer downward at a slope of three to one or less. Alternatively, lateral support for the fill layer may be provided by a retaining wall or a berm of soil material meeting the requirements of N.J.A.C. 7:9A-10.3(f)2 and sloped at a grade of three to one or less.

6. Fill material below the disposal field and within the area of the lateral fill extensions shall be suitable fill material meeting the requirements of N.J.A.C. 7:9A-10.1(f)4.

7. Compaction of fill shall be carried out as prescribed in N.J.A.C. 7:9A-10.4(f).

(f) Construction and installation of the disposal field and distribution network shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(d).

(g) Filter material shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(e).

(h) Backfill and final grading over the mound shall be completed as follows:

1. Immediately above the disposal field filter material which has been covered with a suitable barrier material, as prescribed in N.J.A.C. 7:9A-10.3(e)3, a layer of topsoil, suitable for establishment of a good vegetative cover, 12 to 18 inches in thickness at the center of the mound and six to 12 inches in thickness at the edges, shall be placed over the entire mound, covering the top and side slopes. The topsoil shall be build up thicker along the long axis of the mound so that a convex profile is produced parallel to the direction of the slope. The topsoil shall be lightly compacted by tamping or rolling to prevent settlement.

2. Immediately after completion of final grading, the mound surface shall be mulched and seeded, or sodded, to establish a good vegetative cover and to prevent erosion.

7:9A-10.6 Specific requirements for mounded soil replacement disposal field installations

(a) Mounded soil replacement disposal fields shall be constructed as follows:

1. An excavation shall be made to the required depth throughout the entire area of the disposal field and extended laterally in all directions a minimum of two feet beyond the perimeter of the disposal field.

2. This excavation shall be backfilled with suitable fill material and the fill material mounded up over the excavation to produce a mound of the desired height in which to install the disposal field.

3. The sides of the mound shall be constructed with slopes of three to one or less.

(b) Requirements and restrictions relating to site regrading shall be the same as those prescribed for conventional installations in N.J.A.C. 7:9A-10.3(b).

(c) Excavation prior to placement of fill material shall be carried out as specified in N.J.A.C. 7:9A-10.3(c)2 through 5.

(d) Fill material shall meet the requirements of N.J.A.C. 7:9A-10.4(d).

(e) Construction of the disposal field and distribution network shall be as prescribed for conventional installations in N.J.A.C. 7:9A-10.3(d).

(f) Filter material shall be as prescribed for conventional installations, in N.J.A.C. 7:9A-10.3(e).

(g) Backfill and final grading shall be as prescribed for mounded installations, in N.J.A.C. 7:9A-10.5(h).

7:9A-10.7 Interceptor drains

(a) Interceptor drains may be used on sloping sites to improve site suitability by intercepting laterally moving ground water which is perched above a hydraulically restrictive horizon provided that the requirements of (b) through (k) below are met.

(b) Interceptor drains shall be oriented parallel to the length and width of the disposal field and shall be installed on all sides except for the downslope side, as shown in Figure 25 of Appendix A.

(c) Interceptor drains designed to intercept ground water which is perched above a hydraulically restrictive horizon shall extend to the top but not through the entire thickness of the hydraulically restrictive horizon.

(d) The minimum distance between the disposal field and an interceptor drain shall be as prescribed in (d)1 and 2 below. The only exceptions to these requirements shall be where the bottom of the drain is at an elevation which is higher than the bottom of the disposal field or where the drain is set at the top of a restrictive horizon which is penetrated by the excavation for a soil replacement or mounded soil replacement installation, in which cases the minimum setback distance between the disposal field and the drain shall be 20 feet.

1. The minimum distance between a disposal field and any portion of an interceptor drain which is downslope of the disposal field shall be 50 feet.

2. The minimum distance between a disposal field and those portions of the interceptor drain which are upslope of the disposal field's downslope side shall be 50 feet unless a shorter distance is calculated using the formula given in (d)3 below. In no case shall this distance be less than 10 feet.

3. Calculate the minimum required horizontal separation distance, D, using the equation, $D = Q/(LKI^2)$, where:

Q is the volume of sanitary sewage, determined as prescribed in N.J.A.C. 7:9A-7.4, in gallons per day, multiplied by a unit conversion factor of 1 $ft^3/7.48$ gallons.

L is the total length of the disposal field, in feet, measured parallel to the topographic contour.

K is the horizontal saturated permeability above the restrictive horizon, in inches per hour, determined as prescribed in N.J.A.C. 7:9A-6.5 or 6.6, multiplied by unit conversion factors of (1 foot/12 inches) and (24 hours/1 day).

I is the slope, in feet/foot, measured perpendicular to the topographic contour ***and described based on appropriately located subsurface explorations***.

(e) Excavation shall be carried out as follows:

1. The excavation for the interceptor drain shall be made to the exact depth required in (c) above, a minimum two feet wide, and shall extend for the entire length of the drain, around the upslope side of the disposal field and down both ends of the field to the downslope side, as shown in Figure 25 of Appendix A.

2. To accommodate the drain discharge pipes, the excavation shall extend, on each end of the disposal field, beyond the extent of the drain, from the downslope side of the disposal field to free-flowing outlet meeting the requirements of (f) below.

3. The part of the excavation in which the drain discharge pipe will be laid shall have a slope which is steep enough to carry away the intercepted ground water.

(f) That portion of the excavation which will accommodate the drain shall be filled with filter material to a depth which is a minimum of one foot higher than the top of the perched zone of saturation which is to be drained. Filter material used for this purpose shall be washed gravel or crushed stone, free of fines, dust, ashes or clay, and shall conform in size and gradation with one of the following New Jersey Department of Transportation standard sizes for coarse aggregate as shown in Figure 26 of Appendix A: size number four, size number five, size number 56 or size number six.

(g) Barrier material shall consist of continuous layers of drainage fabric and shall be placed throughout the entire length of the drain, above, below and along the sides of the filter material. The following requirements shall be met:

1. The edges of adjacent sheets shall be overlapped by a minimum of six inches.

2. The type of drainage fabric used shall be specified in the engineering design and shall have adequate tensile strength to prevent ripping during installation and backfilling, adequate permeability to allow unimpeded passage of water, and adequate particle retention to prevent migration of soil particles into the filter material.

(h) Drainage pipe shall be laid throughout the entire length of the excavation and shall be placed immediately above the barrier material at the bottom of the excavation and midway between the sides. The type of drainage pipe used shall be as follows:

1. Upslope of the downslope side of the disposal field, where the excavation is filled with filter material, the pipe shall be perforated or laid with open joints.

2. Downslope of the downslope edge of the disposal field, and beyond the extent of the filter material, the pipe shall be non-perforated and laid with tight joints.

3. The size of the pipe shall be large enough to handle the expected amount of flow and in no case shall the pipe diameter be less than *[six]* ***four*** inches.

4. Materials used for drainage pipe shall be as allowed in N.J.A.C. 7:9A-9.5(b).

(i) Free-flowing outlets shall be provided downslope of the drain, on each end of the disposal field. Outlets shall meet the following requirements:

1. Outlets may empty into a surface water body, a drainage swale discharging to a surface water body, ***a storm sewer,*** a groundwater recharge basin or a gravel bed.

2. Outlets shall be designed, constructed, located and maintained in a manner which does not cause soil erosion, surface flooding or damage to adjacent properties, does not create a public nuisance, and does not violate any applicable Federal, State or local laws or regulations.

3. Adequate measures shall be taken to protect each outlet from entry of rodents or other small animals.

(j) Backfill over the drain and the drain discharge pipes shall be of earth similar to that found at the site and free of large stones, broken masonry, stumps or other waste construction material.

(k) Where an interceptor drain is proposed to divert laterally moving perched ground water away from the area of the disposal field, the drain shall be installed and its satisfactory performance confirmed prior to granting of final approval, as follows.

1. After installation of the drain has been completed, borings or pits shall be excavated to the top of (but not penetrating) the hydraulically restrictive horizon, hydraulically restrictive substratum or massive rock substratum above which the perched zone of saturation is located. This shall be done on the upslope and downslope sides of the drain and during a time of year when the presence of the perched zone of saturation is anticipated. Piezometers may also be used for this purpose provided that they do not penetrate through the hydraulically restrictive horizon and provided that the requirements of N.J.A.C. 7:9A-5.9(e) are met.

2. The drain shall be considered to be performing adequately if no perched zone of saturation is observed on the downslope side of the drain at the same time that a perched zone of saturation is observed on the upslope side of the drain. This test shall be witnessed by the administrative authority or its authorized agent.

SUBCHAPTER 11. SEEPAGE PITS

7:9A-11.1 Site/soil requirements

(a) Seepage pits shall not be approved except as specified in N.J.A.C. 7:9A-7.6. When a seepage pit is approved, the following site/soil requirements shall be met:

1. The bottom of any seepage pit shall be a minimum of eight feet above any hydraulically restrictive horizon or substratum not fully penetrated or any massive rock substratum.

2. The bottom of any seepage pit shall be a minimum of four feet above any fractured rock substratum.

3. The bottom of any seepage pit shall be a minimum of four feet above the level of the seasonally high water table.

7:9A-11.2 Design requirements

(a) The percolating area shall be considered to be the total outside surface of the seepage pit lining below the inlet and exclusive of any soil horizons with a percolation rate slower than 40 minutes per inch. The bottom of the seepage pit shall not be counted as part of the percolating area.

(b) The minimum required percolating area for dwelling units shall be determined from the following table, based upon a weighted average, of the percolation rates of all the soil layers exposed in the sidewalls, determined as prescribed in N.J.A.C. 7:9A-6.4(f)4. In no case, however, shall the percolating area be less than 110 square feet per dwelling unit.

Average Percolation Rate (Min/inch)	Minimum Area Per Bedroom Per Day (Square feet)
10 or less	72
11 to 20	108
21 to 30	144
31 to 40	180
over 40	not acceptable

(c) The minimum percolating area for facilities other than individual dwellings shall be determined from the following table based upon the volume of sanitary sewage, determined as prescribed in N.J.A.C. 7:9A-7.4, and a weighted average of the percolation rates of all soil layers exposed in the sidewalls, determined as prescribed in N.J.A.C. 7:9A-6.4(f)4. In no case, however, shall the percolating area be less than 110 square feet.

Average Percolation (Min/inch)	Minimum Area Per Gallon Per Day (Square feet)
10 or less	0.48
11 to 20	0.72
21 to 30	0.96
31 to 40	1.20
over 40	not acceptable

7:9A-11.3 Construction requirements

(a) Seepage pits shall be constructed within an excavation affording adequate working space and shall be constructed of stone, brick, cinder ***, precast concrete*** or concrete block, or similar material laid dry with open joints where permeable strata has been penetrated, except that if the seepage pit is not of circular construction or if the surrounding ground is subject to cave-in, all horizontal joints shall be mortared in such a manner as to prevent structural failure. The following requirements shall be met:

1. All joints above the inlet, in all cases, shall be made water-tight.

2. Before placement of backfill, all sidewall areas shall be scarified.

3. The bottom of the seepage pit shall be filled with coarse gravel to a depth of one foot unless the bottom is in a sand or gravel formation.

(b) Seepage pits shall be backfilled according to the following procedure:

1. The space between the excavation and the seepage pit wall shall be backfilled with at least three inches of coarse gravel or filter material meeting the requirements of N.J.A.C. 7:9A-10.3(e)2.

2. Where cinder or concrete blocks are laid with core openings exposed, the space between the excavation and seepage pit wall shall be backfilled with at least six inches of two and one-half inch crushed stone or gravel.

3. Backfill above the inlet shall be as required for disposal fields in N.J.A.C. 7:9A-10.3(f)2 and shall be thoroughly compacted by hand or mechanical tamping methods. The use of heavy machinery for this purpose is prohibited.

(c) Covers shall be constructed of reinforced concrete, shall be a minimum of three inches in thickness, water-tight, and shall be designed and constructed so as not to be damaged by any load which is likely to be placed upon them.

(d) At least one access opening with a removable water-tight cover and a minimum dimension of 24 inches shall be provided. Access openings shall meet the following requirements:

1. Access shall be adequate to permit pumping out of the pit as well as inspection and maintenance of the inlet.

2. When the cover of the seepage pit is deeper than 12 inches below finished grade, the access opening shall be extended to within 12 inches of finished grade by means of a concrete riser with a cast-iron manhole cover.

3. When the access opening is below finished grade, a permanent marker at finished grade shall be provided to indicate its location.

4. When the access opening is at or above finished grade, the cover shall be bolted, locked or otherwise secured to prevent access by children.

SUBCHAPTER 12. OPERATION AND MAINTENANCE

7:9A-12.1 System use

(a) The individual subsurface sewage disposal system shall be used only for the disposal of wastes of the type and origin provided for in the approved engineering design. No permament or temporary connection shall be made to any source of wastes, wastewater or clean water other than those plumbing fixtures which are normally present within the type of facility indicated in the approved engineering design.

(b) Drainage from basement floors, footings or roofs shall not enter the individual subsurface sewage disposal system and shall be diverted away from the area of the disposal field. Backwash from water softeners shall not be disposed of within the individual sewage disposal system but may be discharged into a drywell located away from the area of the disposal field.

(c) As set forth in N.J.S.A. 58:10A-17, no person shall use or introduce or cause any other person to use or introduce into any individual subsurface sewage disposal system any sewage system cleaner containing any restricted chemical material.

(d) Disposal of materials containing toxic substances into an individual subsurface sewage disposal system is prohibited. Material containing toxic substances include, but are not limited to, waste oil (other than cooking oil), oil-based or acrylic paints, varnishes, photographic solutions, pesticides, insecticides, paint thinners, organic solvents or degreasers and drain-openers.

(e) Inert or non-biodegradable substances shall not be disposed of in the individual subsurface sewage disposal system. Such substances include, but are not limited to, disposable diapers containing plastic, cat box litter, coffee grounds, cigarette filters, sanitary napkins, facial tissues and wet-strength paper towels.

(f) Large quantities of cooking greases or fats shall not be discharged into systems not equipped with a grease trap designed and constructed as prescribed in N.J.A.C. 7:9A-8.1.

(g) Major plumbing leaks shall be repaired promptly to prevent hydraulic overloading of the system.

7:9A-12-2 System inspection requirements

(a) Inspection of the system shall be required once every year except for the first three years following the installation or pump-out of the septic tank. Annual inspection of the system shall begin three years after installation or pump-out of the septic tank.

(b) In the following cases, the administrative authority may require inspection of the system once every year regardless of whether the septic tank has been pumped out:

1. The system is malfunctioning or has malfunctioned in the past;

2. The size or capacity of one or more components of the system does not meet the current requirements of these standards;

3. When actual measured water usage is greater than the design capacity of one or more system components;

4. In residential facilities, when the estimated water useage based upon the actual number of residents is greater than the design capacity of one or more system components. For the purpose of making this determination, the design flow shall be estimated by multiplying the number of persons living in the residence by a factor of 100 gallons per day; or

5. Facilities in which a grease trap is required.

(c) Results of system inspections shall be reported on standard forms provided by the Department, or on equivalent forms which are acceptable to the administrative authority.

(d) During each inspection, the following information shall be noted and recorded on the appropriate form:

1. A general description of the system type and configuration including size, number and location of each system component and the type of disposal field installation.

2. For residential facilities, the current number of persons residing in the building(s) served by the system.

3. Measured water useage in gallons per day from water meter readings, if available.

4. For each septic tank or each compartment of multiple compartment septic tanks:

i. Vertical distance in inches between the bottom of the scum or grease layer and the bottom of the outlet baffle;

ii. Vertical distance in inches between the top of the sludge layer and the bottom of the outlet baffle;

iii. Physical condition of inlet and outlet baffles;

iv. Evidence of leakage out of or into the unit including visible holes, cracks or corrosion, a liquid level prior to pumping which is below the invert of the outlet, or noticeable seepage of ground water into the unit after it has been pumped out; and

v. Signs of clogging or effluent back-up indicated by a liquid level higher than the invert of the outlet.

5. For distribution boxes equipped with access risers extending to finished grade:

i. Evidence of solids carry-over from the septic tank;

ii. Evidence of leakage out of or into the unit including visible holes, cracks or corrosion, a liquid level prior to pumping which is below the invert of the outlet, or noticeable seepage of ground water into the unit after it has been pumped out;

iii. Levelness of distribution box as indicated by height of each outlet in relation to liquid level; and

iv. Signs of clogging or effluent back-up indicated by liquid level higher than invert of the outlets.

6. For dosing tanks with pumps or siphons:

i. Evidence of solids carry-over from the septic tank;

ii. Evidence of leakage out of or into the unit including visible holes, cracks or corrosion, or noticeable seepage of ground water into the unit; and

iii. Condition and operation of pumps, siphons, switches, electrical wiring and alarms. Sufficient water shall be added to activate a dose cycle.

7. For disposal fields:

i. Signs of hydraulic failure including but not limited to ponding of rainwater or effluent, surface breakout of effluent, wet or soggy soil conditions or sewage odors emanating from the area of the disposal field;

ii. Condition of surface grading and vegetation, evidence of uneven ground settlement, slope failure, erosion or ruts caused by vehicle traffic;

iii. Level of effluent ponding within the disposal bed or each individual disposal trench determined by means of inspection ports where available;

iv. Encroachments onto the area of disposal field including driveways, patios, accessory buildings, additions to the main building or any other form of encroachment which may adversely affect the functioning of the system; and

v. Improperly directed drainage from roofs, footing drains, ditches or swales, discharges from water softener backwashing, or any other unauthorized source of hydraulic loading which may adversely affect the functioning of the disposal field.

8. For seepage pits or cesspools:

i. Hydraulic failure indicated by ponding of water in the vicinity of the disposal area, overflow of effluent or sewage onto the surface of the ground or foul odors emanating from the vicinity of the disposal area;

ii. Physical condition of the cover and inlet pipe, signs of ground subsidence or structural collapse; and

iii. Improperly directed drainage from roofs, footing drains, ditches or swales, discharges from water softener backwashing, or any other unauthorized source of hydraulic loading which may adversely affect the functioning of the seepage pit or cesspool.

(f) Any problems or malfunctions noted during the inspection shall be corrected in a manner and within a timeframe acceptable to the administrative authority.

7:9A-12.3 Septic tank maintenance

(a) The contents of the septic tank shall be removed by pumping whenever either of the following conditions are noted during the course of inspection:

1. The bottom of the scum layer is within three inches of the bottom of the outlet baffle.

2. The top of the sludge layer is within eight inches of the bottom of the outlet baffle.

(b) Pumping of septic tanks shall be performed by a solid waste hauler registered with the Department in accordance with the requirements of N.J.A.C. 7:26-3.1.

(c) Equipment used in the pumping of septic tanks shall meet the following requirements:

1. Mobile tanks shall be securely mounted on trucks or trailers, shall be water-tight and provided with a leak-proof cover and shall be vented to permit the escape of gases but not the liquid or solid contents of the tank.

2. Pumps and hoses shall be maintained and operated in a condition that will prevent the leakage of sewage.

3. Equipment shall be available to permit accurate measurement of the sludge and scum levels in relation to the bottom of the outlet baffle.

(d) Pumping of septic tanks shall be conducted in such a manner that the entire contents of the septic tank including both liquids and solids are removed.

(e) Pumping shall be carried out in a manner that will prevent spillage of sewage onto the ground. If any spillage occurs, the solid portion shall be immediately removed and disposed of in a sanitary manner and the area of the spill shall be disinfected using a suitable chlorine-bearing compound.

(f) Septage shall be disposed of at a sewage treatment plant designated in accordance with District and/or State Solid Waste Management Plans pursuant to the Statewide Sludge Management Plan adopted pursuant to N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 58:11A-1 et seq.

7:9A-12.4 Additional inspection and maintenance requirements for grease traps

(a) Grease traps shall be inspected and cleaned out at a frequency adequate to prevent the volume of grease from exceeding the grease retention capacity. Grease shall be removed whenever 75 pecent of the grease retention capacity has been reached. Grease traps serving restaurants may require pumping as frequently as once a week to once every two to three months.

(b) Pumping of grease traps shall be performed by a solid waste hauler registered with the Department in accordance with the requirements of N.J.A.C. 7:26-3.1.

(c) Equipment used in the pumping of grease traps shall meet the following requirements:

1. Mobile tanks shall be securely mounted on trucks or trailers, shall be water-tight and provided with a leak-proof cover and shall be vented to permit the escape of gases but not the liquid or solid contents of the tank.

2. Pumps and hoses shall be maintained in a condition that will prevent the leakage of sewage.

3. Equipment shall be available to permit accurate measurement of the volume of grease in relation to the grease retention capacity of the grease trap.

(d) Pumping of grease traps shall be conducted in such a manner that the entire contents of the grease trap including both liquids and solids are removed.

(e) Pumping shall be carried out in a manner that will prevent spillage of sewage onto the ground. If any spillage occurs the solid portion shall be immediately removed and disposed of in a sanitary manner and the area of the spill shall be disinfected using suitable chlorine-bearing compound.

(f) Grease and other waste materials removed from grease traps shall be disposed of in accordance with the requirements of the Statewide Sludge Management Plan adopted pursuant to N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 58:11A-1 et seq., as well as any other applicable State or local rules, regulations, ordinances or directives.

7:9A-12.5 Maintenance of dosing tanks

(a) Dosing tanks and associated pumps, siphons, switches, alarms, electrical connections and wiring shall be maintained in proper working order.

(b) Any solids which accumulate in the dosing tank shall be removed and disposed of in a sanitary manner.

7:9A-12.6 Disposal field maintenance

(a) The area of the disposal field shall be kept free of encroachments from driveways, patios, accessory buildings, additions to the main building and trees or shrubbery whose roots may cause clogging of any part of the system.

(b) Grading shall be maintained in a condition that will promote run-off of rainwater and prevent ponding.

(c) Drainage from roofs, footing drains, ditches or swales shall be diverted away from the disposal field.

(d) Vegetation shall be maintained to prevent soil erosion.

(e) Vehicle traffic shall be kept away from the area of the disposal field.

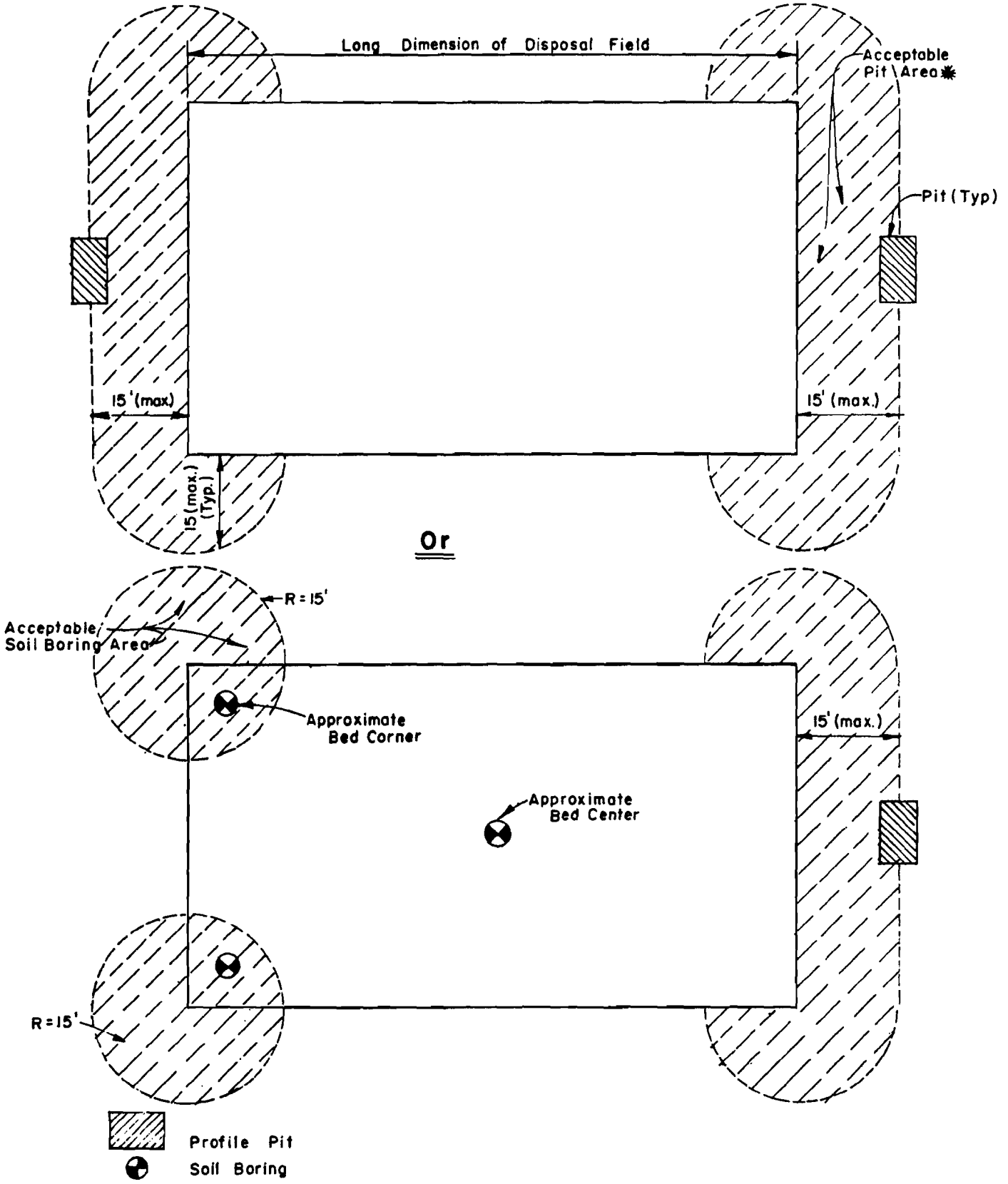
7:9A-12.7 System testing

No person shall test an individual subsurface sewage disposal system in a manner that will adversely affect the functioning of the system. Hydraulic loading shall not be applied in excess of the design flow capacity of the septic tank and/or grease trap unless all solids have been removed from the septic tank and/or grease trap prior to testing or unless the hydraulic loading is applied at a point that will bypass the septic tank and/or grease trap. ***All testing of operating systems which requires a hydraulic loading which is in excess of the design flow shall be performed under the supervision of a licensed professional engineer.***

7:9A-12.8 Abandoned systems

When it is necessary to abandon a system or components of a system, all septic tanks, dosing tanks, seepage pits, dry wells and cesspools which are to be abandoned shall be emptied of wastes and removed or filled completely with gravel, stones or soil material in a manner which is acceptable to the administrative authority.

APPENDIX A—FIGURES



*Profile pits may be located within the boundaries of the disposal field also, provided that they are backfilled after use as prescribed in N.J.A.C. 7:9A-5.2(c).

Figure 1. Location of Soil Profile Pits and Borings

AGENCY NOTE: The Department is not adopting proposed Figure 2, which is not reproduced herein for deletion in the interest of clarity. Instead, as explained in the Summary of Comments, the following Figure 2 is adopted.

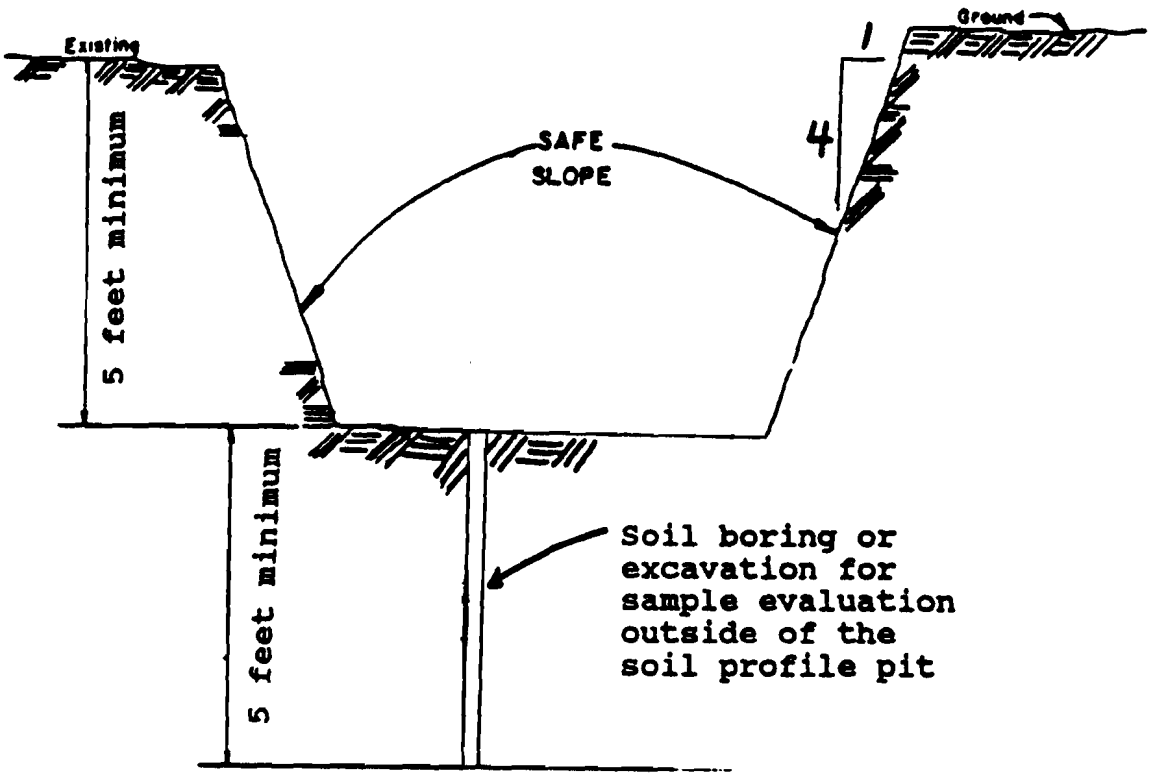
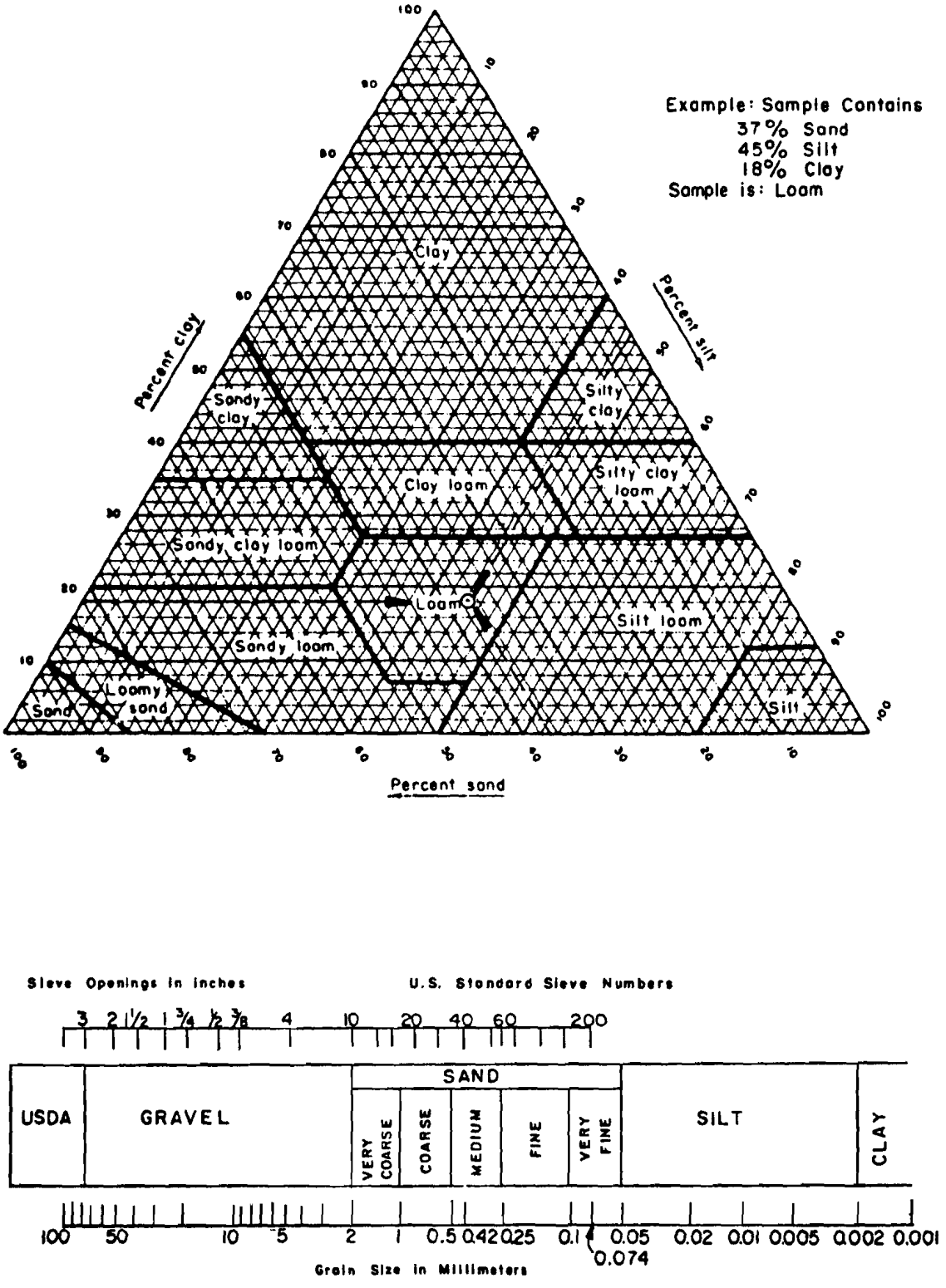
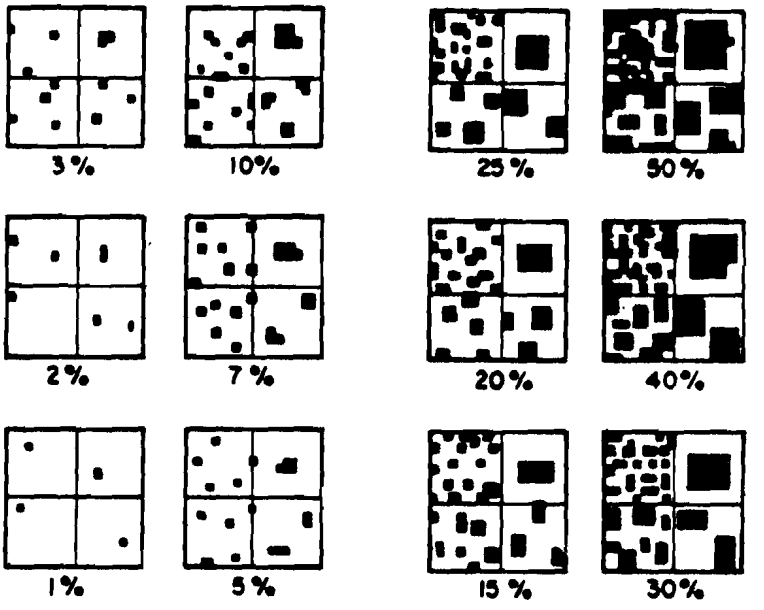


Figure 2. Recommended Cross-section of Soil Profile Pit.



Adapted from U.S. Dept. of the Interior, Water & Power Research Service (1974) *Earth Manual,* 2nd Edition, pg. 82

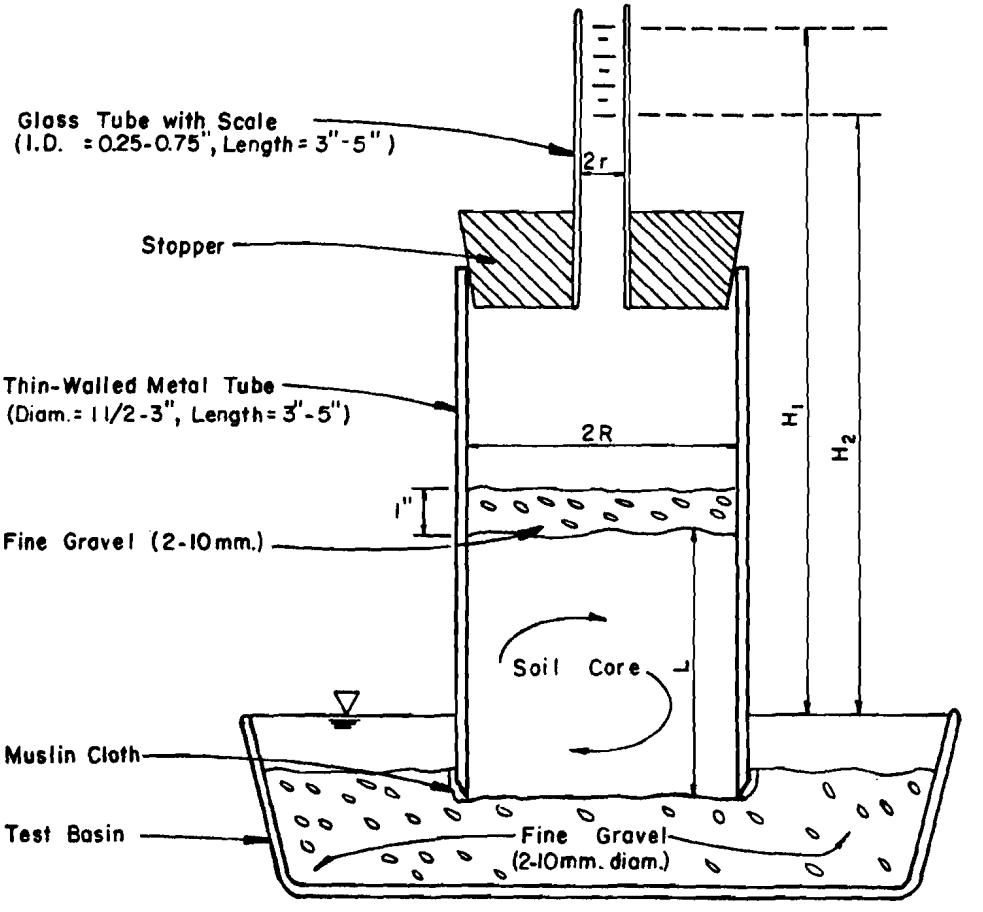
Figure 3. U.S.D.A. System of Soil Textural Classification



Charts for estimating proportions of Mottles and Coarse Fragments.
Each fourth of any one square has the same amount of black.

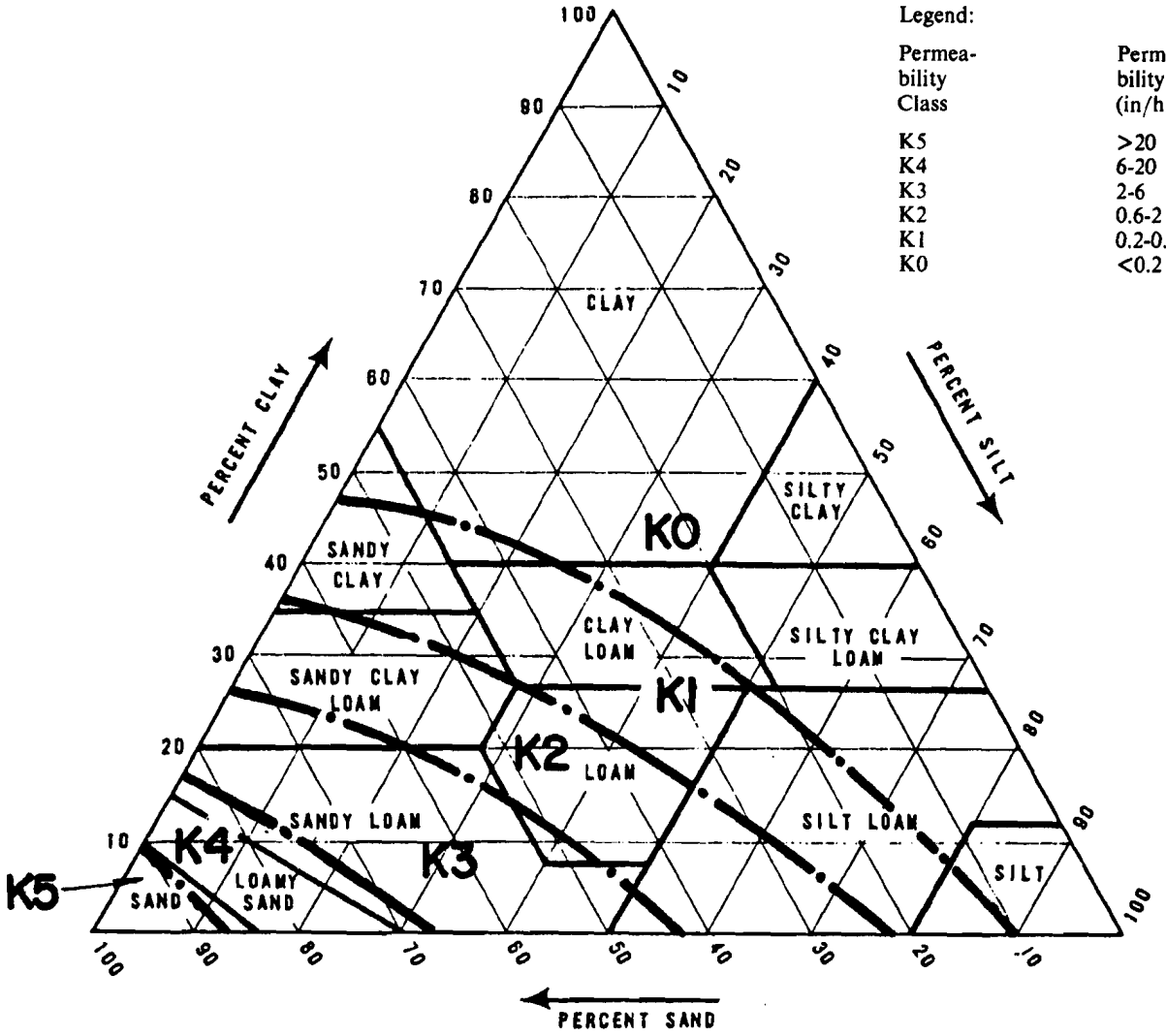
Adapted from *Technical Manual for Sewage Enforcement Officers* Commonwealth of Pennsylvania, Dept. of Environmental Resources, Div. of Local Environmental Services, Bureau of Water Quality Management

Figure 4. Charts for Visual Estimation of Volume Percentage



$$K(\text{in./hr.}) = 60(\text{min./hr.}) \times r^2/R^2 \times L(\text{in.})/T(\text{min.}) \times \ln\ (H_1/H_2)$$

Figure 5. Tube Permeameter (with standpipe)



Adapted from N.N. Hantzsche et al. (1982) Soil Textural Analysis for Onsite Sewage Disposal Evaluation, Proc. 3rd Nat. Symposium on Individual and Small Community Sewage Treatment, Am. Soc. Agric. Eng., St. Joseph, Michigan

Figure 6. Soil Permeability/Textural Triangle

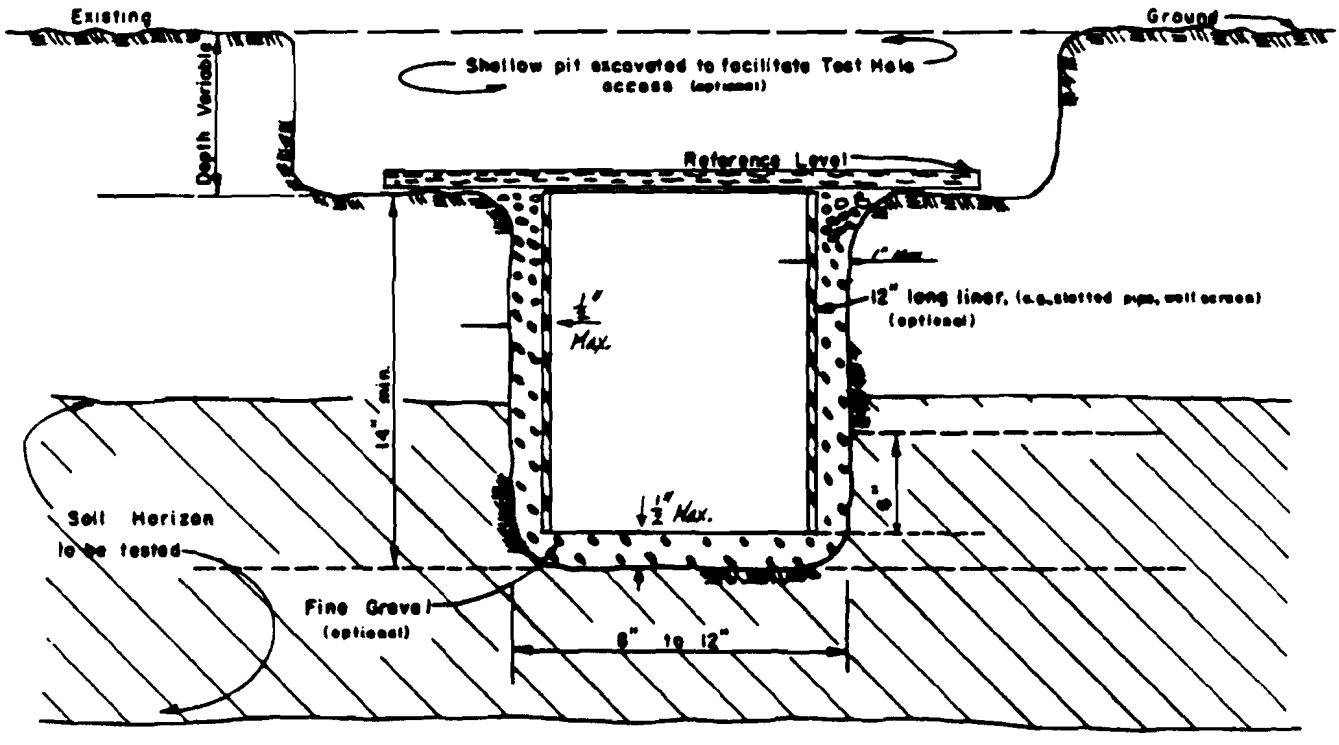
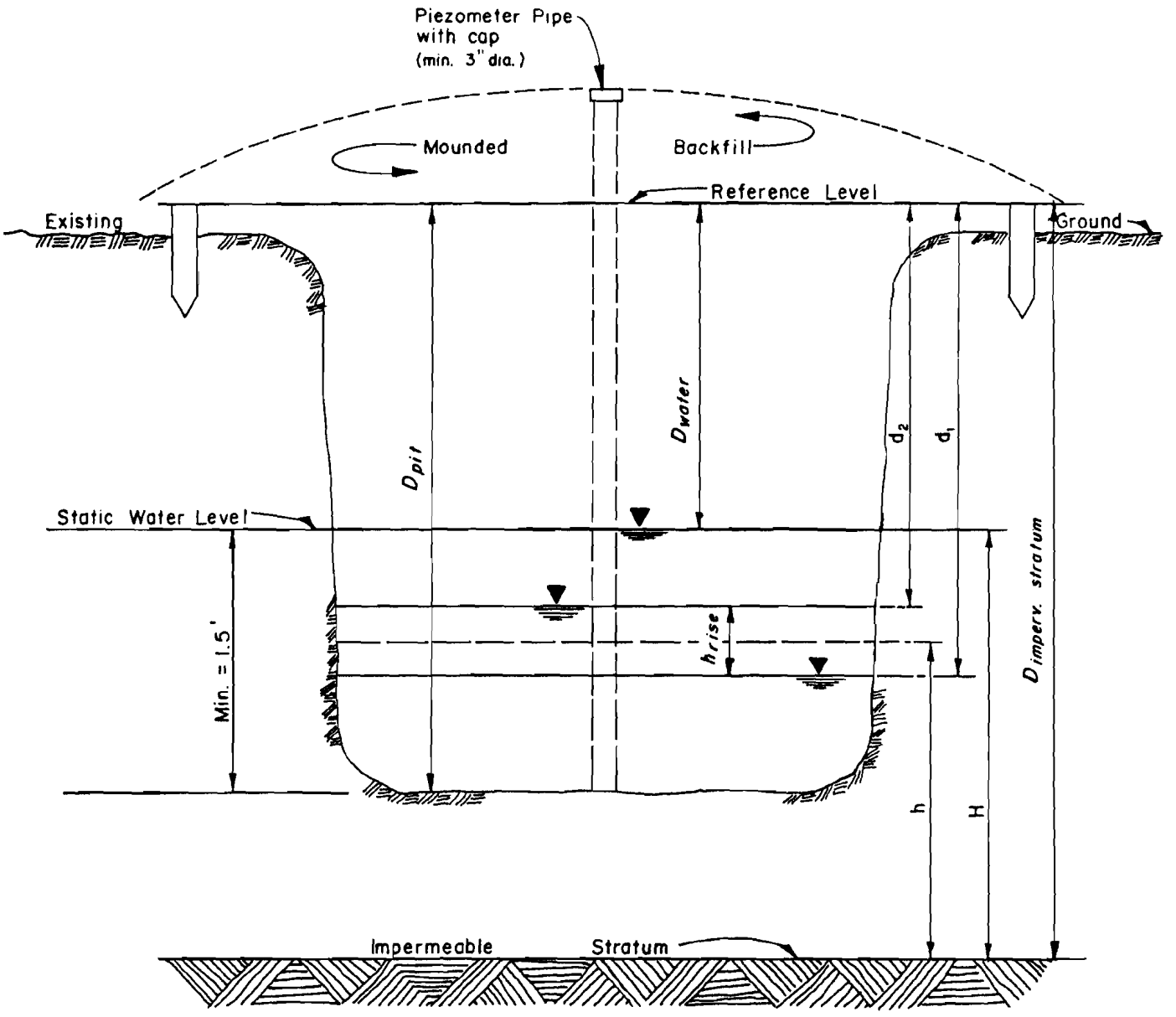
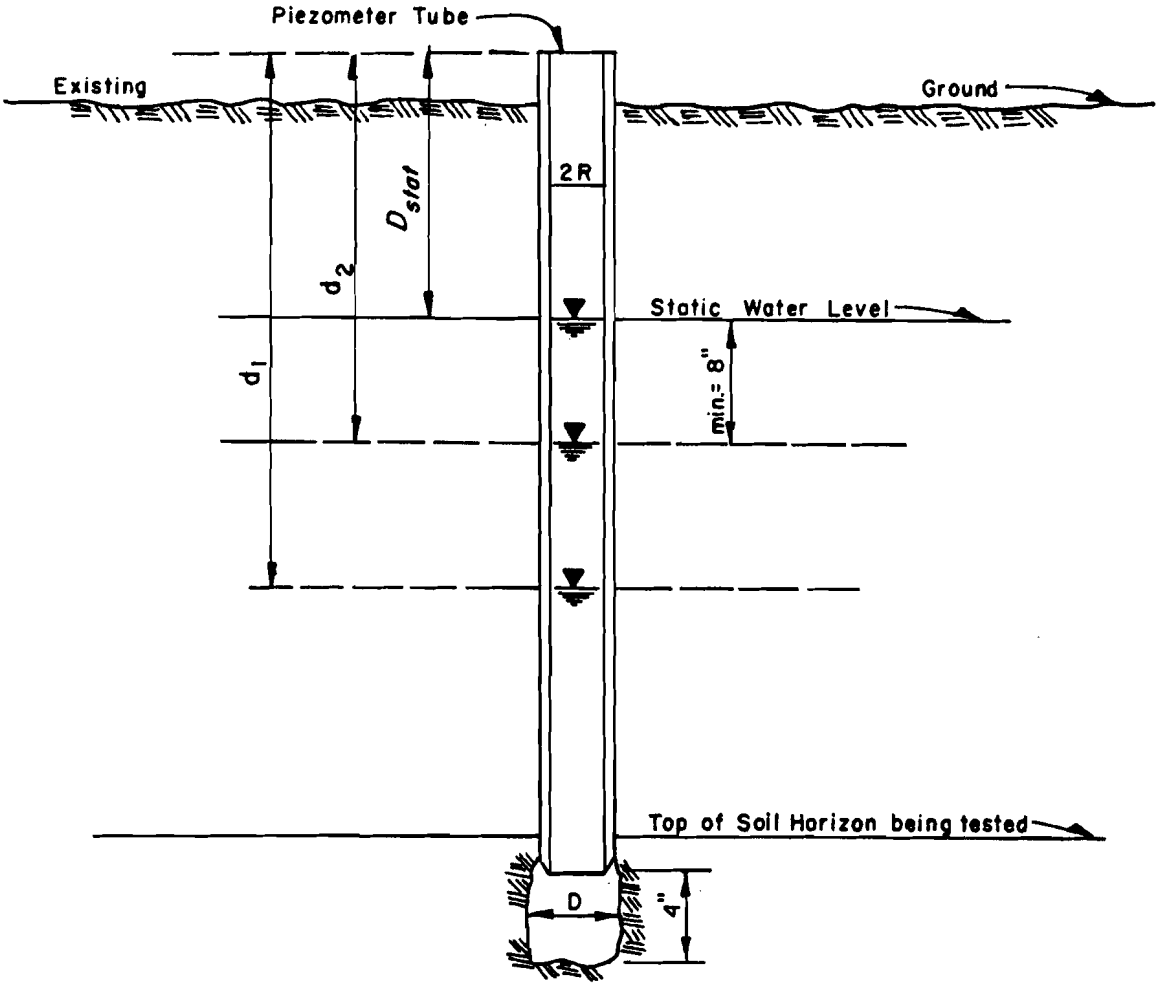


Figure 7. Percolation Test



$$K\,(\text{in./hr.}) = [(h_{rise})/t] \times [A_{av.}/2.27\,(H^2 - h^2)] \times 60\ \text{min./hr.}$$

Figure 8. Pit-bailing Test.



$$K = 60\ \text{min/hr.} \times (3.14\ R^2/At) \times ln\ [(d_1 - D_{stat}) / (d_2 - D_{stat})]$$

Figure 9. Piezometer Test.

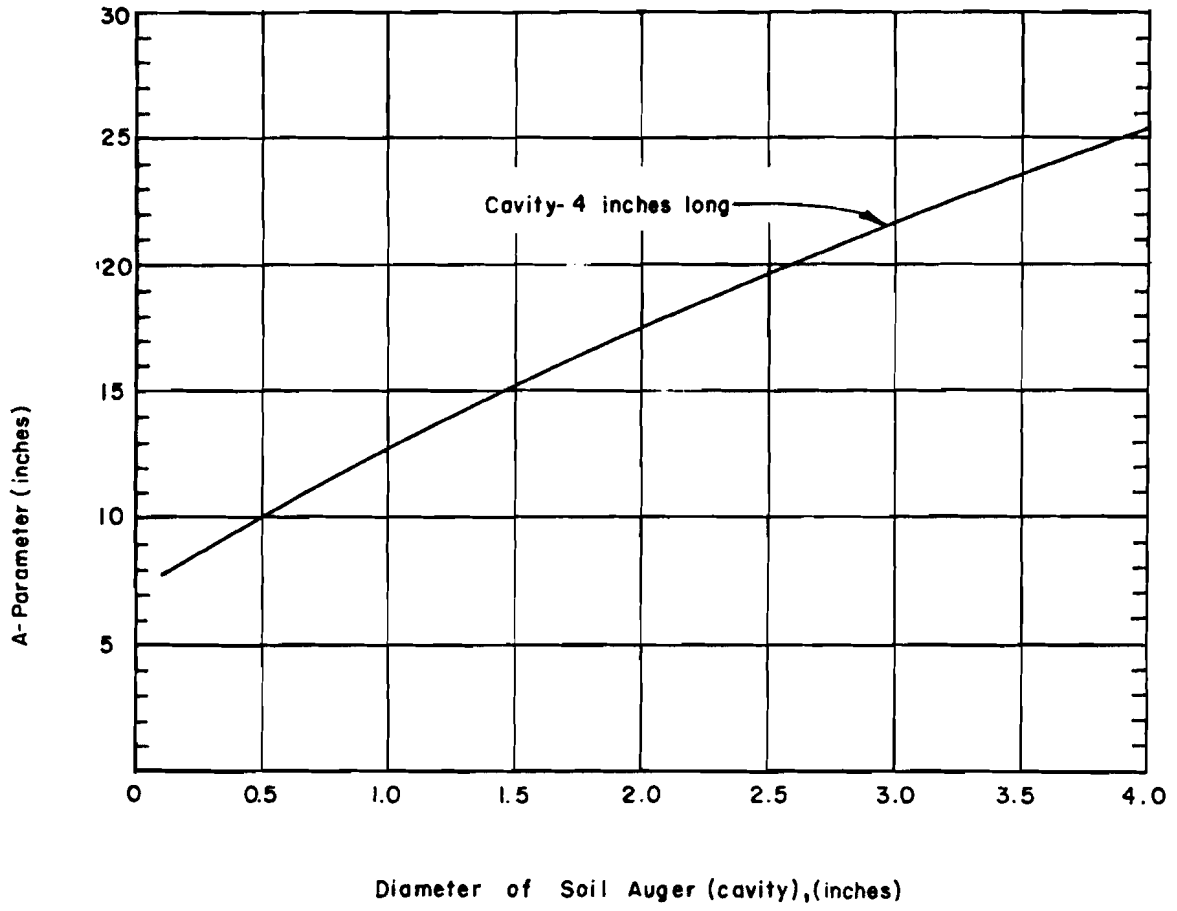
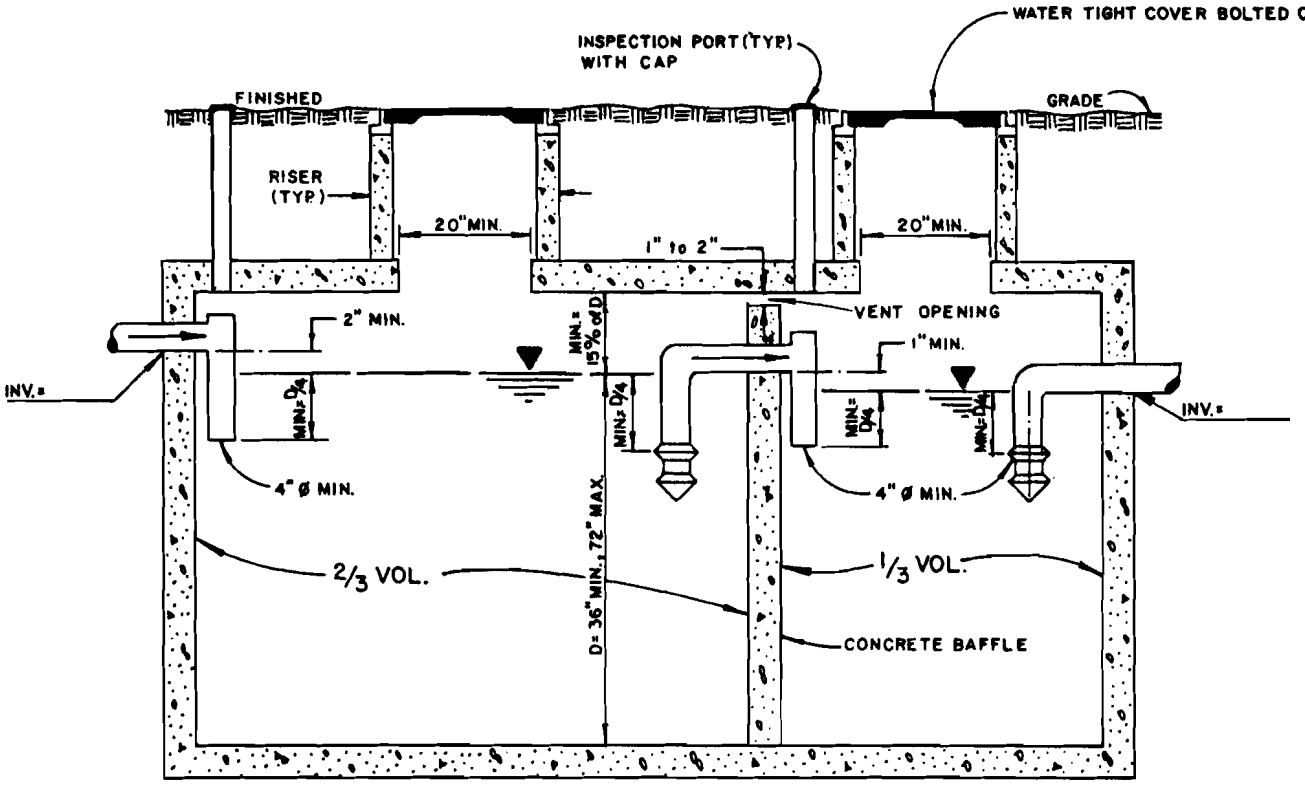
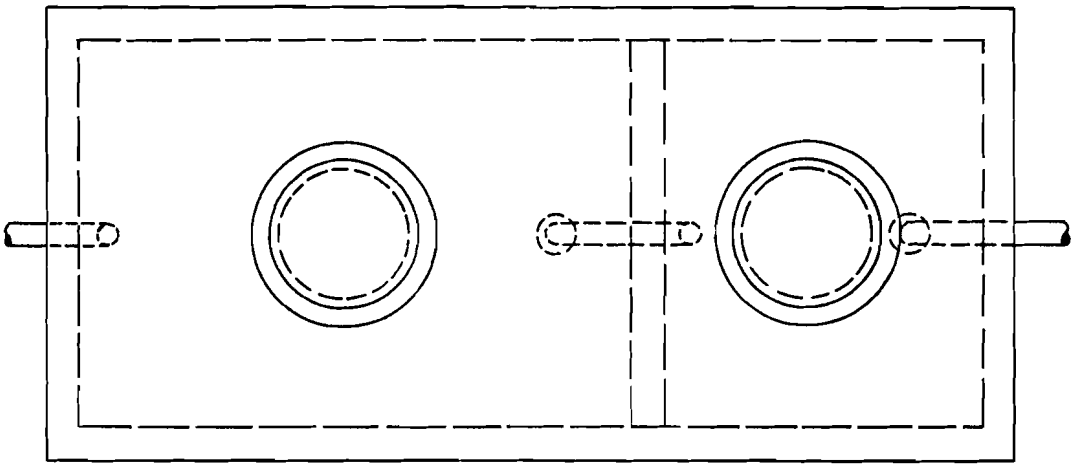


Figure 10. "A" Parameter for Piezometer Test.



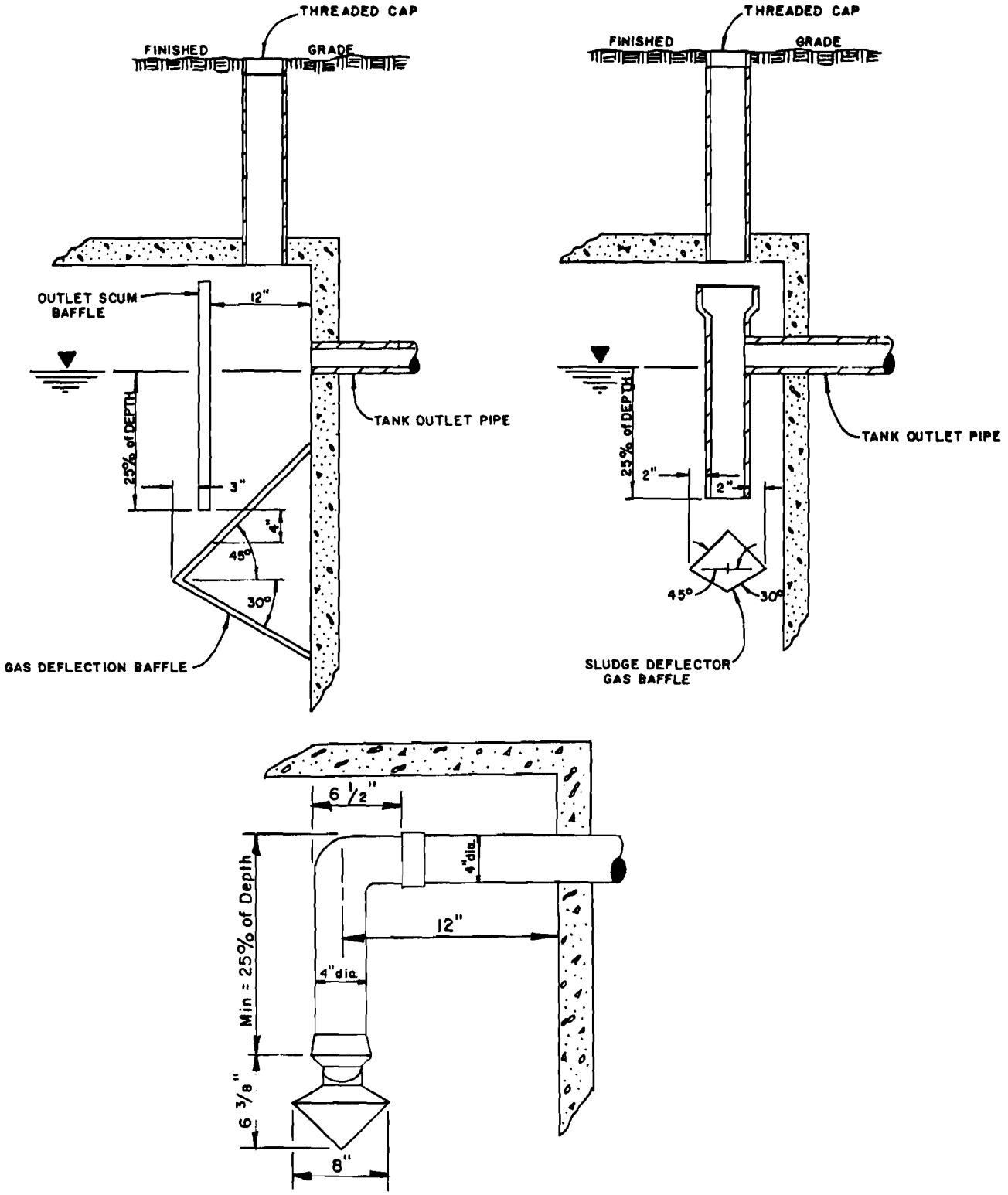
ELEVATION

VOL.= TOTAL LIQUID CAPACITY



PLAN

Figure 11. Multiple Compartment Septic Tank with Septic Solids Retainer



Septic Solids Retainer (Proprietary)

Figure 12. Gas Deflection Baffles

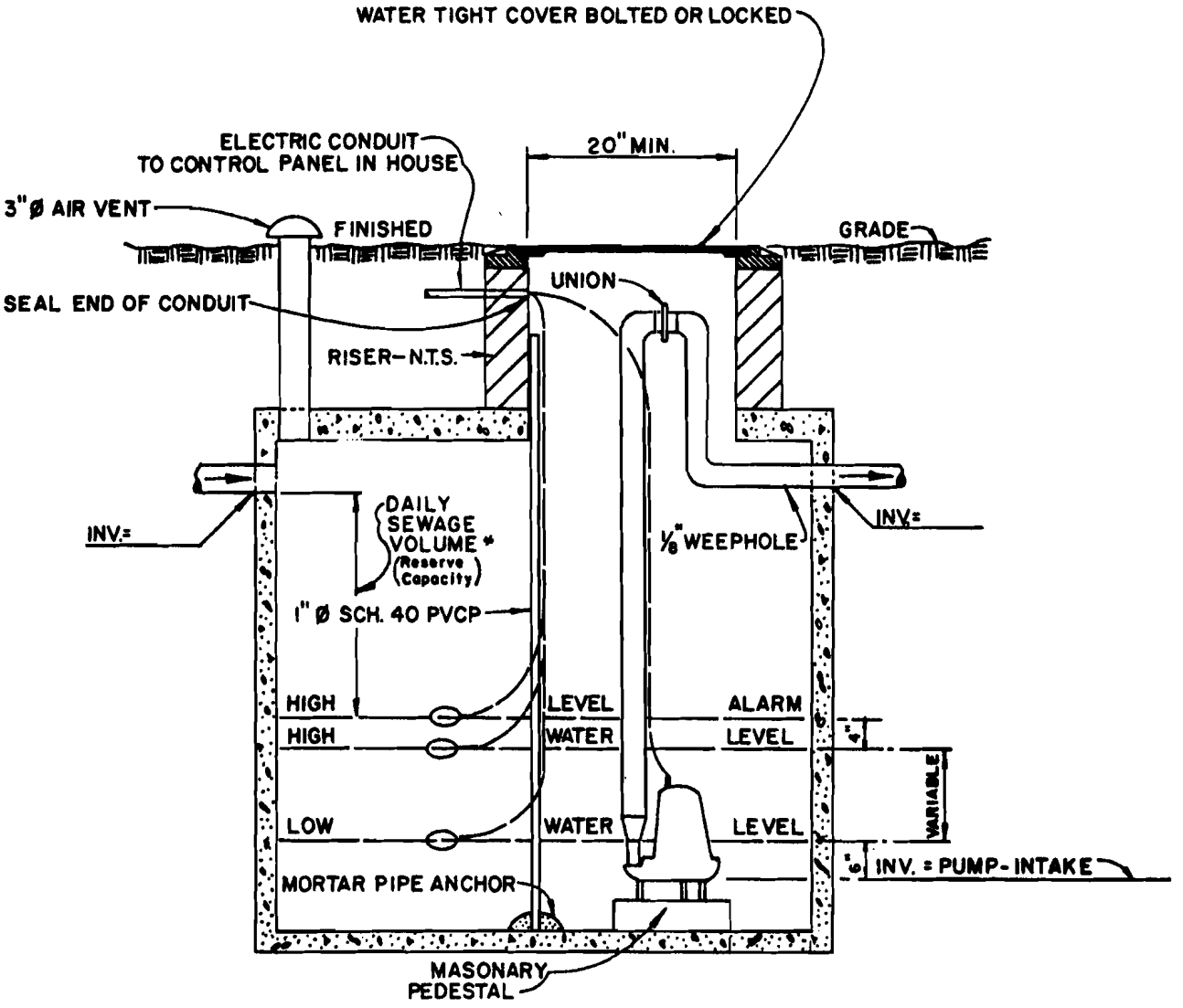


Figure 13. Dosing Tank with Pump.

LATERAL LENGTH (FT)	PIPES WITH 1/4 INCH HOLES				PIPES WITH 5/16 INCH HOLES				PIPES WITH 3/8 INCH HOLES			
	HOLE SPACING (FT)				HOLE SPACING (FT)				HOLE SPACING (FT)			
	2	3	4	5	2	3	4	5	2	3	4	5
10												
15							1				1	
20			1									
25									3/2	5/4		
30					3/2		5/4					
35	3/2		5/4							2	3/2	
40						3/2						
45	2	3/2			2				3			
50					3			3/2				

LATERAL LENGTH (FT)	PIPES WITH 7/16				PIPES WITH 1/2			
	HOLE SPACING (FT)				HOLE SPACING (FT)			
	2	3	4	5	2	3	4	5
10								
15			1					1
20	3/2					3/2	5/4	
25		3/2	5/4				3/2	
30			3/2					3/2
35		2		3/2			2	
40						3		
45	3							
50								

Computed for plastic pipe. The Hazen-Williams equation was used to compute headlosses through each pipe segment. (Hazen-Williams C = 150). The orifice equation for sharp-edged orifices (discharge coefficient = 0.6) was used to compute discharge rates through each orifice. The maximum lateral length for a given hole and spacing was defined as that length at which the difference between the rates of discharge from the distal end and the supply end orifices reached 10% of the distal orifice rate.

Figure 14. Required Lateral Diameters, in Inches, For Various Hole Diameters, Hole Spacings and Lateral Lengths

MANIFOLD DIAMETER (IN)

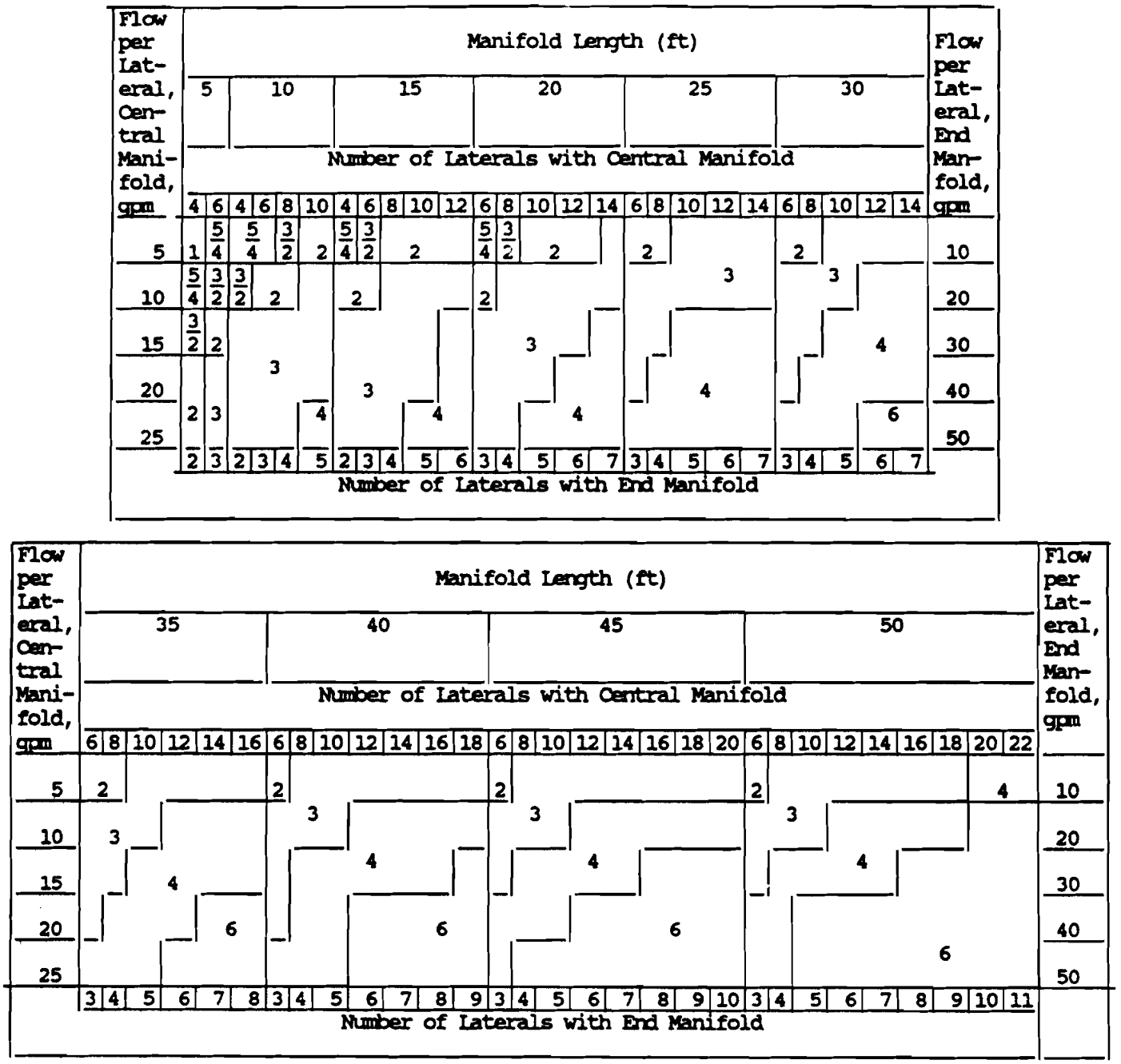


Figure 15. Required Manifold Diameters For Various Manifold Lengths, Number of Laterals and Lateral Discharge Rates

FRICTION LOSS IN SCHEDULE 40 PLASTIC PIPE, C = 150
(ft/100 ft)
Pipe Diameter (in)

Flow (gpm)	1	1¼	1½	2	3	4	6	8	10
1	0.07								
2	0.28	0.07							
3	0.60	0.16	0.07						
4	1.01	0.25	0.12						
5	1.52	0.39	0.18						
6	2.14	0.55	0.25	0.07					
7	2.89	0.76	0.36	0.10					
8	3.63	0.97	0.46	0.14					
9	4.57	1.21	0.58	0.17					
10	5.50	1.46	0.70	0.21					
11		1.77	0.84	0.25					
12		2.09	1.01	0.30					
13		2.42	1.17	0.35					
14		2.74	1.33	0.39					
15		3.06	1.45	0.44	0.07				
16		3.49	1.65	0.50	0.08				
17		3.93	1.86	0.56	0.09				
18		4.37	2.07	0.62	0.10				
19		4.81	2.28	0.68	0.11				
20		5.23	2.46	0.74	0.12				
25			3.75	1.10	0.16				
30			5.22	1.54	0.23				
35				2.05	0.30	0.07			
40				2.62	0.39	0.09			
45				3.27	0.48	0.12			
50				3.98	0.58	0.16			
60					0.81	0.21			
70					1.08	0.28			
80					1.38	0.37			
90					1.73	0.46			
100					2.09	0.55	0.07		
150						1.17	0.16		
200							0.28	0.07	
250							0.41	0.11	
300							0.58	0.16	
350							0.78	0.20	0.07
400							0.99	0.26	0.09
450							1.22	0.32	0.11
500								0.38	0.14
600								0.54	0.18
700								0.72	0.24
800									0.32
900									0.38
1000									0.46

Figure 16. Friction Loss in Schedule 40 Pipe

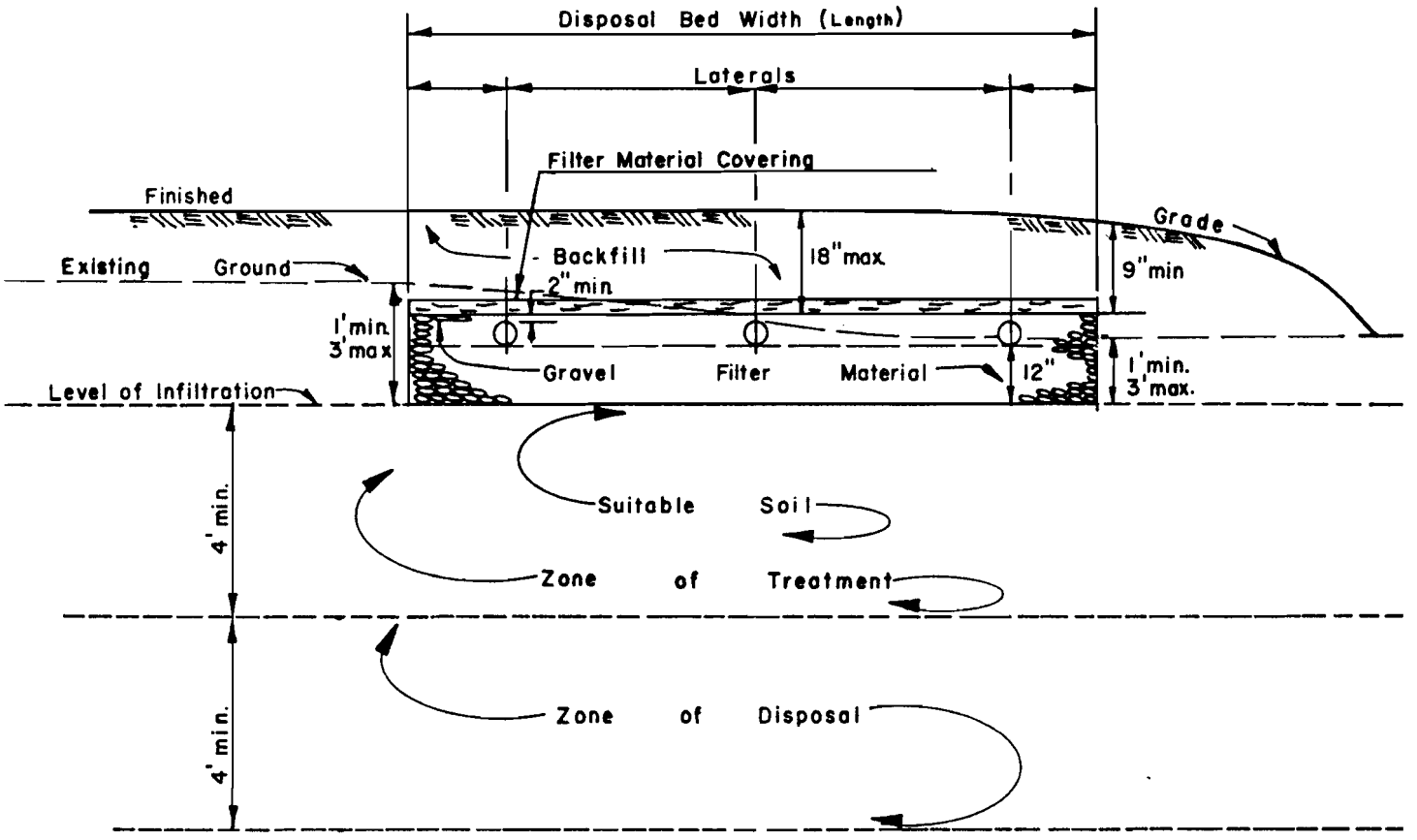


Figure 17. Conventional Disposal Field Installation.

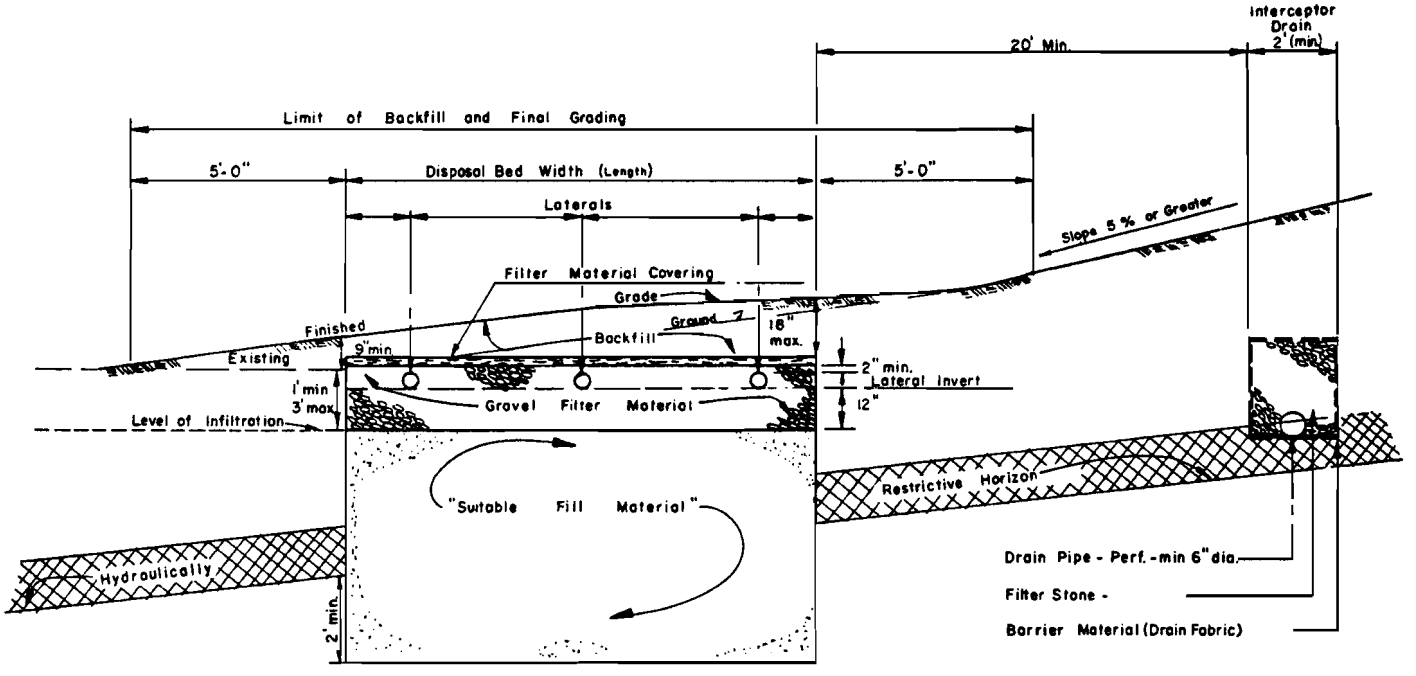


Figure 18. Soil Replacement, Bottom-Lined Disposal Field Installation.

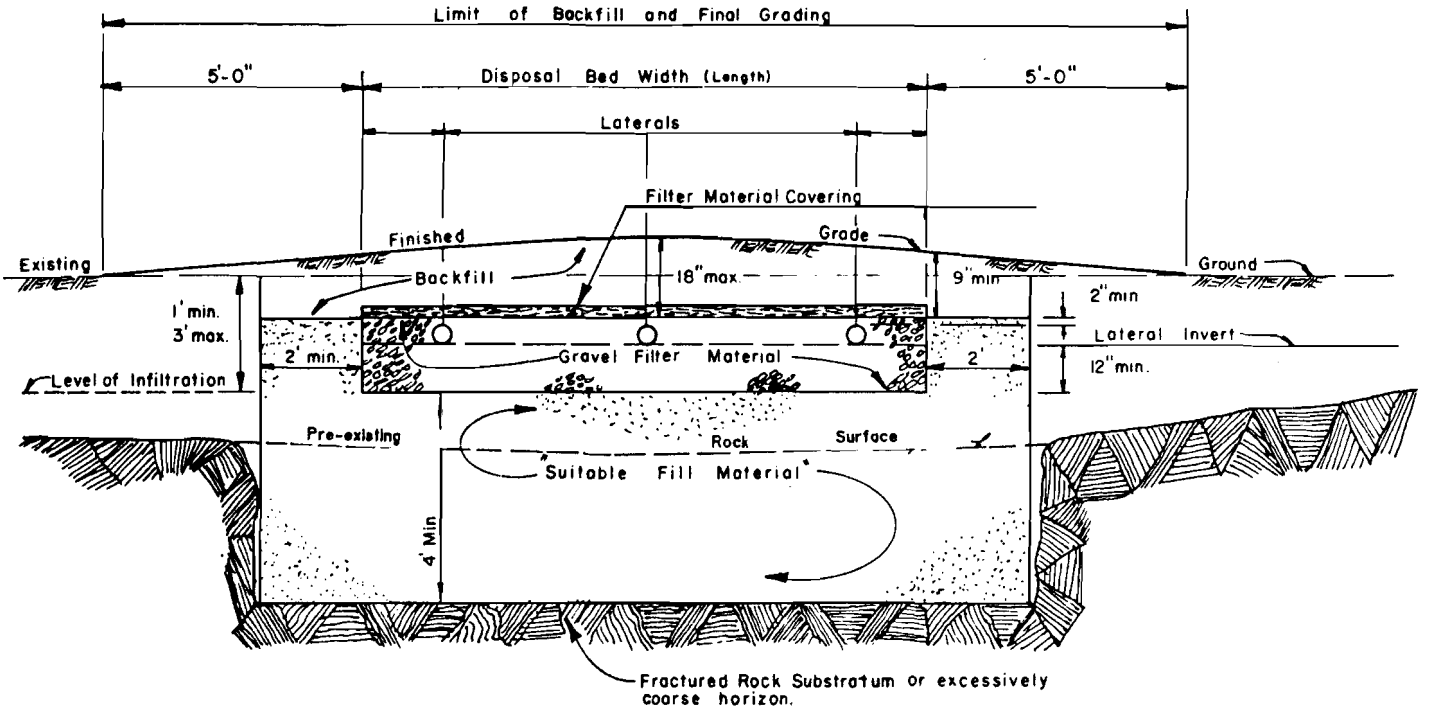


Figure 19. Soil Replacement, Fill-enclosed Disposal Field Installation.

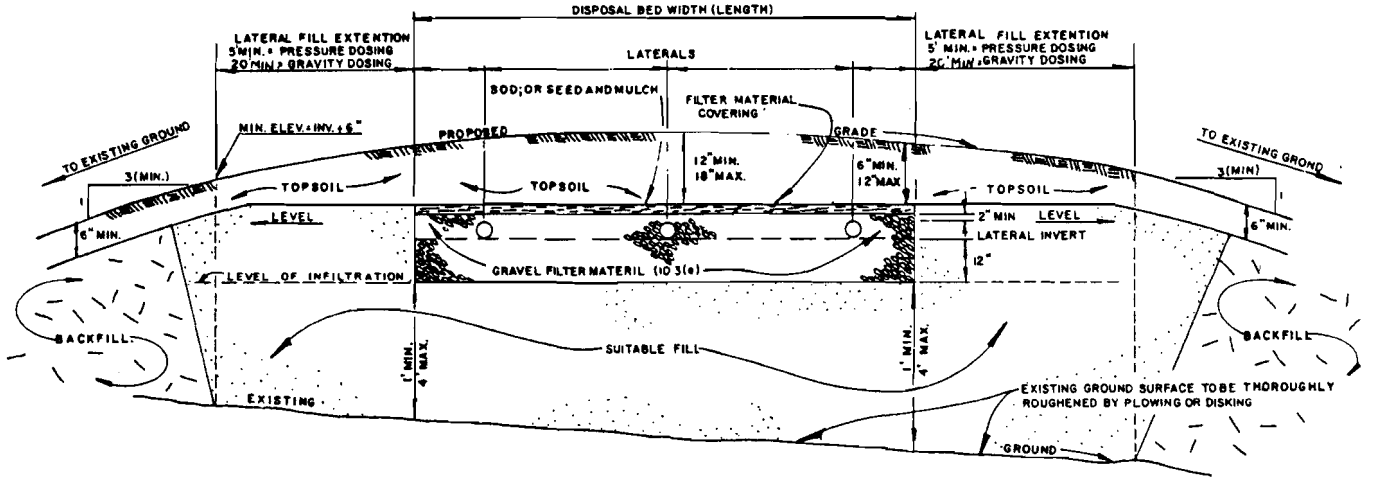


Figure 20. Mounded Disposal Field Installation.

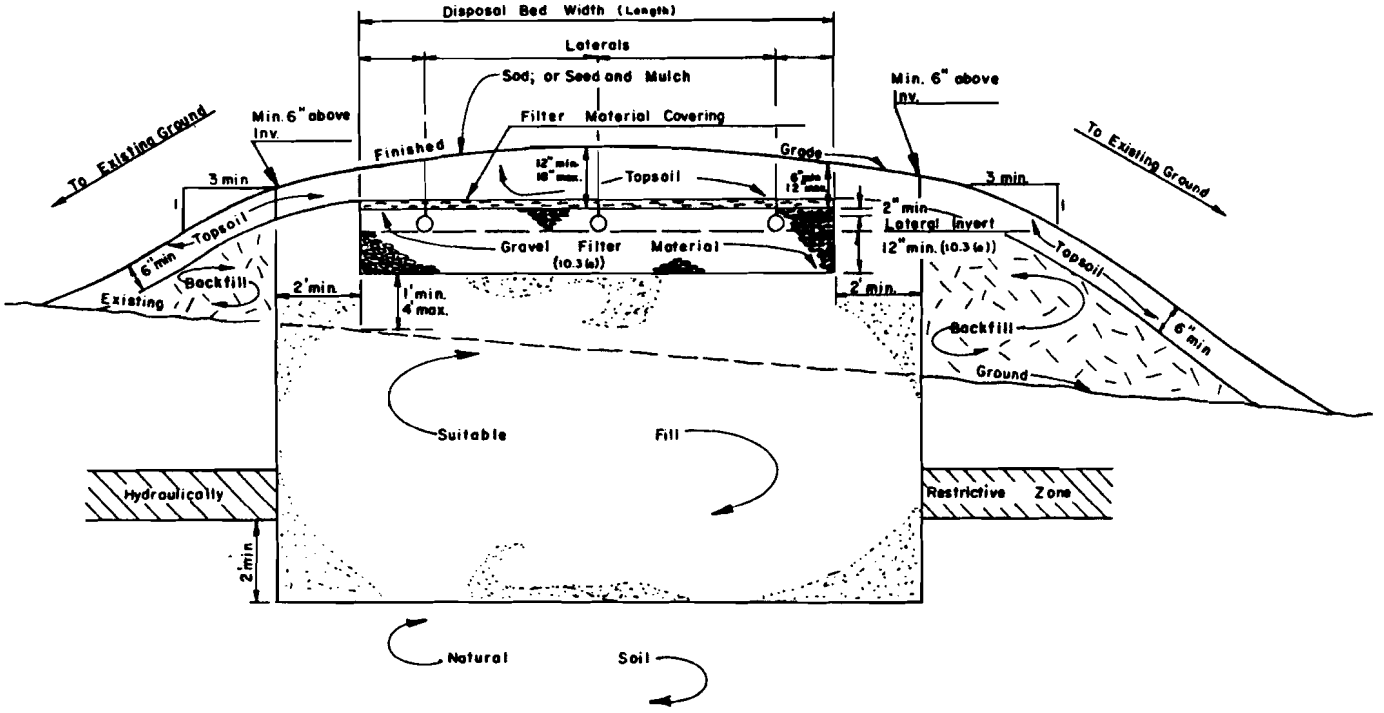


Figure 21. Mounded Soil Replacement Disposal Field Installation.

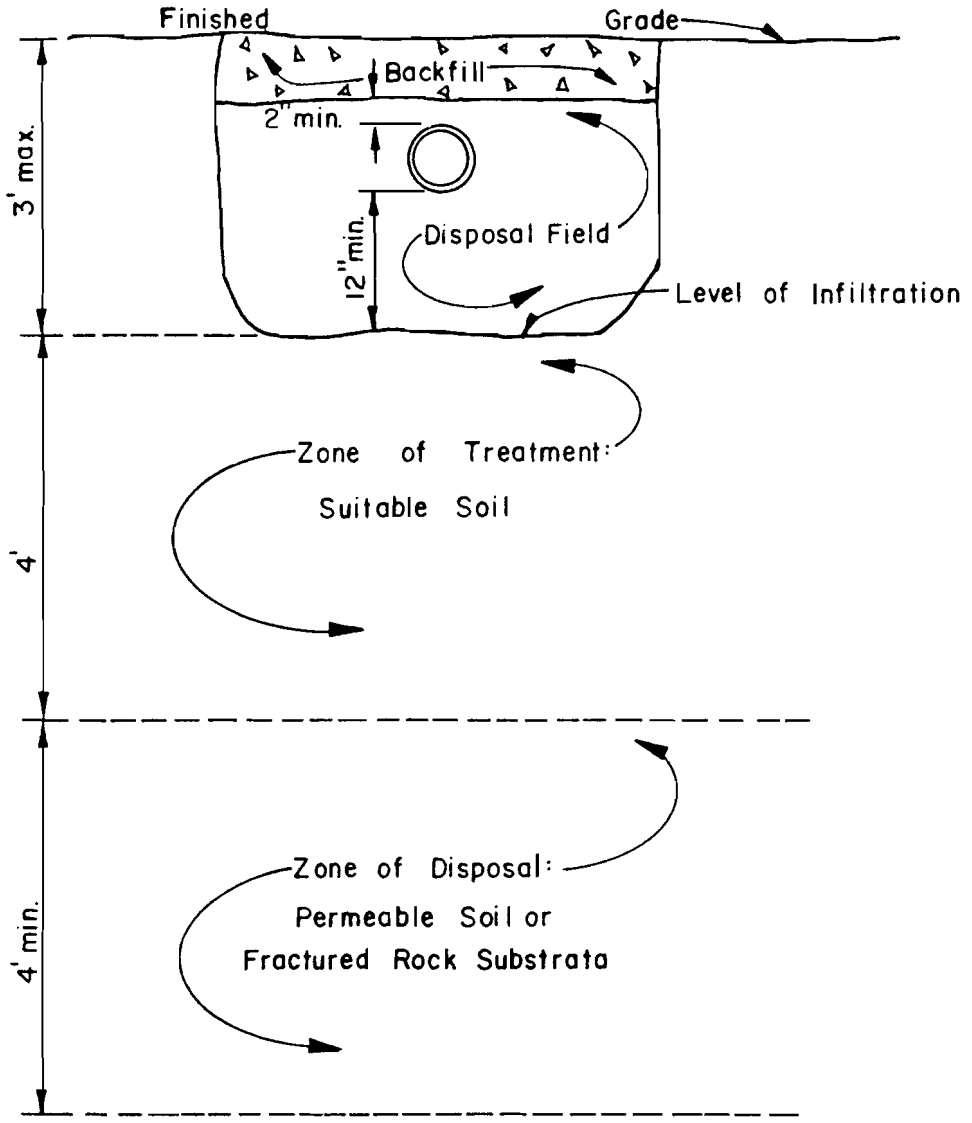


Figure 22. Zone of Treatment and zone of Disposal, Conventional Installations.

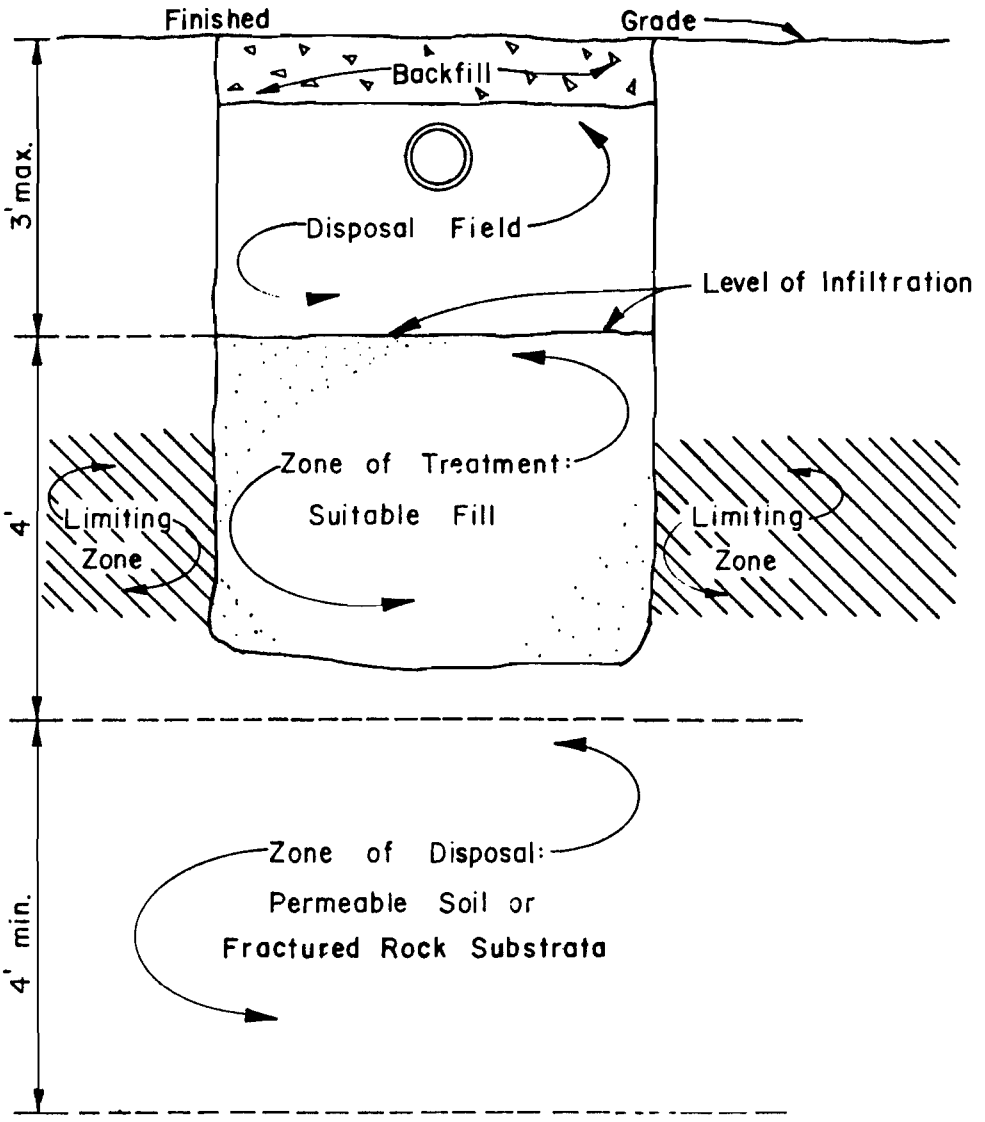


Figure 23. Placement of Fill Material Within Zone of Treatment.

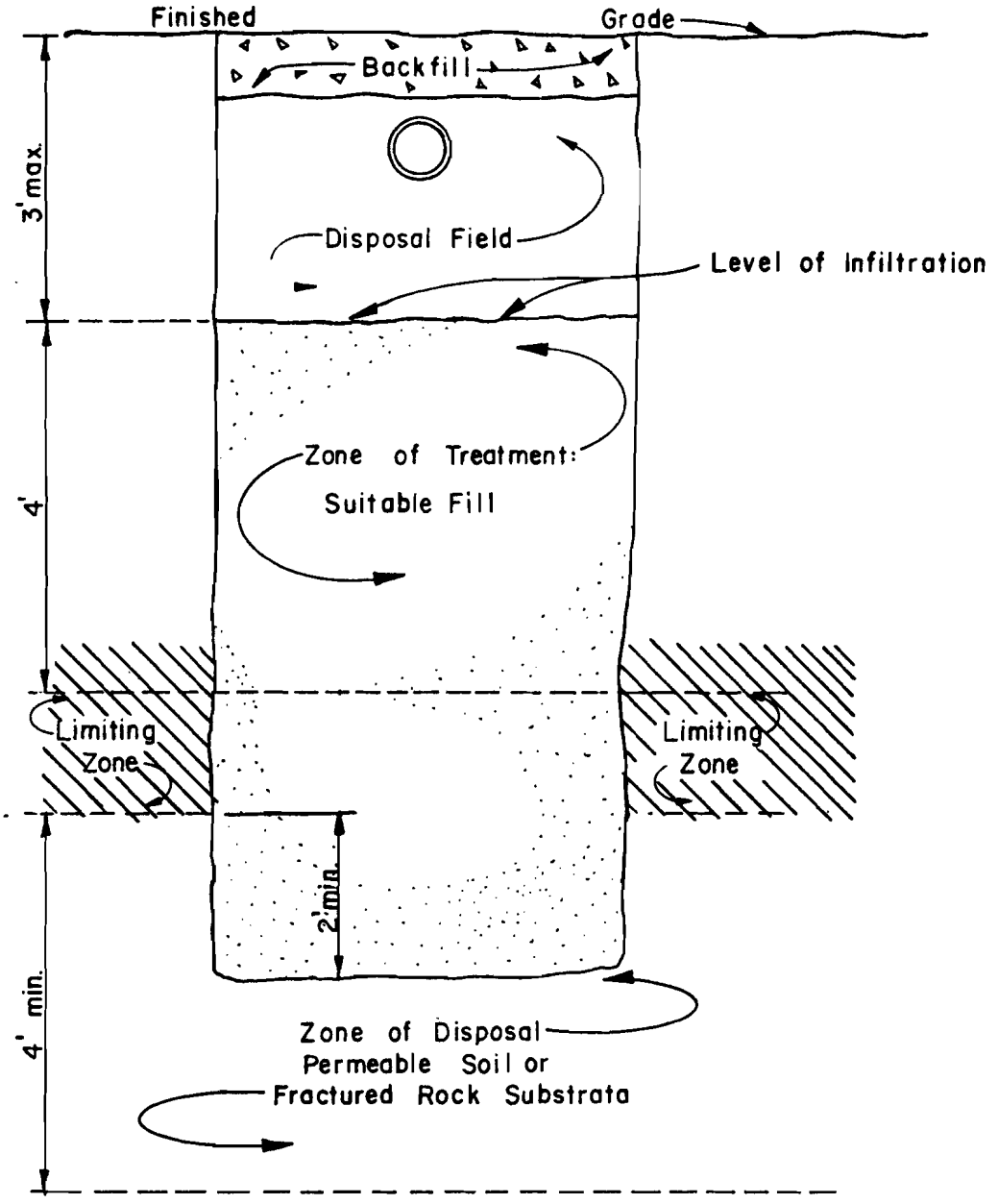


Figure 24. Placement of Fill Material Within Zone of Disposal.

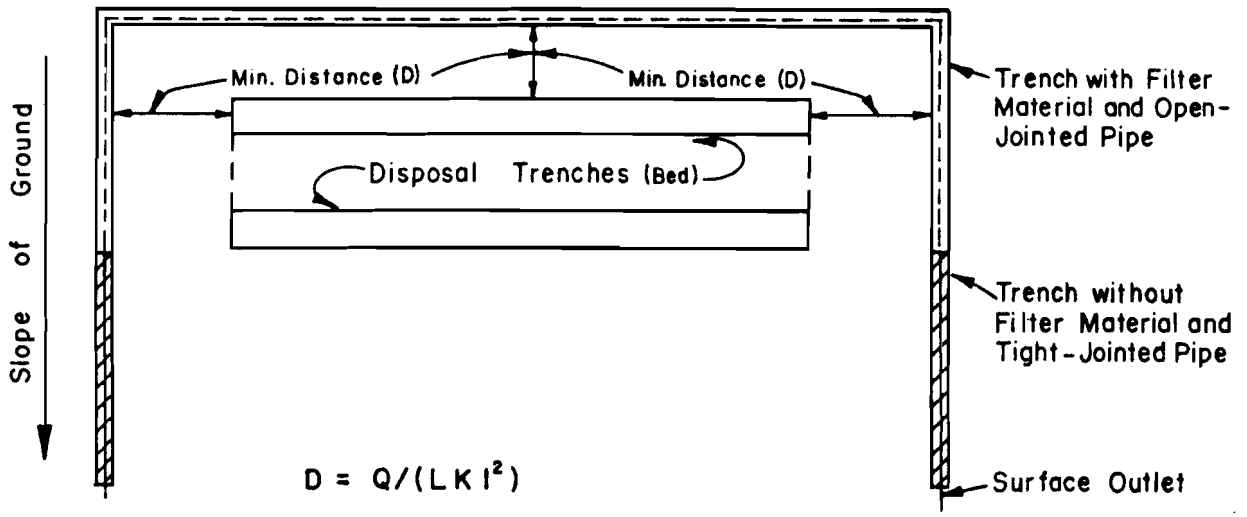


Figure 25. Disposal Field with Interceptor Drain.

AGENCY NOTE: The Department is not adopting proposed Figure 26, which is not reproduced herein for deletion in the interest of clarity. Instead, as explained in the Summary of Agency Initiated Changes, the following Figure 26 is adopted.

Size Number	Nominal Size Square Openings (1)	Amounts finer than each laboratory sieve (square openings), percentage by weight														
		4	3½	3	2½	2	1½	1	¾	½	⅜	No. 4	No. 8	No. 16	No. 50	No. 100
1	3½ to 1½	100	90–100		25–60		0–15		0–5							
2	2½ to 1½			100	90–100	35–70	0–15		0–5							
24	2½ to ¾			100	90–100		25–60		0–10	0–5						
3	2 to 1				100	90–100	35–70	0–15		0–5						
357	2 to No. 4				100	95–100		35–70		10–30		0–5				
4	1½ to ¾					100	90–100	20–55	0–15		0–5					
467	1½ to No. 4					100	95–100		35–70		10–30	0–5				
5	1 to ½						100	90–100	20–55	0–10	0–5					
56	1 to ⅜						100	90–100	40–75	15–35	0–15	0–5				
57	1 to No. 4						100	95–100		25–60		0–10	0–5			
6	¾ to ⅜							100	90–100	20–55	0–15	0–5				
67	¾ to No. 4							100	90–100		20–55	0–10	0–5			
68	¾ to No. 8							100	90–100		30–65	5–25	0–10	0–5		
7	½ to No. 4								100	90–100	40–70	0–15	0–5			
78	½ to No. 8								100	90–100	40–75	5–25	0–10	0–5		
8	⅜ to No. 8									100	85–100	10–30	0–10	0–5		
89	⅜ to No. 16									100	90–100	20–55	5–30	0–10	0–5	
9	No. 4 to No. 16										100	85–100	10–40	0–10	0–5	
10	No. 4 to 0[2]										100	85–100				10–30

[1]In inches, except where otherwise indicated. Numbered sieves are those of the United States Sieve Series.
[2]Screenings.

Figure 26. N.J. Department of Transportation Standard Sizes for Coarse Aggregate

AGENCY NOTE: The Department is not adopting the forms in proposed Appendix B, as explained in the Summary of Comments. In the interest of clarity, proposed Appendix B is not reproduced herein for deletion. The Department is adopting the following Appendix B.

APPENDIX B

STANDARD FORMS FOR SUBMISSION OF SOILS/ENGINEERING DATA

COUNTY/MUNICIPALITY_____

APPLICATION FOR PERMIT TO CONSTRUCT/ALTER/REPAIR AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1—General Information

1. Type of Permit Needed (Check applicable categories):
   - ___ New Construction ___ Alteration/No Expansion or Change of Use
   - ___ Alteration/Expansion or Change in Use
   - ___ Alteration/Malfunctioning System
   - ___ Deviation from Standards ___ Repairs to Existing System
2. Location of Project:
   Municipality_____ Block No._____Lot No._____
   Street Address_____ Zip_____
3. Name of Applicant (print):_____
4. Applicant's Present Address:_____
5. Applicant's Phone Number:_____
6. Type Of Facility:
   - ___ Residential
   - ___ Commercial/Institutional
     Specify Type of Establishment:_____
7. Type of Wastes to be Discharged:
   - ___ Sanitary Sewage
   - ___ Industrial Wastes
   - ___ Other—Specify Type
8. Other Approvals/Certification/Waivers/Exemptions (Attach to Application):
   - ___ Pinelands Commission
   - ___ U.S. Army Corps of Engineers
   - ___ NJDEP—Bureau of Flood Plain Management
   - ___ Other—Specify:
9. I hereby certify that the information furnished on Form 1 of this application is true. I am aware that false sweaning is a crime in this State and subject to prosecution.

Signature of Applicant_____Date_____

FOR AGENCY USE ONLY

___ Application Denied—Reason for Denial/Citation of Rules Violated:_____

___ Application Approved

___ Application Approved Subject to Approval by NJDEP

Date of Action_____Signature of Authorized Agent_____

Name and Title_____

COUNTY/MUNICIPALITY_____

APPLICATION FOR PERMIT TO CONSTRUCT/ALTER/REPAIR AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 2a—General Site Evaluation Data Lot_____ Block_____

1. Name of Site Evaluator (print):_____
2. Business Address of Site Evaluator:_____
3. Business Phone Number of Site Evaluator:_____
4. Special Site Limitations Identified (Check appropriate Categories):
   - ___ Flood Plains ___ Bedrock Outcrops ___ Wetlands
   - ___ Excessively Stony ___ Disturbed Ground ___ Sink Holes
   - ___ Sand Dunes ___ Steep Slopes
   - ___ Other—Specify_____
5. Soil Logs—Enter on Form 2b—Use one sheet for each soil log.
6. Considerations Relating to Disturbed Ground:
   a) Type of Disturbance (Check appropriate categories):
      - ___ Filled Area ___ Excavated Area ___ Re-graded Area
      - ___ Subsurface Drains ___ Other—Specify_____

   b) Pre-existing Natural Ground Surface
      Elevation Relative to Existing Ground Surface_____
      Method of Identification_____

   c) Suitability of Disturbed Ground
      - ___ Unsuitable: Objects Subject to Disintegration or Change in Volume
      - ___ Excessively Coarse
      - ___ Proctor Test performed—% Standard Proctor Density =_____
7. Hydraulic Head Test:
   a) Hydraulically Restrictive Horizon: Depth Top to Bottom_____
   b) Piezometer A: Depth to Bottom___Depth of Water Level (24 hrs)___
   c) Piezometer B: Depth to Bottom___Depth of Water Level (24 hrs)___
   d) Witnessed by_____ Signature_____ Date_____
8. Attachments (Check items included):
   - ___ Site Plan
   - ___ Key Map Showing Location of Site On U.S.G.S. Quadrangle or Other Accurate Map
   - ___ Key Map Showing Location of Site on U.S.D.A. Soil Survey Map
   - ___ Other—Specify_____
9. I hereby certify that the information furnished on Form 2a of this application (and the attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator_____Date_____

Signature of Professional Engineer ___License #

COUNTY/MUNICIPALITY_____

APPLICATION FOR PERMIT TO CONSTRUCT/ALTER/REPAIR
AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 2b—Soil Log and Interpretation Lot_____ Block_____

1. Log Number_____Method (Check One): ___ Profile Pit ___ Boring

2. Soil Log

Depth (inches) Top-Bottom	Munsel Color Name and Symbol; Estimated Textural Class; Estimated Volume % Coarse Fragment, If Present; Structure; Moist or Dry Consistence; Mottling—Abundance, Size and Contrast, If Present

3. Ground Water Observations:

___ Seepage—Indicate Depth_____

___ Pit/Boring Flooded—Depth after ___ Hours_____

4. Soil Limiting Zones (Check Appropriate Categories):

___ Fractured Rock Substratum—Depth to Top_____

___ Massive Rock Substratum—Depth to Top_____

___ Excessively Coarse Horizon—Depth Top to Bottom_____

___ Excessively Coarse Substratum—Depth to Top_____

___ Hydraulically Restrictive Horizon—Depth Top to Bottom_____

___ Hydraulically Restrictive Substratum—Depth to Top_____

___ Perched Zone of Saturation—Depth Top to Bottom_____

___ Regional Zone of Saturation—Depth to Top_____

5. Soil Suitability Classification:

6. I hereby certify that the information furnished on Form 2b of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Site Evaluator_____Date_____

Signature of Professional Engineer ___License #_____

COUNTY/MUNICIPALITY_____

APPLICATION FOR PERMIT TO CONSTRUCT/ALTER/REPAIR
AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 3a. Soil Permeability Data Lot_____ Block_____

Assign a number for each test and a letter for each test replicate. Show test data and calculations on Form 3b, 3c, 3d, 3e, 3f or 3g. Use one sheet for each separate test or test replicate.

1. Summary of Data—Enter data for each test replicate on a separate line.

Type of Test	Test (number)	Replicate (letter)	Depth (inches)	Result*

*For tube permeameter, pit-bailing and piezometer tests report results in inches per hour. For Soil permeability class rating give soil permeability class number. For percolation test report result in minutes per inch. For basin flooding test report result as positive if basin drains completely within 24 hours after second filling, negative otherwise.

2. Design Permeability/Percolation Rate: Specify Test Number_____

___ Average of Test Replicates ___ Single Replicate

___ Slowest of Replicates

3. Type of Limiting Zone Identified Test Number

_____ _____

_____ _____

_____ _____

4. Attachments (Check items included):

___ Form 3b—Tube Permeameter Test Data—Number of Sheets_____

___ Form 3c—Soil Permeability Class Rating Test Data—
Number of Sheets_____

___ Form 3d—Percolation Test Data—Number of Sheets_____

___ Form 3e—Pit-Bailing Test Data—Number of Sheets_____

___ Form 3f—Piezometer Test Data—Number of Sheets_____

___ Form 3g—Basin Flooding Test Data—Number of Sheets_____

5. I hereby certify that the information furnished on Form 3a of this application (and the attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Soil Evaluator_____Date_____

Signature of Professional Engineer_____License #_____

Form 3b. Tube Permeameter Test Data

1. Test Number_____ Replicate (Letter)_____ Date Collected_____

2. Material Tested: ___ Fill ___ Test in Native Soil—Indicate Depth___

3. Type of Sample: ___ Undisturbed ___ Disturbed

4. Sample Dimensions: Inside Radius of Sample Tube, R, in cm_____
Length of Sample, L, in inches_____

5. Bulk Density Determination (Disturbed Samples Only):
Sample Weight (Wt. Tube Containing Sample—Wt. of Empty Tube), grams_____
Sample Volume (L x 2.54cm./inch x 3.14R^2), cc_____
Bulk Density (Sample Wt./Sample Volume), grams/cc_____

6. Standpipe Used: ___ No ___ Yes
—Indicate Internal Radius, cm_____

7. Height of Water Level Above Rim of Test Basin, in inches:
At the Beginning of Each Test Interval, H_1_____
At the End of Each Test Interval, H_2_____

8. Rate of Water Level Drop (Add additional lines if needed):

Time, Start of Test Interval, T_1	Time, End of Test Interval, T_2	Length of Test Interval, T, minutes

9. Calculation of Permeability:

K, (in/hr) = 60 min/hr x r^2/R^2 x L(in)/T(min) x 1n (H_1/H_2)

= 60 min/hr x ___ / ___ x ___ / ___

x in (___ / ___) = ___

10. Defects in the Sample (Check appropriate items):

___ None ___ Cracks ___ Worm Channels

___ Root Channels ___ Soil/Tube Contact

___ Large Gravel ___ Large Roots

___ Dry Soil ___ Smearing ___ Compaction

___ Other—Specify_____

11. I hereby certify that the information furnished on Form 3b of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Site Evaluator_____Date_____

Signature of Professional Engineer_____License #_____

Form 3c. Soil Permeability Class Rating Data

1. Test Number_____Replicate (Letter)_____

2. Sample Depth_____Soil Pit/Boring Number_____Date Collected_____

3. Coarse Fragment Content:

Total Weight of Sample, W.T., grams_____

Weight of Material Retained on 2mm sieve, W.C.F., grams_____

Wt. % Coarse Fragment (W.C.F./W.T. x 100):_____

4. Oven Dry Weight (24 hrs, 105°C) of 40 Gram Air Dry Sample, grams, Wt_____

5. Hydrometer Calibration, Rc_____

6. Hydrometer Reading—40 seconds, grams, R1_____

Temperature of Suspension, °F_____

7. Corrected Hydrometer Reading, grams, R1'_____

8. Hydrometer Reading—2 hours, grams, R2_____

Temperature of Suspension, °F_____

9. Corrected Hydrometer Reading, grams, R2'_____

10. % sand = (Wt. - R1')/Wt. x 100 = (___ - ___)/ ___ x 100 =_____

11. % clay = R2'/Wt. x 100 = ___ / ___ x 100 =_____

12. Sieve Analysis:

a. Oven Dry Wt. (2 hrs., 105°C) Total Sand Fraction (Soil Retained in 0.047 mm Sieve), grams_____

b. Wt. of Fine Plus Very Fine Sand Fraction (Sand Passing 0.25 mm Sieve), grams_____

c. % Fine Plus Very Fine Sand (b/a)_____

13. Soil Morphology (Natural Soil Samples Only):

Structure of Soil Horizon Tested_____

Consistence of Soil Horizon Tested: Dry_____Moist_____

14. Soil Permeability Class Rating (Based upon average textural analysis of this replicate and other replicate samples)_____

15. I hereby certify that the information furnished on Form 3c of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Site Evaluator_____Date_____

Signature of Professional Engineer_____License #_____

Form 3d. Percolation Test Data

1. Test Number_____Replicate (Letter)_____Date Tested_____

2. Depth_____

3. Pre-soak:_____

___ Sandy Textured Soil Only, Shortened Pre-soak—Indicate Time Required for 12 Inches of Water to Drain After Second Filling, Minutes _____

___ Four Hour Pre-soak Completed—Indicate Result:

___ Test Hole Drained Within 16 to 24 Hours After Pre-soak

___ Test Hole Did Not Drain Within 24 Hours After Pre-soak

4. Rate of Fall Data:

a. Time Interval Selected, Minutes_____

b. Record the Drop in Water Level During Each Time Interval to the Nearest 1/10th-Inch On the Lines Below:

Depth of Water, Start of Interval (inches)	Depth of Water, End of Interval (inches)	Drop in Water Level (inches)

5. Percolation Rate:

a. Time, minutes, Required for a Six-inch Drop in Water Level_____

b. Percolation Rate = a/6 = ___ /6 = ___ min/in

6. I hereby certify that the information furnished on Form 3d of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Site Evaluator_____Date_____

Signature of Professional Engineer_____License #_____

Form 3e. Piezometer Test Data

1. Test Number_____Reference Soil Log_____Date Tested_____

2. Diameter of Soil Auger, in._____Depth of Test Hole, in._____
   Inside Radius of Pipe, R, in._____

3. Depth to Apparent Static Water Level, in._____

4. Measure and Record:

Water Depth, Start of Interval inches, d_1	Time at Start of Interval,	Water Depth, End of Interval inches, d_2	Time at End of Interval,	Length of Interval, min, t

5. Depth to Water Level After 24 Hour Stabilization Period, D_{static}, in._____

6. Value of A-parameter_____

7. Calculation of Permeability:

K, in/hr = $[(3.14R^2)/(A \times t)] \times [1n(d_1-D_{stat}/d_2-D_{stat})] \times 60$ min/hr

= [(3.14 ___)/(___ x ___)] x [1n(___ - ___ / ___ - ___)]

x 60 min/hr =_____

8. I hereby certify that the information furnished on Form 3e of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Site Evaluator_____Date_____

Signature of Professional Engineer_____License #_____

Form 3f. Pit-Bailing Test Data

1. Test Number_____ Reference Soil Log_____ Date Tested_____

2. Using the reference level established, measure and record the following:

   —Depth to Bottom of Pit, ft, D_{pit}_____

   —Depth to Water Level after 2 hr. Stabilization Period, ft, D_{water}_____

   —Depth to Impermeable Stratum, ft, $D_{stratum}$_____
   (If depth is unknown assume it to be 1.5 times the depth of the pit.)

   —Height of Water Level Above Impermeable Stratum, ft, H_____
   ($H = D_{stratum} - D_{water}$)

   —Length of Time Interval, T, in minutes_____

3. At the interval chosen, record the following data in the table below:

   —Time of Measurement, t_n, minutes

   —Depth of Water Level Below Reference Level, d_n, inches

   —Water Surface Dimensions, ft: l,w

4. Calculate the following values and enter in the table below:

   —Water Surface Area, ft^2, A_n

   —Water level Risem h_{rise} (Subtract current value of d_n from previous value)

   —Ave. Water Surface Area, ft^2, A_{av} (Take average of A_n and previous A_n)

   —Ave. Height of Water Level Above Impermeable Stratum, ft, h (Take ave. of d_n and previous value of d_n, convert to ft., and subtract from $D_{stratum}$)

   —Permeability, in/hr, K_n (Calculate using formula):
   $K_n = [h_{rise}/T] \times [A_{av}/2.27 (H^2-h^2)] \times 60$ min/hr

t_n	d_n(in.)	l,w (ft.)	A_n(ft^2)	h_{rise}(in.)	A_{av}(ft^2)	h (ft)	K_n
t_0				XXXX	XXXX	XXXX	XX
t_1							
t_2							
t_3							
t_4							
t_0				XXXX	XXXX	XXXX	XX
t_1							
t_2							
t_3							
t_4							
t_0				XXXX	XXXX	XXXX	XX
t_1							
t_2							
t_3							
t_4							

5. Record the Following Data:

   —Final Depth of Pit, D_{pit}, ft_____

   —Depth to Impermeable Stratum, ft, $D_{stratum}$_____
   (If no impermeable stratum is encountered assume $D_{stratum} = D_{pit}$)

   —Height of Standpipe Above Reference Level, ft, h_{pipe}_____

   —Depth to Water Level after 24 hr. Stabilization Period, ft, D_{water}_____
   (Take measurement from top of standpipe. Subtract h_{pipe})

   —Height of Static Water Level Above Impermeable Stratum, ft, H_____
   ($H = D_{stratum} - D_{water}$)

   —Average Height of Water Level Above Impermeable Stratum, ft, h_____
   (Take average of d_n from beginning and end of last time interval recorded in section 4, convert this to ft., subtract from $D_{stratum}$)

6. Re-calculation of K using data from section 5 above and from final time interval of section 4:

   $K = [h_{rise}/t] \times [A_{av}/2.27(H^2-h^2)] \times 60$ min/hr
   = [_____ / _____] x [_____ /2.27
   (_____ - _____)] x 60 min/hr =_____

7. I hereby certify that the information furnished on Form 3f of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Site Evaluator_____Date_____

Signature of Professional Engineer_____License #_____

Form 3g. Basin Flooding Test Data

1. Test Number____ Reference Soil Log____ Date Tested____
2. Depth of Pit, ft____
3. Area of Pit, ft^2____
4. Description of Rock Substratum Within Test Zone:
   Type of Rock____
   Name of Formation____
   Average Fracture Spacing____
   Type of Fractures (Check Appropriate Category):
   ___ Open (Wide), Clean—Width of Openings, mm____
   ___ Open (Wide), Infilled with Fines—Width of Openings, mm____
   ___ Tight (Closed)
   Orientation of Fractures:
   ___ Horizontal (Parallel to Pit Bottom) Or Nearly So
   ___ Inclined
   ___ Vertical (Parallel to Sides of Pit) Or Nearly So
   Hardness of Rock:
   ___ Rippable with Hand Tools
   ___ Not Rippable with Hand Tools, Rippable by Machine
   ___ Not Rippable by Machine, Explosives Used
5. Time of First Basin Flooding____
   Volume of Water Added, Gal____
6. Result of First Basin Flooding:
   ___ Basin Drained within 24 Hrs.—Indicate Time____
   ___ Basin Not Drained within 24 Hrs.
7. Time of Second Basin Flooding____
   Volume of Water Added, Gal____
8. Result of Second Basin Flooding:
   ___ Basin Drained within 24 Hrs.—Indicate Time____
   ___ Basin Not Drained within 24 Hrs.
9. I hereby certify that the information furnished on Form 3g of this application is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Site Evaluator____ Date____

Signature of Professional Engineer____ License #____

Form 4. General Design Data

1. Volume of Sanitary Sewage, gal____
   ___ Residential: No. of Dwelling Units____ Total No. of Bedrooms____
   ___ Commercial/Institutional—Indicate type of establishment and show method of calculation. If estimate is based on water meter data, indicate source of data, frequency of readings, average daily flow, and maximum recorded daily reading____
2. Alterations or Repairs
   a) Reason for Alteration or Repair (Check appropriate categories):
   ___ Expansion or Change in Use ___ Upgrade Existing Facilities
   ___ Correct Malfunctioning System ___ Other—Specify____
   b) Describe Nature of Alteration or Repairs:____
3. System Components:
   a) Grease Trap Capacity, gals____
   Show Calculation Used:____
   b) Septic Tank Capacities, gals: ___ First (Single) Compartment____
   ___ Second Compartment____ ___ Third Compartment____
   c) Effluent Distribution
   Method: ___ Gravity Flow ___ Gravity Dosing
   ___ Pressure Dosing
   Dosing Device: ___ Pump ___ Siphon
   d) Dosing Tank Capacities, gals: Total Capacity____ Dose Volume____
   Reserve Capacity____
   e) Laterals: Number____ Total Length____ Pipe Size____ Spacing____
   f) Connecting Pipe: Size____ Length____
   g) Manifold: Size____ Length____
   h) Disposal Field: Type of Installation____
   Design Permeability (Percolation Rate)____
   Trenches: Width____ Total Length____ Bed: Area____
   i) Seepage Pits: Design Percolation Rate____
   Number of Pits____ Total Percolating Area Provided____
4. Attachments (Check items included):
   ___ General Plan of System Showing Location of All System Components
   ___ X-Sections of Each System Component Including Grease Trap, Septic Tank, Dosing Tank, Disposal Field, Seepage Pits and Interceptor Drains
   ___ Pump Performance Curve
   ___ Other—Specify____
5. I hereby certify that the information furnished on Form 4 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Professional Engineer____ Date____

Form 5. Design of Pressure Dosing System

1. Configuration of Distribution Network:
   Type of Manifold: ___ End ___ Central
   Distribution Laterals: Number ___ Length, ft ___ Spacing, ft ___
   Hole Diameter, ins ___ Hole Spacing, ins ___
   Diameter of Laterals, ins ___
2. Lateral Discharge Rate:
   Design Pressure Head at Supply End of Laterals, H_p, ft ___
   Hole Discharge Rate, Q, gpm ___
   Number of Holes per Lateral, n ___
   Lateral Discharge Rate, (Q x n) gpm ___

3. Manifold Length, ft ___ Manifold Diameter, ins ___

4. System Discharge Rate, gpm ___

5a. Pump Selection:

Diameter of Delivery Pipe ___ Length of Delivery Pipe ___

Friction Loss in Delivery Pipe, H_f, ft ___

Elevation of Dosing Tank Low Water Level ___

Elevation of Lateral Invert ___

Elevation Head, H_e, ft ___

Total Operating Head, H_t ($H_p + H_f + H_e$), ft ___

Pump Model ___ Rated Horsepower ___

Pump Discharge Rate at Total Operating Head, gpm ___

5b. Siphon Elevation:

Diameter of Delivery Pipe ___ Length of Delivery Pipe ___

Friction Loss in Delivery Pipe, H_f, ft ___

Velocity Head, H_v, ft ___

Total Operating Head, H_t ($H_p + H_f + H_v$), ft ___

Elevation of Lateral Invert ___

Elevation of Siphon Invert ___

6. Dose Volume:

Design Volume of Sewage, gal/day ___

Design Permeability, in/hr ___ or Percolation Rate, min/in ___

Internal Volume of Distribution Network ___

Dose Volume ___

7. I hereby certify that the information furnished on Form 4 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Professional Engineer_____ Date_____

APPLICATION FOR LICENSE TO OPERATE AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1. General Information

1. Municipality_____ Block No._____ Lot No._____

2. Name of Applicant (print):_____

3. Applicant's Address:_____

4. Applicant's Phone Number:_____

5. Certificate of Compliance: Date of Issuance_____

If no Certificate Was Issued, Indicate Approximate Age of System_____

6. Type of Facility: ___ Residential—Indicate Number of Occupants_____

___ Commercial/Institutional—Specify Type of Establishment_____

7. Type of Wastes Discharged: ___ Sanitary Sewage Only

___ Industrial Wastes

___ Other—Specify Type_____

8. Volume of Wastes: Ave. Flow, gal/day ___ Max. Daily Flow, gal ___

___ Based On Water Meter Data

___ Assumed Based On Data Related to Water Usage—Show Data Below:

—Number of Users (Patrons, Guests, Visitors, etc.) per Day_____

—Number of Employees ___

Total Employee Hours per Day ___

—Number of Fixtures ___, Specify Type_____

—Size of Building, ft^2 ___

—Other—Specify_____

9. Indicate System Components, Provide What Information is Available:

___ Grease Trap: Capacity, gals ___

___ Septic Tank: Capacity, gals ___ No. of Compartments ___

___ Dosing Tank: Capacity, gals ___ Dosing Device:

___ Pump ___ Siphon

___ Disposal Bed: Area, ft^2 ___

___ Disposal Trenches: Width, ft ___ Number ___

Total Length, ft ___

___ Seepage Pits: Number ___ Diameter, ft ___ Depth, ft ___

___ Interceptor Drain

___ Other—Specify_____

10. I hereby certify that the information furnished on Form 1 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Septic System Inspector_____ Date_____

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___ Application Denied—State Reason for Denial_____

___ Application Approved—License Number_____

Date of Action_____ Signature of Authorized Agent_____

Name and Title_____

RENEWAL OF LICENSE TO OPERATE AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1. Report of Septic System Inspection/Maintenance

1. Municipality_____ Block No._____ Lot No._____

2. Name of Applicant (print):_____

3. Applicant's Address:_____

4. Applicant's Phone Number:_____

5. Expiration Date of Current License_____ License Number_____

6. Maintenance Performed at Time of Inspection: ___ Septic Tank Pumped

___ Other—Specify_____

7. If the Septic Tank Was not Pumped, Provide Following Information:

Date of Last Pump Out_____

Record Vertical Distance in inches:	1st Comp	2nd Comp	3rd Comp
Bottom of Scum Layer to Bottom of Outlet Baffle	___	___	___
Top of Sludge Layer to Bottom of Outlet Baffle	___	___	___

8. Indicate Problems Identified During Inspection:

___ Septic Tank Not Accessible
___ Inlet Baffle Needs Repair
___ Outlet Baffle Needs Repair
___ Effluent Backs-Up into Septic Tank
___ Septic Tank Leaks
___ Dosing Tank Not Accessible
___ Dosing Tank Leaks
___ Solids in Dosing Tank
___ Operation/Condition of Pump, Switches, Alarm, Siphon, etc.
___ Solids in D-Box
___ D-Box Not Level
___ Hydraulic Failure of Disposal Field or Seepage Pit
___ Settlement or Improper Grading
___ Encroachments in Disposal Area
___ Improperly Directed Drainage
___ Physical Condition of Seepage Pit
___ Other—Specify_____

9. Observed Malfunctions:

___ Back-up into Plumbing
___ Surface Break-out or Ponding
___ Odors
___ Other—Specify_____
___ Seepage of Sewage/Effluent into Bldg.
___ Contamination of Well Water

10. I hereby certify that the information furnished on Form 1 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed in N.J.A.C. 7:14-8.

Signature of Septic System Inspector_____ Date_____

FOR AGENCY USE ONLY

___ Renewal of License Denied—Reason for Denial_____

___ Approval Pending Completion of Repairs—Description of Repairs Required:_____

___ License Renewed—Expiration Date of New License_____

STANDARD FORMS FOR CERTIFICATE OF COMPLIANCE

County/Municipality of_____

INSTRUCTIONS: Part A is to be completely filled in for all Certifications. Only Part B or Part C will be completed. Part B will be completed if the administrative authority relies upon the certification signed and sealed by a New Jersey licensed professional engineer that the system has been located, constructed, installed or altered in compliance with the requirements of N.J.A.C. 7:9A-1 and the Application to Construct/Alter/Repair and Individual Subsurface Sewage Disposal System which was approved by the administrative authority. Part C will be completed if the administrative authority performs the certification.

Part A—General Information

1. Permitted Activities (Check applicable categories):

Permit Number _____

___ New Construction
___ Alteration/No Expansion or Change of Use
___ Alteration/Expansion or Change in Use
___ Alteration/Malfunctioning System
___ Deviation from Standards
___ Repairs to Existing System

2. Location of Project:

Municipality _____ Lot _____ Block _____

Street Address _____

3. Name and Present Address of Applicant:

Applicant's Phone Number _____

Part B—Professional Engineers Certification

I certify under penalty of law that the subsurface sewage disposal system identified in Part A has been located, constructed, installed or altered in compliance with the requirements of N.J.A.C. 7:9A-1 and the Application to Construct/Alter/Repair an Individual Subsurface Sewage Disposal System which was approved by the administrative authority. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(Signature)

SEAL

Name (Type or Print), License #

Date: _____

Part C—Certification by Administrative Authority

I certify under penalty of law that the subsurface sewage disposal system identified in Part A has been located, constructed, installed or altered in compliance with the requirements of N.J.A.C. 7:9A-1 and the Application to Construct/Alter/Repair an Individual Subsurface Sewage Disposal System which was approved by the administrative authority. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Authorized Signature | Type of License Held

Name (Typed or Printed) | License Number

Date: _____

For Agency Use Only

Date Received: _____
Form Determined To Be: ___ Complete ___ Incomplete
Date Returned ___
Date Received ___

Date Certification Approved: _____

Authorized Signature: _____

APPENDIX C
UNIFORM PLACEMENT OF PERCOLATION TESTS

Uniform Placement of Percolation Tests

N.J.A.C. 7:9A-6.1(e)7 of these standards requires that percolation tests be spaced uniformly within the area of the disposal field. Acceptable patterns or arrangements for percolation test placement depend upon the size and shape of the disposal field as outlined below. Patterns other than those provided below may be approved provided that it is determined by the Administrative Authority that the test results submitted are representative of the soil conditions throughout the entire area of the disposal field.

Definitions

The following words and terms shall have the following meanings when used within Appendix B of this chapter:

"Center" means the intersection of the two disposal field diagonals.

"Diagonal" means a line connecting opposite corners of the disposal field.

"Elongated disposal field" means a disposal field with a length/width ratio of 3.0-5.0.

"End" means one of the two shorter sides in a disposal field which has a length/width ratio not equal to 1.0.

"Length" means the longest dimension of the disposal field, or the distance between the ends of the disposal field.

"Long axis" means a line connecting the midpoints of the disposal field ends.

"Rectangular disposal field" means a disposal field with a length/width ratio of 1.5-3.0.

"Side" means one of the two longer sides of a disposal field which has a length/width ratio not equal to 1.0.

"Square disposal field" means a disposal field with a length/width ratio of 1.0-1.5.

"Very elongated disposal field" means a disposal field with a length/width ratio greater than 5.0.

"Width" means the shortest dimension of the disposal field, or the distance between the sides of the disposal field.

A. When the disposal field is less than 1500 square feet, a minimum of two percolation tests are required and the following arrangements are acceptable:

All Disposal Field Shapes

1. Both tests spaced along the long axis of the field, the minimum distance between tests one third of the length of the field.
2. Both tests spaced along the diagonal of the field, the minimum distance between tests one third the length of the diagonal.

B. When the disposal field size is 1500 to 3000 square feet, a minimum of three percolation tests are required and the following arrangements are acceptable:

All Disposal Field Shapes

1. All tests spaced evenly along the diagonal of the field, the minimum distance between tests one quarter the length of the diagonal.
2. One test near the midpoint of a side, one test near each of the two opposite corners.

Field Shape Rectangular to Very Elongated (L/W >1.5)

3. All three tests spaced evenly along the long axis; minimum distance between tests one quarter the length of the disposal field.

C. When the disposal field size is 3000 to 4500 square feet, a minimum of four percolation tests are required and the following arrangements are acceptable:

Field Shape Square to Rectangular (L/W = 1.0 - 3.0)

1. One test near the midpoint of each of the sides and ends.
2. One test near each of the four corners.

All Field Shapes

3. A zig-zag pattern with tests placed at points along one side which are approximately zero thirds and two thirds the distance from end to end, and along the opposite side at points which are approximately one third and three thirds the distance from end to end.

Field Shape Elongated to Very Elongated (L/W > 3.0)

4. All tests spaced evenly along the long axis of the field, the minimum distance between tests one fifth the length of the field.
5. All tests spaced evenly along the diagonal of the field, the minimum distance between tests one fifth the length of the diagonals.

D. When the disposal field size exceeds 4500 square feet, a minimum of five percolation tests are required and the following arrangements are acceptable:

Square Fields

1. One test near the midpoints of each of the sides and ends, one test near the center of the field.

Field Shape Square to Rectangular (L/W = 1.0 - 3.0)

2. One test near each corner of the field, one test near the center of the field.

All Field Shapes

3. A zig-zag pattern with tests placed at points along one side which are approximately zero fourths, two fourths and four fourths the distance from end to end, and along the opposite side at points which are approximately one fourth and three fourths the distance from end to end.

Field Shape Elongated to Very Elongated (L/W > 3.0)

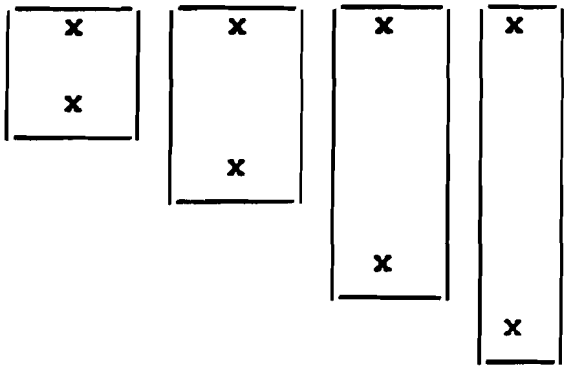
4. All tests spaced evenly along the long axis of the field, the minimum distance between tests one sixth the length of the field.
5. All tests spaced evenly along the diagonal of the field, the minimum distance between tests one sixth the length of the diagonal.

Uniform Placement of Percolation Tests—Figures

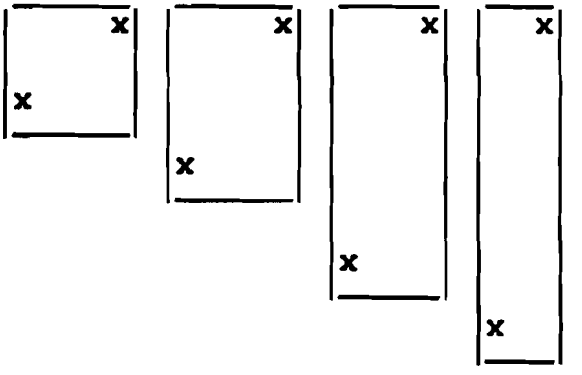
(a) Square Disposal Fields, L/W = 1.0 - 1.5
(b) Rectangular Disposal Fields, L/W = 1.5 - 3.0
(c) Elongated Disposal Fields, L/W = 3.0 - 5.0
(d) Very Elongated Disposal Fields, L/W > 5

A. Disposal Field Size Up To 1500 Square Ft.—Minimum of 2 Percolation Tests Required

1. (a) (b) (c) (d)

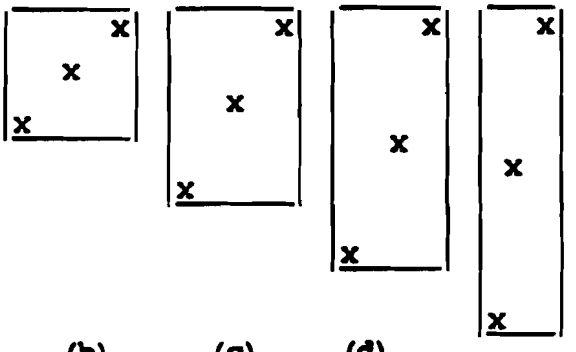


2. (a) (b) (c) (d)

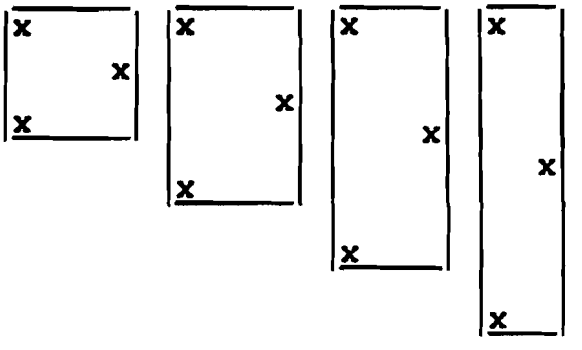


B. Disposal Field Size 1500-3000 Square Ft.—Minimum of 3 Percolation Tests Required

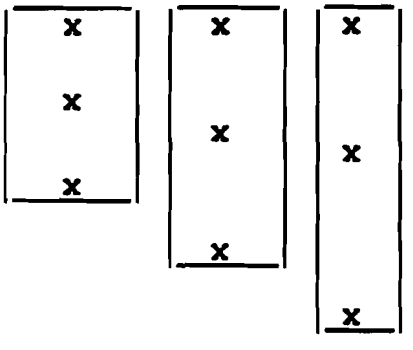
1. (a) (b) (c) (d)



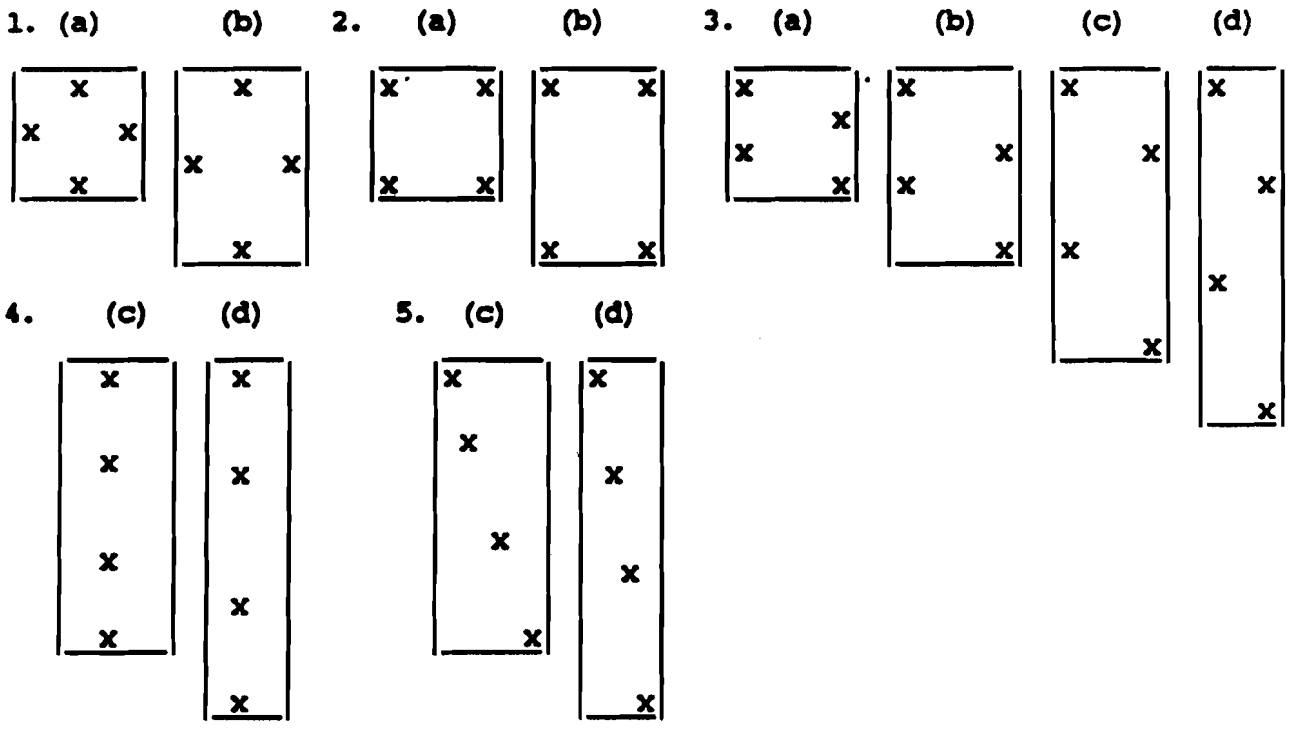
2. (a) (b) (c) (d)



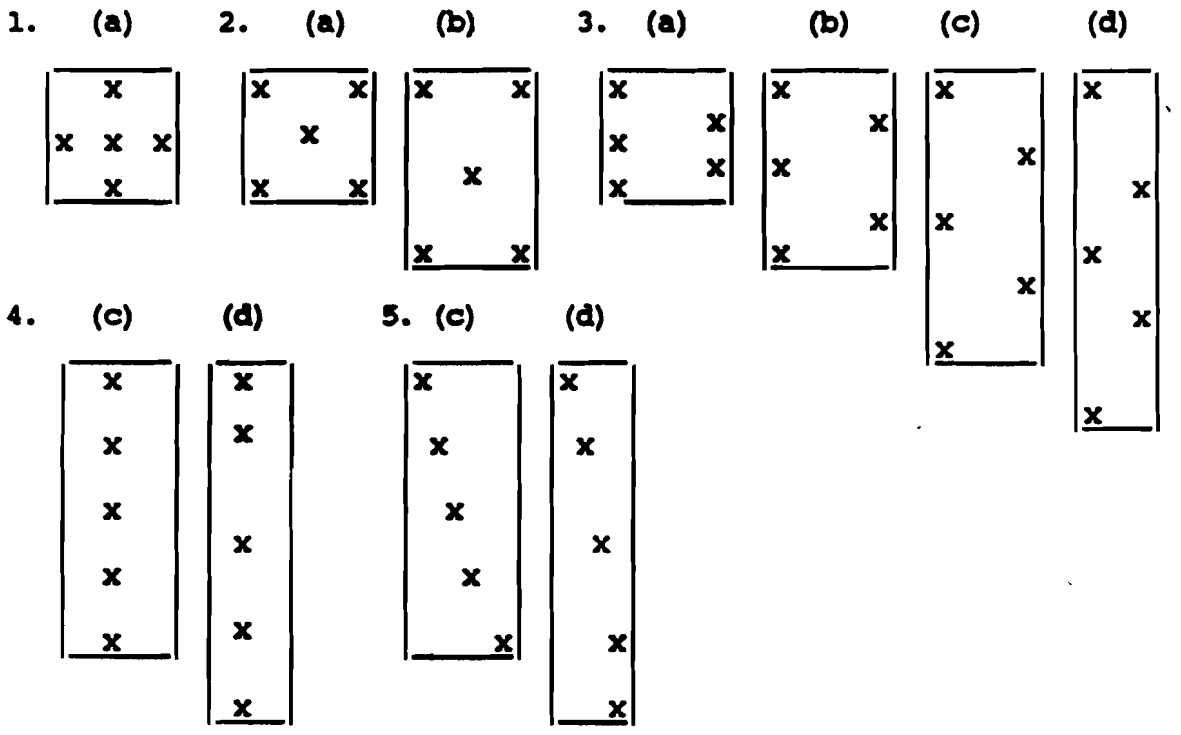
3. (b) (c) (d)



C. Disposal Field Size 3000-4500 Square Ft.—Minimum of Four Percolation Tests Required



D. Disposal Field Size Greater Than 4500 Square Ft.—Minimum of 5 Percolation Tests Required



APPENDIX D
SOIL SUITABILITY CLASSIFICATION OF NEW JERSEY SOILS

Explanation of the Soil Suitability Classification System

The suitability of soil for onsite disposal of sanitary wastewater by means of individual subsurface sewage disposal systems is classified based upon the type and depth of soil limiting zones as outlined below. Definitions and criteria for recognition of soil limiting zones are provided in Subchapters 2 and 5 of this chapter.

Type of Limiting Zone	Depth, ft.	Suitability Class
Fractured Rock or Excessively Coarse Substrata	>5	I
	0-5	IISc
Massive Rock or Hydraulically Restrictive Substrata	>9	I
	4-9	IISr
	0-4	IIISr
Hydraulically Restrictive Horizon, Permeable Substratum	>9	I
	4-9	IIHr
	0-4	IIIHr
Excessively Coarse Horizon	>5	I
	0-5	IIHc
Zone of Saturation, Regional	>5	I
	2-5	IIWr
	0-2	IIIWr
Zone of Saturation, Perched	>5	I
	2-5	IIWp
	0-2	IIIWp

The soil suitability classification consists of a Roman numeral from I to III which is indicative of the severity of the limitation and a letter symbol which indicates the type of limiting zone. (In general the limitation is considered more severe when the limiting zone occurs at a shallower depth in or below the soil profile). Where more than one type of limiting zone is present, the primary classification of the soil is based upon whichever limiting zone(s) presents the most severe limitation (highest numerical symbol). Secondary limitations are given based upon limitations which are less severe (lower numerical symbols). The primary classification is stated first, followed by secondary classifications in parentheses. For example, the classification for a soil with a seasonally high water table (top of a regional zone of saturation) at a depth of 1.5 feet and a massive rock substratum at a depth of 7 feet would be IIIWr(IISr).

Where two or more limiting zones are present with the same degree of limitation, a compound symbol is used in primary or secondary classifications, consisting of a Roman numeral showing the degree of limitation together with a letter symbol for each type of limited zone. For example, the classification for a soil with a seasonally high water table at a depth 2.5 feet and a fractured rock substratum at a depth of 3 feet would be IIWrSc.

Soil Suitability Classes of New Jersey Soil Series

The type of standard septic system installation, if any, which can be approved on a specific site depends upon the soil suitability class which must be determined based upon detailed onsite soil evaluation. Such evaluation is costly and would normally not be performed prior to the purchase of land or the granting of preliminary or conceptual approvals for large tracts of land which are to be subdivided for residential or commercial development. In these or other situations where more general information regarding soil suitability is required, preliminary determinations may be made based upon information contained in the county soil surveys which are published by the U.S.D.A.—Soil Conservation Service in cooperation with the N.J. Agricultural Experiment Station and Cook College of Rutgers, The State University. These soil surveys contain descriptions of the various soil series which occur in New Jersey together with maps showing the geographic distribution of the soils. At present, published soil surveys or preliminary field maps are available for every county in the state with the exception of Essex and Hudson.

A soil series is a group of similar soil types having major horizons which are similar in thickness, arrangement and other important characteristics. The soil suitability classes provided for each New Jersey soil series listed below are based primarily upon the soil profile descriptions given in the soil survey reports.

Soil series may be divided into one or more soil phases which differ in the texture of the surface horizon, stoniness or some other property. Although soil phase differences may affect design and construction requirements, they are generally not a factor in determination of the soil suitability class given for a particular soil series. In some cases a soil series may have one or more variants which may differ significantly with respect to the types or depths of soil limiting zones. In such cases each variant is treated as a separate soil type with respect to the classification.

Each soil series is characterized by a range of soil profile characteristics so that two or more soil suitability classes may be possible for a given soil series. The soil suitability classes given below are those which are considered most typical for a given soil series. Other soil suitability classes are possible depending upon conditions which may vary from location to location.

Soil survey maps delineate the boundaries of soil mapping units in which a specific soil series, soil phase, soil complex, association or other grouping is predominant. Within every soil mapping unit however, there may be areas of dissimilar soils which are too small and scattered or otherwise impractical to show at the scale of mapping used. For this reason, use of the soil survey is not a substitute for onsite soil evaluation when detailed information for a specific site is required.

Many soil series in the coastal plain region of southern New Jersey are underlain by stratified sedimentary formations which consist of layers of contrasting grain size. In some cases layers of highly permeable sand and gravel may alternate with hydraulically restrictive layers of silt and clay. Where hydraulically restrictive layers occur at depths less than nine feet they will be a determining factor for the soil suitability classification. The presence of such layers below a depth of five feet however, is generally not indicated in the soil survey reports and therefore may not be reflected in the soil suitability classes given here. As a result, coastal plain soils series which are classified as having no limitation (Roman numeral I) with respect to hydraulically restrictive horizons and substrata may in some locations have IIHr or IISr limitations. In other cases, soil series which are assigned classifications of IISr or IIISr may in some locations have permeable substrata at depths below the extent of soil survey data such that a classification of IIHr or IIIHr may be appropriate.

In the northern portion of the state many soil series are described as having bedrock substrata at shallow depths below the soil profile. Soil survey reports generally do not provide information relative to the permeability of these rock substrata. Rock substrata underlying soil profiles of the same soil series may often range from excessively permeable to relatively impermeable. Soil suitability classes are given to represent those conditions which are considered most typical for a soil series. In many cases, however, soil series which are given classes of I or IISc may in some locations have the more severe limitations associated with classes IISr or IIISr. Classifications of rock substrata given here must be regarded as preliminary in nature and may be subject to modification based upon detailed onsite evaluation and testing.

Soil Series (Variant) Name	Typical Classification(s)
Abbottstown	IIIHR,Wp(IIISc); IISr,Wp(IIISc)
Adelphia	IIWr
Adelphia Clayey Substratum	IIISr(IIWr)
Adelphia Glauconitic Variant	IIISr(IIWr)
Adelphia Truncated	IIIWr
Adrian	IIIWr
Albia	IIIHr,Wp; IISr,Wp
Amwell	IIIHr,Wp; IIIHr,Wp(IISr)
Amwell Rock Substratum	IIIHr,Wp; IIIHr,Wp(IIsr)

Annandale ..... IIIHr
Arendtsville ..... I; IISc
Atherton ..... IIIWr
Athol I
Atsion ..... IIIWr
Atsion Tide Flooded ..... IIIWr
Aura ..... I; IIHr
Aura Moderately Firm ..... I; IIHr
Aura Ironstone Variant ..... I; IIHr
Barclay ..... IIWr; IIIWr
Bartley ..... IIIHr(IIWp)
Bath ..... IIIHr(IIWpSc)
Bath Stony ..... IIIHr(IIWpSc)
Bayboro ..... IIISrWr
Bayboro Ponded ..... IIISrWr
Bedington ..... IISc
Berks ..... IISc
Berryland ..... IIIWr
Berryland Flooded ..... IIIWr
Berryland Freq. Flooded ..... IIIWr
Berryland Heavy Subsoil Var. ..... IIIWr
Bertie ..... IIIWr
Bibb ..... IIIWr
Biddeford ..... IIISrWr
Birdsboro ..... I; IIWr; IISc; IIWrSc
Birdsboro Gravelly Solum Var. I
Birdsboro Sandy Subsoil Var. ..... IISc
Boonton ..... IIIHrWp; IIISrWp
Bowmansville ..... IIIWr
Braceville ..... IIIHrWp
Bucks ..... IISc; IISr
Califon ..... IIIHrWp
Califon Friable Subsoil Var. ..... IIIWr
Carisle Muck ..... IIIWr
Chalfont ..... IIISrWp
Chenango ..... IISc
Chillum ..... I; ISc; IIISr
Chippewa ..... IIISrWr
Cokesbury ..... IIIHrWp
Colemantown ..... IIIHrWp
Collington I
Colonie I
Colts Neck ..... I, IIHr
Croton ..... IIISrWp; IIISrWr
Donlonton ..... IIIHrWr
Downer I
Downer Clayey Substratum I
Downer Gravelly Substratum ..... I; IISc
Downer Loamy Substratum I
Downer Truncated I
Doylestown ..... IIISrWr
Dragstown ..... IIIWr; IIWr
Duffield ..... I; IISr
Duffield Very Rocky ..... IISr
Dunellen I
Dunellen Mod. Well Drained Var. ..... IIIWr
Edneyville ..... I;IISc
Elkton ..... IIISrWr
Ellington Loamy Subsoil Var. ..... IISrWpWr; IIISrWpWr
Evesboro I
Evesboro Clayey Substratum ..... IIISr; IIIHr
Evesboro Sandy Loam Subsoil Var. I
Fallsington ..... IIIWr
Fallsington Clayey Substratum ..... IIIHr
Fallsington Var. ..... IIIHrWrWp
Fort Mott I
Fredon ..... IIIWr
Freehold I
Freehold Clayey Substratum ..... IIISr
Fripp I
Galestown I
Galestown Clayey Substratum ..... IISr
Haledon ..... IIIHrWp
Haledon Wet Var. ..... IIIHrWpWr
Halsey ..... IIIWr; IIIWr(IISc)
Hammonton ..... IIWr;
Hammonton Clayey Substratum ..... IIISr(IIWrWp); IIIHr(IIWrWp)
Hazen ..... I; IISc
Hazleton ..... IISc
Hero ..... IIScWr; IIWr
Hibernia ..... IIIHrWp
Holmdel ..... IIIWr; IIWr
Holmdel Clayey Substratum ..... IIISrWr
Holyoke Rocky ..... IISc; IISr
Hoosic ..... I; IISc
Howell ..... IIWr; IIIWr
Keansburg ..... IIIWr
Keyport ..... IIISr(IIWp)
Klej ..... IIWr; IIIWr
Klej Clayey Substratum ..... IIISrWr; IIISr(IIWr)
Klej Loamy Substratum ..... IIISrWr; IIISr(IIWr)
Klinesville Shaly ..... IISc; IISr
Kresson ..... IIIHrWp(IIWr)
Lakehurst ..... IIWr; IIIWr
Lakehurst Clayey Substratum ..... IIISrWrWp; IIISr(IIWrWp)
Lakehurst Loamy Substratum ..... IIWr; IIIWr
Lakehurst Thick Surface ..... IIWr; IIIWr
Lakeland I
Lakeland Firm Substratum I
Lakeland Water Table ..... IIWr
Lakewood I
Lakewood Loamy Substratum I
Lakewood Thick Surface I
Lamington ..... IIIHrWpWr
Lansdale ..... IISc
Lansdowne ..... IIIHrWp(IISc); IIIHrWp(IISr)
Lansdowne Var. ..... IIIHrWp(IISc); IIISrWp
Lawrenceville ..... IIISrWp; IIIHrWp
Legore ..... I; IISr
Lehigh ..... IIISrWp; IIIHrWp(IISc)
Lenoir ..... IIISrWr
Leon ..... IIIWr
Livingston ..... IIISrWr
Lyons ..... IIIWr; IIISrWr; IIISrWr(IISc)
Manahawkin ..... IIIWr;
Marlton ..... IIIHr(IIWp); IIIHr
Matapeake ..... IIISr(IIWp); IISrWp; I
Matapeake Thin Solum I
Matawan ..... IIWr; IIIHrWp(IIWr)
Mattapex ..... IIISr(IIWr); IIWr
Mattapex Clayey Substratum ..... IIISrWr
Mattapex Glauconitic Substratum ..... IIWr
Meckesville ..... IIIHr(IIWp)
Middlebury ..... IIIWr
Minoa ..... IIIWr
Mount Lucas ..... IIIWp(IISr)
Mullica ..... IIIWr
Mullica Loamy Substratum ..... IIIWr
Nassau ..... IIISr; IISc
Neshaminy ..... IISr
Neshaminy Fragipan Var. ..... IIISrWp; IIIHrWP
Netcong I
Nixon I
Nixon Var ..... IIWr; IIIWr
Nixonton ..... IIIWr
Norton ..... IIIHr
Norwich ..... IIIHrWr
Oquaga ..... IISc; IIISr(IISc)
Othello ..... IIIWr
Otisville ..... IISc
Palmyra ..... IISc
Parker ..... IISc
Parker Rocky ..... IISc
Parsippany ..... IIHrWr; IIISrWr

Parsippany Sandy Loam Substratum	IIIHrWr
Parsippany Var.	IIISrWr
Pasquotank	IIIWr
Pattenburg	IISc
Pattenburg Moderately Wet	IIScWr; IIIWr(IISc)
Pemberton	IIWr; IIIWr
Pemberton Thick Surface	IIWr;IIIWr
Penn	IISc; IIISr
Penn Shaly	IISc; IIISr
Phalanx	IISc
Plummer	IIIWr
Plummer Very Wet	IIIWr
Pocomoke	IIIWr
Pompton	IIIWr; IIIWr(IISc)
Pope	I; IISc
Portsmouth	IIIWr
Preakness	IIIWr
Preakness Dark Surface Var.	IIIWr
Quakertown	IISc; I
Quakertown Channery	IISc
Raritan	IIIHrWp; IIIHrWp(IISc); IIIHrWp(IISr)
Raynham	IIIWr
Readington	IIIHrWp(IISc); IIWpSrSc; IIWrSc
Reaville	IIISrWp(IIHc)
Reaville Deep Var.	IIISrWp(IIHc)
Reaville Wet Var.	IIISrWp(IIHc)
Ridgebury	IIIHrWp
Riverhead	I; IISc
Riverhead Neutral Var.	I; IISc
Rockaway	IIIHrWp
Rowland	IIIWr
Royce	IISc
Sassafras	I
Sassafras Clayey Substratum	IIISr; IISr; IIIHr; IIHr
Sassafras Water Table	IIWr
Shrewsbury	IIIWr
Shrewsbury Clayey Substratum	IIIWrSr
Shrewsbury Ironstone Var.	IIIWrHr
Shrewsbury Truncated	IIIWr
Sloan	IIIWr
Steinsburg	IISc
St. Johns	IIIWr
St. Johns Clayey Substratum	IIIWrSr
Swartswood	IIIHrWp
Tinton	I
Tinton Thick Surface	I;
Tioga	I; IIWr; IIWrSc; IISc
Turbotville	IIIHrWp
Unadilla	I
Valois	I
Venango	IIIHrWp; IIISrWp
Wallkill	IIIWr
Washington	I; IISc
Wassaic	IISc; IIISr
Wassaic Rocky	IISc; IIISr
Watchung	IIIHrWpWr
Wayland	IIIWr; IIIWrSr
Wecksville	IIIWr
Westphalia	I
Whippany	IIISrWp;
Whippany Sandy Loam Substratum	IIIHrWp
Whitman	IIIHrWp
Woodmansie	I
Woodmansie Firm Substratum	I
Woodmansie Loamy Substratum	I
Woodstown	IIIWr; IIWr
Woodstown Clayey Substratum	IIIWrSr; IIIWr(IISr); IIWrSr;
Woodstown Loamy Substratum	IIIWr; IIWr
Wooster	IISc; I
Wurtsboro	IIIHrWp; IIIHrWp(IISc)

Following is a listing of miscellaneous mapping unit designations which do not consist of any one specific soil series or soil series variant. In general these mapping units cannot be assigned a soil suitability class due to extreme variability or a lack of data. The type of limitations which are generally associated with these mapping units are indicated below:

Mapping Unit Designation	Type(s) of Limitations
Alluvial Land (Various Modifying Terms)	Flooding, Wetland
Clayey Land-Keyport Materials	Hydraulically Restrictive Substrata
Clayey Land-Marlton Materials	Hydraulically Restrictive Substrata
Clay Pits	Disturbed Ground, Hydraulically Restrictive Substrata
Coastal Beach	Dunes, Excessively Coarse Substrata
Cut and Fill Land	Disturbed Ground
Dune Land	Dunes, Excessively Coarse Substrata
Fill Land (Various Modifying Terms)	Disturbed Ground
Fluvaquents	Flooding
Fresh Water Marsh	Wetland
Gravel Pits	Disturbed Ground, Excessively Coarse Substrata
Humaquepts	Wetland
Made Land (Various Modifying Terms)	Disturbed Ground
Marsh (Various Modifying Terms)	Wetland
Mine Dump	Disturbed Ground
Muck (Various Modifying Terms)	Wetland
Peat (Various Modifying Terms)	Wetland
Pits (Various Modifying Terms)	Disturbed Ground
Psamments	Dunes, Excessively Coarse Substrata
Quarries	Disturbed Ground
Rock Land-Edneyville Material	Rock Outcrops, Excessively Coarse Substrata
Rock Outcrop	Rock Outcrops
Rough Broken Land	Excessively Stony
Sand Pits	Disturbed Ground, Excessively Coarse Substrata
Sandy Land	Excessively Coarse Substrata
Steep Stony Land Parker Material	Slope, Excessively Stony
Sulphaquents	Wetland
Sulphihemists	Wetland
Swamp	Wetland
Tidal Marsh	Wetland
Urban Land	Disturbed Ground

(a)

DIVISION OF COASTAL RESOURCES
Redelineation of the Ramapo River
Adopted Amendment: N.J.A.C. 7:13-7.1(d)

Proposed: May 1, 1989 at 21 N.J.R. 1046(b).
Adopted: July 21, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: July 27, 1989 as R.1989 d.446, **without change.**

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.

DEP Docket Number: 021-89-04.
Effective Date: August 21, 1989.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was published on May 1, 1989, in the New Jersey Register at 21 N.J.R. 1046(b). The notice advised that a public hearing had been scheduled for May 17, 1989 at 1:30 P.M. at the Division of Coastal Resources, Department of Environmental Protection, 501 East State Street, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on May 12, 1989 in the Bergen Record. Both notices invited written comments to be submitted on or before May 31, 1989 and announced the holding of the public hearing. Because of a delay in publishing the notice in the Record, the comment period was extended through June 19, 1989 to provide an additional opportunity for comments. Notice of the comment period extension was published in the New Jersey Register on June 5, 1989 at 21 N.J.R. 1482(a). Two members of the public attended the public hearing.

No comments were received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the delineations have been sent to the Mahwah Township Clerk and to the Bergen County Planning Board.

(a)

DIVISION OF COASTAL RESOURCES

Redelineation of West Branch Rahway River

Adopted Amendment: N.J.A.C. 7:13-7.1(d)

Proposed: March 6, 1989 at 21 N.J.R. 605(a).
Adopted: July 21, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: July 27, 1989 as R.1989 d.445, **without change.**

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.

DEP Docket Number: 008-89-02.
Effective Date: August 21, 1989.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was published on March 6, 1989, in the New Jersey Register at 21 N.J.R. 605(a). The notice advised that a public hearing had been scheduled for March 22, 1989 at 1:30 P.M. at the Division of Coastal Resources, Department of Environmental Protection, 501 East State Street, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on March 1, 1989 in the Star Ledger. Both notices invited written comments to be submitted on or before April 5, 1989 and announced the holding of the public hearing. No members of the public attended the public hearing.

No comments were received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the delineations have been sent to the West Orange Town Clerk and to the Essex County Planning Board.

EMERGENCY ADOPTION

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Coordinated Expenditures

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 19:25-15.29

Emergency Amendment Adopted and Concurrent Proposed Amendment Authorized: July 18, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): August 2, 1989.

Emergency Amendment Filed: August 3, 1989 as R.1989 d.456.

Authority: N.J.S.A. 19:44A-38 and P.L. 1989, c.4, specifically section 12.

Emergency Amendment Effective Date: August 3, 1989.

Emergency Amendment Expiration Date: October 2, 1989.

Concurrent Proposal Number: PRN 1989-452.

Submit written comments by September 20, 1989 to:

Nedda Gold Massar, Esq.
Election Law Enforcement Commission
National State Bank Building, 12th Floor
CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary and Statement of Imminent Peril

The Election Law Enforcement Commission emergency adopts and concurrently proposes to amend the recently promulgated rule concerning coordinated expenditures made in a gubernatorial general election (see 21 N.J.R. 1286(a) (May 15, 1989), and 21 N.J.R. 2056(b) (July 17, 1989)). As noted in the agency responses to comments received at that time, this amendment is the result of new suggestions recently received from representatives of "Friends of Jim Courter," and from "Florio for Governor, Inc." Jim Courter and Jim Florio are major political party candidates for Governor in the 1989 general election.

The emergency and concurrently proposed amendment to the coordinated expenditures rule contained herein permit additional communication activity by others on behalf of gubernatorial candidates which would not be counted toward the $5 million expenditure limit imposed upon publicly-financed general election candidates (see N.J.S.A. 19:44A-7, as amended by P.L. 1989, c.4). Strictly defined direct mail materials and telephone contact are permitted without triggering a gubernatorial expenditure. Further, the emergency amendments define which entities may engage in such non-allocable activities.

The opinion in *Friends of Tom Kean v. New Jersey Election Law Enforcement Commission*, 114 *N.J.* 33 (1989), was not decided until February, 1989. The direction in the *Friends of Tom Kean* decision was necessary to begin discussion of the scope of coordinated expenditure activity for the 1989 gubernatorial election. Comments suggesting these amendments were received from representatives of the Florio campaign on May 26, 1989. Comments were also received from the Courter campaign on June 14, 1989. Additional materials were submitted by both the Courter and Florio campaigns on June 21, 1989.

The major party candidates, as a practical matter, could not have commented much earlier because they were not selected as candidates until the date of the June 6, 1989 primary election. The Commission believes that emergency adoption is particularly appropriate because both major party candidates already have not only had the opportunity to comment, but in fact have submitted proposed texts. Also, all gubernatorial candidates on the ballot for the general election have been sent copies of these amendments before the Commission decided to propose them.

Emergency amendment is necessary in order to introduce predictability and certainty into the gubernatorial campaigns' financial operations at a time when planning to include such activity is still possible. To delay adoption of the emergency amendment to the coordinated expenditures rule would effectively preclude use of these campaign strategies in the 1989 general election.

The Commission perceives imminent peril to the public welfare if the 1989 gubernatorial campaigns are unnecessarily restricted in their use of certain voter communication methods. The public welfare is further endangered when other than gubernatorial candidates are restricted in their ability to produce campaign materials containing references to the gubernatorial candidates. The Commission believes that imminent peril to party building activity exists in the absence of these emergency amendments.

Under the emergency and proposed amendment to the coordinated expenditures rule, non-gubernatorial general election candidates or a joint committee designated by non-gubernatorial candidate pursuant to N.J.S.A. 19:44A-16(h) and political party committees, as defined in N.J.A.C. 19:25-1.7, may pay for and coordinate direct mail and telephone communications which mention the gubernatorial candidate. Previously, those same activities if coordinated with a publicly-financed gubernatorial campaign, would have resulted in an allocation against the gubernatorial candidate's expenditure limit.

Among the emergency adopted and proposed changes to the coordinated expenditures rule at N.J.A.C. 19:25-15.29 are:

1. Subsection (a), which contains the basic coordinated expenditure provision, has been amended to specify that expenditures by all entities other than the gubernatorial candidate or his or her principal campaign committee are subject to the contribution and expenditure limits of the public financing law if the previously articulated criteria are met.

2. Subsection (b), which establishes an exclusion from application of the coordinated expenditure provision of subsection (a), is amended to state that the exclusion for volunteer activity applies only if paid for by a non-gubernatorial candidate, by a political committee designated by a non-gubernatorial candidate pursuant to N.J.S.A. 19:44A-16(h), or by a political party committee, as defined in N.J.A.C. 19:25-1.7. By adding the word "as" to paragraph (b)2, the amendment suggests appropriate volunteer activity subject to the exception, without precluding other types of activity from the exemption.

3. New subsection (c) creates an exception from the coordinated expenditures provision for insubstantial references to a gubernatorial candidate contained in direct mail activity by a non-gubernatorial candidate or political party committee. Standards are established for determination of the material which is subject to the exception.

4. New subsection (d) excepts from the coordinated expenditure provision of subsection (a) an insubstantial reference to a gubernatorial candidate during get-out-the-vote telephone bank activity conducted seven or fewer days before the general election which is paid for by a non-gubernatorial candidate or political party committee.

5. Existing subsections (c), (d), and (e) have been relettered respectively as (e), (f), and (g).

6. For the purposes of N.J.A.C. 19:25-15.29, new subsection (h) limits the term "non-gubernatorial candidate" to such a candidate's campaign committee or multi-candidate committee designated pursuant to N.J.S.A. 19:44A-16(h), and clarifies that the rule contemplates only activity by political party committees as defined in N.J.A.C. 19:25-1.7. Non-designated political committees and continuing political committees (PACs) are not eligible for the exemptions contained in the rule.

Pursuant to its authority under P.L. 1989, c.4, section 12, the Commission intends the concurrently proposed amendment to be permanently effective upon the filing of its notice of adoption with the Office of Administrative Law. The Commission contemplates such filing will occur shortly after the expiration of the comment period on September 20, 1989.

Social Impact

The proposed amendment to the coordinated expenditures rule affects principally general election candidates who have elected to participate in public financing and are thereby subject to the overall expenditure limit contained in N.J.S.A. 19:44A-7. They also affect other than gubernatorial candidates and political party committees who wish to coordinate campaign efforts with publicly-financed gubernatorial candidates. The Commission believes the amendment to the coordinated expenditures rule will have a beneficial social impact because it encourages political party activity in gubernatorial general elections. The amendment enhances the ability of the affected non-gubernatorial candidates to communicate with the voters without jeopardizing the expenditure limit imposed on publicly-financed candidates.

Economic Impact

The Commission believes that the proposed amendment to the general election coordinated expenditures rule does not have any substantial economic impact, other than the minimal costs which the gubernatorial and non-gubernatorial candidates and political party committees might incur for required recordkeeping and reporting purposes. Sufficient records must be kept by the entity making the exempt communication expenditure.

Regulatory Flexibility Statement

The proposed amendment does not impose any recordkeeping, reporting or 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 or otherwise contracted by gubernatorial or other candidates or political party committees for the purpose of preparing or circulating political advertising, the reporting, recordkeeping and compliance requirements generated by the proposed amendment are solely on the campaign entities purchasing such services.

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

19:25-15.29 Coordinated expenditures

(a) A communication expenditure by [a candidate] **any person or entity,** other than a gubernatorial candidate **or his or her principal campaign committee, as defined in N.J.A.C. 19:25-15.3,** is a contribution by such [candidate] **person or entity** subject to the [contribution] limit **on a contribution to a gubernatorial candidate** in N.J.S.A. 19:44A-29 and is a coordinated expenditure of the gubernatorial candidate properly allocable against the expenditure limit of the gubernatorial candidate in N.J.S.A. 19:44A-7 if:

1.-2. (No change.)

(b) A reference to a gubernatorial candidate **appearing in materials paid for by non-gubernatorial candidates, as hereinafter defined, or political party committees, as defined in N.J.A.C. 19:25-1.7,** will be deemed insubstantial and not subject to (a) above provided that:

1. (No change.)

2. The names or pictures of the gubernatorial and non-gubernatorial candidates appear on printed campaign materials used in connection with volunteer activities on behalf of the named or pictured non-gubernatorial candidates, such **as** materials consisting of buttons, pins, bumper stickers, handbills, brochures, posters, yard signs or palm cards; and

3. The materials in (b)2 above are not used in connection with any broadcasting, newspaper, magazine, billboard, [direct mail] or similar type of general public communication or political advertising.

(c) A reference to a gubernatorial candidate appearing in campaign literature or material circulated to voters by direct mail and paid for by non-gubernatorial candidates, as hereinafter defined, or by political party committees, as defined in N.J.A.C. 19:25-1.7, shall be deemed insubstantial and not subject to (a) above provided that:

1. The reference consists of no more than a single use of the gubernatorial candidate's name in the text, a single use of the gubernatorial candidate's name within a slate or listing of the names of gubernatorial and non-gubernatorial candidates, and a single photograph or depiction of the gubernatorial candidate provided that a photograph or depiction of each non-gubernatorial candidate larger or of equal size to the gubernatorial candidate's photograph or depiction is included; and

2. The size of the print used to reproduce the name of the gubernatorial candidate is the same or smaller than the size of the print used for the names of the non-gubernatorial candidates; and

3. The predominant theme of the text promotes the candidacy or candidacies of the non-gubernatorial candidate or candidates and not that of the gubernatorial candidate.

(d) A reference to a gubernatorial candidate made in a telephone communication to a voter shall be deemed insubstantial and not subject to (a) above provided that:

1. The telephone communication is part of a get-out-the-vote effort of the non-gubernatorial candidate, as hereinafter defined, or of a political party committee, as defined in N.J.A.C. 19:25-1.7, conducted seven or fewer days before the gubernatorial general election; and

2. The reference to the gubernatorial candidate is limited to stating the name of the gubernatorial candidate as part of a slate or together with the names of non-gubernatorial candidates.

Redesignate (c)-(d) as (e)-(f) (No change in text.)

[(e)](g) A gubernatorial candidate determining the reasonable value to his or her candidacy of a coordinated communication pursuant to [(d)](f) above shall establish that value to the nearest five percent of the total cost of preparation and circulation. In no case shall the reasonable value be determined to be less than five percent of total cost.

(h) For the purposes of this section, the term "non-gubernatorial candidate" shall mean any candidate, other than a gubernatorial candidate, acting alone under a single campaign committee or jointly with other candidates under a multi-candidate joint campaign committee designated pursuant to N.J.S.A. 19:44A-16(h), but shall not mean any political committee, as defined in N.J.S.A. 19:44A-3(i), or shall not mean any continuing political committee, as defined in N.J.S.A. 19:44A-3(n)(2), which is not a political party committee, as defined in N.J.A.C. 19:25-1.7, or shall not mean any other corporation, partnership, incorporated or unincorporated association, or part thereof.

PUBLIC NOTICES

PERSONNEL

(a)

MERIT SYSTEM BOARD

Action on Petition for Rulemaking Promotional Examinations

N.J.A.C. 4A:4-2.1

Petitioner: William Seip.
Authority: N.J.S.A. 11A:4-1.

Take notice that William Seip filed a rulemaking petition on April 26, 1989 with the Department of Personnel requesting the amendment of N.J.A.C. Title 4A (see 21 N.J.R. 1581(b)). He proposed that the Merit System Board adopt a rule requiring the Department of Personnel to reannounce a promotional examination if it does not promulgate a promotional list within one year from the examination closing date.

The Board agrees in concept with the view that, if there is a significant delay in the promotional examination process, the examination should be reannounced to give additional employees a chance to apply for the promotional opportunity who may not have been eligible as of the original examination closing date. However, the Board does not believe that a promotional examination should be reannounced if the examination has already been constructed and scheduled. Therefore, the Board has decided to publish for comment a proposed amendment to N.J.A.C. 4A:4-2.1 (see notice of proposal published elsewhere in this issue of the Register) which would require the reannouncement of a promotional examination if, within one year of the closing date, the examination has not yet been constructed and scheduled.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF COASTAL RESOURCES

Notice of Receipt of Petition for Rulemaking

N.J.A.C. 7:7A

Petitioners: Association of New Jersey Environmental Commissions (ANJEC), the American Littoral Society, the Delaware Riverkeeper, the Great Swamp Watershed Association, the New Jersey Audubon Society, the New Jersey Conservation Foundation, the New Jersey Environmental Lobby, the Passaic River Coalition, the Upper Raritan Watershed Association, the Upper Rockaway River Watershed Association, and the Watershed Association of the Delaware River.

Take notice that on July 5, 1989, the Department of Environmental Protection (the Department) received a petition for rulemaking concerning N.J.A.C. 7:7A, the Department's rules regulating activities in freshwater wetlands.

Petitioners' request addresses exemptions from freshwater wetlands permit requirements. The petitioners suggest several changes which will substantially narrow the availability of these exemptions. Specifically, petitioners request that the Department amend N.J.A.C. 7:7A-2 to:

(1) Reduce the length of time within which exempted activities must be initiated from five years to three years;

(2) Empower local authorities to prevent projects from obtaining exempted status by denying site plan or subdivision approval to the project;

(3) Deny exempt status on the basis of prior local approval if project changes require a new or amended application to the local authorities;

(4) Deny exempt status to projects with Nationwide general permit approvals from the United States Army Corps of Engineers (Corps) if changes are made to the project plans subsequent to their submittal to the Corps, provided the changes would increase the project's impact on wetlands, water quality, or valuable wildlife habitats;

(5) Deny exempt status to projects with Corps approval if an application were not submitted for local approval of the project within 60 days after Corps approval;

(6) Narrow the class of projects exempted by virtue of Corps Nationwide general permit approval from those with applications submitted to the Corps by June 10, 1988, to only those with approval letters issued prior to July 1, 1988;

(7) Require notice of and opportunity for comment by municipal clerks, planning boards, environmental committees, county planning boards, and areawide water quality management agencies prior to Department issuance of letters of exemption;

(8) Provide that the Department no longer shall issue letters of exemption based on any Corps approval granted subsequent to July 1, 1988; and

(9) Provide that letters of exemption already issued by the Department based on Corps approvals granted after July 1, 1988 shall be void if local authorities deny project approval, if application for local approval is not made within 60 days of Corps approval, if changes which would increase Wetlands impacts are made to the project after Corps approval, if the project is not initiated within three years after local approval, or if the project is not initiated within three years after assumption by the State of the Federal 404 program.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioners, and file with the Office of Administrative Law, a notice of action on the petition.

(c)

THE COMMISSIONER

Notice of Availability of Grants Matching Grants Program for Municipal Environmental Commissions

Take notice that, in compliance with P.L. 1972, c.49, the Department of Environmental Protection hereby announces the availability of the following grant program:

A. Name of program:

Matching Grants Program for Municipal Environmental Commissions. Maximum grant $2,500.

B. Purpose:

The purpose of this matching grants program is to assist municipal environmental commissions in obtaining the financial resources necessary to inventory and document environmental resources, and to prepare policy recommendations to protect those resources.

C. Amount of money in the program:

It is anticipated that a minimum of $200,000 will be available for this program, but the exact amount of funding available is not known at this time.

D. Organizations which may apply for funding under this program:

Municipal Environmental Commissions established in accordance with P.L. 1968, c.245, as revised.

E. Qualifications needed by an applicant to be considered for the program:

Applicant must conduct an eligible project as defined in the Procedural Guide for this program. Applicant must agree to fund 50 percent of the cost of the project, by matching the state grant on a dollar-for-dollar basis.

F. Procedure for eligible organizations to apply:

Request a copy of the Matching Grants Program Procedural Guide and Application Form from:

Mr. Thomas Wells, Director
Office of Environmental Services
NJDEP
CN 402
501 East State Street, Third Floor
Trenton, NJ 08625
609-292-3904

G. Address for application to be submitted:

Completed proposals should be submitted to the address listed directly above.

H. Deadline by which application proposals must be submitted:
Proposals must be submitted by October 1, 1989.
I. Date by which applicants shall be notified of approval or disapproval:
November 1, 1989.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY

Notice of Availability of Grants HIV-Related Tuberculosis Prevention Program in Drug Treatment Centers

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Health hereby publishes notice of the availability of the following grant:

NAME OF GRANT PROGRAM:
HIV-Related Tuberculosis Prevention Program in Drug Treatment Centers, Grant Program No. 90-76-TB.

PURPOSE FOR WHICH THE GRANT PROGRAM FUNDS WILL BE USED:
To demonstrate the effectiveness of isoniazid (INH) therapy in preventing clinical tuberculosis among intravenous drug users (IVDUs) attending methadone or other long-term residential treatment programs in drug treatment centers.

AMOUNT OF MONEY IN THE GRANT PROGRAM:
The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

GROUP OR ENTITIES WHICH MAY APPLY FOR THE GRANT PROGRAM:
Not for profit corporations and government organizations.

QUALIFICATIONS NEEDED BY AN APPLICANT TO BE CONSIDERED FOR THE GRANT:
Demonstrate ability to meet the requirements stipulated by the Centers for Disease Control (CDC) in their Program Announcement 925 and be approved for funding by CDC.

PROCEDURES FOR ELIGIBLE ENTITIES TO APPLY FOR GRANT FUNDS:
Complete and submit a Department of Health Application for Health Service Grant on or before the deadline established in the request for proposal (RFP).

FOR INFORMATION CONTACT:
Sr. Public Health Advisor (Tuberculosis Control)
Communicable Disease Field Activities Unit—NJSDH
CN 369
Trenton, New Jersey 08625-0369
(609) 588-7522

DEADLINE BY WHICH APPLICATIONS MUST BE SUBMITTED:
August 31, 1989.

DATE BY WHICH APPLICANT SHALL BE NOTIFIED WHETHER THEY WILL RECEIVE FUNDS
September 30, 1989.

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

Notice of Public Hearing Licensing and Degree Standards Characteristics of a University

Take notice that the Board of Higher Education will hold a public hearing to hear testimony on the standards for university designation in compliance with the Governor's veto of Assembly Bill No. 3056 dated June 15, 1989. The hearing will be held on:

September 12, 1989 at 9:30 A.M.
University of Medicine and Dentistry of New Jersey
Room B-515
Medical Science Building
185 South Orange Avenue
Newark, New Jersey 07103-2757

Requests to speak will be accepted by telephone or in writing until noon on Thursday, September 7, 1989. Please contact Ms. Judith Himes, Director of Board Activities and External Relations, at (609) 292-5879, with requests to speak or for further information.

HUMAN SERVICES

(c)

HISPANIC OUTREACH PROGRAM

Notice of Availability of Grant Funds Hispanic Components of REACH Welfare Reform Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds.

A. Name of the grant programs that have funds available:
Hispanic components of REACH (Realizing Economic Achievement) welfare reform program.

B. Purpose for which the grant program funds shall be used:
To award three (3) regionally based contracts for provision of the following services to Hispanic REACH-eligible clients and to county-level agencies participating in REACH.

To develop and implement targeted outreach efforts and to disseminate culturally and linguistically relevant information to REACH-eligible clients; to develop model employment training and case management components; to provide training sessions to county level agencies; and to provide for the use of facilities as orientation, information and referral centers.

C. Amount of money in the grant program:
Total amount of grant for Fiscal Year 1989-90 is $75,000. No contract is to exceed $35,000 maximum.

D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:
Non-profit Hispanic community-based organizations; non-profit professional or service organizations; consortia of several non-profit agencies may be formed for the purpose of these contracts.

E. Qualifications needed by an applicant to be considered for the grant program:
Applicants must demonstrate prior experience in delivering services to Hispanic- or Spanish-speaking clients and must demonstrate ability to provide the services outlined in section "B" above.

F. Procedure for eligible entities to apply for grant funds:
Send letter of inquiry or call for copy of Request for Proposal specifications to:

Fred Burgos, Administrator
Hispanic Outreach Program
N.J. Department of Human Services
CN 700
Trenton, NJ 08625
(609) 292-3813

G. Address of division, office or official receiving application:
Same as F above.

H. Deadline by which applications must be submitted to the office:
Proposals must be submitted before September 29, 1989.

I. Date by which applicants shall be notified whether they will receive funds under the grant program:
Applicants shall receive notice of approval or disapproval by October 31, 1989.

INSURANCE

(a)

THE COMMISSIONER

Notice of Public Hearing on Exportable List

Take notice that Kenneth D. Merin, Commissioner, Department of Insurance, announces that the Department will hold a hearing to determine classes of insurance for which no reasonable or adequate market exists among authorized insurers on September 13, 1989 at 10:00 A.M., at:

Department of Insurance
Commerce Building, Room C-218, 2nd Floor
20 West State Street
Trenton, New Jersey 08625

Consideration will be given to the continued listing of the 26 classes of coverage declared eligible to export on October 17, 1988. In addition, interested persons are invited to submit other proposed classes of coverage for listing.

Interested persons may submit, in writing, data, views or arguments relevant to the Exportable List on or before September 6, 1989. These submissions should be addressed to:

Department of Insurance
Financial Examinations Division
Surplus Lines Examining Office
CN 325
Trenton, New Jersey 08625

The current Exportable List as established on October 17, 1988 (see 20 N.J.R. 2596(b)) shall continue in effect until a determination based upon the September 13, 1989 public hearing is announced.

TREASURY-GENERAL

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection
Notice of Assignments—Month of July 1989

Solicitation of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated July 6, 1989.

The following assignments have been made:

DBC#	PROJECT	A/E	CCE
I028	Roof Monitoring Services Roof Replacement Kean College Union, NJ	Roof Maintenance Systems	$20,000 Services
P627	Lighthouse Renovations Barnegat Lighthouse State Park Ocean County, NJ	Watson & Henry Assoc.	$150,000
J058	Facility Consultant FY '90 Div. of Building & Construction	Hubert H. Hayes, Inc.	$50,000 Services
M1016	Asbestos Removal Forensic Psychiatric Hospital Trenton Psychiatric Hospital W. Trenton, NJ	Gaudet Assoc.	$195,000
	COMPETITIVE PROPOSALS		
	Gaudet Assoc.	$30,275 Lump Sum	
	Applied Environmental Technology	$30,870 Lump Sum	
	O'Brien & Gere Engrs., Inc.	$68,400 Lump Sum	
P618	Cranberry Lake Dam Rehabilitation Allamuchy Mountain State Park Sussex County, NJ	Woodward-Clyde Consultants	$300,000
	COMPETITIVE PROPOSALS		
	Woodward-Clyde Consultants	$59,500 Lump Sum	
	Frederic R. Harris, Inc.	$87,800 Lump Sum	
	O'Brien & Gere Engrs., Inc.	$94,600 Lump Sum	
C396	Infirmary Renovations East Jersey State Prison Rahway, NJ	Harsen & Johns Partnership	$700,000
	COMPETITIVE PROPOSALS		
	Harsen & Johns Partnership	$57,500 Lump Sum	
	Nadaskay-Kopelson Architects	$68,280 Lump Sum	
	The Grad Partnership	$103,200 Lump Sum	
I054 Reassigned Project	Upgrade Domestic/Fire Water System Stockton State College Pomona, NJ	Seeler-Smith, Inc.	$320,000
	COMPETITIVE PROPOSALS		
	Seeler-Smith, Inc.	$54,200 Lump Sum	
	*Roy Larry Schlein & Assoc.	$23,875 Lump Sum	
	Stone & Webster Engrng. Corp.	$99,217 Lump Sum	
	James Anderson Assoc.	$110,340 Lump Sum	
	*mutual agreement to withdraw		
P620 P621	New Administrative Facility (P620) New Maintenance Facility (P621) Washington Crossing State Park Mercer County, NJ Matawan, NJ	Michael Mostoller-Fred Travisano	$350,000 (P620) $900,000 (P621)
	COMPETITIVE PROPOSALS		
	Michael Mostoller-Fred Travisano	$116,300 Lump Sum	
	Kehrt Shatken Sharon: Architects	$137,100 Lump Sum	
	Thomas W. Kocubinski AIA Architects	$156,400 Lump Sum	
	Holt & Morgan Assoc., PA	$168,802 Lump Sum	
Note: A/E fees shown are for both projects.			
M1007	Installation of Emergency Generator Marlboro Psychiatric Hospital Marlboro, NJ	John C. Morris Assoc., Inc.	$565,000
	COMPETITIVE PROPOSALS		
	John C. Morris Assoc., Inc.	$54,082 Lump Sum	
	Barnickel Engrng. Corp.	$58,269 Lump Sum	
	Frank R. Holtaway & Son, Inc.	$80,480 Lump Sum	
C383	Wastewater Treatment Plan Improvements Albert C. Wagner Correctional Facility Burlington Co., NJ	Kupper Assoc.	$3,500,000
	COMPETITIVE PROPOSALS		
	Kupper Assoc.	$434,250 Lump Sum	
	Clinton Bogert Assoc.	$670,000 Lump Sum	
	Post, Buckley, Schuh & Jernigan	$842,000 Lump Sum	
	Metcalf & Eddy, Inc.	$850,000 Lump Sum	
M1013	Renovations to Dodds Kitchen No. Princeton Developmental Ctr.	M. Benton & Assoc.	$300,000
	COMPETITIVE PROPOSALS		
	M. Benton & Assoc.	$58,060 Lump Sum	
	Edward A. Sears Assoc.	$73,780 Lump Sum	
	J.M. DiGiacinto Assoc.	No proposal received	
	Syska & Hennessy	No proposal received	

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Recording and Reporting of Currency Transactions Over Specified Amounts
N.J.A.C. 19:45-1.47

Petitioner: Division of Gaming Enforcement.
Authority: N.J.S.A. 5:12-69(c), 5:12-76(b) and 52:14B-4(f).

Take notice that on June 30, 1989, the Division of Gaming Enforcement ("Division") filed a rulemaking petition with the Casino Control Commission proposing a new rule, N.J.A.C. 19:45-1.47, effectuating amendments to the Casino Control Act, N.J.S.A. 5:12 et seq., regarding the recording and reporting of identities of persons who engage in large currency transactions with casino licensees.

Specifically, the proposed new rule would require a casino licensee, a person licensed under the Act, and persons acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, to examine proof of identity and, if not a United States citizen, the passport identification number of any person who engages in a single currency transaction of $10,000 or more during a gaming day. Multiple currency transactions by or on behalf of one person resulting in either the receipt or disbursement of cash totalling $10,000 or more during a gaming day would be considered a single transaction if the casino licensee had knowledge of such transactions. Finally, a report reflecting the identity and passport numbers of those persons who have engaged in such currency transactions must be made to the Division no later than five calendar days following the month in which the cash receipt or cash disbursement transaction occurred.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the requirements of N.J.S.A. 52:14B-4.

(b)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Minibaccarat Table Characteristics
N.J.A.C. 19:46-1.12

Petitioner: Paul-Son Dice & Card, Inc.
Authority: N.J.S.A. 5:12-69(c) and 52:14B-4(f).

Take notice that on June 29, 1989, Paul-Son Dice & Card, Inc. filed a rulemaking petition with the Casino Control Commission proposing to amend N.J.A.C. 19:46-1.12 with respect to the design requirements which must be imprinted on the cloth covering a minibaccarat table.

It is the petitioner's contention that the language of the current rule, N.J.A.C. 19:46-1.12(c)1, requires clarification because it is somewhat contradictory in its terms and definitions. The petitioner proposes that the rule generally require that the locations for wagers on the minibaccarat table be depicted by a "geometrical shape" rather than the current specific requirement that the areas for wagers be rectangular, circular or oval in shape. The petitioner would also amend the rule to clarify that the total number of positions for players on the minibaccarat table shall not exceed seven in number.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the requirement of N.J.S.A. 52:14B-4.

RULEMAKING IN THIS ISSUE—Continued

TREASURY-GENERAL
Architect-engineer selection for major projects ..... 2677(b)
CASINO CONTROL COMMISSION
Rulemaking petition concerning the recording and reporting of large currency transactions ..... 2678(a)
Petition to amend N.J.A.C. 19:46-1.12, concerning minibaccarat table covering design ..... 2678(b)

INDEX OF RULE PROPOSALS AND ADOPTIONS 2679

Filing Deadlines

September 18 issue:	
Adoptions	**August 25**
October 2 issue:	
Proposals	**September 1**
Adoptions	**September 11**
October 16 issue:	
Proposals	**September 15**
Adoptions	**September 22**
November 6 issue:	
Proposals	**October 6**
Adoptions	**October 16**

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the July 3, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JUNE 19, 1989

NEXT UPDATE: SUPPLEMENT JULY 17, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1179 and 1474	May 15, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2949 and 3046	December 5, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1 and 88	January 3, 1989	21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 89 and 224	January 17, 1989	21 N.J.R. 2149 and 2426	August 7, 1989
21 N.J.R. 225 and 364	February 6, 1989	21 N.J.R. 2427 and 2690	August 21, 1989
21 N.J.R. 365 and 588	February 21, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to OAL	21 N.J.R. 1181(a)	R.1989 d.395	21 N.J.R. 2019(a)
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
1:10	Public welfare hearing rules: administrative change	———	———	21 N.J.R. 2288(a)
	Most recent update to Title 1: TRANSMITTAL 1989-3 (supplement April 17, 1989)			
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importations	21 N.J.R. 1477(a)	R.1989 d.455	21 N.J.R. 2470(a)
2:5	Equine infectious anemia and avian influenza	21 N.J.R. 1479(a)	R.1989 d.454	21 N.J.R. 2472(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)		
2:76	State Agricultural Development Committee rules	21 N.J.R. 1601(a)	R.1989 d.453	21 N.J.R. 2472(b)
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)	R.1989 d.451	21 N.J.R. 2472(c)
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)	R.1989 d.452	21 N.J.R. 2473(a)
2:76-6.16	Farmland Preservation Program: easement purchase evaluation criteria	21 N.J.R. 2152(a)		
	Most recent update to Title 2: TRANSMITTAL 1989-6 (supplement June 19, 1989)			
BANKING—TITLE 3				
3:1-2.25, 2.26	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(b)
3:1-2.25, 2.26	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:1-6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 9.6	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:6-13.3, 13.5, 14.1, 14.2	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(c)
3:6-13.3, 13.5, 14.1, 14.2	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:11-5.1, 11.9	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(c)
3:11-5.1, 11.9	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:13-3.2	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:17-2.1, 2.2, 3.9, 6.1, 6.2, 6.6, 6.10, 7.1	Consumer Loan Act rules	Emergency (expires 9-1-89)	R.1989 d.408	21 N.J.R. 2399(a)
3:18-10.1	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)
3:19-1.7	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:23-2.1	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)
3:24	Check cashing business standards	21 N.J.R. 1765(a)		
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		
3:38-1.1, 1.2	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3:38-1.8	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
	Most recent update to Title 3: TRANSMITTAL 1989-3 (supplement June 19, 1989)			
CIVIL SERVICE—TITLE 4				
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)		
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)		
4:3-16	Layoffs in local service	21 N.J.R. 1185(a)	R.1989 d.369	21 N.J.R. 2019(b)
4:3-16	Layoffs in local service: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1480(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
	Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)			
PERSONNEL—TITLE 4A				
4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)		
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)		
4A:3-2.2	Designation of SES positions: administrative correction	_____	_____	21 N.J.R. 1824(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:4-2.3, 2.9, 2.15, 5.2, 6.3–6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)		
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)		
	Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)			
COMMUNITY AFFAIRS—TITLE 5				
5:11-8.5	Recovery of relocation assistance costs	21 N.J.R. 1039(a)	R.1989 d.402	21 N.J.R. 2288(b)
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)		
5:15-3.1, 3.4	Emergency shelters for homeless	21 N.J.R. 1509(a)	R.1989 d.412	21 N.J.R. 2288(c)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18-2.8	Uniform Fire Code: correction to fee schedule	_____	_____	21 N.J.R. 2402(a)
5:18A-2.6	Fire Code Enforcement: fee collection remittance	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)	R.1989 d.435	21 N.J.R. 2774(a)
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: municipal and departmental fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)	R.1989 d.342	21 N.J.R. 1844(b)
5:26-2.3, 2.4	Planned real estate development full disclosure: registration and exemption fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)		
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)	R.1989 d.393	21 N.J.R. 2019(c)
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)		
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)	R.1989 d.370	21 N.J.R. 2020(a)

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5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-12.3	Option to buy sales units: administrative correction	———	———	21 N.J.R. 2475(a)
5:92-12 App.	Uniform deed restrictions and lines: controls on affordability	21 N.J.R. 1988(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

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6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)	R.1989 d.354	21 N.J.R. 1824(b)
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:21	Public testimony session concerning pupil transportation	21 N.J.R. 1939(a)		
6:22-1.1, 2.5	Public testimony session concerning school facilities	21 N.J.R. 1939(a)		
6:24-5.4	Public testimony session concerning charges against tenured employees of other State departments	21 N.J.R. 1775(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)		
6:26, 6:27	Public testimony session concerning elementary and secondary education	21 N.J.R. 1939(a)		
6:28-4.5	Special education home instruction: administrative correction	———	———	21 N.J.R. 2288(d)
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6:30	Public testimony session concerning bilingual education	21 N.J.R. 1939(a)		
6:30-1.7, 2.3, 2.6	Adult education programs: monitoring and funding	21 N.J.R. 1039(b)	R.1989 d.355	21 N.J.R. 1826(a)
6:30-2.3	Adult education: administrative correction	———	———	21 N.J.R. 2475(b)
6:39-1	Statewide assessment of pupil proficiency in core studies	21 N.J.R. 1605(a)		
6:70	Public testimony session concerning library network services	21 N.J.R. 1775(a)		
6:70	Library network services	21 N.J.R. 1940(a)		

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7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2–1.5, 1.7–1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)	R.1989 d.436	21 N.J.R. 2530(a)
7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)		
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7:6	Boating rules	21 N.J.R. 1157(a)	R.1989 d.351	21 N.J.R. 1856(a)
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7:7A-1.4, 2.5, 6, 7, 16.6, 16.7	Freshwater wetlands transition areas	21 N.J.R. 596(a)	R.1989 d.362	21 N.J.R. 1858(a)
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)	R.1989 d.373	21 N.J.R. 2024(a)
7:7E-7.14	High rise structures: administrative correction	———	———	21 N.J.R. 1857(a)
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)	R.1989 d.450	21 N.J.R. 2534(a)
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7:12-1.1, 2.1, 3.2, 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9, 9.12	Shellfish-growing water classification	21 N.J.R. 1041(b)	R.1989 d.390	21 N.J.R. 2032(a)
7:13	Flood hazard area control	21 N.J.R. 371(a)	R.1989 d.415	21 N.J.R. 2350(a)
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13	Flood Hazard Area Control: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
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7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)	R.1989 d.445	21 N.J.R. 2672(a)
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)	R.1989 d.446	21 N.J.R. 2671(a)
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7:14A	New Jersey Pollutant Discharge Elimination System (NJPDES)	21 N.J.R. 707(a)	R.1989 d.339	21 N.J.R. 1883(a)
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7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
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7:23	Emergency flood control	21 N.J.R. 1051(a)	R.1989 d.348	21 N.J.R. 1903(a)
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)		
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)	R.1989 d.418	21 N.J.R. 2356(a)
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)		
7:25-22.1–22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)	R.1989 d.394	21 N.J.R. 2035(a)
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7:26-3A	Regulated medical wastes	Emergency (expires 8-25-89)	R.1989 d.396	21 N.J.R. 2109(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)		
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7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)		
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8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51–3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1–5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
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8:31B-3.51–3.55, 3.58, 3.59, 3.60	Hospital reimbursement: appeals	21 N.J.R. 131(b)	R.1989 d.385	21 N.J.R. 2073(a)
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8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)		
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8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)		
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)	R.1989 d.417	21 N.J.R. 2289(a)
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8:33M	Rehabilitation hospitals and comprehensive rehabilitation services: need review process	21 N.J.R. 1062(a)	R.1989 d.386	21 N.J.R. 2102(a)
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8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)		
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8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)	R.1989 d.433	21 N.J.R. 2494(a)
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8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b), 756(b), 1430(a))	20 N.J.R. 1766(a)	R.1989 d.377	21 N.J.R. 2107(b)
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8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products	21 N.J.R. 662(a)	R.1989 d.378	21 N.J.R. 2107(c)
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10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
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10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
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10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)	R.1989 d.300	21 N.J.R. 2513(b)
10:120	Youth and Family Services hearings: reopening of comment period	21 N.J.R. 1580(a)		
10:122-3.3, 4.7	Child care centers: administrative correction	_____	_____	21 N.J.R. 2385(a)
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16:28-1.72, 1.77	School and speed limit zones along U.S. 206 in Hamilton and Route 29 in Stockton	21 N.J.R. 1501(b)	R.1989 d.411	21 N.J.R. 2299(a)
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